

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Monday, October 25, 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 Ronald Nehring  
Hon. James Davis  
Hon. Kevin Nelson  
Hon. Jon Memmott  
Hon. J. Mark Andrus  
Hon. Jerald Jensen  
Hon. Clair Poulson  
Hon. Robert Hilder  
Hon. Lee Dever  
Hon. Gary Stott  
Hon. K.L. McIff  
Hon. Hans Chamberlain  
David Bird, esq.

#### **STAFF PRESENT:**

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

#### **GUESTS PRESENT:**

Hon. Pamela Greenwood  
John Ashton, esq.  
Brent Bowcutt  
Justice Matthew Durrant  
Hon. Ronald Hare

### **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 then discussed. After one minor modification was mentioned, the following motion was made.

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

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

Chief Justice introduced and welcomed the three newly appointed Council members: Justice Ronald Nehring (replacing Justice Matthew Durrant), Judge Kevin Nelson (replacing Judge Ronald Hare), and Judge Hans Chamberlain (replacing Judge Scott Johansen).

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

Chief Justice Durham reported the following:

- Chief Justice Durham, Daniel Becker, and Myron March recently held an informal orientation for new Council members.
- Chief Justice Durham recently met with the gubernatorial candidates, Jon Huntsman, Jr. and Scott Matheson, Jr. During the meeting discussions took place concerning judicial governance, the judiciary's budget process, the judicial nomination process, problem solving courts, judicial salaries, and other issues related to the judiciary.

- A meeting recently took place with Governor Walker, in which Chief Justice Durham and Governor Walker discussed the creation of a committee which would consist of members of various entities involved with foster care issues. Governor Walker agreed to co-chair the committee with Chief Justice Durham.

Judge Memmott then indicated that a report on judicial salaries was recently presented to the Executive and Judicial Compensation Commission. A copy of the report was distributed and discussed with the Council. Judge Memmott pointed out that, in the public sector, many public attorneys would have to take a reduction in pay in order to become a judge. Additionally, applicant pools for judicial vacancies are beginning to decrease in size, and the average age of applicants is decreasing.

Judge Memmott reported that a 7% increase in judicial salaries is being requested this year.

Chief Justice Durham indicated that she would write a letter of appreciation to the court's committee which evaluated judicial salaries for their excellent work on this project.

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

Daniel J. Becker reported the following items:

- Judge Kent Bachman is now the chair of the Board of Juvenile Court Judges, and Judge Mary Noonan has been elected to serve on the Board.

- Judge Thomas Willmore is now chair of the Board of District Court Judges.

- John Paul Kennedy was recently confirmed by the Senate to serve as a judge in the Third District Court, replacing Judge William Bohling.

- The Utah State Courts were recently selected to receive the Golden Spike Award, largely due to the court's 2004 Annual Report to the Community.

- The Center for Digital Government selected the Utah State Court's Website to receive their Government to Citizen Award. Mr. Becker noted that in 2003 there were 870,000 visits to the website, and that number will be exceeded in 2004.

- Jessica Van Buren was recently hired to serve as Director of the Utah State Court's Law Library. Ms. Van Buren, who will begin December 1<sup>st</sup>, brings extensive experience to this position.

- The court's facilities requests are included in the top ten requests advanced by the Capital Facilities Committee.

#### **5. REPORTS:**

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

Chief Justice Durham reported that items discussed by the Management Committee can be viewed in the committee's October 12<sup>th</sup> minutes.

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

Judge Dever reported that Policy and Planning discussed issues surrounding Court Referees.

##### **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 courts should expect to have the support of the Bar in advancing a request for increases in judicial salaries. Mr. Bird then reported that the Utah State Bar has presented the Honorable Gordon J. Low with the inaugural Professionalism Award. The award is in appreciation for dignified and courteous conduct as a lawyer or judge and in recognition for deportment in the practice of law, which represents the highest standards of fairness, integrity, and civility. In addition, the following individuals were recognized with an award: Second Judicial District-Richard W. Campbell; Third Judicial District-Stephen B. Nebeker; Fourth

Judicial District-M. Dayle Jeffs; Fifth through Eighth Judicial Districts-Ken K. Chamberlain, who was recognized posthumously.

Mr. Bird reported that a report has been issued by the Office of Professional conduct that indicates the source of complaints against lawyers. It was reported that a very small percentage (0.9%) of those complaints come from the judiciary. Mr. Bird suggested that a discussion take place between the Bar and the bench concerning issues surrounding judges referring complaints to the Bar related to attorneys.

## **6. REPORT AND RECOMMENDATIONS OF THE AD HOC COMMITTEE ON PRIVACY AND PUBLIC COURT RECORDS: (Hon. Pamela Greenwood, Tim Shea)**

Judge Pamela Greenwood, chair of the Ad Hoc Committee on Privacy and Public Court Records, reported that the committee has been working for approximately 20 months, and has prepared a draft report for the Council's consideration and subsequent approval. Tim Shea reported that the committee consisted of members of the judiciary, as well as members of the legal community, and pro-public access representatives. The Committee used existing rules, GRAMA, the work of other states, the testimony of stakeholders, as well as guidelines adopted by the Conference of Chief Justices and the Conference of State Court Administrators, as the basis for beginning its work.

