

JUDICIAL COUNCIL MEETING

Minutes

February 26, 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. Paul Farr
Hon. Thomas Higbee
Justice Thomas Lee
Hon. David Marx
Hon. Mary Noonan
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Staff:

Richard Schwermer
Ray Wahl
Shane Bahr
Cathy Dupont
Geoff Fattah
Kara Mann
Jim Peters
Dawn Marie Rubio
Jacey Skinner
Nancy Sylvester
Jeni Wood

Excused:

Hon. Mark DeCaria

Guests:

Judge Michele Christiansen
Michelle Draper
Sr. Judge Dennis Fuchs
Judge Elizabeth Hruby-Mills
Kevin Nudd
Lee Anne Ross – private citizen

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 January 22, 2018 Judicial Council meeting. Judge Thomas Higbee 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 provided a history of council attendance at the State of the Judiciary address and asked whether this practice should continue. After brief discussion, the Council decided to continue providing an opportunity for Council members to attend the State of the Judiciary address. Mr. Schwermer noted a new request from Third District for senior judges to assist with the vacancy created with the appointment of Judge Petersen to the Supreme Court. He approved the request, until the end of this fiscal year.

Mr. Schwermer said there was a pretrial release meeting that included Judge Todd Shaughnessy, Keisa Williams, various lobbyists, and bail bond sureties. The resolution of the meeting was to move forward with the pretrial release program with a minor change to the MOU (memorandum of understanding) with the Arnold Foundation. That amendment has been signed.

Mr. Schwermer discussed the priority list that the appropriations subcommittee sent to the Executive Appropriations Committee.

4. COMMITTEE REPORTS:

Management Committee Report:

The committee’s work is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee said the committee is meeting weekly, and deferred to Ms. Skinner’s report.

Policy and Planning Meeting:

Judge Derek Pullan noted the work is reflective in the minutes.

Bar Commission Report:

Rob Rice said the Commission didn’t meet this month.

5. LEGISLATIVE UPDATE: (Jacey Skinner)

Chief Justice Durrant welcomed Jacey Skinner. Ms. Skinner has met with several bail bondsmen groups and legislators. Chief Justice Durrant noted the pretrial release team has done a remarkable job.

Ms. Skinner reviewed the following bills.

- S.B. 0079 Judiciary Amendments. This is the courts’ housekeeping bill. (Passed)
- S.B. 0107 Third District Court Judge.
- H.B. 0132 Juvenile Justice Modifications.
- S.B. 0019 Competency restoration bill, which addresses the length of time individuals can be held in custody at a state mental health facility. The bill proposes that the timeliness and process be expedited. (Passed)

- S.B. 0051 Court Security Funding Amendments. This bill requests \$3 million for the court security account and is moving forward.
- H.B. 198 Attorney General amendments. This bill creates a presumption regarding what constitutes a conflict of interest amount attorneys. This may conflict with the Supreme Courts rule-making authority with the Rules of Professional Responsibility.
- Intervention as a matter of right. This allows the legislature to intervene in a wide range of lawsuits.

Ms. Skinner thanked Cathy Dupont for her assistance with the HB 198 and Chris Palmer for his assistance with the security fee issue. Ms. Skinner indicated that if anyone has any questions about pending legislation, please send her a text. Ms. Skinner said aside from a couple of issues, the session has gone very well.

6. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)

Chief Justice Durrant welcomed Nancy Sylvester. Ms. Sylvester reviewed the applications of Judge Lyle Anderson and Judge Robert Adkins to become senior judges.

Motion: Judge Toomey moved to approve Judge Lyle R. Anderson and Judge Robert W. Adkins to become active senior judges. Judge Augustus Chin seconded the motion, and it passed unanimously.

7. MENTAL HEALTH COURT APPLICATION: (Kevin Nudd)

Chief Justice Durrant welcomed Kevin Nudd. Mr. Nudd, the West Valley Justice Court administrator, reviewed the application for a West Valley Mental Health Court. Mr. Nudd explained the program and which entities have committed to this program. Judge Dennis Fuchs said this is a very well planned mental health court. Mr. Schwermer noted that the legal eligibility description is not consistent with best practices on the certification of checklist items. Mr. Nudd said there are many people who need this opportunity.

Motion: Judge Toomey moved to approve the application of the West Valley Mental Health Court with the contingency to review the legal eligibility process for compatibility with certification checklist items #1, #4, and #8. Judge Higbee seconded the motion, and it passed unanimously.

8. PROBLEM-SOLVING COURT CERTIFICATIONS: (Sr. Judge Dennis Fuchs)

Chief Justice Durrant welcomed Senior Judge Dennis Fuchs. Judge Fuchs addressed certifications for approval for the below-listed courts. Judge Fuchs noted there are 61 problem-solving courts in Utah. Judge Fuchs is delaying certification review of two problem-solving courts because they are having a few issues that need to be addressed. Judge Fuchs noted the judges are receiving online training and training at conferences.

