

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, December 18th, 2006

Matheson Courthouse

Salt Lake City, Utah

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*Chief Justice Christine M. Durham, Presiding*

### **ATTENDEES:**

Chief Justice Christine Durham  
Hon. James Davis  
Hon. Ronald Nehring  
Hon. Gary D. Stott  
Hon. Michael Lyon  
Hon. Robert Hilder  
Hon. Mark Andrus  
Hon. Kevin Nelson  
Hon. Rand Beacham (by phone)  
Hon. Michael Kwan  
Hon. William Barrett  
Scott Sabey, esq.

### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Rick Schwermer  
Mark Jones  
Matty Branch  
Holly Frischknecht  
Tim Shea  
Kathy Elton  
Ray Wahl  
Natalie Threlkeld

### **EXCUSED:**

Hon. Hans Chamberlain  
Hon. Jody Petry

### **GUESTS:**

Judge Jerry Jensen

## **1. WELCOME AND APPROVAL OF MINUTES:**

Chief Justice Durham welcomed everyone to the meeting and excused Judge Chamberlain and Judge Petry.

**Motion:** Judge Hilder motioned to approve the minutes, Judge Andrus seconded the motion, the motion passed unanimously.

## **2. CHAIR'S REPORT**

Chief Justice Durham reported the following:

- Legislative meetings have taken place in the 3<sup>rd</sup>, 8<sup>th</sup>, and 5<sup>th</sup> Districts. These meetings have been well attended by legislators and judges. The remaining district's meetings will continue into January. These meetings are not lobbying efforts, but discussion on the Council's priorities have taken place at each meeting.
- The 7<sup>th</sup> Judicial Nominating Commission met last Friday and selected five strong candidates to be interviewed this week. There are 24 individuals who have applied for the

3<sup>rd</sup> District judicial vacancy.

### **3. ADMINISTRATOR'S REPORT**

Mr. Becker reported the following:

- The Governor released his budget last week and was extremely supportive of the Council's requests. Virtually everything other than the self-represented litigant project was recommended. The amount of law clerks suggested was five instead of the requested seven. The St. George Courthouse was also funded in the Governor's budget. The compensation proposal included a 3.5% COLA for employees, 2.5% in discretionary funds, and 11% for judicial salary increases. Drug court funding was also supported.
- Nancy Volmer received the Golden Spike Award for her work with Law Day and the Annual Report. This is the third year the courts have been recognized for the Annual Report.
- The 4<sup>th</sup> District hosted a group of judges and law clerks from Korea last week to meet with the bench, ask questions and observe court proceedings.
- The Sanpete Courthouse will be put on the ballot over a revenue bond on the construction. The opposition to the courthouse is largely connected to the location near the fairgrounds and having a stand alone courthouse. The county commission met with the Facilities Committee last week and continue to be very supportive of the courthouse. A public information campaign will begin shortly to educate the public on the benefits of the courthouse being located near the fairgrounds.

### **4. REPORTS:**

#### **Management Committee: (Chief Justice Durham)**

- Chief Justice Durham commented on the high degree of confidence the Management Committee has with the internal auditing staff. The courts have a record of implementing 97% of the recommendations from the internal auditing department. Judge Hilder also commented on the working relationship between the Auditing Department and district staff.
- The Chief also indicated that the Management Committee discussed the need for Policy and Planning to address an email retention policy and review statute and federal rules related to this question. Policy and Planning will discuss this issue and bring back a suggested rule for the Council to consider.

#### **Bar Report: (Scott Sabey)**

- Mr. Sabey indicated the Bar has seen a draft of the performance review report and he will keep the Council updated as more information is available.

#### **Policy and Planning:(Judge Gary Stott)**

- Judge Stott indicated that the Policy and Planning Committee continued to review the Guardianship and Conservatorship accounting details.

### **5. INTERIM COMMITTEE REPORT: (Rick Schwermer, Mark Jones)**

Mr. Schwermer reported that the committee assignments have been made in the house

and senate. Mr. Schwermer highlighted the membership of some of the committees that work closely with the courts.

