

# JUDICIAL COUNCIL MEETING

Minutes  
Monday, April 30th, 2012  
Judicial Council Room  
Matheson Courthouse  
Salt Lake City, UT

Chief Justice Matthew B. Durrant, Presiding

## ATTENDEES:

Chief Justice Matthew B. Durrant  
Hon. Kimberly K. Hornak, vice chair  
Justice Jill N. Parrish  
Hon. Judith Atherton  
Hon. George Harmond  
Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. David Mortensen  
Hon. Gregory Orme  
Hon. John Sandberg  
Hon. Larry Steele  
Hon. Keith Stoney  
Hon. Thomas Willmore  
Lori Nelson, esq.

## GUESTS:

Aaron Falk, SL Tribune  
Emiley Morgan, Deseret News  
Judge John Baxter  
Judge David Marx  
Joanne Slotnik, JPEC  
Judge Randall Skanchy  
Judge Kate Toomey  
Jeff Hunt  
David Walsh

## STAFF PRESENT:

Daniel J. Becker  
Ray Wahl  
Diane Abegglen  
Jody Gonzales  
Lisa-Michele Church  
Debra Moore  
Rick Schwermer  
Tim Shea  
Nancy Volmer  
Brent Johnson  
Derek Byrne  
Jessica Van Buren  
Mary Jane Ciccarello  
Carol Price

## EXCUSED:

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

Chief Justice Durrant welcomed everyone to the meeting.

**Motion:** Judge Sandberg moved to approve the minutes. Judge Harmond seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the following:

He commended Justice Durham for her extraordinary contribution to the judiciary and the State of Utah during her time as Chief Justice of the Utah Courts and for her leadership in providing direction to the Judicial Council and the ongoing programs in the judiciary. He also noted the remarkable quality of the AOC senior staff and their commitment to the judiciary.

He updated the Council on the April 10 meeting with the Judicial Performance Evaluation Commission (JPEC) to include the following: 1) the Council representatives and staff who attended the meeting, 2) discussion of the evaluation process, 3) discussion of Council issues and concerns with the evaluation process, and 4) a request that meetings between JPEC and Council representatives be held twice yearly. It was noted that representation from each of the Boards of Judges will be included in future meetings on the JPEC Workgroup.

Chief Justice Durrant spoke at the Justice Court Conference on April 13, and he attended the Presiding Judge/TCE/Clerk of Court Workshop held April 26-27 where he offered a few remarks.

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

He reported on the following items:

Seventh District Court Executive. Ms. Terri Yelonek has been hired to fill the court executive vacancy in the Seventh District. Mr. Becker provided a brief background of Ms. Yelonek's experience.

Fourth District Court Executive. Interviews to fill the court executive vacancy in the Fourth District took place last week.

American Fork City. American Fork City has hired a consultant to conduct a feasibility study on creating a justice court. A proposal is anticipated to be ready for the July Council meeting.

Clarkston City. A request for dissolution of their court is forthcoming. Cases from this court would be handled in district court and, accordingly, would require legislative action.

Justice Court Council Representative. Judge Reed Parkin was selected to replace Judge Keith Stoney at the end of September when his term expires.

Law Day Insert. Mr. Becker shared a copy of the Law Day insert with the Council members.

Court's Volunteer Program. An advertisement for volunteers to support the court volunteer program has gone out. The State Justice Institute (SJI)-sponsored program will be conducted as a pilot program in the Third and Seventh Districts.

May Council Meeting. The May Council meeting is scheduled on May 29 to be held at the Vernal Courthouse. Ms. Jody Gonzales will be contacting Council members with lodging details.

Reception for Chief Justice Durham. The reception honoring Chief Justice Christine M. Durham for her invaluable years of service as the Chief Justice will be held directly following the meeting.

Executive Session. An executive session will be held later in the meeting where Judge Mark Andrus will be joining us.

#### **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:***

Justice Parrish reported on the following:

No meeting was held in April.

##### ***Policy and Planning Meeting:***

Judge Orme reported on the following:

He noted that Mr. Becker provided information relative to the revised rules on protected records in the opinion section of the Salt Lake Tribune.

There is one rule to be published for comment on the consent calendar for approval by the Council.

Policy and Planning has drafted a proposal relative to the court referee rule which will be reviewed by the Board of Justice Court Judges. Once the Committee has reviewed the Board's feedback, the policy will be presented to the Council.

