

JUDICIAL COUNCIL MEETING

Minutes
Monday, June 26, 2017
Jury Room
Duchesne County Courthouse
Duchesne, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Justice Thomas Lee
Hon. Marvin Bagley
Hon. Mark DeCaria
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

STAFF PRESENT:

Richard Schwermer
Ray Wahl
Jody Gonzales
James Ishida
Jim Peters
Brent Johnson
Nancy Sylvester
Keisa Williams

GUESTS:

Hon. Doug Thomas
Alex Peterson, JCC
Joanna Landau
Jojo Liu
Taylor Mosolf
Hon. Samuel Chiara
Hon. Keith Eddington
Russ Pearson, 8th Dist TCE

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 May 22 Judicial Council meeting. The motion was seconded, and it passed unanimously.

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

Chief Justice Durrant had nothing to report at this time.

3. **ADMINISTRATOR'S REPORT: (Richard Schwermer)**

Mr. Schwermer reported on the following items:

Duchesne Courthouse. He reported that the Duchesne Courthouse is a newly renovated facility. A tour of the facility will be provided at the end of the meeting.

Judicial Retirements. The following judges have announced their upcoming retirements:

1) Judge Bruce Lubeck, effective the end of December 2017; and 2) Judge Ann Boyden, effective January 1, 2018.

Judicial Appointments. The Governor has appointed Judge Ryan Harris and Ms. Diana Hagan to fill the vacancies in the Court of Appeals due to the upcoming retirement of Judge Fred Voros and Judge Stephen Roth. The appointments are pending confirmation.

Judicial Confirmations. The following were recently confirmed as judges: 1) Jennifer Valencia, Second District; 2) Jared Eldridge, Fourth District; 3) Susan Eisenman, Third District Juvenile; and 4) Steven Beck, Third District Juvenile.

AOC Interviews. Final interviews will be held on June 27 and June 28 to fill the vacancies for a district court administrator and the Chief Information Officer.

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 meeting was held in June. A future offsite meeting will be planned to: 1) get organized for the 2018 legislative session, 2) discuss juvenile justice reform efforts, and 3) review and revisit the criteria by which the committee evaluates legislation.

Policy and Planning Meeting:

Judge Pullan reported on the following items: 1) the committee working on the rule regarding communication with the Office of Legislative Research and General Counsel, 2) commissioner rules for comment are on the agenda for discussion for further action later in the meeting, 3) continue to work on the means by which the Policy and Planning Committee does their work, and 4) creation of a form to be submitted to the Policy and Planning Committee to have matters addressed by the committee.

Chief Justice Durrant noted that this will be Mr. Lund's last Council meeting, and recognized Mr. Lund for his many contributions and valuable service to the Judicial Council.

Mr. Lund offered a few comments. He mentioned that Mr. Rob Rice has been appointed as the Bar's appointment to the Council and will join the Council at their next meeting.

Bar Commission Report:

Mr. Lund reported on the following items: 1) Bar's Summer Conference to be held in Sun Valley, Idaho July 26-29; and 2) Justice Durham will be recognized at the Bar's Summer Conference as the recipient of the Distinguished Service Award.

5. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Richard Schwermer)

Mr. Schwermer highlighted the following in his legislative update:

- New staff appointments to the Judiciary Interim Committee
- Request from the Legislature as to an area the judiciary feels needs to be studied more in depth
 - ❖ The coordination from a procedural prospective of the following: 1) protective orders, 2) jail release orders, 3) pretrial restrictions, and 4) restrictions on dating violence, stalking, etc;
 - ❖ The continuing protective order in a civil context
 - ❖ A workgroup will be formed and will be on the agenda in June

- A request for a presentation on drug courts to include: 1) what drug courts are, 2) for whom they are most effective, and 3) the way in which they have been affected by JRI. Mr. Schwermer provided this presentation during the June interim session.
- Looking at statutory reports
- Sunset review of the Administrative Office of the Courts in August
- Jury Nullification in August
- Domestic Case Processing Report will be presented at the September interim

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

6. DOMESTIC CASE PROCESSING SUBCOMMITTEE REPORT AND RECOMMENDATIONS: (Judge Doug Thomas and Ray Wahl)

Chief Justice Durrant welcomed Judge Thomas to the meeting.