Mr. Schwermer indicated that the fiscal note process is slightly different this year based on an internal audit of the Legislative Fiscal Analysts Office. A fiscal note manager has now been hired who will manage and coordinate all fiscal analysts. Thor Nielson has been hired for this position, he has been a fiscal analyst for many years.

Mr. Schwermer provided a list of bills that have been numbered. Mr. Jones reported that Mike Mower attended the Board of District Judges meeting and discussed judicial salaries and the composition of the nominating commissions. Mr. Mower also reported that the Governor's budget is within the spending cap.

Mr. Schwermer reported that the philosophy behind the spending cap is that government should not grow faster than the state's economy. A formula was created to determine the percentage the government should be expanding based on the population growth and the CPI. The cap only applies to general fund money. Federal funds, education, transportation and one time spending are not effected by the spending cap. The amount of tax relief provided this year will also effect how much money will be available.

**6. PRESIDING JUDGE RULE CHANGE: (Daniel J. Becker)**

Chief Justice Durham indicated that the last time the Council addressed the presiding judge rule changes, they essentially approved the suggested changes with the understanding that the Boards of Judges still needed to review the proposal. The District Board has discussed the rule change during their last two meetings and has asked for additional time to discuss the proposed changes.

**Motion:** Judge Davis motioned to move into executive session, Judge Andrus seconded the motion, the motion passed unanimously.

**Motion:** A motion was made for the meeting to come out of executive session, the motion was seconded and approved unanimously.

**Motion:** Judge Stott motioned to move into executive session, the motion was seconded and passed unanimously

**Motion:** A motion was made to come out of executive session, the motion was seconded and passed unanimously.

**Motion:** Judge Stott motioned to modify Rule 3-104, section 3H to change the word coordinate to the word direct and exclude 'in accordance with supplemental court rules.' This change would become effective immediately. Any further action on the entire rule will be deferred until final feedback from the Board of District Court Judges. Judge Lyon seconded the motion, the motion passed unanimously.

Justice Nehring indicated that the Council hopes to continue working successfully with all of the Boards and would like to avoid conflict over the presiding judge rule change if possible. Justice Nehring proposed he attend the next Board of District Judges meeting to discuss this issue. The Board has also asked that Brent Johnson attend the next meeting and help clarify some points. Justice Nehring indicated that by attending the Board meeting it shows a respect for the important and critical role the Boards play in the decision and policy making for the courts.

**7. INTERPRETER TRAINING AND TESTING: (Tim Shea)**

Mr. Shea indicated that interpreter certification and approval changes need to be addressed by the Judicial Council. Mr. Shea reported that the AOC offered a five-day interpretation skills course before certification exams last year that significantly helped the individuals preparing to take the test. That course was offered at a significantly lower cost to participants than it costs the AOC to offer the training. Based on the daily rate and the number of days needed, Mr. Shea reported the total cost for a three part training would be \$630, which is a \$155-increase over the current fee.

Mr. Shea reported that the committee doesn't support the increases completely because it could limit the amount of people who are able to participate in these workshops. However, they don't have an alternative suggestion to address the disparity of costs.

Chief Justice Durham indicated that there is a balance between offering these courses to individuals whose services are so greatly needed in the courts, while still allowing these training's to be self-sufficient. Up to this point, the additional costs have been covered by one time funds. Chief Justice Durham questioned whether it is possible for Mr. Shea to re-examine the proposal based on the national average, and the cost of living in Utah. The total amount currently being collected is around \$4,000 and the total cost to provide this training is closer to \$15,000.

Justice Nehring indicated that spending more time up front and more money to allow the committee to put further research into this issue could allow for a more significant policy review, including alternate ways to deliver interpreter services, during the August budget and planning meeting.

***Motion:*** Judge Hilder motioned keep the current fees where they're at, anticipating a loss in the cost of training, then addressing these shortfalls in April when the Council reviews the budget. A more in-depth policy discussion could then take place during the August budget and planning meeting. Judge Nelson seconded the motion, the motion passed unanimously.

**8. 2007 JUDICIAL COUNCIL GOALS: (Daniel J. Becker)**

Daniel Becker reported that over the last several years the Council has adopted a single goal to focus their efforts on. 2005 was the Council addressed CourTools, and in 2006 the Justice Court Study Committee was created to evaluate justice courts. The Management Committee

recommends the Council review probate matters for their focus in 2007. This is an area that will be growing in importance and the Council should address any possible rule changes or policy adjustments that would be needed in order to better serve the public.

