

JUDICIAL COUNCIL MEETING

Minutes
October 22, 2018
Price Courthouse
120 East Main Street
Price, Utah 84501
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. Kevin Allen
Hon. Augustus Chin
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
Shane Bahr
Michael Drechsel
Cathy Dupont
Brent Johnson
Rob Parkes
Jeni Wood

Excused:

Guests:

John Dougall, Utah State Auditor
Travis Erickson
Hon. Doug Thomas

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Chief Justice Durrant welcomed John Dougall, Utah State Auditor.

Judge Derek Pullan recommended amending the September 18, 2018 minutes to note in section 7, Court Commissioner Conduct Committee, that Rule 3-201.02 was sent for review to the Policy & Planning Committee.

Motion: Judge Kate Toomey moved to approve the Judicial Council minutes from the September 18, 2018 meeting, as amended. Judge Augustus Chin seconded the motion, and it passed unanimously.

2. OATH OF OFFICE – JUDGE KEVIN ALLEN: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant administered the Judicial Council Oath of Office to Judge Kevin Allen.

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

Chief Justice Durrant thanked the Seventh District for inviting the Judicial Council to the new Price Courthouse. Chief Justice Durrant said the Price Courthouse dedication ceremony held this morning went well and noted Judge Thomas’ comments.

4. ADMINISTRATOR’S REPORT: (Richard Schwermer)

Richard Schwermer thanked everyone who attended the Price dedication ceremony, including Senator David Hinkins and Representative Christine Watkins. Mr. Schwermer said the Juvenile Court Administrator, Dawn Marie Rubio, would be leaving the courts in November for a position in Washington, where she has been appointed Court Administrator. Neira Siaperas, the Third District Juvenile Court Trial Court Executive, has agreed to fill the position temporarily.

Mr. Schwermer next reviewed the ABA/OPC Committee summary recommendations report. An oversight committee will be formed to review and implement the findings of the ABA/OPC report. The oversight committee will report to the Supreme Court.

The Utah courts will present on the new ODR small claims program at the South-by-Southwest (SXSW) 2019 conference. The program is currently being piloted in the West Valley Justice Court.

Mr. Schwermer stated the media recently published a negative article about a Fourth District Court judge. The Utah State Bar will respond and explain to the media the role of JPEC. Mr. Schwermer noted that judges could not respond to the media. Justice Thomas Lee would like to see a fairer environment about the timing of posting negative reports against judges, while voting is still active. Rob Rice believes this may be an opportunity to educate the media. Mr. Schwermer will discuss this with Geoff Fattah.

Mr. Schwermer stated the Management Committee approved replacing Judge Mark DeCaria on the Liaison Committee with Judge Kara Pettit and adding Judge Kevin Allen to the Policy & Planning Committee. The Judicial Council agreed.

Mr. Schwermer said that the Judicial Council, in past years, has selected a study item. After brief discussion, the Council asked Mr. Schwermer to present a few ideas for discussion at the next Council meeting.

5. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflective in the minutes.

Liaison Committee Report:

Justice Thomas Lee said the Liaison Committee has not met recently.

Policy and Planning Committee Report:

Judge Derek Pullan said updates from Policy & Planning Committee would be addressed with agenda items 6 & 7.

Bar Commission Report:

Rob Rice said the Lawyer Attorney Client Fund would include Licensed Paralegal Practitioners (LPPs). The Bar will review the Fund in five years to determine whether the LPPs should continue to be included in the Attorney Fund or have their own fund.

6. RULE 4-409 FOR PUBLIC COMMENT: (Judge Derek Pullan and Michael Drechsel)

Judge Pullan reviewed proposed changes to rule 4-409. Judge Pullan noted that the Adult Drug Court Certification Checklist needed to be amended to comply with the revisions to rule 4-409. The Council discussed the definition of “structural inability.” After further review, the Council agreed to the following amendments to rule 4-409 and the Certification Checklist: 1) Remove certification criteria from the rule and add it to the Checklist; and 2) Reformat and reorganize the Checklist.

Motion: Justice Lee moved to approve publishing rule 4-409, as amended, and approve the revisions to the Adult Drug Court Certification Checklist, as amended, for a 45-day comment period. Judge Toomey seconded the motion, and it passed unanimously.

