

JUDICIAL COUNCIL MEETING

Minutes
Monday, March 10, 2017
Indigo Room
Hilton Garden Inn
St George, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Justice Thomas Lee
Hon. Marvin Bagley
Hon. Paul Farr
Hon. Thomas Higbee
Hon. David Marx
Hon. Mary Noonan
Hon. Reed Parkin
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. Kate Toomey
John Lund, esq.

EXCUSED:

Hon. Ann Boyden
Hon. Mark DeCaria

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
James Ishida
Debra Moore
Jim Peters
Dawn Marie Rubio
Rick Schwermer
Brent Johnson (by phone)

GUESTS:

Neira Siaperas, 3rd Juv TCE
Wendell Roberts, 6th Dist TCE
Hon. James Taylor
Hon. John Walton
Sean Toomey

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

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

Motion: Judge Toomey moved to approve the minutes from the February 27, 2017 Judicial Council meeting. Judge Farr seconded the motion, and it passed unanimously.

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

Chief Justice Durrant announced the appointment of Mr. Rick Schwermer as the new state court administrator to fill the vacancy left with the upcoming retirement of Mr. Dan Becker.

He expressed his gratitude to Mr. Dan Becker for his leadership shown during his tenure as the state court administrator for the Utah courts. He mentioned that he is confident that Mr. Schwermer will continue to lead the state courts, in a positive manner, as the new state court administrator.

Mr. Schwermer provided a few comments regarding his appointment as the new state court administrator.

3. **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

State Court Administrator Appointment. Mr. Becker congratulated Mr. Schwermer on his appointment as the new state court administrator.

Chief Information Officer. Mr. Ron Bowmaster has announced his upcoming retirement, effective May 1. Mr. Becker acknowledged Mr. Bowmaster's many contributions to the Utah courts.

Judicial Performance Evaluation Commission (JPEC) Survey. A copy of the proposed survey was distributed to members of the Council. Mr. Wahl reviewed the proposed JPEC survey of judges as it relates to the adjective question. Ms. Jennifer Yim, Executive Director of the Judicial Performance Evaluation Commission, requested feedback from judges regarding the proposed changes to the survey to be received by March 31. Any comments or feedback can be sent to Mr. Becker or Mr. Wahl.

Mr. Schwermer offered comments on the method by which the survey information was reported for the last retention election.

Council members were reminded that Ms. Yim is scheduled to provide an update to the Council in April. Further discussion can take place at this time.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

No report was provided at this time.

Policy and Planning Meeting:

Judge Pullan reported on the following items: 1) the proposed rule change to CJA Rule 4-202.09 which was discussed at the February Council meeting has been sent out for public comment, and 2) efforts have been shifted to completing the commissioner rule.

Bar Commission Report:

Mr. Lund reported on the following items: 1) he welcomed everyone to St. George in conjunction with the Bar's Spring Conference, with attendance expected to be over 500; 2) the Commission recently reviewed a report prepared by a consulting firm with focus on the Bar's structure, as it relates to staffing, with a secondary focus on wage comparability studies; and 3) the ABA report requested on the OPC office is expected in early April.

5. TCE UPDATE: (Neira Siaperas and Wendell Roberts)

Mr. Becker introduced and welcomed Ms. Siaperas and Mr. Roberts to the meeting. He noted that the court executives use the March meeting to provide their annual update to members of the Judicial Council.

Ms. Siaperas and Mr. Roberts highlighted the following in their update:

- Phase 2 of Mandatory E-Filing in Juvenile Court
 - ❖ As of February 1, 2017, the juvenile court has granted CARE and e-filing access to over 700 law firms
- Child Welfare
 - ❖ Court Improvement Program (CIP) – juvenile court judges and teams have focused on encouraging and monitoring the presence of children at court hearings during child welfare proceedings

