

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, September 10, 2013
Snowbird Resort
Snowbird, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Justice Jill Parrish
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendon McCullagh
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
Hon. Larry Steele
John Lund, esq.

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Ron Bowmaster
Derek Byrne

GUESTS:

Judge Michele Christiansen
Judge Carolyn McHugh
Joanne Slotnik, JPEC

EXCUSED:

Hon. Gregory Orme

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

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Maughan moved to approve the minutes from the August 16, 2013 Judicial Council meeting. Judge Steele seconded the motion, and it passed unanimously.

Chief Justice Durrant recognized the outgoing members for their service and contribution to the Council. The outgoing members include: 1) Judge Larry Steele, and 2) Judge Brendon McCullagh.

Chief Justice Durrant swore in Judge Skanchy as a member of the Council.

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

Chief Justice Durrant had nothing new to report.

3. **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

State Supreme Courts. A book depicting the State Supreme Courts was circulated amongst the Council members for viewing. It will be placed in the Council Room at the Matheson Courthouse for further viewing.

Legislative Retirement Committee. The Legislative Retirement Committee will meet on September 25 with judicial retirement on their agenda for discussion. Chief Justice Durrant and Mr. Becker are on the agenda to address the importance of the present system.

Drug Court Grant. A drug court grant in the amount of \$1.4 million has been received by the Department of Human Services (joint application by Utah Courts and DHS) to be used over a three-year period. Discussion of how the funding will be implemented will take place at a later date.

Judicial Vacancies. The following judgeship appointments are pending confirmation: 1) Mr. Brian Cannell, 1st District Juvenile Court; 2) Commissioner Catherine Conklin, Second District Court; 3) Mr. Samuel Chiara, Eighth District Court; 4) Mr. Keith Eddington, Eighth District Juvenile Court; and 5) Mr. Ryan Evershed, Eighth District Juvenile Court.

The following judicial vacancies are pending appointment by the Governor: 1) Second District Juvenile Court vacancy replacing Judge Paul Iwasaki, 2) Fourth District Juvenile Court vacancy replacing Judge Kay Lindsay, and 3) Court of Appeals vacancy replacing Judge Bill Thorne.

4. **COMMITTEE REPORTS:**

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

Justice Parrish reported on the following items:

The Liaison Committee met prior to the Council meeting to review the proposed amendment to the Citation Section of the Code which would require law enforcement to note on the citation whether the offense is a domestic violence citation or not.

Feedback on the proposed amendment will be sought by the statewide association of prosecutors.

Policy and Planning Meeting:

Mr. Shea reported on the following items:

The Policy and Planning Committee met on Friday, September 6. The following was highlighted in his update: 1) reviewed guidelines for paying interpreters, 2) rules for final action are included on the agenda later in the meeting, 3) discussion took place regarding a request for an amendment relative to SB 281 – Debt Collection Information Amendments – to allow clerks to use judges' signature stamps in matters of disclosing information for debt collection by the Department of Workforce services.

Bar Commission Report:

Mr. Lund reported on the following:

The Bar Commission held their annual retreat at the end of August.

The 2014 Bar's Summer Conference will be held in Snowmass, Colorado.

A special election will be held in the Third District to replace Mr. Jim Gilson.

Ms. Joanne Slotnik and Mr. John Ashton, Judicial Performance Evaluation Commission (JPEC) members, presented information on the work of JPEC to the Bar.

Mr. Lund reported that the Bar Commission would be looking at the practice of law in the next 5-10 years as one of their priorities for the coming year.

5. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided a Legislative Update for the Council.

An interim session was not held in August. Mr. Schwermer highlighted the following in his update: 1) a legislator is considering resurrecting circuit courts to handle misdemeanors and domestic cases, and the justice courts would continue to handle infractions and local ordinances; 2) EEOC Appropriations Committee met at the Ogden Courthouse; and 3) the Prison Relocation and Development Authority (PRADA) met with Mr. Rick Schwermer, Ms Debra Moore, and Judge Kevin Allen making presentations.

Mr. Becker introduced Alison Adams-Perlac, the new AOC staff attorney and former juvenile court law clerk. Ms. Emily Iwasaki has been selected to fill the juvenile court law clerk vacancy and will begin working for the courts on Monday, September 16.

