JUDICIAL COUNCIL MEETING

Minutes
Monday, November 24, 2014
Judicial Council Room
Matheson Courthouse
Salt Lake City, 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. Ann Boyden
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:

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Ron Bowmaster
Nancy Volmer

GUESTS:
Joanne Slotnik, JPEC
Kelsie Strong, JPEC
Judge John Pearce
Judge Royal Hansen
Peyton Smith
Shane Bahr
Judge Derek Pullan
Judge Elizabeth Hruby-Mills
Judge Brent West
Commissioner Kim Luhn

1. **WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**
   Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Skanchy moved to approve the minutes from the October 27, 2014 Judicial Council meeting. Judge Dawson 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 Reinvestment Initiative. He provided comments, on behalf of the judiciary, at the press conference outlining the CCJJ recommendations on the Justice Reinvestment Initiative.

Justice Reinvestment National Summit. Chief Justice Durrant and Mr. Ray Wahl attended a Justice Reinvestment National Summit last week in San Diego.

Meeting with the Governor. Chief Justice Durrant, Mr. Becker, Mr. Wahl, and Mr. Schwermer met with the Governor on October 28. The following items were discussed: 1) the

Governor's Healthy Utah Plan, 2) the Justice Reinvestment Initiative, 3) applicant pools for judicial vacancies and the effect judicial compensation may have on the pools, and 4) the courts 2016 budget requests.

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

Mr. Becker reported on the following items:

Elected Offices and Judicial Compensation Commission. The Elected Offices and Judicial Compensation Commission took final action at their October 30 meeting with the proposed recommendation to increase district court judges' salaries from $136,500 to $160,000 over a two-year period. The projected cost for the proposed recommendation is $4 million.

Discussion took place.

2015 Legislation – Bill Sponsorship. Mr. Becker reported on the following bill sponsorships: 1) judgeship request for the Fourth District Juvenile Court, Senator Curtis Bramble; 2) judgeship request for the Fifth District Court, Senator Stephen Urquhart; 3) ADR Fee Bill, Representative Eric Hutchings; and 4) Housekeeping Bill, Senator Lyle Hillyard.

Civil Justice Reform Task Force. Mr. Becker is a member of the task force which met last week in Washington DC. The task force was created by the Conference of Chief Justices (CCJ) to look at the states engaged in civil justice reform initiatives. Research is being conducted on the states that have made changes. Mr. Becker noted that Utah is the only state that has implemented changes, statewide. Other states are currently conducting pilot programs.

Ms. Paula Hanaford from the National Center for State Courts (NCSC) has been conducting research on Utah's changes relating to discovery. Ms. Hanaford will be in Utah in January to report on her findings. Discussion took place.

Building Board. The Building Board has approved advancing the Provo Courthouse to the legislature.

Commission on Criminal and Juvenile Justice (CCJJ). Senior Judge Judith Atherton has been named as the chair of CCJJ replacing Mr. Stan Parrish.

Pre-Trial Release Study Committee. Mr. Becker noted that all participants have responded with the exception of Mr. David Brickey. An alternate county attorney will be selected by the Management Committee and requested to serve on the committee.

2015 Legislation. Representative Kraig Powell will be introducing a bill to remove the mandatory retirement age at the request of a county commission which does not want to lose the services of its current justice court judge. The Liaison Committee has declined sponsorship of the bill. Discussion took place.

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 November.

Policy and Planning Meeting:

Judge Parkin reported on the following items: 1) Rule 4-401.01 – Electronic media coverage of court proceedings, 2) records retention policy, and 3) interpreters code of conduct.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the Utah State Bar held their Fall Forum last week with 400 attendees; 2) the inaugural meeting of the Future's Commission was held last week. Commission members from the judiciary include Mr. Dan Becker, State Court Administrator, and Judge Elizabeth Hruby-Mills, Third District; and 3) the Bar's commitment to review several topics in the coming year include: office of professional conduct, the Bar's budget, new lawyer training program, and the Bar's summer convention.

5. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC) UPDATE: (Joanne Slotnik and Kelsie Strong)

Chief Justice Durrant welcomed Ms. Slotnik and Ms. Strong to the meeting.

Ms. Slotnik introduced Ms. Kelsie Strong to the Council.

Ms. Strong provided background information on her experience.

Ms. Slotnik and Ms. Strong highlighted the following in their update to the Council: 1) 2014 election from JPEC's perspective and what to expect in 2015; 2) current and future public relation efforts, 3) benefits seen from the recent public relation efforts, 4) no JPEC legislation has been proposed for the 2015 Legislative Session, 5) dates to remember relative to the 2016 retention elections, 6) dates to remember relative to the evaluations for the 2018 mid terms, 7) justice court judges up for retention in 2016 will be under the old system, and 8) justice court judges up for retention in 2018 will move to the three-tiered system.

Questions were asked of Ms. Slotnik. She provided responses to the questions asked.

Chief Justice Durrant thanked Ms. Slotnik and Ms. Strong for their update.

6. 2015 COUNCIL CALENDAR FOLLOW-UP: (Ray Wahl and John Lund)

Mr. Wahl reminded the Council of their decision, at their October meeting, to approve the 2015 Council calendar as proposed with the exception of the July 2015 meeting. This would allow for Mr. John Lund to be present to provide information, on behalf of the State Bar, relative to the following: 1) 2015 Summer Bar Conference in Sun Valley, 2) annual attendance at the Summer Bar Conference, and 3) future Summer Bar Conference locations.

Mr. Wahl mentioned that the May 18 Council meeting date would need to be changed as the District Court Judges Spring Conference is scheduled for May 18-20. He suggested holding the May Council meeting on May 26.

Mr. Lund highlighted the following on behalf of the State Bar and their annual conferences, 1) the summer conference and future summer conferences will be reviewed by the Bar Commission in the coming year, 2) the focus of the summer conference and the fall forum is different, 3) selection of future summer conference locations is governed by booking requirements, 4) consistency in location of the summer conference will be addressed by the Bar Commission, and 5) interaction between members of the State Bar and the judiciary is important.

Discussion took place.

Possible options for judicial participation at State Bar conferences were suggested.

Mr. Becker noted the increase in the judicial operations budget for judges to participate in bar functions which was approved by the Council at their April meeting.

Motion: Judge Skanchy moved to approve the May 18 Council meeting be rescheduled to May 29 and the July Council meeting be scheduled for July 13 at the new Ogden Juvenile Courthouse. Judge Boyden seconded the motion, and it passed unanimously.

7. RULES FOR FINAL ACTION: (Alison Adams-Perlac)

Chief Justice Durrant welcomed Ms. Adams-Perlac to the meeting.

The Policy and Planning Committee is recommending the approval of the following rules for final action:

Rule CJA 3-104 – Presiding judges. The rule has been amended to define final determination for purposes of a case under advisement.

Rule CJA 3-403 – Judicial branch education. The rule has been amended to require new judges to attend the first orientation program held after they have taken the oath of office. The rule provides an exception, if attendance is excused by the Management Committee based on good cause.

Rule CJA 4-403 – Signature stamp use. The rule has been renamed and amended to provide for a clerk to use a judge's or commissioner's electronic signature when the clerk otherwise has permission under the rule to use the signature stamp.

Motion: Judge Hornak moved to approve the following rules for final action as recommended by the Policy and Planning Committee: 1) Rule CJA 3-104 – Presiding judges, 2) Rule CJA 3-403 – Judicial branch education, and 3) Rule CJA 4-403 – Signature stamp use. Judge Dawson seconded the motion, and it passed unanimously.

8. SWORN STATEMENT FOR CLOSED MEETINGS: (Alison Adams-Perlac)

Ms. Adams-Perlac distributed corrected copies of the Sworn Statement under Rule 2-103(5)(B) of the Utah Code of Judicial Administration regarding Judicial Council Meeting Closure.

