

JUDICIAL COUNCIL MEETING

Minutes
Monday, April 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. Marvin Bagley
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
John Lund, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Dawn Marie Rubio
Rick Schwermer
Tim Shea
Nancy Sylvester
Nini Rich
Derek Byrne
Alyn Lunceford

GUESTS:

Jennifer Yim, JPEC
David Jordan, JPEC
Shane Bahr
Hon. Royal Hansen
Robert Gehrke, SL Tribune
Hon. Noel Hyde
Hon. Fred Voros
Hon. Jeffrey Noland
Hon. Paul Lyman

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 March 11, 2016 Judicial Council meeting. Judge Toomey seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported that he and Mr. Becker met with Jennifer Yim, the new Executive Director of the Judicial Performance Evaluation Commission (JPEC).

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

Mr. Becker reported on the following items:

Court Security Director. Mr. Becker introduced Mr. Chris Palmer to the Council members and welcomed him to the courts.

2016 Award for Reporting Excellence. Mr. Becker mentioned that the Utah courts were recognized this year relative to a court statistics project with the National Center for State Courts (NCSC). The National Center for State Courts, during a long-term effort, has worked to create consistency and more uniformity with regards to reporting of case definitions and case types. Utah is one of three states that reported 100% of the case types in Supreme Court and Court of Appeals reporting. Mr. Becker acknowledged the work of Ms. Kim Allard and Ms. Heather Marshall of the Court Services Division of the Administrative Office of the Courts for their efforts on the NCSCs court statistics project.

SJI Grant. SJI has approved a grant request submitted by the Utah courts for use with the Online Dispute Resolution (ODR) Program to allow for funding of a program coordinator.

Judicial Retirements. Judge Claudia Laycock, Fourth District Court, has announced her upcoming retirement, effective December 2016. Judge Mark Andrus, Second District Juvenile Court, has announced his upcoming retirement, effective at the end of December 2016.

First District Court TCE. Mr. Corrie Keller has announced his resignation, May 1. Mr. Keller's work in the First District was acknowledged.

Appellate Court Administrator. Mr. Shea announced his upcoming retirement, effective the end of June. Mr. Becker acknowledged Mr. Shea's many contributions to the courts.

Indigent Defense Commission – Retired Judge Recommendations. The Governor requested recommendations for a retired judge to serve on the Commission. Mr. Becker has not been able to secure three recommendations. He asked that members of the Management Committee stay after the meeting to discuss the matter further.

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 April.

Policy and Planning Meeting:

Judge Parkin reported that there are several rules on the agenda for final action.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the 2016 Law Day celebration will be in recognition of the 50th Anniversary of the Miranda warning with a luncheon to be held on May 2, 2) Lifetime Service Award recipients include Ms. Anne Milne for her work with legal aid and Mr. Leonard Burningham for his work on behalf of the homeless, and 3) bar election results.

The Bar election results include the following: 1) Mr. John Bradley was elected to serve as the Second District Commissioner, 2) Heather Thuet was elected as a Third District Commissioner, 3) Grace Acosta was elected as a Third District Commissioner, 4) Kara Tangaro was elected as a Third District Commissioner, and 5) John Lund was elected as the President-Elect,

5. JUDICIAL PERFORMANCE EVALUATION COMMISSION: (Jennifer Yim and David Jordan)

Chief Justice Durrant welcomed Ms. Yim and Mr. Jordan to the meeting.

Ms. Yim, Executive Director of JPEC, introduced herself and provided background of her work experience. Her plans for JPEC include: 1) improve continuity, 2) strengthening their processes, and 3) an emphasis on communication.

