

JUDICIAL COUNCIL MEETING

Minutes
August 23, 2019
Matheson Courthouse
Large Conference Room (W19)
450 S. State St.
Salt Lake City, Utah 84111
1:45 p.m. – 4:00 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

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

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Shane Bahr
Stacey Demma
Jim Peters
Tiffany Pew
Nini Rich
Neira Siaperas
Nancy Sylvester
Keisa Williams
Jeni Wood

Excused:

Hon. Brook Sessions

Guests:

Jacqueline Carlton, Office of Legislative Research
Hon. Sherene Dillon, Second District Juvenile Court
Travis Erickson, Seventh District TCE
Hon. Dennis Fuchs, Senior Judge
Hon. Elizabeth Hruby-Mills, Third District Court
Joanna Landau, Indigent Defense Commission
Jojo Liu, Indigent Defense Commission
Hon. Laura Scott, Third District Court
Joseph Wade, Office of Legislative Research

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

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

Motion: Judge Kate Appleby moved to approve the Judicial Council minutes from the July 18, 2019 meeting, as presented. Judge Mark May seconded the motion, and it passed unanimously.

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

Chief Justice Durrant thanked the Council and support staff for a successful budget meeting.

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

Judge Mary T. Noonan briefly addressed the Performance Audit of Child Welfare During Divorce Proceedings. The Audit of Evidence Storage and Management Among Selected Utah District and Juvenile Courts report is being finalized.

The new Human Resources Director, Bart Olsen, will begin September 3. The Appellate Court Administrator position should be filled soon.

Judge Noonan noted she would not attend at the September Judicial Council meeting and Annual Judicial Conference.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee said the most recent Liaison meeting discussed weighted caseloads. The committee has been addressing expected legislative bills. Judges who have legislative experience have been invited to attend a Liaison meeting to provide input.

The Council composition workgroup will have recommendations soon on the composition and responsibilities of the Council.

Policy and Planning Committee Report:

Judge Derek Pullan said they are following up on the Council’s June retreat assignments. HR’s policies are being worked on and are expected to be complete in the fall.

Bar Commission Report:

Rob Rice noted that the Bar voted to increase funding for the licensed lawyer program.

5. RECERTIFICATION OF PROBLEM-SOLVING COURTS: (Judge Dennis Fuchs)

Chief Justice Durrant welcomed Judge Dennis Fuchs.

The following courts have met all required and presumptive practices for recertification:

Adult Drug Courts

Second District	Farmington	Judge Morris
Second District	Ogden	Judge Bean
Third District	Tooele	Judge Bates
Fifth District	Cedar City	Judge Barnes

Adult Mental Health Courts

Second District	Farmington	Judge Kay
Fifth District	Cedar City	Judge Little
Fifth District	St. George	Judge Leavitt

The Third District Dependency Court in West Jordan (Judge Renteria) met all required practices criteria but not the presumptive practices criteria due to having more than 15 participants but less than 125. This Court was recently changed from a juvenile drug court to a dependency drug court. The amount of participants in the Court is increasing.

The following courts have met all required practices but fail to meet presumptive practices of monitoring historically disadvantaged groups:

Adult Drug Courts

Fourth District	Nephi	Judge Howell
Fourth District	Fillmore	Judge Howell
Fifth District	St. George	Judge Wilcox

Adult Mental Health Court

Fifth District	St. George	Judge Westfall
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The IT Department is working on a program that will better monitor disadvantaged groups. Judge Fuchs recommended, until the program is complete, to change presumptive practice to simple best practice for monitoring disadvantaged groups.

Chief Justice Durrant thanked Judge Fuchs.

