

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Monday, October 21, 2002

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. Ben Hadfield  
Hon. Jerald Jensen  
Hon. Clair Poulson  
Hon. Robert Hilder  
Hon. Lee Dever  
Hon. Andrew Valdez  
Hon. Gary Stott  
Hon. Ronald Hare  
Hon. Scott Johansen  
C. Dane Nolan, esq.

#### STAFF PRESENT:

Daniel J. Becker  
Myron K. March  
Richard Schwermer  
Holly Bullen  
D. Mark Jones  
Ray Wahl  
Tim Shea  
Matty Branch  
Jan Thompson  
Gordon Bissegger  
Alicia Davis  
AnNicole Faeth

#### GUESTS PRESENT:

Hon. Hans Chamberlain, *chair, Standing Committee on Facilities*  
Hon. John Sandberg, *chair, Board of Justice Court Judges*  
John Baldwin, *president, Utah State Bar*  
4 representatives of the Utah Association of Counties

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

All in attendance were welcomed to the meeting. The minutes of the Council's September meeting were discussed. A motion was then made.

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

#### 2. INTRODUCTION OF NEW COUNCIL MEMBERS: (Chief Justice Christine M. Durham)

Chief Justice Durham introduced Judge Gary Stott (replacing Judge Lynn Davis), Judge K.L. McIff (replacing Judge Lyle Anderson), and Dane Nolan, esq. (replacing Debra Moore, esq.) as new members of the Judicial Council.

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

Chief Justice Durham reported that many items of interest to the Council would be discussed in her report from the Management Committee. She did mention, however, that the Management Committee reviewed what the Utah State Courts are currently doing in regards to public outreach and communication, and she hoped that this would be an issue the Council would pay special attention to.

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

Daniel J. Becker reported the following items:

- Kathy Elton will receive a Community Builder's Award from the Utah Women's Association of Community Builders.
- The Citizen's Committee on Judicial Compensation has met and is recommending a 4% increase in judicial salaries.
- A meeting will take place with the Governor, October 31<sup>st</sup>, concerning the court's budget. It appears that the state's budget is currently experiencing another shortfall. The legislature and Governor's office have not suggested action to address shortfall yet.
- The courts made three proposals to the Building Board in a recent meeting. The proposal included a south Salt Lake Valley project, the purchase of land surrounding the existing Cedar City courthouse for future expansion, and a lease purchase in Tooele. The Building Board issued their recommendations in the past week, and all of court's projects made the list.
- The Management Committee discussed the possibility of arranging an orientation for new legislators, to acquaint them with the judicial branch of government. The orientation would familiarize them with how the courts are organized, the role and decision making process of the Judicial Council, and other relevant issues.
- Holly Bullen, Assistant Court Administrator, will be leaving Utah for a position in the California Court System after a long career with the Utah State Courts. She was thanked for her many contributions.

## 5. REPORTS:

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

Chief Justice Durham reported that the Management Committee heard a report concerning communications and public outreach, and this issue will be discussed further in future meetings.

The following items were also reported:

- Tim Shea presented information to the Management Committee concerning the formation of a Records Access Study Committee.
- There has been a great response of people volunteering to help with the caseload in the 4<sup>th</sup> District.
- The Supreme Court approved a rule change which extends the length of time a senior judge may serve in a year by an additional 60 days, under extraordinary circumstances. This rule change will proceed under the regular rule making procedures, and will not be expedited.
- The Constitutional Revision Commission examined impeachment authority, October 11<sup>th</sup>.

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

Judge Johansen reported that Policy and Planning looked at child protective order legislation, which would be discussed during the Council meeting.

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

Judge Jensen reported that the Liaison Committee had not met since the Council's last meeting.

### **Bar Commission: (C. Dane Nolan, esq.)**

Dane Nolan reported that the Dialogue on Freedom program, which took place in September, was a great success. A total of 1,392 presentations were given to 39,129 participating students. Mr. Nolan noted that a total of 37 judges participated in the program.

