

JUDICIAL COUNCIL MEETING

Minutes

January 27, 2020

Matheson Courthouse

Council Room

450 S. State St.

Salt Lake City, Utah 84111

9:00 a.m. – 12:00 p.m.

Judge Kate Appleby, Presiding

Members:

Hon. Kate Appleby, Vice Chair
Hon. Brian Cannell
Hon. Augustus Chin
Justice Deno Himonas
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Brook Sessions
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Brent Johnson
Jim Peters
Neira Siaperas
Nancy Sylvester
Shonna Thomas
Keisa Williams
Jeni Wood

Excused:

Chief Justice Matthew B. Durrant, Chair
Hon. Ryan Evershed
Hon. Paul Farr
Larissa Lee

Guests:

Jim Bauer, JTCE Third District Court
Commissioner Christine Durham, JPEC
Hon. Keith Kelly, Third District Court
Dr. Jennifer Yim, JPEC

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

Chief Justice Matthew B. Durrant, Judge Ryan Evershed, and Judge Paul Farr were unable to attend the meeting. Judge Kate Appleby welcomed everyone to the meeting.

Motion: Judge Derek Pullan moved to approve the edited Judicial Council minutes from the November 25, 2019 and approve the December 16, 2019 Council minutes, as amended to state: 1) Section 7. Judge Cannell abstained only in relation to the Adult Mental Health Court Brigham City, Box Elder County, and 2) Section 11. “Therefore, the committee concluded that justice court reform is predominantly within the exclusive authority of the Judicial Council. The task force will therefore be a Judicial Council Task Force. The Supreme Court will designate one member of the task force because part of the review will address de novo appeals, an area over which the Supreme Court has exclusive authority.” Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

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

Chief Justice Durrant was unable to attend the meeting.

3. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)

Judge Mary T. Noonan noted the Judicial Council's Annual Report to the Legislature and to the Chief Justice will be distributed electronically, so there are fewer printed copies this year.

There has been positive press coverage with the judiciary recently.

- Judge Elizabeth Knight and her drug court team were recognized last fall.
- Judge Brown received favorable media on being the first female presiding judge.

The Mental Health Initiative Conference has been rescheduled from April to August 18-19 to allow for additional preparation time.

Legislative Audits:

- Fines & Fees Audit held their opening conference and will include state and justice courts. The last audit was completed in 2007.
- Audit of the Office of State Debt Collection will include information provided by the courts. Cathy Dupont will lead the courts assistance to the auditors.

Cathy Dupont is meeting with John Fellows, Legislative General Counsel, at the request of the Speaker to discuss the court's involvement in the study of pre-trial release and detention issues.

Shane Bahr noted the Board of District Court Judges sent proposed revisions of Rule 64 to the Rules of Civil Procedure Committee for consideration. The Board requested Brent Johnson prepare an opinion regarding the propriety of cash only bails in debt collection context and the practice of issuing bench warrants on debt collection cases without first holding an order to show cause hearing.

It is anticipated that a motion to repeal the tax reform will be filed. This would affect the Governor's budget recommendations. The judiciary will present their budget requests at the EOCJ appropriations meeting next week. Third District Court Judge Jim Gardner will provide testimony at the appropriations meeting concerning the need to replace the aging audio equipment in West Jordan.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Ad Hoc Budget & Finance Committee Report:

The Budget & Finance Committee met this month.

Issues addressed:

- Turnover savings showed an increase in available funds from last year.
- Strategies were discussed on how to better document spending in the districts.
- TCEs are researching how many devices are in their district and identifying the need for them.

- Creation of a workgroup to review the Judicial Operations Budget.
- Use of Xchange funds.

Ms. Dupont will create a Judicial Operations Budget workgroup, consisting of AOC personnel, TCEs and judges from various court levels, to gather data and focus on alternative options for the Judicial Operations Budget.

