

JUDICIAL COUNCIL MEETING

Minutes
July 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. Ryan Evershed
Hon. Paul Farr
Hon. Kara Pettit
Justice Thomas Lee
Hon. David Marx
Hon. Mark May
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Staff:

Richard Schwermer
Ray Wahl
Jacey Skinner
Heidi Anderson
Shane Bahr
Cathy Dupont
Geoff Fattah
Jim Peters
Dawn Marie Rubio
Stacey Snyder
Jeni Wood

Excused:

Guests:

Dr. Doug Goldsmith
Commissioner David Jordan
Annie Knox
John Larsen
Hon. Douglas Thomas
Dr. Jennifer Yim

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

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

Motion: Judge Kate Toomey moved to approve the minutes from the June 25, 2018 Judicial Council meeting. Judge Ryan Evershed seconded the motion, and it passed unanimously.

2. **OATH OF OFFICE – JUDGE MARK MAY: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant welcomed Judge Mark May to the Council and administered the oath of office.

3. **CHAIR’S REPORT: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant had nothing new to report.

4. **ADMINISTRATOR’S REPORT: (Richard Schwermer)**
Richard Schwermer thanked Judge May for his willingness to serve on the Council as a follow-up to the Council’s previous conversation about jury usage. Mr. Schwermer handed out a spreadsheet identifying FY17 and FY18 jury trials throughout the state. Mr. Schwermer noted that in FY18 Davis County cancelled 10% of their jury trials within 7 days of the scheduled trial date; Washington County had 36% cancel within 7 days of the scheduled trial date; and Salt Lake County had 32% cancel within 7 days of the scheduled trial date. This variance may be a topic for further discussion about jury management practices throughout the state.

Mr. Schwermer handed out a technical assistance bulletin from the U.S. Department of Health and Human Services that addressed child welfare data sharing. The bulletin noted the interface between the AOC and the Utah Division of Child and Family Services (DCFS) as a seamless process that allows for real-time information sharing. Utah’s system was commended as a best practice.

Mr. Schwermer noted the Council members would receive a copy of the National Center for State Courts publication entitled “Trends in the U.S. Courts.” Mr. Schwermer stated Chris Talbot has accepted the Facilities Director position. Mr. Talbot previously worked as a facilities director for the courts in Riverside County, California so he comes to the courts with a considerable amount of experience. There are two candidates for the Audit Director position being considered and a decision should be made in the next few days.

5. **COMMITTEE REPORTS:**

Management Committee Report:

The work of this committee is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee noted the committee has not met since the last Council meeting.

Policy and Planning Committee Report:

Judge Derek Pullan said the committee did not meet in July.

Bar Commission Report:

Rob Rice said Dickson Burton will be sworn in as Bar President and Herm Olsen will be sworn in as president-elect at the Annual Conference in Sun Valley.

**6. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC) REPORT:
(Dr. Jennifer Yim and Commissioner David Jordan)**

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner David Jordan. Chief Justice Durrant noted Dr. Yim has demonstrated an understanding for procedural fairness and its application in the evaluation process. Chief Justice Durrant thanked Commissioner Jordan for serving on this Commission. Dr. Yim provided some background on Commissioner Jordan.

Commissioner Jordan said this year is the first time JPEC instituted a blind review of judges, which hopefully allows for an unbiased review. The blind review removes all identifying information of a judge, including their name, gender, and location.

Dr. Yim noted JPEC amended the survey to be more specific to inquire only about recent time-periods and behaviors. JPEC evaluated approximately 50 judges in 2018.

Dr. Yim said that in this non-election year, JPEC is working on process improvements including infrastructure issues to improve data reliability, tracking judges from first appointment to retirement, and improving evaluations for justice courts. Dr. Yim said Aden Batar, Director of Migration and Refugee Services, will join JPEC as a legislative appointee. Commissioner Jordan said JPEC would like input from the Council on the standards used when reviewing appellate court judges. It is difficult to measure the judicial performance of an appellate court judge, although other states have developed different processes.

Dr. Yim also discussed how and when JPEC provides feedback to the courts when an issue about a judge has come to light, such as the mental health of a judge. Mr. Schwermer said the courts confidentially review and address everything JPEC brings to their attention. Mr. Schwermer said JPEC has been terrific to work with.

**7. STANDING COMMITTEE ON CHILDREN AND FAMILY LAW REPORT:
(Judge Douglas Thomas and Ray Wahl)**

Chief Justice Durrant welcomed Judge Douglas Thomas. Judge Thomas thanked the Council for allowing the committee to provide an update. Judge Thomas reviewed the committee membership. There are two subcommittees: 1) divorce procedures subcommittee; and 2) custody evaluation subcommittee. Judge Thomas reviewed rules the committee is working on.

Judge Thomas described the domestic case manager pilot program that began in April in the Fourth and Seventh Districts. This pilot was a result of the recommendations of the recent Domestic Case Process Committee. The use of case managers has been very successful so far. The program allows for an electronic notice of a hearing to be sent within two business days when an answer in a domestic case has been filed. Many cases are being resolved at this initial hearing. This is especially helpful with self-represented litigants. While in the early stages of the pilot progress the hope is the time it takes to rule on a uncontested divorce will be reduced. Questions were asked about the difference in how case managers are used in the Second District, which has existed for a number of years, and the case manager process involved in the current pilot project.

