

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Monday, November 28<sup>th</sup>, 2005  
Matheson Courthouse

450 South State Street  
Salt Lake City Utah

Chief Justice Christine M. Durham, Presiding

#### **MEMBERS PRESENT:**

Chief Justice Christine M. Durham  
Hon. James Davis  
Hon. Hans Chamberlain  
Hon. Kevin Nelson  
Hon. J. Mark Andrus  
Hon. William Barrett  
Hon. Jody Petry  
Hon. Rand Beacham  
Hon. Jon Memmott  
Hon. Jerry Jensen  
David Bird, esq.

#### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Richard Schwermer  
Mark Jones  
Ray Wahl  
Tim Shea  
Holly Frischknecht  
Nancy Volmer  
Kim Allard  
Rob Parkes

#### **MEMBERS EXCUSED:**

Judge Gary Stott  
Judge Robert Hilder

#### **GUESTS:**

Judge Judith Billings  
Michele Christiansen, CCJJ  
Derek Byrne, Fiscal Analyst  
Senator Tom Hatch  
Representative Mike Noel  
Judge James Shumate  
Rick Davis

#### **1. Welcome and Approval of Minutes: (Chief Justice Christine M. Durham)**

Chief Justice Durham welcomed everyone to the meeting and thanked them for being here. Chief Justice Durham excused Judge Hilder and Judge Stott who were unable to be in town for the meeting.

**Motion:** Judge Hans Chamberlain motioned to approve the minutes, Judge Beacham seconded the motion and the motion passed unanimously.

#### **2. Chair's Report: (Chief Justice Christine M. Durham)**

Chief Justice Durham reported the following:

- The Gaurdian Ad Litem Standing Committee hosted an informational breakfast to help legislators understand the role of the GAL' s office and the work the GAL standing committee is doing. Chief Justice Durham commended the work of the committee and the quality of people involved.
- The Initiative on Utah Children in Foster Care met and received sub committee federal and state funding issues involving foster care. The committee also discussed children aging out of foster care and the need to raise awareness about how the child welfare system works.
- Dialogue on Democracy was held last week and many judges and AOC staff took place in the program. The Public Outreach Standing Committee helped sponsor the activities.
- The Management Committee attended a Judicial Conduct Committee Retreat earlier this month to discuss judicial conduct nationwide and judicial independence.
- The judicial vacancy within 3<sup>rd</sup> District has been announced and the closing date for applicants is December 2<sup>nd</sup>. The nominating commission is already in place.

-The Management Committee discussed the difficulties the justice courts have faced with the court reporting system Casselle. The Management Committee decided to create a Rule for certification and re certification that requires court reporting systems to comply with design and technical standards approved by the Judicial Council.

-The Management Committee also discussed the long term process for judicial compensation. The Management Committee along with representatives from various boards will serve as a study committee to determine the process the Council should take on the compensation issue in the future.

- Judge Memmott has been asked by Chief Justice to serve on the Liaison Committee for the upcoming legislative session.

-Justice Nehring will chair the Liaison Committee, Judge Stott will chair the Policy and Planning Committee and Chief Justice Durham will continue to chair the Management Committee.

### **3. Administrator' s Report: (Daniel J. Becker)**

Mr. Becker Reported the following:

-The conversion of records from JJIS to the CARE system was made over the weekend. This system has taken years of planning and many court staff have contributed to help make the transition. Utah is now one of five states that has their own state-wide juvenile court reporting system.

-Chief Justice Durham, Mr. Becker and AOC staff have again met with the Governor to discuss the budget. The GOPB has recommended that the following be advanced to the Governor.

-Five law clerks

-4<sup>th</sup> District Judge

-3<sup>rd</sup> District Juvenile Judge

-An \$850,000 GAL increase

-The Jury Witness and Interpreter increase of \$150,000 in expansion, \$277,000 in supplemental

-\$20,000 for the Drug Offender Reform Act

-Lease and Contract request

The following requests have not been recommended at this time

-3<sup>rd</sup> District Court Commissioner

-Child Welfare Mediator

-Law Library increase

-One time data processing equipment request

The one time data processing request could possibly be added later. Mr. Becker reported they also discussed judicial compensation with the Governor. At the time of that meeting the Governor had not yet received the recommendation from the Executive Compensation Committee. Since then, the Executive and Judicial Compensation Committee has recommended a 21% increase to be spread out over the next 3 years at 7% each year.

-Chief Justice Durham and Mr. Becker will meet with all Juvenile Court Presiding Judges this week. This is the first time all the Juvenile Presiding Judges will meet together to discuss operational issues.

-Mr. Becker reported the Courts have received two Golden Spike Awards for excellence in public relations and communications for the Opening of the West Jordan Courthouse and the 2005 Annual Report to the Community.

-Chief Justice Durham' s selection to serve a second term as Chief Justice was recognized and members of the Council offered their congratulations.

### **4. Reports:**

#### **Management Committee:**

Chief Justice Durham reported that she covered the issues addressed in the Management Committee Meeting in her report and any further information can be found in the minutes.

