

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Monday, April 24th, 2006

Matheson Courthouse  
Council Room  
Salt Lake City, Utah

Judge James Davis, Presiding

#### **MEMBERS PRESENT:**

Hon. James Davis  
Hon. Robert Hilder  
Hon. Hans Chamberlain  
Hon. Kevin Nelson  
Hon. J. Mark Andrus  
Hon. William Barrett  
Hon. Jody Petry  
Hon. Rand Beacham  
Hon. Jon Memmott  
Hon. Jerry Jensen  
Hon. Robert Hilder

#### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Richard Schwermer  
Mark Jones  
Brent Johnson  
Tim Shea  
Holly Frischknecht  
Kim Allard  
Matty Branch  
Nancy Volmer

#### **EXCUSED MEMBERS:**

Chief Justice Christine Durham  
Judge Gary Stott  
David Bird, esq.

#### **GUESTS PRESENT:**

Elizabeth Neff, Salt Lake Tribune  
Dave Walsh  
Derek Byrne  
Judge Judith Billings  
Judge Dave Mower  
Tim Taylor, Saratoga Springs Attorney

### **1. WELCOME AND APPROVAL OF MINUTES : (Judge James Davis)**

Judge Davis welcomed everyone to the meeting and excused Chief Justice Durham, Judge Stott and David Bird. After reviewing the minutes, the following motion was made.

***Motion:*** Judge Hilder motioned to approve the minutes, Judge Chamberlain motion was seconded and approved unanimously.

### **2. Chair's Report: (Judge James Davis)**

Judge Davis reported that Justice Nehring will be reporting about the discussion the Appellate Board had at their conference later in the meeting.

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

Mr. Becker reported the following:

CCJJ met last week and approved the Courts request for \$82,500 which will cover a year long time half time Juvenile Commissioner position. They also approved \$100,000 for JAG funding which will be applied to projects in the Juvenile Court.

Chief Justice Durham participated in a Law Day forum that was broadcast on RadioWest on the Law Day theme of "Separate Branches, Balanced Powers." The Governor and representatives from the House and the Senate also spoke as part of a panel.

A Meth Conference was held at the end of March and all who participated reported they had a valuable experience. The conference was for judges, attorney's and all other service providers in the child welfare system. It was sponsored by the Court Improvement Project.

The Law School, the School of Social Work, and School of Behavioral Sciences have collaborated for the opening of the Utah Center for Criminal Justice that will focus both teaching and research. Chief

Justice Durham spoke during the inaugural ceremonies of the new center.

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

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

Judge Davis reported that Judge Frederick, Judge Hansen, Judge Fuchs and Judge Yeates have indicated they plan on retiring this year. The timing of their retirements is not yet finalized.

Judge Davis also reported that the OPC indicated that attorney misconduct complaints brought forth by judges is at a very low percentage. The Management Committee discussed the ethical responsibility a judge has to report misconduct. The Judicial Council discussed the possibilities of why the misconduct reported from the bench was low. The Chief reported at the Management Meeting that she will confer further with the Court and possibly discuss the advantages of providing education for each bench on this topic.

Mr. Becker reported that the consent calendar item that approved Paul Thompson as a Justice Court Judge needs to be changed. Mr. Thompson has modified his request and now wants to become an active sr. judge, which requires a different approval process. This item will be considered at the next Management Committee meeting.

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

The Policy and Planning Committee have not met since the last Judicial Council Meeting.

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

Mr. Bird was excused from the meeting and will provide a report from the Bar Commission during the next Council meeting.

#### **5. ACCESS TO FAIRNESS: (Tim Shea)**

Mr. Shea reported that last September the Judicial Council approved in concept a survey that would be used in courthouses across the state to measure the perception of court accessibility and fairness. Mr. Shea provided an example of the survey that would be used this summer. Interns would be hired to administer the survey to visitors in a courthouse, including lawyers, parties, witnesses, and jurors. Mr. Shea reported that not every courthouse will be used, depending on location, but that every attempt will be made to reach as many as possible.

Mr. Shea indicated that the Management Committee approved the budget for the survey project and for the committee to apply for an SJI grant that would assist in funding this program. Discussion took place about some of the questions the survey asks, particularly the one including physical barriers. The possibility of including questions about security was also discussed. The timing of the survey was also discussed.

