

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, September 22, 2015
Silver Mine A
Park City Marriott
Park City, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Thomas Lee
Hon. Marvin Bagley
Hon. Ann Boyden
Hon. Glen Dawson
Hon. Paul Farr
Hon. Thomas Higbee
Hon. David Marx
Hon. David Mortensen
Hon. Reed Parkin
Hon. Randall Skanchy
Hon. Kate Toomey
John Lund, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Dawn Marie Rubio
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Tom Langhorne
Clayson Quigley
Nancy Sylvester
Nancy Volmer

GUESTS:

Joanne Slotnik, JPEC
Judge Reuben Renstrom
Judge Derek Pullan

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

Motion: Judge Skanchy moved to approve the minutes from the August 14, 2015 Judicial Council meeting. Judge Toomey 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: (Ray Wahl)**

Mr. Wahl reported on the following items:

Presiding Judge Meeting. The presiding judges are scheduled to meet tomorrow at 11:45 a.m. A presentation on perimeter security and an update on the law clerk study will be provided.

New Council Member Orientation. A new Council member orientation will be held on the morning of October 26 prior to the Council meeting.

Juvenile Court E-Filing. Voluntary CARE e-filing went live last week, with no problems experienced.

November Council Meeting. The Council has been invited to hold a future meeting at the new S.J. Quinney College of Law at the University of Utah. It was suggested to hold the November 23 meeting at the law school.

Motion: Judge Higbee moved to hold the November 23 Council meeting at the new S.J. Quinney College of Law at the University of Utah with the start time being moved from 9:00 a.m. to 9:30 a.m. Mr. Lund seconded the motion, and it passed unanimously.

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:

The Liaison Committee has not met since the last Council meeting and had nothing to report.

Policy and Planning Meeting:

Judge Parkin reported on the following items: 1) the Policy and Planning Committee considered comments received during the public comment period for Rule CJA 04-0905 – Restraint of minors in juvenile court, 2) recognized Judge Dawson for his service and contributions to the Policy and Planning Committee, with his term on the Council expiring, 3) Rules for Final Action will be considered later on the agenda, and 4) Rules for Public Comment on the consent calendar.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the Bar Commission met last week, and 2) items of interest include the Futures Report and the Supreme Court Task Force to Examine Limited Legal Licensing.

5. RULES FOR FINAL ACTION: (Alison Adams-Perlac)

Chief Justice Durrant welcomed Ms. Adams-Perlac to the meeting.

The public comment period for Rule 4-202.02 – Record access and Rule 4-0905 – Restraint of minors in juvenile court has closed, and the proposals were recommended for final action.

Rule 4-0202.02 – Records access. The rule was amended to provide that adoption records become public on the one hundredth anniversary of the date of the final decree as required by statute, and it makes notices from the U.S. Bankruptcy Court private.

The Policy and Planning Committee considered the comments and voted to recommend the proposal, as written.

Motion: Judge Toomey moved to approve the amendments to Rule 4-0202.02 – Records access as amended. Judge Hornak seconded the motion, and it passed unanimously.

Rule CJA 04-0905 – Restraint of minors in juvenile court. This is a new rule which provides for proper restraints of minors in juvenile court proceedings. It provides that ex parte communications related to restraint are not prohibited, but that the judge or commissioner shall

notify all parties of the communication as soon as possible and give them an opportunity to respond.

Discussion took place.

Motion: Judge Parkin moved to allow for the Policy and Planning Committee to review their decision on the proposed Rule CJA 04-0905 – Restraint of minors in juvenile court before the Council takes final action. Judge Mortensen seconded the motion, and it passed unanimously.

The Policy and Planning Committee met during the break to clarify their decision relative to the language in Rule CJA 04-0905 – Restraint of minors in juvenile court. The change in language was noted.

Motion: Judge Hornak moved to approve Rule CJA 04-0905 – Restraint of minors in juvenile court as recommended with an October 1 effective date. Justice Lee seconded the motion, and it passed with Judge Higbee voting no.

Rule CJA 04-202.08 – Fees for records, information, and services. The rule has been amended to change the fee to access a document online from \$2.50 per document to \$.50 per document. The amendment was recommended by the Technology Committee on an expedited basis.

Motion: Judge Hornak moved to approve Rule CJA 04-202.08 as recommended, on an expedited basis, effective immediately. Judge Toomey seconded the motion, and it passed unanimously.

6. LEGISLATIVE UPDATE: (Rick Schwermer)

Chief Justice Durrant welcomed Mr. Schwermer to the meeting.

