

JUDICIAL COUNCIL MEETING

Minutes

December 18, 2017

Council Room

Matheson Courthouse

450 S. State St.

Salt Lake City, Utah 84111

9:00 a.m. to 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. Paul Farr
Hon. Thomas Higbee
Justice Thomas Lee
Hon. David Marx
Hon. Mary Noonan
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Todd Shaughnessy
Rob Rice, esq.
Hon. John Walton

Staff:

Richard Schwermer
Ray Wahl
Jeni Wood
Shane Bahr
John Bell
Cathy Dupont
Brent Johnson
Alyn Lunceford
Nini Rich
Dawn Marie Rubio
Jacey Skinner
Nancy Sylvester
Jessica Van Buren
Keisa Williams

Excused:

Guests:

Hon. James Brady
Randy Dryer
Hon. Ryan Evershed
Hon. Royal Hansen
Hon. Elizabeth Knight
Hon. Barry Lawrence
Alex Peterson
Hon. Andrew Stone

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

Chief Justice Matthew Durrant welcomed everyone to the meeting. Judge David Marx moved to remove the VAWA Grant from the consent calendar to allow the Justice Court Board to discuss the request further. Judge Paul Farr seconded the motion, and it passed unanimously.

Motion: Judge Kate Toomey moved to approve the minutes from the November 20, 2017 Judicial Council meeting. Judge David Marx seconded the motion, and it passed unanimously.

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

Chief Justice Durrant said he along with Rick Schwermer and others met with Governor Herbert regarding the courts budget. The issue of pre-trial reform was also discussed. Chief Justice Durrant thought the meeting went well. Chief Justice Durrant and Rick also met with JPEC, where they discussed certification issues.

3. ADMINISTRATOR'S REPORT: (Richard Schwermer)

Richard Schwermer noted today is Heather Mackenzie-Campbell's last day. There has been an offer made to fill the Director of Audit position. Mr. Schwermer noted Terri Yelonek, the Seventh District TCE, is retiring and Travis Erickson has accepted that position. A job announcement for Travis' current TCE position in the Second District was posted and will close 1/12.

Mr. Schwermer discussed the issue of sexual harassment in the workplace. Mr. Schwermer said there are some classes offered on sexual harassment for court employees but not necessarily for judges. The Education Department will address this issue at future conferences. Justice Thomas Lee said there should be regular discussions with staff on how to report incidents.

Mr. Schwermer noted Camille Neider was nominated to the bench of the Second District Court replacing Judge West. Jacey Skinner recently graduated as a Toll Fellow. Mr. Schwermer distributed the Judicial Council budget as proposed by the Governor's budget.

4. COMMITTEE REPORTS:

Management Committee Report:

The committee's work is reflective in the minutes.

Liaison Committee Report:

Justice Thomas Lee reported that recently committee members met with Brent Johnson to discuss Senator Todd Weiler's draft bill on expungement issues. Regular meetings will commence on January 12.

Policy and Planning Meeting:

Judge Derek Pullan noted there are three rules (rule 3-101, 3-201, and 3-111) on the consent calendar that need to be addressed by the Judicial Council because of their substantive changes. Judge Pullan moved to remove the three rules from the consent calendar and add them to the Judicial Council agenda. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

Judge Pullan noted Policy & Planning meets on a monthly basis. Twice a year the Committee has an all-day meeting.

Nancy Sylvester discussed rule 3-101. Ms. Sylvester proposed that this rule go out for public comment. After brief discussion, the rule will go out for public comment in the spring, after JPEC completes their evaluation process, and after JPEC has had an opportunity to discuss it.

Ms. Sylvester next discussed rule 3-201. There was one comment received. Judge Higbee moved to approve rule 3-201 with an effective date of May 1, 2018. Judge Toomey seconded the motion, and it passed unanimously.

Ms. Sylvester addressed rule 3-111. After discussion, Judge Toomey moved to send rule 3-111 for public comment, Judge Higbee seconded the motion, and it passed unanimously.

Bar Commission Report:

Rob Rice addressed the survey the State Bar is conducting to determine how litigants decide whether to hire counsel for their cases. Mr. Rice noted the 2019 and the 2020 Summer Bar Conventions will be held in Park City.

