

JUDICIAL COUNCIL MEETING

Minutes

January 22, 2018

Council Room

Matheson Courthouse

450 S. State St.

Salt Lake City, Utah 84111

9:00 a.m. to 12:00 p.m.

Chief Justice Matthew B. Durrant, Presiding

Attendees:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Toomey, Vice Chair
Hon. Augustus Chin
Hon. Mark DeCaria
Hon. Paul Farr
Hon. Thomas Higbee
Justice Thomas Lee
Hon. David Marx
Hon. Mary Noonan
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Todd Shaughnessy
Rob Rice, esq.
Hon. John Walton

Staff:

Richard Schwermer
Ray Wahl
Jeni Wood
Karolina Abuzyarova
Shane Bahr
Cathy Dupont
Brent Johnson
Alyn Lunceford
Jim Peters
Dawn Marie Rubio
Jacey Skinner
Nancy Sylvester
Keisa Williams

Excused:

Guests:

Alex Christman, intern
Judge James Blanch
Judge David Connors
Justice Deno Himonas
Commissioner Gil A. Miller, JPEC
Judge David Mortensen
Jennifer Yim, JPEC

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

Chief Justice Matthew Durrant welcomed everyone to the meeting.

Motion: Judge Kate Toomey moved to approve the minutes from the December 18, 2017 Judicial Council meeting. Judge Augustus Chin seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

3. ADMINISTRATOR’S REPORT: (Richard Schwermer)

Richard Schwermer said he, Geoff Fattah, and Brent Johnson met with the Salt Lake Tribune (Tribune) to discuss the January 18, 2018 article “Warrants approved in just minutes: Are Utah judges really reading them before signing off?” The meeting went well with the Tribune understanding the courts position. Mr. Schwermer noted the Tribune has offered to post an op-ed piece prepared by the courts. Judge Derek Pullan said sometimes he has read the same warrant multiple times so it may not take long to make a final decision. Judge Todd Shaughnessy said he has received responses from judges on the article but he has not received comments from anyone else. Mr. Schwermer suggested the courts article can be more informative than rebuttal.

Mr. Schwermer and Judge Mary Noonan participated in a H.B. 239 (Juvenile Justice Reform) conference call where it was mentioned that savings are now available in the amount of \$3.8 million dollars. The funds available were broken down as follows: 1) \$1.4 million could be used to form a crisis response team in northern Utah; 2) \$1.2 million ongoing funds and; 3) \$1.2 million one-time funds. Mr. Schwermer recommended giving the remaining \$2.2 million (ongoing and one-time funds) to the Division of Substance Abuse and Mental Health. Judge Noonan said it was a very productive and positive meeting. Judge Noonan noted the rural areas of Utah are a priority for treatment.

Legislative fiscal staff are proposing the elimination of a Second District Judicial judgeship, and a reduction of \$67,300 for child welfare appropriations.

4. COMMITTEE REPORTS:

Management Committee Report:

The committee’s work is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee said the committee has discussed an internal operating procedure to create consistency of practice. Justice Lee noted the committee has been very busy.

Policy and Planning Meeting:

Judge Derek Pullan said the committee received a proposal for e-filed debt-collections answers. Judge Pullan noted there are details that need to be worked out. Judge Kara Pettit noted there are also out-of-state debt-collection filers. Justice Lee questioned how this would affect clerical workload. Mr. Schwermer noted OCAP does not have a debt-collection module. The OCAP Committee prioritizes modules based on impact and difficulty. Mr. Schwermer noted OCAP charges a fee for filers.

Bar Commission Report:

Rob Rice noted John Lund met with Representative Norm Thurston to discuss Representative Thurston's proposal to amend the constitution to shift the oversight of non-court appearing lawyers from the Supreme Court. Jacey Skinner spoke with Representative Thurston and she believes he will not push this issue, at least this year. Ms. Skinner felt like the meeting with John Lund was helpful.

5. LEGISLATIVE UPDATE: (Jacey Skinner)

Chief Justice Durrant welcomed Jacey Skinner. Ms. Skinner noted not much has happened yet because the first couple of weeks the session is focused on budget issues. Ms. Skinner offered to address any bills the Judicial Council was concerned about. Ms. Skinner requested direct feedback from judges on any bills they have a question or concern about. Ms. Skinner said she met with the Boards to discuss bills and the process. Ms. Skinner is sending proposed bills to specific groups to allow for an open discussion within the group. Ms. Skinner will forward comments she receives to the Liaison Committee.

6. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC) REPORT: (Commissioner Gil A. Miller and Jennifer Yim)

Chief Justice Durrant welcomed Commissioner Gil Miller and Jennifer Yim. Ms. Yim said JPEC is busy meeting twice a month. Ms. Yim introduced Commissioner Gil Miller. Ms. Yim discussed 1) survey response rates from, 2017; 2) Judicial Council certification; and 3) midterm evaluations.

- **Survey response rates:** In 2015 the attorney response rate was 43%. In 2017 there was 41% attorney response rate. JPEC has taken steps to increase responses and encourage participation. JPEC's efforts are focusing on the responses received with a more targeted approach. Ms. Yim reviewed the rates in other states.
- **Judicial Council certification:** Ms. Yim had two recommendations: 1) being proactive and notifying judges on a regular basis of their caseload dates so they don't go beyond the time-limits; and 2) consider making judges mental and physical health evaluation something other than a self-certification.
- **Midterm evaluations:** Ms. Yim said the evaluations should be sent by the end of January. Ms. Yim noted the evaluations will be sent to Richard Schwermer, on the Judicial Council's behalf.

Ms. Yim said the deliberation process with JPEC is going well. They find the more data they have the better the results will be. Mr. Schwermer thanked Ms. Yim for her continued efforts with the midterm evaluations. Mr. Schwermer noted the Judicial Council will begin reviewing the mid-term evaluations, which has not happened in the past. Justice Lee thanked Ms. Yim and Commissioner Miller for their service with JPEC.

7. MANTI LAND PURCHASE: (Judge David Mortensen and Alyn Lunceford)

Chief Justice Durrant welcomed Judge David Mortensen and Alyn Lunceford. Judge Mortensen briefly described the process in obtaining land for courthouses. Mr. Lunceford

presented a map of three proposed sites for the courthouse. Option 1 is currently available, whereas options 2 and 3 may possibly be available. Mr. Lunceford believes option 1 is the best choice due to price, location, and availability. Mr. Lunceford noted the Council does not need to take action at this time because the purchase agreement has already been signed. Judge Mortensen noted the goal is to obtain additional property.

- Option 1 cost \$250,000
- Option 2 cost \$550,000
- Option 3 cost \$500,000

8. LPP COMMITTEE STATUS REPORT: (Justice Deno Himonas and Cathy Dupont)

Chief Justice Durrant welcomed Justice Deno Himonas and Cathy Dupont. Justice Himonas stated this committee was formed in 2015. The committee is working on new rules and rule amendments as well as education and testing. Utah Valley University is hoping to begin classes this fall. The committee has received a bid to prepare the tests for \$35,000. The LPP Committee will ask the Utah State Bar to fund the tests, as well as oversight of the admissions. Chief Justice Durrant thanked Justice Himonas and Cathy Dupont for their efforts with this new program.

9. WINGS COMMITTEE REPORT: (Judge David Connors and Karolina Abuzyarova)

Chief Justice Durrant welcomed Judge David Connors and Karolina Abuzyarova. Judge Connors briefly addressed the guardianship program and educational outreach for both attorneys and volunteers. Ms. Abuzyarova discussed guardianship cases. There are classes scheduled throughout the state, with the exception of the First and Sixth Districts. Judge Connors said they will discuss the Court Visitor Program at the appropriations committee meeting on February 7.

10. CRIMINAL JURY INSTRUCTIONS COMMITTEE REPORT: (Judge James Blanch)

Chief Justice Durrant welcomed Judge James Blanch. Judge Blanch briefly reviewed the Committee's progress on jury instructions. Judge Blanch said they are amending instructions that contain out-of-date information. The Committee addressed instructions based on case law. Judge Blanch noted they have subcommittees working on instructions. Chief Justice Durrant thanked Judge Blanch and the Committee for all of their continued efforts.

11. SALT LAKE COUNTY HARVARD STUDY CONSIDERATION: (Keisa Williams).

Chief Justice Durrant welcomed Keisa Williams. Ms. Williams briefly discussed the PSA study. Salt Lake County is currently performing in-jail interviews, which they will continue with the new PSA tool. They are proposing running a PSA on every offender. The proposal is performing a study of cases based on the following: 1) even number cases will receive both a PSA and five additional questions; and 2) odd number cases will receive a PSA only. This will include self-reported demographic information. The study does not have an end date because they want to receive enough data be statistically relevant, however, it has in the past been approximately two years.

Motion: Judge Toomey moved to approve the case study for Salt Lake County. Justice Lee seconded the motion, and it passed unanimously.

