

JUDICIAL COUNCIL MEETING

Minutes
April 16, 2018
Council Room
Matheson Courthouse
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 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
Hon. John Walton
Rob Rice, esq.

Staff:

Richard Schwermer
Ray Wahl
Shane Bahr
John Bell
Cathy Dupont
Dennis Moxon
Jim Peters
Dawn Marie Rubio
Jacey Skinner
Nancy Sylvester
Jeni Wood
Julie Wrigley

Excused:

Guests:

John P. Aston, JPEC Chairman
John Baxter
Clemons Landau
Michele Mattsson
Judge Gregory Orme
Judge Reuben Renstrom
Dave Walsh
Dr. Jennifer Yim

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 March 9, 2018 Judicial Council meeting. Judge Paul Farr seconded the motion, and it passed unanimously.

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

Chief Justice Durrant thanked Jacey Skinner for her report at the Legislative Update.

3. ADMINISTRATOR’S REPORT: (Richard Schwermer)

Mr. Schwermer said the Third District judge vacancy should be posted this week. Mr. Schwermer said the JPEC public voting is halfway complete. Mr. Schwermer noted the Management Committee discussed the possibility of moving the July Judicial Council meeting to Sun Valley, Idaho in conjunction with the Bar Conference. Rob Rice noted the Bar would like to have the Council meeting there. Judge Toomey said it would be helpful to make this decision soon to accommodate for travel arrangements. While there were both positives and negatives to the Council’s attendance, no action was proposed, and the schedule will remain unchanged.

Mr. Schwermer introduced Julie Wrigley as the new AOC Audit Director.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee said there has been discussion about revisiting criteria used by the committee to evaluate bills. The committee has also discussed meeting with legislators and legislative staff to discuss the judiciary’s legislative review process. Mr. Schwermer said that this year general meetings would be held with legislators in each district. Jacey Skinner noted she would be bringing legislators to observe courtrooms. Justice Lee said one project the committee is working on is cataloging existing procedural provisions in the Code. Justice Lee said they might seek assistance from the advisory committees.

Policy and Planning Meeting:

Judge Derek Pullan stated Policy & Planning did not have a meeting this month; therefore, there were no minutes provided.

Bar Commission Report:

Rob Rice stated Bar Commission elections close today. The Lighthouse survey, consisting of 800 individuals and small businesses, is now complete. The results will be posted on the Bar’s website. The Bar is now analyzing the results. Cost of legal counsel is the comment most often made in the survey as the reason not to engage an attorney.

5. LEGISLATIVE POLICY DISCUSSION: (Jacey Skinner)

Ms. Skinner discussed separating juvenile and district court bills in a short meeting and then having all the judges meet together in one large group for a longer meeting. Dawn Marie Rubio and Shane Bahr will discuss this proposal with their Boards.

6. FY2019 SPENDING RECOMMENDATIONS: (Richard Schwermer)

Mr. Schwermer distributed the FY 2019 proposed Judicial Council spending plan and described the process of how the budget plan is created.

Regarding, the ongoing budget plan, Mr. Schwermer explained that market comparability adjustment studies are divided into three different groups: 1) AOC personnel, including administrative assistants, TCE's, and state-level employees; 2) judicial assistants and case managers; and 3) probation staff. Market studies rotate amongst these three groups each year to determine the market rate of positions. This year Chief PO's, Probation Supervisors, Probation Officers and Deputy Probation Officers were studied. Human Resources completed a market comparability analysis of these positions for both private and public sectors, and found these positions are 13% below market. In the past, the goal has been to ensure the salaries for these positions are at least within 10% of market. The budget committee recommended that the Council increase all of the ranges by 7.5%, which includes the 2.5% COLA. If the Council approves the budget plan, everyone in those positions would get at least a 4.5% pay increase but could get as much as 7.5%. Last year the judicial assistants received a 5% increase due to the HR market analysis. Ray Wahl noted Rob Parkes, HR Director, is part of a list serve that aides in his market analysis research. Mr. Schwermer discussed changing an audit coordinator position to an auditor position. There is also a recommendation to add one more law clerk and have the Board of District Court Judges decide the location for the position. Mr. Schwermer proposed using the remaining \$41,000 for HR hot spots.

Mr. Schwermer next discussed the recommendation to use one-time funding for upgrades that were recommended by the recent IT security audit. Some funds have already been spent due to licenses expiring. Judge Shaughnessy said the Council might need to move IT expenses from one-time funds to ongoing funds. Mr. Schwermer noted there are some ongoing funds for IT already in place.

The anticipated cost of Codebooks may be less after an email is sent to all judges asking them to notify the Law Library if they do not need a full hardbound Utah Code book set and just use the softbound set, or if they prefer using the online version.

The rest of the ongoing and one-time spending plans were reviewed and discussed. Mr. Schwermer noted adjustments can be made to the budget plan in September once the 2018 books are closed and an exact carry forward figure of ongoing and one time money is determined.

Motion: Judge Toomey moved to approve the proposed FY 2019 budget plan as presented. Judge Higbee would like to include looking at alternative ways to calculate market adjustments to account for compression, more information on ODR, understanding why there are not any juvenile court law clerk positions requested, and reassurance that IT funds will be available to accommodate the replacement schedule. The staff should prepare information on these issues and present it to the Management Committee. Judge Mark DeCaria seconded the motion, and it passed unanimously.

7. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and John P. Ashton)

Chief Justice Durrant welcomed Dr. Jennifer Yim and John P. Ashton. Chief Justice Durrant thanked Mr. Ashton for his service as he ends his term on JPEC. Mr. Ashton expressed his commitment to the judiciary. Mr. Ashton noted the input from JPEC is important. Dr. Yim addressed some of the evaluations received. Dr. Yim provided examples of evaluations of

judges that more reflect issues with the system rather than the judge. Judge Shaughnessy would like data JPEC receives on system issues addressing the judiciary be shared with the Council. Dr. Yim addressed juvenile court judges' evaluations.

Dr. Yim said there were ongoing discussions regarding time standards. Dr. Yim asked whether judges are receiving timely updates on their cases. Mr. Schwermer noted a committee was created to address this issue with both district and juvenile court judges. Mr. Schwermer stated the Council takes the comments and suggestions from JPEC seriously and appreciates the feedback. Judge Higbee recommended discussing issues with each districts' respective Bench.

The commission's voting will be complete by April 24. Retention elections this year will include 35 full judges, 6 mid-level judges and 3 basic level judges. Dr. Yim has been working with judges to update their biographies and photos. Mr. Ashton said everyone is committed to having the best judiciary possible.

8. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)

Ms. Sylvester addressed Judge Thomas Higbee's application to become an active senior judge and Justice Leonard Russon's application to become an inactive senior judge.

Motion: Judge Toomey moved to approve the appointment of Judge Thomas Higbee to be an active senior judge and Justice Leonard Russon to be an inactive senior judge. Judge Farr seconded the motion, and it passed with Judge Higbee abstaining on his application.

9. APPELLATE MEDIATION PROGRAM REPORT: (Judge Gregory Orme and Michele Mattsson)

Chief Justice Durrant welcomed Michele Mattsson. Ms. Mattsson explained the mediation process and noted the appellate mediation program began 20 years ago. Approximately 50% of the appellate cases selected settle through mediation. Judge Toomey said the appellate courts receive an overwhelming amount of positive feedback about mediation. After a question about why juvenile cases are not a separate statistical category, Ms. Mattsson said they do not often select juvenile court appellate cases. Court of Appeals cases are scheduled based on a single request, whereas, Supreme Court cases must have bilateral acceptance.

Judge Gregory Orme stated that previously the courts selected cases based on anticipation of settlement through mediation. Judge Orme said Ms. Mattsson communicates well with litigants and receives all positive feedback.

10. NEW JUSTICE COURT JUDGE CERTIFICATION: (Jim Peters)

Jim Peters discussed the certification application of Clemons Landau as a new justice court judge at the Salt Lake City Justice Court.

Motion: Judge Marx moved to approve Clemons Landau as a Salt Lake City Justice Court Judge. Judge Toomey seconded the motion, and it passed unanimously.

11. BOARD OF JUSTICE COURT JUDGES REPORT: (Judge Reuben Renstrom and Jim Peters).

Chief Justice Durrant welcomed Judge Reuben Renstrom. Judge Renstrom noted law trained judges have increased in the Justice Courts. Justice Courts handled 68% of all filings in Utah in 2017. Jim Peters has been visiting courthouses throughout Utah. Elections will be held next week to establish presiding judges in each district. The Board's current initiatives include interpreter requirements, media requests, ensuring quality recordings, and tracking cases under advisement. Judge Renstrom said Kim Free is working on creating a new clerk orientation and certification process. Judge Renstrom said there is a statutory requirement to keep a hardbound copy of the Utah Code in each courtroom; however, many judges are using online resources, such as Westlaw, to view the Code. A review of certification requirements is underway.

Judge Renstrom introduced Justice Courts 4.0 initiative or the future of Justice Courts, which allows for the possibility of consolidation of courts, Justice Courts becoming courts of record and moving from city/county employees to state employees. It has been approximately 10 years since the last study was completed. Justice Lee said justice courts becoming courts of record is an ongoing conversation.

12. EXECUTIVE SESSION

There was not an executive session held.

13. CONSENT CALENDAR ITEMS.

1) **Committee appointments.** Pretrial Release and Supervision Committee appointment of Reed Stringham, Marshall Thompson, Cara Tangaro, and Kimberly Crandall and the appointment of Judge Harmond as chair, subject to conditions; MUJI – Civil Committee appointment of Doug Mortensen; and Self-Represented Parties Committee appointment of Judge Catherine Hoskins. Approved without comment.

2) **Forms Committee forms.** Motion to _____ (name of motion); Stipulated Motion to _____(name of motion); Memorandum Opposing Motion to _____(name of motion); Stipulation to Motion to _____(name of motion); Reply Memorandum Supporting Motion to _____(name of motion); Statement Supporting Motion to _____(name of motion); Request to Submit for Decision; Notice of Hearing; Findings of Fact, Conclusions of Law and Order on Motion to _____(name of motion); Motion to Excuse Education Requirements; Motion to Excuse Mandatory Divorce Mediation and Motion to Excuse Mediation; Non-public Information – Parent Identification and Location; Non-public Information – Safeguarded Address; Non-public Information – Minors; Ex Parte Motion for Hearing to Identify Judgment Debtor's Property; Order for Debtor to Attend Hearing to Identify Judgment Debtor's Property; Answers to Questions About Judgment Debtor's Property; Certificate of Service of Answers to Questions About Judgment Debtor's Property; Motion for [] Finding of Contempt [] Bench Warrant; Bench Warrant; and Order to Appear and Explain Failure to Comply with Order. Approved without comment.

3) **Probation Policies 2.17, 2.18, and 4.5.** Approved without comment.

4) **HR Code of Personal Conduct 500.** Approved without comment.

14. ADJOURN

The meeting adjourned.