- ❖ Indian Child Welfare Act (ICWA) – judges, court staff, and community partners will soon participate in training on the new Indian Child Welfare Act (ICWA) guidelines and regulations
- Probation Positions and Practices
 - ❖ Ongoing structural modifications and evolving probation practices – the juvenile court reallocated and repurposed numerous probation positions
 - ❖ District probation teams have expanded the use of risk assessments and the case planning model with youth and families
 - ❖ The juvenile court implemented the EBP BriefCase toolkit for supervisors
 - ❖ Probation practices have further evolved with emphasis on mental health needs and restorative justice
- District Court – Customer Service
 - ❖ Creation of 13 new training modules for judicial assistants to aid them in assisting court patrons, mostly pro se litigants, to navigate the courts website and utilize OCAP programs
 - ❖ Several districts have implemented improving mentoring programs for new employees and judges
 - ❖ More rural districts have collaborated with the state and local bar in the delivery of remote CLE webcasts
 - ❖ Training on conducting remote appearances, including equipment training, has been provided
 - ❖ Effective use of senior judges, with one district reporting the closure of 97% of assigned cases
- Justice Reinvestment Initiative
- CORIS Rewrite
- Education and Succession Planning
 - ❖ Non-Supervisory Court Skills Academy
 - ❖ Middle Management Leadership Academy
- Court Personnel
 - ❖ Appointment of Mr. Brett Folkman, First District TCE and Mr. James Bauer, Fourth District TCE in 2016
- Facilities
 - ❖ Duchesne court facility remodel – completed in 2016
 - ❖ New Provo courthouse is under construction – anticipated completion – Fall of 2018
 - ❖ New Price courthouse slated to begin March 2017 – anticipated completion – June 2018

Mr. Roberts expressed his gratitude to Mr. Becker, on behalf of the court executives, for his leadership. He also acknowledged Mr. Rick Davis' accomplishments as the Fifth District TCE and wished him well in his upcoming retirement.

6. FIFTH DISTRICT UPDATE: (Judge John Walton and Judge Thomas Higbee)
 Chief Justice Durrant welcomed Judge Walton and Judge Higbee to the meeting.

Judge Walton reported that changes have been taking place in the Fifth District Court, specifically, the upcoming retirement of Mr. Rick Davis, Fifth District trial court executive. He expressed his appreciation to members of the Judicial Council for their support in addressing the need for an additional judgeship in the Fifth District Court with passage of HB 77 – Fifth District Court Judge in the current legislative session.

Judge Higbee reported that the Fifth District Juvenile Court is fully staff and functioning well.

Chief Justice Durrant thanked them for their update.

7. SR JUDGE CERTIFICATIONS: (Brent Johnson)

The following judges have applied for certification as senior judges: 1) Judge Anne Steen, active senior justice court judge; 2) Judge Norman Ashton, active senior justice court judge ; 3) Judge Steve Hansen, active senior judge; and 4) Judge Leslie Brown, inactive senior judge.

They all meet the minimum qualifications with the judicial performance standards.

Motion: Judge Toomey moved to forward the recommendations for senior judge certification to the Supreme Court, on behalf of the Council, for the following judges: 1) Judge Anne Steen, active senior justice court judge; 2) Judge Norman Ashton, active senior justice court judge ; 3) Judge Steve Hansen, active senior judge; and 4) Judge Leslie Brown, inactive senior judge. Judge Pullan seconded the motion, and it passed unanimously.

8. LEGISLATIVE BUDGET UPDATE/INTERIM HIGHLIGHTS: (Daniel J. Becker and Rick Schwermer)

Mr. Becker expressed his appreciation to the AOC staff who provided support during the 2017 Legislative Session.

A handout outlining the 2017 Legislature: Appropriations Summary was distributed to members of the Council.