The recommendation to adopt a rule for part-time and full-time justice court judges has been controversial in nature. Policy and Planning will recommend to the Council that, they in turn, recommend to the Supreme Court to consider a change in the Judicial Code of Conduct. They will also recommend that the Supreme Court send the recommendation to the Ethic's Advisory Committee for their consideration.

Policy and Planning will hold a shortened May meeting and resume their regular schedule in June.

##### ***Bar Commission Report:***

Ms. Nelson reported on the following:

The Commission is scheduled to meet on Friday in Logan.

The "Check Yes" Campaign relative to the Pro Bono initiative will be included with this year's Bar license renewal.

The first Pro Bono Committee meeting was held.

The Bar's dispute with the State Tax Commission relative to property taxes on their building has been resolved.

#### **5. RESOURCES FOR SELF-REPRESENTED PARTIES: (Judge John Baxter and Tim Shea)**

Judge Baxter provided an update to the Council on the activities of the Resources for Self-Represented Parties. He highlighted the following in his report: 1) reviewed the makeup of the committee, 2) the initial charge of the committee was to implement a call-in center to provide support for self-represented parties, 3) the Self-Help Center initially started in two districts, 4) six districts are currently being supported by the Self-Help Center, excluding the Third and Fourth Districts and 5) the Legislature approved permanent statewide funding for the Center effective July 1, 2012.

Introduction of the Self-Help Center into the Third and Fourth Districts will begin

with training of additional staff. He highlighted the following relative to statewide implementation of the Center: 1) Self-Help Center staff will meet with court staff in the Third and Fourth Districts to familiarize them with the services available to self-represented parties, 2) introduction of the Self-Help Center into the Fourth District is planned for late July, 3) introduction of the Self-Help Center into the Third District is planned for late August, and 4) a small subcommittee is revising forms, the divorce education, child custody, summary of civil procedures webpages, and guardianship forms.

Judge Baxter expressed his gratitude for the support shown the Self-Help Center and the positive impact it provides to self-represented parties and the Council's support for statewide funding.

Chief Justice Durrant thanked Judge Baxter for his report.

## **6. DEFINITION OF A "FULL-TIME" JUDGE FOR THE CODE OF JUDICIAL CONDUCT: (Tim Shea)**

Mr. Shea was welcomed to the meeting.

The Policy and Planning Committee was charged with providing a definition of a "full-time" judge. The Committee determined the weighted caseload formula was the best tool to measure the work of a judge. As proposed by the Policy and Planning Committee, a "full-time" judge is any judge of a court of record and a justice court judge whose judicial weighted caseload measure shows the need for at least one judge, whether from a single court or a combination of multiple courts. The intention would allow the weighted caseload measure for the court(s) to determine full-time status regardless of the actual hours worked by the judge. The amendment would take into account the definition of a full-time judge and prohibit only full-time judges from practicing law. Therefore, the Policy and Planning Committee recommended that the Judicial Council recommend to the Supreme Court the amendment to the Applicability Section of the Code of Judicial Conduct, which defines a "full-time" judge. It was also suggested that it be reviewed by the Ethics Committee as well.

It was noted that the Board of Justice Court Judges deferred to Policy and Planning for further discussion. A response from Judge Scott Waterfall, Roy Justice Court, regarding the proposed definition of a full-time judge was distributed to Council members. Judge Sandberg, Judge McCullagh, and Judge Stoney provided input to the proposed definition of a full-time judge. Judge Orme and Mr. Schwermer offered opinions to the amendment, as well. Discussion took place.

**Motion:** Judge Willmore moved to support the definition of a "full-time" judge in concept and refer it back to Policy and Planning to address specific changes which would be scheduled for the June Council meeting. Judge McCullagh seconded the motion, and it passed unanimously.

**Motion:** Judge Hornak moved to enter into an executive session to discuss an issue concerning professional competence. Judge Steele seconded the motion, and it passed unanimously.

Chief Justice Durrant welcomed Ms. Emiley Morgan from the Deseret News and Mr. Aaron Falk from the Salt Lake Tribune to the meeting.

**7. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge David Marx)**

Chief Justice Durrant welcomed Judge David Marx to the meeting.

Judge David Marx provided an update to the Council on the state of the justice courts. He highlighted the following recent projects in his report: 1) CORIS conversion completed for all justice courts, 2) the Annual Justice Court Conference was held for all judges and clerks, and 3) updated Title 78a passed.