6. FY 2014 BUDGET ADJUSTMENTS: (Daniel J. Becker)

Mr. Becker reported that an additional \$200,000 in unobligated carry forward funds is available after the books were closed for FY 2013.

He recommended the following adjustments to the FY 2014 budget: 1) set aside \$44,000 for the Fourth District Juvenile clerical assistance as approved at the August Budget and Planning Session, 2) increase the senior judge budget by \$56,000 to allow senior judge coverage while judicial vacancies are being filled and provide for commissioner vacancies, and 3) add \$100,000 to the balance in the trust interest support account to address revenue shortfalls stemming from low interest rates.

Mr. Byrne provided an overview providing a comparison of the trust interest support account expenses to revenue over time.

Motion: Judge Parkin moved to approve the FY 2014 budget adjustment recommendations as presented by Mr. Becker. Judge Hornak seconded the motion, and it passed unanimously.

7. COURT COMMISSIONER CONDUCT COMMITTEE UPDATE: (Judge Michele Christiansen and Rick Schwermer)

Judge Christiansen provided an update to the Council on the activities of the Court Commissioner Conduct Committee. The following was highlighted in her update: 1) four complaints were received, 2) one complaint was dismissed, 3) one complaint was dismissed after investigation, and 4) one complaint – lost jurisdiction upon retirement of the commissioner.

Discussion will take place and feedback sought at the Presiding Judge luncheon tomorrow of Rule 3-111 – Performance Evaluation of Senior Judges and Court Commissioners.

8. E-FILING HARDSHIP EXEMPTION: (Debra Moore)

Ms. Moore received an e-filing hardship exemption from Mr. Steve Simpson, attorney in Bluff, UT due to inadequate internet access. A temporary exemption was granted by the Management Committee at their August 16 meeting to be discussed further at the September Council meeting.

Discussion took place.

Motion: Judge Mortensen moved to approve an exemption for 24 months. The motion was amended to approve an exemption for 12 months. Upon expiration of the 12-month period, Mr. Simpson would need to request approval for an extension to his exemption. Judge Dawson seconded the motion, and it passed unanimously.

9. THIRD DISTRICT COURT COMMISSIONER VACANCY AND SECOND DISTRICT COMMISSIONER VACANCY: (Daniel J. Becker)

Mr. Becker distributed data of the Second and Third District Court Judicial Weighted Caseload of Domestic Cases and Workload. He recommended filling both Commissioner vacancies.

Motion: Judge Maughan moved to approve filling the Third and Second District Commissioner vacancies. Judge Dawson seconded the motion, and it passed unanimously.

10. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)

Chief Justice Durrant welcomed Ms. Slotnik to the meeting.

Ms. Slotnik highlighted the following in her update: 1) the Commission will meet bi-weekly deliberating on judges up for retention in 2014; 2) the Supreme Court has appointed Professor Eric D. de Rosia, Brigham Young University, to replace Mr. Myron March on the Commission; 3) Ms. Diane Allison has replaced Ms. Jennifer Yim on the Commission; 4) the Utah Criminal Justice Center conducted an audit of the survey results and deemed the data accurate; 5) the timeframe to receive attorney survey data closed in mid August; 6) a request will be sent to the 2014 judges up for retention to update their bios; 7) any 2014 or 2016 judges up for retention, whose surveys reflect lower scores, will be notified by October 1 to be given an opportunity to meet with members of the Commission at the end of October to discuss their survey results further; 8) two writers have been hired to help prepare the judges' narratives; and 9) the 2014 retention reports will be distributed in January 2014.

Chief Justice Durrant thanked Ms. Slotnik and JPEC for their service.

11. STANDING COMMITTEE ON TECHNOLOGY UPDATE: (Judge Carolyn McHugh and Ron Bowmaster)

Chief Justice Durrant welcomed Judge McHugh to the meeting.

Judge McHugh expressed her gratitude to Ron and the IT staff for all they do to help the courts move forward technologically.

