

JUDICIAL COUNCIL MEETING

Minutes
January 28, 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. Kevin Allen
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.

Excused:

Hon. Augustus Chin

Staff:

Hon. Mary T. Noonan
Ray Wahl
Karolina Abuzyarova
Heidi Anderson
Shane Bahr
Michael Drechsel
Cathy Dupont
Geoff Fattah
Kim Free
Tom Langhorne
Chris Palmer
Jim Peters
Neira Siaperas
Karl Sweeney
Nancy Sylvester
Jeni Wood

Guests:

Hon. James Blanch
Hon. James Brady
Sr. Judge Dennis Fuchs
Hon. Elizabeth Hruby-Mills
Michael Jarman, Private citizen
Hon. Barry Lawrence
Justice Paige Petersen
Dr. Jennifer Yim, JPEC

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Chief Justice Durrant noted Judge Kate Toomey has taken her maiden name and will now be known as Judge Kate Appleby.

Motion: Judge Kate Appleby moved to approve the Judicial Council minutes from the December 17, 2018 meeting, as presented. Judge Mark May seconded the motion, and it passed unanimously.

Judge Kara Pettit briefly discussed two forms on the consent calendar. Judge Pettit noted she has contacted Brent Johnson about them.

Motion: Judge Kara Pettit moved to remove the Notice to Defendant of Disclosure Requirements form and approve the Request for Request for Occupancy form with minor changes from the consent calendar. Judge Appleby seconded the motion, and it passed unanimously.

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

Chief Justice Durrant, Judge Mary Noonan, Ray Wahl, Cathy Dupont, Shane Bahr, Neira Siaperas, Jim Peters, and Mike Drechsel visited the eight judicial districts to meet with judges, staff, and local legislators. Chief Justice Durrant was very pleased with the events held. Judge Mary Noonan noted many judges attended and participated in valuable discussions.

Chief Justice Durrant requested a review of the courts' sexual harassment policies including reporting, education. The review should be a part of the upcoming organizational assessment conducted by the National Center for State Courts. Any comments or suggestions on this review should be directed to Judge Noonan.

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

Judge Mary Noonan reported that the National Center for State Courts was selected through an RFP process to recruit applicants for the State Court Administrator position. The position closes February 11.

The State Auditor's Office will conduct an audit of the courts, including storage of physical evidence in trial courts, ensuring compliance with Utah Code of Judicial Administration Rule 4-206, jury management, CORIS, and the courts IT security systems. Karl Sweeney said he is working with Heidi Anderson on preparing information needed by the Auditor's Office. Mr. Sweeney said it has been approximately 10 years since the State Auditor conducted an audit.

Judge Noonan explained that the National Center for State Courts conducts organizational assessments for member court systems. There are three levels of review: high-level reviews which consist of a 2-3 days visit with the AOC and judicial leadership and is expected to cost approximately \$2,500; in-depth reviews would consist of a week-long visit, a more detailed review, and is expected to cost approximately \$25,000 - \$30,000; the third option would involve a State Justice Institute Grant, and is designed to assist a new State Court Administrator, and is expected to cost \$50,000 (if received, the grant would cover all but \$5,000.) Judge Noonan noted the courts can guide the areas included in an assessment. Judge Noonan recommended the high-level review. The Management Committee approved a high-level assessment followed by an in-depth review when the new court administrator has been named. Judge Noonan stated a Steering Committee has been created to work with the National Center during this process. Committee members include Judge Noonan, Judge Appleby, Judge Shaughnessy, Neira Siaperas, and Ray Wahl as staff. The Committee will report findings to the Council.

The new Provo Courthouse has received the Associated General Contractors Most Outstanding Government or Public Building award. The award ceremony will be held this month. The courthouse dedication ceremony will be held on February 4 at 10:00 a.m. Judge Pullan said everyone has moved in and the courthouse is operational.

4. JUDICIAL COUNCIL SELECTION OF STUDY ITEM: (Judge Kate Appleby)

Judge Appleby noted the Management Committee would like to delay a decision on this topic and readdress it in the fall.