The current projects being addressed by the Board of Justice Court Judges include: 1) implementation of SB 318 (digital recording proceedings in justice courts), and 2) continued efforts in development of a pro-active strategy of improving the reputation and image of the justice courts.

Judge Marx noted that revisiting SB72 implementation issues as an upcoming project would include: 1) selection process mechanics, 2) court dissolution logistics, and 3) salary/workload fluctuation/judicial independence issues.

Future considerations by the Board of Justice Court Judges include: 1) reviewing and advancing recommendations for revisions in the judicial weighted workload formula, 2) reviewing ways to educate judges and advance evidence-based sentencing, and 3) advancing paperless systems in the justice courts.

Judge Marx was thanked for his update.

**8. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)**

Chief Justice Durrant welcomed Ms. Slotnik to the meeting.

Ms. Slotnik updated the Council on the following items:

Currently, judges file for retention in mid-March of the same year they are up for retention. Ms. Slotnik has had preliminary discussions with Mr. Becker and others to possibly move the filing date to later in the year. Moving it back would allow judges more time to review their evaluations. She would also like to adjust the evaluation periods, mid-term and retention, so there is more time in between each evaluation to allow for report production. The intention would be to keep the length of the retention evaluation period to two years in length. Discussion took place. Ms. Slotnik will pursue the issue of moving the filing date to later in the year, and she will provide an update to the Council as needed.

The Commission has not met since the Council Workgroup met with them on April 10. They are scheduled to meet on May 8. The Commission will devote a fair amount of time in their next several meetings to address the five specific issues brought to their attention, by the Council, on April 10. The dates scheduled for the Council to meet with the Commission again are 1) November 13 and 2) April 9, 2013.

She updated the Council on the State Justice Institute grant which would fund the study of part-time justice court judge evaluations. To receive approval for the state match, it requires approval from Executive Appropriations prior to receiving grant funding. Executive Appropriations is scheduled to meet on May 15. The first call with the National Center for State Courts (NCSC) is scheduled for May 23. After this date, Ms. Slotnik will arrange to meet with the Board of Justice Court judges to provide an update of the study.

The Appellate opinion evaluation pilot program was launched on April 11. The evaluations are due back today. Chief Justice Durrant and Judge Orme are participants in the

pilot program. Three opinions will be received from each judge. The process for evaluating the opinions was outlined by Ms. Slotnik.

Ms. Slotnik noted that Mr. Nate Alder has been appointed by the Governor to replace Mr. Lowry Snow.

Chief Justice Durrant thanked Ms. Slotnik for the manner by which the Commission received the Council's concerns.

Ms. Slotnik was asked for the schedule relative to the 2014 evaluations. She provided the tentative schedule.

## **9. OVERVIEW OF ISSUES RELATED TO WEAPONS BACKGROUND CHECKS: (Brent Johnson)**

Chief Justice Durrant welcomed Mr. Johnson to the meeting.

Mr. Johnson reported on the changes to federal requirements on reporting information to the National Instant Criminal Background Check System (NICS) and compliance with the requirements. He highlighted some of the requirements and issues that will need to be dealt with: 1) states are required to report all civil commitments, 2) reporting of every judicial determination of incompetency, 3) report to NICS all determinations of guilt and mental illness. There are many areas that will need to be considered and addressed to come in to compliance with the federal reporting requirements to the NICS.

He mentioned that the requirements pertain to other state agencies as well. Legislation will need to be addressed in the process. Discussion took place.

## **10. REPORT FROM THE STUDY COMMITTEE ON TECHNOLOGY BROUGHT INTO THE COURTROOM: (Diane Abegglen)**

Chief Justice Durrant welcomed Ms. Abegglen to the meeting.

Ms. Abegglen provided a brief overview of the committee's original charge which was to conduct a study of the public's access to information on trial court proceedings, the issues surrounding technology being brought into the courtrooms and its impact on court operations, safety and security, and issues relating to the possible use of recording equipment in the justice courts.

The study combined several independent inquiries including: 1) the use of phones and cameras in the courtroom and jury rooms conducted by the Board of District Court Judges, 2) study of the use of social media and technology brought into courtrooms by the Public Outreach Committee, and 3) use of recording technology in the justice courts.

