

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, October 4, 2016
Silver Mine A
Park City Marriott
Park 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. Mary Noonan
Hon. Reed Parkin
Hon. Derek Pullan
Hon. Randall Skanchy
Hon. Kate Toomey
John Lund, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
James Ishida
Debra Moore
Jim Peters
Dawn Marie Rubio
Rick Schwermer
Ron Bowmaster
Brent Johnson
Tom Langhorne
Nancy Sylvester

GUESTS:

Justice Christine Durham
Jennifer Yim
Nate Alder
Justice John Pearce
Judge Reuben Renstrom
Judge James Brady
Judge Mark Kouris
Judge Brent West

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 September 12, 2016 Judicial Council meeting. Justice Lee seconded the motion, and it passed unanimously.

As an outgoing member, Chief Justice recognized Judge Randall Skanchy for his service and contribution to the Council.

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

He reported that he and Mr. Becker recently met with Ms. Jennifer Yim and Mr. John Ashton of the Judicial Performance Evaluation Commission (JPEC).

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

Mr. Becker reported on the following items:

Judicial Appointment. Mr. Robert Neill has been appointed to fill the judicial vacancy in the Second District Juvenile Court, pending confirmation.

Finance Director. Mr. John Bell has been appointed as the Finance Director. Mr. Becker provided his background and work experience. His start date is October 11.

Presiding Judge Lunch. The presiding judge lunch will be held tomorrow with discussion of the following topics: 1) new mentoring program, 2) presiding judge handbook, and 3) professional development plan and strategy to address poor JPEC scores.

CIP Program. Mr. Becker informed the Council that federal funding for the Court Improvement Program (CIP) was not approved before the Congressional recess. The CIP program in Utah is funded through September 2017, but the failure to act could have ramifications on future funding.

State Court Administrator. Mr. Becker announced his upcoming retirement, effective May 1. He reviewed the selection process and timetable for filling his vacancy. He expressed his appreciation for the opportunity to work for the Utah court system and the support he has received.

Chief Justice Durrant expressed his gratitude for Mr. Becker's contributions to the Utah courts during his tenure.

Justice Durham expressed her gratitude for all Mr. Becker has done for and on behalf of the Utah court system.

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 October.

Policy and Planning Meeting:

Judge Parkin mentioned that the committee continues to work on a number of issues that will be brought to the Council at a later date.

Bar Commission Report:

Mr. Lund reported on the following items:

- Emphasis is being directed on promoting the licensed lawyer directory
- A decision was made by the Bar Commission to include on the licensing form for lawyers the various non-profits that may be seeking contributions, to allow inactive lawyers to serve on committees of the Bar, and look at implementing the ABA Free Legal Answers program locally.

5. STANDING COMMITTEE ON EDUCATION UPDATE: (Justice Christine M. Durham and Mr. Tom Langhorne)

Chief Justice Durrant welcomed Justice Durham and Mr. Langhorne to the meeting.

Justice Durham recognized Mr. Langhorne for all he does on behalf of the Standing Committee on Education, specifically regarding incorporation of evidence-based practice areas where appropriate, and development of a depth of expertise and talent in the programs offered.

Mr. Langhorne highlighted the following in his update of the Standing Committee on Education:

- 133 days of classes held across the state
- 33 major statewide conferences held
- Development of a district judges long-term curriculum
- Formalized mentoring guidelines adopted by the Judicial Council
- Developing a presiding judge manual
- Conducted a two-day law clerk workshop
- Development of a Court Skills Academy (for non-supervisory employees); two sessions have been conducted
- Development of a Middle Management Leadership Academy; two sessions have been conducted
- 33 students graduated from the MSU Judicial Administration Program in August, with the second round of students slated to graduate in December 2017
- New judge orientation has been revised and enhanced, with the week-long orientation being offered twice yearly
- A two-day “train the faculty” workshop was held
- Rewrite of the probation case planning curriculum was completed, with pilot testing being done in November

Chief Justice Durrant thanked Justice Durham and Mr. Langhorne for all they do regarding judicial and staff education, and he particularly thanked Justice Durham for her years of service as a committee chair.

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

Mr. Schwermer highlighted the following in his legislative update: 1) Crime Victims Reparations and Assistance Board; 2) court surcharge with focus on the “35/90 surcharge”; 3) expedited jury trials report, 4) family law as it relates to alimony amendments, divorce education program summary, and divorce orientation program summary; 5) offenses based on victim selection; 6) a meeting is scheduled for October 20 to discuss the judicial weighted caseload process; and 7) recommendations, observations and conclusions are being prepared relative to JRI and drug courts.

7. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Jennifer Yim and Nate Alder)

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

Ms. Yim introduced Mr. Alder to the Council, and she provided Mr. Alder’s background and work experience. She mentioned that he is serving his second term as a commissioner of the Judicial Performance Evaluation Commission (JPEC).

Ms. Yim and Mr. Alder highlighted the following in their update: 1) JPEC’s new website design is up and running; 2) a few minor changes have been done to the courtroom observations; 3) engaged in courtroom observation recruitment and training; 4) launching of the justice court

mid-level observations will take place soon; 5) a new mid-level justice court evaluator has been hired by JPEC; 6) JPEC's November meeting has been cancelled; training on implicit bias will take its place; 7) for new judges who missed a mid-term evaluation cycle, some kind of evaluation information prior to the retention election in 2016 will be provided; and 8) a proposed statutory change relative to judicial discipline.

Clarification was provided on questions asked of Ms. Yim.

Chief Justice Durrant thanked Ms. Yim and Mr. Alder for their update.