Judge Thomas provided background information on the creation of the domestic case processing subcommittee. He highlighted the following as it relates to the work of the subcommittee, and the report and recommendations of the subcommittee:

- Charge of the Domestic Case Processing Subcommittee
- Membership of the Domestic Case Processing Subcommittee
- Work of the Standing Committee on Children and Family Law (SCCFL)
- Analysis of Court Data
 - ❖ Days to disposition
 - ❖ Average number of hearings
 - ❖ Self-represented parties in domestic matters
- Surveys
 - ❖ Summary of survey of attorneys, judges and commissioners
 - ❖ Summary of survey of self-represented parties
 - ❖ State Justice Institute (SJI) study
- Technical Assistance by the National Center for State Courts (NCSC)
 - ❖ Best practices in states all included early intervention and case triage
 - ❖ Use of “family court facilitators”
 - ❖ Triage includes considering complexity of case
 - ❖ Best practice should include an evaluation of processes
- Conclusion and Recommendations
 - ❖ Active case management will improve the court’s ability to dispose of cases
 - Use of domestic case managers
 - ❖ Self-represented parties need additional resources and guidance
 - Specialized case management
 - ❖ Court should take active role in managing a case where both parties have representation
 - ❖ Different tools should be used to resolve custody disputes
 - Four types
 - ❖ Uniformity between districts needs to be achieved
 - ❖ Modification of statutes

Discussion took place.

Questions were asked of Judge Thomas, and he provided responses.

- Final Summary
 - ❖ Cases take too long, cost too much money and are too complicated
 - ❖ Understandable and timely information needs to be available, especially to self-represented parties
 - ❖ Use domestic case managers to improve case management
 - ❖ Broader variety of tools in custody disputes
 - ❖ More uniformity
 - ❖ Modify or eliminate some statutes and rules

Motion: Judge DeCaria moved to accept the report as prepared by the Domestic Case Process Improvement Subcommittee. Judge Higbee seconded the motion, and it passed unanimously.

Mr. Schwermer suggested that the Domestic Case Process Subcommittee Report be referred to the Board of District Court Judges and the Family Law Section of the Utah State Bar, and referred back to the Standing Committee on Children and Family Law (SCCFL) for interim implementation of the recommendations. The Council was in agreement to Mr. Schwermer's suggestions.

7. JUDICIAL CONDUCT COMMISSION UPDATE: (Alex Peterson)

Chief Justice welcomed Mr. Peterson to the meeting.

Mr. Peterson highlighted the following in his update to the Council:

- Commission members and their terms of office were noted
- Annual caseload for FY 17 – approximately 70-75 cases
- Turnaround time for cases – the goal is 90 days per case, the turnaround time is averaging 61 days
- Caseload – Five public actions taken in FY 17 including one public reprimand, and the remaining four were dismissals with warning
- Type of action that can be taken by the Judicial Conduct Commission includes:
 - ❖ Dismissal
 - ❖ Public actions after a formal hearing and formal charges are filed
 - Reprimand
 - Censure
 - Suspension
 - Removal
 - ❖ Dismissal with Warning
 - ❖ Letter of Education

Chief Justice Durrant thanked Mr. Peterson for his update.

8. PRE-TRIAL RELEASE UPDATE: (Keisa Williams)

Chief Justice Durrant welcomed Ms. Williams to the meeting.

Ms. Williams highlighted the following in her update on the pre-trial release efforts:

- the PSA Working Group, chaired by Judge Brent West, has started meeting
- Implementation with a goal for the “go live” date of November 13
- Review of the violent offense list developed by the Arnold Foundation

- Identified additional offenses that qualify as violent offenses to be added to the list developed by the Arnold Foundation
- Additional approval to be sought by the Arnold Foundation on the additional offenses to be added to the approved violent offense list
- Parts of the decision-making framework being addressed
- Development of offenses with exclusions – to the working group for consideration and approval on July 7
- Development of a CLE for the Bar
 - ❖ Meeting with prosecutors, defense counsel and county attorneys on what is being done with the PSA
- Education for Judges to be provided
 - ❖ Justice Court Judges Conference on August 4
 - ❖ District and Appellate Judges at the Annual Judicial Conference
 - ❖ Clerks of Court at the end of October
 - ❖ Additional Justice Court Judge training to be provided at the Clerk’s Conference in October
 - ❖ Training will be recorded as well for future viewing
- Train the trainer sessions are being completed by Mr. Tom Langhorne, Ms. Keisa Williams, and Mr. John Bowers to provide training to others
- Adding additional CLEs in the future
- The importance of capturing identifying information (SID) is being addressed
- Programming efforts are progressing
 - AOC IT staff is working with the Department of Public Safety to recreate the automated probable cause system
- Discussion of a side-by-side study in Salt Lake City is taking place

9. INDIGENT DEFENSE COMMISSION REPORT: (Joanna Landau)

Chief Justice Durrant welcomed Ms. Landau to the meeting.

