

JUDICIAL COUNCIL MEETING

Minutes
Wednesday, July 16, 2014
Westin Resort
Snowmass, CO

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Jill Parrish
Hon. Michele Christiansen for Hon. James Davis
Hon. Glen Dawson
Hon. George Harmond
Hon. Thomas Higbee
Hon. David Marx
Hon. Paul Maughan
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
John Lund, esq.

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Debra Moore
Rick Schwermer
Tim Shea

GUESTS:

EXCUSED:

Hon. James Davis

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

Chief Justice Durrant welcomed everyone to the meeting. A special welcome was extended to Judge Michele Christiansen who was sitting in for Judge James Davis.

Motion: Judge Skanchy moved to approve the minutes from the June 23, 2014 Judicial Council meeting. Mr. Lund seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the following items:

Justice Nehring has announced his upcoming retirement, effective Feb 1, 2015.

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

Mr. Becker reported on the following items:

Judicial Retirements. Judge Donald Eyre, Fourth District Court, has announced his upcoming retirement, effective January 1, 2015. Judge Robin Reese, Third District Court, has announced his upcoming retirement, effective December 31, 2014.

Currently five vacancies exist in the Third District Court to include: 1) Judge Terry Christiansen, 2) Judge Lee Dever, 3) Judge John Kennedy, 4) Judge Denise Lindberg, and 5) Judge Robin Reese. Mr. Becker reported that the Third District Nominating Commission will consider nominees to fill the five vacancies with three applicant pools. There may be a month or two at the beginning of 2015 with two vacancies not filled.

Judicial Statistics. Mr. Becker provided statistics relative to the makeup of the Utah judiciary to include: 1) average age of judges, 2) experience prior to appointment, 3) legal experience and background of legal service prior to appointment, 4) years of legal experience, and 5) average age of retiring judges.

Bar Leadership Workshop. Chief Justice Durrant and Mr. Becker will be participating in a Bar Leadership Workshop later in the afternoon.

PEW Study Update. Mr. Becker reported on the PEW Study, the CCJJ initiative to look at the current criminal justice system with focus on corrections, parole and probation, with a summary of their findings presented at the CCJJ Commission meeting on Monday, July 14. CCJJ has formed three subgroups to develop tailored policy options to be considered by the full Commission to include: 1) sentencing, 2) release, and 3) supervision and programming.

The subgroups will meet twice monthly during August and September with the following presentation schedule: 1) an initial review will be presented to the Commission at their August meeting; 2) recommendations will be presented to the Commission at their September meeting; 3) refinement of the recommendations will take place in October, if necessary; and 4) the Commission will make final recommendations at their November meeting.

August Budget and Planning Session. The budget and planning session will be held on Friday, August 15 with the Council meeting to follow.

Judicial Compensation. Matters regarding judicial compensation will be addressed by Chief Justice Durrant at future meetings of the Elected and Judicial Compensation Commission.

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:

No meeting was held in July.

Policy and Planning Meeting:

No meeting was held in July.

Bar Commission Report:

Mr. Lund highlighted the following regarding the Bar's Summer Conference in Snowmass, Colorado: 1) he thanked the Council for holding their July meeting in Snowmass; 2) he thanked members of the Council who would be participating on panels during the sessions; 3) he noted registration numbers for the conference; 4) next year's conference will be held in Sun Valley, Idaho; 5) James Gilson will be sworn in as the new Bar president on Friday morning.

5. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer highlighted the following information in his update: 1) today is Interim Day, 2) Executive Appropriations met yesterday with further efforts to look at major line items and ensure performance measures are in place for each line item, 3) looking at sentencing reform, 4) blended sentencing discussion, and 5) a proposed bill on Penalty for Traffic Violation Causing a Death.

6. JURY INSTRUCTION COMMITTEE PLACEMENT: (Tim Shea)

Mr. Shea distributed copies of the following two rules for consideration: 1) Rule 1-205 – Standing and Ad hoc Committees, and 2) Rule 3-418 – Model Utah Jury Instructions. If the Council is in agreement with the direction presented by Mr. Shea for placement of the Jury Instruction Committee, the draft rules can be reviewed further by the Policy and Planning Committee.

Mr. Shea provided background information on the current placement of the Jury Instruction Committee, which is under the direction of the Supreme Court.

Recent discussion has taken place regarding the best placement of the committee, whether to place the committee under the direction of the Bar Commission, or as an alternative, consider placement under the direction of the Judicial Council. The Management Committee recommended considering placement under the direction of the Judicial Council.

Both chairs for the civil and criminal jury instruction committees have recommended the committees to remain under the direction of the judiciary.

It was noted that in the past, the committees have published the instructions. If the committees are placed under the direction of the Judicial Council, the Policy and Planning Committee would determine if the instructions will continue to be published by the committees.

Discussion took place.

