

JUDICIAL COUNCIL MEETING

Minutes
Friday, March 13, 2015
Sego Lily/Sage
Hilton Garden Inn
St George, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Jill Parrish
Hon. Marvin Bagley
Hon. Kate Toomey for Hon. James Davis
Hon. Glen Dawson
Hon. Thomas Higbee
Hon. David Marx
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
John Lund, esq.

EXCUSED:

Hon. Ann Boyden

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Rick Schwermer
Tim Shea
Alyn Lunceford
Brent Johnson (by phone)

GUESTS:

James Gilson, Utah State Bar
Angelina Tsu, Utah State Bar
John Baldwin, Utah State Bar
Sean Toomey, Utah State Bar
Nate Alder, Utah State Bar
Judge John Walton
Judge Derek Pullan
Peyton Smith, 3rd Dist TCE
Travis Erickson, 2nd Dist Juv TCE
Rick Davis, 5th Dist TCE
Judge Noel Hyde
Judge Robert Dale
Judge Mary Noonan

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

Chief Justice Matthew B. Durrant welcomed all members and guests to the meeting.

Motion: It was moved and seconded to approve the minutes from the February 23, 2015 Judicial Council meeting, and it passed unanimously.

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

Chief Justice Durrant reported on the following items:

He expressed his gratitude to Mr. Becker, Mr. Wahl, and Mr. Schwermer for all the work they accomplished, on behalf of the courts, during the 2015 Legislative Session.

He mentioned that he would acknowledge the work of the Bar when they arrive.

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

Mr. Becker reported on the following items:

Judicial Conduct Commission. Judge Todd Shaughnessy has been appointed, by the Supreme Court, to fill the vacancy on the Judicial Conduct Commission to replace Justice Deno Himonas.

Judicial Performance Evaluation Commission. Membership changes to the Judicial Performance Evaluation Commission (JPEC) included: 1) Mr. John Ashton has been named chair of the Commission, replacing Mr. Anthony Schofield; and 2) Mr. David Jordan, Supreme Court appointment to the Commission.

Legislative Update. A legislative update will be held on April 10 at the University Park Marriott in Salt Lake City. Senator Lyle Hillyard and Representative Eric Hutchings have been invited to speak during lunch at the update.

AOC Retirement. Mr. Ron Bowmaster, Director of IT, has announced his upcoming retirement, effective April 30. The job announcement to fill his vacancy has been posted with assistance filling the position being provided by the NCSC. He will be recognized at the April Judicial Council meeting. (*Mr. Becker subsequently notified the Council that Mr. Bowmaster had withdrawn his intent to retire.*)

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 that a legislative report would be deferred to later in the meeting.

Policy and Planning Meeting:

Judge Parkin reported on the following items:

The committee has been very active addressing several rules. He mentioned that there are several rules listed on the consent calendar. The rules have been sent out for public comment.

Bar Commission Report:

Mr. Lund deferred his report to James Gilson, Utah State Bar president, who will be providing an update later in the meeting.

5. REMARKS FROM UTAH STATE BAR PRESIDENT/PRESIDENT ELECT:

(James Gilson, Angelina Tsu, John Baldwin and Sean Toomey)

Chief Justice Durrant welcomed Mr. Gilson, Ms. Tsu, Mr. Baldwin, and Mr. Toomey to the meeting. He expressed his appreciation to the Bar for all they do for the court system, as well as, the work they did with respect to judicial salaries, along with the Elected Offices and Judicial Compensation Commission. Chief Justice Durrant expressed his appreciation for Senator Lyle Hillyard's efforts and involvement in the process to increase judicial salaries. He also noted the continued efforts of the Bar to provide regular access to justice.

Mr. Gilson highlighted the following in his update to the Council: 1) the Bar Commission's continued focus on access to justice issues, 2) greater access to legal services for the poor with availability of the Pro Bono Program, 3) greater access to legal services for the low income population through other available services, 4) greater access to legal services for the

middle class population, 5) the Bar's focus on SJR 3 – Proposal to Amend Utah Constitution Regarding the Practice of Law during the 2015 Legislative Session, 6) creation of the Middle Class Legal Access Task Force, chaired by Ms. Angelina Tsu, to address legal access issues for the middle class population, 7) a handout was distributed with ideas to address middle class legal access issues, 8) consideration of a limited license legal technician in family law matters by the task force, and 9) celebration of the 800th anniversary of the Magna Carta with exhibits being available in April, and a big gala on April 14 at Rice Eccles Stadium.

Mr. Gilson and Ms. Tsu expressed their appreciation for the communication that takes place between the Bar and the courts.

