

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Tuesday, September 10, 2002

Park City Marriott  
1895 Sidewinder Drive  
Park City, Utah

Chief Justice Christine M. Durham, Presiding

#### MEMBERS PRESENT:

Chief Justice Christine M. Durham  
Justice Matthew Durrant  
Hon. James Davis  
Hon. Ben Hadfield  
Hon. Jerald Jensen  
Hon. Clair Poulson  
Hon. Robert Hilder  
Hon. Lee Dever  
Hon. Lyle Anderson  
Hon. Scott Johansen  
Hon. Ronald Hare  
Debra Moore, esq.

#### STAFF PRESENT:

Daniel J. Becker  
Myron K. March  
Richard Schwermer  
D. Mark Jones  
Holly Bullen  
Tim Shea  
Matty Branch  
Jan Thompson  
Diane Cowdrey  
Sandra Kinoshita  
AnNicole Faeth

#### **MEMBERS EXCUSED:**

Hon. Lynn Davis  
Hon. Andrew Valdez

#### **GUESTS PRESENT:**

Hon. W. Brent West, *Chair, Racial and Ethnic Fairness Implementation Committee*  
Hon. Kimberly Hornak, *Chair, Standing Committee on Education*  
Colin Winchester, *Executive Director, Judicial Conduct Commission*  
Hon. John Backlund, *Acting Presiding Judge, Fourth District Court*

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

All in attendance were welcomed to the meeting. The minutes of the Council's August budget planning meeting and business meeting were discussed. A motion was then made.

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

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

Chief Justice Durham reported that she will be making an effort to visit most districts during the Fall months. The first of these visits took place recently in the Second District Juvenile Court. Chief Justice Durham reported that the meeting went well, and that she enjoyed becoming better acquainted with the Second Juvenile Court staff and learning more about the districts activities.

Chief Justice Durham also reported that she recently attended the dedication of the new American Fork Courthouse, and that it appears the new facility will serve the area very well.

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

Daniel J. Becker reported the following items:

- The Governor forwarded the name of Elizabeth Lindsley to the Senate for their consideration, to fill a vacancy in the Third District Juvenile Court. The Senate will likely consider this matter September 18<sup>th</sup>. Also, the

Nominating Commission in the 5<sup>th</sup> District forwarded five names to the Governor to fill a judicial vacancy in that district.

- The Supreme Court Delivery of Legal Services Committee has issued a report.
- The Commission on Criminal and Juvenile Justice has awarded the courts \$115,000 to install digital audio systems in the juvenile court. These funds should be sufficient to finish placing the audio systems in every juvenile courtroom in the state.
- Sherry Stettler, the Trial Court Executive in the 8<sup>th</sup> District, has submitted notification of her intention to resign. A notice of the vacancy has been distributed.
- The investigation and prosecution of the former Clerk of Court of Washington County has been turned over to the Attorney General's Office.

#### 4. REPORTS:

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

Chief Justice Durham reported that the Management Committee discussed the following items:

- They reviewed a proposal by the Utah Association of Counties (UAC) that would establish a separate judicial conduct commission for justice court judges. The Management Committee suggested that the Council might want to invite a representative from UAC to attend a future Judicial Council meeting, in order to provide an opportunity for the Council to better understand their position.
- The Council didn't attend the 2002 Annual Bar Conference due to budgetary concerns. The Bar reported that the judiciary's participation was greatly missed, and that their absence even adversely impacted attendance. The Management Committee decided to tentatively make arrangements for the Council to hold meetings in conjunction with the Bar's 2003 Conference, but to review the court's budget in April to make sure that this would be financially feasible. The Committee also recommended that the schedule of when the Council meets during the conference be slightly modified from that of previous years, in order to save money on room charges.
- Meetings with legislators will be arranged in each of the districts, immediately following the November elections. These meetings will provide an opportunity for legislators to become better acquainted with the court system and to become familiarized with certain individuals they may encounter working within that system. The Management Committee considered the possibility of legislators sitting in on a court hearing and then joining a group for a lunch following the hearing.
- The Management Committee discussed education and proficiency standards that were passed several years ago relating to court reporters, but have not been monitored. The Committee suggested that this issue be referred to Policy and Planning.

