

JUDICIAL COUNCIL MEETING

Minutes

September 18, 2018

Snowbird Resort – Cliff Lodge

Tenth Floor, Twin Peaks B Conference Room

9320 Cliff Lodge Dr.

Snowbird, Utah 84092

12:30 p.m. – 4:00 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
Justice Thomas Lee
Hon. David Marx
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Staff:

Richard Schwermer
Ray Wahl
Jacey Skinner
Kim Allard
Heidi Anderson
Brody Arishita
Shane Bahr
Cathy Dupont
Kim Free
Tom Langhorne
Suzy Lee
Heather Marshall
Chris Palmer
Jim Peters
Nancy Sylvester
Jeni Wood

Excused:

Dawn Marie Rubio

Guests:

Senior Judge Dennis Fuchs
Judge Diana Hagen
Justice Deno Himonas
Peyton Smith

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 Budget & Planning and the Judicial Council minutes from the August 17, 2018 meeting. Judge Augustus Chin seconded the motion, and it passed unanimously.

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

Chief Justice Durrant said he attended a meeting with the Judicial Executive Compensation Committee during which the courts relayed the message that the recent raises helped increase the quality of judges who have been confirmed to the bench. Chief Justice Durrant thanked Jacey Skinner for her comments to the committee. Dickson Burton also presented to the Committee. Ms. Skinner said the Committee members were very attentive to the court’s needs. Richard Schwermer said there was discussion on rural versus urban judicial salary needs. The committee will make a recommendation to the legislature prior to the 2019 session.

3. ADMINISTRATOR’S REPORT: (Richard Schwermer)

Mr. Schwermer distributed the 2018 Human Resources AOC survey results. The results have consistently increased over the past several years.

Mr. Schwermer said the Judicial Performance Evaluation Commission (JPEC) conducted a member survey that covered issues such as procedural fairness, courtroom observation, and judges’ self-evaluations. The commission prioritized procedural fairness adjustments and yearly survey high, and appellate opinion and litigant surveys low for attention this year.

There was a meeting to discuss the Manti project. Mr. Schwermer explained the Matheson Courthouse bond expired this year and the timing of the Provo Courthouse will be complete next year so that money can be used for Provo. A similar option is less attractive for Manti. The Facilities Committee suggested the Manti project be presented to the legislature during their next session for funding.

Mr. Schwermer said the courts had a booth at the recent FanX event. Mr. Schwermer noted there were more than 20 court volunteers. Approximately 2,500 people stopped at the booth for brief discussions. The event was a successful public outreach event, and hopefully a booth can be acquired for next year again.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflective in the minutes.

Liaison Committee Report:

Justice Thomas Lee had to leave the meeting early.

Policy and Planning Committee Report:

Judge Derek Pullan said the committee recently finalized their work on the Professional Appearance Policy. The policy will be presented to the Council in October.

Judge Pullan said they are working on the rule that will consolidate multiple probation cases involving a single defendant. Utah Code § 77-18-1(12)(2)(b) states the court has continuing jurisdiction, however, if a defendant has multiple cases throughout multiple jurisdictions, there is concern as to which court should have jurisdiction if the probation is consolidated. Judge Pullan recommended having the statute amended before the rule is

finalized. Ms. Skinner said the proposed amendment to the statute could perhaps be included in a housekeeping bill.

Bar Commission Report:

Rob Rice said John Lund on behalf of the Bar is taking the lead on exploring the possibility of creating a committee to review the rules of professional conduct that address how Licensed Paralegal Practitioner's will work in law firms, advertising for attorneys, affiliating other professions with law firms. Mr. Rice noted Dickson Burton is the co-chair of the lawyer and judge well-being committee. The committee will have a presentation at the Bar's fall forum.

