

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Tuesday, July 13, 2004  
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 Matthew Durrant  
Hon. James Davis  
Hon. Jon Memmott  
Hon. J. Mark Andrus  
Hon. Jerald Jensen  
Hon. Clair Poulson  
Hon. Robert Hilder  
Hon. Lee Dever  
Hon. Gary Stott  
Hon. Ronald Hare  
Hon. Scott Johansen  
Hon. K.L. McIff  
David Bird, esq.

#### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Richard Schwermer  
Mark Jones  
Ray Wahl  
Matty Branch  
Tim Shea  
Mary Boudreau  
Kim Allard  
Nancy Volmer  
Brian Nelson  
AnNicole Faeth

#### **GUESTS PRESENT:**

Colin Winchester, *Executive Director,  
Judicial Conduct Commission*  
Elizabeth Neff, *Salt Lake Tribune*  
Hon. William Thorne, *Chair, Standing  
Committee on Court Technology*  
Hon. Lynn Davis, *Chair, Interpreter  
Advisory Panel (by telephone)*  
Paul Isaac, *Assistant West Valley Justice  
Court Administrator*  
Herb Katz, *West Valley Justice Court  
Administrator*

#### 1. WELCOME & APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)

All in attendance were welcomed to the meeting. The minutes of the Council= s June meeting were discussed. After a few minor changes were mentioned, the following motion was made.

**Motion:** Judge Poulson made a motion to approve the minutes, as modified. The motion was seconded and carried unanimously.

#### 2. CHAIR= S REPORT: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that she received a letter approximately a month ago from the Second District Juvenile Court, regarding concerns related to the CARE System. It was reported that the Juvenile Board determined that the release of this system would be delayed, pending the addressing of these concerns.

Chief Justice Durham reported that she recently attended the District Board= s meeting, where Senator Michael Waddoups was invited to visit with the Board regarding a number of issues. Chief Justice Durham also reported that the Supreme Court was recently invited to meet with legislative leadership.

#### 3. ADMINISTRATIVE UPDATE: (Daniel J. Becker)

Daniel J. Becker reported the following items:

- A legislative audit of the Guardian ad Litem Office has begun. It is anticipated that the audit will conclude in November or December.
- Christine Decker will be sworn in August 10<sup>th</sup> as a judge in the Third District Juvenile Court.
- John Morris, Jr. has been appointed by the Governor to serve as a new judge in the Second District Court.
- Katie Gregory will join the courts as an Assistant Juvenile Court Administrator August 14<sup>th</sup>, replacing Alicia Davis.
- The Governor's budget guidelines have been released. The guidelines remain similar to previous years in that they provide for no new funding requests, and only the submission of mandates.
- Judge Sharon McCully of the Third District Juvenile Court, will be sworn in next week as president of the National Council of Juvenile Family Court Judges.
- The Third District Juvenile Court currently has two judges serving on the Juvenile Board who are approaching the conclusion of their terms. It was reported that Third Juvenile terms on the Board used to be administered on a staggered basis, and the district requests that one of the judge's terms be expanded an additional year in order to return to staggered terms. After discussion took place, the Council expressed support for this request.

#### 4. REPORTS:

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

Chief Justice Durham reported that a few months ago, the Council designated a committee to review issues related to hours of operation in justice courts. Judge McIff, chair of the committee, reported that the committee recognized that an effort has been made over the last decade or so to inject uniformity and consistency in justice courts, and the committee is reluctant to take any action that would be a departure from these efforts. Judge McIff also discussed the integral role that justice courts play in the court system. In light of this, the committee determined that justice courts should maintain uniform hours of operation, 8:00 a.m. - 5:00 p.m., Monday through Friday. It was mentioned that this issue would be discussed again later in the Council's meeting.

Chief Justice Durham then mentioned that the Management Committee also reported that the committee endorsed a 13/87% split in mental health court funding.

##### **Policy and Planning: (Hon. Lee Dever)**

Judge Dever reported that a report would be made later in the meeting related to a recommendation made to make the Self Represented Litigant Committee a standing committee of the Council.

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

Judge Jensen reported that the Liaison Committee had not met since the Council's last meeting, but that they would be meeting that afternoon following the Council meeting.

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

David Bird reported that the Bar Commission would meet the following day.

