

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, September 9, 2014
Zermatt Resort
Room
Midway, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Jill Parrish
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. Royal Hansen for Hon. Randall Skanchy
John Lund, esq.

EXCUSED:

Judge Randall Skanchy

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Debra Moore
Rick Schwermer
Tim Shea
Ron Bowmaster
Nancy Volmer
Nancy Sylvester

GUESTS:

Judge Dennis Fuchs
Judge John Pearce
Judge Reuben Renstrom

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

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Parkin moved to approve the minutes from the August 15, 2014 Judicial Council meeting. Judge Davis seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the following items:

He met with Chief Justice Herb Yazzie, Associate Justice Eleanor Shirley, and other court staff from the Navajo Nation on August 25 during their visit with the Utah courts.

Chief Justice Durrant recognized the outgoing members for their service and contribution to the Council. The outgoing members included: 1) Judge Paul Maughan, and 2) Judge George Harmond.

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

Mr. Becker reported on the following items:

Legislative Meeting. Mr. Becker, Mr. Wahl, Mr. Schwermer and Mr. Byrne met with Mr. Jonathan Ball, Director – Legislative Fiscal Analysts and Mr. Gary Syphus, Legislative Fiscal Analyst. Discussion took place relative to the court's accomplishments, challenges and 2015 budget requests.

Presiding Judges Meeting. A meeting will be held with the presiding judges on September 10 with focus on the following: 1) reviewing budget requests, and 2) court performance measures.

PEW Study Update – Justice Reinvestment Initiative. The three subcommittees – 1) sentencing, 2) release, and 3) supervision and programming reported to the full Commission on Criminal and Juvenile Justice (CCJJ) yesterday with no action taken. The committees will finalize their recommendations and present their findings to CCJJ on October 9, with adoption of the legislative package is expected to take place on November 12.

NCSC Article. Mr. Becker circulated an article published by the National Center for State Courts (NCSC) in the Trends of State Courts publication. The article is entitled *Procedural Fairness Movement Comes of Age*, by Judge Steven Levin, Kansas City Court of Appeals.

O'Connor Judicial Selection Plan. Mr. Becker circulated a press release from the office of former Justice Sandra Day O'Connor relative to her work with the Institute for the Advancement of the American Legal System (IAALS) out of Denver. The O'Connor Judicial Selection Plan – a four-part plan – has been released. Mr. Becker provided an outline of the plan.

Judicial Performance Evaluation Commission (JPEC). Mr. Becker noted that Ms. Slotnik had nothing new to report to the Council today and asked that her update to the Council be rescheduled at a later meeting for a more complete report.

Mr. Schwermer reported on JPEC's September meeting. He highlighted the following from today's JPEC meeting: 1) procedural fairness emphasis; 2) two vacancies existed on the commission – a senate appointment vacancy filled by Gil A. Miller and a governor's appointment – not filled; 3) a professor from UNLV is studying racial, ethnic and gender issues relative to judicial performance evaluation approaches by several states, including Utah; and her submission of GRAMA requests relating to the study; and 4) future public relation efforts of JPEC.

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 September.

Policy and Planning Meeting:

Judge Maughan reported on the following items: 1) continued work on performance evaluations of senior judges, 2) finalizing language for the move of the Model Utah Jury Instruction Committees as standing committees under the direction of the Judicial Council, 3) addressing electronic media coverage matters, 4) addressing several rule changes to comply with statute, and 4) several rules to be placed on the October Judicial Council consent calendar.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the Commission held their annual retreat at the end of August; 2) the Commission's list of priorities was developed; 3) Bar operations to include the study of OPC; 4) a look at a new lawyer training program, summer convention and their budget; 5) formation of the Future's Commission; 6) focus on celebrating the Magna Carta; and 7) feature of the Open Legal Services in Utah in the Atlantic Monthly.

The Commission's two priorities included: 1) access to justice with emphasis on growing the pro bono and modest means programs, and 2) advocating for the judiciary.

5. PUBLIC ADDRESS ANNOUNCEMENT: (Nancy Volmer)

Chief Justice Durrant welcomed Ms. Volmer to the meeting.

Ms. Volmer provided background information on the National Association of Women Judges (NAWJ) program entitled *Free and Clear, the Voter's Right to Choose* relative to a video developed by this group to educate voters on the judicial selection/retention process.

A short video entitled *Fair and Free* was shown to members of the Council, which is part of the Informed Voters Project developed by the National Association of Women Judges (NAWJ).