Liaison Committee Report:

Judge Kara Pettit said the Liaison Committee opposed SJR005 Joint Resolution to Amend the Rules of Civil Procedure on Disqualification of a Judge, because the bill interferes with the administration of justice and allows judge shopping. Judge Lawrence attended the Liaison Committee meeting and offered some historical perspective that may offer insight into the motivation for this bill. Judge Lawrence stated that the District Court bench is concerned with the bill, but the Board has not had a chance to formally address it in a meeting. Rob Rice will review this with the Bar.

Policy and Planning Committee Report:

The committee did not meet in January. Judge Pullan noted the committee has been working on:

- Courtroom attire rule. Research showed each state varies with their requirement for attire.
- They are focusing on rules that were discussed at the Council retreat. Their first meeting of the year is next week.

Bar Commission Report:

Rob Rice noted the Supreme Court approved an extended public comment period (90 days) for the regulatory reform rules due to the high level of interest. The rules have not been published as of this date. The Bar created a cannabis section.

5. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and Commissioner Christine Durham)

Judge Appleby welcomed Dr. Jennifer Yim and Commissioner Christine Durham. Commissioner Durham has been a member of JPEC since July, 2018 and has assisted with outreach efforts at the Bar Convention as well as New Judge Orientation. Commissioner Durham said JPEC provides a robust training for their members. JPEC has participated in educating judges on the evaluation process. Everything has been corrected from the survey software program glitch in the fall that affected sixty-eight attorneys. JPEC reviewed all survey results to ensure they were completed correctly. Dr. Yim distributed JPEC's first Annual Report.

Judge Pullan appreciated the efforts of JPEC with providing meaningful information to the public which has increased public confidence in the judiciary. In an effort to retrieve more responses, Mr. Rice recommended including a message to attorneys that the survey is efficient and brief. Attorneys will receive CLE credit for completing the survey and watching a brief video.

JPEC, through statute, is required to report any concerns about a judge to the judge, presiding judge, and the Council. JPEC believes the mentoring program should be increased for some judges who are struggling. The Education Department can help with judge training.

Judge Appleby thanked Dr. Yim and Commissioner Durham.

6. WINGS COMMITTEE REPORT: (Judge Keith Kelly and Shonna Thomas)

Judge Appleby welcomed Judge Keith Kelly and Shonna Thomas. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) is a problem-solving body that relies on court-community partnerships to oversee guardianship practice in the Courts, improve the handling of guardianship cases, engage in outreach/education, and enhance the quality of care and quality of life of vulnerable adults. The WINGS Committee meets about every two months with a membership that has increased 54% since January 2019. WINGS is effective through participation of key stakeholders who understand and are in a position to improve the Courts' guardianship processes.

Accomplishments:

- Native American Collaboration, January 2019. Identified and implemented goals for working with the tribal population, including: (a) improving mutual understanding between state and tribal adult protection systems to resolve issues; (b) establishing a referral procedure; and (c) improving education about state resources available to assist tribes in protecting vulnerable adults.
- Participated in the Strategies and Training to Advance Greater Elder Safety Conference, March 2019.
- Guardianship training at the Elders Justice Conference, May 2019.
- Held a CLE to recruit volunteers for the Guardianship Signature Program (GSP), June 2019.
- Facilitated an Interagency Record Sharing for the benefit of vulnerable adults.

Current & Upcoming Projects:

- Clerical Education. The Clerical Education Subcommittee is working to develop a revised draft of the 2013 clerical guardianship manual.
- GSP Monitoring. WINGS is engaged in monitoring to ensure improvements in the GSP, and expanding the network, especially in rural areas.
- Annual Reports and Court Visitor Review Process. WINGS is working on concerns with the current processes for reviewing guardianship annual reports and the reports submitted by Court Visitors.
- Financial Exploitation Concerns. Adult Protective Services and the Court Visitor Program are working together to coordinate financial exploitation training to offer both an in-person and recorded version. The Commission on Aging is developing additional training opportunities for attorneys and the public related to financial exploitation.
- Guardianship Test. A subcommittee is addressing revisions of the guardianship test and test procedures, developing training, and resource materials to provide to new guardians.