8. GAL OVERSIGHT COMMITTEE REPORT: (Dr. Doug Goldsmith and Stacey Snyder)

Chief Justice Durrant welcomed Dr. Doug Goldsmith, Chair of the GAL Oversight Committee. Dr. Goldsmith stated that the Committee reviews the enumerated committee statutory requirements as agenda items at its quarterly meetings to ensure the committee is effective. Additionally, they regularly review the duties of the Guardian ad Litem so they do not become overburdened. The national average of cases per Guardian is 100 cases. Utah Guardian's, with assistance of support staff, average 150 clients, with a maximum of 100 families. Each child is counted as a client.

As a result of recent budget adjustments, the GAL Department added two FTE attorneys, two investigators, and staff. They also brought a social worker. Recently, the committee met with Brent Johnson to review statutory obligations and oversight requirements for guardians. The GALs work is in compliance with both federal and state statutes. The Committee is working on a policy about the process of removing private guardians. Private guardians must be in good standing with the Bar, meet CLE requirements, and have no complaints filed with the Bar. The Committee has discussed how complaints should be addressed and at what point the Committee should notify the judges of removals.

9. IT PLANNING AND PROJECT MANAGEMENT DEMONSTRATION: (Heidi Anderson and John Larsen)

Heidi Anderson introduced John Larsen, who is the new IT project manager. Mr. Larsen explained that Agile is a planning and delivery process that allows for the faster development of technology. Mr. Larsen discussed the development of software and how Agile will allow changes to programs on an expedited basis. This system is very helpful to track personnel resources needed and monitoring of time frames.

Mr. Larsen said the IT Department is moving to a system that allows for realtime review of progress on all projects. Mr. Schwermer said the new system will protect and recognize priorities set by Council, Technology Committee, and IT. Ms. Anderson said the structural changes to the department included eliminating separate developer groups. Projects can now be more evenly prioritized. Judge Shaughnessy thanked Ms. Anderson and her team, especially for their work on the PSA program. Judge Shaughnessy recommended having developers come to court to review how the programs are being used.

Mr. Larsen said listening to needs of court personnel has been productive in helping the courts move forward. Ms. Anderson said CORIS development has been prioritized, with the next two projects to be delivered being ODR and MyCase functionality. Probable cause, PSA, auto-dialer are all part of CORIS rewrite.

10. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)

Nancy Sylvester was unable to attend. Ray Wahl reviewed Judge Michael G. Allphin's application to become a senior judge.

Motion: Judge Toomey moved to approve Judge Michael G. Allphin as an active senior judge. Judge Evershed seconded the motion, and it passed unanimously.

11. APPROVAL OF INTERLOCAL AGREEMENT BETWEEN PAROWAN CITY AND PARAGONAH TOWN: (Jim Peters)

Jim Peters explained that Parowan City is seeking authorization from the Judicial Council to expand the territorial jurisdiction of the Parowan City Justice Court to include the town of Paragonah. The request is based on an interlocal agreement between Parowan City and the town of Paragonah, where the Parowan City Police Department provides law enforcement services. Additionally, Parowan City is requesting a waiver of the 180-day requirement as described in Utah Code § 78A-7-102. Mr. Peters said he anticipates a transition date of September/October.

Motion: Judge Shaughnessy moved to approve the expansion of the jurisdiction of the Parowan court as requested and approve the 180-day waiver with an effective date of September 1. Judge Toomey seconded the motion, and it passed unanimously.

12. JUDICIAL WORKLOAD AND JUDICIAL RESOURCES: (Richard Schwermer)

Mr. Schwermer explained the weighted caseload measure and how judicial resources have been requested in the past. Mr. Schwermer noted the weighted caseload includes a travel time adjustment for rural areas. Mr. Schwermer said the current resource needs evaluation process includes several criteria, filing trends, anecdotal information, time to disposition data, the number of positions needed, and the weighted workload percentage are all relevant factors.

Judge Todd Shaughnessy agreed that judicial positions should not be based on weighted caseloads alone. Judge Shaughnessy said the judicial needs should begin with approval of the Boards then move to Council for final consideration. Justice Lee said decision-making bodies need data to review when considering requests for additional resources, so perhaps the courts could create a metric with more criteria. Justice Lee said without data to review, the process becomes too impressionistic. Mr. Schwermer noted the Legislature requires the Council to prioritize judicial requests when more than one position is requested.

Chief Justice Durrant said the Council tries to account for differences in rural vs. urban judicial needs. He also noted that the Third District currently needs six more judges to reach the standard. Judge Shaughnessy said the Third District has spent a considerable amount of time considering its request, taking into account that workloads may change. Judge Shaughnessy said the courts could consider non-judicial positions to help alleviate some of the judges' workloads. Judge Shaughnessy said he will initiate a broader discussion about alternative possibilities to measure judicial needs with the Third District Bench. Justice Lee said having a series of facts with ways of measuring those factors would be an improvement. Mr. Schwermer said the courts adjusted their measurements with the JRI changes. Jacey Skinner said she believes forecasting judicial employment expectations with the Legislature would be helpful. Mr. Schwermer suggested Kim Allard review our current data inputs and report to the Council in September. The Council's consensus was that no one measure should determine whether a judicial resource requests be advanced.

13. EXECUTIVE SESSION

Motion: Judge Toomey moved to go into an executive session to discuss personnel issues and litigation. Judge Marx seconded the motion, and it passed unanimously.

14. CONSENT CALENDAR ITEMS

1) Committee appointments.

- MUJI - Criminal Committee approval of committee term limits, and approval of Judge Linda Jones' term;
- Pretrial Release Committee appointment of Judge Keith Eddington. Approved without comment.

15. ADJOURN

The meeting adjourned.