The following motion was then made.

**Motion:** Judge Poulson made a motion to refer the aforementioned issue to Policy and Planning. Debra Moore seconded the motion. The motion carried unanimously.

##### **Policy and Planning: (Hon. Scott Johansen)**

Judge Johansen reported that Policy and Planning had placed a few items on the consent calendar, and that the issue regarding protective orders would be discussed later in the Council's meeting.

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

Judge Jensen reported that Tim Shea is working with a small claims committee which is submitting a proposal to increase the time of appeal from 10 days to 30 days. The Liaison Committee decided that more research should be conducted on the effect of this change, and this issue be discussed at a future meeting.

Judge Jensen reported that the Liaison Committee also discussed a proposed bill regarding the execution of mentally retarded defendants. The Committee proposed that this bill be discussed by entire Council. Richard Schwermer summarized the bill by stating that in *Atkins v. Virginia*, the U.S. Supreme Court found the execution of mentally retarded individuals to be unconstitutional. In discussing this bill, the Liaison Committee thought that the legislature and the courts could jointly look at the issues included in the bill. Although, the Committee discussed the Council taking no position on the bill, other than to have substantial issues referred to the legislature and the courts looking at procedural issues. It was mentioned, however, that the Supreme Court may want to look at the issue before the Council makes that determination.

**Motion:** Judge Hilder moved that the Council communicate with the drafters of the aforementioned bill that there appears to be some rule making involved with the bill, and that it might be better for the Council to review those sections. It was clarified that this motion makes no comment on the substance of the bill. Judge James Davis seconded the motion. The motion carried unanimously. Justice Durrant abstained from the vote.

##### **Bar Commission: (Debra Moore, esq.)**

Debra Moore reported that the Bar Commission hasn't met since the Council's last meeting. Ms. Moore then distributed newspaper inserts on "the Dialogue on Freedom" program which was taking place that week. Ms. Moore reported that, through the program, great discussions are taking place in schools throughout the state. It was noted that 55 judges are signed up and participating in the program.

Jan Thompson mentioned that the Education for Justice curriculum is being implemented this year in 6 high schools in the state.

#### **5. CHILD PROTECTIVE ORDER LEGISLATION: (Tim Shea)**

Tim Shea reported that the Policy and Planning Committee discussed a proposal made by the Standing Committee on Children and Family Law concerning child protective orders. Mr. Shea distributed draft legislation prepared by Policy and Planning which varied slightly from the legislation forwarded by the Standing Committee. Mr. Shea noted that a major difference between Policy and Planning's legislation and that of the Standing Committee, is that Policy and Planning recommends retaining a separate petition for a child protective order, rather than eliminating it as the Standing Committee recommends. Mr. Shea reported that the effect of this difference is that the only relief available from a child protective order petition is the child protective order itself. It was clarified that services and remedies that may be made available through a private petition alleging child abuse are not available from a child protective order petition.

Mr. Shea also reported that Policy and Planning also recommends that child protective orders be eliminated from the district court, and handled exclusively by the juvenile court. It was reported that the Board of Juvenile Court Judges has expressed concerns with this proposal due to the increase judicial and clerical resources it would require. Additionally, the Juvenile Board is concerned that the proposal would require the Division of Child and Family Services to provide additional resources, resulting in a potentially large fiscal note for the Department of Human Services.

**Motion:** A motion was made to table the issue until the Council's October meeting. The motion was seconded and carried unanimously.

