

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

**Monday, December 16, 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. K.L. McIff  
 Hon. Scott Johansen  
 C. Dane Nolan, esq.

#### **STAFF PRESENT:**

Daniel J. Becker  
 Myron K. March  
 Richard Schwermer  
 D. Mark Jones  
 Ray Wahl  
 Matty Branch  
 Tim Shea  
 Alicia Davis  
 Kim Allard  
 Kathy Elton  
 Sandra Kinoshita  
 AnNicole Faeth

#### **GUESTS PRESENT:**

Justice Richard C. Howe  
 Hon. Tyrone Medley  
 Hon. William Thorne  
 Hon. Pamela Greenwood, *Chair, Court Improvement Project*  
 Hon. William Bohling, *Chair, Standing Committee on Alternative Dispute Resolution*  
 Hon. Charles Behrens, *Co-Chair, Standing Committee on Children and Family Law*  
 Hon. Judith Atherton, *Co-Chair, Standing Committee on Children and Family Law*  
 Elizabeth Neff, *The Salt Lake Tribune*  
 Katie Gregory, *Utah Children*

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

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

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

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

Chief Justice Durham reported that she had nothing to share with the Council at that time.

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

Daniel J. Becker reported the following items:

- A special session of the legislature will begin December 18<sup>th</sup> to address the \$117 million shortfall in the state's budget. It was reported that the idea the Council advanced of generating a security fee has been discussed with the Governor's office and the legislative fiscal analyst.
- The Governor will release his FY 2004 budget December 16<sup>th</sup>.
- The court facility proposal in West Jordan is proceeding. A meeting recently took place with West Jordan's City Council and local legislative delegation. Legislators appeared to be supportive of the project generally, but expressed concerns about the prospect of funding this year in light of the state's budget status.
- Sandy City conducted an independent appraisal of the Sandy Courthouse, which was \$2 million lower than the state's appraisal. Discussions regarding the appraisal have been scheduled.

- Supreme Court interviews for the two upcoming vacancies on the bench will take place December 17<sup>th</sup>. Second District judge, Stanton Taylor, will retire the end of February, and Fourth District judge, Jeril Wilson, has announced his retirement. Also, a vacancy which will occur when Judge David Young's term expires the end of December, will be transferred to and filled in the Third Juvenile Court. Nominating Commissions need to be named by the Governor in the Second, Third, and Fourth Districts.
- Professor Kevin Worthen, of the BYU Law School, will facilitate the Board/Council workshop which will take place January 13<sup>th</sup>. The Council will have a business meeting the following day.

#### 4. REPORTS:

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

Chief Justice Durham had nothing to report in addition to what was in the Management Committee's minutes.

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

Judge Dever reported that Policy and Planning met with three managing court reporters regarding present policies related to court reporter qualification and certification. The committee also received a presentation on digital audio systems, and discussed a resolution in support of justice courts.

##### **Liaison Committee:**

It was reported that the Liaison Committee had not met.

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

Dane Nolan reported that the Bar is co-sponsoring the retirement reception for Justice Richard Howe, which will take place January 15<sup>th</sup> from 4:30 - 6:00 p.m. at the Matheson Courthouse. It was reported that the Bar is reviewing admission policies, and that different types of questions will be included in the Bar Exam, which will become effective in February. Mr. Nolan also mentioned that discussions are taking place with other states concerning reciprocity.

#### 5. RESOLUTION IN SUPPORT OF JUSTICE COURTS: (Tim Shea)

Chief Justice Durham provided background for the draft resolution Mr. Shea would be presenting by mentioning that the Council has long strived to include justice courts in the same realm as state courts in order to ensure independence and impartiality in the justice courts. Chief Justice Durham suggested that it might be a good time to reaffirm the Council's position in regards to justice courts.

Tim Shea reported that the Council asked for a resolution in support of justice courts at its last meeting, and that, in response, Policy and Planning was forwarding this draft resolution.

Discussion took place concerning the content and wording of the resolution. The following motion was then made.

**Motion:** Judge Dever made a motion to forward the resolution to the Liaison Committee for further consideration. Judge Hilder seconded the motion. The motion carried unanimously.

#### 6. BAR APPOINTMENT TO THE COMMITTEE ON PRIVACY AND PUBLIC COURT RECORDS: (Tim Shea)

Tim Shea reported that the Management Committee approved a number of appointments to the Committee on Privacy and Public Court Records, which appear on the Council's consent calendar. It was reported that the names forwarded by the Bar were received after the Management Committee met, therefore, it was requested that the Council select and appoint a Bar representative f□

**Motion:** Judge Dever made a motion to appoint Thomas Mitchell to the Committee on Privacy and Public Court Records. Judge Hilder seconded the motion. The motion carried unanimously.

#### 7. EXECUTIVE SUMMARY OF STATEWIDE COURT IMPROVEMENT PROJECT EVALUATION: (Hon. Pamela Greenwood)

Judge Pamela Greenwood reported that an evaluation of Utah's Court Improvement Project was recently performed by the National Council of Juvenile and Family Court Judges. The evaluation used both qualitative and quantitative analysis, and it focused on three components: a case file review, in-court observation, and stakeholder interviews. Overall, the evaluation indicated that, while there is room for improvement in certain areas, Utah's Juvenile Court is grounded in best practices for child abuse and neglect cases, and is generally compliant with statutorily and federally mandated time frames, as well as accountable for achieving safe, timely permanency for children.