#### 5. REPORT: JUDICIAL CONDUCT COMMISSION: (Colin Winchester)

Colin Winchester reported that thus far this year, the JCC has received 94 complaints, 72 of which have been dismissed, and 22 remain pending. Mr. Winchester then reported that rules have been drafted to address the issues of dismissals with warning upon stated conditions, and sanctions guidelines. Drafts of the rules were distributed and discussed with the Council.

Mr. Winchester then discussed mandatory justice court judge attendance at the Annual Justice Court Judges Conference. Mr. Winchester reported that Richard Schwermer is required to submit names of judges who do not attend this conference to Mr. Winchester. Mr. Winchester suggested that he, Mr. Schwermer, Matty Branch, Tim Shea, and Jerry Howe meet and discuss how to address conflicting rules related to this issue.

Mr. Winchester reported that a new database has been created which allows him to track statistical information related to complaints against judges, both individually and collectively. Mr. Winchester asked the Council if they felt that the JCC should send information to judges indicating the number of complaints that have been filed related to that judge. It was determined that Richard Schwermer and Tim Shea would be in contact with Mr. Winchester related to this matter.

## 6. DIVERSITY PLEDGE: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that the Minority Bar Association is supporting and raising the awareness of a diversity pledge that has gained the support of numerous law firms and state agencies. It was reported that the Management Committee reviewed a draft diversity pledge applicable to the courts, and has forwarded the pledge to the Council for its consideration and action. Judge Hilder reported that some of his colleagues in the Third District feel strongly about the courts participating in such a pledge, and they recommend that the pledge be approved by the Council. After discussion took place, the following motion was made.

**Motion:** Judge Dever made a motion to approve the pledge. Judge Hilder seconded the motion. No vote was taken on the motion.

Judge Johansen distributed a modified draft pledge for the Council's review, and submitted the following amended motion.

**Amended Motion:** Judge Johansen made a motion to amend the pledge to be modified as presented. Judge Poulson seconded the motion. No vote was taken on the motion.

**Motion:** David Bird made a motion to table the amended motion. Judge Andrus seconded the motion. The motion carried with one opposed.

**Motion:** David Bird made a motion to untable the motion. Judge Hilder seconded the motion. The motion carried with one opposed.

**Substitute Motion:** David Bird made a motion to go on record in support of the diversity pledge in concept, and that the specific language of the pledge should be drafted by Judge McIff, Judge Memmott, Judge Hilder, and others, taking into consideration the language proposed by Judge Johansen. This group is to bring a new draft to the Council's August meeting. Judge Hilder seconded the motion. The motion carried with three opposed.

## 7. REPORT AND RECOMMENDATIONS FROM THE POLICY AND PLANNING COMMITTEE: (Tim Shea, Mary Boudreau)

Tim Shea reported that currently no effort exists in Utah to survey and plan a coordinated response to self-represented litigants' needs. Mr. Shea reported that the Policy and Planning Committee recommends that such an effort should be organized, for a number of reasons which were discussed with the Council. Specifically, it was mentioned that the courts and the Bar recognize that self-represented litigants are inadequately served in Utah; resources for self-represented litigants are inadequate, uncoordinated, and unpredictable; and, national models and resources for serving self-represented litigants exist to assist Utah in establishing a program. Mr. Shea then reviewed draft rules with the Council which would create a committee that would be responsible in this area. After discussion took place, the following motion was made:

**Motion:** Judge Dever made a motion to remove the word "executive" in line 76 of the proposed rule, and substitute the word "clerk". The motion was seconded and carried unanimously.

**Motion:** Judge Memmott made a motion to approve the proposed rule as previously amended. Judge Stott seconded the motion. The motion carried unanimously.

## 8. STRATEGIC PLAN FROM THE TECHNOLOGY COMMITTEE: (Hon. William Thorne)

Judge Thorne presented a strategic plan adopted by the Council's Standing Committee on Court Technology. Judge Thorne discussed the committee's goals, purpose, and tasks with the Council. In summary, Judge Thorne indicated that the core of the committee's efforts continue to be focused on the court's case management systems, including CARE, AIS and CORIS. It was reported, however, that the committee feels that the court's secondary systems, such as jury management and e-filing, should continue to be pursued.

The Council thanked Technology Committee for its work on this strategic plan, and expressed appreciation to Judge Thorne for his report.

