

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, April 28, 2014

Juab County Courthouse

Nephi, UT

**Chief Justice Matthew B. Durrant, Presiding**

### **ATTENDEES:**

Chief Justice Matthew B. Durrant  
Hon. Kimberly K. Hornak, Vice Chair  
Justice Jill Parrish  
Hon. Glen Dawson  
Hon. George Harmond  
Hon. David Marx  
Hon. Paul Maughan  
Hon. David Mortensen  
Hon. Reed Parkin  
Hon. John Pearce for Hon. James Davis  
Hon. John Sandberg  
Hon. Randall Skanchy  
John Lund, esq.

### **EXCUSED:**

Hon. James Davis  
Hon. Thomas Higbee

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Alison Adams-Perlac  
Dawn Marie Rubio  
Debra Moore  
Jody Gonzales  
Rick Schwermer  
Tim Shea  
Derek Byrne  
Brent Johnson  
Alyn Lunceford

### **GUESTS:**

Judge James Brady  
Judge Rick Smith  
Shane Bahr, 4<sup>th</sup> Dist TCE  
James Peters, 4<sup>th</sup> Juv TCE  
David Walsh, GOMB  
Ken Matthews, GOMB

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

Chief Justice Durrant welcomed everyone to the meeting. A special welcome was extended to Judge John Pearce who was sitting in for Judge James Davis.

**Motion:** Judge Skanchy moved to approve the minutes from the March 14, 2014 Judicial Council meeting. 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 items:  
He recently attended the Justice Court Judges Conference in St. George.  
Judge Stephen Roth has been appointed to fill a vacancy on the Court Commissioner Conduct Committee with the appointment of Judge Carolyn McHugh to the 10<sup>th</sup> Circuit Court of Appeals.

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

Mr. Becker reported on the following items:

Judicial Retention Filing. The following judges did not file for retention: 1) Judge John Kennedy, 2) Judge Denise Lindberg, and 3) Judge Larry Jones.

Judicial Retirements. Judge Terry Christiansen has announced his upcoming retirement, effective October 1, 2014. Judge John Kennedy has announced his upcoming retirement, effective December 31, 2014.

Mandatory Criminal E-Filing. The effective date for mandatory e-filing of criminal cases, with the exception of the information, was March 31. Implementation went very smoothly with few calls being received for assistance. Mr. Becker expressed gratitude to the court staff involved with preparing for the move to e-filing of criminal cases.

Commissioner Workgroup. Mr. Becker reminded the Council of their approval at the March meeting to delegate to the Management Committee responsibility of preparing a charge and membership of a commissioner workgroup. He distributed the proposed membership and charge of the workgroup to Council members. Mr. Becker noted that the workgroup is requested to complete their work and report their findings and recommendations to the Council at the November 2014 Council meeting.

E-Filing Hardship Exemption Follow-Up. Mr. Becker reported that the e-filing exemption in civil cases granted last September to Mr. Steve Simpson, an attorney in Bluff, Utah due to inadequate internet access is no longer needed. Internet access is now available.

Case Filing and Referral Year-to-Date Update as of April 2, 2014. District case filings, overall, reflected a 4% decrease. The following case filing types were highlighted in his update: 1) criminal case filings, 4% decrease; 2) felony case filings, 6% increase; 3) domestic case filings, 1% decrease; 4) general civil case filings, 6% decrease; 5) debt collection case filings, 7% decrease; 6) judgments, 4% decrease; 7) probate case filings, 3% increase; 8) property rights case filings, 1% decrease; 9) tort case filings, 5% increase; and 10) traffic case filings, 10% decrease.

Juvenile Court referrals overall, reflected a 6% decrease. In delinquency cases, misdemeanor referrals reflected a 14% decrease and infractions reflected a 36% decrease.

Executive Session. A brief executive session will be needed at the end of the meeting.