Motion: Judge Todd Shaughnessy moved to have Policy & Planning amend the monitoring disadvantaged groups’ presumptive practice to simple best practice, as presented. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Ryan Evershed moved to approve recertification of the following courts: Adult Drug Courts: Second District Farmington – Judge Morris, Second District Ogden – Judge Bean Third District, Tooele – Judge Bates, Fifth District Cedar City – Judge Barnes, Fourth District Nephi – Judge Howell, Fourth District Fillmore – Judge Howell, Fifth District St. George – Judge Wilcox; Adult Mental Health Courts: Second District Farmington – Judge Kay, Fifth District Cedar City – Judge Little, Fifth District St. George – Judge Leavitt, Fifth District St. George – Judge Westfall; Dependency Drug Court: Third District West Jordan – Judge Renteria, as presented. Judge Appleby seconded the motion, and it passed unanimously.

**6. STANDING COMMITTEE ON CHILDREN AND FAMILY LAW REPORT:
(Judge Elizabeth Hruby-Mills, Judge Sherene Dillon, and Cathy Dupont)**

Chief Justice Durrant welcomed Judge Elizabeth Hruby-Mills, Judge Sherene Dillon, and Cathy Dupont. Judge Dillon reviewed the committee membership and rules the committee is working on. The committee will come back to the Council in the fall with recommendations for member appointments. The Second, Fourth and Seventh Districts have been working on a

domestic case manager pilot program. This is working well and has covered both urban and rural areas.

The committee offered its services for the Court’s response to the Performance Audit of Child Welfare During Divorce Proceedings report.

Chief Justice Durrant thanked Judge Hruby-Mills, Judge Dillon, and Ms. Dupont.

7. CJA RULES 1-204, 3-402, 4-202.03, AND 4-903 FOR FINAL APPROVAL: (Michael Drechsel)

Chief Justice Durrant welcomed Michael Drechsel. Rules 1-204, 3-402, 4-202.03, and 4-903 completed the public comment phase.

- Rule 1-204’s proposal allows for the Policy & Planning Committee to recommend to the Council new, amended, or repealed policies. Rule 1-204 did not receive any comments.
- Rule 3-402’s proposal clarifies membership of the Human Resources policy committee. Rule 3-402 received 3 comments, which resulted in an amendment from including a probation supervisor on the committee to a chief probation officer.
- Rule 4-202.03’s amendment would permit the parent or guardian of a minor victim to access the disposition order in the same way that any victim (including a minor victim) already can. Rule 4-202.03 received no comments.
- Rule 4-903’s amendment adds “Licensed Clinical Mental Health Counselor” to list of professionals who may perform custody evaluations and removes from the rule the list of factors required to be considered by an evaluator, instead directing that all custody factors set forth in statute must be considered. Rule 4-903 received 33 comments.

Chief Justice Durrant thanked Mr. Drechsel.

Motion: Kara Pettit moved to approve CJA rules 1-204 and 3-402, with an effective date of September 1, 2019 and CJA rules 4-202.03 and 4-903, with an effective date of November 1, 2019 as presented. Judge Augustus Chin seconded the motion, and it passed unanimously.

8. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)

Chief Justice Durrant welcomed Nancy Sylvester. The senior judges listed below have terms that will expire on December 31, 2019. None of the senior judges has any complaints pending before the Utah Supreme Court or the Judicial Conduct Commission.

The following Active Senior Judges are seeking recertification:

Appellate Courts

Hon. Judith M. Billings

District Courts

Hon. L.A. Dever
Hon. Donald Eyre, Jr.
Hon. Dennis Fuchs
Hon. Ben H. Hadfield
Hon. Scott M. Hadley
Hon. Michael Lyon
Hon. Sandra Peuler

Juvenile Courts

Hon. L. Kent Bachman
Hon. Paul D. Lyman
Hon. Frederic Oddone

Hon. Robin Reese
Hon. Gary Stott
Hon. W. Brent West

The following Inactive Senior Judges are seeking recertification:

District Courts

Hon. Douglas Cornaby
Hon. Denise Posse-Blanco Lindberg
Hon. Tyrone Medley

Juvenile Courts

Hon. Leslie Brown
Hon. Hans Chamberlain
Hon. Paul Iwasaki
Hon. Andrew Valdez
Hon. Diane Wilkins