## 9. REPORT: CLERICAL WEIGHTED CASELOAD COMMITTEE: (Kim Allard, Peggy Gentles)

Kim Allard reported that the clerical weighted caseload is calculated by multiplying the time allocated to process each case type and tasks (case weights) by the number of cases. This generates the number of clerks required to process case filings. It was reported that variables in this equation may include the number of cases coming in the door, the number of self-represented litigants, the time allocated for each case type (case weight), and the percentage of cases in each case example. It was mentioned that in the last variable

mentioned, case examples, different examples (or scenarios) within case types can generate differing levels of complexity. Ms. Allard then reviewed clerical weighted caseload results for each district in the state.

Ms. Allard and Ms. Gentles then reviewed decisions and actions made for the 2004 Clerical Weighted Caseload Update with the Council. It was mentioned that the Clerical Weighted Caseload Committee began documenting the clerical weighed caseload process and history; and, the committee moved away from referring to A urban@ and A rural@ courts, and began using the terms A Group 1" and A Group 2". In regards to juvenile court, it was reported the committee established weights for protective orders on behalf of children. In regards to district court, the committee added a pro se weighting factor to Domestic cases, and re-validated the pro se factor for General Civil and Debt Collection cases. Additionally, criminal appeals were added to the formula, case weights for satisfactions were re-validated, and a change was made in the way garnishments are being counted.

It was then reported that the committee plans to accomplish two significant tasks in 2005 Clerical Weighted Caseload. First, with the assistance of a consultant, and in-depth evaluation of the methodology will be undertaken. The second task the committee plans to undertake is updating the case weights (minutes-per-case) in District Court.

The Council thanked Ms. Allard and Ms. Gentles for their report.

10. REPORT FROM THE COURT INTERPRETER ADVISORY PANEL: (Hon. Lynn Davis, Mary Boudreau)

Judge Lynn Davis provided a report to the Council related to the work of the Interpreter Advisory Panel. Judge Davis reported that Utah= s foreign born population has grown from 3.40 percent of the population in 1990, to 7.10 percent in 2000. It was reported that the Interpreter Advisory Panel= s work reflects the linguistic and cultural diversity challenges facing Utah courts. It was mentioned that Utah was one of the first eight states to join the NCSC Consortium for State Court Interpreters in 1995. This consortium has since grown to 30 states. Relying on Consortium resources, Utah= s court system has been a leader in establishing interpreter training and certification programs, and in adopting a code of professional responsibility for interpreters.

Judge Davis reported that the Interpreter Advisory Panel was established by the Council in 1996 as an interpreter oversight group to develop policy. Judge Davis reviewed with the Council the panel= s purpose, membership, activities and accomplishments, and future projects.

The Council thanked the panel for its work, and expressed appreciation to Judge Davis for his report.

11. REPORT FROM COMMITTEE CHARGED WITH REVIEWING JUSTICE COURT HOURS OF OPERATION: (Richard Schwermer)

Judge McIff reported that he was asked to chair a committee charged with reviewing justice court hours of operation. Judge McIff reported that within the last two decades or so ago, efforts have been made to bring uniformity and consistency to justice courts throughout the state of Utah. In light of these efforts, the committee did not feel that it could endorse a justice court operating on a schedule other than regular business hours, Monday through Friday. A draft revision to Rule 9-105, Justice Court Hours, was distributed for the Council= s review. It was mentioned that this revision would include the following language in the rule: A Justice Courts shall be open and available to transact judicial business every business day, Monday through Friday, excluding holidays as defined in U.C.A. 63-13-2, and unless specifically waived by the Judicial Council...@

Herb Katz and Paul Isaac from the West Valley Justice Court were present during Council discussion of this issue, and thanked the Council for its consideration of this matter.

After discussion took place, the following motion was made.

**Motion:** Judge McIff made a motion to adopt the revised rule. Judge Hilder seconded the motion. The motion carried unanimously.

It was mentioned that Rule 9-105 would be sent out for comment.

12. FINAL ACTION ON AMENDMENTS TO CODE OF JUDICIAL ADMINISTRATION: (Tim Shea)

Tim Shea reported that a number of rules were published for comment, and that no comments were received. The amendments to the Code of Judicial Administration were presented for final action by the Council. After discussion took place, the following motion was made.

**Motion:** Judge Johansen made a motion to approve the amendments. Judge Hare seconded the motion. The motion carried unanimously.

13. ADJOURN:

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