

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, January 25, 2016

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

**Chief Justice Matthew B. Durrant, Presiding**

### **ATTENDEES:**

Chief Justice Matthew B. Durrant  
Justice Thomas Lee  
Hon. Ann Boyden  
Hon. Mark DeCaria  
Hon. Paul Farr  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. David Mortensen  
Hon. Mary Noonan  
Hon. Reed Parkin  
Hon. Randall Skanchy  
Hon. Kate Toomey

### **EXCUSED:**

Hon. Marvin Bagley  
John Lund, esq.

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Jody Gonzales  
Debra Moore  
Dawn Marie Rubio  
Rick Schwermer  
Tim Shea  
Alison Adams-Perlac  
Kim Allard  
Tucker Samuelson  
Nancy Sylvester  
Geoff Fattah  
Derek Byrne  
Alyn Lunceford

### **GUESTS:**

Hon. Paul Lyman  
Joanne Slotnik, JPEC  
John Ashton, JPEC

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

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

**Motion:** Judge Toomey moved to approve the minutes from the December 14, 2015 Judicial Council meeting. Judge Higbee seconded the motion, and it passed unanimously.

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

Chief Justice Durrant mentioned that he would be delivering the State of the Judiciary address this afternoon.

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

Mr. Becker reported on the following items:

Annual Report to the Community. A copy of the 2016 Annual Report to the Community was distributed to members of the Council. Copies of the annual report will be available at all court locations and to legislators.

Communication Director. Mr. Becker introduced Mr. Geoff Fattah, new communications director, to members of the Council. He provided background information of Mr. Fattah's work experience.

Judicial Retirement. Judge Scott Johansen retired, effective December 31, 2015. Mr. Becker noted that Judge Johansen was a huge advocate for children, and he will be missed.

Court Security Director. Final interviews were held last week. Selection is expected this week.

Second District TCE. Interviews were held last week to fill the vacancy for a court executive in the second district.

Duchesne County Courthouse. Phase I of the Duchesne County Courthouse expansion project has been completed, and they began holding court in the courthouse on January 12, 2016.

Center for Court Innovations. Utah is one of three court locations who applied to participate in a study with the Center for Court Innovation regarding procedural fairness, principles and methods. Utah courts staff met with staff from the Center of Court Innovation last week regarding the study.

2016 Legislative Session. The legislative appropriations process will begin on Wednesday. The courts base budget meeting is scheduled for February 2, with the courts expansion requests to be heard the following week.

State of the Judiciary Address. Chief Justice Durrant will deliver the State of the Judiciary address this afternoon. Transportation to the Capitol will be provided for Council members able to attend.

#### **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:***

Judge Mortensen reported on the following items: 1) meetings are being held weekly, 2) no position was taken on the majority of the bills considered by the Liaison committee, 3) HB 22 – Civil Asset Forfeiture, and 4) HJR 1 - Proposal to Amend Utah Constitution - Judges of Courts Not of Record.

##### ***Policy and Planning Meeting:***

Judge Parkin reported on the following items: 1) a meeting was held where several rules were being discussed and reviewed, 2) a rule is on the agenda for final action, and 3) several rules are being recommended for public comment on the consent calendar.

Discussion took place regarding the senior judge assistance rule.

##### ***Bar Commission Report:***

No report was provided at this time.

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

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

Ms. Adams-Perlac mentioned that the public comment period for Rule 4-202.02 – Records classification has closed with no public comments being received. The rule has been amended as follows: 1) deletes maiden name and mother’s maiden name from the lists of private and safeguarded information, 2) classifies juvenile mediation disposition notices as juvenile court social records, and 3) notes a statutory exception to the protection of certain victim information.

**Motion:** Judge Toomey moved to approve the proposed amendments to Rule 4-202.02 – Records classification as recommended by the Policy and Planning Committee, with a May 1, 2016 effective date. Judge Higbee seconded the motion, and it passed unanimously.

**6. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwermer provided a legislative update for members of the Council. He highlighted the following in his update: 1) Pre-Trial Release Bill, 2) Fourth District Juvenile Judgeship Bill, 3) Sixth Amendment matters, 4) HJR 1 - Proposal to Amend Utah Constitution – Judges of Courts Not of Record, 5) the 2016 Legislative Session begins today, 6) appropriation budget meeting schedule, and 7) lobbyists for the Utah State Bar.

**7. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Paul Lyman and Dawn Marie Rubio)**

Chief Justice Durrant welcomed Judge Lyman and Ms. Rubio to the meeting.

Judge Lyman highlighted the following in his update: 1) 2015 referrals, overall referrals show a 3% decrease; 2) referrals in the Fourth District Juvenile Court reflect the need for an additional judgeship; 3) Phase I of mandatory e-filing of existing cases was effective December 1, 2015; 4) Phase II will focus on case creation, with mandatory e-filing of all cases by August 1, 2016; 5) juvenile judges focusing on the educational aspect of juveniles, 6) available treatment programs for youth, low risk vs. high risk; and 7) PEW study to be conducted relative to juvenile court, similar to the study conducted in district court several years ago.

