

JUDICIAL COUNCIL MEETING

Minutes
November 19, 2018
Matheson Courthouse
Council Room
450 S. State St.
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. 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. John Walton
Rob Rice, esq.

Excused:

Hon. Todd Shaughnessy

Staff:

Richard Schwermer
Ray Wahl
Shane Bahr
Cathy Dupont
Brent Johnson
Jim Peters
Neira Siaperas
Jessica Van Buren
Jeni Wood

Guests:

Hon. Mark DeCaria
Randy Dryer
Commissioner Rick Hoffman, JPEC
Hon. Christine Johnson
Hon. Reuben Renstrom
Aimee Thoman, JCC
Dr. Jennifer Yim, JPEC

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 Judicial Council minutes from the October 22, 2018 meeting, as presented. Judge David Marx seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

3. ADMINISTRATOR'S REPORT: (Richard Schwermer)

Richard Schwermer stated the new Provo Courthouse won the Utah Construction & Design 2018 Most Outstanding Project award. The courthouse is scheduled to be ready for move-in in January. Interviews for the juvenile court administrator position will be held December 10. Neira Siaperas is the acting juvenile court administrator. Mr. Schwermer reported there have been 300 case filings with the new online ODR program in West Valley Justice Court.

Mr. Schwermer said the AOC has accomplished several things over the past year, including:

- Realignment of the Legal Departments assignments;
- The new Audit Director, Karl Sweeney, has automated many processes including self-evaluations with justice courts;
- The Juvenile Court Department worked tirelessly on the implementation of H.B. 239 changes and expenditures associated with the appropriation;
- Added staff capacity for the Public Information Officer;
- Created a new consolidated DV and a program coordinator position, expanded clerk education, and revised district leadership, including presiding judges;
- The new Facilities Director, Chris Talbot, has created new relationships with DFCM and legislators;
- Court Services won a National Center for State Courts award for best data;
- The new Chief Information Officer, Heidi Anderson, implemented a new management strategy called "agile" which includes a dashboard for IT to track status of projects;
- It is anticipated that Ms. Anderson will share lessons learned in this process with other states; and
- Implementation of the new PSA system, development of the new LPP program, creation of an online ODR small claims program, ABA/OPC study, and the judge and lawyer well-being initiative.

All of these efforts have been staffed by the AOC in the last year. Chief Justice Durrant thanked Mr. Schwermer for his leadership.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee met with Cathy Dupont and Michael Drechsel to discuss the 2019 legislative session. The Committee scheduled several meetings. Mr. Schwermer said Mr. Drechsel would assist Ms. Dupont with the 2019 legislative session.

Policy and Planning Committee Report:

Judge Derek Pullan said the work of this committee is reflected in the minutes. The Committee meets monthly for two hours and twice a year for an all-day session. The Committee reviews the Code of Judicial Administration every five years. Judge Pullan thanked the Committee members for their continued dedication.

Bar Commission Report:

Rob Rice said Dickson Burton and John Baldwin met with the Governor's Office of Management and Budget to discuss the Governor's interest in expanding sales tax to services, including healthcare, attorneys, architects, and cosmetology/barber services. Utah's sales tax revenue has continued to decline over the past several years. Mr. Burton will prepare a response to that office.

5. JUDICIAL COUNCIL SELECTION OF STUDY ITEM: (Richard Schwermer)

Mr. Schwermer explained the history of Council study items and presented possible items for discussion.

- Justice For All – fines and fees that the court assesses (see Arizona study).
- Mental health issues – improving how the courts deal with individuals who have mental health issues. This will be a topic at the midyear Conference of Chief Justices and State Court Administrators in May 2019.
- Court security – variety of court security structures used in Utah and other states.
- Justice court reform – procedural issues; this hasn't been reviewed for 11 years

Judge Kevin Allen said he believes fines and fees are a pressing issue. Mr. Schwermer said this is an issue in district, juvenile, and justice courts. Judge Kara Pettit said fines and fees would have the largest impact for court patrons. Judge Toomey said a Justice Court Reform Committee is looking at procedural reforms to reduce inefficiencies and restructuring. Justice Lee recommended the Supreme Court work on the justice court reform should be completed before the Council selects justice court reform as a study item.

Chief Justice Durrant asked the Council members to consider the items and the issue will be discussed at the next Council meeting. Justice Lee would like input from the Boards before making a decision.

6. FORMS COMMITTEE REPORT: (Randy Dryer and Brent Johnson)

Chief Justice Durrant welcomed Randy Dryer and thanked him for this work on the Committee. Mr. Dryer stated the Committee focuses much of their time on the LPP forms in anticipation of the LPP program beginning in 2019. The Committee created a numbering system for all court forms. Mr. Dryer said the Committee has approved 169 forms. Mr. Dryer thanked Brent Johnson and Jessica Van Buren for their continued effort and service on this Committee.

Chief Justice Durrant thanked Randy Dryer for his report.

7. PROPOSED JPEC RULE AMENDMENTS: (Dr. Jennifer Yim and Commissioner Rick Hoffman)

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Rick Hoffman. Dr. Yim introduced Commissioner Rick Hoffman. Mr. Schwermer thanked Commissioner Hoffman for his frequent service to the courts, including his active participation on the ODR Steering Committee.