He highlighted the following in his Appropriations Summary:

- HB 239 – Juvenile Justice Amendments – focus and attention to this bill took the time of many AOC staff and judges. Mr. Becker expressed his gratitude to Judge Noonan for all she did, on behalf of the Liaison Committee, relative to HB 239.
- Appropriation requests approved for the courts during the 2017 Legislative Session
 - ❖ Fifth District Court Judge
 - ❖ Contracts and Leases
 - ❖ CORIS Rewrite
 - ❖ Juror, Witness, Interpreter FY 2017 Supplemental
- Appropriation requests not funded during the 2017 Legislative Session
 - ❖ GF Restoration to the Court Complex Fund
 - ❖ Law Clerks (3)
 - ❖ Court Visitor Program (GRAMPS)
- Compensation Related Funding
 - ❖ 2% increase for judges and staff
 - ❖ Compensation funding exceptions (to provide funding for the 2% increase for court employees not funded by general funds)
 - ❖ Judicial Retirement Cost Increase
 - ❖ 401K Match for Employees
- Fiscal Note Funding

Mr. Becker offered recommendations on the following:

- HB 239 – Juvenile Justice Amendments. Mr. Becker recommended that the Liaison Committee schedule several meetings with members of the Board of Juvenile Court Judges relative to HB 239 and address the changes resulting from passage of the bill.

- Court Complex Fund. The final bond payment for the Matheson Courthouse is due in FY 2018. The first bond payment for the Provo Courthouse is due in FY 2019. Mr. Becker recommended that the matter of replacing the main line item court complex account with general fund be addressed through a supplemental request.
- Law Clerks. This matter relates to the law clerk bailiffs in the Fourth District Court. Mr. Becker recommended that there is sufficient funding to address one law clerk for the coming fiscal year, if the Council approved it as a priority.
- Court Visitor Program. Mr. Becker recommended one-time funding of the program.

Mr. Schwermer highlighted the following bills which were considered during the 2016 Legislative Session:

- HB 72 – Child Welfare Proceedings Amendments - failed
- HB 77 – Fifth District Court Judge - passed
- HB 93 – Judicial Nominating Process Amendments – subbed, failed
- HB 155 – Driving Under the Influence and Public Safety Revisions – subbed, passed
- HB 170 – Small Claims Amendments – amended, passed
- HB 191 – Judicial Performance Evaluation Commission Amendments/Judiciary Related Amendments – 1st Substitute - passed
- HB 208 – Jail Release Orders Amendments – passed
- HB 248 – Domestic Violence Related Amendments – subbed, passed
- HB 250 – Driving Under the Influence Program Amendments – subbed, passed
- HB 254 – Bail Forfeiture Amendments – failed
- HB 332 – Criminal Procedure Revisions – failed
- HB 286 – Essential Treatment and Intervention Act – subbed, passed
- HB 289 – Grandparent Visitation Amendments – failed
- HB 431 – Government Employees Reimbursement Amendments – subbed, passed
- SJR 4 – Joint Resolution Amending Rules of Evidence-Victim Selection - failed
- SB 110 – Sales Tax Collection Amendments - failed
- S B 115 Compulsory Education Revisions - failed
- SB 134 – Indigent Defense Commission Amendments – passed
- SJR 7 Joint Resolution Amending Rules of Criminal Procedure – failed
- SB 167 Bail Amendments – passed
- SB 193 – Judicial Performance Evaluation Commission Modifications – passed
- HB 239 – Juvenile Justice Amendments – Mr. Schwermer responded by noting the process for addressing this bill throughout the legislative session.

Discussion took place.

Motion: Judge Toomey moved to enter into an executive session to discuss the character, competence, or physical or mental health of an individual. Judge Shaughnessy seconded the motion, and it passed unanimously.

9. EXECUTIVE SESSION:

An executive session was held at this time.

Motion: Judge Pullan moved to refer the judge, discussed in the executive session, to the Judicial Conduct for a violation of Rule 2.8 for failure to treat court personnel in a patient, dignified, and courteous matter; 2) refer the second issue to the Judicial Conduct Commission for the issuance of an illegal order; and 3) refer the third issue to the Judicial Conduct Commission

for violation of ethical rules related to political statements in Facebook posts. Justice Lee seconded the motion, and it passed unanimously.

10. ADJOURN

The meeting was adjourned.