Mr. Nolan then reported that the Bar has agreed to write a comment in favor of the Council's action concerning the repeal of secure areas in Rule 3-414. It was also mentioned that the Bar would like to offer a training session to new legislators, in which the structure of the constitution, the separation of powers, and other issues would be discussed.

## 6. CHILD PROTECTIVE ORDER LEGISLATION: (Tim Shea)

Tim Shea reported that the Standing Committee on Children and Family Law has been considering issues related to Child Protective Order legislation for some time. Mr. Shea then presented proposed child protective order legislation developed by the Standing Committee with amendments made by the Policy and Planning Committee. Additionally, two further amendments proposed by the Board of Juvenile Court Judges were reviewed. Mr. Shea reported that the proposed legislation takes the co-habitant abuse process, and puts it into the juvenile court act. A protective order petition would provide a protective order, and nothing in addition to that. It was reported that a petitioner may obtain DCFS services by filing a separate petition.

Judge Johansen reported that Policy and Planning differs from the position of the Board of Juvenile Court Judges in a couple ways. The Juvenile Board doesn't want civil remedies added to the juvenile court act, which Policy and Planning disagrees with. Also, the Juvenile Board would like the Council to measure the caseload shift from district

to juvenile court. Judge Johansen reported that Policy and Planning doesn't disagree with that request, but they haven't included it in the proposed legislation. After discussion took place, the following motions were made.

**Motion:** Judge Johansen made a motion to amend line 25 on page 22 to add a sentence that says "The petitioner shall first make a referral with the division.". Judge Valdez seconded the motion. The motion carried unanimously.

**Motion:** Judge Johansen made a motion to amend line 1 on page 23 to change the word "shall" to "may" and strike everything after "guardian ad litem". Judge Poulson seconded the motion. The motion carried unanimously.

**Motion:** Judge Johansen made a motion to add the following language to the end of line 18 on page 23 "A child protective order does not constitute an adjudication of abuse, neglect or dependency pursuant to (the abuse/neglect statute)." The motion was seconded and carried unanimously.

**Motion:** Judge Johansen made a motion to delete the sentence on line 7 of page 26. Judge Davis seconded the motion. The motion carried unanimously.

**Motion:** Judge Johansen made a motion to delete the language following the word "and" in line 1 on page 26, and to delete a similar provision in 30-6 which takes the position that reviewing courts should be able to amend a protective order with notice to the petitioner but not require petitioner consent. Judge Hadfield seconded the motion. It was also requested that the language on line 24 of page 6 also be deleted. Additionally, language regarding the three year period should be deleted where it appears in the legislation. The motion carried with two opposed.

**Motion:** Judge Johansen made a motion to adopt the proposed legislation as amended. Judge Valdez seconded the motion. The motion carried unanimously.

Richard Schwermer reported that Senator Hillyard has expressed an interest in sponsoring this legislation, but has raised a few concerns and wants three amendments added.

1. In protective order situations, a petitioner may invite an individual who a protective order has been filed against to their home, and then call the authorities claiming that the individual is in violation of the protective order.
2. On a protective order form, a place should be designated for a person to indicate whether they are represented by counsel or not.
3. If a protective order is issued, and a divorce decree entered, the protective order would terminate and the provisions of the protective order would merge into the divorce decree.

The Council understood these were concepts at this time and would consider the specific language when drafted.

## **7. DISCUSSION OF 2003 COUNCIL MEETING SCHEDULE: (Daniel J. Becker)**

Daniel Becker reported that an email was sent to Council members, asking their preference concerning the day of the week Council meetings are held. It was reported that the majority of Council members felt that the meeting should be kept on Mondays. After discussion took place, the following motions were made.

**Motion:** Judge Jensen motion to amend the start time of the Council meetings from 9:00 a.m. to 9:30 a.m. Judge Johansen seconded the motion. The motion carried unanimously.

**Motion:** Judge Hadfield made a motion to try to schedule Council meetings on Fridays. The motion was not seconded.

Judge McIff suggested that meetings be held on a Monday other than the 4<sup>th</sup> Monday.