Chief Justice Durrant thanked members of the Bar for all they do in support of the courts.

6. FIFTH DISTRICT UPDATE: (Judge John Walton, Judge Thomas Higbee, and Rick Davis)

Chief Justice Durrant welcomed Judge Walton and Mr. Davis to the meeting.

Judge Walton highlighted the following in his update: 1) with the retirement of Judge James Shumate in March of 2014; Judge Keith Barnes filled the district court judge vacancy in Cedar City, and Judge Michael Westfall filled the district court vacancy in St. George; 2) continued judicial assistance from Judge Paul Lyman, Sixth District Court, of all matters before the court in Beaver; 3) continued assistance provided by Judge Higbee twice a month in Cedar City; and 4) continued assistance provided by the new Fifth District juvenile judges with protective order calendars.

Mr. Davis highlighted the following in his update: 1) projected case filing trends in the Fifth District show an increase, 2) the ability of the Fifth District judges to handle their caseload, with visiting judge assistance, as well as, assistance from the Fifth District juvenile judges—rather than using senior judge assistance; 3) making staff structural changes in the district including reducing the number of managers in Cedar City to one case manager and cross training staff; 4) a meeting was held between Fifth District and the Southern Utah Bar in February; 5) a change in the probation process in juvenile court from a monitor report process to a interventionist process, with classes being offered to help youth and their families.

Judge Higbee highlighted the following in his update: 1) access to available services to help families of the youth in Cedar City and Beaver is a challenge, and the probation staff has been creative in addressing these deficiencies; and 2) Prime for Life for Youth Program available in the district with training and certification being received by three Fifth District probation officers.

Chief Justice Durrant thanked Judge Walton, Mr. Davis and Judge Higbee for their update.

7. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Derek Pullan)

Chief Justice Durrant welcomed Judge Pullan to the meeting.

Judge Pullan highlighted the following in his update to the Council: 1) current members of the Board of District Court Judges; 2) working on recommendations for a uniform process for setting bail, statewide; 3) use of the Board of District Court Judges by the Judicial Council, as necessary, in providing assessment of particular matters in district court.

Chief Justice Durrant thanked Judge Pullan and members of the Board of District Court Judges for all they do for the courts.

8. LEGISLATIVE BUDGET UPDATE/INTERIM HIGHLIGHTS: (Daniel J. Becker and Rick Schwermer)

Mr. Becker expressed his appreciation to the AOC staff who provided support during the 2015 Legislative Session to include: 1) Mr. Rick Schwermer, 2) Mr. Ray Wahl, 3) Mr. Alyn Lunceford, and 4) Mr. Derek Byrne.

He highlighted the appropriation requests approved for the courts during the 2015 Legislative Session to include: 1) restoration of the general fund appropriation for trust revenue, 2) juror, witness, interpreter supplemental, 3) ADR fee increase, 4) approval of a revenue bond for a new Fourth District Courthouse in Provo for district and juvenile courts, 5) one-time and ongoing fiscal note funding, and 6) compensation and judicial salary increases.

Mr. Becker expressed his appreciation to the following for all they did relative to approval of increased judicial salaries: 1) Chief Justice Durrant, 2) the Elected Offices and Judicial Compensation Commission, and 3) Senator Lyle Hillyard.

Mr. Becker mentioned that funding was not approved for the Fourth District Juvenile Court and Fifth District Court judgeship requests.

The FY 2016 spending plan will be considered at the April Council meeting.

Mr. Alyn Lunceford provided an update on the new Fourth District Courthouse in Provo and the approved funding for improvement projects for the courts in FY 2016. He highlighted the following in his update: 1) projected cost to build the new courthouse, 2) timeline from the design phase to completion of the courthouse, 3) anticipated number of courtrooms to be completed, and 4) the majority of the FY 2016 improvement projects are slated for the Matheson Courthouse.

Chief Justice Durrant expressed his gratitude to Mr. Lunceford for all his hard work and preparation in getting the revenue bond approved for the new Fourth District Courthouse during the 2015 Legislative Session.