The surveys would not be disseminated at justice courts unless the courts were co-located with the juvenile and district courts. The possibility of using the Justice Court Education, Training and Security funds for this survey was considered. The application deadline for the Justice Court Grant fund is on Monday, so there could be a possibility of making that request and distributing the survey in the Justice Courts some time in the Fall.

**Motion:** Judge Hilder motioned to approve the survey with question 12 being changed to address any barriers for disability, a separate question for court security, and the addition of an open ended question, Judge Barrett seconded the motion and the motion passed unanimously.

Mr. Becker indicated that the survey specifies whether the responder is a juror and that the jury qualification questions will be valuable.

#### **6. COURTOOLS REVIEW: (Daniel J. Becker)**

Mr. Becker provided information on the progress the Judicial Council has made with the CourTools Initiative that the Council has worked on over the last year. Mr. Becker reported that five of the eight reports currently have data available, they are: clearance rates; time to disposition; age of active pending cases; collection of monetary penalties; and effective use of jurors. The access and fairness, reliability and integrity of case files and court employee satisfaction sections are slated for reporting by the end of 2006.

Mr. Becker reported that for each tool, a description, the purpose, the application, the data sources, the process, the key outcomes and schedule were provided. Questions about each measure were discussed and Ms. Allard indicated that she would follow up on reporting issues that were un-clear.

Mr. Becker highlighted that the target rate for each of these tools have not yet been established. Mr. Becker indicated that the ABA standard was included on the report to give the Council some reference point. Mr. Becker discussed that the Council should consider where the targets for each tool should be and suggested that targets will be evaluated by the staff and brought to the Management Committee for further consideration.

Discussion took place about some of the challenges with measures. Mr. Becker reported that regardless of difficulties it is the courts responsibility to be accountable for the work at the courts.

Mr. Becker indicated that from this discussion he understood that the Council should not use the ABA standards, but that the Council should determine their own targets based on the needs of Utah's courts.

Discussion took place about the differences in local policy on individuals in the system making payments at age 18 or 21. Discussion took place about the need of having further education on this topic, possibly at the district court conference.

Mr. Becker reported that Tim Shea's memo will be sent out again regarding the responsibilities of the Office of State Debt Collection and its relationship with the courts.

### **7. SARATOGA SPRINGS JUSTICE COURT REQUEST: (Rick Schwermer)**

Mr. Schwermer reported that Saratoga Springs has requested approval to create a justice court. The Management Committee discussed some concerns about the creation of this new court based on the distance from other justice courts and their ability to provide security for their court. Tim Taylor, Saratoga Springs' City Attorney, reported that Saratoga Springs is one of the fastest growing cities in Utah. Currently, almost 75 cases are prosecuted in Utah County from Saratoga Springs. The Saratoga Springs City Council was not eager to enter in to an inter-local agreement with nearby justice courts. Mr. Taylor answered questions about funding surrounding the new justice court and that the court would eventually be self sufficient. Mr. Taylor reported he didn't anticipate operating court on a full time basis and that they could provide a budget if the Council would like to view it. Mr. Taylor reported that Saratoga Springs is planning on opening in July of 2007. Mr. Taylor reported that the schedule of court operation has not been determined but that there would be more accessibility to Saratoga Springs residents than they have in Utah County, even if a Saratoga Springs justice court is not open every day.

**Motion:** Judge Hilder motioned to delay the decision until Saratoga Springs can provide more detailed information on a budget and the times court will be open, and how long current cases in Saratoga Springs are taking in Utah County Justice Court. This issue will then be taken back to the Management Committee. The motion was seconded and approved unanimously.

### **8. FY 2007 BUDGET PLAN ADOPTION: (Daniel J. Becker)**

Mr. Becker provided a breakdown of the proposed budget for fiscal year 2007. Many of these items were discussed in St. George but a more detailed breakdown was explained. The two budgets to consider is how to spend ongoing funds and one time funds.

This year the ongoing funds come from fiscal notes from legislative action. Turnover savings are also included in ongoing funds along with retirement savings, exchange funds, drug court funds and reallocation of positions based on the creation of the Ogden Justice Court. The total projected amount of ongoing funds is \$1,227,500.