5. FOURTH DISTRICT/JUVENILE COMMISSIONER NOMINEE: (Judge James Brady)

Chief Justice Durrant welcomed Judge James Brady. Judge Brady said the Fourth District and Juvenile Benches met to select a candidate to fill the commissioner position. The Fourth District Judges have selected Sean Peterson. Shane Bahr will make the appropriate contacts to inform him of the Judicial Council's decision.

Motion: Judge Toomey moved to approve Sean Peterson to fill the Fourth District commissioner position. Judge Noonan seconded the motion, and it passed unanimously.

6. HOMESLESS YOUTH COURT: (Judge Elizabeth Knight)

Chief Justice Durrant welcomed Judge Elizabeth Knight. Judge Knight described a new effort to provide better support to youth transitioning from State care. They recently changed the name from "homeless youth court" to "transition youth court." Judge Knight explained some of the processes and how the youth are selected. Judge Knight said the Homeless Youth Center provides amazing services to the youth, including case managers who assist with job placement and housing. Judge Knight said she receives reports on the youth and presides over all of the cases in the transition court. Because it has been determined this is not a Problem Solving Court under the Rules of Judicial Administration, its formation does not need Council approval.

7. ADR COMMITTEE UPDATE: (Judge Royal Hansen and Nini Rich)

Chief Justice Durrant welcomed Judge Royal Hansen and Nini Rich. Ms. Rich distributed recent mediation statistics. Judge Hansen noted the Committee is working on updating the Mediation Best Practices Guide. Judge Hansen reviewed changes to the Committee roster.

8. JUDICIAL CONDUCT COMMISSION UPDATE: (Alex Peterson)

Chief Justice Durrant welcomed Alex Peterson. Mr. Peterson reviewed personnel changes within the Commission. Mr. Peterson noted the Commission had slightly fewer

referrals. Mr. Peterson advised the Council the Commission has moved their office to Salt Lake City. The Commission is working with JPEC to provide training at conferences. Chief Justice Durrant thanked Mr. Peterson for all of his work.

9. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Ryan Evershed and Dawn Marie Rubio)

Chief Justice Durrant welcomed Judge Ryan Evershed. Judge Evershed reviewed the Board's goals, which include judicial outreach and implementation of H.B. 239. Judge Evershed noted the Board is trying to identify gaps in services to better assess needs of the juveniles with one step being to meet with service entities in the community, such as schools. Staff and judges are involved in filming of a video that will be shown at intake to youth who are referred to the Court for a delinquency offense. The video will be ready sometime after the first of the year.

Judge Evershed thanked the AOC staff for their continued good work.

10. PROPOSED PROBATION POLICY PROCESS: (Dawn Marie Rubio and Brent Johnson)

Chief Justice Durrant welcomed Dawn Marie Rubio and Brent Johnson. Ms. Rubio discussed the proposed probation policy approval process. Ms. Rubio said after speaking with Brent Johnson, she proposes the Judicial Council approve all existing policies with the understanding that additional changes to policies would be forthcoming. Brent Johnson said they would like the juvenile courts to be allowed to continue their current practices knowing that some policy changes may be due to HB 239. The review process will take about 15-18 months, pending final Judicial Council approval.

Motion: Judge Higbee moved to approve that the juvenile courts continue to use their current policies, with all policies being presented to the Judicial Council within the next 15-18 months. Judge Toomey seconded the motion, and it passed unanimously.

11. HR POLICY. CODE OF PERSONAL CONDUCT 500: (Keisa Williams).

Chief Justice Durrant welcomed Keisa Williams. Ms. Williams briefly addressed a situation where an employee left a personal weapon in a state vehicle. Ms. Williams noted this amendment is for an internal policy so it would not need to go out for public comment. Ms. Williams noted Chris Palmer has reviewed and approved the proposed amendment. The amendment excludes judges. Judge Noonan would like Ms. Williams to address this proposal with the TCE's, and then move it to consent calendar if there are no other proposed changes.

Motion: Judge Noonan moved to address this proposal with the TCE's and move it to consent calendar if there are no other proposed changes. Justice Lee seconded and it passed unanimously.

12. POLICY ON NAMING COURTHOUSES: (Keisa Williams)

Ms. Williams distributed an edited version of the proposed policy. Chief Justice Durrant noted he is also concerned about transparency and fairness. Justice Lee recommends adding a statement that the final decision does not reside within the Judiciary. There was discussion as

to whether the Building Board would seek the input of the Judicial Council prior to naming a courthouse. Mr. Schwermer noted the Judicial Council was involved with the naming of the Matheson Courthouse.