#### **6. ADMINISTRATION OF DISTRICT COURT IN KANE COUNTY: (Daniel J. Becker)**

Daniel J. Becker reported that Kane County has indicated their intent to move from a contract site to a state operated site. Mr. Becker reported that Kane County has been a contract site for many years, and they currently have three employees that would become state employees if Kane County was to become a state operated site. It was mentioned that this request would be implemented in conjunction with a remodel of the Kane County court facility, and it was noted that it is actually costing the state more to contract with this particular site than it would be to operate the site as a state operated site.

**Motion:** Judge James Davis made a motion to approve Kane County's request to have their court become a state operated court site. Judge Anderson seconded the motion. The motion carried unanimously.

#### **7. REPORT: IMPLEMENTATION OF RACIAL AND ETHNIC FAIRNESS: (Hon. W. Brent West, Sandra Kinoshita)**

Judge West, chair of the court's Racial and Ethnic Fairness Implementation Committee, reported that the committee's work came about as the result of the recommendations of the Task Force on Racial and Ethnic Fairness. The committee was appointed to serve as an ad hoc committee to oversee the implementation of those recommendations in the court system. Judge West reported that each recommendation made by the Task Force that was directed towards the courts has been addressed. It was reported that the membership of the committee was comprised of 16 individuals which represented various court locations and system levels throughout the state. The committee appointed 7 subcommittees: workforce: recruiting/hiring, training, interpreting, community resources/outreach, administration, data/research, needs assessment, and public relations.

Judge West then provided a brief explanation of the work each subcommittee had performed, as follows:

- **Workforce:** Created a 7 point plan to increase minority recruitment and retention; developed a "minority retention report"; and, collected voluntarily self-reported racial data from employee and judicial applicants.
- **Training:** Implemented a mandatory cultural competency training for all court employees; addressed racial diversity issues at conferences; and, the 2002 judicial conference will include training on interpreter issues.
- **Interpreting:** Interpreter selection guidelines, a professional code of conduct, and discipline and grievance procedures were completed. Bilingual court employees are now eligible to receive an additional stipend; and, interpreting issues will continue to be addressed in new judge orientation.
- **Community Resources/Outreach:** The TCE's conducted outreach activities locally, a summary of which will soon be available on the court's webpage. Seven community court forums were held with ethnic community groups to provide information about the courts. The Education for Justice Project established a curriculum in schools.

- **Administration:** A partnership and formal liaison with the Bar Association was established to address racial and ethnic fairness issues. A systematic reporting system was identified to monitor workforce recommendations and timelines for reporting.
- **Data/Research:** Collected and monitored self reported racial data submitted with employee and judicial applications; redesigned annual performance review forms to include cultural competency as a criteria; and, collaborated with the jury committee to improve the master juror list and improve response from ethnic minorities.
- **Needs Assessment and Public Relations:** A needs assessment survey was distributed and input was gathered. Presiding Judges and Court Executives in each district endorsed the importance of the implementation of the recommendations of the Task Force by sending a letter to each employee in their district which included the results of the needs assessment.

Judge West reported that as the committee looked forward, their goal is to continue and sustain the implementation of the Task Force's recommendations. The committee would like to see the strength and gaps in current services examined, and policies and procedures formed to address gaps that are identified. The committee would also like to see intra and inter-agency collaboration within the legal system take place, in order to streamline services and share resources.

It was reported that the committee wished to forward 3 recommendations to the Judicial Council:

1. Responsibility should be transferred to the appropriate established entities.
2. The management of racial and ethnic fairness efforts should be supported by a permanent coordinator position.
3. Accountability and prioritization should be formalized through regular reporting to the Judicial Council.

The Council thanked Judge West and the Implementation Committee for their fine work.

#### **8. REPORT: STANDING COMMITTEE ON EDUCATION: (Hon. Kimberly Hornak, Diane Cowdrey)**

Judge Kimberly Hornak, chair of the Standing Committee on Education, reported on a few special projects the committee had been working on. Judge Hornak reported that a cultural competency training was conducted in the last year. This training came about as the result of the recommendations of the Task Force on Racial and Ethnic Fairness which called for this type of training in various entities within the justice system. The training was mandatory for all court employees, guardians ad litem, interpreters, and was made available to most judges throughout the state. Judge Hornak reported that similar training has been conducted in the Department of Corrections, the Department of Public Safety, and other organizations. Judge Hornak reviewed court employees' evaluations of the training, and noted that employees reported an increase in knowledge and skills related to cultural competency as a result of the training. It was mentioned that a similar training will be included in new judge orientation in the future.