It was also suggested that security access be given to Council members to allow them to bypass the public entrance.

**Motion:** A motion was made to approve the proposed 2003 Council meeting dates as presented, with a start time of 9:30 a.m. The motion was seconded and carried unanimously.

## **8. PROPOSED COUNCIL EXECUTIVE COMMITTEE ASSIGNMENTS: (Chief Justice Christine M. Durham)**

Chief Justice Durham distributed a list of proposed Council executive committee assignments. After discussion took place, the following motion was made.

**Motion:** A motion was made to approve the assignments. The motion was seconded and carried unanimously.

The following appointments were approved:

**Management  
Committee:**

Chief Justice  
Christine M.  
Durham  
Hon. James Davis  
Hon. Clair Poulson  
Hon. Robert Hilder  
Hon. Scott  
Johansen

**Policy and  
Planning:**

Justice Matthew  
Durrant  
Hon. Lee Dever  
Hon. Gary Stott  
Hon. Ron Hare  
Dane Nolan, esq.

**Liaison  
Committee:**

Hon. K.L. McIff  
Hon. Jerald Jensen  
Hon. Ben Hadfield  
Hon. Andrew Valdez

**9. REPORT OF THE FACILITIES STANDING COMMITTEE ON SOUTH VALLEY COURT FACILITY OPTIONS:  
(Hon. Hans Chamberlain, Gordon Bissegger)**

Judge Hans Chamberlain, chair of the Standing Committee on Court Facilities, reported that a proposal has been made to sell the Sandy Courthouse to Sandy City, and to build a new facility in West Jordan. Gordon Bissegger discussed the background of the facility needs in the south Salt Lake Valley. It was reported that the estimated cost of constructing a new facility in West Jordan would be approximately \$18 million. This cost could be offset by the sale of the Sandy facility for the amount it has been appraised at, \$5.5 million. This would result in a remaining cost to state of approximately \$11.5 million.

Several options considered by the committee concerning addressing the needs in the south valley were discussed. It was also mentioned that the Facilities Master Plan currently says that there will be three court facilities in the Salt Lake Valley. If the Sandy courthouse is closed, the Facilities Master Plan would need to be amended to provide for two facilities in the Salt Lake Valley.

The Council unanimously expressed support of option C.

**10. REPORT: BOARD OF JUSTICE COURT JUDGES: (Hon. John Sandberg, Richard Schwermer)**

Judge John Sandberg, chair of the Board of Justice Court Judges, provided a report to the Council concerning Utah's Justice Courts. Judge Sandberg reported that a second level of the legal institute for justice court judges is being implemented, and that a justice court outreach video is currently being put together. It was reported that justice court judges are very supportive of keeping retention elections for judges at the justice court level, and that this type of election helps a judge continue to uphold the integrity and independence of the judiciary.

Judge Sandberg reported that HB 18, which was passed during the 2002 Legislative Session, provided for electronic data reporting requirements. It was reported that justice courts should be compliant by January of 2003.

It was also reported that the ethics component of New Judge Orientation is being revised, and that an ethics presentation is being scheduled to take place at the annual training seminar.

The Council thanked Judge Sandberg for his presentation.

#### **11. OTHER BUSINESS:**

Judge Michael Allphin was introduced as the new chair of the Board of District Court Judges. Judge Allphin expressed appreciation to Chief Justice Durham for recognizing him, and mentioned that he hoped communication between the Board and the Council would continue.

#### **12. 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.

**Motion:** A motion was made to certify Commissioners Susan Bradford and Patrick Casey. It was also moved that the application of Judge Robert Braithwaite to senior judge status, be approved with an effective date of January 1, 2003. The motion was seconded and carried unanimously.

#### **13. LUNCH:**

The Council presented the Amicus Curae Award to John Baldwin, Executive Director of the Utah State Bar.

Members of the Utah Association of Counties (UAC) also joined the Council for lunch. A discussion took place concerning UAC's interest in forming a separate judicial conduct commission for justice court judges. Discussion concerning abolishing retention elections for justice court judges also took place.

#### **14. ADJOURN:**

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