The following was highlighted in the discussion: 1) legitimacy of the Model Utah Jury Instruction (MUJI) process, 2) separating the instruction from the Supreme Court, 3) the decision for placing the committees under the direction of the Judicial Council rather than the Utah State Bar, and 4) the same rules, term limits, sunset review, etc would apply to the committees if placed under the direction of the Judicial Council.

Motion: Judge Maughan moved to approve the concept of placing The Committee on Model Utah Jury Instructions for Civil Cases and The Committee on Model Utah Jury Instructions for Criminal Cases under the direction of the Judicial Council and referring draft Rule 1-205/draft Rule 3-418 to the Policy and Planning Committee for further review. Judge Dawson seconded the motion, and it passed unanimously.

7. BOARD OF DISTRICT COURT JUDGES – JUDICIAL OUTREACH PROJECT UPDATE: (Debra Moore)

Ms. Moore provided an update to the Council on the Board of District Court Judges Judicial Outreach Project. The Board of District Court Judges has set a goal to increase the level of participation for district court judges with judicial outreach opportunities.

They are focusing their efforts on participating in judicial outreach opportunities with the upcoming September 17 Constitution Day. The State Bar's website currently allows teachers throughout the state, who are interested in a civic presentation or outreach opportunity, to post their requests. Judges and attorneys interested in participating can then select available dates.

Resources are also available on the Bar's website, and training is also available. The information was presented to the district bench at their April bench meeting.

District court judges interested in participating in the upcoming Constitution Day outreach opportunities would block out two to three half days the week before, during and after Constitution Day, in advance, to allow for it. After the outreach opportunity has been completed, the district court judge would provide a report to their respective presiding judge. The outreach report would then be placed on their respective district court bench meeting agenda as an item for discussion. The Board of District Court judges would also discuss these outreach efforts with the presiding judges in each district when they have their scheduled meetings.

The Board of District Court Judges is requesting endorsement of the judicial outreach program by members of the Council.

Motion: Justice Parrish moved to endorse the District Court Judges Judicial Outreach Project with focus on the upcoming September 17 Constitution Day. Judge Maughan seconded the motion, and it passed unanimously.

8. SENIOR JUDGE CERTIFICATIONS: (Ray Wahl)

Judge Ben Hadfield has applied to be appointed as an active senior judge. He meets the minimum standards for appointment.

Motion: Judge Hornak moved to forward the recommendation, on behalf of the Council, to the Supreme Court to certify Judge Ben Hadfield as an active senior judge—effective August 16. Judge Skanchy seconded the motion, and it passed unanimously.

9. PROBLEM SOLVING COURTS UPDATE: (Rick Schwermer and Ray Wahl)

Mr. Schwermer provided an update on problem solving courts. He highlighted the following in his update: 1) funding was received from a statewide grant from the Bureau of Justice Assistance, 2) subcontracted with the National Center for State Courts (NCSC) to develop performance measures, 3) the national perspective on problem solving courts, 4) effectiveness of problem solving courts, 4) types of problem solving courts, 5) risk assessment tools, and 6) best practice standards for adult problem solving courts.

The types of problem solving courts include: 1) adult felony, 2) family dependency, 3) DUI, 4) mental health, and 5) veteran.

Mr. Schwermer noted that there is interest in establishing veteran courts, and two courts are in the formative stage.

Mr. Wahl provided an update on juvenile delinquency courts. He highlighted the following in his update: 1) he participated on a panel relative to juvenile delinquency drug courts at a Juvenile Justice Reform Summit in May 2014; 2) research shows that juvenile drug court treatment has lagged behind the adult drug court treatment; 3) noted the Hickert research: Evaluation of Utah Juvenile Drug Courts: Final Report, Utah Criminal Justice Center, University of Utah—target of high risk youth and focus on intensity of treatment; 4) noted Latessa research: Final Report: Outcome and Process Evaluation of Juvenile Drug Courts, University of Cincinnati, Center for Criminal Justice Research—use of a Correctional Program Checklist; and 5) noted the differences in assessment, and logistics between juveniles and adults being treated for addiction.

Discussion took place.

Program Information for the Utah State Bar Conference was distributed to members of the Council.

**10. JUDICIAL COUNCIL PLANNING: SELECTION OF 2014-2015 STUDY ITEM:
(Daniel J. Becker and Rick Schwermer)**

Mr. Becker reminded the Council of the workshop held at the end of the October 2012 Council meeting, where discussion took place regarding future items that may impact the courts.

He mentioned that since that time, the Judicial Council pulled from these items, two issues for study to include: 1) use of technology to deliver remote services, and 2) strengthening the court commissioner process.

Mr. Becker and Mr. Schwermer highlighted the following during the discussion of potential 2014-2015 Judicial Council study item: 1) future issues before the courts, 2) significant developments over the next 18 months, and 3) possible 2014-2015 study items.

Discussion took place.

Additional topics can be forwarded to Mr. Becker prior to the September Council meeting. Selection of the 2014-2015 study item will be considered at the September Council meeting.

11. EXECUTIVE SESSION:

An executive session was not needed at this time.

12. ADJOURN

The meeting was adjourned.