### **Policy and Planning:**

Tim Shea reported that the Policy and Planning Committee discussed the record of conviction enhancements. A list of enhanceable crimes is being developed and continued work will be done on this issue. The accounting policy for court interpreters was also discussed and those recommendations will be advanced to the Management Committee.

### **Liaison Committee:**

Justice Nehring reported that the Liaison Committee has met and reviewed Guardian ad Litem legislation drafted by the Council's GAL Standing Committee that will be considered this session. Language in a proposed bill that would allow the subpoena of records from the Guardian ad Litem was also discussed.

Legislation is being proposed that would allow judges to keep information submitted to county recorders office private. The committee also discussed possible legislation protecting reporters and their sources through Rule. The question of whether this issue should be addressed by legislation or Rule was still unclear. Justice Nehring reported that the courts consider it a Rule and will go ahead, recognizing that their may be legislators who may wish to address this through legislation.

There is an effort to codify the murder statute to authorize sentencing enhancements for people who were in a relationship of trust. That relationship would become an aggravating factor instead of a mitigating factor. E-warrants are once again being discussed in regards to how reliable and trustworthy signatures are on electronic and telephonic warrants. Legislation will be advanced that considers if the court should maintain jurisdiction over a defendant for the duration of restitution.

### **Bar Commission:**

David Bird reported that the Bar has three meetings per year and the fall forum recently took place. More than 400 people attended the forum. The Bar Admission was held last month and Mr. Bird expressed appreciation to the Supreme Court. Mr. Bird indicated that the Bar recently had their quarterly meeting with Chief Justice Durham. The Bar is continuing their work on their performance review.

Mr. Bird reported that the Lawyers Helping Lawyers program has continued to move forward and Mr. Bird thanked Rob Parkes for his assistance. A number of petitions will be going to the Supreme Court. The first deals with house counsel and admission to the Utah Bar. Faculty pro-bono will also be considered. Many faculty members from both the University of Utah and BYU are members of other states bars but would like to do pro-bono work in Utah.

Mr. Bird reported that 2006 is the Bar's 75<sup>th</sup> Anniversary and activities throughout the year will be organized to recognize this milestone.

### **5. Parowan Court Coverage: (Senator Hatch, Representative Noel, Judge James Shumate, Rick Davis)**

Chief Justice Durham reported that Parowan Court scheduling has been a local issue over the last few months and Presiding Judge James Shumate, Senator Tom Hatch, Representative Noel and Rick Davis were available to discuss the resolution that had been reached.

Judge Shumate reported that after Judge Eves announced his retirement, issues surrounding location and scheduling in Parowan came to his attention. These concerns had never been considered before since Judge Eves had lived in Parowan and had been able to easily address the court needs. Judge Shumate reported on a number of problems surrounding holding court in Parowan, including the lack of safety in the Parowan Courthouse, which is a rented building. Judge Shumate indicated that the following Rule has been established:

The clerks of the Fifth District Court are authorized to assign cases in Iron County to either the Parowan Court location or the Cedar City Court location based on zip code of the Plaintiff. All cases with a zip code or mailing address for Brian Head, Enoch, Pargonah, Parowan and Summit will be assigned to the Parowan Court location. Cases with any other Iron County zip code will be assigned to the Cedar City Court location. Parties by motion or stipulation, may change the court location for hearings with approval of the assigned judge.

Senator Hatch reported that there is an underlying historical tension that stems from Parowan, Paragonah and other towns feel that they are losing influence to Cedar City. Senator Hatch reported he would like to see the conflict resolved in a manner that is acceptable to all parties.

Chief Justice Durham reported that the courts concern is to create public access in a safe setting. She also expressed appreciation to Representative Noel and to Senator Hatch for their involvement and apologized for any unfair statements that had been made about elected officials and reiterated that those statements did not reflect the feeling of the judiciary. Representative Noel and Senator Hatch thanked Rick Davis for his efforts and his good work.

Judge Shumate reported that he has promised the county council' s that if the Parowan courthouse can be upgraded to meet security requirements, a more regular court schedule could be considered. Bids to improve the Parowan Courthouse have been done and county officials are considering their options for improvements.

#### **6. Interim Committee Report: (Richard Schwermer, Mark Jones)**

Rick Schwermer reported that rules surrounding GRAMA are being discussed and issues regarding electronic signatures are being considered. The parental defense position has been contracted out instead of continuing as an independent office. Mr. Schwermer reviewed legislation that could be recommended during the upcoming session. Mr. Schwermer discussed the sponsors of court requests.

Mr. Jones reported that the courts have been enjoying a good relationship with the legislature and that the courts have the responsibility to maintain that by respecting the differing roles each branch of government has.

#### **7. Judicial Outreach Standing Committee Report: (Judge Judith Billings)**

Judge Judith Billings reported on the progress of the Judicial Outreach Standing Committee. Judge Billings indicated that the membership of the committee is diverse and thanked Nancy Volmer, Dan Becker and Chief Justice Durham for their support. Judge Billings indicated that the committee met in the spring and established the following goals.

