JUDICIAL COUNCIL MEETING

Minutes
Monday, May 23, 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
Rob Rice for John Lund, esq.

EXCUSED:
John Lund, esq.

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Dawn Marie Rubio
Rick Schwermer
Tim Shea
Nancy Sylvester
Stacey Snyder
Alyn Lunceford
Keisa Williams

GUESTS:
Hon. James Brady
Hon. Marsha Thomas
Hon. John Morris
David Walsh
Cuong Nuygen

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. He mentioned that Mr. Rob Rice is sitting in for Mr. John Lund.

Motion: Judge Toomey moved to approve the minutes from the April 25, 2016 Judicial Council meeting. Judge Farr seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported that he, Mr. Becker, Judge Todd Shaughnessy, Ms. Keisa Williams, Mr. Patrick Corum, and Mr. Robert Hilder attended a Pretrial Justice Reform Summit in Santa Fe, New Mexico May 11-13.

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

Mr. Becker reported on the following items:

Associate General Counsel. Mr. Becker introduced Ms. Keisa Williams, associate general counsel, filling the vacancy left by Ms. Alison Adams-Perlac. He provided background information of her work experience.

Recruitments. Recruitment for the following vacancies is in progress: 1) Appellate Court Administrator, 2) First District Trial Court Executive, and 3) Justice Court Administrator.

Pretrial Justice Reform Summit. Mr. Becker summarized what other states have undertaken regarding pretrial justice reform to include: 1) most states are addressing pretrial justice reform with amendments to rules rather than amendments to statutes, and 2) most states have not included the bail industry in discussion regarding pretrial release reform.

Provo Courthouse Groundbreaking Ceremony. The groundbreaking ceremony for the new Provo Courthouse is scheduled for tomorrow, May 24 at 11 a.m. Chief Justice Durrant is scheduled to provide comments at the ceremony. All are invited to attend.

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 May.

Policy and Planning Meeting:

Judge Parkin reported that there are several rules on the agenda for final action, including the proposed senior judge rule.

Bar Commission Report:

Mr. Rob Rice reported on the following items: 1) Judge Dane Nolan has been selected as judge of the year; 2) Ms. Annette Jarvis and Mr. Bruce Mack have been selected as lawyers of the year; 3) the Bar's Summer Convention will be held on July 6-9 at the Loews Hotel in Coronado, CA; 4) the ABA will be conducting an internal review of the Utah State Bar's Office of Professional Conduct in June; and 5) a soft launch of the attorney directory at licensedlawyers.org took place last week, with testing at the operational level as well.

5. RULES FOR FINAL ACTION: (Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Ms. Sylvester mentioned that the public comment period for Rules CJA 3-0403, CJA 4-202.02, CJA 4-0404, and CJA 4-0903. Rule CJA 4-0903 was the only rule that received any comments, receiving only once comment.

Rule CJA 03-0403 – Judicial branch education. This rule was amended to give the Management Committee authority to excuse an active senior judge applying for reappointment from completing the annual 30 hour education requirement based on good cause. To be eligible, the senior judge must have completed at least 60 total education hours in the two years preceding the effective date of the reappointment.

Rule CJA 04-0402.02 – Records classification. This rule was amended to classify jail booking sheets and nonresident violator notices of non-compliance as private. The amendment deletes language addressing appellate brief addenda as they are governed by other rules.

Rule CJA 04-0404 – Jury selection and service. This rule was amended to incorporate recent amendments to the statute regarding a juror's term of service.

Rule CJA 04-0903 – Uniform custody evaluations. This rule was amended to include the following: 1) clarify the list of professionals who may perform custody evaluations, 2) eliminate

the provision allowing two custody evaluators to be appointed if one party resides out of state, and 3) adds additional factors for a custody evaluator to consider when conducting an evaluation.

Discussion took place.

Motion: Judge Higbee moved to approve the following rules for final action as recommended by the Policy and Planning Committee: 1) Rule CJA 03-0403, 2) Rule CJA 04-0402.02, 3) Rule CJA 04-0404, and 4) Rule CJA 04-0903. Judge Toomey seconded the motion, and it passed unanimously.

6. PROPOSED SENIOR JUDGE RULE: (Nancy Sylvester)

Ms. Sylvester reviewed discussion points made at the April 25 Council meeting regarding the proposed changes to Rule 3-108 – Judicial assistance. Policy and Planning was given specific direction on what elements should be considered when preparing a revised rule change for consideration by the Council. At their May meeting, the Policy and Planning Committee drafted language to incorporate the elements discussed at the April 25 Council meeting. Mr. Shea suggested that Rule 3-104 – Presiding Judges would be a more appropriate rule to address the presiding judge's authority in approving senior judge coverage.

The Policy and Planning Committee amended Rule 3-104 – Presiding judges to include the following:

- The presiding judge is authorized to use senior judge coverage for up to 14 judicial days if a judicial position is vacant or if a judge is absent due to illness, accident, or disability.

- Before assigning a senior judge, the presiding judge will consider the priorities for requesting judicial assistance established in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule 11-201(6).