5. EDUCATION COMMITTEE REPORT: (Judge Diana Hagen, Tom Langhorne, Kim Free)

Chief Justice Durrant welcomed Judge Diana Hagen, who discussed judicial education. Tom Langhorne thanked the Council for their continued support of the Education Department. Annually, the Department holds more than 114 day-long classes for court staff including of more than 3,000 students, 24 statewide conferences, and 2 academies. The Department created manuals for presiding judges, TCE's, and clerks of court. The redesigned New Judge Orientation course also now includes one-on-one specialized training.

Kim Free said justice courts now have presiding judges. The presiding judges are participating in the annual Judicial Conference. Mentors are experimenting with using cameras at the new judges' benches to facilitate remote video assistance. Ms. Free attended the national court educators' conference where many states sought the advice of Mr. Langhorne and the Utah courts. Judge Hagen thanked the Council for its support.

Chief Justice Durrant said the level of our judicial education programming is due to the hard work of many talented individuals.

6. REVIEW OF CURRENT JUDICIAL WORKLOAD DATA INPUTS: (Kim Allard)

Kim Allard noted this is a follow up to a recent discussion about the process and application of judicial weighted caseloads. Ms. Allard said the weighted caseloads are calculated twice a year to estimate time required to address case filings. This began in approximately 1997 for district courts and 1999 for juvenile courts.

The standard work time used to calculate a weighted caseload is 1,540 work hours per year based on 7-hour per day for direct case work. Additional considerations in the calculation include travel time and administrative responsibilities. Cross-jurisdictional work and senior judge work is not counted in weighted caseloads. Ms. Allard stated weighted caseloads are based on the districts, not the judges.

Ms. Allard said it might be more beneficial to review multiple years' worth of weighted caseloads. Mr. Schwermer explained that this presentation was to inform the Council of how the final calculations are made and to provide options for consistent application of the information. Justice Lee noted this presentation was very helpful.

Ms. Allard said it is possible to include committee assignments and travel time related to those assignments. Mr. Schwermer said the Legislature has confidence in the courts' weighted caseload formula. Judge Shaughnessy would like to include a three or five year average. Ms. Allard will include a three-year average when providing the data assessment. Chief Justice Durrant recommended Ms. Allard present this data to the Boards.

7. COURT COMMISSIONER CONDUCT COMMITTEE REPORT: (Judge Michele Christiansen Forster, Jacey Skinner)

Judge Michele Christiansen Forster was unable to attend. Ms. Skinner said prior to last week, no complaints were received this year. Ms. Skinner reviewed rule 3-201.02 with the Council. Currently, there are commissioners in the First, Second, Third, and Fourth Districts. Mr. Schwermer said the members of the Committee are the three presiding judges of the Second, Third, and Fourth Districts, as well as John Lund, and Steve Johnson. All members are ex officio and do not meet unless there is a non-frivolous complaint received.

Chief Justice Durrant said we need to be sure the public has information necessary to file a complaint. Mr. Schwermer noted informal complaints are sent to the presiding judge of that district, whereas, a written formal complaint is ones received by Chief Justice. Mr. Schwermer stated the process for a formal complaint begins with Ms. Skinner and the chair, who will initially decide if the complaint is frivolous. If the chair finds it to be non-frivolous the committee will meet. Judge Shaughnessy suggested that perhaps more than one person should make that determination.

Rule 3-201.02 will be sent to Policy & Planning for review. Chief Justice Durrant asked Ms. Skinner to relay to Judge Christiansen Forster the Council's appreciation for her work.

8. REVIEW OF REVISED CERTIFICATION STANDARDS AND CERTIFICATION OF PROBLEM SOLVING COURTS: (Senior Judge Dennis Fuchs)

Chief Justice Durrant welcomed Senior Judge Dennis Fuchs. Judge Fuchs first reviewed his proposed revisions to the modified adult problem solving court checklist.