Mr. Becker proposed that the Council recommend that the Management Committee create a committee to study probate issues.

***Motion:*** Judge Stott motioned that the Management Committee consider what the composition and charge would be for a probate study committee and report back to the Council. Judge Hilder seconded the motion, the motion passed unanimously.

#### **9. PROPOSED LEGISLATION: (Tim Shea)**

Mr. Shea indicated that statute 76-8-316 discusses the safety, influencing or retaliation against a judge, but does not include the protection of commissioners. Mr. Shea reported that it would be appropriate to have the definition of judge in this statute also include commissioners. This definition change would only apply to this specific statute.

***Motion:*** Judge Davis motioned to enhance the definition of judge to include commissioner for the sake of statute 76-8-316 that deals with the safety and influencing of judges. The motion was seconded and passed unanimously.

#### **10. DIVORCE MEDIATION REPORT: (Kathy Elton)**

Chief Justice Durham welcomed Kathy Elton, Director of ADR, and Natalie Threlkeld, Divorce Mediation Coordinator, to the meeting. Ms. Elton provided an overview of the divorce mediation program. In May of 2005 a new statute requiring individuals with any remaining contested issues, after the filing of an answer to a complaint of divorce, to participate in at least one session of mediation unless excused from this requirement for good cause.

Ms. Elton reviewed the implementation of the divorce mediation program that has taken place to address the requirements of this new statute:

- Divorce mediation coordinator position created
- Divorce mediation website created
- Implementation of 1-800 number sent directly to the coordinator
- Meetings with family section of BAR, judges and court qualified mediators in each court location
- Meetings with domestic violence agencies across the state
- Creation of domestic violence expertise in domestic mediation roster
- Increased training and experience qualifications for domestic court roster
- On-going orientation given to new domestic mediators added to the court roster

Ms. Elton also reviewed the statistics available in 2005 and 2006 since the beginning of the divorce mediation program. The statistics represented the low income cases, the excused cases and the settlement rates. Ms. Elton indicated that the resolution of issues is much more party driven than issue driven.

Mr. Becker indicated that this program stems from a year-long study conducted by the legislature's Judiciary Committee and the efforts of Senator Bell in sponsoring the bill. Chief Justice Durham thanked Ms. Elton and Ms. Threlkeld. Ms. Elton thanked the Council for their support of the mediation programs.

**11. BOARD OF JUSTICE COURT JUDGES REPORT: (Judge Jerry Jensen)**

Chief Justice Durham welcomed Judge Jerry Jensen to the Council. Judge Jensen indicated that the Board of Justice Court Judges have been generally supportive of the Justice Court Study Committee's efforts. Judge Jensen reported that there is a need for the Study Committee and the efforts of the Committee up to this point have been productive and will assist in the independence of the justice court bench. Judge Jensen indicated that the diversity of the justice court judges is more widespread than the bench has ever been.

Judge Jensen reported that the level of education offered to the justice court judges and clerks has greatly increased this past year. Video arraignments are also now available in every justice court besides Beaver. Judge Jensen indicated that this past week alone he conducted arraignments from his office with three different prisons in under one hour. Without the video arraignment, these hearings would have taken significantly more time and money to conduct. Judge Jensen indicated he would like to see some kind of study evaluating the cost savings of video arraignment in the future.

Judge Jensen reported that a formalized mentoring program will begin this February with new judges. This program will be coordinated by the education department. The Legal Institute will also be expanded and the topics being taught this year will be evidence and criminal procedure. Judge Jensen indicated that e-learning is also now available for justice court judges. Topics like handling DUI cases and internal auditing courses are available online. Judge Jensen reported that there is as much knowledge available as any judge could want in very accessible ways, largely due to the effort by the education department and the funding from the technology, education and safety grant.

Chief Justice Durham thanked Judge Jensen for his report and his leadership of the Board of Justice Court Judges.

**12. ADJOURN**

***Motion:*** A motion was made to adjourn the meeting, the motion was seconded and passed unanimously.