Motion: Judge Pettit moved to approve recertification of active senior judges: Hon. Judith M. Billings, Hon. L.A. Dever, Hon. L. Kent Bachman, Hon. Donald Eyre, Jr., Hon. Paul D. Lyman, Hon. Dennis Fuchs, Hon. Frederic Oddone, Hon. Ben H. Hadfield, Hon. Scott M. Hadley, Hon. Michael Lyon, Hon. Sandra Peuler, Hon. Robin Reese, Hon. Gary Stott, and Hon. W. Brent West, and to approve recertification of inactive senior judges: Hon. Douglas Cornaby, Hon. Leslie Brown, Hon. Denise Posse-Blanco Lindberg, Hon. Hans Chamberlain, Hon. Tyrone Medley, Hon. Paul Iwasaki, Hon. Andrew Valdez, and Hon. Diane Wilkins as presented. Justice Lee seconded the motion, and it passed unanimously.

9. PROBATE CODE SUBCOMMITTEE REVISION PROPOSAL: (Judge Laura Scott and Nancy Sylvester)

Chief Justice Durrant welcomed Judge Laura Scott and Nancy Sylvester. The Utah Supreme Court tasked the Probate Subcommittee with reviewing the Uniform Probate Code (Title 75) for court procedure and making recommendations for codifying that procedure in rule and amending the Code. This task would accomplish at least two purposes: 1) making our courts more accessible to the public by clarifying how a probate case will proceed in the district court; and 2) affirming that court procedure is the constitutional prerogative of the Utah Supreme Court and should be governed by court rule instead of by statute. Due to the voluminous nature of Title 75, the Probate Subcommittee chose to focus initially on Chapter 5 of the Probate Code, which addresses guardianship and conservatorship.

The Probate Subcommittee recommends that the Judicial Council advance to the Legislature during the 2020 Legislative Session amendments to Chapter 5 of the Uniform Probate Code. The subcommittee will recommend to the Utah Supreme Court that a separate body of probate rules be created. Rule 5 of the Utah Rules of Probate Procedure would address the giving of notice in probate proceedings in much the same way that Rule 5 of the Utah Rules of Civil Procedure does so in civil cases.

Chief Justice Durrant thanked Judge Scott and Ms. Sylvester.

Motion: Justice Lee moved to refer to the Liaison Committee the advancement to the legislation amendments to Chapter 5 of the Uniform Probate Code, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

10. INDIGENT DEFENSE COMMISSION REPORT: (Joanna Landau and Jojo Liu)

Chief Justice Durrant welcomed Joanna Landau and Jojo Liu. Ms. Landau noted the Commission protects constitutionally guaranteed liberties through ongoing support for effective indigent defense services.

The IDC collaborates with the state, local governments, indigent defense providers, and other stakeholders to:

- Provide guidance & standards to ensure effective local defense services;
- Gather and report information about local indigent defense services;
- Award state funding grants to local governments to improve indigent defense services; and
- Encourage and aid in the regionalization of indigent defense services throughout the state.

Rule 11-401 of the Code of Judicial Administration created a court-appointed appellate representation roster. Several counties do not have qualified appellate representation.

Chief Justice Durrant thanked Ms. Landau and Ms. Liu.

11. OLD BUSINESS / NEW BUSINESS

Judge Appleby requested the Council create a report for the judiciary from the Budget meeting results.

12. EXECUTIVE SESSION

Motion: Judge Appleby moved to go into an executive session to discuss a personnel matter. Judge Chin seconded the motion, and it passed unanimously.

13. CONSENT CALENDAR ITEMS

a) Probation Policies 5.1 and 5.3. Approved without comment.

b) Committee Appointments. 1) Judge Brendan McCullagh and Karen Klucznik were reappointed to the MUJI – Criminal Committee. Judge Katherine Peters was appointed to the Resources for Self-Represented Parties Committee. Judge Jon Carpenter and Judge Brian Brower were appointed to the Uniform Fine and Bail Committee. Approved without comment.

c) CJA Rule 4-410 for Public Comment. Approved without comment.

14. ADJOURN

The meeting adjourned.