Judge Fuchs reviewed the status of the below listed courts. Judge Fuchs is seeking recertification on all courts except for the Second District Juvenile Drug Court (Ogden); Third District Juvenile Dependency Drug Court (West Jordan); Fourth District Juvenile Dependency Drug Court (Orem), and Fourth District Juvenile Dependency Drug Court (Spanish Fork); and American Fork Juvenile Dependency Court. Judge Fuchs noted in February 2018, conditional certification was approved for the Weber County Adult Drug Court (Judge Bean); American Fork Juvenile Dependency Court (Judge Bazzelle); and Washington County Adult Mental Health Court (Judge Walton).

Adult Drug Courts

First District Adult Drug Court. Logan, Judge Willmore

First District Adult Drug Court, Brigham City, Judge Maynard

Second District DUI Court, Ogden, Judge DiReda

Second District Adult Drug Court, Riverdale Justice Court, Judge Renstrom

Second District Dependency Drug Court, Ogden, Judge Heward
Third District Adult (ASAP) Drug Court, Salt Lake City, Judge Blanch
Third District Adult Drug Court, Tooele, Judge Bates
Third District Dependency Drug Court, West Jordan, Judge Jimenez
Fourth District Adult (Probation) Drug Court, Provo, Judge Eldridge
Fourth District Dependency Drug Court, Orem, Judge Nielsen
Fourth District Dependency Drug Court, Spanish Folk, Judge Smith
Sixth District Adult Drug Court, Richfield, Judge Bagley
Seventh District Dependency Drug Court, Price, Judge Bunnell
Eighth District Adult Drug Court, Vernal, Judge McClellan

Juvenile Drug Courts

Second District Juvenile Drug Court, Ogden, Judge Noland

Veteran Courts

Third District Veteran Court, Salt Lake City, Judge Hansen
Fourth District Veteran Court, Provo, Judge Powell

Mental Health Courts

First District Adult Mental Health Court, Brigham City, Judge Cannell
Second District Adult Mental Health Court, Ogden, Judge Hyde
Second District Adult Mental Health Court, Farmington, Judge Dawson

Policy and Planning convened a committee to review the current certification checklist. Judge Pullan reviewed the proposed amendments to the adult court checklist. Judge Fuchs said he would like approval of the modified checklist so he can begin using it immediately.

Mr. Schwermer said there are three issues for the Council to address: 1) does the Council accept the proposed revisions to the adult checklist; 2) revision of rule 4-409; and 3) what to do with current issues with problem-solving courts not meeting the testing requirements.

Judge Pullan said he prefers to wait until a rule is in place before any notice is sent to the courts that are not in compliance.

Motion: Judge Shaughnessy moved to have Policy & Planning revise rule 4-409 and address the revisions at the next Council meeting. Judge David Marx seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to approve the changes to the adult court checklist as presented. Justice Lee seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to approve recertification of the above listed courts, with the exception of the Second District Juvenile Drug Court (Ogden); Third District Dependency Drug Court (West Jordan); Fourth District Dependency Drug Court (Orem), and Fourth District Dependency Drug Court (Spanish Fork); and American Fork Juvenile as presented. Justice Lee seconded the motion, and it passed unanimously.

9. ONLINE DISPUTE RESOLUTION: (Justice Deno Himonas, Heidi Anderson, and Brody Arishita)

Chief Justice Durrant welcomed Justice Deno Himonas. Justice Deno Himonas stated the small claims ODR program would require all litigants to initially create a case in the program. The pilot program will begin September 19 in West Valley Justice Court. This will be reviewed in 2019 to determine if it is successful. There are six facilitators for the pilot, including Nini Rich, and several other lawyers and mediators. Justice Himonas said there is an information sheet attached with the complaint that explains how a litigant can opt out of the program, such as if there was a language barrier or lack of internet. A facilitator is automatically assigned when a case is created and will respond within 24-48 hours.