Motion: Judge Pettit moved to defer the discussion of a Judicial Council study item until late fall. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

5. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee welcomed Judge Mark May and Judge Kara Pettit to the committee. The committee meets weekly during the legislative session. The committee makes decisions on whether to take a position on a bill and provides guidance to Cathy Dupont and Mike Drechsel. Justice Lee thanked the committee members, Ms. Dupont and Mr. Drechsel.

Policy and Planning Committee Report:

Judge Derek Pullan said much of the committees' work will be discussed during the Council meeting.

Bar Commission Report:

Rob Rice said Heather Farnsworth was elected as the president-elect of the Utah Bar. The Bar awarded Jacey Skinner with the Dorothy Merrill Brothers Advancement of Women in the Legal Profession award. Bar Commissioners have awarded the Lawyer Wellness initiative \$10,000.

6. WINGS COMMITTEE REPORT: (Judge James Brady and Karolina Abuzyarova)

Chief Justice Durrant welcomed Judge James Brady and Karolina Abuzyarova. Judge Brady stated the WINGS Committee is a multi-disciplinary problem solving body that relies on court and community partnerships to:

- Oversee guardianship practice;
- Address key policy issues;
- Improve the current system of guardianship and less restrictive alternatives;
- Engage in outreach, education;
- Enhance the quality of care and quality of life of vulnerable adults.

Judge Brady reviewed the committee members, current activities, accomplishments, and goals. Karolina Abuzyarova said they are working with Utah tribes regarding adult guardianship. Ms. Abuzyarova reviewed grants that have been received.

Chief Justice Durrant thanked Judge Brady and Ms. Abuzyarova for their report.

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

Cathy Dupont noted there have been 100 Senate bills and 185 House bills filed; of those, 86 are court-related. Thus far, the Liaison Committee has reviewed 20 bills, and several more will be addressed this week.

Ms. Dupont stated some legislation has historically included court procedures. The courts are typically guided by rules. A long-term goal of the committee is to amend legislation to exclude what should be procedure found in court rules. Representative Snow recommended the Rules of Evidence Committee review H.J.R. 3 and H.B. 53.

Justice Lee commended Ms. Dupont and Mike Drechsel for their dedication to the legislative work. Chief Justice Durrant concurred and noted they have gone well above and beyond call of duty.

8. RULES 4-409, 1-205, 2-208, 3-103, 3-104, 3-111, 3-106, 3-107, 3-413, 3-501, 4-202.09, 4-403, 4-405, 4-508, AND ADULT DRUG COURT CERTIFICATION CHECKLIST FOR FINAL APPROVAL: (Michael Drechsel)

Mr. Drechsel stated rules 4-409, Adult Drug Court Certification Checklist, 1-205, 2-208, 3-103, 3-104, 3-111, 3-106, 3-107, 3-413, 3-501, 4-202.09, 4-403, 4-405, and 4-508 completed a public comment period. There was one comment received regarding the checklist. Mr. Drechsel said Policy & Planning reviewed the comment and believe all of these rules are ready for final approval.

Judge Pullan noted rule 4-409 allows for certification of problem-solving courts who meet the requirements, decertification of those who do not meet the requirements, and conditional certification when needed. Judge Noonan expressed a need to educate the courts on the importance of this rule change.

Motion: Judge Shaughnessy moved to approve rules 1-205, 2-208, 3-103, 3-104, 3-111, 3-106, 3-107, 3-413, 3-501, 4-202.09, 4-403, 4-405, and 4-508 with an effective date of May 1, 2019. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to approve rule 4-409 and the Adult Drug Court Certification effective immediately. Judge Allen seconded the motion, and it passed unanimously.

9. HUMAN RESOURCE POLICY 500 INTERN WORK CONFLICT FOR FINAL APPROVAL: (Michael Drechsel)

Mr. Drechsel addressed the Code of Personal Conduct section 500, which applies to employees, interns and externs. The Policy & Planning Committee was presented with a proposed HR policy 500 revision that would create a limited exception to the general principles for an intern or extern working under the supervision of a justice or a judge. The limited exception would not permit secondary employment that creates a conflict of interest. Judge Shaughnessy believes it is a lawyer's responsibility to ensure ethical behavior when a person under their supervision also is an intern working for the courts. Justice Lee said current rules do not speak directly to a conflict, however, before rules are amended, research needs to be conducted to understand better how often this is happening. Judge Kevin Allen said when this situation arose in his district last summer, the district did not allow the intern to also work at a

law firm. Mike Drechsel noted employees are required to sign a secondary employment form ensuring there are no appearance of conflicts. Shane Bahr said in the past, the Fourth District dealt with this situation many times.

