

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

**Monday, October 27, 2003**

**Conference Room D, 3<sup>rd</sup> Floor**

**Logan Courthouse  
135 North 100 West  
Logan, Utah**

**Chief Justice Christine M. Durham, Presiding**

**MEMBERS PRESENT:**

Chief Justice Christine M. Durham  
Justice Matthew Durrant  
Hon. Jon Memmott  
Hon. J. Mark Andrus  
Hon. Jerald Jensen  
Hon. Clair Poulson  
Hon. Robert Hilder  
Hon. Gary Stott  
Hon. K.L. McIff  
Hon. Ronald Hare  
David Bird, esq.

**STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Richard Schwermer  
D. Mark Jones  
Ray Wahl  
Tim Shea  
Matty Branch  
Nancy Volmer  
Alicia Davis  
Rob Parkes  
AnNicole Faeth

**MEMBERS EXCUSED:**

Hon. James Davis  
Hon. Scott Johansen  
Hon. Lee Dever

**GUESTS PRESENT:**

Hon. Pamela Greenwood (for Judge Davis)  
Hon. Jeffrey "R" Burbank, *Presiding Judge, First District Court*  
Sharon Hancey, *Trial Court Executive, First District Court*

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

All in attendance were welcomed to the meeting. New members of the Council, Hon. J. Mark Andrus (replacing Hon. Andrew Valdez) and Hon. Jon Memmott (replacing Hon. Ben Hadfield), were introduced and welcomed.

The minutes of the Council's September meeting were discussed. A minor modification was suggested. The following motion was then made.

**Motion:** David Bird made a motion to approve the minutes as modified. Judge Hilder seconded the motion. The motion carried unanimously.

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

Chief Justice Durham reported that Judge Bill Barrett is the new chair of the District Court Board, and Judge Paul Lyman is the new chair of the Juvenile Court Board. They will each be invited during the course of the year to meet with the Council.

Chief Justice Durham also reported that the Supreme Court has been working with the Bar Commission to increase standards for passing the Bar Exam. The Bar is proposing, and the Supreme Court is ready to approve, an increase in the difficulty level of the exam over the course of the next few years.

Utah will be hosting the Annual Conference of Chief Justices and Conference of State Court Administrators' meeting in the Summer of 2004.

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

Daniel J. Becker reported the following items:

- Rob Parkes was introduced as the Court's new Human Resources Director. Mr. Parkes replaces Barbara Hanson who took a position as the Director of Human Resources for the State Tax Commission.
- The first edition of the Court's new electronic newsletter was recently distributed. It is anticipated that the newsletter will be distributed on a monthly basis.
- Chief Justice Durham and Mr. Becker will meet with Governor Leavitt and Lt. Governor Walker regarding the Court's budget requests, Friday, October 31<sup>st</sup>.
- A presentation was recently made to the State Building Board in which a request for the purchase of land adjacent to the existing Cedar City Courthouse for future expansion, and a request for a new Tooele Courthouse were advanced.
- A special session of the legislature will take place November 19<sup>th</sup>. The courts will have one item which will be considered during this session, a technical change to the security fee bill.
- A few minor changes to a resolution honoring retired Judge DeVerl Payne which was included on the Council's consent calendar were suggested by the Justice Court Board. After discussion took place by the Council, the following motion was made.

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

Richard Schwermer then reported that a subcommittee of the Judiciary Interim Committee is exploring an option of making mediation in contested divorce cases when children are involved mandatory, rather than discretionary. It was reported that questions have been raised, however, about whether or not there are presently enough mediators on the ADR Roster and whether or not they are equally distributed across the state. Following discussion, Mr. Schwermer was asked to raise the issue of mandatory mediation with the Council's Advisory Committee on Alternative Dispute Resolution, and report back to the Council their recommendations.

- Chief Justice Durham and Mr. Becker are scheduled to meet with Senate leadership in the near future.

- **REPORTS:**

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

Chief Justice Durham reported that the Management Committee reviewed a proposed 2004 meeting schedule. The draft schedule was discussed with the Council, who expressed their approval of the schedule with the following modification.

