

**JUDICIAL COUNCIL MEETING**

**Minutes**

**Wednesday, May 28th, 2008**

**Judicial Council Room**

**Chief Justice Durham, Presiding**

**ATTENDEES:**

Chief Justice Christine M. Durham  
Justice Ronald Nehring  
Hon. Gary Stott  
Hon. Hans Chamberlain  
Hon. Gregory Orme  
Hon. William Barrett  
Hon. Judith Atherton  
Hon. Michael Westfall  
Hon. Brendan McCullagh  
Hon. Jody Petry  
Hon. Michael Lyon  
Scott Sabey, esq.

**STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Ray Wahl  
Debra Moore  
Tim Shea  
Nancy Volmer  
Ron Bowmaster  
Holly Frischknecht  
Heather Mackenzie-Campbell  
Brent Johnson

**EXCUSED:**

Hon. Mark Andrus  
Hon. Michael Kwan

**GUESTS:**

Steve Hunt, Salt Lake Tribune  
Hon. David Mortenson, 4<sup>th</sup> District  
Judge  
Hon. William Thorne

**1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)**

Chief Justice Durham welcomed everyone to the meeting. Chief Justice Durham excused Judge Kwan and Judge Andrus from the meeting. The minutes of the April meeting were reviewed and the following motion was made.

***Motion:*** Judge Stott motioned to approve the minutes, Judge Petry seconded the motion, the motion passed unanimously.

**2. CHAIR'S REPORT: (Chief Justice Durham)**

Chief Justice Durham reported the following:

-Chief Justice Durham substituted for Justice Nehring on an Appellate Review panel at the District Court Conference. Chief Justice Durham also reported on the plain language jury instructions to the District bench.

-Chief Justice Durham and Brent Johnson attended the annual meeting on Racial and Ethnic Fairness in the Courts in Seattle. The Chief and Mr. Johnson received many new ideas on how to better involve the courts in racial and ethnic fairness efforts. Further discussion will take place about this topic in future Council meetings.

-Chief Justice Durham, Mr. Becker, and Mr. Shea attended a conference sponsored by the PEW Commission on state courts and public policy. Mr. Shea presented on Utah's efforts in Guardianships and Conservatorships.

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

Mr. Becker reported the following:

-Joe Derring has been hired as the new TCE in the 1<sup>st</sup> District. Mr. Derring has been the Clerk of Court in Brigham City since 1997, and has worked in the courts since 1992. Before working for the courts, Mr. Derring served in the Air Force. Mr. Derring replaces Sharon Hancey, who served the courts for 31 years.

-The Council will be reviewing the Comprehensive Clerical Study proposal during their next meeting. The Council will then consider what the next steps in this process should be.

-Beani Martinez, 2<sup>nd</sup> District Juvenile TCE, graduated from the Institute of Court Management this month. Ms. Martinez is the fourth ICM Fellow from Utah. Mr. Becker indicated this is a very prestigious accomplishment.

-This will be Holly Frischknecht's last meeting with the Council as Executive Assistant. She will soon begin working as a Trial Court Program Administrator with the district and justice courts. Ms. Frischknecht recently completed her master's in public administration.

### **4. COMMITTEE REPORTS:**

#### ***Management Committee Report:***

Chief Justice Durham referred the Council to the minutes of the Management Committee meeting. The Management Committee reviewed input from Judge Davis who serves as the Council's liaison on the Retirement Board. Judge Davis suggested that a member currently serving on the Council would be a better fit for the Retirement Board.

***Motion:*** A motion was made that Judge Stott replace Judge Davis as the Council's liaison on the Retirement Board. Judge Lyon seconded the motion, the motion passed unanimously.

Chief Justice Durham requested that the Council members review the names suggested for the Appellate Review Committee listed as a consent item on the agenda. The Council approved the names on the list and those individuals will be contacted.

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

Judge Orme reported that the Policy and Planning Committee met with members of the press and made final suggestions on Rule 4-202, and 4-202.09 which will be reviewed later in the meeting. The Committee was persuaded that the date of birth should remain on a court record since this information could easily be attained from other locations and it is difficult to correctly

identify the individual on record without the date. The email retention rule was also discussed. The Committee made some changes to the rule that are being considered for adoption today. Judge Orme reported that Title 78 has also been re-codified as 78A and 78B. The Committee has determined that reviewing the courts rules is technical only so the entire body of re-codified rules will not go out for comment. The Policy and Planning Committee will also work to minimize referencing specific sections in the code.