Mr. Schwermer highlighted the following in his legislative update: 1) approval of a draft letter to the Law Enforcement and Criminal Justice Interim Committee recommending that it study certain issues related to peace officer use of force, and 2) the Judiciary report included information on electronic filings in district court.

7. JUDICIAL BRANCH EDUCATION COMMITTEE UPDATE: (Tom Langhorne)

Chief Justice Durrant welcomed Mr. Langhorne to the meeting.

He highlighted the following in his meeting: 1) MSU Judicial Administration Program; 2) delivery of two new academies – non-supervisory court skills academy and the middle management leadership academy; 3) conduct “train the faculty” workshop; 4) long-term, formal curriculum guide for district court judges; 5) continue to enhance new judge orientation; 6) formalizing mentoring training; 7) substantially revised PO trainings; 8) restructured PO Safety training; 9) migrated to “paperless” conferences; 10) continue to provide a variety of educational opportunities.

Mr. Langhorne was thanked for his update.

8. 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 is fully staffed, 2) , the surveys and courtroom observations have been completed for the 2016 retention and the 2018 midterm reports; 3) for the 2012, 2014, and 2016 retention elections, justice court judges

are classified as full-time or part-time for evaluation purposes; 4) with the 2018 retention election, justice court judges will be classified as follows for evaluation purposes: a) full-time, b) mid-level, and c) basic evaluation; 5) 21 district court judges, 11 juvenile court judges and 20 justice court judges are up for retention in 2016; 6) survey response rate has declined relative to the 2016 retention evaluations; 7) the response rate for surveys by court staff and juvenile court professionals, overall, reflected an 11% decrease with 52% responding; 8) use of pre-notification letter signed by the three branches of government relative to completing the surveys with the recent survey period, 9) future survey requests to attorneys may be sent by mail to the attorneys with the link and password included in the letter, 10) process audit of the data collection and transfer of the data took place, with everything shown to be in order; 11) deliberation for the judges up for retention in 2016 begins September 8 and goes through December 4, twice monthly meetings will be held by the Commission; 12) notification will be made to the judges who failed any part of the minimum performance standards in mid October and provide them with an opportunity to meet with members of the Commission, 13) notification will be made to judges that the Commission has concerns with, to provide them with an opportunity to meet with the Commission on November 10; 14) final retention votes will be taken in January; 15) final 2016 retention reports will be distributed by March 1; 13) the 2018 mid-term reports will go out before the end of September; and 14) adjective question will be shown differently in this reporting cycle with the use of a bar graph and it will include a peer group comparison.

Questions were asked of Ms. Slotnik. She provided responses to the questions asked of her.

Chief Justice Durrant thanked Ms. Slotnik for her update.

9. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge Reuben Renstrom and Rick Schwermer)

Chief Justice Durrant welcomed Judge Renstrom to the meeting.

Judge Renstrom highlighted the following in his update: 1) reputation of justice courts, 2) history of justice courts, 3) the changing face of the justice courts, 4) positive changes in the past year, and 5) additional changes to be made to achieve judicial independence.

Chief Justice Durrant thanked Judge Renstrom for his update.

10. ONLINE DISPUTE RESOLUTION (ODR) PROPOSAL: (Daniel J. Becker)

Mr. Becker reminded the Council of the Online Dispute Resolution Proposal which was presented to them at their June meeting. At that time, the Council approved for the Online Dispute Resolution Workgroup to further assess the matter of Online Dispute Resolution and report back to the Council at a later date. At that time, it was reported that online dispute resolution was more commonly used in the private sector with little experience in the public sector.

Mr. Shea reviewed the conceptual design of an online dispute resolution system. The Workgroup determined to pursue the area of small claims as they moved forward with their assessment of online dispute resolution.

He reviewed the principles involved with an online dispute resolution (ODR) system. They include: 1) evaluation, 2) negotiation, and 3) judicial decision.

It has been designed to parallel the system in place for small claims.

As the workgroup met, they identified areas to be examined that would: 1) reduce time and costs for litigants, 2) potentially reduce filing fees, and 3) lower overhead to the courts.

The effectiveness of an online court would be increased by the following: 1) individualized assistance, 2) a collaborative approach to resolution among the parties, 3) compensating for imbalances of power and resources, 4) allowing asynchronous conversations,

in which parties control the pace, as well as contemporaneous conversations, and 5) creating incentives to encourage parties to resolve their dispute online.

Mr. Shea mentioned that statutes would need to be examined and amended. The issue of territorial jurisdiction and venue would need to be addressed.

He noted that the legal requirements process is outlined in the document provided for each Council member.

The proposal presumed online dispute resolution for small claims cases with an opportunity to opt out.