Motion: Judge Hornak moved to approve the Sworn Statement regarding Judicial Council meeting closure. Judge Sandberg seconded the motion, and it passed unanimously.

9. STANDING COMMITTEE ON TECHNOLOGY – STRATEGIC AND TACTICAL PLANS: (Judge John Pearce and Ron Bowmaster)

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

Judge Pearce reminded the Council that the strategic plan for the Standing Committee on Technology was last updated in 2007. Beginning in January of 2014, Mr. Bowmaster conducted interviews of various court groups to gather information on what should be included in the strategic plan.

The following themes formed the basis of the strategic plan for the Standing Committee on Technology: 1) enhancements, 2) uniformity, 3) organization, 4) centralization, and 5) accounting.

Discussion took place.

Questions were asked relative to scheduling and prioritization of the strategic plan measures. Clarification was provided.

Mr. Becker mentioned that the 2014 Tactical Plan of the Standing Committee on Technology is for information only.

Chief Justice Durrant thanked Judge Pearce, on behalf of the Standing Committee on Technology, for all their hard work in preparing their updated strategic plan.

Motion: Judge Hornak moved to adopt the Strategic Plan as recommended by the Standing Committee on Technology. Mr. Lund seconded the motion, and it passed unanimously.

10. APPROVAL FOR PROPOSED PROBLEM-SOLVING COURT PROJECT – THIRD AND FOURTH DISTRICT COURT'S VETERANS COURTS: (Judge Royal Hansen, and Shane Bahr)

Chief Justice Durrant welcomed Judge Hansen to the meeting.

Judge Hansen provided background information on the proposed Veterans Court for the Third District. He highlighted the following regarding the proposed Veterans Court for the Third District: 1) it will be managed similar to drug or mental health court, 2) proposed start date of January 8, 2015, 3) court size of 25-50 participants, 4) will be held on Thursday mornings, 5) high risk, high needs veteran's court, 6) selection process and eligibility requirements, 7) approved by the Third District specialty court subcommittee, 8) veteran's court team and interdisciplinary team established, and 9) development of a client agreement, client handbook, policies and procedures, and mentoring handling in progress.

Discussion took place.

Questions and clarification were asked of Judge Hansen. He provided responses to questions asked of him.

If approved, it was suggested that an evaluation and report be completed after 2.5 years from the start date of the court.

Motion: Judge Skanchy moved to approve the proposed Veterans Court for the Third District noting that a review of the court's feasibility be completed within 2.5 years of starting. Judge Mortensen seconded the motion, and it passed unanimously.

Chief Justice Durrant welcomed Mr. Bahr to the meeting.

Mr. Bahr provided background information on the proposed Veterans Court for the Fourth District. He mentioned that the Fourth District has a planning committee, made up of veterans, with the exception of Mr. Bahr, who have met over the last year in preparation of the Veterans Court for the Fourth District.

He highlighted the following regarding the proposed Veterans Court for the Fourth District: 1) the target population is anticipated to include 15 participants at any given time, 2) a low risk, high needs court, 3) proposed start date of January 12, 2015, 4) will meet every two weeks, 5) target population of veterans charged with felonies and Class A misdemeanors, 6) screening process has begun, 7) draft policies and procedures in place, and 8) development of a participant manual in progress.

Discussion took place.

Questions and clarification were asked of Mr. Bahr. He provided responses to questions asked of him.

Motion: Judge Higbee moved to approve the proposed Veterans Court for the Fourth District noting that a review of the court's feasibility be completed within 2.5 years of starting. Justice Parrish seconded the motion, and it passed unanimously.

11. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Derek Pullan and Debra Moore)

Chief Justice Durrant welcomed Judge Pullan to the meeting.