Discussion took place.

Members of the Council agreed that dissemination of the information to the media would be best coming from the Utah State Bar. The information has been forwarded to Judge Robin Reese, chair of the Community Relations Subcommittee, for use in judicial outreach opportunities.

Motion: Judge Higbee moved to refer the program to the Bar to determine the best use of the video entitled *Fair and Free*, with general support in concept by the Judicial Council. Judge Sandberg seconded the motion, and it passed unanimously.

The Council was in agreement to allow the Public Outreach Committee to work directly with the Bar for possible uses of the video in judicial outreach efforts.

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

Chief Justice Durrant welcomed Ms. Nancy Sylvester to the meeting.

The following court commissioners terms will expire on December 31, 2014; and they have applied for reappointment: 1) Commissioner Anthony Ferdon, and 2) Commissioner Michelle Tack.

Judge Donald Eyre has applied to be appointed as an active senior judge effective with his January 1, 2015 retirement. He meets the minimum performance standards.

Motion: Judge Hornak moved to forward the recommendations, on behalf of the Council, to the Supreme Court to recertify Commissioner Anthony Ferdon and Commissioner Michelle Tack and to certify Judge Donald Eyre as an active senior judge, upon his retirement. Justice Parrish seconded the motion, and it passed unanimously.

7. LEGISLATIVE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided a legislative update to the Council. He highlighted the following in his update: 1) legislative interim will be held next week, 2) Judge Toomey's confirmation will be held next week, 3) prison relocation focus of legislative bodies, as well as, CCJJ, PRADA, PEW, 4) reported on meetings being held by the Elected Offices and Judicial Compensation Commission, and 5) judiciary reviewing PEW related sentencing issues.

8. CERTIFICATION OF PROBLEM SOLVING COURTS: (Judge Dennis Fuchs)

Chief Justice Durrant welcomed Judge Fuchs to the meeting.

Judge Fuchs reported that the certification report provided to members of the Council, in a checklist format, is the format that will be used to certify all problem-solving courts in the future. The questions provided on the checklist are based upon NADCP standards.

The following problem-solving courts are being recommended for certification:

Utah County, Provo, Adult Last Chance Drug Court – Judge Brady

Utah County, Provo, Adult Drug Court – Judge Taylor

Weber County, Ogden, Adult Drug Court – Judge DeCaria

Salt Lake County, Salt Lake City, Lower Risk Adult Drug Court – Judge Blanch

Weber County, Ogden, DUI Court – Judge DiReda

Salt Lake County, West Jordan, Adult Drug Court – Judge Kouris

Weber County, Ogden, Ogden Juvenile Drug Court – Judge Noland

Salt Lake County – SLC, Dependency Drug Court – Judge Behrens

Weber County, Ogden, Dependency Drug Court – Judge Sipes

Salt Lake County, SLC, Dependency Drug Court – Judge Hornak

Weber County, Ogden, Dependency Court – Judge Heward

Salt Lake County, SLC, SLC Juvenile Drug Court – Judge Hornak

Salt Lake County, SLC, Dependency Drug Court – Judge Lund

Utah County, Provo, Juvenile Court – Judge Smith

Davis County, Dependency Drug Court – Judge Dillon

Salt Lake County, West Jordan, Dependency Drug Court – Judge Decker

The following drug courts were recommended for conditional certification: 1) Judge Sipes – to allow for additional training, 2) Judge Dillon – to allow for required risk and assessment to be completed, 3) Judge Brady – participant issue, 4) Judge Lund – participant issue, and 5) Judge Blanch – low risk, high needs court – evaluation component to reflect benefits of courts existence.

Discussion took place.

Motion: Judge Parkin moved to approve the certifications of the problem-solving courts in compliance and the five conditionally certified to include the following actions: 1) approve Judge Sipes' and Judge Dillon's problem-solving courts with a six-month provisional certification to allow them to address their courts' organizational and operational issues; 2) approve Judge Brady's and Judge Lund's courts until July 1, 2015 to allow them to increase their participants to the 12-15 standard participant requirement level; and 3) waive the requirement of Judge Blanch's court of a high risk court to a low risk, high needs court during the pilot program phase and evaluation period. Mr. Lund seconded the motion. It passed with Judge Hornak and Mr. Lund recusing themselves from the vote.

9. STANDING COMMITTEE ON TECHNOLOGY UPDATE: (Judge John Pearce and Ron Bowmaster)

Chief Justice Durrant welcomed Judge John Pearce and Mr. Ron Bowmaster to the meeting.