12. POLICY ON NAMING COURTHOUSES: (Richard Schwermer)

Mr. Schwermer presented the proposed policy. Judge Kara Pettit noted she presented to the Board of District Court Judges the Judicial Councils work, including this item. The policy would read: "The Judicial Council's policy is that courthouses should be named after geographic locations."

Motion: Judge Toomey moved to approve the Policy on Naming Courthouses. Judge Mark DeCaria seconded the motion, and it passed unanimously.

13. CODE OF JUDICIAL ADMINISTRATION RULES 1-205, 3-104, and 6-501: (Nancy Sylvester)

Chief Justice Durrant welcomed Nancy Sylvester. Ms. Sylvester explained each of the proposed rules. Ms. Sylvester noted there were no comments received.

Motion: Judge Higbee moved to approve rules 1-205, 3-104, and 6-501. Justice Lee seconded the motion, and it passed unanimously.

14. THIRD DISTRICT COURT JUDICIAL AND CLERICAL REQUEST: (Shane Bahr)

Chief Justice Durrant welcomed Shane Bahr. Mr. Bahr reviewed the clerical weighted caseload for 2017. Mr. Bahr said the 10% deviation staff level criterion was created in 2006. The requests from the Third District are as follows: 1) 1 clerk from the Second District is moved to the Third District; 2) 7 clerks from the Third Juvenile be moved to the Third District; and 3) 2 clerks from the Seventh District be moved to the Third District. Mr. Bahr is proposing effective immediately moving three FTE vacancies from Third Juvenile to Third District. Mr. Schwermer thought the clerical requests should be a priority.

Regarding the judicial needs, the Council determined that they would wait until December to understand the impact of HB 239 on the Commissioner workload. Mr. Schwermer said the Third Juvenile Commissioner position can be reallocated because the commissioner caseloads are lower due to H.B. 239 changes. Felonies have increased, and must be heard by judges, and NJ referrals have increased, which reduces the utility of a commissioner. One of the clerical positions assigned to the commissioner would need to be used to fund the difference between the cost of a commissioner and judgeship.

Mr. Schwermer said Third District has the highest need for a judicial position. Senator Hillyard has a protected bill for a judicial position in the Third District.

Judge Shaughnessy confirmed that with this action between now and July there would be four new judicial assistants and one new judge position. Judge Higbee would like to see protocol established for future requests.

Mr. Schwermer noted Utah Code § 78A-10-104 states that the recruitment period for a judicial vacancy shall begin immediately. The Seventh District judicial vacancy is now open. Mr. Schwermer said the distance between the courts in the Seventh District is considerable therefore including travel-time is important. Increased travel time if a judge from Price were to handle Moab and Monticello cases would affect the ability of 7th District to continue to assist other districts, and the ability to continue with their problem solving courts. Therefore moving a Seventh District vacancy is problematic.

Mr. Schwermer noted there are three decisions the Council needs to make today. Mr. Schwermer said the Council can move one commissionership and two clerical positions from the Third Juvenile to the Third District.

- 1) Move three vacant clerical FTE's from Third Juvenile to Third District.
- 2) Decision on the Seventh District judicial vacancy.
- 3) Approve moving resources associated with Third Juvenile commissioner and two clerks to fund one Third District judge. This also requires the Council to approve a reduction in force of the Third District Commissioner position.

Motion: Judge Higbee moved to approve the reduction in force of one commissioner and two clerks in the Third Juvenile; use the funds saved to fund a new judge in the Third District opening of a bill for a new judge in the Third District; take no action on Seventh District; and approve the immediate transfer of three FTE positions from the Third Juvenile to Third District. Judge Toomey seconded, Judge Pullan opposed the motion only due to the condition of evaluating a future pattern was not more defined. Chief Justice Durrant noted Judge Pullan's objection to the motion and the motion carries.

15. EXECUTIVE SESSION

Motion: Judge Toomey moved to discuss a security matter. Judge Shaughnessy seconded the motion, and it passed unanimously.

16. CONSENT CALENDAR ITEMS.

- 1) Language Access Committee: appointment of Chris Kunej. Approved without comment.
- 2) Forms Committee: Forms: Certificate of Service, Proof of Service Completed, Acceptance of Service, Consent to Email Service and Notification, Summons In-State, Summons Out-of-State. Judge Kara Pettit briefly discussed the Proof of Service Completed form from the Forms Committee forms submitted. Judge Shaughnessy moved to remove that form and send it back to the Forms Committee. Judge Pettit seconded the motion, and it passed unanimously. Approved as amended.
- 3) Probation Policies: 2.14, 4.15, and 4.18. Approved without comment.

17. ADJOURN

The meeting was adjourned.