Judge Hornak reported that Commissioner Michael Evans has been appointed as the new chair of Public Outreach Committee, which is a subcommittee of the Education Standing Committee. Chief Justice Durham formerly served as chair of this committee. Judge Hornak mentioned that the committee intends to focus on improving access to the court by self-represented litigants, and would like to see juvenile court information and public outreach materials placed on the court's website.

It was then reported that the first judicial faculty development program was held in Utah this year. Judge Hornak noted that this program received some of the highest evaluations of any educational program offered during the year, therefore, the committee hopes that it will be continued.

Judge Hornak reported that a Utah Judicial Institute faculty program is being initiated by Commissioner Evans to highlight the individuals in Utah who teach within the court system. It was mentioned that individuals must meet a strict criteria that is set out in order to become a faculty member. There are currently 50 faculty members.

The Council thanked the committee for their fine work.

#### **9. REPORT: JUDICIAL CONDUCT COMMISSION: (Colin Winchester)**

Colin Winchester, Executive Director of the Judicial Conduct Commission, reported that the Conduct Commission typically receives approximately 100 complaints per year, and that in 2001, 90 complaints were filed. Mr. Winchester reported that the percentage of dismissals remains fairly constant, citing that usually 13 - 14 cases are dismissed each month. It was reported that the Conduct Commission would like to see no more than 60 days pass, between the time a complaint is filed and the point at which the Conduct Commission reviews the complaint.

Mr. Winchester reported that the current members of the Judicial Conduct Commission are: Rep. Katherine Byrson, Rep. Neil Henriksen, Sen. Michael Waddoups, Sen. Gene Davis, Judge Russell Bench, Judge Darwin Hansen, Gayle McKeachnie, esq, and Ruth Lybbert, esq. (new chair of the Commission). The Commission also includes the

following public members: Rod Orton, Joe Judd, and Flora Ogan. Mr. Winchester reported that each member is typically appointed for four years terms. Since this is an entirely new Commission, however, some members have been appointed to 6 year terms and some to 4 year terms. Members may serve a maximum of 8 years.

Mr. Winchester reported that HB 136 made significant changes to the membership of the Conduct Commission, as well as changes to its processes. Specifically, HB 136 significantly changed the district court representation on the Conduct Commission. Previously, there had been two district court judges on the Commission, one of which was a voting member. There is now one district court judge and one appellate judge. It was reported that this can create difficulty when the district judge member has a conflict of interest with a judge who a complaint has been filed against. Previously, when a conflict of interest arose, one district judge could choose not to participate in discussions and the other district judge would step in. It was mentioned, however, that the rules were changed to allow the judge to review cases within the judge's own district if there's not a conflict of interest present. Additionally, the judge will be given the option of stating their potential conflict of interest, and then participating in deliberations. The judge may then determine if he/she should be disqualified or not.

It was reported that the Legislative Management Committee voted to have the Legislative Auditor conduct an audit of the Judicial Conduct Commission. The audit began the end of May. Mr. Winchester mentioned that the auditors have wanted to look at case files, but the Conduct Commission believes it cannot disclose the contents of the files and has written the Supreme Court asking that they consider this matter.

Mr. Winchester also reported that there is currently a proposal being made by the Utah Association of Counties (UAC) to form a separate Judicial Conduct Commission for justice court judges. Mr. Winchester has been invited to meet with UAC September 18<sup>th</sup>.