Brody Arishita explained the program. An ODR email account will provide access to litigants with questions about the program. Justice Himonas thanked everyone involved with this program. The next step for the committee is to create a Spanish version. At this time, any cases with language barriers will need to take the traditional route for their case. Rob Rice said the Bar is interested in linking this program with their assistance programs. Justice Himonas said this would be addressed in the next phase.

Motion: Judge Pullan moved to amend the summons form with moving the language “if you are unable to participate . . .” from page 4 to page 3. The Council agreed.

Motion: Judge Kara Pettit moved to approve the small claims ODR program as presented, with the exception of the amended summons. Judge Paul Farr seconded the motion, and it passed unanimously.

10. COMMISSIONER EVALUATIONS: (Nancy Sylvester)

Nancy Sylvester reviewed commissioner evaluations for Commissioners Michelle Blomquist (Third District), Kim Luhn (Third District), Joanna Sagers (Third District), and Thomas Patton (Fourth District).

11. PROPOSED COUNCIL LEGISLATION: (Jacey Skinner)

Ms. Skinner welcomed Judge May to the Liaison Committee. Ms. Skinner reviewed proposed changes to Utah Code § 78A-2-220 Authority of Magistrate. Ms. Skinner next reviewed the proposed amendments to the housekeeping bill. Ms. Skinner will discuss the possibility of adding Utah Code § 77-18-1, after further discussion with Policy & Planning.

Ms. Skinner addressed current issues arising during interim. Ms. Skinner said there might be a possibility that a bill will be run that allows automatic expungement of certain low-level offenses. CCJJ is discussing having more expungement fairs to allow individuals easier access. Ms. Skinner said there is discussion on revising how a grand jury operates. Judge Toomey recommended having more than one judge make a decision on convening a grand jury.

Court security was discussed.

Motion: Judge Shaughnessy moved to approve the housekeeping bill as amended, adding § 77-18-1 with the understanding that this statute will be reviewed by Policy & Planning. Judge Toomey seconded the motion, and it passed unanimously.

12. APPROVAL OF NEW COMMISSIONER – THIRD DISTRICT COURT: (Peyton Smith)

Chief Justice Durrant welcomed Peyton Smith. Mr. Smith stated Commissioner T. Patrick Casey will retire in October. Mr. Smith noted they held a 10-day comment period on the applicants for the commissioner position. The Third District recommended Russell Minas be approved for this position.

Motion: Judge Toomey moved to approve Russell Minas be approved as the new Third District Court Commissioner. Judge Walton seconded the motion, and it passed with Judge Marx abstaining.

13. JPEC RULE 597-3-2 AND 597-3-4 PROPOSED CHANGES: (Richard Schwermer)

Mr. Schwermer addressed the proposed changes to the Judicial Performance Evaluation Committee rule 597-3-2. This rule is currently out for public comment. Ms. Skinner noted that for judicial applicants all comments are public unless the provider of the comments specifically requests they be confidential. Section (5) allows comments to be submitted anonymously. Judge Shaughnessy said there would be concern for judges if 597-3-4(5) is approved. Mr. Schwermer said Dr. Yim would like feedback from the Council on these proposed rule changes. The Council agreed to provide comment on the rule. The Council recommended a similar process as exists with judicial applicants.

14. EXECUTIVE SESSION

Judge Toomey moved to go into an executive session to discuss a personnel matter and litigation. Judge Pullan seconded the motion, and it passed unanimously.

15. CONSENT CALENDAR ITEMS

1) Probation Policies. Revisions to rules 2.10, 3.1, 4.3, and 4.13 and the deletion of rules 3.2, 3.3, and 3.4. Approved without comment.

2) Rules for Public Comment. Code of Judicial Administration Appendix I. Rule 4-202.02. Approved without comment.

3) Committee Appointments.

Technology Committee appointment of Judge Clemens Landau. Approved without comment.

Self-Represented Parties Committee appointment of Charles Stormont and Shawn Newell. Approved without comment.

16. ADJOURN

The meeting adjourned.