**Motion:** Judge Hilder made a motion to not have the Council hold its July meeting in Sun Valley in conjunction with the Annual Bar Conference. Judge Poulson seconded the motion. The motion carried unanimously.

It was then decided that the Council's July 2004 meeting will take place on July 13<sup>th</sup> rather than on the 14<sup>th</sup>.

Chief Justice Durham also reported that the Management Committee considered executive committee assignments since the terms of two Council members have come to an end and two new members have been appointed. They suggested that Judge Andrus be appointed to the Liaison Committee, that Judge Memmott be appointed to the Policy and Planning Committee, and that Judge Stott be appointed to the Liaison Committee. After discussion took place, the following motion was made.

**Motion:** Judge Poulson made a motion to approve the aforementioned appointments. Judge Stott seconded the motion. The motion carried unanimously.

**Policy and Planning: (Justice Matthew Durrant)**

Justice Durrant reported that a claims director from PEHP attended Policy and Planning's most recent meeting. It was also reported that Richard Uday reported on the progress of the Lawyers Helping Lawyers program.

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

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

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

David Bird reported that the Bar's Fall Forum was recently held at the University Park Hotel in Salt Lake City. The Forum was well attended and appeared to be a great success. It was mentioned that many of the attendees appeared to be attorneys that do not typically attend the Mid-Year Bar Conference or the Annual Bar Conference.

Mr. Bird reported that the Bar's Litigation Section had been experiencing difficulty with SPAM filters that law firms have. The filters have been deleting mass e-mails from the Bar, treating them as SPAM. It was reported that the

Bar is looking at this issue.

- **MEDIA TRAINING: ACCESS TO JUVENILE PROCEEDINGS: (Nancy Volmer)**

Nancy Volmer reported that a media plan has been created to assist the media in observing juvenile court proceedings, which will take place on a pilot basis in the Third and Sixth District Juvenile Court. The pilot project will begin November 1, 2003. Media training on this plan will take place Tuesday, October 28, 2003, and many members of the media are expected to attend.

- **BUDGET: CARRY FORWARD FUNDS: (Daniel J. Becker)**

Daniel J. Becker reported that last April, the Council considered how much the courts would have at the end of 2003 in carry forward funds. At that time it was projected that there could be as much as \$500,000 in carry forward funds from 2003 to 2004. The Council allocated only \$250,000 of the potential \$500,000. When the final year end calculations were made, the courts actually have \$783,900 in carry forward funds, which leaves \$533,900 in one time carry forward funds unallocated. It was recommended that only half of that amount, \$266,950, be allocated at this time, and that the balance be maintained in reserve. A list of budget requests deferred from the Council's budget planning session, requests not addressed in the 2003 budget plan, and other needs were reviewed by the Council.

**Motion:** Judge McIff made a motion to allocate only half of the unallocated surplus, \$266,950. Judge Hare seconded the motion. The motion carried unanimously.

The Council then reviewed how this money could be allocated. After discussion took place, the following motion was made.

**Motion:** Judge Hilder made a motion to approve one time protective order funding, senior judge assistance for the Fourth District Court, and funding for capital equipment. The motion was seconded and carried with one opposed.

It was proposed that some money be allocated to the senior judge fund for one time, pressing personnel needs.

**Motion:** Judge McIff made a motion to allocate the remaining one time money as follows: \$85,000 for CARE Hardware, \$20,000 for augmenting the senior judge fund for backlog relief in the Second District and Juvenile Courts (the two courts where the Council has approved seeking funds for new judicial positions), and \$51,000 for technical equipment replacement. The motion was seconded and carried unanimously.

- **PROGRAM BASED BUDGETING UPDATE: (Daniel J. Becker)**

Daniel J. Becker reported that he has met with the District Board, the Juvenile Board, and the Standing Committee on Technology. He still plans on meeting with the Appellate Board and the Education Standing Committee regarding the program based budgeting initiative. Each of these who Mr. Becker has spoken with have expressed support for this initiative, and welcome the opportunity of reviewing programs and recommending spending priorities to the Council.