### 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 April.

#### ***Policy and Planning Report:***

Judge Maughan reported that the Policy and Planning Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

***Bar Commission Report:***

Mr. Lund reported on the following: 1) the Bar Commission met on April 25, 2) Judge David Hamilton presented a report of the lawyer's fund for client protection, 3) new lawyer's survey results, and 4) an op-ed by Mr. Curtis Jensen, bar president, entitled *Utah lawyer discipline balances individual rights, public responsibility*.

**5. REVIEW OF JUDICIAL EDUCATION GUIDELINES FOR SENIOR JUDGES: (Alison Adams-Perlac)**

The Policy and Planning Committee recommended changes to the judicial education guidelines for senior judges. The proposed amendment would allow the Standing Committee on Education to recommend to the Council that a senior judge be allowed to receive more than 1/3 of his/her education credits through independent learning if good cause is shown.

**Motion:** Judge Dawson moved to adopt the judicial education guidelines as amended. Justice Parrish seconded the motion, and it passed unanimously.

**6. COURT CONTRACT INTERPRETER HOURLY RATE INCREASE: (Alison Adams-Perlac)**

The Management Committee accepted and forwarded the recommendation, on behalf of the Language Access Committee, to approve a 1% increase in hourly fee for contract court interpreters to coincide with the 1% cost-of-living increase, approved for court employees during the 2014 Legislative Session. The cost of the increase for 2014 is estimated at \$9,528 and would be funded from the jury/witness/interpreter fund.

The question was asked how the contract interpreters compare regionally. Ms. Adams-Perlac mentioned that it was planned to conduct a survey to gather that data within the next year. Discussion took place.

**Motion:** Judge Maughan moved to request a survey be conducted regarding how the contract interpreters compare regionally before the June meeting and present that information for consideration for final action at that time. Judge Sandberg seconded the motion, and it passed unanimously.

**7. COURT INTERPRETER CREDENTIALING CHANGES: (Alison Adams-Perlac)**

The Policy and Planning Committee recommended the following changes to the Utah State Courts interpreter credentialing requirements: 1) the basic Orientation Workshop be removed as an option for interpreters seeking to become Registered, and 2) the Registered 2 designation be removed.

Utah is the only state in the nation that offers a free Basic Orientation Workshop. If the Basic Orientation Workshop is removed as an option for interpreters seeking to become Registered, they will need to fulfill the orientation requirement by attending the \$100 mandatory two-day orientation course as required for Certified Interpreters and Approved Interpreters.

If the Registered 2 designation is removed, a rule change will be drafted. Once the proposed rule is approved for public comment, the Registered 2 Interpreters would be given notice and would have six months to take the OPI in order to become an Approved Interpreter. If they choose not to become approved, they will be placed on the unofficial conditionally approved list.

**Motion:** Mr. Lund moved to approve the credentialing changes as recommended by the Policy and Planning Committee. Judge Maughan seconded the motion, and it passed unanimously.

**8. COURT FACILITIES STANDING COMMITTEE UPDATE: (Alyn Lunceford)**

Chief Justice Durrant welcomed Mr. Lunceford to the meeting.

Mr. Lunceford provided an update to the Council on behalf of the Court Facilities Standing Committee. Judge Charles Behrens, committee chair, was unable to attend.

The following areas were highlighted with regards to the committee responsibilities:

1) completed studies in Summit and Duchesne Counties – with construction of a third courtroom to handle civil cases at the Summit County courthouse scheduled to begin in May and design work being completed for the Duchesne County Courthouse expansion project, 2) current and ongoing studies being completed in Utah and Carbon Counties, 3) future studies to be completed in Sanpete and Iron Counties, 4) the Ogden Juvenile Courthouse construction is underway, 5) completion of the Juab County Courthouse, and 6) delegated responsibility of defining and requesting improvement projects to the facility coordinators for each district.