The following was highlighted in her report to the Council: 1) expansion of civil e-filing to include domestic and probate cases; 2) the transition to mandatory e-filing on April 1, 2013; 3) judicial workspace application became available for trial court judges and staff in January 2013; 4) juvenile court adopted a two-year electronic conversion plan; 5) the move to criminal e-filing is being addressed in county offices; 6) automated trust account disbursements being reviewed; 7) development of case management and workflow systems within the court systems; 8) development of e-filing in the Appellate Courts; 9) expansion of the judicial workspace application to justice courts; 10) adoption and expansion of mobile computing systems; 11) reviewing service delivery methods to remote court locations; and 12) e-filing and e-citation data was provided.

Judge McHugh was thanked for all she and the committee have done during the e-filing conversion.

The Council went back into an executive session.

12. RULES FOR FINAL ACTION: (Tim Shea)

The following Rules are being recommended for final action: 1) CJA 01-0205 – Standing and Ad Hoc Committees, 2) CJA 03-0306 – Court Interpreters, 3) CJA 03-0402 – Human Resources Administration, 4) CJA 04-0110 – Transfer of Juvenile Cases from District and Justice Courts to the Juvenile Court, 5) CJA 04-0404 – Jury Selection and Service, 6) CJA 04-0508 – Guidelines for Ruling on a Motion to Waive Fees, and 7) Rule 4-0408.01 – Responsibility for Administration of Trial Courts.

Rule CJA-03-0306 – Court Interpreters. The amendment creates a complaint process for failure to follow the requirements of the rule and clarifies that the rule is not authority to charge for language access costs, and includes qualifications for a second language stipend before engaging in a first-hand conversation with a person of limited English proficiency.

Rule CJA 04-404 – Jury Selection and Service. The amendment to this rule implements the requirement of Section 78B-1-110 that compliance with a summons satisfies a person's jury service obligation for two years. The effective date for this rule should be January 1, 2014. The remainder of the rules can have an effective date of November 1, 2013.

Rule 4-408.01 – Responsibility for Administration of Trial Courts. This rule has been amended to remove Morgan from the list of contract sites.

Clarification was requested relative to justice courts and second language stipends.

Motion: Judge McCullagh moved to approve the rules for final action with an additional amendment to Rule CJA-03-0306 – Court Interpreters, relative to justice courts and second language stipends. Judge Steele seconded the motion, and it passed unanimously.

13. SENIOR JUDGE CERTIFICATIONS: (Tim Shea)

Mr. Shea provided background information on certification of court commissioners and senior judges. He reported that the process for certifying court commissioners has remained the same for several years. The process for certifying senior judges, amended two years ago, includes reporting of attorney survey data to the survey contractor (National Center for State Courts). Mr. Shea outlined the process that should be taking place with the survey data. He reported ongoing problems exist with attorney survey data being reported to the survey

contractor. He noted that short of the surveys, the senior judges meet the minimum performance standards to be recertified.

Discussion took place.

Mr. Becker recommended that the Council act on the certification information for senior judges minus the attorney surveys and request the Policy and Planning Committee to review the process for certifying senior judges and modify the policy, if needed.

Motion: Mr. Lund moved to approve Mr. Becker's recommendations regarding the certification process for senior judges. Judge Steele seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss matters of personnel. The motion was seconded, and it passed unanimously.

14. SENIOR JUDGES AND COURT COMMISSIONERS CERTIFICATION: (Tim Shea)

The following court commissioners terms will expire on December 31, 2013; and they have applied for reappointment: 1) Commissioner Michelle R. Blomquist, 2) Commissioner David S. Dillon, and 3) Commissioner Thomas R. Patton.

The following senior judges have terms that will expire on December 31, 2013; and they have applied for reappointment: 1) Judge Roger S. Dutson, 2) Judge Dennis M. Fuchs, 3) Judge Pamela G. Heffernan, and 4) Judge Sandra N. Peuler.

Motion: Judge Maughan moved to forward the recommendations, on behalf of the Council, to the local presiding judges to certify the court commissioners for reappointment and to the Supreme Court to certify the senior judges for reappointment. Judge Mortensen seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION:

An executive session was held at this time.

16. ADJOURN

The meeting was adjourned.