Ms. Yim and Mr. Jordan highlighted the following in their update to the Council: 1) provide information found on the surveys to appropriate court staff and judges in a beneficial manner; 2) upcoming vacancy resulting from the end of Mr. Eric De Rosia's term; 3) improve response rate of attorney surveys; 4) JPEC deliberations have been completed relative to the retention evaluations; 5) 96% of all judges considered received a unanimous vote for retention which included a 3% mixed retain, and 4% received a do not retain or no recommendations; 6) overall retention rates in the past three retention cycles for the 2012, 2014, 2016 elections reflected a 97% unanimous vote for retention which included a 4% mixed retain, and 3% received a do not retain or no recommendations; 7) retention reports were sent to judges in February, with a 15-day window to voice their objections to their reports, with an automatic review at the March JPEC meeting; 8) those judges who received a recommendation of do not retain could file a 100-word statement that will go at the bottom of their voter information pamphlet page due by April 29—originally set for April 15; 9) everyone who filed, will go on the website by July 16; 10) for those who decided not to file for retention, their information is protected; 11) in the process of revising JPEC's website; 12) during the non-evaluation year, JPEC will be addressing areas that will improve their processes; 13) justice court mid-level evaluations will begin soon; 14) a person will be hired to conduct in-person interviews with court patrons leaving the courtroom – beginning around August 2016; and 15) courtroom evaluations – feedback with judge's experience with courtroom observations – manner by which this could be solicited was requested.

Ms. Yim and Mr. Jordan were thanked for their update and their service on the Judicial Performance Evaluation Commission (JPEC).

6. RULES FOR FINAL ACTION: (Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Ms. Sylvester noted that the public comment period has closed. Rule 4-106 received one comment. The Policy and Planning Committee recommended final action for the following rules:

CJA 03-0302 – Clerk of Court. This rule was amended to provide that the clerk's office shall be open during all business hours except Saturdays, Sundays, and holidays. It provides that during hours of operation that the clerk or deputy shall be physically present, or immediately available remotely.

CJA 04-106 – Electronic conferencing. This rule was amended to authorize the use of remote conferencing in lieu of personal appearances when certain requirements are met.

CJA 09-105 – Justice Court hours. This rule was amended to provide that during hours of operation, the justice court judge or clerk shall be physically present, or immediately available remotely.

Motion: Mr. Lund moved to approve the following rules for final action as proposed by the Policy and Planning Committee: 1) CJA 03-0302 – Clerk of Court, 2) CJA 04-106 – Electronic conferencing, and 3) CJA 09-105 – Justice Court hours. Justice Lee seconded the motion, and it passed unanimously.

CJA 03-0306.01 – Language access definitions. This is a new rule which defines terms applicable to rules 03-306.02 through 03.306.05 of the Utah Code of Judicial Administration.

CJA 03-0306.02 – Language Access Committee. This is a new rule which outlines the Language Access Committee’s responsibilities.

CJA 03-0306.03 – Interpretation certification. This is a new rule which outlines the process for becoming a certified interpreter.

CJA 03-0306.04 – Interpreter appointment, payment, and fees. This is a new rule which outlines the interpreter appointment process and provides that the Judicial Council will review a market study every three years in order to set hourly rates for interpreters.

CJA 03-0306.05 – Interpreter removal, discipline, and formal complaints. This is a new rule which outlines the interpreter discipline process.

Motion: Mr. Lund moved to approve the following rules for final action as proposed by the Policy and Planning Committee: 1) CJA 03-0306.01 – Language access definitions, 2) CJA 03-0306.02 – Language Access Committee, 3) CJA 03-0306.03 – Interpretation certification, 4) CJA 03-0306.04 – Interpreter appointment, payment, and fees, and 5) CJA 03-0306.05 – Interpreter removal, discipline, and formal complaints. Judge Higbee seconded the motion, and it passed unanimously.

CJA 04-408.01 – Responsibility for administration of trial courts. This rule was amended to remove Morgan from the list of district courts administered by a county or municipality, since it is administered by the Administrative Office of the Courts.

Motion: Mr. Lund moved to approve CJA 04-408.01 – Responsibility for administration of trial courts for final action as proposed by the Policy and Planning Committee. Judge Mortensen seconded the motion, and it passed unanimously.

CJA 04-0602 – Victims’ Rights Committees. The rule was repealed because the process for establishing Victims’ Rights Committee is now outlined by Utah Code section 77-37-5.

Motion: Judge Toomey moved to approve CJA 04-0602 – Victims’ Rights Committees for final action as proposed by the Policy and Planning Committee. Judge Mortensen seconded the motion, and it passed unanimously.

CJA 09-0302 – Mandatory electronic filing. This is a new rule which provides that e-filing be discretionary in justice court criminal cases from July 1, 2016 to December 31, 2016 and provides that e-filing will be mandatory in justice court criminal cases beginning December 31, 2016.