He highlighted the following prioritized list of court projects: 1) Ogden Juvenile Courthouse, 2) Provo District Court expansion, 3) Northern Utah County land bank request, 4) Orem Juvenile Court, 5) Provo Juvenile Court, 6) Sanpete County Courthouse, 7) Carbon County Courthouse.

Chief Justice Durrant thanked Mr. Lunceford for his update and for his involvement in completing the Juab County Courthouse.

Mr. Lunceford acknowledged Shane Bahr, Fourth District Trial Court Executive, and Mr. James Peters, Fourth District Juvenile Trial Court Executive regarding their work with the Juab County Courthouse project.

**9. CODE BOOK PURCHASE: (Tim Shea)**

Background was provided on the supplier of the Utah Code and the Utah Court Rules books for judges, senior judges, court commissioners and court staff in the past.

Currently, the law library, local courts and offices have set aside funding for the code and rule books. To maintain the current practice of providing code and rule books for those mentioned; the cost would increase substantially.

With the ease of access to statutes and rules online—through Westlaw, the legislature’s website for statutes, and the court’s website for rules—it is being recommended that the Council establish a policy for the number and type of statute and rule books being purchased. It was proposed that the courts purchase the Utah Court Rules and the unannotated edition of the Utah Code for judges, court commissioners and limited staff. Subscriptions to the annotated edition of the Utah Code would be discontinued. The cost for the annotated edition of the Utah Code vs. the unannotated edition was noted.

Discussion took place.

Council members will request feedback regarding the use of the code books from their respective courts. Further discussion of code book purchases will be deferred for further action at the June Council meeting.

**10. FY 2015 OPERATIONS BUDGET APPROVAL: (Ray Wahl)**

The recommendations for the FY 2015 operational budget for the courts, as prepared by the Executive Budget Committee, were reviewed by Mr. Wahl.

The following ongoing general fund and ongoing obligation recommendations were highlighted: 1) ongoing turnover savings, 2) fiscal note funding for HB 71 and HB 117, 3) mental health court – 1<sup>st</sup> District, 4) ongoing fiscal note funding from the 2013 general session, 5) VOIP budget savings, 6) lease and contract funding increase, 7) .25% personnel funding for high-performance staff, 8) career track, 9) law clerk positions, 10) market comparability adjustments, and 11) transfer of CIP grant personnel funding to general fund.

The following one-time funding request recommendations were highlighted: 1) one time general fund – courtroom technology funding, 2) carry forward funding projection, 3) time-limited law clerks, 4) tuition assistance, 5) employee incentive awards, 6) UCA purchases (code books), 7) self-help center, 8) judicial operations budget, 9) District Court Program Administrator to be funded from a .5 FT to a 1.0 FTE, 10) MSU Judicial Administration Certification Program, and 11) reserve amount.

**Motion:** Justice Parrish moved to approve the FY 2015 operational budget for the courts as proposed, with the exception of code book purchases. Mr. Lund seconded the motion, and it passed unanimously.

**11. BAIL SCHEDULE AMENDMENT TIMING: (Rick Schwermer)**

To be compliant with the effective date of May 13 for the bills passed during the 2014 Legislative Session and with the Uniform Fine/Bail Schedule Committee not scheduled to meet until May 2, it was recommended that the Council delegate approval of the changes made to the Uniform Fine/Bail Schedule to the Management Committee at their May 13 meeting with approval effective the same day.

**Motion:** Judge Maughan moved that the Council delegate approval of the changes made to the Uniform Fine/Bail Schedule to the Management Committee at their May 13 meeting with approval effective the same day. Judge Parkin seconded the motion, and it passed unanimously.

**12. PROPOSED CHANGES TO RULE 4-401.01: (Brent Johnson)**

Chief Justice Durrant welcomed Mr. Johnson to the meeting.

Mr. Johnson provided background information regarding numerous requests by a local attorney who has established a YouTube channel for the purpose of disseminating news and information about Utah domestic relations matters.

The Standing Committee on Judicial Outreach met recently to discuss circumstances under which court proceedings may be recorded as established by Rule 4-401.01 – Electronic media coverage of court proceedings.