Judge Pullan highlighted the following in his update to the Council: 1) Seventy one district court judges in eight judicial districts, 2) the current Board of District Court Judges, and 3) current goals of the Board of District Court Judges.

He highlighted the current board goals to include: 1) involvement with the Pre-Trial Release Study Committee efforts, 2) increase participation in the Constitution Day outreach efforts, and 3) standardization of mental health court policies and procedures.

Judge Pullan noted that Ms. Jennifer Valencia, CCJJ, distributed a copy of a Pre-Sentence Investigation Report for review by the Board of District Court Judges with consideration on how the report can be more useful with evidence-based sentencing. He mentioned that the majority of the January Board meeting will be dedicated to discussing this matter further.

Judge Pullan thanked Ms. Moore for all she does on behalf of the Board of District Court Judges.

Chief Justice Durrant thanked Judge Pullan for his update.

12. JUDICIAL OUTREACH COMMITTEE UPDATE: (Judge Elizabeth Hruby-Mills and Nancy Volmer)

Chief Justice Durrant welcomed Judge Hruby-Mills to the meeting.

Judge Hruby-Mills highlighted the following in her update to the Council: 1) committee membership, 2) subcommittees, 3) 2013-2014 committee review, and 4) 2014-2015 strategic communication plan.

Ms. Volmer was asked as to what type of information is available to judges in outreach efforts. She provided a response.

She noted that plans are being developed in support of the following 2015 events: 1) Law Day, 2) Constitution Day, and 3) Magna Carta focus.

Chief Justice Durrant thanked Judge Hruby-Mills for her update.

13. COMMISSIONER WORKGROUP REPORT: (Judge Brent West and Debra Moore)

Chief Justice Durrant welcomed Judge West to the meeting.

Judge West reminded the Council that the Commissioner Workgroup was appointed by the Council, in April 2014, to study the judiciary's use of court commissioners to handle domestic relations cases. The Council directed the workgroup to complete its work and report their findings at the November 2014 Council meeting.

He highlighted the following in his report, on behalf of the Commissioner Workgroup: 1) the workgroup membership was noted, 2) the workgroup met monthly from June to November, 3) the workgroup did not identify any issues to address regarding the juvenile court commissioners, and 4) the findings and recommendations.

The findings and recommendations are as follows: 1) transparency and accountability – the workgroup recommended that a period of 10 calendar days be provided for the public to submit comments before the original hiring or reappointment of a commissioner; 2) full evidentiary hearings before district court judges – the workgroup believes that the change in practice following the adoption of URCP 108 is sufficient to ensure the opportunity of a full evidentiary hearing by the judge, therefore, the workgroup made no recommendation regarding this finding; 3) self-represented parties – the district courts should examine commissioners' calendars for opportunities to better accommodate pro bono and limited appearances by attorneys on behalf of self-represented parties; 4) guardians ad litem – with the recent adoption of 78A-2-703, the workgroup made no recommendations concerning guardians ad litem; 5) remedies for contempt – the practice for contempt should be consistent in all districts; 6) modification of permanent orders, the workgroup made no recommendations in this matter; 7) automatic temporary orders, the workgroup made no recommendations in this matter; 8) risk of commissioner burnout – presiding judges should be sensitive to the difficult nature of commissioners' duties when supervising them on a daily basis and in conducting performance

evaluations and retention reviews; and 9) custody evaluations, the workgroup made no recommendations in this matter.

Discussion took place.

Chief Justice Durrant expressed his appreciation to the Commissioner Workgroup for their hard work.

Motion: Judge Hornak moved to accept the Commissioner Workgroup report and recommendations and send it to Policy and Planning for drafting of rules required for implementation of the recommendations. The motion was seconded, and it passed unanimously.

Mr. Becker suggested that a review of the Judicial Council's process for reappointing commissioners be discussed at a later date.

14. EXECUTIVE SESSION

An executive session was not needed at this time.

15. ADJOURN

The meeting was adjourned.