Chief Justice Durrant thanked Judge Lyman for his update to the Council.

**8. MODEL UTAH CIVIL JURY INSTRUCTION AMENDMENTS: (Nancy Sylvester)**

Chief Justice welcomed Ms. Sylvester to the meeting.

Ms. Sylvester reminded the Council of their concerns with the language in the Model Utah Jury Instructions, Second Edition website introduction which was reviewed with members of the Council at their December meeting.

Ms. Sylvester reviewed the amendments made to address the concerns expressed. A minor wording change was recommended. Discussion took place.

**Motion:** Judge Toomey moved to approve the proposed amendments to the Introduction to the Model Utah Jury Instructions, Second Edition, with the recommended wording change. Judge Mortensen seconded the motion, and it passed unanimously.

**9. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC): (Joanne Slotnik and John Ashton)**

Chief Justice Durrant welcomed Ms. Slotnik and Mr. Ashton to the meeting.

Ms. Slotnik and Mr. Ashton highlighted the following in their update to the Council: 1)

the Commission is fully staffed; 2) four-hour, twice-monthly meetings have been held since September in evaluating the judges up for retention in 2016; 3) 52 judges up for retention in 2016 – 21 district court judges, 11 juvenile court judges, and 20 full-time justice court judges, have been evaluated; 4) judges who failed any part of the minimum performances standards were invited to meet with members of the Commission; 5) judges, of concern, were invited to meet with members of the Commission; 6) there is continuing concern over survey response rates; 7) advertisements will be prepared to get public interest in the reports available prior to the 2016 election; 8) judges retained in the 2016 election will not be up for retention again until 2022; 9) judges up for retention in 2018; including district, juvenile, justice, and appellate court judges, are in their retention period with mid-term reports to be prepared in June 2017; 11) judges up for retention in 2020, their mid-term period runs until June 2017; and 12) transitioning into the three-tiered groups for the purpose of evaluating justice court judges including: a) full-time, b) mid-level, and c) basic level.

Ms. Slotnik and Mr. Ashton responded to questions asked of them.

Mr. Ashton acknowledged all the work Ms. Slotnik has done, on behalf of the Commission. It was noted that Ms. Slotnik will be retiring in March.

Chief Justice Durrant thanked Ms. Slotnik and Mr. Ashton for their service on the Commission.

#### **10. FIFTH DISTRICT MENTAL HEALTH COURT OF IRON COUNTY APPLICATION: (Rick Schwermer)**

Mr. Schwermer reported that the request for application of a mental health court in Iron County was presented to the Management Committee in October. At that time, there were questions that needed to be addressed before approval regarding the following: 1) risk assessment, 2) defense attorney availability, and 3) eligibility criteria.

The revised application was included with the Council materials.

Discussion took place.

Mr. Schwermer mentioned that a new requirement when a new mental health court is established is for the mental health court staff to receive appropriate training.

**Motion:** Judge Skanchy moved to accept the application from the Fifth District Court for creation of a mental health court in Iron County, to include the required mental health court training. Judge Toomey seconded the motion, and it passed unanimously.

#### **11. NAPLES CITY JUSTICE COURT RESOLUTION: (Rick Schwermer)**

Mr. Schwermer provided background information on the Naples City Justice Court and the Uintah County Justice Court.

Naples City approved Naples City Resolution No. 15-285 which allows for the following: 1) revoking their application to recertify the Naples City Justice Court, 2) requesting decertification of the Naples City Justice Court, 3) inclusion of Naples City within the territorial jurisdiction of the Uintah County Justice Court with a January 1, 2016 effective date.

Discussion took place.

Mr. Schwermer provided responses to questions asked relative to the resolution.

**Motion:** Judge Parkin moved to maintain the Council function of certifying and decertifying courts, upon request; therefore, approving Naples City's resolution where they requested decertification of their justice court and requesting inclusion (certification) of Naples City within the territorial jurisdiction of the Uintah County Justice Court, effective January 1, 2016. Judge Farr seconded the motion, and it passed unanimously.

**12. NORTH SALT LAKE JUSTICE COURT PROPOSED INTERLOCAL AGREEMENT: (Rick Schwermer)**

The City of North Salt Lake is requesting to expand the territorial jurisdiction of the North Salt Lake Justice Court by entering into an interlocal agreement with West Bountiful, effective July 1, 2016.

**Motion:** Judge Higbee moved to approve the request to expand the territorial jurisdiction of the North Salt Lake Justice Court by entering into an interlocal agreement with West Bountiful, effective July 1, 2016. Judge Marx seconded the motion, and it passed unanimously.

**13. JUSTICE COURT JUDGE CERTIFICATION: (Rick Schwermer)**

Mr. Schwermer recommended the certification of the new justice court judge, Judge Cordell Pearson, appointed to the Aurora and Salina Justice Courts who recently completed justice court judge orientation and passed the orientation exam.