The proposed changes to Rule 4-401.01 include: 1) amend the definition of a news reporter to mirror the definition in the Utah Rules of Evidence, 2) remove the presumption of allowing electronic media coverage in divorce, guardianship, conservatorship and protective order cases, 3) add a factor to allow the court to consider whether the request is more about broadcasting news or more about education of the public through methods such as a YouTube channel, and 5) require all requests be submitted on the appropriate form.

Discussion took place. Concerns were expressed regarding the type of information that

should be included on the media request form.

**Motion:** Judge Mortensen moved to refer the Media Request Form to the Board of District Court Judges for further review and input. Judge Dawson seconded the motion, and it passed unanimously.

**Motion:** Judge Hornak moved to approve the proposed changes to Rule 4-401.01 and adopt it on an expedited basis. Judge Maughan seconded the motion, and it passed unanimously.

**13. FOURTH DISTRICT COURT UPDATE: (Judge Rick Smith and Judge James Brady)**

Chief Justice Durrant welcomed Judge Smith to the meeting.

Judge Smith provided a Fourth District Juvenile Court update to the Council. He highlighted the following challenges faced in the rural communities of Juab and Millard Counties with regard to available resources: 1) available credentialed therapist(s) to counsel juvenile sex offenders, victims of pornography; 2) finding opportunities for community service; and 3) addressing truancy matters.

Judge Brady provided a Fourth District Court update to the Council. He highlighted the following in his update: 1) Juab County Courthouse completion; 2) the need for expansion in the Fourth District Court in Provo; 3) a 2% increase in population; 4) a 1% decrease in case filings; 5) creation of a Veteran's Court in Provo by Judge Samuel McVey; 6) available specialty courts, 7) reduction of court staff by 10% due to e-filing efforts; 8) anticipated future staff needs due to potential upcoming retirements, 9) retirement of Judge Steven Hansen, effective July 1; 10) Judge Derek Pullan will fill the district court judge vacancy in Provo; and 11) the judicial vacancy will remain in Heber.

Chief Justice Durrant thanked Judge Smith and Judge Brady for their updates.

**14. UNIFORM FINE/BAIL SCHEDULE COMMITTEE APPOINTMENT: (Debra Moore)**

The Board of Justice Court Judges recommended the following three judges to fill the vacancy for a justice court judge on the Uniform Fine/Bail Schedule Committee with the expiration of Judge Whitlock's term: 1) Judge John Baxter, Salt Lake City Justice Court; 2) Judge Paul Farr, Sandy City Justice Court; and 3) Judge Sherlynn Fenstermaker, Springville and Mapleton Justice Courts.

Discussion took place.

**Motion:** Judge Sandberg moved to approve the appointment of Judge John Baxter to fill the vacancy for a justice court judge on the Uniform Fine/Bail Schedule Committee. Judge Harmond seconded the motion, and it passed unanimously.

**15. RETENTION AND PERFORMANCE DISCUSSION: (Rick Schwermer)**

Mr. Schwermer lead discussion on several matters regarding the retention and evaluation process for judges. A copy of a letter from Ms. Joanne Slotnik to Chief Justice Durrant was distributed.

He highlighted the following in his discussion: 1) the process for evaluating judges who have expressed or announced their upcoming retirement, 2) changes made to the courtroom

observation process, 3) addressing criteria for evaluating justice court judges with the passing of HB 325 – Judicial Performance Evaluation Commission Amendments, 4) evaluation survey questions, process, and factors, 5) performance standard discussion, and 6) continued modifications to the evaluation process and system.

Discussion took place.

**Motion:** Judge Hornak moved to enter into an executive session to address a personnel matter. Judge Mortensen seconded the motion, and it passed unanimously.

**16. EXECUTIVE SESSION:**

An executive session was held at this time.

**17. ADJOURN**

The meeting was adjourned.