Dr. Yim reviewed the proposed changes to JPEC rule 597-3-5, which would no longer require a person's name and contact information when submitting a comment. Dr. Yim noted JPEC members are currently required to contact individuals who leave a comment but do not complete all of their contact information.

Dr. Yim said judges would get the comments minus the name and contact information. JPEC decided not change the process regarding comments. Dr. Yim noted 95% of judges do not receive any comments.

The Council was concerned that the new rule would allow one person to submit multiple comments. Dr. Yim said JPEC has the ability to see an IP address when a person leaves a comment therefore if a person submits multiple comments, JPEC will be able to identify that the comments are from the same person.

Justice Lee thanked Dr. Yim for the Commission's continued support and respect for the judiciary.

8. JUDICIAL PERFORMANCE EVALUATION COMMISSION: (Dr. Jennifer Yim and Commissioner Rick Hoffman)

Dr. Yim addressed the recent judicial retention elections. JPEC members are allowed to answer questions from the public but they do not proactively speak about judges. JPEC voted to retain all 44 judges that were on the ballot for retention. Dr. Yim noted New Mexico and Colorado have a similar retention election system.

Chief Justice Durrant thanked Dr. Yim and Commissioner Hoffman for their presentation.

9. JUDICIAL CONDUCT COMMISSION REPORT: (Aimee Thoman)

Chief Justice Durrant welcomed Aimee Thoman. Ms. Thoman said the Commission is comprised of 11 members from throughout the state. In fiscal year 2018, the Commission received 58 complaints, of which 53 were resolved and 5 are pending. The vast majority of complaints were with the district courts. The Commission moved from Ogden to Salt Lake City. Ms. Thoman said the Commission had considered but would not yet offer online complaint forms.

Chief Justice Durrant thanked Ms. Thoman.

10. BOARD OF DISTRICT COURT JUDGES REPORT: (Judge Christine Johnson and Shane Bahr)

Chief Justice Durrant welcomed Judge Christine Johnson. Judge Johnson noted the new Board chair is Judge Samuel Chiara and Judge Johnson is the new vice chair. Judge Chiara was not able to attend the Council meeting because of a jury trial. The Board has several new members. Many judges throughout the state volunteer within their community, such as speaking at schools, these outreach efforts are reported at each Board meeting. The Attorney General's Office, JPEC, AP&P, Bar, and the Indigent Defense Commission reported to Board. The Board goals for FY19 include a focus on civility with the Bar; review of the 60 day under advisement

rule; review civil rules 54 and 108; increasing efficiency between judges with shared documents; and better measures to manage caseloads.

Chief Justice Durrant thanked Judge Johnson.

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

Chief Justice Durrant welcomed Judge Reuben Renstrom. Judge Renstrom said the justice courts now have presiding judges in each of the districts. The presiding judges are using the district courts benchbook as a guideline. Justice courts throughout the state have more than 80 judges and 400 clerks. All of the justice court clerks now have Google accounts.

Mr. Peters meets quarterly with the administrators. Judge Renstrom thanked Judge Toomey for her assistance with the justice court reform meetings.

Chief Justice Durrant thanked Judge Renstrom.

12. RECOGNITION OF OUTGOING COUNCIL MEMBERS: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant presented Judge Mark DeCaria with a Judicial Council plate and thanked him for his service on the Council. Judge DeCaria said he enjoyed his time on the Council and the Liaison Committee. Judge DeCaria announced his retirement for April 15, 2019.

13. SENIOR JUDGE CERTIFICATION: (Brent Johnson)

Brent Johnson reviewed Judge Glen Dawson's application to become an active senior judge.

Motion: Judge Toomey moved to approve Judge Glen Dawson to become an active senior judge. Judge Marx seconded the motion, and it passed unanimously.

14. EXECUTIVE SESSION

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

15. CONSENT CALENDAR ITEMS

a) Committee Appointments.

Forms Committee appointment of Judge Randy Birch and Commissioner Russ Minas. Approved without comment.

MUJI - Civil Committee appointment of Alyson McAllister. Approved without comment.

b) 2019 IOLTA Grant. Approved without comment.

c) Rules for Public Comment. Rule 1-205 – Standing and Ad Hoc Committees, Rule 2-208 – Publication and Distribution, Rule 3-103 – Administrative Role of Judges, Rule 3-104 –

Presiding Judges, Rule 3-106 – Legislative Activities, Rule 3-107 – Executive Branch Policy Initiatives, Rule 3-111 – Performance Evaluations of Senior Judges and Court Commissioners, Rule 3-413 – Judicial Library Resources, Rule 3-501 – Insurance Benefits upon Retirement, Rule 4-202.09 – Miscellaneous, Rule 4-403 – Electronic Signatures and Signature Stamp Use, Rule 4-405 – Juror and Witness Fees and Expenses, Rule 4-508 – Guidelines on Ruling on a Motion to Waive Fees. Approved without comment.

16. ADJOURN

The meeting adjourned.