Justice Lee recommended Policy & Planning research procedures for this situation in other jurisdictions. The Council agreed to return the proposed amendment to Policy & Planning.

10. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC) REPORT: (Dr. Jennifer Yim)

Chief Justice Durrant welcomed Dr. Jennifer Yim. Dr. Yim stated JPEC sent an anonymous survey to judges with retention cycles in 2018. Thus far, 36% of judges have responded. Judge Shaughnessy asked Dr. Yim if it would be appropriate for the Council to encourage participation. Dr. Yim welcomed the idea of assistance.

JPEC has a \$60,000 request for a building block of on-going funds that will be used to create computerized tracking of judicial evaluations. Currently, JPEC has no automated tracking system. Dr. Yim noted JPEC was created in 2008.

JPEC goals for this year include:

- 1) performance evaluation as a process, improving relationship with courts;
- 2) increase public awareness of JPECs work; and
- 3) improve JPEC structure, database, tracking service, reporting correct and timely data on judges.

Dr. Yim next reviewed the three types of evaluations: 1) a basic evaluation includes a Judicial Council certification and review of public discipline-related issues; 2) a mid-level evaluation includes the basic evaluation and courtroom observations; and 3) a full evaluation includes the mid-level evaluations and a survey. JPEC has been working with the Board of Justice Court Judges to develop ideas to provide more substantial basic evaluations to justice court judges. The University of Utah conducted a study to explore various options for evaluations of justice court judges in rural areas with fairly small court calendars.

Chief Justice Durrant thanked Dr. Yim for her report.

11. SELF-REPRESENTED PARTIES COMMITTEE REPORT: (Judge Barry Lawrence and Nancy Sylvester)

Chief Justice Durrant welcomed Judge Barry Lawrence and Nancy Sylvester. Judge Lawrence noted the committee was created in 2005. The committee has four subcommittees: 1) Education; 2) Outreach; 3) Rural service; and 4) Self-Help Center/Non-lawyer assistance/Court updates.

Judge Lawrence provided the Council with a draft Memorandum of Understanding between the committee and the Access to Justice Coordinating Committee and Pro Bono Commission. The Access to Justice Committee will focus on the coordination of all initiatives, including those from the Pro Bono Commission and the Self-Represented Parties Committee. The Pro Bono Commission will seek to increase pro bono legal services throughout the state by creating pro bono committees in each of the judicial districts.

Judge Lawrence said rural area litigants do not have the resources found in urban areas such as participation in legal clinics or adequate resources to pro bono attorneys. Chief Justice Durrant noted he recently toured some of the rural districts and learned the court clerks are referring litigants to the Self-Help Center. Chief Justice Durrant said focusing on public education is important. The Utah State Bar recently created a section of retired attorneys who are willing to perform limited work.

Chief Justice Durrant thanked Judge Lawrence and Ms. Sylvester for their report.

12. LAWYER AND JUDGE WELL-BEING COMMITTEE REPORT: (Justice Paige Petersen and Kim Free)

Chief Justice Durrant welcomed Justice Paige Petersen and Kim Free. Justice Petersen provided the Council with a timeline of activities from 2018 and 2019 and reviewed the committee members and workgroups. The committee believes well-being is defined as the continuous process of thriving in all aspects of a person's life.

Chief Justice Durrant thanked Justice Petersen and Ms. Free for their report.

13. JUSTICE COURT RECERTIFICATIONS: (Jim Peters)

Jim Peters reviewed the five remaining justice courts that are seeking recertification. Mr. Peters noted the Board of Justice Court Judges reviewed the results from each of these courts and believes they are now in compliance.

