

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, January 29th, 2007

Matheson Courthouse

Salt Lake City, Utah

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*Chief Justice Christine M. Durham, Presiding*

### **ATTENDEES:**

Chief Justice Christine Durham  
Hon. James Davis  
Hon. Ronald Nehring  
Hon. Gary D. Stott  
Hon. Michael Lyon  
Hon. Robert Hilder  
Hon. Mark Andrus  
Hon. Kevin Nelson  
Hon. William Barrett  
Hon. Michael Kwan  
Scott Sabey, esq.  
Hon. Hans Chamberlain  
Hon. Rand Beacham  
Hon. Jody Petry

### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Rick Schwermer  
Mark Jones  
Matty Branch  
Holly Frischknecht  
Tim Shea  
Ron Bowmaster  
Ray Wahl

### **1. WELCOME AND APPROVAL OF MINUTES:**

Chief Justice Durham welcomed everyone to the Council meeting. After making changes to the minutes, the following motion was made.

***Motion:*** Judge Lyon motioned to approve the minutes. Judge Davis seconded the motion. The motion passed unanimously.

### **2. CHAIR'S REPORT**

Chief Justice Durham reported the following items:

- Since the last Judicial Council meeting, all the district legislative luncheons have taken place. Chief Justice Durham indicated these meetings went extremely well.
- Chief Justice Durham presented her State of the Judiciary speech to the combined Senate and House on January 15<sup>th</sup>. Among the issues covered, the Chief Justice encouraged the legislature to address the need for increased GAL resources and for judicial compensation.

### **3. ADMINISTRATOR'S REPORT**

Mr. Becker reported the following items:

-The Judicial Council photograph and Annual Report was passed out to the group. Mr. Becker indicated that 5,000 copies of the report are available to provide for courthouses throughout the state.

-The court's budget hearing took place last week to positive feedback. The CourTools performance measures were presented and the information was well-received. Many questions were asked which led to in-depth discussions. The legislative analysts have been more conservative in their recommendations this year due to the spending cap and on-going programming needs that were originally funded with one-time money. The appropriations committee voted to put all the court's request on the list of recommendations. The final vote for these priorities will take place at the end of this week.

-The GAL budget was also presented last week. The vote on this item will take place this afternoon.

-The Facility Committee will meet this week to discuss the St. George Courthouse request. Currently, the courthouse is thought to be about number five on the priority list.

-Many changes have taken place in the Executive Branch. Tom Patterson, former Director of Criminal and Juvenile Justice has been named as Director of Corrections, replacing Scott Carver who was moved to the Sentencing Commission. Robert Yeates was moved from the Sentencing Commission to Director of CCJJ.

-The Chief, Mr. Becker, Mr. Schwermer, Mr. Jones and Mr. March met with Scott Anderson of the Citizen's Commission on Judicial Compensation a few weeks ago. Mr. Anderson was going to meet with leadership to learn more about increasing judicial salaries. The bill to sponsor legislation about an alternative process for setting judicial compensation is not gaining support, but there is a sense that judicial compensation will be addressed by the legislature.

-Mr. Becker met with the legislative auditor last week and they will begin an audit on criminal surcharge accounts and plea and abeyance fees. The courts are not the focus of the audit, but the auditors do need to use the courts information system to access surcharge data.

-Mark Jones' last day will be this Friday, February 2<sup>nd</sup>. Mr. Becker expressed his sadness at Mr. Jones's departure and also how proud the judiciary is of his new appointment as Clerk of the U.S. District Court. A reception will be held in his honor this Friday, in the Council room from 2 -4 p.m.

-Mr. Becker introduced Ron Bowmaster, the new Director of IT. Mr. Bowmaster comes to the Utah Nebraska where he had direct court technology experience.

#### **4. REPORTS:**

##### **Management Committee: (Chief Justice Durham)**

Chief Justice Durham referred the Council to the management minutes which outlined the discussion that took place.

##### **Bar Report: (Scott Sabey)**

Mr. Sabey reported that Nate Alder was named as president-elect, elect. Recently, Judge Glenn Iwasaki was recognized by the Bar for his achievements, receiving the Ray Uno Award. During the last Bar meeting mandatory insurance disclosure was discussed. It was determined a

questionnaire will now be mandatory for attorney's to fill out in order to disclose insurance coverage. The Bar's performance review has been received and the following issues were addressed: confusion about the organizational structure, particularly with those who can and cannot vote; monitoring, potentially in the form of creating an independent auditor and oversight committee, and; ensuring a justice attend at least one meeting per year.