Mr. Shea summarized the committee's recommendations as follows:

- Changes be made to the classification of court records, as follows:
  - - 1) Personal identifying information of a party other than name, address, date of birth, driver's license number and last four digits of social security number should be private.
  - - 2) The classification of A controlled@ records should be eliminated and those records reclassified as private.
  - - 3) The distinction between administrative and judicial records should be eliminated, but the process to access administrative and judicial records should be better delineated.
- Record keeping systems should be improved, especially paper systems, so non-public records are more easily separated from public records.
- Education should be improved on the rights, the responsibilities and the benefits of privacy and court records.

After discussion took place, the following motion was made.

**Motion:** Judge Hilder made a motion to release the report of the Ad Hoc Committee on Privacy and Public Court Records, and send associated rules out for comment. The motion was seconded and carried unanimously.

## **7. RECORDS QUALITY REPORT: (Brent Bowcutt)**

Brent Bowcutt, chair of the Records Quality Committee, distributed and discussed a report of the committee. Mr. Bowcutt discussed a number of improvements in records quality that have taken place, largely as a result of the committee's work, throughout the state court system. The committee has worked to establish quality control mechanisms, audit trails, and routine tests which will continue to enhance the quality of court data.

The Council thanked Mr. Bowcutt and the committee for its excellent work.

## **8. LUNCH - RECOGNITION OF OUTGOING COUNCIL MEMBERS:**

Appreciation was expressed to Justice Matthew Durrant, Judge Scott Johansen, and Judge Ronald Hare for their dedicated service to the court system over the past several years they served on the Council. Tokens of appreciation were presented to Justice Durrant and Judge Hare by Chief Justice Durham. Judge Johansen was unable to attend, therefore, it was mentioned that a token of appreciation would be sent to him.

## **9. REPORT: PERFORMANCE EVALUATION COMMITTEE: (John Ashton, esq.)**

John Ashton, chair of the Performance Evaluation Committee, reported that at the request of the Judicial Council, the committee has reviewed the attorney and juror surveys. It was reported that the committee recommends combining or eliminating several questions. Mr. Ashton reviewed the proposed changes with the Council. After discussion took place, the following motion was made.

**Motion:** Judge Hilder made a motion to adopt the proposal with the addition of language that would phrase questions regarding legal and factual issues the same for trial court judges as they are for appellate court judges. The motion was seconded and carried unanimously.

## **10. JUDICIAL COUNCIL COMMITTEE APPOINTMENTS: (Chief Justice Christine M. Durham)**

Chief Justice Durham distributed a list of proposed Council committee appointments for the Council's review. It was mentioned that these appointments were reviewed and are recommended by the Management Committee. After discussion took place, the following motion was made.

**Motion:** Judge Poulson made a motion to approve the Council committee appointments as follows:

Management Committee

Chief Justice Christine M. Durham, Chair

Judge Jim Davis, Vice Chair

Judge Robert Hilder

Judge Clair Poulson

Judge Hans Chamberlain\*

Liaison Committee

Judge Jerald Jensen

Judge Kay McIff

Judge Mark Andrus

Justice Ron Nehring\*

Policy and Planning Committee

Judge Lee Dever

Judge Gary Stott\*\*

Judge Jon Memmott

David Bird

Judge Kevin Nelson\*

\* new Council member

\*\* new committee assignment

Judge Davis seconded the motion. The motion carried unanimously.

### **11. JUDICIAL COUNCIL MEETING SCHEDULE: (Chief Justice Christine M. Durham)**

Chief Justice Durham reviewed a tentative list of 2005 meeting dates with the Council which were recommended by the Management Committee. After discussion took place, the following motion was made.

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

### **12. FAX FILING POLICY: (Tim Shea)**

Tim Shea reported that several months ago, the Council referred to Policy and Planning the issue of a uniform policy on filing papers by fax. The committee developed a working draft, which was shared with the Trial Court Executives, the Clerks of Court, Board of Justice Court Judges, and the Board of District Court Judges. It was reported that the committee has incorporated several suggestions from those groups and recommends amending Utah Rule of Civil Procedure 5. Mr. Shea reported that the committee recommends that there be no fee for filing a paper by fax. It was mentioned that since the amendment will affect how parties and lawyers process their cases, the committee recommends using the rules of procedure, rather than the Code of Judicial Administration, as the vehicle for the change. After discussion took place, the following motion was made.

**Motion:** David Bird made a motion to forward the rule to the Supreme Court with a recommendation that it be adopted. Judge Hilder 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.

After the Council came out of executive session, the following motion was made.

**Motion:** Judge Dever made a motion to certify Judge Matheson and Judge Bohling as active senior judges. Judge Davis seconded the motion. The motion carried unanimously.

**14. ADJOURN:**

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