Ms. Landau, Ms. Liu, and Mr. Mosolf highlighted the following in their report to the Council:

- Studies of indigent defense in Utah
- Utah laws regarding indigent defense
- Indigent Defense Commission staff
 - ❖ Director – Joanna Landau
 - ❖ Assistant Director – Jojo Liu
 - ❖ Research and Data Analyst – Taylor Mosolf
 - ❖ Grant Monitor/Manager – Collett Litchard
 - ❖ Staff interns
- Indigent Commission’s statutory duties
 - ❖ Collect statewide data
 - ❖ Setting standards
 - Develop and adopt guiding principles for the assessment and oversight of indigent defense systems.
 - ❖ Encourage regionalization
 - ❖ Award grants
- Sources of Indigent Defense Data in the State
 - ❖ Local government contracts with attorneys
 - ❖ Local government budgets
 - ❖ AOC case data

- ❖ Local court data
- ❖ Surveys and studies
- Patchwork of indigent defense systems
 - ❖ Patchwork of independent systems with diverse delivery methods, resources, quality, oversight, and court practices
 - ❖ No substantive accountability/quality assurance
 - ❖ Disparate funding levels
- Juvenile standards, specifically, systems and attorney performance standards
 - ❖ Development of three subcommittees to address development of attorney performance standards
- Grant projects
- Non-statutory duty – indigent defense public relations

Discussion took place.

Questions were asked of Ms. Landau, Ms. Lui and Mr. Mosolf, and they provided responses.

Chief Justice Durrant thanked Ms. Landau, Ms. Liu, and Mr. Mosolf for their update.

10. PCRA RECOMMENDATION FOLLOW-UP: (Brent Johnson)

Chief Justice Durrant welcomed Mr. Johnson to the meeting.

Mr. Johnson reminded the Council of one of the recommendations, as prepared by the Post-Conviction Subcommittee, dealt with the development of a more robust post-conviction pro bono program in the Utah State Bar. The Council asked Mr. Johnson to look at potential ethical considerations.

Mr. Johnson provided background information on his review into the use of pro bono services by the Utah State court system when the Third District Court participated in a pilot program several years ago. Discussion of this matter took place at the June Management Committee. The proposed solution for use of a pro bono program is it relates to the PCRA recommendations included the following: 1) the Utah State Bar will maintain a list of pro bono attorneys and provide the list for use by the courts, and someone other than the assigned judge will contact the firms as needed, on a rotating basis.

Mr. Schwermer reported that the proposed solution has been discussed with Mr. John Baldwin of the Utah State Bar. He approved the solution. Mr. Schwermer and Mr. Johnson will meet with the appropriate representative at the Utah State Bar to develop a protocol that is repeatable for use with a pro bono program.

Mr. Lund suggested that contact be made with the Utah Association of Criminal Defense Lawyers (UACDL) as well.

11. RULE FOR COMMENT: (Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Ms. Sylvester reviewed the revisions made by the Policy and Planning Committee to the commissioner rules to include: 1) CJA Rule 3-201 – Court commissioners, and 2) CJA Rule 3-111 – Performance evaluation of senior judges and court commissioners.

She highlighted the amendments requested by Mr. Peyton Smith, Third District Court trial court executive, to Rule 3-111 – Performance evaluation of senior judges and court commissioners. His request was relative to having surveys of judges and court personnel be done annually as opposed to quarterly, and having the annual evaluations completed by June 1, rather than by January 31.

Discussion took place.

Motion: Mr. Lund moved to approve the recommended changes to: 1) CJA Rule 3-201 – Court commissioners, and 2) CJA Rule 3-111 – Performance evaluation of senior judges and court commissioners as proposed by the Policy and Planning Committee, to include the input requested by Mr. Peyton Smith, and send the rules out for public comment. Judge Toomey seconded the motion, and it passed unanimously.

12. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)

Judge Stephen Roth and Judge Dane Nolan have applied for senior judge certification. Both judges are in compliance with the minimum qualifications and performance standards

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

Motion: Judge Noonan moved to forward the recommendations for senior judge certification for the following judges: 1) Judge Stephen Roth, active senior judge; and 2) Judge Dane Nolan, active senior judge. Judge Toomey seconded the motion, and it passed unanimously.

13. EXECUTIVE SESSION:

An executive session was held at this time.

14. EIGHTH DISTRICT UPDATE/LUNCH: (Judge Samuel Chiara, Judge Keith Eddington, and Russ Pearson)

Chief Justice Durrant welcomed Judge Chiara, Judge Eddington and Mr. Pearson to the meeting.

Judge Chiara, Judge Eddington and Mr. Pearson provided an update on Eighth District activities.

15. ADJOURN

The meeting was adjourned.