Mr. Schwermer highlighted the following bills considered during the 2015 Legislative Session:

HB 137 – Change to Mandatory Retirement Age for Judges – Failed

HB 189 – Child Welfare Mediation - Passed

HB 240 – Judicial Discretion in Sentencing Amendments - Failed

HB 278 – Justice Court Judge Compensation – Failed

HB 348 – Criminal Justice Programs and Amendments – Passed

HB 356 – 3rd Sub – Parent Child Amendments – Passed

HB 445 – Bail Bond Surety Amendments – Failed

SB 82 – 1st Sub – Forcible Entry Amendments – Passed

SB 101 – 5th Sub – Adoption Amendments – Passed

SB 141 – 1st Sub – Judiciary Amendments – Passed

SB 167 – Juvenile Offender Amendments – Passed

SB 183 – Judicial Salaries and Compensation – Passed

SB 236 – Justice Court Judges Retirement Amendments – Passed

SB297s2 – Protections for Religious Expression and Beliefs About Marriage, Family or Sexuality – Passed

SJR 3 – Proposal to Amend Utah Constitution Regarding the Practice of Law – Failed

Mr. Schwermer thanked members of the Liaison Committee and everyone who responded to the bills being considered during the 2015 Legislative Session.

9. REPLACEMENT FOR ECR PROCESS: (Judge Randall Skanchy)

Judge Skanchy provided an updated, on behalf of Judge Hansen, on the status of the Early Case Resolution (ECR) Pilot Program in the Third District Court. He highlighted the following in his update: 1) an ECR Subcommittee held meetings to determine what actions will be taken relative to early case resolution; 2) meetings with all stakeholders to gather input on matters relative to the ECR pilot program have taken place; 3) an additional criminal judge will be assigned to hear cases on March 16; 4) Judge Hansen continues a low risk, low needs track; 5) the manner by which orders to show cause will be handled in the interim; and 6) recommendations will be prepared by April 1.

Discussion took place. Questions were asked of Judge Skanchy, and he provided responses.

10. TCE UPDATE: (Peyton Smith and Travis Erickson)

Chief Justice Durrant welcomed Mr. Erickson and Mr. Smith to the meeting.

Mr. Smith and Mr. Erickson highlighted the following in their update to the Council on behalf of the court executives: 1) during the next 4 years, 25% of court managers will be eligible for retirement; 2) percentage of court managers eligible for retirement in the next four years by district; 3) creation of a succession plan; 4) development of a six-day court skills academy; 5) development of a leadership academy; 6) participation in the Michigan State University Certified Court Manager Program by court executives, clerks of court and chief probation officers; 7) support of the transition of the judicial service representative position to the judicial assistant position, statewide; 8) organizational culture shift, to respond to the needs of a changing workforce in the court system; 9) implementing case file audit process changes; 10) more transparency in communicating with court staff; 11) e-filing in district, juvenile, and appellate courts; 12) juvenile probation update; and 13) a renewed focus on education by the juvenile court.

Mr. Becker, Mr. Wahl, and Chief Justice Durrant expressed their appreciation to the court executives for all they do for the Utah court system.

11. DAVIS COUNTY JUSTICE COURT DISSOLUTION: (Rick Schwermer)

Chief Justice welcomed Mr. Schwermer to the meeting.

Mr. Schwermer provided background information relative to Davis County's request to dissolve their justice court. He highlighted the following: 1) a letter was received by Davis County Commission giving the Council notice of their intent to dissolve the Davis County Justice Court with their request to waive the waiting period; 2) Davis County's intent to close their justice court at the end of calendar year 2016; 3) this request, as required by statute, would require permission by the Legislature to close the court with the transfer of cases to the district court; 4) Davis County did not seek legislation in the 2015 Legislative Session to address this request; and 5) without approved legislation to address Davis County's request, the appropriate adjustments in workload by the state courts cannot be addressed.

Mr. Becker mentioned that a request by the Davis County Commission of a waiver to shorten the waiting period to dissolve their justice court several years ago was denied. At that time, the Davis County Commission elected not to close their justice court.

Discussion took place.

Mr. Schwermer reported on a recent conversation with the Davis County attorney. It was also noted that no interlocal agreements have been sought by the Davis County Commission relative to dissolution of their justice court.

Motion: Judge Sandberg moved to deny the request made by the Davis County Commission for a waiver to shorten the waiting period required to dissolve the Davis County Justice Court as they did not seek the appropriate legislation during the 2015 Legislative Session, required by statute. The Davis County Commission is encouraged to meet formally with members of the Administrative Office of the Courts to resolve the matter. Judge Higbee seconded the motion, and it passed unanimously.

12. CHANGE IN JULY MEETING DATE: (Daniel J. Becker)

Mr. Becker requested the July meeting (to be held at the new Ogden Juvenile Courthouse) be moved from July 13 to July 20 due to the fact that he and Mr. Wahl will both be out of state on July 13.

Motion: Judge Skanchy moved to change the date of the July meeting from July 13 to July 20. Judge Hornak seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss a personnel matter. Judge Parkin seconded the motion, and it passed unanimously.

13. EXECUTIVE SESSION

An executive session was entered into at this time.

14. ADJOURN

The meeting was adjourned.