The program may request Policy & Planning create rules directly related to the Court Visitor program. Judge Appleby thanked Judge Kelly and Ms. Thomas for their continued dedication to this program.

7. JUSTICE COURT REFORM TASK FORCE: (Judge Paul Farr and Jim Peters)

Judge Appleby welcomed Jim Peters. The newly formed task force will meet monthly or more if needed to evaluate all aspects of the current justice court system, including structure, organization, procedures and practices including appeals. The task force will then present recommendations for improvement and reform to the Council in approximately 12 to 18 months. Judge Shaughnessy felt the task force should understand that they directly report to the Council. The task force will determine if any additional committee members are needed at their initial meeting.

Judge Appleby thanked Mr. Peters.

Motion: Judge Augustus Chin moved to approve the task force membership as follows: Judge Paul Farr, Chair, Paul Burke, Supreme Court representative, Judge Roger Griffin, District Court representative, Anna Anderson, prosecutor, Joanna Landau, defense counsel, representatives to be named from the Court of Appeals, two justice courts, the Governor's office, the Senate and House, the League of Cities and Towns, and the Utah Association of Counties. Staff shall be Jim Peters, with assistance from Cathy Dupont and Michael Drechsel. In addition, the Chair and staff should come back to the Council for approval of other members and any needed changes to the purpose of the task force. Judge Pullan seconded the motion, and it passed unanimously.

8. JUSTICE COURT JUDGE CERTIFICATIONS: (Jim Peters)

Judge Appleby welcomed Jim Peters. Mr. Peters sought certification of four new justice court judges and noted all applicants have completed the new judge course, passed the required justice court test, and completed BCI check, as required.

- Ann Boyle, Saratoga Springs Justice Court
- Paul Olds, Riverdale Justice Court
- Ryan Richards, South Salt Lake Justice Court
- Danalee Welch-O'Donnal, Grand County Justice Court

Judge Appleby thanked Mr. Peters.

Motion: Judge Brian Cannell moved to certify the following as justice court judges: Ann Boyle, Saratoga Springs Justice Court, Paul Olds, Riverdale Justice Court, Ryan Richards, South Salt Lake Justice Court, and Danalee Welch-O'Donnal, Grand County Justice Court, as presented. Judge Pettit seconded the motion, and it passed unanimously.

9. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)

Judge Appleby welcomed Nancy Sylvester. Judge Thomas Willmore (retiring Feb. 16, 2020) and Judge Gordon Low (retired) applied for active senior judge status. Judge Evan Hall applied for inactive justice court senior judge status. All applicants are complying.

Judge Cannell disclosed he has a working relationship with Judge Low, but he felt he could be fair and impartial with his vote.

Judge Appleby thanked Ms. Sylvester.

Motion: Judge Sessions moved to approve Judge Thomas Willmore (effective upon retirement – Feb. 16, 2020) and Judge Gordon Low (retired) as active senior judges and Judge Evan Hall as an inactive justice court senior judge. The Council would like to understand the need for and costs associated with active senior judges for each bench, and would like to evaluate the need for changes to senior judge rules before the Council approves additional applications for active senior judge status. Judges may continue to apply for active senior judge status, but the Council will suspend action on applications until the Council has fully identified the issues and made changes if necessary. Judges should be notified of the study of the senior judges and the suspension of approving applications. Judge Shaughnessy seconded the motion, and it passed with Judge Pullan and Rob Rice voted nay.

10. LEGISLATIVE UPDATES: (Michael Drechsel)

Judge Appleby welcomed Michael Drechsel. Today is the first day of the Legislative Session. There are approximately 250 numbered bills, slightly higher than in the past. The courts have reviewed 86 bills thus far.