**Liaison Report: (Justice Ronald Nehring)**

Justice Nehring indicated there are three bills the committee has taken position in opposition to and Mr. Schwermer will review those in detail later in the meeting. Justice Nehring indicated that the email responses Mr. Schwermer receives are used in the Liaison meeting and helpful to the members when discussing proposed legislation.

**Policy and Planning:(Judge Gary Stott)**

Judge Stott indicated that the Policy and Planning Committee discussed rules that were sent out for comment and that Mr. Shea will report more on those later. The committee also recently heard the report on the Justice Court Study Committee from Justice Nehring.

**5. APPROVAL OF RULE AMENDMENTS: (Tim Shea)**

Mr. Shea provided information on the rules that were sent out for public comment. He reviewed some of the changes in the Code of Judicial Administration. Mr. Shea indicated some substantive changes were made to the rule, including the agenda being sent to the media. Another change includes having closed meetings recorded unless a personnel or security issue is being discussed. An oath must be signed when this is the case.

Recordings of these meetings will not be public record but kept for a specific time. It was discussed that the records could be kept until someone specifically requested they be destroyed. It was clarified that private recordings can be done during open meetings, but not during closed meetings. Discussion took place about the Council's practice of being an open meeting.

***Motion:*** Judge Hilder motioned to approve CJA 02-103 dealing with open and closed meetings, Judge Lyon seconded motion, the motion passed unanimously.

***Motion:*** Scott Sabey motioned to approve CJA 02-104 addressing recording meetings, Judge Chamberlain seconded the motion, the motion passed unanimously.

***Motion:*** Judge Stott motioned to approve CJA 04-202.08, dealing with fees for records, information and services, Scott Sabey seconded the motion. The motion passed unanimously.

***Motion:*** Judge Stott motioned to approve CJA 04-403 dealing with the signature stamp use, Scott Sabey seconded the motion, the motion passed unanimously.

***Motion:*** Judge Chamberlain motioned to approve CJA 04-704, the authority of court clerks to extend payment schedule and dismiss citations, Judge Barrett seconded the motion, the motion passed unanimously.

The Council will vote on CJA 04-704 at a later date.

**6. DAVID C. UPDATE: (Lisa-Michele Church, Director, DHS)**

Chief Justice Durham welcomed Lisa-Michele Church, Director of the Department of Human Services who attended the Council meeting to provide a David C case update. The David C case was filed in the Federal Court in 1993 by the National Center for Youth Law out of California. They claimed that the Utah Foster Care System allowed children to languish in foster care too long. This case resulted in a dissent decree that outlined performance measures DHS must meet in services with foster care.

The Department of Human Services has completed all but two of the requirements of the dissent decree. One of those requirements include passing a competency test two years in a row in each region. The performance of the case-work in the state has demonstrated the testing can be passed. The second requirement involves building quality improvement committees in each region made up of citizens and DHS stakeholders who can provide input to the department.

Ms. Church reported there has been a challenge working with Legislators to limit the amount of statute changes made per year. Ms. Church indicated that establishing closer relationships with community partners, such as the courts, schools, police and churches would improve the effectiveness of DHS and the changes brought about by David C.

Ms. Church requested that the Council hear a report on child protection issues annually based on the tests that are passed in each region yearly. Ms. Church reported that this same request has also been made of the Court Improvement Project Committee, the Standing Committee on Family Law, and Board of Juvenile Judges. Ms. Church indicated that the Standing Committee on Family law agreed to participate in the David C. discussion with the authorization from the Judicial Council. Ms. Church reported that given the great responsibility and the challenges that often accompany DHS's obligations, it is important to build a network of support and communication with other agencies involved. DHS has also worked to make their actions transparent to the community, families and stakeholders affected by their policies. Ms. Church indicated that unless a community consensus can be built and external accountability is established, sustainability cannot be accomplished.

The Management Committee will discuss whether it will be useful, helpful and appropriate for the Council to be involved in updates on the David C case and also make a recommendation about the involvement the Standing Committee on Children of Family Law should have in receiving these reports. This item will then be brought back to the Council for action.

**7. CERTIFICATION OF SR. JUDGES: (Tim Shea)**

Mr. Shea indicated that Judge Burningham has applied to become an inactive Sr. Judge. Judge Jeril Wilson has applied to be a Sr. Judge and meets all of the qualifications except for education because he has been on a mission.

***Motion:*** Judge Lyon motioned to certify Judge Burningham as an inactive judge and Judge Jeril Wilson as an active sr. judge, the motion was seconded and passed unanimously.