A handout was distributed to the Council which contained several forms. The first form would be completed for each board or committee involved in the process. It includes a program description/purpose, current program costs, proposed program costs, priorities, and proposed alternatives. The second form would also be completed by each entity involved in the process, and would outline priorities, program names, current funding allocation, current FTE, proposed funding allocation, proposed FTE, and a funding source for an increase, if any. The last piece of information included in the handout listed programs included in each board or committee's realm of responsibility for consideration.

Mr. Becker then asked the Council how they would like to proceed with their involvement in this process. After discussion took place, the Council decided to ask the Management Committee to formulate a recommendation to the Council regarding how to proceed with this process.

- **REPORT TO LEGISLATIVE CHILD WELFARE OVERSIGHT PANEL: (Ray Wahl)**

Ray Wahl reported that a report was recently presented to the Child Welfare Oversight Panel. Mr. Wahl indicated that this is a statutorily required report in which information is presented regarding the timely occurrence of child welfare proceedings and reasons for delay. It was reported that in the last year there has been even greater compliance with "time limits established in Section 78-3a-308 regarding pretrial and adjudication hearings, Section 78-3a-311, regarding dispositional hearings and reunification services, and Section 78-3a-312, regarding permanency hearings and petitions for termination." Mr. Wahl reported that the Legislative Child Welfare Oversight Panel was generally favorable in their response to the report.

- **PROPOSED CODE OF JUDICIAL CONDUCT AMENDMENTS: (Richard Schwermer)**

Richard Schwermer reported that several months ago, a letter was submitted to Chief Justice Durham by Colin Winchester related to provisions of the Code of Judicial Administration Rule 2-211. Chief Justice Durham subsequently received a letter from the chairs of the Judicial Rules Review Committee which asked the court to

consider its position on when judges report possible judicial misconduct or problems to the Judicial Conduct Commission and/or the Judicial Council. It was suggested that the Code of Judicial Conduct and the Canon be amended to indicate that judges should report information that would be a violation of the Code of Judicial Conduct, and shall report substantiated information of serious violations of the Code of Conduct consistent with the current model ABA Code of Conduct. It was noted that the ABA is currently reviewing and will be making changes to the present Code of Conduct. The Supreme Court has decided to wait and see what the changes will be before they recommend any changes for Utah.

After discussion took place, it was decided that no action would taken on this item at this time.

- **REPORT: FIRST DISTRICT COURT: (Hon. Jeffrey "R" Burbank, Sharon Hancey)**

Judge Burbank thanked those members who attended the dedication of the new Logan Courthouse, and thanked the Council for holding their meeting at the courthouse. Judge Burbank also expressed appreciation to Sharon Hancey and First District Court staff for their work in making the move into the new building a success.

Sharon Hancey reported on community outreach in the First District. She reported that a few judges are involved in teaching at Utah State University, and all of the First District Judges have visited local high schools on Law Day. Judges occasionally use their lunch hour to deliver "meals on wheels" to needy, elderly people in the community. Additionally, members of the First District Juvenile Court have served on the Mayor's Youth Council.

Ms. Hancey also reported that the First District has a quarterly newsletter which describes what they're doing internally within the district. This includes an "employee of the quarter" program, which has been a very positive experience for employees in the district.

The Council expressed appreciation to Judge Burbank and Ms. Hancey for their report, and for their hospitality in hosting their meeting that day.

- **TOUR OF NEW LOGAN COURTHOUSE:**

The Council was led on a tour of the new Logan courthouse. The Logan courthouse is the is the first courthouse in the state to be constructed through the newly adopted prototypical model.

- **OTHER BUSINESS:**

- Judge Hilder reported that construction on the new West Jordan Courthouse should begin soon. He indicated that the Third District Bench would like to close the West Valley Courthouse and move those judges to West Jordan, along with Sandy, if that could be worked out. He indicated that they understood the courthouse would either have to be sold, or another state agency would have to take over the building, and that there were no funds presently available to finish two roughed in courtrooms in the West Jordan facility.

- **ADJOURN:**

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