

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Monday, February 28, 2005

Council Room, Matheson Courthouse  
450 South State Street  
Salt Lake City, Utah

Chief Justice Christine M. Durham, Presiding

#### **MEMBERS PRESENT:**

Chief Justice Christine M. Durham  
Justice Ronald Nehring  
Hon. James Davis  
Hon. Kevin Nelson  
Hon. Jon Memmott  
Hon. J. Mark Andrus  
Hon. Robert Hilder  
Hon. Clair Poulson  
Hon. Jerald Jensen  
Hon. Gary Stott  
Hon. K.L. McIff  
Hon. Hans Chamberlain  
David Bird, esq.

#### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Ray Wahl  
Tim Shea  
Brent Johnson  
Richard Schwermer  
Rob Parkes  
Nancy Volmer  
Mark Jones  
Fred Jayne  
AnNicole Faeth

#### **MEMBERS EXCUSED:**

Hon. Lee Dever

### **1. Welcome & Approval of Minutes: (Chief Justice Christine M. Durham)**

All in attendance were welcomed to the meeting. The minutes of the Council's January meeting were discussed, and the following motion was then made.

**Motion:** Judge Hilder made a motion to approve the minutes. Judge Davis seconded the motion. The motion carried unanimously.

### **2. Chair's Report: (Chief Justice Christine M. Durham)**

Chief Justice Durham reported that the American Bar Association recently held its mid-year meeting in Salt Lake City. It was reported that, during the conference, she had the opportunity to participate in a dialogue on a "We the Jury" project which educates the public about jury service. It was suggested that this would be a good topic for a future " Law Day" . Chief Justice Durham also reported that she had recently met with the new Public Outreach Standing Committee and had encouraged them to consider a program in place in Alaska where judges are asked to clear a portion of their calendars on law day in order to engage in civic education.

Chief Justice Durham then reported that a presiding judge workshop recently took place. It was reported that the workshop was well planned and appeared to be well received.

### **3. Administrator' s Report: (Daniel J. Becker)**

Daniel J. Becker reported the following items:

- Applications to fill the vacancy in the Court of Appeals, created by Judge Norman Jackson's pending retirement, will be accepted through the end of the day today. At present, 21 applications have been received.

- Judge Philip Eves, of the Fifth District Court, has announced his intent to retire December 1, 2005.
- Mr. Becker has received a preliminary draft of a report on a district court timeliness audit conducted by the Legislative Auditor's Office. The final report will be issued shortly.

#### **4. Reports:**

##### **Management Committee: (Chief Justice Christine M. Durham)**

Chief Justice Durham indicated that she had nothing to report in addition to what is included in the Management Committee's minutes.

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

David Bird, esq. indicated that Judge Dever was excused from the Council meeting that day, and that the additional members of Policy and Planning had nothing to report beyond the material in the committee's written report.

##### **Liaison Committee: (Hon. Jerald Jensen)**

Judge Jensen reported that he would defer his committee report until the legislative update scheduled to take place later in the meeting.

##### **Bar Commission: (David Bird, esq. )**

David Bird, esq. reported that the Bar Commission had not met since the Council's last meeting.

#### **5. Human Resource Policies: (Rob Parkes)**

Rob Parkes reported on changes to personnel policies which were being recommended by the Personnel Policy Committee. Discussion then took place regarding HB 213 which incites changes to the sick leave benefits for state employees upon retirement. After further discussion took place, the following motion was made.

**Motion:** Judge Hilder made a motion to table consideration of the propose policy change. Judge McIff seconded the motion. The motion carried unanimously.

It was reported that the second policy for the Council to consider is an amendment to the policy dealing with political activity by court employees. Mr. Parkes reported that the change to this policy reads as follows "Employees of the Judiciary are prohibited from running for, being appointed to, or otherwise holding an elected office at any level of government." It was reported that this change clarifies the court's operating procedures related to running for or holding a political office, in order to bring this policy in line with an Ethics Advisory opinion on the subject. After discussion took place, the following motion was made.

**Motion:** Justice Nehring made a motion to reject this specific policy change. Judge McIff seconded the motion. The motion carried with two opposed.

It was further determined that this issue should be studied by the Council's Management Committee, and brought back to the Council.

#### **6. Public Information Protocol: (Nancy Volmer)**

Nancy Volmer presented a revised media protocol plan which incorporated changes suggested by the Management Committee after their review of an earlier draft. Ms. Volmer indicated that the protocol would be distributed via the Court's internal newsletter, and in the media section of the Court's website. After the updated plan was reviewed by the Council, the following motion was made.

**Motion:** Judge Hilder made a motion to approve the proposed protocol. Judge Jensen seconded the motion. The motion carried unanimously.

#### **7. Proposed Rule Establishing GAL Oversight Committee: (Tim Shea)**

Daniel Becker reported that at the last Council meeting, the Council reviewed a preliminary report of a legislative audit of the Guardian ad Litem Office. At that time, the Council asked the Management Committee to review a recommendation included in the report, indicating that a GAL oversight committee should be formed. Mr. Becker reported that the Management Committee reviewed this issue, and recommends that the Council form a standing committee subject to a recently adopted sunset provision. The committee would consider issues, similar to those that related to the operation of a law firm.