***Bar Committee Report:***

Mr. Sabey reported that the Bar Commission's retreat is this Friday. The Bar is in the middle of a two year operational review. The meeting Friday will be spent considering the budget, staff, governance and other items the review has focused on. The Bar continues to work with Blomquist Hale to provide services to support attorneys. The Bar's budget is also being considered and discussion will take place about raising the Bar dues. The Bar's dues come in once a year and, as is standard with non profit organizations, the Bar saves a quarter of their funds in reserve. However, this limits funds available throughout the year. Mr. Sabey indicated the Bar continues to work on the mentoring proposal for young attorneys with the Court. Chief Justice Durham reported that she has been very impressed by the work that has been done in the mentoring program. Chief Justice Durham reported that education within the judiciary will be critical for the program's success. Chief Justice Durham reported that she appreciates the strong relationship between the Bar and the Council.

**5. JUDICIAL NOMINATING COMMISSION PROCEDURES: (Myron K. March)**

Mr. March reported that the Governor's Office had expressed concern about some of the Judicial Nominating Commission's processes. After reviewing the concerns, the Management Committee recommended some changes to the manual governing Nominating Commissions.

The first change to the manual specifies that if a commissioner fails or refuses to follow statutes or rules, the commissioner may be removed and the Governor shall appoint a replacement. The second change specifies that a candidate does not have to live in the district when applying for a position, but they must live within the district 60 days after being sworn in. The third change clarifies that trial experience is desirable when considering a candidate, but should not be overemphasized. The Commission should also consider the temperament of a candidate. The final change to the manual specifies that if a Nominating Commission does not nominate the maximum number of candidates, they must specify in writing why that number was not sent to the Governor. If a nominee withdraws before the Governor makes an appointment, the commission may nominate a replacement if it can be done before the original 45 day deadline.

Mr. March reported that these changes to the Nominating Commission manual will help better meet the judiciary's and the Governor's needs. Mr. March indicated that similar procedures will be created for the Justice Court's County Nominating Commissions.

***Motion:*** Judge Orme motioned to accept the changes in the Nominating Commission manual. The motion was seconded and passed unanimously.

**6. CJA 4-403 SIGNATURE STAMP RULE: (Brent Johnson, Heather Mackenzie-Campbell)**

The Management Committee had previously discussed that amended Rule 4-403 provides clerks with the authority to stamp orders prepared by the court and eliminates the distinction between a signature stamp and the actual signature. The broad use of the signature stamp could lead to potential abuse by a clerk and the Audit Department suggested that the rule return to its previous language. By returning to the old rule, the judge must approve the clerk's use of the signature stamp on a document by document basis.

This current rule specifies that the clerk goes ahead and creates the order and uses the judges signature and files the order. Ms. Mackenzie-Campbell reported that whenever changes in amounts due are made, the audit department relies on the order for documentation. In the Justice Court audit's there is no record to review, so only the order is available for verification.

Mr. Shea reported that the Policy and Planning Committee reviewed this request that came from the District Board. Mr. Sabey reported that the original request focused on a judge's concern about the need to return to a court they did not live near to perform perfunctory duties. Mr. Johnson stated the current rule still requires blanket approval of the judge under 1a or specific permission under 3.

The Policy and Planning Committee will consider this item further at their meeting next week.

**7. INTERPRETER FEE INCREASE: (Tim Shea)**

Mr. Shea reported that the Court Interpreter Committee submitted a request to the Council during their Budget and Planning Meeting to increase the fee paid to certified interpreters. The Judicial Council did not advance this request, but opted to consider an increase after the Legislative Session. The Executive Budget Committee recently recommended an increase of 3% for the certified court interpreter fee. This increase would be consistent with the COLA increase that was provided by the Legislature for state employees. Mr. Becker reported that in the past, the Council has looked to pass along the cost of living that state employees have received on to the interpreters. After reviewing the request, the Management Committee also recommended a 3% increase.

Chief Justice Durham reported that Judge Kwan expressed opposition to the interpreter fee increase. Judge Kwan had concerns that the assignment of interpreters was not being managed well which created a false sense that there was a shortage of interpreters because of low pay. Mr. Shea reported that the courts are now using a system of assignment for interpreters to better distribute assignments.

***Motion:*** Judge McCullagh motioned to approve the 3% increase for interpreters, Judge Chamberlain seconded the motion, the motion passed unanimously.

**8. VOTER INFORMATION PAMPHLET APPROVAL: (Tim Shea)**

Mr. Shea provided a copy of the information that will be published in the voter information pamphlet that describes merit selection, judicial evaluation and retention election, and provides information about each judge standing for election. This information is close to the Lt. Governor's voter information pamphlet format used in the past. The Council certified all the

judges during the December Council meeting. Mr. Shea indicated the judges up for retention have had an opportunity to review their photograph and their biography.

**Motion:** Judge Orme motioned to approve the format and content of the judicial voter information, Judge Westfall seconded the motion, the motion passed unanimously.