**Motion:** Judge Toomey moved to certify Judge Cordell Pearson as a justice court judge. Judge DeCaria seconded the motion, and it passed unanimously.

**14. FY 2016 SPENDING PLAN AMENDMENT: (Daniel J. Becker)**

Mr. Becker addressed the request from the Court of Appeals for senior judge coverage for two vacancies resulting from Judge Jim Davis' retirement and Judge John Pearce's appointment to the Supreme Court. The projected cost in FY 2016 for the senior judge coverage for the Court of Appeals is \$100,400. A handout was distributed relative to the FY 2016 Senior Judge Budget. The Management Committee has recommended approval of the request for senior judge coverage for the Court of Appeals.

Mr. Becker recommended addressing the request in one of two ways: 1) use of reserve funds, or 2) reducing one-time spending plan items.

Mr. Becker reviewed the FY 2016 senior judge budget as it relates to this request. The recommendation is to increase the FY 2016 senior judge budget by \$100,000.

The Court of Appeals request was discussed in the context of the proposed senior judge rule change.

Mr. Becker was asked, by the Policy and Planning Committee, to review with the Council how the proposed senior judge rule change would affect the courts budget and the courts spending plan. He highlighted the following in his review: 1) base budget, discretionary funds or available one-time funds; 2) approval of one-time spending plan, in April, for the coming fiscal year; 3) spending plan amended, based upon actual carry-forward funds, in September; 4) FY 2016 one-time spending plan; and 5) FY 2017 spending plan projections.

The proposed rule change provides that a presiding judge will have the authority to obligate senior judge funds. Mr. Becker referred to three options that would provide the presiding judge with the authority to obligate senior judge funds. The three options include: 1) build more into the senior judge budget for senior judge use, 2) require turnover savings from judicial vacancies be managed separately and not be included as revenue available for the annual spending plan, and 3) discuss a process where the presiding judge would have the ability to address current calendar and trial needs associated with an unplanned vacancy by developing a spending plan or coverage plan which would be prepared and signed off by the Management Committee.

Mr. Becker noted that there would not be sufficient funds to fund both the proposed senior judge rule and all of the items proposed and contained in the annual spending plan.

Discussion took place.

**Motion:** Judge Skanchy moved to approve \$100,400 to be funded from the courts reserve for senior judge use in the Court of Appeals. The motion was seconded, and it passed unanimously.

**15. 2016 COUNCIL MEETING DATE REVISIONS: (Daniel J. Becker)**

Mr. Becker reminded the Council that the dates for the Annual Judicial Conference had not been set when the 2016 Council calendar was originally set in October. The Annual Judicial Conference has been scheduled for October 5-7 in Park City.

Mr. Becker recommended the following changes be made to the 2016 Judicial Council calendar: 1) the September meeting to be scheduled for September 12, and 2) the October 24 Judicial Council meeting to be moved to October 4, in conjunction with the Annual Judicial Conference.

**Motion:** Judge Mortensen moved to approve the proposed changes to the 2016 Judicial Council Calendar. Judge Toomey seconded the motion, and it passed unanimously.

**16. PRESENTATION ON JURY TRIALS IN DISTRICT COURT AND SIX-MONTH FILING TRENDS: (Kim Allard and Tucker Samuelson)**

Chief Justice Durrant welcomed Ms. Allard and Mr. Samuelson to the meeting.

Ms. Allard reviewed the mid-year filings comparing the FY 15 and FY 16 filings. She highlighted the following in her report: 1) juvenile court referrals and events, 2) juvenile court referral trend, 3) district court filings, 4) justice reinvestment initiative changes and their effects, 5) mid-year combined district and justice court filings, 6) district court case filings – 10 years, and 7) justice court filings.

Ms. Allard introduced Mr. Tucker Samuelson who provided information on jury trials. Mr. Becker provided background information relative to the presentation on jury trials. The Conference of Chief Justices (CCJ) formed the National Civil Justice Reform Task Force which has been meeting the past few years. A report prepared by the task force will soon be released. Mr. Becker provided preliminary information to be included in the report, including the national decline in civil jury trials.

Mr. Samuelson highlighted the following in his presentation: 1) definition of a jury trial, 2) district court – jury trials by severity, 3) district and justice courts – jury trials by severity, 4) district court – verdicts in criminal jury trials, 5) district court – civil and criminal jury trials, 6) district and justice court – civil and criminal jury trials, 7) jury trial case types for FY15, 8) jury trials per 1000 filings 9) district court – jury trial length, 10) district court – average days per jury trial, and 11) district and justice court – total trials per year.

Chief Justice Durrant thanked Ms. Allard and Mr. Samuelson for their presentation.

**17. EXECUTIVE SESSION**

An executive session was not held at this time.

**18. ADJOURN**

The meeting was adjourned.