- Juab County Justice Court – Judge Sharla Williams. The Court increased the hours of operation on Fridays, as requested. The Court requested a waiver to remain with 1.5 clerks rather than the 2 required clerks.
- Kane County Justice Court – Judge Gary Johnson. Kane County Justice Court provided documentation showing the judges salary is in compliance.
- Morgan County Justice Court – Judge Brian Brower. The Court only has one part-time clerk. Morgan County has agreed to provide additional clerical resources when needed. Their issue is resolved.
- Uintah County Justice Court – Judge Jody Petry. The Board withdrew the compliance request for Uintah County Justice Court. There is no issue.
- Wayne County Justice Court – Judge Roy Brown. The Court corrected their hours of operations and corrected their website.

Motion: Judge Appleby moved to approve the recertifications of Juab County Justice Court with a waiver, Kane County Justice Court, Morgan County Justice Court, Uintah County Justice Court, and Wayne County Justice Court, as presented. Judge Pullan seconded the motion, and it passed unanimously.

14. PROBLEM-SOLVING COURTS RECERTIFICATIONS: (Sr. Judge Dennis Fuchs)

Chief Justice Durrant welcomed Sr. Judge Dennis Fuchs. Judge Fuchs reviewed the status of the below listed courts. Judge Fuchs is seeking full recertification on all courts listed below in section (1) and conditional recertification of the courts listed below in section (2). The juvenile courts seeking conditional certification are seeking conditional certification due to non-

compliance with weekend drug testing. The West Valley Justice Mental Health Court has staffing issues. Judge Pullan recommended sending a copy of rule 4-409 with a letter of conditional recertification to the judge who leads the team. Judge Pullan noted that the team may seek review by the Council for conditional recertification. The Council agreed the letters sent to conditionally recertified courts should only go to the teams. Judge Kara Pettit expressed concerns that some courts designated for approval may not have met all of the requirements.

(Section 1) Problem Solving Courts’ Recertification Recommendations

Adult drug court:

Third District	Park City	Judge Patrick Corum
Sixth District	Kanab	Judge Wallace Lee
Sixth District	Manti	Judge Brody Keisel
Seventh District	Castle Dale	Judge Douglas Thomas
Seventh District	Moab	Judge Mary Manley
Seventh District	Monticello	Judge Don Torgerson
Seventh District	Price	Judge George Harmond

Juvenile drug court:

Third Juvenile Court	Salt Lake City	Judge Steven Beck
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Adult mental health:

First District	Logan	Judge Kevin Allen
Third District	Salt Lake City	Judge Vernice Trease
Fourth District	Provo	Judge James Brady
Sixth District	Richfield	Judge Marvin Bagley

Juvenile mental health:

First Juvenile Court	Brigham City	Judge Kirk Morgan
First Juvenile Court	Logan	Judge Angela Fonesbeck

(Section 2) Courts Seeking Conditional Recertification

Juvenile dependency drug court:

Second District Juvenile Court	Farmington	Judge Robert Neill
Third District Juvenile Court	Salt Lake City	Judge Kimberly Hornak
Third District Juvenile Court	Salt Lake City	Judge Mark May
Third District Juvenile Court	Salt Lake City	Judge Julie Lund
Fourth District Juvenile Court	Provo	Judge Brent Bartholomew
Seventh District Juvenile Court	Moab	Judge Mary Manley

Juvenile mental health:

Third District Juvenile Court	Salt Lake City	Judge Elizabeth Knight
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Justice court mental health:

West Valley Justice Court		Judge Clint Gilmore
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Motion: Judge Allen moved to approve recertification of the following problem-solving courts:
Adult Drug Courts - Park City (Judge Corum), Kanab (Judge Lee) Manti (Judge Keisel), Castle

Dale (Judge Thomas), Moab (Judge Manley), Monticello (Judge Torgerson), and Price (Judge Harmond); *Juvenile Drug Courts* – Salt Lake City (Judge Beck); *Adult Mental Health Courts* – Logan (Judge Allen), Salt Lake City (Judge Trease), Provo (Judge Brady), and Richfield (Judge Bagley); *Juvenile Mental Health Courts* – Brigham City (Judge Morgan) and Logan (Judge Fannesbeck), as presented. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Allen moved to conditionally approve recertification until May 1, 2019 of the following problem-solving courts: *Juvenile dependency Drug Courts* – Farmington (Judge Neill), Salt Lake City (Judge Hornak), Salt Lake City (Judge Mark May), Salt Lake City (Judge Julie Lund), Provo (Judge Bartholomew), and Moab (Judge Manley); and *Juvenile Mental Health Court* – Salt Lake City (Judge Knight), as presented Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Appleby moved to conditionally approve recertification for 30 days to the West Valley Justice Mental Health Court, pending resolution of staffing issues. Judge Shaughnessy seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Sr. Judge Fuchs.