**8. UNIFORM FINE AND BAIL COMMITTEE REPORT:(Mark Jones)**

Mr. Jones indicated that Judge West is the new chair of the Uniform Fine and Bail Committee. Mr. Jones and Taayna Ramirez, who have assisted in staffing the committee, will both be leaving the courts this week. Mr. Jones expressed his thanks to the justice court judges for their involvement in improving the uniform fine and bail schedule. The committee members include Judge Sadler, Judge Bunnell, Judge Wilkins, Judge Shumate, Judge Beelsely, Judge Westfall, Judge Hadley and Judge Boyden as chair. The committee meets one time per year, usually at the beginning of April. The online schedule is now available instead of hard copies.

Mr. Jones thanked the members of the committee who participate so actively. Chief Justice Durham thanked Mr. Jones for his work with the committee.

**9. COUNTY JUSTICE COURT RE-CERTIFICATION: (Rick Schwermer)**

Mr. Schwermer provided re-certification information on all existing county justice courts. The certification of all county courts expires on February 5, 2007. The Council's Standing Committee on Justice Court Standards met and reviewed all applicants and provided the Council with exceptions to consider when certifying some courts.

The Beaver County Justice Court currently has requested 2.5 FTE clerks instead of the standard of 3. This resulted in the court being understaffed at certain times of the day. The Beaver County Justice Court in Minersville has requested a waiver for the requirement of a six-inch riser. The Standing Committee suggested providing a specific date that the riser must be put in if the county wants to avoid having their certification revoked.

Juab County Justice Court has requested a waiver allowing the employment of 2.5 FTE clerks rather than 3 clerks required for a Class I justice court. The Standards Committee recommends a six-month waiver to allow the Juab County Justice Court to come up to 2.5 clerks.

The Tooele County Justice Court is a Class I court and is required to have trial calendars at least once per week. Recently, prosecutor availability has reduced this to a day and a half per month. Trials are being set two to three months out because these trial blocks are full. The committee did not have all this information and will look into the circumstances of calendaring further.

The Wasatch County Justice Court currently has 2.5 FTE clerks. The judge is requesting an extension until April 1, 2007 to allow the court to convert the .5 FTE into a full position. The committee recommends re-certification of this justice court, contingent on the court having met the standard of 3 FTE by April 1<sup>st</sup>.

***Motion:*** Judge Hilder motioned to certify Beaver County Justice Court with the condition of

them hiring three clerks by July 1, 2007. Judge Hilder motioned to certify Minersville County Justice Court with the condition of them having a riser in place by April 1, 2007. Judge Hilder motioned to certify Juab County Justice Court with the waiver in place as requested and recommended by the Standards Committee. Judge Hilder motioned to certify Tooele but require they hold court for trials at least once per week effective July 1, 2007. Judge Hilder motioned to certify Wasatch County Justice Court with a waiver until April 1, 2007 when they can hire 3 FTE clerks. Judge Hilder motioned to certify the rest of the county justice courts as proposed by the Justice Court Standards Committee. Judge Chamberlain seconded the motion, the motion passed unanimously.

Mr. Schwermer will send a letter to each court indicating the stipulations they must meet in order to avoid de-certification by the Council.

**10. BOARD OF JUVENILE JUDGES REPORT: (Judge Behrens)**

Judge Behrens presented the 2007 goals of the Board of Juvenile Court Judges. Those goals include:

- Support CARE User Group
- Address finding of State Supervision study
- Support Evidence Based Practices in Districts
- Support stakeholder committees on delinquency in Districts
- Support IOU, CIP and best practices in dependency cases
- Review and make necessary changes to Judicial Workload Formula

Judge Behrens outlined in greater detail the Board's goals and the progress being made in each of these areas. Judge Behrens indicated that funding has been provided for a law clerk for the entire juvenile court and that position has been very helpful to the bench.

Judge Behrens reported that the 3<sup>rd</sup> and 5<sup>th</sup> Districts were areas where there was an increase in juvenile referrals which require judges from other districts to volunteer their time.

Chief Justice Durham thanked Judge Behrens and the Board for their clear vision and leadership in the juvenile court. Judge Behrens thanked the Council for their support.

**11. PRESIDING JUDGE RULE CHANGE: (Rick Schwermer)**

Mr. Schwermer indicated that the Presiding Judge Rule amendment has been two years in the making. The presiding judges recommended the proposed rules and the Council approved the rule conditioned on the input from the Board of Juvenile Judges and Board of District Judges. The Board of District Judges have spent the last few months reviewing the proposed rule. Judge Maughan, chair of the Board attended the Council meeting to discuss the changes the Board would like to see in the new Presiding Judge Rule.