Mr. Becker proposed the following items:

4 <sup>th</sup> District Court Judge	257,500
(4) Law Clerks	272,800
.5 District Court Commissioner	73,100
Juvenile Court DNA database	32,800
Law Library	81,300
Employee Career Ladder	300,000
Restoration of Ongoing Reductions	43,000
Education	30,000 (remove from one time request)
Travel	13,000 (remove from one time request)
<b>Total:</b>	<b>1,227,500</b>

Mr. Parkes reported that in the past the Legislature has given market adjustments that raise the entry level positions, but doesn't affect the employees who have been here longer. Mr. Parkes reported that deputy court clerks are most affected by this salary compression because they are on a broad banded career track, which means increases are granted within a single broad pay range. This has led to newer employees receiving career ladder increases that vault their pay to the same level or above those more senior employees. Mr. Parkes proposed that in instances where pay falls at or below new rates corresponding to each level of the career ladder, salary adjustments be granted. This would mean clerks would receive selective pay adjustments to bring each individual up to current career level advancements. The annual cost of this proposal would be approximately \$122,000 and would affect 89 deputy court clerks. The majority of the clerks have worked under 3 years with the courts and are not affected by compression.

Mr. Parkes indicated that lead clerks are facing a similar situation with compression, although it is not as severe as the deputy clerks because lead clerks are not on a career track. Some lead clerks will also be affected by a one or two step increase in salary with this proposal.

Mr. Becker provided information on one time funds which come from fiscal note funding, JBIG grant funds, turnover savings and the estimated carry forward funds, which total \$1,536,500.

The proposed allocation of one time funds are:

Data Processing Programming	4,000
.5 Juvenile Court Commissioner (JBIG Funds)	82,500
Child Welfare Mediator	75,800
(2) Time Limited Law Clerks	136,400
Senior Judge Benefits	15,000
Second Language Incentive	50,000
Perm. Part-time Deputy Clerks: 3 <sup>rd</sup> District	70,000
Employee Incentive Awards	150,000
Employee Tuition Assistance	25,000
Employee Assistance Program	35,000
(9) Time Limited Deputy Clerks	360,000
Court Executive Training	10,000
District Equipment	100,000
Audit Department assessment	10,000
Grant Matching Funds	55,000
Document Translation	7,000
Secondary Court-site Contract Increases	15,000
Small Claims Pro Tem Judge Training	2,000
Interpreter Coordinator/Jury Clerk Training	2,000
Reserve	331,800
<b>Total:</b>	<b>1,536,500</b>

Discussion took place about specific budget items and questions that Council members had.

**Motion:** Judge Hilder motioned to approve the budget as proposed, Judge Memmott seconded the motion, the motion passed unanimously.

Judge Memmott indicated that Mr. Becker should be commended for his work on the budget and how it places an emphasis on employees and programs that are usually overlooked. Mr. Becker recognized Mr. March and Mr. Jayne for their work on the budget proposal and discussed the importance of the Council's budget and planning sessions.

#### **9 BOARD OF DISTRICT JUDGES UPDATE: (Judge David Mower)**

Judge Mower thanked the Judicial Council for their invitation to report on the activities of the Board of District Judges. Judge Mower reported that the Board has been working on plain language forms and provided examples of some of the forms that have been modified. Judge Mower also reported that the Board feels there is a good and open communication with the Chief Justice and the Administrative Office of the Court and they appreciated those relationships. Judge Mower indicated that obtaining law clerks has been a priority for the Board and they have discussed how to allocate money for law clerks in each district.

The Board has also continued the tradition of inviting legislators to their meetings and have felt this has been a positive way to communicate with the legislature about the Board's priorities and concerns.

**10. JUDICIAL OUTREACH COMMITTEE REPORT: (Judge Judith Billings)** Judge Billings thanked the Council for inviting her to report on the Outreach Committee's efforts. Judge Billings recognized Nancy Volmer, the Public Information Officer, for her hard work and dedication. Judge Billings recapped the goals the Outreach Committee had set, they are:

1. Provide more opportunities for judges to speak with students in the schools, and track those judges who do so.
2. Conduct a baseline survey of public perceptions in the court.
3. Develop a power point presentation that judges can adapt for use in school and community presentations.
4. Update the court's media guide.

Judge Billings reported that the Outreach Committee is now organizing Law Day and this year's theme is "Separate Branches, Balanced Powers." Chief Justice Durham recently participated in a panel discussion at the Hinckley Institute of Politics with Governor Huntsman, Speaker Curtis, and Senator Knudson. The discussion was also

broadcast on KUER RadioWest. The ' Judge for a Day' program is also being organized where students will be able to shadow a judge and learn about their job duties. Chief Justice Durham will also be writing an editorial for the Tribune and the Governor will be signing a Law Day proclamation. An insert for the Salt Lake Tribune and the Deseret News will advertise the activities for Law Day.