- The presiding judge will notify the State Court Administrator when a senior judge assignment has been made.

- If more than 14 judicial days of coverage will be required, the presiding judge will promptly present to the State Court Administrator a plan for meeting the needs of the court for the anticipated duration of the vacancy or absence and a budget to implement that plan. The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should estimate the funds needed for travel by judges and for time and travel by senior judges.

- If any part of the proposed plan is contested by the State Court Administrator, the plan will be reviewed by the Management Committee of the Judicial Council for final determination.

Discussion took place.

Motion: Judge Parkin moved to approve the changes, for public comment, to Rule 3-104 – Presiding judges as proposed. Additional rules affected by the proposed changes will be addressed separately. Judge Higbee seconded the motion. The motion passed with Judge Skanchy voting no.

7. UNIFORM FINE AND BAIL COMMITTEE UPDATE: (Judge James Brady)

Chief Justice Durrant welcomed Judge Brady to the meeting.

Judge Brady provided background information on the makeup of the committee and the committee's past and current charge.

It was suggested that it may be timely to revisit the charge and operation of the committee. Judge Brady requested approval from the Council to authorize the Uniform Fine and Bail Committee to complete the following:

- Study and recommend changes to the current Uniform Fine and Bail Schedule to:
  - Identify all crimes with maximum mandatory fines established by the legislature and confirm that they reflect the proper amount.
  - Treat similar types of crimes with similar fine recommendations (e.g., person crimes, property crimes, crimes against public order, crimes against moral order, regulatory crimes, traffic offenses, etc).
  - 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.
- Study and recommend changes in the current rules and or statutes necessary to separate a Uniform Bail Schedule from a Uniform Fine Schedule. Prepare to issue a Uniform Fine Schedule without linkage to a Uniform Bail Schedule.
- Study and recommend alternatives for obtaining Offense Tracking Numbers (OTNs) for defendants that are not arrested, which do not create a conflict between BCI's purposes, the operations of the Committee, or create constitutional issues for the courts.

Judge Brady reported that the Committee surveyed district and justice court judges on how they perceived the Uniform Fine and Bail Committee. The results included: 1) a 50% response rate was shown, 2) 60% of the respondents were from the justice courts, 3) 40% of the respondents were from the district courts, 4) 75% of the respondents recommended changes to the schedule be made, 5) 50% of the respondents recommended reduction in the total number of violation number fines in each category to no more than three levels, 6) 20% of the respondents recommended single fine amounts be created, and 7) 70% of the respondents recommended the number of fine levels be restricted.

Motion: Judge Skanchy moved to authorize the Uniform Fine and Bail Committee to complete a study and prepare and present a report of their findings, at a later date, to the Council. Judge Toomey seconded the motion, and it passed unanimously.

8. RESOURCES FOR SELF-REPRESENTED PARTIES COMMITTEE UPDATE: (Judge Marsha Thomas and Nancy Sylvester)

Chief Justice Durrant welcomed Judge Thomas to the meeting.

Judge Thomas reminded members of the Council of the strategic plan update provided by her at the April 2015 Council meeting of the proposed priorities. She provided an update on the priorities listed in the September 2015 strategic plan to include: 1) continued support for the Self-Help Center; 2) develop and implement a court navigator program; 3) continue to develop forms; 4) analyze and improve the third year practice rule; 5) encourage improvement of lawyer directories, webpage triage efforts and referral sources; 6) support increasing availability of malpractice insurance for volunteer attorneys in all capacities; 7) support the development and

implementation of virtual services in rural areas; and 8) suggest opportunities for educating those who interact with self-represented parties.

Mr. Becker mentioned that concern was expressed at the Appellate Court Conference relative to the limited use of remote appearances. Discussion took place.

Judge Thomas noted that an Access to Justice listing is being compiled as a resource to self-represented parties.

Ms. Sylvester provided an update on behalf the Rule 16 Subcommittee. She highlighted the following regarding the subcommittee and the subcommittee's focus: 1) noted the members of the subcommittee; 2) how to implement early case conferences and domestic cases; 3) how to bring in the litigant early on while the attorneys are involved, with a plan, to get their cases through the system; 4) through a pilot soft-launch, commissioners are working on how to address these matters; and 5) the subcommittee will review their findings in August.

Judge Thomas was asked if there were any inquiries received from the juvenile court processes relative to delinquency and child welfare matters. She responded by letting the Council know that Judge Evershed is a member of the committee and has provided ideas in responding to inquiries related to juvenile court inquiries. She also noted that the Self-Help Center would be able to provide detailed statistics of the number and type of inquiries received relative to juvenile court that could be provided to Council members.

Once the Access to Justice document has been finalized, copies can be made available to judges.

The question was asked regarding the amount in the budget for the Self-Help Center. Mr. Becker noted that it is around $350,000.

Judge Thomas and Ms. Sylvester were thanked for their update.

9. JUVENILE INDIGENT DEFENSE STUDY: (Rick Schwermer)

Mr. Schwermer provided background information relative to the study of indigent defense. The following study committees addressed indigent defense at the appellate and trial court level: 1) Study Committee on the Representation of Indigent Appellate Representation of Indigent Criminal Defendants, and 2) Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts. During the 2016 Legislative Session, creation of an Indigent Defense Commission was approved.