Bills with position of support from the Liaison Committee:

HB0100 – Veteran’s Treatment Court Act. Liaison has a position of support as the courts programs largely comply with the bill.

HB0081 – Judicial Retention for Justice Court Judges. This bill proposes to eliminate first and second classes, allowing for statewide assessments of the need for judges.

SB0066 – Court Resources Reallocation Amendments. Senator Weiler, sponsor, agreed that this bill should move quickly through the legislature in case a juvenile court judge retires in Third District before the normal course of time that a bill takes effect.

The Liaison Committee took no position on SB46. Domestic Violence Amendments. This bill proposes changing a charge of domestic violence in the presence of a child from a class B misdemeanor to a class A misdemeanor, which would essentially move all cases with this charge from the justice courts to the district courts.

Mr. Drechsel thanked Jim Bauer, Third District Juvenile TCE and Meredith Mannebach who are serving as legislative support staff, and noted Judge Noonan and Ms. Dupont have been pivotal with the budget requests this session. The EOCJ appropriations subcommittee will hold 7 meetings every other day for next two weeks to address budget requests. Judge Noonan and Judge Gardner will present the courts budget requests to the appropriations subcommittee on February 4. Mr. Drechsel noted if the tax reform is repealed this may change the appropriations process causing budget requests to be subjected to additional scrutiny. Senator Todd Weiler indicated that during the December Legislative meeting an undisclosed list of \$330 million in budget cuts may be needed if the tax reform is not passed. Judge Noonan noted the Council should ensure that any budget requests include cost efficiencies.

Judge Appleby thanked Mr. Drechsel.

11. CJA RULE 4-410 COURTHOUSE CLOSURE FOR FINAL ACTION: (Keisa Williams)

Judge Appleby welcomed Keisa Williams. Rule 4-410 completed its 45-day public comment period in the fall 2019 with no comments received. The purpose of the rule is to establish protocols for closing or delaying the opening of a courthouse. The Trial Court Executives, Presiding Judges, and Board of Justice Court Judges reviewed this rule. Policy & Planning took their comments into consideration. Policy and Planning recommends that the Council approve the amendments to CJA 4-410 on an expedited basis with a January 27, 2020 effective date.

Judge Appleby thanked Ms. Williams.

Motion: Justice Himonas moved to approve CJA Rule 4-410 with an effective date of January 27, 2020, as presented. Judge Chin seconded the motion, and it passed unanimously.

12. OLD BUSINESS / NEW BUSINESS

Judge Pettit noted Chief Justice Durrant sought support for the Mental Health Initiative from the executive and legislative branches. The task force composition will include 25 stakeholders from all three branches of government. The August conference will guide the initiative and will include an invitation to teams from each district.

Judge Pettit requested support from the Council to participate in this year's National Center for State Courts (NCSC) Mental Health Conference. The NCSC will invite eight states to participate in learning about competency to stand trial and restoration discussions. Applications are being accepted by the NCSC. Judge Pettit proposed sending Judge Howell, Utah County, or herself with the Council's approval. Judge Appleby granted the support of the Council.

Judge Pullan is concerned that the Council history project is moving too slow and may result in lost institutional knowledge. Judge Noonan requested a project plan from Geoff Fattah which will include a timeline, deliverable, bench mark goals, actions, and costs within two weeks. Ms. Dupont asked the Council to consider adding Roger Tew, who served as staff to the Constitutional Revision Commission when they created Article VIII, to the list of interviewees for the Council history.

The NCSC chose Utah as case study for ODR. Justice Himonas anticipates seeking approval from the Council for an ODR grant that would allow for Utah to share the code for ODR with other states through licensing agreements, and include training. Judge Brook Sessions said feedback he has received of the ODR program has been positive. SJI may also provide grant funds to the program. Phase two will include links to the Bar for legal counsel assistance and training videos. Judge Pullan recognized that licensing of code to other states is new territory for the Utah Courts and was concerned that IT would be a maintenance provider for other states. Justice Himonas said this is open source code, the other states would not be purchasing the program, and the courts in other states would be allowed to use the Utah technology, but they would be expected to collaborate and add value to the code. Heidi

Anderson noted that before the Utah IT Department would provide aid to other state courts, they would review all aspects, including any personnel costs and capacity. Utah will retain control over security issues.