Judge Billings highlighted the other projects the Outreach Committee has been working on. The Committee has been applying for grants to fund surveys to measure the public perception of Utah' s courts. Kids and Judges Day will also take place again this year both in the Matheson Courthouse and the West Jordan Courthouse. The pilot program for Divorce Education is currently underway and will be evaluated upon its completion. Judge Billings also reported that Ms. Volmer is always working to get positive stories about the judiciary out to the public and encouraged judges to work with her on ideas. Mr. Becker thanked Judge Billings for all the leadership she has demonstrated with all the work the committee is doing.

#### **11. RULEMAKING FOR ABORTION BY A MINOR: (Brent Johnson) -**

Justice Nehring reported that the Court discussed the scope of counsel involvement in rulemaking as opposed to the authority of the Supreme Court. Brent Johnson explained that the statute requires the Council to enact rules and procedures but the Supreme Court will eventually have to consider these rules and criteria. Justice Nehring indicated that the discussion at the Appellate Court Conference discussed the elements of a case when an abortion by a minor is requested and possibly appealed to the Supreme Court. Mr. Johnson provided examples of forms and discussed the following considerations: time frames, notice, anonymity, venue, counsel, contents of petition, the standard for approval or denying and appeals.

After further discussion about the details and the types of situations that could come before a judge in an abortion by a minor case, the Council unanimously agreed to comply with the legislation and endorse the Supreme Court's rulemaking authority regarding this matter.

#### **12. JURY SELECTION AND SERVICE: (Tim Shea)**

Mr. Shea reported that the original source for jurors was the voter registration list of each county that are maintained by the Lt. Governor. Vital Statistics records have recently been added as a quality control list. With recent legislation that passed the Tax Commission records will now also be used for quality control. Mr. Shea requested the approval to add the Workforce Services' records as a jury source list. He indicated that with the improvements that have been made in order to decrease duplicate records, another source list will not significantly increase the probability of creating triplicate records.

**Motion:** A motion was made to approve Workforce Services' records as a jury source list. The motion was seconded and approved unanimously.

Mr. Shea then explained that the first batch of pattern jury instructions will be publicly available in May. This presentation will be demonstrated at the district judges conference.

Mr. Shea demonstrated some of the CourTool jury yield web interface available. Some areas of record keeping need to be standardized in order to improve data reliability and he is working with jury clerks to address these issues.

#### **13. LEGISLATIVE INTERIM COMMITTEE UPDATE: (Rick Schwermer, Mark Jones)**

Mr. Schwermer reported that the Judiciary Interim Committee has met and are creating their list of study items to focus on. Currently their list contains a total of 28 items. Seventeen of those items affect the judiciary. Mr. Schwermer reported that the Grand Jury issue has been removed from the list.. Penalty enhancement offenses have also been discussed. Other items on the list include tort reform, victim right to subpoena, justice court recordings, required mediation in all civil suites where the state is a party, jail access booking and warrants, protective orders, and child support guidelines and visitation. Mr. Schwermer went through some of the individual Supreme Court decisions that have resulted in the committee focusing on some of these items.

#### **14. COMMISSIONER COMPENSATION: (Rob Parkes)**

Judge Davis reported that the Management Committee discussed the Commissioner Compensation and found that a 3.5% increase would be appropriate.

**Motion:** Judge Chamberlain motioned to accept the Management's proposal of a 3.5% increase for Commissioner's to make their annual salary \$103,002. The motion was seconded and approved unanimously.

#### **15. EXPEDITED AMENDMENT OF RULE 3-414: (Tim Shea)**

Mr. Shea reported that during the process of amending the court security plan for the Matheson Courthouse, the Building and Security Committee discovered that private security officers who transport money for the court are not permitted under Rule 3-414 to be armed. The committee recommends that such officers be permitted to carry a firearm if properly licensed and required by their company. The proposed change was provided and the

committee would like to add a complementary provision to the Matheson security plan and requests that the amendment be made effective immediately under Rule 2-205.

**Motion:** Judge Chamberlain motioned to accept the changes with the addition that identification be shown, the motion was seconded and approved unanimously.

#### **16. CERTIFICATION OF SR. JUDGE: (Tim Shea)**

**Motion:** Judge Hilder motioned to approve Judge Roth as an inactive Sr. Judge, Judge Barrett Seconded the motion.

#### **17. ADJOURN**