The Management Committee, at their May meeting, was asked for input relative to what steps should be taken to study the matter of indigent defense in juvenile court. The Management Committee requested the AOC to prepare a proposed charge, timetable and membership of a Study Committee on the Representation of Indigent Criminal Defendants in Juvenile Court for review by the Judicial Council at their May meeting.

Mr. Schwermer reviewed details of the proposed committee: 1) committee charge, 2) committee timetable, and 3) committee membership.

The proposed committee would be charged with conducting a thorough assessment of the provision of indigent representation services for juveniles in both delinquency and dependency referrals before the juvenile court, with more specific details provided.

The proposed timetable of the committee would allow for an initial report to be made to the Judicial Council in November of 2016. This would allow for the Judicial Council to determine whether legislation should be prepared for the 2017 legislative session or be deferred until the following year to allow additional committee work to be finalized.

Mr. Schwermer reviewed the proposed membership of the committee.

Discussion took place.

Motion: Judge Higbee moved to approve creation of the Study Committee on the Representation of Indigent Criminal Defendants in Juvenile Court, as proposed, and delegate to the Management Committee the task of naming specific members further, to allow the committee to bring in ex officio members as necessary. Judge Toomey seconded the motion, and it passed unanimously.

10. GAL OVERSIGHT COMMITTEE UPDATE: (Stacey Snyder)

Chief Justice Durrant welcomed Ms. Snyder to the meeting.

Ms. Snyder highlighted the following in her update to the Council: 1) she held her first meeting with the committee in December of 2016, 2) the Council approved the appointment of Mr. Jason Richards, in April, to fill a vacancy on the committee; 3) the next committee meeting is scheduled for September where committee responsibilities and policy updates will be reviewed; 3) legislative approval – salary parity; 4) approval, by the committee, to use the ongoing funding to address staff salary parity, as well as the attorney salaries; and 5) average caseload per GAL attorney.

Chief Justice Durrant thanked Ms. Snyder for her update.

11. JUSTICE COURT JUDGES CERTIFICATIONS: (Rick Schwermer)

Mr. Schwermer recommended the certification of the following two new justice court judges: 1) Judge Gary Owens, Garfield County Justice Court; and 2) Judge John Ynchausti, Davis County Justice Court. Both judges recently completed justice court judge orientation and passed the orientation exam.

Motion: Judge Bagley moved to certify Judge Gary Owens and Judge John Ynchausti as justice court judges. Judge DeCaria seconded the motion, and it passed unanimously.

12. COURT FACILITIES PLANNING COMMITTEE UPDATE: (Alyn Lunceford)

Chief Justice Durrant welcomed Mr. Lunceford to the meeting.

Mr. Lunceford mentioned that Judge Samuel McVey was recently appointed as the committee chair and was unable to attend the meeting.

Mr. Lunceford highlighted the following in his update to the Council relative to the Court Facilities Planning Committee: 1) current and ongoing studies are being conducted in Sanpete, Wasatch, Iron and Davis Counties; 2) the Sanpete capital development project is tentatively slated to be presented to the legislature for full funding during the 2017 Legislative Session; 3) study of Wasatch County will be considered in the near future; 4) consideration for additional courtroom and program space in Cedar City; 5) conduct a feasibility study to evaluate the needs of all three court facilities in Davis County; 6) completion of the Ogden Juvenile Courthouse in 2015; 7) Duchesne County Courthouse – Phase I complete, Phase II to be completed late summer of 2016; 8) remodel of the Kane County juvenile probation office to be completed by August 2016; 9) Provo Courthouse groundbreaking to be held on May 24; 11) Carbon County – Price Courthouse construction – in the design phase; 12) review of the 2016 Facilities Master plan; 13) reviewed the list of court-owned and leased court facilities; and 14) funding in the amount of $4 million to address capital improvement projects in FY 2017.

Motion: Judge Skanchy moved to approve the 2016 Facilities Master Plan as prepared. Judge Toomey seconded the motion, and it passed unanimously.

13. COMMISSIONER NOMINEE APPROVAL: (Judge John Morris)

Chief Justice welcomed Judge Morris to the meeting.

The Second District has a vacancy for a court commissioner with the upcoming retirement of Commissioner David Dillon, effective June 30, 2016.

Judge Morris requested approval for the appointment of Mr. Thomas R. Morgan to fill the vacancy for a court commissioner in the Second District. His background and work experience was provided.

Motion: Judge Toomey moved to approve the appointment of Mr. Thomas R. Morgan to fill the vacancy for a court commissioner in the Second District due to the retirement of Commissioner David Dillon, effective June 30, 2016. Judge Mortensen seconded the motion, and it passed unanimously.

Judge Morris reported that Commissioner Dan Gardner has announced his upcoming retirement, effective October 31, 2016.

14. EXECUTIVE SESSION

An executive session was not held at this time.

15. ADJOURN

The meeting was adjourned.