1. Recruit more judges to go into the schools to talk with students. Determine how to track judges who are currently doing so.
2. Conduct a baseline survey of public perceptions of the courts.
3. Develop a power point presentation that judges can adapt for use in school and community presentations.
4. Update the court' s media guide
5. Develop ways to reach the disenfranchised communities

Judge Billings reported that the programs that have already been established such as Kids and Judges Day, Law Day and Divorce Education for Children will continue.

The Judicial Outreach Standing Committee has divided into four subcommittees , they are the media subcommittee, the education subcommittee, the community outreach committee and a baseline survey committee. These committees are each working on projects to help the full committee reach its goals.

Discussion took place surrounding how judges can more effectively establish contacts that allow them to make presentations in classrooms. Chief Justice Durham thanked Judge Billings for her and the committee's good work.

#### **8. Caseload Measures: (Kim Allard)** handouts attached

Kim Allard reported that the clean up effort has continued and great progress has been made. Ms. Allard reported on civil, domestic and criminal cases and the progress being made in each area. Ms. Allard responded to questions surrounding clean up efforts. Mr. Becker indicated that by focusing efforts on clean up, the culture of keeping current data will be come more established.

Mr. Becker reported that the caseload clean up served two purposes. The first was to address the concerns brought up in the district court audit. The second purpose was to help serve the Judicial Council as they adopted Core measures that will result in data being reviewed on an ongoing basis. Mr. Becker reported that he has met with the TCE' s and requested that data on civil case clearance rates, age of disposition and case pending be available for publication by the end of the first quarter. Mr. Becker requested that criminal cases be published by the end of the second quarter.

#### **9. CourTools Presentation: (Tim Shea)**

Mr. Shea reported that one of the CourTool measures is effective use of jurors. A juror yield is designed to show the effectiveness of jury management at each major step in the process. The most common stages at which yield is measured are:

1. Number of jurors qualified/Number of records randomly selected
2. Number of jurors summoned/Number of jurors qualified
3. Number in venire panel/Number summoned
4. Number in petit panel/Number in venire panel

Yield reports have not yet been created and the courts are limited in their current capabilities. Mr. Shea reported that by establishing goals for each of the four major steps outlined above, achievable goals can be created that will help the courts develop a system to measure the effective use of jurors.

**Motion:** Judge Jensen motioned to accept the Jury management tool in concept, Judge Davis seconded the motion and the motion passed unanimously.

#### **10. Criminal and Juvenile Justice Commission Report: (Michele Christiansen)**

Ms. Christiansen thanked the Council for allowing her to update them on the efforts of CCJJ. CCJJ is a statutory commission responsible for coordinating all aspects of criminal justice.

Two initiatives Governor Huntsman would like to focus on is the war on methamphetamine's and sexual violence. The Governor does not support minimum mandatory sentencing for sex offenders but feels there are other more effective approaches to dealing with sex offenders. Ms. Christiansen discussed the funding for CCJJ.

Ms. Christiansen described the process the Governor uses when making judicial appointments. The Governor uses a committee to initially meet with judicial finalists and then the Governor meets privately with each candidate. Ms. Christiansen described the qualities the Governor looks for in judicial appointees.

Ms. Christiansen responded to questions surrounding sentencing and corrections. Mr. Becker reported that the courts have worked closely with CCJJ to establish a permanent home for the Racial and Ethnic Fairness Committee. Mr. Becker thanked Ms. Christiansen for all her help and the assistance she offers the Governor in understanding court issues and working with the courts.

#### **11. Report on Executive and Judicial Compensation Commission: (Rob Parkes)**

Mr. Parkes reported that the three person, independent Judicial Citizen Compensation Committee met and recommended a 19% increase in judicial compensation based on the projected retirements in the near future. The Executive and Judicial Compensation Committee, in turn, recommended a 7% increase for the next three years to equal a 21% total increase. The Governor's budget is expected to be released within the next week.

#### **12. Justice Court History and Discussion: (Rick Schwermer) handouts attached**

Mr. Schwermer reported that the justice courts have evolved to the their current responsibilities based on the political and practical choices made over the course of the last century. The Council reviewed the history of the justice courts which began in 1885 with justices of the peace.

Mr. Schwermer provided information on the current Utah statutes and discussed issues the justice courts are presently addressing such as selection, retention, administration, jurisdiction, fiscal issues and the Council's role.

Mr. Schwermer reported that the majority of the public that comes in contact with the court system go through the justice courts. The Council discussed issues the justice courts will face in the future. Mr. Schwermer reported that discussing the history of the justice courts will help the Council put the future challenges the justice courts face into context. Mr. Schwermer reported that it is important that there is respect between all court levels since each court is under the umbrella of the judiciary.

Chief Justice Durham reported that the Management Committee would consider the issues discussed and determine how the Council should move forward with those concerns.

#### **14. Adjourn**

**Motion:** Judge Chamberlain motioned to adjourn the meeting, Judge Davis seconded the motion and it passed unanimously.