She noted that the use of recording technology in the justice courts did not receive a lot of attention by the Committee because the Legislature had made the issue moot by requiring recording equipment in all justice courts. The committee focused their attention on: 1) cameras in the courtroom, and 2) electronic portable devices in courthouses and courtrooms.

Electronic Portable Devices in Courthouses and Courtrooms. With regard to technology brought into the courtrooms, the Board of District Court Judges recommend that their use be prohibited, and the Social Media Subcommittee of the Judicial Outreach Committee would allow the use of portable devices in courthouses and courtrooms.

The Study Committee recommends the following: 1) include a policy that allows the use of such technology in the courthouse and courtrooms but allows individual trial judges the ability to regulate or prohibit electronic portable devices in courtrooms, 2) allow electronic portable devices to be used in common areas of the courthouse, 3) the policy is subject to further

restrictions by individual judges, and 4) the policy will prohibit photos and recordings. The Committee voted 9-3 in favor of the recommendation.

Cameras in the Courtroom. It was noted that rules permitting electronic media coverage vary widely in scope and approach across the country. Every state permits some type of electronic media coverage of its trial or appellate courts. Utah is one of the most restrictive states in the country. The proposed revision to Rule 4-401 permits electronic media coverage of open judicial proceedings while allowing a judge to prohibit or restrict such coverage to protect fair trial rights, privacy, security and other important issues. The Committee voted unanimously to allow cameras in courtrooms.

Mr. Jeff Hunt, chair of the Cameras in the Courtroom Committee provided background information to what the Study Committee reviewed in preparing their recommendations, including consideration of case specific concerns.

Judge Skanchy offered comments on behalf of the Board of District Court Judges relative to electronic portable devices in courthouses and courtrooms.

**Motion:** A motion was made to approve the recommended policy in concept and send to Policy and Planning to review the proposed rules. Judge Atherton seconded the motion.

**Substitute Motion:** Judge Willmore moved to consider each category separately. Judge Mortensen seconded the motion. The motion passed with Judge Harmond, Judge Maughan, and Judge Hornak voting no.

**Motion:** Judge Maughan moved to receive the report as recommended and refer it to Policy and Planning for consideration. The motion failed.

**Motion:** Judge McCullagh moved to approve in concept the recommendation on Cameras in the Courtroom and refer it to Policy and Planning for review of the proposed rules. Judge Willmore seconded the motion, and it passed unanimously.

**Motion:** Judge McCullagh moved to approve in concept Electronic Portable Devices in Courthouses and Courtrooms and refer to Policy and Planning for review of the proposed rules. Judge Atherton seconded the motion. The motion passed with Judge Willmore and Judge Mortensen voting no.

**Motion:** Judge McCullagh moved to accept the recommendation of implementation of audio recording in justice courts and refer it to the Board of Justice Court Judges for further monitoring and followup. Judge Hornak seconded the motion, and it passed unanimously.

#### **11. FY 2013 OPERATIONS BUDGET APPROVAL: (Daniel J. Becker and Ray Wahl)**

Mr. Becker reviewed the process undertaken by the Council relative to the budget approval process which begins with recommendations to the Council in August at their budget and planning session. In the Spring, available ongoing, one-time and carry-forward funding along with the appropriate budget is reviewed for the coming fiscal year.

Mr. Becker highlighted the proposed ongoing obligations to include: 1) career track and other compensation adjustments, 2) OCAP, 3) Self-Help Center, 4) Google mail overhead, and 5) Community Legal services.

Mr. Wahl reviewed the specific recommended one-time expenditures.

**Motion:** Ms. Nelson moved to approve the recommended ongoing and one-time funding for FY 2013. Judge Hornak seconded the motion, and it passed unanimously.

Mr. Becker reviewed the information provided for the one percent increase for hourly court interpreters recommended for approval.

**Motion:** Judge Maughan moved to approve the one percent increase for hourly court interpreters. Ms. Nelson seconded the motion, and it passed unanimously.

**12. CERTIFICATION OF SENIOR JUDGE: (Tim Shea)**

Mr. Shea reported that Judge Tyrone Medley has applied to be appointed as an active senior judge.

**Motion:** Judge McCullagh moved to forward the recommendation, on behalf of the Council, to the Supreme Court to certify Judge Tyrone Medley as an active senior judge. Judge Atherton seconded the motion, and it passed unanimously.

**13. EXECUTIVE SESSION**

An executive session was held at this time.

**14. ADJOURN**

The meeting was adjourned.