Motion: Justice Lee moved to adopt a policy moving forward that courthouses are not named after individuals, and that the Building Board be asked to seek input from the Judicial Council if there is a proposal to name a courthouse that they are considering. Judge Toomey seconded the motion, and it passed unanimously.

13. ACCESS AND FAIRNESS SURVEY RESULTS: (Jessica Van Buren)

Chief Justice Durrant welcomed Jessica Van Buren. Ms. Van Buren noted the survey is completed in alternating years, in the summer. The first survey was completed in 2006. Ms. Van Buren noted the survey results are reported to the districts as well as to the Legislature. Mr. Schwermer said Ms. Van Buren puts a considerable amount of time into the survey and the results are valuable to the courts as a way to measure public perception of the courts.

14. FORMS COMMITTEE UPDATE AND PROCESS: (Randy Dryer and Brent Johnson)

Chief Justice Durrant welcomed Randy Dryer. Mr. Dryer said the Committee meets monthly with subcommittees meeting regularly as well. Mr. Dryer noted the Forms Committee is focusing primarily on Licensed Paralegal Practitioner (LPP) forms. Mr. Dryer said each month the Judicial Council will be given various forms for approval. Mr. Schwermer noted the consent calendar is the presumption for the Judicial Council's approval of forms, unless requested otherwise. Mr. Johnson said he does not believe the forms would need to go through a public comment process but that the rolling input process used by the MUJI committees may be appropriate. Mr. Dryer said other issues they seek guidance from the Council on are the following: 1) whether a pro se litigant may recover fees paid to an LPP under circumstances where a fee award would be otherwise allowable if the fees were incurred by a licensed attorney providing the same services; 2) what is the role of the Committee as future legal and policy issues are identified; and 3) what policy would the Judicial Council prefer as to translating forms in various languages.

Regarding question #1, it was suggested that the committee consult with the LPP committee regarding the court ordering fees to LPP's. At the present time, forms only reflect attorney fees, consistent with the current statutory provisions.

Regarding question #2, the committee was encouraged to bring either the Management Committee or Judicial Council any appropriate legal or policy issues through Brent.

Regarding question #3, Mr. Johnson recommends the Forms Committee prioritize on a case-by-case basis which forms need to be translated. Mr. Schwermer said the courts have certified Spanish interpreters as well as one Vietnamese interpreter. Ray Wahl noted there would not be any cost associated with translating forms if the staff interpreters are utilized. Mr. Rice questioned whether it could be the responsibility of the LPP if a form needs to be translated into a language, other than the common ones used in Utah.

Mr. Dryer noted the Forms Committee is creating a master list of forms with a numbering system.

15. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)

Ms. Sylvester briefly addressed the certification of Judge Paul Lyman as an active senior judge and Judge John Sandberg as an inactive senior judge.

Motion: Judge Toomey moved to approve Judge Paul Lyman as an active senior judge and Judge John Sandberg as an inactive senior judge. Judge DeCaria seconded the motion, and it passed unanimously.

16. SELF-REPRESENTED PARTIES COMMITTEE UPDATE: (Judge Barry Lawrence and Nancy Sylvester)

Chief Justice Durrant welcomed Judge Barry Lawrence. Judge Lawrence addressed the Committee's goals and projects. Judge Lawrence said there are a lot of programs established in the Third District Court. One of the challenges is that many of the programs are Salt Lake based and do not reach the rural districts. Judge Lawrence noted only 1% of collection cases have defendants that are represented by an attorney. Judge Lawrence said he would like to see additional resources be given to the Self-Help Center.

17. MUJI – CIVIL COMMITTEE UPDATE: (Judge Andrew Stone and Nancy Sylvester)

Chief Justice Durrant welcomed Judge Andrew Stone. Judge Stone said the Committee has been busy with new instructions. Judge Stone reviewed the Committee's work. Judge Stone presented the Judicial Council with a priority list as created by the Committee. Judge Walton suggested that it may be appropriate to provide an educational opportunity for District judges on the instructions and the work of the Committee.

18. ADJOURN

The meeting was adjourned.