#### **10. RULE 11-201. SENIOR JUDGES: (Tim Shea, Rick Schwermer)**

Richard Schwermer distributed a handout which outlined five options for addressing judicial staffing needs created by an extended judicial absence. The options included the following:

1. Temporary reassignment of another judge of a court of record by the Chief Justice
2. Senior judge assignment
3. Judges pro tempore
4. Use of justice court resources
5. Amend CJA Rule 11-201 to allow for longer senior judge appointments

Tim Shea discussed the proposed amendments to CJA Rule 11-201. It was reported that the proposal is to give to the Chief Justice the authority to allow a senior judge to serve an additional 120 business days in extraordinary circumstances. This would be in addition to the 60 business days a senior judge is currently allowed to serve. The amendments would require the court administrator to certify that there are funds available to support this appointment. It was mentioned that this amendment could become an issue with the legislature, because they have previously voiced concerns with the possibility of senior judges being less regulated than regular judges.

After discussion took place, it was suggested that the proposed rule change be limited to an additional 60 days rather than 120 days. The following motion was then made.

***Motion:*** Judge Dever made a motion to change line 23 of the proposed amendment to Rule 11-201 to read "60 days" rather than "120 days", and that everything after the word "need" be stricken on lines 25 and 26. Included in the motion was a recommendation from the council that the Supreme Court consider the proposed amendments to the rule. Judge Hadfield seconded the motion. The motion carried unanimously.

***Motion:*** Judge Dever made a motion to recommend that the Supreme Court consider these amendments as an emergency rule change. Judge Hadfield seconded the motion. The motion carried with one opposed.

#### **11. 4<sup>TH</sup> DISTRICT COURT CASELOAD: (Hon. John Backlund, D. Mark Jones)**

Judge Backlund reported that Judge Ray Harding, jr. began his term as the presiding judge of the Fourth District Court July 1, 2002, but was arrested July 13<sup>th</sup>. Judge Harding has since been charged with two 3<sup>rd</sup> degree felony counts. He has been placed on administrative leave by Chief Justice Durham, pending the outcome. Judge Backlund reported that a large caseload in the Fourth District is remaining unaddressed as a result of this situation.

Judge Backlund mentioned that Judge Roger Livingston of the Third District Court was planning to retire, effective July 1, 2003. His vacancy would then be transferred to the Third District Juvenile Court. Judge Livingston has offered to retire in January and to serve as a judge in the 4<sup>th</sup> district until July 1, 2003. Judge Backlund reported that if Judge Livingston was to be appointed as a senior judge, he could currently only serve for 60 business days according to Rule 11-201.

After discussion took place, it was suggested that the calendar that needs coverage be compressed to 4 days a week. The calendar could then be covered until the beginning of the year with senior judges (preferably for blocks at a time), and, at the beginning of the year, judges could be appointed (on a voluntary basis) to cover the caseload in blocks at a time. The Council expressed support with addressing the caseload in that manner.

It was suggested that this proposal be presented to the district judges, in order to solicit volunteers to cover the calendar starting in January. It was agreed that this would be mentioned in the District Judges meeting which was scheduled to take place that Friday.

## **12. RECORDS ACCESS AND PRIVACY: (Tim Shea)**

Tim Shea reported that a resolution was recently passed by the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) which adopts guidelines for

addressing the issue of records access and privacy. Mr. Shea inquired of the Council whether the Utah Judiciary should begin to address policies regarding records access and privacy in the court system. Mr. Shea then raised questions the Council would need to consider related to these issues such as: How closely does the judiciary want to follow the GRAMA statutes?; What data is the court recording, and what data does the court want to keep?; Should data be public information, and what are the competing interests of it being public or private?; and, Should people be charged for access to information, and if so, how much? Mr. Shea reported that the CCJ/COSCA guidelines are being reviewed by many states throughout the country.

**Motion:** Judge James Davis made a motion to proceed with looking at the guidelines, and to ask the Management Committee to bring back a recommendation on how to proceed. Debra Moore seconded the motion. The motion carried unanimously.

## **13. EXECUTIVE SESSION:**

**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.

## **14. ADJOURN:**

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