It was reported that the Management Committee was advancing two amended rules to accomplish the outcomes indicated above. The first rule amendment is included in Rule 4-906. Guardian ad Litem program. These amendments address how complaints against the Guardian ad Litem Office should be addressed. The second rule, Rule 1-205. Standing and ad hoc committees. , adds a Guardian ad Litem Oversight Committee as a standing

committee of the Council, and describes committee membership. After discussion took place, the following motion was made.

**Motion:** Judge Stott made a motion to approve the aforementioned rule changes, on an expedited basis. Judge Davis seconded the motion. The motion carried unanimously.

### **8. Budget Request Update: (Daniel J. Becker)**

Daniel J. Becker reported that the 2005 Legislative Session will conclude Wednesday, March 2<sup>nd</sup>. At present, the legislature approved the Court's base budget and lease and contract funding. It was reported that decisions have not been finalized concerning judicial and employee compensation. Additionally, the legislature has not made a decision yet concerning the court's request for a Second District juvenile judge. It was also reported that \$225,000 will be provided for a land purchase for the juvenile court in Provo, and \$145,000 will be provided for the Jury, Witness, Interpreter supplemental.

### **9. Legislative Update: (Richard Schwermer, Mark Jones)**

Richard Schwermer provided an update to the Council concerning legislation considered during the 2005 Legislative Session. The following bills in particular were discussed:

- SB 10 - Liability Reform Act Amendments
- SB 20 - Office of Legislative Auditor - Access to Information
- SB 22 - Drug Offender Reform Act
- SB 25 - Transportation Amendments & Highway Jurisdictional Transfer Task Force
- SB 30 - Amendments to Search Warrants
- SB 47 - Wrongful Lien Offenses
- SB 72 - Child Welfare Amendments
- SB 92 - Utah Attorney's Fees Recovery Act
- SB 104 - Judiciary Amendments
- SB 112 - Child Protection Amendments
- SB 135 - Drug Courts Pilot Project
- SB 186 - Child Welfare Removal - Adoption Option
- HB 4 - Divorce Mediation Program
- HB 56 - Divorce Amendments
- HB 77 - Provisions for Emancipation of a minor
- HB 122 - Bail Bond Amendments
- HB 127 - Offer of Settlement Provisions
- HB 202 - Revisions to Child Welfare
- HB 213 - Unused Sick Leave at Retirement Amendments
- HB 235 - Insurance Arbitration Amendments
- HB 292 - Commission on Racial and Ethnic Fairness
- HB 338 - Child and Family Welfare Revisions
- HB 342 - Civil Legal Aid for Victims of Domestic Violence
- SB 91 - Juvenile Interstate Compact

The Council expressed appreciation to Mr. Schwermer and Mr. Jones for their excellent work on behalf of the courts during the legislative session.

### **10. Justice Court Judges and Full-time/Part-time Issue: (Richard Schwermer)**

Richard Schwermer reported that when Salt Lake City established its justice court several years ago, they submitted a request to the Council to allow for the use of part-time justice court judges when necessary. It was

mentioned that an issue has arisen regarding the use of part-time justice court judges regarding compensation, and judges moving out of state while technically still being active justice court judges without being monitored by the Council. After discussion took place, it was determined that this issue would be referred to the Management Committee for further discussion.

#### **11. Enoch City Justice Court Request: (Richard Schwermer)**

Richard Schwermer reported that Enoch City submitted a request several years ago to create a justice court. At that time, the Council denied the request on the basis that there were other courts in close proximity to the proposed court. It was reported that Enoch is now submitting a request again. The discussion centered on whether there had been any change from the denied request. After discussion took place, the following motion was made.

**Motion:** Judge Davis made a motion to deny the aforementioned request. Justice Nehring seconded the motion. The motion carried unanimously.

#### **12. Proposed Memorandum of Understanding with West Valley City: (Richard Schwermer)**

Richard Schwermer presented a memorandum of understanding between the Council and the West Valley Justice Court, which requires the justice court to be open every weekday, excluding holidays, 8 hours a day. However, this would allow the justice court to be open for business Monday through Thursdays, and ensure that judges will be available and clerks will be in the office on Fridays, but the court doesn't need to be physically open. They will accept filings and payments and be available by telephone. The court will report to the Council near July 1, 2007 on the success of this test project.

**Motion:** Judge Davis made a motion to ratify the aforementioned memorandum of understanding. The motion was seconded and carried with one opposed.

#### **13. Certification of Commissioners and Senior Judges: (Tim Shea)**

**Motion:** A motion was made to go into executive session to discuss personnel matters. The motion was seconded and carried unanimously.

**Motion:** A motion was made to come out of executive session. The motion was seconded and carried unanimously.

**Motion:** A motion was made to certify Commissioners David Dillon and Thomas Patton, and to certify Judge Boyd Bunnell and Judge Sawaya as inactive senior judges.

#### **15. Adjourn:**

**Motion:** A motion was made to adjourn the meeting. The motion was seconded and carried unanimously.