Judge Pearce mentioned that the main focus of the Standing Committee on Technology during 2014 has been to update the committee's strategic plan which hasn't been updated since 2007. To gather information on what should be included in the strategic plan, interviews were conducted with the following groups by Mr. Ron Bowmaster: 1) Board of Juvenile Court

Judges, 2) Board of District Court Judges, 3) Board of Justice Court Judges, 3) AOC staff, 4) Clerks of Court, 5) trial court executives, and 6) members of the Standing Committee on Technology. Several themes emerged during the interview process. Upon reviewing the information gathered during the interview process, the Standing Committee on Technology determined that it was necessary to create four subcommittees to research and refine certain recommendations, to determine what should be included in the updated strategic plan of the Standing Committee on Technology. The four subcommittees created included:

1) Accounting, 2) Scheduling, 3) Electronic Record Retention, and 4) Courtroom Technology.

He mentioned that the strategic plan for the Standing Committee on Technology is in draft form. Judge Pearce provided the following timeline for adopting and gaining approval for the strategic plan: 1) adoption of the plan by the Standing Committee on Technology – October 2014; 2) reviewed and approved by the Management Committee – November 12, 2014; and 3) reviewed and approved by the Judicial Council – December 2014.

Proposed strategic initiatives were presented by each subcommittee. Judge Pearce provided a preview from the four subcommittees.

The strategic initiatives proposed by the Accounting Subcommittee included: 1) create a centralized accounting structure for receipting, deposit, disbursements, and reconciliation; 2) create a centralized juror payment system that is integrated with FINET; and 3) create an electronic interpreters invoice system that is integrated with FINET.

The strategic initiatives proposed by the Scheduling Subcommittee included: 1) create a scheduling system that records completed actions and generates future actions for a case, 2) integrate a court's master calendar with the calendar of individual judges or hearing types, 3) create a single view of court calendars that can be accessed by multiple applications and devices, 4) publish calendar information to minimize scheduling conflicts, and 5) manage case progression by actively monitoring future and overdue actions to take corrective action.

The strategic initiatives proposed by the Electronic Document Retention Subcommittee included: 1) create an automated document management system that permanently retains critical documents and deletes non-critical documents after a certain period of time, and 2) establish a document retention schedule that ensures the availability of documents that are critical to the process of the court.

The strategic initiatives proposed by the Courtroom Technology Subcommittee included: 1) upgrade specified courtrooms with the ability to support remote hearings by video, 2) acquire video conference hardware and software to support HD video conferencing, and 3) establish a procedure to schedule remote video conferences.

Questions were asked relative to a master calendar of hearings including communication between the jail via video conferencing and the poor quality of the system used in the past. Mr. Bowmaster provided clarification on what is being looked at to update the audio visual aspect of the strategic plan of the Standing Committee on Technology.

10. BOARD OF DISTRICT COURT JUDGES UPDATE: (Debra Moore)

Chief Justice Durrant welcomed Ms. Moore to the meeting.

Ms. Moore noted that Judge Allen was unable to attend the meeting.

She highlighted the following in her update, on behalf of the Board of District Court Judges, to include: 1) Judge Allen has enjoyed his time as Board chair, 2) the board's goal to increase judicial outreach efforts among the district bench with the upcoming Constitution Day activities, 2) continuing to work towards progressing in the electronic record transition, especially with the move to e-filing of criminal information effective January 1, 2015; 3) discussion of the Council's future study item—boards consensus to study a pre-trial release item and a second study of mental health, 4) continued updates have been received on the PEW

Justice Reinvestment Initiative, 5) regular updates from AP&P on their efforts to implement evidence-based practices; and 6) reviewed the draft probation incentives and sanctions matrix.

11. COURT COMMISSIONER CONDUCT COMMITTEE UPDATE: (Rick Schwermer)

Mr. Schwermer reported that Judge Christiansen was unable to attend the Council meeting. He highlighted the following in his update: 1) seven complaints were received within the last 12 months, 2) two were dismissed, 3) the types of complaints received were noted, and 4) the commissioner complaint process was noted.

Review of the rule governing court commissioner conduct is taking place.

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

Chief Justice Durrant welcomed Judge Renstrom to the meeting.