8. STANDING COMMITTEE ON TECHNOLOGY UPDATE: (Justice John Pearce and Ron Bowmaster)

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

Justice Pearce highlighted the following areas being addressed by the Standing Committee on Technology: 1) remaining conversion to mandatory electronic filing, 2) software improvement, 3) improvement of video capabilities in remote courthouses, and 4) cyber security.

Chief Justice Durrant thanked them for their update.

9. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge Reuben Renstrom and Jim Peters)

Chief Justice Durrant welcomed Judge Renstrom and Jim Peters to the meeting.

Judge Renstrom highlighted the following in his update: 1) continued work on small claims, 2) new justice court administrator. 3) outreach to local government, 4) efforts of subcommittee on justice court reform, 5) the importance of judicial independence at the justice court level, and 6) technological changes.

Chief Justice Durrant thanked Judge Renstrom for his update.

10. REPORT FROM THE UNIFORM FINE AND BAIL COMMITTEE: (Judge James Brady)

Chief Justice Durrant welcomed Judge Brady to the meeting.

Judge Brady highlighted the following regarding the progress of the Uniform Fine and Bail Committee as they address the following three categories of concern:

- Study and recommend changes to the current Uniform Fine and Bail Schedule
- Study and recommend changes in the current rules and/or statutes necessary to separate a Uniform Bail Schedule from a Uniform Fine Schedule
- Study and recommend alternatives for obtaining Offense Tracking Numbers (OTNs) for defendants that are not arrested, which do not create a conflict between BCIs purposes, and the operations of the Committee, or create constitution issues for the courts.

The following areas have been addressed by the Uniform Fine and Bail Committee:

- Identify all crimes with minimum mandatory and minimum maximum fines established by the Legislature and confirm that they reflect the proper amount
- Treat similar types of crimes with similar fine recommendations
- Significantly reduce the number of different recommended fine amounts within each category of crime
- Recommend fine levels that would demonstrably result in no, or minimal deviation of the total amount of fines ordered by the courts in 2015 and 2016

Chief Justice Durrant thanked Judge Brady for his update.

11. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Mark Kouris)

Chief Justice Durrant welcomed Judge Kouris to the meeting.

Judge Kouris highlighted the following in his update to the Council: 1) judicial weighted caseload revision, 2) numbering and association of documents, 3) post-relief conviction bench book, 4) law clerk study and implementation of the recommendations resulting from the study, and 5) college degrees for team managers, case manager, and judicial assistant positions.

Discussion took place relative to the matter of college degrees for team managers, case manager, and judicial assistant positions.

Mr. Becker provided background information on the hiring practice and policies relative to this matter.

Chief Justice Durrant thanked Judge Kouris for his update.

12. COMMISSIONER NOMINEE APPROVAL: (Judge Brent West)

Judge West was welcomed to the meeting.

Ms. Christina Micken was recommended for appointment to fill the vacancy for a court commissioner in the First and Second Districts due to the retirement of Commissioner Daniel Garner. Her background and work experience was included with the Council material.

Motion: Judge Skanchy moved to approve the appointment of Ms. Christina Micken as the commissioner for the First and Second Districts. Judge Toomey seconded the motion, and it passed unanimously.

13. SENIOR JUDGE AND COURT COMMISSIONER CERTIFICATIONS: (Judge Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Ms. Sylvester reminded the Council that they deferred action on certification of the court commissioners at their September meeting to allow for the appropriate information to be prepared and available for consideration at today's meeting. Commissioner Joshua Faulkner and Commissioner Kim Luhn's terms of offices will expire on December 31, 2016, and they are up for certification. Both commissioners meet all of the performance standards.

The following senior judges terms will expire on December 31, 2016 and have requested to be certified: 1) Judge Wayne Cooper, active senior justice court judge; 2) Judge L.A. Dever, active senior judge; 3) Judge Roger Dutson, active senior judge; 4) Judge Donald Eyre, active senior judge; 5) Judge Ben Hadfield, active senior judge; 6) Judge Pamela Heffernan, active senior judge; 7) Judge James Shumate, active senior judge; 8) Judge Darold Butcher, active senior justice court judge; 9) Judge Timothy Haveron, active senior justice court judge; 10) Judge Douglas Cornaby, inactive senior judge; 11) Judge Timothy Hanson, inactive senior judge; 12) Judge Holly Barringham, inactive senior justice court judge; 13) Judge Dennis Barker, inactive senior justice court judge; 14) Judge Lee Osborn, inactive senior justice court judge; 15) Judge Darwin Poulsen, inactive senior justice court judge; and Judge Elayne Storrs, inactive senior justice court judge.

Motion: Judge Skanchy moved to enter into an executive session to discuss a matter of professional competence. Judge Toomey seconded the motion, and it passed unanimously.

Members of the Council exited an executive session and went back on the record.

Motion: Judge Higbee moved to forward the recommendations for senior judge certification to the Supreme Court, on behalf of the Council, with the exception of Judge Timothy Haveron who was recommended to apply for inactive status and active certification for him was declined. Justice Lee seconded the motion, and it passed unanimously.

Motion: Judge Skanchy moved to forward the following recommendations for court commissioner certification to the Supreme Court, on behalf of the Council: 1) Commissioner Joshua Faulkner, and 2) Commissioner Kim Luhn. The motion was seconded, and it passed unanimously.

Motion: Judge Skanchy moved to forward a matter of judicial performance to the Judicial Conduct Commission for review, and to ask Mr. Johnson to prepare a corrective action plan relative to other concerns relating to the judge in question that will be reviewed with the Management Committee for approval before implementing. Judge Toomey seconded the motion, and it passed unanimously.

14. EXECUTIVE SESSION

An executive session was held at this time.

15. ADJOURN

The meeting was adjourned.