Motion: It was moved and seconded to approve CJA 09-0302 – Mandatory electronic filing for final action as proposed by the Policy and Planning Committee, as well as, with a change to the mandatory effective date of January 1, 2017. The motion passed unanimously.

CJA 04-0401.03 – Notice to public of recording. This is a new rule that establishes uniform standards and procedures for notifying the public when court proceedings are being recorded.

Motion: Judge Higbee moved to approve CJA 04-0401.03 – Notice to public of recording as proposed by the Policy and Planning Committee, on an expedited basis, with a May 10 effective date. Judge DeCaria seconded the motion, and it passed unanimously.

A revised version of this rule was distributed later in the meeting. The revised rule will allow for the courts to provide a written notice to the public that the proceedings are being recorded.

Motion: Judge Noonan moved to amend the motion as previously approved to approve the revised version of CJA 04-0401.03 – Notice to public of recording as proposed by the Policy and Planning Committee, on an expedited basis, with a May 10 effective date. Judge Higbee seconded the motion, and it passed unanimously.

CJA 01-0201 – Membership – election. This rule was amended to provide that Council members are not eligible to be voting members of a Board of Judges of a trial court.

Motion: Mr. Lund moved to approve CJA 01-0201 – Membership – election as proposed by the Policy and Planning Committee. Judge Higbee seconded the motion, and it passed unanimously.

7. RETENTION ELECTIONS: (Nancy Sylvester)

Ms. Sylvester reported to members of the Council that Judge Wayne Cooper was certified for retention election in 2016, along with a number of other judges at the September 2015 Council meeting. She noted that Judge Cooper is currently a temporary judge in Newton-Amalga and his certification was made erroneously.

Motion: Judge Bagley moved to correct the record and not certify Judge Wayne Cooper for retention election in 2016. Judge Noonan seconded the motion, and it passed unanimously.

8. PRESENTATION OF THE FY 2017 SPENDING PLAN: (Daniel J. Becker)

Mr. Becker reviewed the process for addressing the FY 2017 spending plan. He noted that there would be less carry forward funding due to the following: 1) more one-time spending in FY 2016; 2) additional senior judge funding was approved in FY 2016, from the reserve; 3) less fiscal note funding from the 2016 Legislative Session was approved; and 4) the Council obligated during FY 2016 funds for the FY 2017 spending plan. The 2017 budget obligations were: 1) funding for half of the justice court administrator position, 2) Fourth District law clerk positions (over the next three years to be funded with ongoing funding), 3) one-time funding of the Fourth District law clerk/ bailiff benefit package, and 4) CORIS rewrite project.

Mr. Becker mentioned that judicial vacancies do not generate ongoing funding, they generate one-time funding for the period of time they remain vacant.

He highlighted the FY 2017 funding sources for the ongoing spending plan to include the following: 1) ongoing turnover savings, 2) Fourth District Court Juvenile Court Judge, 3) fiscal note funding of HB 241 – Computer Abuse and Data Recovery Act, 4) fiscal note funding of SB 79 – Child Welfare Revisions, and 5) fiscal note funding of SB 124 – Gang Enhancement Provision Amendments.

Budget Obligations for FY 2017 included: 1) career track obligations, 2) Fourth District

Juvenile Court Judge, 3) justice court administrator, and 4) Fourth District law clerks (1 of 4 required FTEs).

Ongoing budget items deferred from from August Budget and Planning Session included the following: 1) Volunteer Court Visitor Program, 2) District Court Program Administrator (.75 FTE to 1.0 FTE), and 3) law clerks (2 FTE).

New ongoing budget requests included: 1) Commissioner compensation, 2) EBP training and program evaluation, and 3) Domestic Violence Program Coordinator.

Ongoing funding requests for FY 2017 totaled \$1,321,800, with \$885,400 in available funds.

One-time funding requests for FY 2017 totaled \$2,249,600, with \$1,311,300 in available funds.

Mr. Becker highlighted the following relative to one-time funding: 1) CORIS project (budget obligation), 2) Fourth District law clerk/bailiff benefit package (budget obligation), 3) computer replacement scheduled (deferred from the August Budget and Planning Session), and 4) amount funded in FY 2016, 5) proposed funding for FY 2017 one-time budget requests.

He mentioned that the FY 2017 one-time budget requests included the current FY 2016 time-limited law clerks (2) and a new budget request for time-limited law clerks (2).