The Council commended the Court Improvement Project on the positive results of this study, and discussed the importance of disseminating this information to the public.

## **8. ONLINE COURT ASSISTANCE PROGRAM PROTECTIVE ORDER DEMONSTRATION: (Kim Allard)**

Kim Allard provided a demonstration of the new protective order application which will be added to the existing Online Court Assistance Program (OCAP). Ms. Allard reported that the protective order application was field tested in the Second District, and should be ready for release in January.

## **9. LUNCH:**

Justice Richard Howe joined the Council for lunch and shared remarks about his experiences on the Supreme Court and Judicial Council.

**Motion:** Judge McIff made a motion to have the Council approve a resolution of commendation and appreciation to Justice Howe for his many years of service in the Utah State Government. Judge Davis seconded the motion. The motion carried unanimously.

## **10. REPORT: STANDING COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION: (Hon. William Bohling)**

Judge Bohling, chair of the Standing Committee on Alternative Dispute Resolution, provided an update to the Council. Judge Bohling reported the following items:

- The courts co-sponsored the 4<sup>th</sup> Annual ADR Symposium which took place in May of 2002.
- The Truancy Mediation and Restorative Dialogue programs have been expanded in the First, Second, Fifth, and Eighth judicial districts.
- Proposed changes to the ADR Rule 105 and the ADR Ethical Code were successfully passed.
- A three day training on domestic violence issues in mediation was held in November of 2002.
- All ADR Program policies and procedures are being reviewed and updated.
- The Court website mediation program information is being updated.
- The Landlord Tenant Mediation Program is being expanded with the Salt Lake City Housing Authority.
- An on-line exam is being created on the ADR ethical code for providers applying for the court roster.
- The Council thanked Judge Bohling for his presentation, and Kathy Elton and the committee for their fine work.

## **11. REPORT: STANDING COMMITTEE ON CHILDREN & FAMILY LAW: (Hon. Charles Behrens, Hon. Judith Atherton)**

Judge Atherton, chair of the Standing Committee on Children and Family Law, introduced Judge Charles Behrens who was recently appointed co-chair of the Standing Committee. Judge Behrens will be replacing Judge Jeril Wilson who has announced his retirement.

Judge Behrens reported that the committee has been looking at the issue of public access to dependency proceedings, and mentioned that the committee recently heard a report from Judith Nord of the Minnesota Judiciary, which has also looked at this issue. In that report, a number of pros and cons to opening access to dependency proceedings were mentioned. The pros included things such as increasing stakeholder accountability, increasing public awareness of the frequency and egregious nature of child protection cases, and more "eyes on the child" which may lead to less repeat abuse and neglect, and maybe even prevention of abuse and neglect. Minnesota also identified a number of cons such as a potential for the child to be stigmatized, a possible chilling effect on both the reporting of abuse and neglect and on in-court admissions, and caseworker and GAL reticence to include information critical for a sound decision. Judge Behrens reported that a subcommittee of the Standing Committee feels that there should be greater openness than what currently exists, with the judicial discretion still available to close a hearing. Additionally, the subcommittee feels that court records and adoption proceedings should remain closed. The subcommittee is also considering if access to dependency proceedings should be first conducted on a pilot basis.

Judge Atherton reported that the committee is looking at creating the title of "Special Masters" in high conflict divorce cases. Additionally the committee is looking at encouraging settlement conferences in custody evaluations. The committee also provided a few forms to the Council for their approval.

**Motion:** Judge Valdez made a motion to approve the Table of Contents Child Custody Evaluation form. Judge Hilder seconded the motion. After discussion took place, the motion was withdrawn.

It was decided that the form should go before the District and Juvenile Boards for their input before the Council takes final action.

## **12. ANNUAL REPORT OF THE COMMISSION ON RACIAL AND ETHNIC FAIRNESS IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEM: (Hon. Tyrone Medley, Hon. William Thorne)**

Judge Medley provided background on the history and work of the Task Force on Racial and Ethnic Fairness, and the Commission on Racial and Ethnic Fairness in the Criminal and Juvenile Justice System. Judge Medley thanked the Council for their history of support of these efforts. It was mentioned that he hoped the recommendations of

the Task Force and Commission will eventually be institutionalized. It was reported that the Commission was formed with the charge of implementing the Task Force's recommendations in the various areas of the justice system. It was mentioned that the Commission will issue its first annual report in January. A draft of the executive summary of the report was distributed to the Council. It was reported that many of the agencies, including the courts, have moved forward with implementing the recommendations. Judge Medley reported that he has been pleasantly surprised with the momentum this work has generated and expressed a hope that it continues.

Judge Thorne also expressed appreciation to the Council for their support, and then reported that the Commission is working on ensuring both actual and perceived fairness in the justice system. The Commission is also trying to increase the minority applicant pool, and educating youth about possible careers in the justice system. It was mentioned that all parties associated with the Commission are involved on a voluntary basis.

Judge Medley reported that Sandra Kinoshita, who has served as the program coordinator for the Commission, will be leaving her position with the courts. Judge Medley acknowledged her contribution to the Commission. The Council also expressed appreciation to Ms. Kinoshita.

### **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.

**Motion:** Judge Stott made a motion to certify Judge Robert Braithwaite as a senior judge. The motion was seconded and carried.

### **14. ADJOURN:**

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