**9 FINAL ACTION ON RULES: (Tim Shea)**

Mr. Shea reviewed Rules 4-202.02 and 4-202.09 that are being considered to be published for comment. The rules address personal information available in court records when GRAMMA reports are requested. The Policy and Planning Committee recommends that the social security number, driver's license number, and other personal information of a party be private. The Policy and Planning Committee determined that the date of birth should be made available since there are so many other ways of obtaining that information and it is crucial for the purpose of identifying individuals on the court record.

**Motion:** Judge McCullagh motioned to publish Rule 4-202.02 and 4-202.09 for comment, the motion was seconded and passed unanimously.

**10. RECORD RETENTION SCHEDULE: (Tim Shea)**

Mr. Shea reported that the Policy and Planning Committee has spent several meetings developing a retention policy as part of the Record Retention Schedule. The Policy and Planning Committee requests that the Council approve the email retention schedule that would create electronic storage space by timely deleting unnecessary e-mail; protect the judiciary in the event of litigation, and; create a repository of stored e-mails that can more easily be sifted in response to discovery requests.

The policy encourages judges and staff to send case-related e-mail through the CORIS, CARE and AIS case management systems. The remainder of the policy regulates e-mail not case related. Mr. Shea reported that when sending an email, the sender must determine the following questions: is the correspondence personal; transitory, or; policy and program correspondence. Judges and employees are encouraged to send a blind copy of the policy and program correspondence to an address that will be created in each district for the TCE to manage and own. Transitory and personal correspondence should be deleted as soon as the messages are no longer of use. Six months after a person leaves court employment, the emails of that person will be deleted. The policy states that e-mails connected to potential litigation should not be deleted. The policy allows the state court administrator the discretion to retain the e-mail of key personnel beyond the minimum requirements. Mr. Shea reported that training will be provided to the entire judiciary regarding this new schedule.

**Motion:** Judge Lyon motioned to approve the email retention schedule. Scott Sabey seconded the motion, the motion passed unanimously.

**11. APPOINTMENT OF 4<sup>TH</sup> DISTRICT COMMISSIONER: (Judge David Mortenson)**

Judge Mortenson reported that Presiding Judge Pullan and Judge Sainsbury have worked with the District and Juvenile benches to select a joint commissioner. The nominating committee

was chaired by Judge Fred Howard. Three finalists were considered by the two benches. Members of the Bar in the 4<sup>th</sup> District also visited with the bench to offer input on the selection process. The majority of the judges agreed that Josh Falkner was the best applicant.

Mr. Falkner has practiced in both juvenile and district court. The firm he came from focused on domestic work. Mr. Falkner graduated from BYU law school. Mr. Falkner also externed and was a law clerk for the 4<sup>th</sup> District. The term for a Commissioner is four years. Judge Mortenson indicated that Mr. Falkner will alternate each week two and three days of service on the juvenile and district bench. The Commissioner will be working in both Provo and in American Fork.

***Motion:*** Judge Barrett motioned to approve Mr. Falkner as the new Commissioner in 4<sup>th</sup> District, Judge Lyon seconded the motion, the motion passed unanimously.

**12. CHANGES TO RULE 4-905 GUARDIAN AD LITEM: (Keith Kelly, Rick Smith)**

Keith Kelley reported that Rule 4-905 gives the GAL office flexibility in the hiring process and allows the Director to make final hiring decisions. Rule 4-906 clarifies the policy that addresses complaints. Under the new rule, complaints about the GAL office or director go to the GAL Oversight Committee, complaints about a specific GAL attorney go to the director of the GAL. The Management Committee recognized that GAL staff are subject to the AOC personnel policies so the language addressing staff was removed from Rule 4-906. Mr. Kelley clarified language dealing with rights of appeal.

***Motion:*** Judge Chamberlain motioned to approve the rule changes to 4-905 and 4-906, Judge Lyon seconded the motion, the motion passed unanimously.

**13. TECHNOLOGY COMMITTEE UPDATE: (Judge William Thorne, Ron Bowmaster, Kim Allard)**

Judge Thorne provided an annual report of the Technology Committee's work. Judge Thorne reported on the Technology Committee's strategic plan, strategic objectives, and tactical initiatives. The Technology Committee's projects include the following: civil and criminal electronic filing; the creation of a redundant data center in St. George; justice court data conversion; Xchange access to justice court records; desktop equipment replacement schedule, and; electronic payment systems.

Mr. Bowmaster demonstrated the e-payment system for the Council. Mr. Becker thanked Judge Thorne for his outstanding service as Chair of the Technology Committee. Chief Justice Durham thanked Judge Thorne and Ron Bowmaster for their time and work.

**14. ADJOURN**

The meeting was adjourned.