Additional information for consideration was highlighted by Mr. Becker to consider prior to approving the FY 2017 spending plan to include: 1) spending plan assumptions; 2) senior judge assistance; 3) two options for increasing senior judge assistance.

Ms. Nancy Sylvester provided information on the Volunteer Court Visitor Program.

9. PROPOSED SENIOR JUDGE RULE CHANGE: (Nancy Sylvester)

Chief Justice Durrant welcomed the following board chairs to the meeting to present their board's position on the proposed senior judge rule change: 1) Judge Paul Lyman, Board of Juvenile Court Judges; 2) Judge Noel Hyde, Board of District Court Judges. Judge Toomey mentioned that Judge Voros was unable to be present and she would report on his behalf.

Judge Hyde distributed a copy of the revised changes to Rule 3-108 – Judicial assistance as prepared and approved by the Board of District Court Judges. The position of the Board of District Court Judges regarding funding for filling judicial vacancies is that the funding for judicial vacancies should be made available for use with senior judge assistance during the vacancies.

Judge Hyde reviewed the revised changes to Rule 3-108 – Judicial assistance as prepared by the Board of District Court Judges noting that the changes proposed dealt with the exigent and non-exigent circumstances used in determining assignment of an active judge.

Discussion took place.

Judge Hyde provided responses to questions asked of him.

Chief Justice Durrant thanked Judge Hyde for his comments provided on behalf of the Board of District Court Judges.

Judge Lyman reported, on behalf of the Board of Juvenile Court Judges, recommended that there be no changes to Rule 3-108 – Judicial assistance as the juvenile bench is happy with the current process for requesting senior judge assistance. Judge Jeff Noland, Second District Juvenile Court was in agreement with Judge Lyman.

Chief Justice Durrant thanked Judges Lyman and Noland for their comments.

Judge Toomey reported, on behalf of Judge Voros and the Appellate Court Judges, that they voted in favor of the concept of the proposed rule change as proposed by the Policy and Planning Committee.

Discussion took place.

The following concerns were discussed regarding the proposed rule change and the use of senior judge assistance: 1) provisions in the rule to address emergency judicial absences versus long-term judicial vacancies, 2) unique needs in the Third District, 3) budget implications with regard to the proposed rule change, 4) presiding judge discretion regarding judicial vacancies in emergency or exigent circumstances, and 5) the use of funding resulting from judicial vacancies only for judicial assistance/coverage.

Motion: Mr. Lund moved to send Rule 3-108 – Judicial assistance back to the Policy and Planning for consideration of the following elements: 1) empowers presiding judges to seek senior judge assistance, on a short-term, unexpected basis for a period of time without seeking prior approval; 2) notification to the appropriate governing body by the presiding judge of the action taken, 3) if the need is longer than 14 days, communication of a proposed plan and discussion on what and how it would be accomplished takes place with the Administrative Office of the Courts, 4) if there is no resolution after 14 days, final approval of the appropriate plan of action will be made by the Management Committee. It was seconded by Justice Lee, and it passed unanimously.

10. UTAH MEDIATION BEST PRACTICE GUIDE: (Judge Royal Hansen and Nini Rich)

Chief Justice Durrant welcomed Judge Hansen and Ms. Rich to the meeting.

Judge Hansen provided background information regarding the current *Utah Mediation Best Practice Guide*. The ADR Committee is requesting endorsement and adoption of the *Utah Mediation Best Practice Guide* by the Judicial Council.

Judge Hansen highlighted the following relative to the Utah Mediation Best Practice Guide to include: 1) mediation practices are governed by four statutory provisions, two rule provisions and ongoing appellate court decisions; 2) the process for reviewing and updating the Utah Best Practice Guide, 3) benefits of using the best practice guide, and 4) specific topics addressed in the best practice guide.

The following benefits from using the guide were highlighted: 1) importance of a court roster, 2) harmonize potential disputes regarding confidentiality and privilege, 3) use of the guide as an educational tool, 4) use to train new mediators, 5) will serve as a resource to mediators and the legal community, and 6) use as a settlement conference tool.