15. JURY SERVICE VIDEO AND CRIMINAL RIGHTS VIDEO: (Geoff Fattah)

Geoff Fattah presented the Jury Service Video and the Defendants Rights Video for the Council. Mr. Fattah thanked Judge Tupakk Renteria for his assistance with creating videos in both English and Spanish and thanked the court video working group. Judge Allen was concerned because the jury video identified people by a number, however, current practice in many courts is to identify jurors by name. Mr. Fattah will prepare a memo to the courts explaining this. Judge Pettit noted Summit County does not show a juror video.

Chief Justice Durrant thanked Mr. Fattah and the court video working group for a job well-done.

16. OUTREACH COMMITTEE REPORT: (Judge Elizabeth Hruby-Mills and Geoff Fattah)

Chief Justice Durrant welcomed Judge Elizabeth Hruby-Mills. Judge Hruby-Mills stated there have been courthouse tours for nearly 1,500 students. The committee has participated in community organizations including the Hinckley Institute Huntsman Seminar, University of Utah Pre-Law, Utah Council for Citizen Diplomacy, and the Governor’s Native American Summit. The committee was provided a free booth at FanX, and interacted with more than 2,000 people.

The committee goals for 2019 include assessing the Trust and Confidence Survey, pursuing a Listening Tour with Utah’s Hispanic Communities, Law Day Events, Divorce Education for Children expansion, outreach kits for districts, and updating the artwork in the Matheson Courthouse.

Chief Justice Durrant thanked Judge Hruby-Mills and Mr. Fattah for their report.

17. CRIMINAL JURY INSTRUCTIONS COMMITTEE REPORT: (Judge James Blanch and Michael Drechsel)

Chief Justice Durrant welcomed Judge James Blanch. Judge Blanch reviewed the committee members and presented the Council with a list of completed jury instructions. During the fall of 2018, the committee spent time working through an issue that arose related to the U.S. Department of Justice Board of Immigration Appeals citing to a recently published Model Utah Criminal Jury Instruction (CR1204 – Possession with Intent to Distribute). The committee considered whether the drafting of the model instruction had caused any unintended consequence in a federal immigration proceeding, and whether the model instruction should be further revised to avoid future issues. The committee concluded that the model instruction was an accurate statement of Utah law and should not be amended.

Judge Blanch noted the committee is currently working on assault-related instructions. Once complete, they will begin working on Burglary & Robbery Offenses, DUI & Traffic Offenses, Homicide Offenses, Use of Force & Prisoner Offenses, and Wildlife Offenses.

Judge Shaughnessy asked about judicial education/best practices between the criminal and civil jury instructions committees. Judge Blanch said the committee would be happy to present more information regarding best practices at court conferences.

Chief Justice Durrant thanked Judge Blanch and Mr. Drechsel for their report.

18. EXECUTIVE SESSION

There was no executive session held.

19. CONSENT CALENDAR ITEMS

a) Forms Committee Forms. Forms: Ex Parte Motion for Order of Restitution, Notice of Occupancy Hearing, Motion for Summary Judgment to Declare Non-Parentage After Genetic Testing and Order Granting Motion for Summary Judgment on Non-Parentage, Parenting Plan, Military Parenting Plan, Motion for Temporary Order Due to Deployment and Order on Motion for Temporary Order Due to Deployment. Approved without comment.

b) Committee Appointments.

• MUJI – Criminal Committee appointment of Jessica Jacobs, Elise Lockwood, and Melinda Bowen. Approved without comment.

• Self-Represented Parties Committee appointment of Nicole Gray. Approved without comment.

c) Probation Policy. Revisions to policy 2.10. Approved without comment.

d) Rules for Public Comment. Rule 7-302. Approved without comment.

20. ADJOURN

The meeting adjourned.