Judge Noonan noted Brent Johnson is conducting an annual review of responsibilities, such as proper use of XChange funds, evidence rules, restricted funds usage, business practices, and other rules.

Ms. Dupont updated the Council on the Board of Senior Judges efforts to review all senior judge rules to ensure the rules are current and are serving the needs of the courts. A senior judge working group was formed with Senior Judge Scott Hadley, Chair of the Board of Senior Judges, Senior Judge Michael Allphin, and Senior Judge Michael Lyon. Senior judges will hold a special meeting on March 20, following the Legislative Update to finalize rule amendment recommendations. Judge Hadley attended a TCE meeting in an effort to provide better communication between senior judges and TCEs. Judge Pullan wanted the Council to review costs associated with senior judges and perhaps consider capping the number of senior judges per district. Judge May questioned why sitting judges must retire at 75 but senior judges do not have that same age limit.

The HR Department did not email judges about tracking their sick days this year as they have done in the past. This information is needed for calculating retirement benefits. Judge Noonan and Ms. Dupont will research this issue.

13. EXECUTIVE SESSION

Motion: Justice Himonas moved to go into an executive session to discuss a personnel matter and an audit. Judge Shaughnessy seconded the motion, and it passed unanimously.

14. CONSENT CALENDAR ITEMS

a) Recertification of Municipal Justice Courts. First District: Box Elder County – Garland, Mantua, Tremonton, and Willard and Cache County – Hyde Park, Hyrum, Logan, Providence, Richmond, Smithfield, and Wellsville; Second District: Davis County – Centerville, Clearfield, Clinton, North Salt Lake, South Weber, Sunset, Syracuse, and Woods Cross and Weber County – Farr West, Harrisville, North Ogden, Ogden, Plain City, Pleasant View, Riverdale, Roy/Weber, South Ogden, Uintah City, and Washington Terrace; Third District: Salt Lake County – Alta, Bluffdale, Draper, Herriman, Holladay, Midvale, Murray, Riverton, Salt Lake City, Sandy, South Jordan, South Salt Lake, Taylorsville, West Jordan, and West Valley and Tooele County – Grantsville and Stockton; Fourth District: Juab County – Levan and Nephi, Millard County – Fillmore, Utah County – Genola, Goshen, Highland, Lehi, Lindon, Mapleton, Orem, Payson, Pleasant Grove, Provo, Santaquin, Saratoga Springs, and Springville, and Wasatch County – Heber; Fifth District: Iron County – Parowan and Washington County – Enterprise, Hildale, Hurricane, Santa Clara, and Washington City; Sixth District: Garfield County – Panguitch, Kane County – Big Water and Orderville, Sevier County – Aurora and Salina, and Sanpete County – Ephraim, Fairview, Fountain Green, Gunnison, Manti, Moroni, Mt. Pleasant, and Spring City; Seventh District: Carbon County – East Carbon and Wellington and San Juan County – Blanding and Monticello; Eighth District: Uintah County – Vernal. Approved without comment.

b) Forms Committee Forms. Declaration of Other Parent's Earnings; Objection to Form of Order or Judgment; Notice of Modification; Petition and Stipulation to Modify Child Support; Findings and Conclusions on Petition to Modify Child Support; Order on Petition to Modify Child Support; Motion to Adjust Child Support; Order on Motion to Adjust Child Support; Notice of Registration Foreign Domestic Order; Request for Hearing on Request to Register Foreign Order; Order on Hearing for Confirmation of Foreign Order; Notice of Confirmation on Foreign Order; and Notice of Judgment. Approved without comment.

15. ADJOURN

The meeting adjourned.