Judge Hansen highlighted the following topics addressed in the Utah Mediation Best Practice Guide to include: 1) the importance of maintaining confidentiality before, during and after mediation to promote the exchange of information and ideas; 2) establish basic parameters to show how mediation should be used in ongoing settlements and litigation proceedings; 3) establish mediation practices; 4) address conflicts of interest; 5) establish guidelines in advising parties with regard to final agreements; and 6) establish guidelines in dealing with subpoenas.

Motion: Judge Higbee moved to adopt the Utah Mediation Best Practice Guide as a resource for mediation standards. Judge Toomey seconded the motion, and it passed unanimously.

11. ADOPTION OF THE FY 2017 SPENDING PLAN AND COMPENSATION ADJUSTMENT APPROVAL: (Daniel J. Becker)

Mr. Becker began with the ongoing spending plan. He mentioned that the approval of the budget obligations needs no further discussion. Prioritization of the ongoing budget items deferred from the August Budget and Planning Session and the new ongoing budget requests needs to take place.

Option A: 1) revise the ongoing base budget for senior judges to \$235,100 and 2) add an additional 118,300 in one-time funding.

Option B: 1) the senior judge base budget would remain at \$189,400, and 2) add an additional \$127,300 in one-time funding.

Discussion took place.

With Option A, the remaining available funding totals \$45,700. If Option A is approved, the following new ongoing budget requests would be partially funded or not funded at all: 1) commissioner compensation would be funded at the 2% cost-of-living adjustment, 2) EBP training and program evaluation would not be funded, and 3) Domestic Violence Program Coordinator (.5 FTE to 1.0 FTE) would not be funded.

Mr. Becker provided data relative to the historical spending for senior judge assistance relative to the proposed FY 2017 spending plan.

Motion: Judge Higbee moved to approve the ongoing spending plan as follows: 1) adoption of the recommended budget obligations, 2) increase commissioner compensation by 4.04%, 3) extra \$4,300 to the senior judge budget, and 4) defer the remaining senior judge funding to be considered with one-time funding. Judge DeCaria seconded the motion, and it passed unanimously.

One-time spending plan. This plan proposes to add an additional \$127,300 in funding to the senior judge budget.

Mr. Becker recommended the following regarding the one-time spending plan: 1) no additional funding for the CORIS project, deferring further action to September, 2) reduce the amount to the employee incentive awards from \$200,000 to \$100,000, deferring action to September, 3) no funding to be approved for the additional time-limited law clerks, 4) provide funding for the existing time-limited law clerks, 5) no funding to be approved for the leadership conference in FY 2017, 6) no funding for the juvenile court extradition funds in FY 2017, 7) reduce the judicial operations budget from \$60,000 to \$46,600 in FY 2017, 8) no funding for the pro tem/interpreter/jury training in FY 2017, 9) no funding for the Fourth District Juvenile Court Clerical Support in FY 2017, 10) no funding for courtroom technology, remote services in FY 2017, 11) no funding for juvenile court education liaison in FY 2017, and 12) no funding for unannotated soft copies of the Utah Code for law clerks.

Mr. Becker provided clarification on the use of the second language stipend.

Discussion took place.

Motion: Judge Noonan moved to defer the additional \$400 in funding of the judicial operations budget for FY 2017 and apply that amount to the employee incentive awards. Judge DecCaria seconded the motion. The motion was withdrawn.

Motion: Judge DeCaria moved to approve the funding of \$100,000 for employee incentive awards for the first half of FY 2017. Judge Noonan seconded the motion, and it passed unanimously.

Motion: Judge Toomey moved to approve the one-time spending plan for FY 2017, as proposed, including approval of Option B to fund the addition of \$127,300 to the senior judge budget as well as, the \$4,300 ongoing increase to the senior budget. And, to prioritize any additional discretionary funds after the close of FY 2016, first to increasing employee incentive awards and second to increasing funding for the CORIS project. Judge Marx seconded the

motion, and it passed unanimously.

Motion: Judge Mortensen moved to approve the increase in commissioner compensation to \$135,100 which represents a 4.04% increase and approve the 2% cost of living adjustment for court employees. Mr. Lund seconded the motion, and it passed unanimously.

Motion: Judge Noonan moved to enter into an executive session to address the character, competence, or physical or mental health of an individual. Judge Toomey seconded the motion, and it passed unanimously.

12. EXECUTIVE SESSION

An executive session was held at this time.

13. ADJOURN

The meeting was adjourned.