Judge Fuchs discussed the issue of drug testing being available 7 days a week and holidays. Some courts are having difficulty meeting that standard. The Council had in-depth discussion about the best practices of the drug-courts with regular drug testing and who should

be responsible for the testing. Mr. Schwermer noted with the new Medicaid expansion everyone meeting the income guidelines is eligible for Medicaid. The Council needs to be prepared to enforce required standards and decertify courts, but wants to give adequate notice to comply.

Adult Drug Courts

- Cache County (Logan) – Judge Thomas Willmore
- Davis County (Farmington) – Judge John Morris
- Iron County (Cedar City) – Judge Keith Barnes
- Salt Lake County – Judge L. Douglas Hogan
- Salt Lake County (Salt Lake City) – Judge Todd Shaughnessy
- Salt Lake County (Salt Lake City) – Judge Laura Scott
- Salt Lake County (Salt Lake City) – Judge Randall Skanchy
- Summit County (Park City) – Judge Kent Holmberg
- Weber County (Ogden) – Judge Joseph Bean
- Washington County (St. George) – Judge Jeffrey Wilcox

Juvenile Drug Courts

- Utah County (American Fork) – Judge Suchada Bazzelle

Dependency Drug Courts

- Davis County (Farmington) – Judge Janice Frost
- Washington County (St. George) – Judge Michael Leavitt

Mental Health Courts

- Iron County (Cedar City) – Judge Matthew Bell
- Salt Lake County (Salt Lake City) – Judge Heather Brereton
- Washington County (St. George) – Judge John Walton

Motion: Justice Lee moved to approve the certification of all problem-solving courts listed above with a sixth-month conditional certification of the three drug courts who are not meeting drug testing and other requirements, with Judge Fuchs notifying the drug courts of the expectations and rules, and with Policy & Planning Committee reviewing the problem-solving court rules. Those courts are the Weber County adult drug court, American Fork juvenile court, and the Washington County mental health court. Judge Higbee amended motion to revisit this issue when Policy & Planning has finished their work on the rules. Judge Toomey seconded the motion, and it passed unanimously. Judge Shaughnessy and Judge Walton abstained from voting as their courts are listed above.

Judge Fuchs will send a notice to the problem-solving courts explaining the conditional approval. Judge Fuchs will follow up with the drug courts within six months. Mr. Schwermer will discuss drug court testing options with the Division of Substance Abuse and Mental Health.

9. ETHICS ADVISORY COMMITTEE REPORT: (Judge Michele Christiansen)

Chief Justice Durrant welcomed Judge Michele Christiansen. Judge Christiansen said the committee has received a new opinion request and they will meet to discuss the issue. There were two opinions published in 2017. The committee is working on proposed changes to the Code of Judicial Conduct. Judge Christiansen said Brent Johnson does a wonderful job on this committee.

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

Chief Justice Durrant welcomed Michelle Draper and Kara Mann. Ms. Draper reviewed interpreter statistics for FY2017, which included spoken language interpreter requests of 5,449 for the district courts; 4,380 for the juvenile courts; and 6,402 for the justice courts. The most requested language is Spanish, followed by Arabic. There were 188 sign-language interpreter requests in FY2017. The committee has completed bench cards for spoken languages. The committee is working on revising HR Policy 570 and rules 3-306.01-.05. Ms. Mann discussed the ongoing training for interpreters. Additionally, they will be including interpreter information in the TCE and COC manuals. Ms. Mann will present at the justice court judge conference in April.

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

Chief Justice Durrant welcomed Judge Elizabeth Hruby-Mills and Geoff Fattah. Judge Hruby-Mills reviewed the Outreach Committees activities, including school tours, working with civic organizations, working with community leaders, and hosting committees, such as the Martin Luther King Human Rights Committee. Geoff Fattah noted he has been asked to assist in training reporters on court procedures. This will be an annual event and will be done in conjunction with the Bar. Judge Hruby-Mills said they are working on the Trust and Confidence Survey project.

12. EXECUTIVE SESSION

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

13. CONSENT CALENDAR ITEMS.

- 1) Judicial Outreach Committee: appointment of Michael Anderson, Joyce Pace, and Michelle Oldroyd. Approved without comment.
- 2) Ethics Advisory Committee appointment of Judge Trent Nelson. Approved without comment.
- 3) Forms Committee: Forms: Proof of Completed Service and Ex Parte Motion for Alternative Service. Approved without comment.
- 4) Probation Policies: Policy 2.6 deleted, Policy 4.7 amended. Approved without comment.

14. ADJOURN

The meeting was adjourned.