Judge Renstrom provided an update to the Council on the activities of the Board of Justice Court Judges. He highlighted the following in his update: 1) conversion to recording of proceedings in justice court, 2) in the process of implementing the use of workspace in the justice courts, 3) availability of annual educational opportunities, 4) move to evidence-based sentencing, 5) efforts to meet time to disposition standards is taken seriously, 6) noted the makeup of the newly appointed judges, 7) concern with the salary range and retirement of justice court judges, 8) issues expressed relative to trial de novo matters and justice court closures, and 9) 2013-2014 fiscal year, 496,953 filings in the justice courts.

A question was asked relative to the matter of trial de novo. Judge Renstrom addressed this issue.

Judge Renstrom provided his sense of the view of most justice court judges relative to SB 72 – Justice Court Reform and the matters not addressed with this reform.

13. JPEC UPDATE: (Joanne Slotnik)

The JPEC update was deferred to a future Council meeting.

14. CERTIFICATION OF JUSTICE COURT JUDGES: (Rick Schwermer)

Mr. Schwermer recommended the certification of the following two justice court judges who recently completed justice court judge orientation and passed the orientation exam: 1) Ms. Catherine Hoskins, Syracuse Justice Court; and 2) Mr. Ronald Read, Washington County Justice Court.

Motion: Judge Hornak moved to approve the certification of Ms. Catherine Hoskins and Mr. Ronald Read as justice court judges. Judge Dawson seconded the motion, and it passed unanimously.

15. RECOMMENDED SPENDING PLAN ADJUSTMENT: (Daniel J. Becker)

Mr. Becker reminded that Council of their approval, in April for the FY 2015 operational budget for the courts. He presented recommendations to the Council for use of an additional \$200,000 in carry-forward funding to include: 1) \$57,000 for the court visitor program, 2) \$20,000 for the middle management succession plan program, 3) \$60,000 for IT contract work, 4) \$23,000 for the senior judge budget, and 5) \$40,000 to be placed in reserve. In January, a recommendation will be made for further downsizing as a result of additional e-filing efficiencies.

Motion: Mr. Lund moved to approve the additional \$200,000 in carry-forward funding for the FY 2015 operational budget for the courts, as proposed. Judge Davis seconded the motion, and it passed unanimously.

16. CONDITIONS OF PROBATION AND SUPERVISION: (Debra Moore)

Ms. Moore mentioned that, by statute, the Council should have the opportunity to review probation and supervision standards for the adult system annually. She noted that it hasn't taken place for approximately four years. In the past, the Council requested that the Board of District Court Judges review the probation and supervision standards first and provide recommendations to the Council.

The Board of District Court Judges reviewed proposed recommendations of three probation conditions to existing standards to include: 1) a recommendation to change the current standard condition language as a result of the modified "weapon" statute language in HB 268 – Dangerous Weapons Amendments which would include archery equipment and crossbows to be considered as dangerous weapons, 2) adoption of Sex Offender C group conditions where the condition does not allow any relationship with anyone under the age of 18 without prior written approval of Adult Probation and Parole, and 3) adoption of a standard condition for both probation and parole that requires offenders to provide valid identification.

Discussion took place with clarification on the valid identification condition.

Ms. Moore reported that the Board of District Court judges recommend approval of the recommended changes to items 1 and 2 and did not recommend approval of the condition relative to valid identification. They also recommended approval of the existing conditions as established.

Motion: Judge Dawson moved to accept the recommendations from the Board of District Court judges of the proposed probation and supervision standards conditions. Judge Harmond seconded the motion, and it passed with Judge Higbee voting no on the condition relative to provide valid identification.

17. SELECTION OF 2015 STUDY ITEM: (Daniel J. Becker and Rick Schwermer)

Mr. Becker reported that discussion of the 2015 Council study item took place at the July 16 Council meeting on potential study items. Since that time, he has met with the Board of District Court Judges, the Board of Juvenile Court Judges and the Board of Appellate Judges on the potential study item topics.

It was noted that Judge Dennis Fuchs and Mr. Schwermer would meet with the Board of Juvenile Court Judges to further discuss their concerns with family and juvenile drug courts.

Discussion took place.

Motion: Mr. Lund moved to approve the selection of the 2015 study item with focus on pre-trial release of adult and juvenile issues. The AOC was requested to look at the scope, charge and membership for the study item and present this information to the Council at their October 27 meeting for approval. Judge Davis seconded the motion, and it passed unanimously.

18. EXECUTIVE SESSION

An executive session was not needed at this time.

19. ADJOURN

The meeting was adjourned.