Mr. Becker highlighted the following relative to the proposal if approved by the Council, 1) a year of development work is expected, 2) the IT development costs are included as part of the CORIS rewrite project, and 3) Utah would be the first state to undertake an online dispute resolution program.

Discussion took place and questions were asked.

Motion: Judge Toomey moved to approve the following 1) a committee be formed by the Online Dispute Resolution Workgroup to further assess the needs, 2) apply for a grant to provide funding for the required staff for the project, and 3) seek Council input throughout the process. Judge Farr seconded the motion, and it passed with Judge Parkin and Judge Higbee voting no.

11. BUDGET ADJUSTMENT FOR UNALLOCATED CARRY FORWARD: (Ray Wahl)

A handout was distributed to members of the Council with the FY 2016 Proposed Additional Carry-Forward Plan in the amount of \$408,000.

Mr. Wahl reviewed the following proposed one-time spending plan: 1) start CORIS Rewrite Project in FY 2016, \$208,000; 2) data wiring and installation costs associated with credit card machines authorized last fiscal year, \$40,000; 3) courtroom technology and remote services, \$100,000; and 4) additional reserve, \$60,000.

Motion: Judge Toomey moved to approve the recommendations for the additional FY 2016 unallocated carry-forward budget adjustment. Judge Hornak seconded the motion, and it passed unanimously.

12. 2016 JUDICIAL COUNCIL STUDY ITEM: (Daniel J. Becker)

Mr. Becker reviewed the process, purpose and nature of the study item topics undertaken by the Council. The three items to consider for the 2016 Council study item included: 1) domestic court, 2) judicial district boundaries, and 3) court security.

Mr. Schwermer provided background information on the matter of domestic court, in particular, the way in which divorce cases are processed.

Discussion took place.

Further discussion and action will be taken relative to the 2016 Council study item at the October Council meeting.

13. SENIOR JUDGE AND COMMISSIONER CERTIFICATIONS: (Nancy Sylvester)

The following senior judges' terms will expire on December 31, 2015; and they have applied for reappointment: 1) Judge Gordon Low, active senior judge; and 2) Judge Kay Lindsay, inactive senior judge. Both judges meet the minimum performance standards.

Motion: Judge Hornak moved to forward the recommendations, on behalf of the Council, to the Supreme Court to recertify Judge Gordon Low as an active senior judge and Judge Kay Lindsey as an inactive senior judge. Justice Lee seconded the motion, and it passed unanimously.

14. RETENTION ELECTION CERTIFICATIONS: (Nancy Sylvester)

Ms. Sylvester reported that there are a significant number of judges up for retention election in 2016 to be certified by the Judicial Council to the Judicial Performance Evaluation Commission (JPEC) that they have met the performance standards.

All judges, with the exception of the following who did not apply, will be considered for certification for the 2016 retention election: 1) Judge Russell Bulkley, Panguitch; 2) Judge Elizabeth Christensen, Escalante, and 3) Judge F. Kirk Heaton, Kanab.

Motion: Judge Hornak moved to enter into an executive session to address issues of professional competence. Justice Lee seconded the motion, and it passed unanimously.

Motion: Justice Lee moved to certify the judges, requesting certification for the 2016 retention election. The following judges are excluded from the certification: 1) Judge Russell Bulkley, 2) Judge Elizabeth Christensen, 3) Judge F. Kirk Heaton, 4) Judge Clinton Balmforth, and 5) Judge Roy Brown. Judge Parkin seconded the motion, and the motion passed with Judge Dawson, Judge Higbee, Judge Hornak, Judge Mortensen, Judge Skanchy, Judge Farr, and Judge Marx recusing themselves from voting for their certifications.

Motion: It was moved and seconded to authorize the Management Committee to consider certification for the 2016 retention election of the following judges on behalf of the Council: 1) Clinton Balmforth and 2) Roy Brown. The motion passed unanimously.

15. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Derek Pullan and Debra Moore)

Chief Justice Durrant welcomed Judge Pullan to the meeting.

Judge Pullan highlighted the following in his update to the Council: 1) 71 district court judges in eight districts; 2) processed 269,143 filings in FY 2015; and 3) specialty courts.

He highlighted the following areas of importance: 1) bail and pre-trial release, 2) justice reinvestment matters, 3) best practices for law clerks, statewide; and 4) senior judge use.

Discussion took place on the senior judge issue.

Chief Justice Durrant thanked Judge Pullan for his update.

16. EXECUTIVE SESSION

An executive session was held at this time.

Chief Justice Durrant recognized the outgoing members for their service and contribution to the Council. The outgoing members included: 1) Judge Kimberly Hornak, and 2) Judge Glen Dawson.

17. ADJOURN:

The meeting was adjourned.