7. RULES FOR FINAL APPROVAL 3-401, 3-414, 4-202.03, 4-202.09, 4-403, AND 4-701: (Michael Drechsel)

Mr. Drechsel reviewed rules 3-401, 3-414, 4-202.03, 4-202.09, 4-403, and 4-701 as presented for final approval. Mr. Drechsel noted the rules completed a comment period in June 2018, with no comments received. Mr. Drechsel requested rule 3-414 be approved with the understanding that the rule will return to the Policy & Planning Committee to readdress the section that addressed color-coded badges.

Motion: Justice Lee moved to approve rule 3-414 with an effective date of November 1, 2018, and send the rule to Policy & Planning to readdress the color-coded badges section. Judge Toomey seconded the motion, and it passed unanimously.

Motion: Judge Toomey moved to approve rules 3-401, 4-202.03, 4-202.09, 4-403, and 4-701, as presented, with an effective date of November 1, 2018. Justice Lee seconded the motion, and it passed unanimously.

8. PROFESSIONAL APPEARANCE POLICY: (Rob Parkes and Michael Drechsel)

Rob Parkes said a committee of statewide court employees was formed to create a professional appearance policy. The TCEs, Policy & Planning Committee, and the Management Committee have reviewed the policy. Judge Toomey expressed her appreciation in creating a gender-neutral policy. The Council discussed the policy on polo shirts. Judge Shaughnessy said many law enforcement and probation officers wear polo shirts when testifying in court. Mr. Parkes said there is a lack of consistency in dress appearance throughout the state.

Motion: Judge Toomey moved to approve the professional appearance policy as presented. Judge Mark May seconded the motion, and it passed with Justice Lee and Judges Shaughnessy and Judge Pettit voting no.

9. SENIOR JUDGE CERTIFICATIONS: (Ray Wahl)

Ray Wahl reviewed the applications. The Board of Justice Court Judges recommended Judge Weidauer's certification. Mr. Wahl noted Judge Kay Lindsay has reapplied to remain as an inactive senior judge. Mr. Wahl requested the application for Judge Dawson be addressed at the November Council meeting.

Motion: Judge Shaughnessy moved to approve Judge Susan Weidauer as an inactive senior judge, and the recertification of Judge Kay Lindsay as an inactive senior judge, as presented. Judge Paul Farr seconded the motion, and it passed unanimously.

10. SEVENTH DISTRICT REPORT: (Judge Doug Thomas and Travis Erickson)

Chief Justice Durrant welcomed Judge Doug Thomas and Travis Erickson. Judge Thomas thanked the Council for visiting the new Price Courthouse. Judge Thomas said there are three district court judges and two juvenile court judges that serve four Seventh District courthouses, located in Carbon County, Emery County, Grand County, and San Juan County. There are also four problem-solving courts. Judge Thomas said clerical personnel are cross-trained across court levels.

Court filings throughout the district have increased 27% this year. Judge Thomas said the Seventh District is one of two districts serving a pilot program for domestic case processing. Judge Thomas explained the details of the new domestic case process.

Mr. Schwermer said the National Center for State Courts is studying best practices with domestic matters and thanked the Seventh District for their work on this process. Chief Justice Durrant thanked Judge Thomas on structuring the Seventh District in a positive and effective manner.

11. EXECUTIVE SESSION

Judge Toomey moved to go into an executive session to discuss the character, competence or mental health of a person or a personnel matter. Judge Pullan seconded the motion, and it passed unanimously.

Motion: Judge Toomey moved to have the Council direct Mr. Schwermer to file a formal complaint. Judge Chin seconded the motion, and it passed with Justice Lee abstaining.

12. CONSENT CALENDAR ITEMS

1) Committee Appointments.

Standing Committee on Children and Family Law reappointment of James Hanks.

Approved without comment.

Ethics Advisory Committee appointment of Ryan Tenney. Approved without comment.

2) Probation Policies. Revisions to rules 1.6, 2.3, and 2.4, and the deletion of policies 1.5 and 4.12. Approved without comment.

3) New Senior Judge Questionnaires. Approved without comment.

4) Probate Cover Sheet Revisions: Approved without comment.

13. ADJOURN

The meeting adjourned.