A copy of the Board's changes were provided to the Council and Judge Maughan reviewed and explained each proposal. The Council discussed the relationship between supplemental rules and if there is a reasoning behind having the rule recognize the local culture

of each court. Judge Maughan expressed the Board's concerns with section 3K of the rule that details the presiding judge's role when dealing with other judge's potential misconduct. Discussion took place about how a presiding judge would determine the need for outside intervention on behalf of a judge in their district. Judge Maughan indicated that the Board and the Council are approaching the rule changes from two different philosophical viewpoints.

Chief Justice Durham indicated that along with acting in judicial roles, judges are also elected by the public to run the third branch of government and must do so effectively and efficiently to maintain the public's trust and confidence in the judiciary. Chief Justice Durham expressed that many challenges the judiciary has faced in the past has resulted because the judiciary did not have the rules in place to intervene at an earlier stage, which led to a weakened perception of the judiciary.

Judge Maughan thanked the Council for considering the Board's recommendations. Chief Justice Durham indicated that the Management Committee would go through and compare each recommendation from the presiding judges, Board of Juvenile Judges and Board of District Judges and also review the rule for anything that has not yet been discussed. This organization or issues could then be brought to the Council to help with further discussion and consideration.

Justice Nehring suggested the Management Committee review all the comments that have been suggested and evaluate the next step. Justice Nehring indicated three considerations should be made when comparing input.

1. Review what each group has considered and compare the opposing views
2. Review any potential oversights any groups missed
3. Formalize language in 3(K)VI by giving a judge or commissioner the right to appeal instead of respond.

Justice Nehring suggested the Management Committee make those appeal changes in the rule and bring the proposal to the Judicial Council. The Management Committee will consider this issue at their next meeting.

## **12. LEGISLATIVE UPDATE: (Rick Schwermer, Mark Jones)**

Mr. Schwermer and Mr. Jones reported that up to this point the legislative session has been going smoothly. Thursday was the last day for filing bills. Mr. Schwermer indicated the Liaison Committee has reviewed the following bills:

-H.B. 32 Expedited Parent-time Enforcement- the Liaison Committee's position is support with an adequate fiscal note because this bill would have a direct operational impact on the courts.

-H.B. 51 Adoption Amendments - the Committee does not have a position, but there is concern with confusing language and the amendments not seeming to solve any problems.

-H.B. 112 Utah Council on Victims of Crime - the Liaison Committee opposes the part of the bill

that includes judges serving on the Utah Council on Victims of Crime because there is an ethical issue that prevents judges serving on the Council, however, may replace judges serving on the Council with court administrators serving on the Council.

-H.B. 116 Juror Transport Amendments - the Liaison Committee took no position, but pointed out operational difficulties and the potential statutory and constitutional conflicts with the amendments as written.

-H.B. 128 - Divorce Orientation - the Committee took no position, but will require a large fiscal note because of the number of divorce cases filed as well as the number of petitions filed for temporary separation orders that the proposed bill will affect.

-H.B. 207 - School Truancy & Compulsory Education Amendments - the Liaison Committee took no position, but suggest that the compulsory education violation be changed from a class B misdemeanor to an infraction for policy and fiscal note purposes.

-H.B. 235 - Abortion Law Revisions - the Committee took no position, but may want to express to the sponsor the confusion as to whether this bill would apply if Roe v. Wade is partially overturned.

-H.B. 262 - Search Warrant Amendments - the Committee supports the bill because it puts procedural provisions in Rules where they belong.

-S.B. 35 - Uniform Child Abduction Prevention Act - the Liaison Committee took no position, but note problems with operation detail.

-S.B. 50 Drug Offenders Reform Act - the Committee took no position, but opposes the bill if line 393 is deleted.

-H.B. 139 - Parental Consent to Abortion Amendments - the Committee decided to table an action on the bill until the next meeting or until the Utah Supreme Court has considered the proposed rule.

-S.B. 166 - Notary Public Amendments - the Committee took no position but suggested that Section 46-1-11 should be amended to refer to 'prohibitive acts' rather than 'unauthorized practice of law.'

### **13. JUSTICE COURT JUDGE CERTIFICATION: (Rick Schwermer)**

***Motion:*** A motion was made to go into executive session to discuss personnel issues. The motion was seconded and passed unanimously.

***Motion:*** A motion was made to come out of executive session. The motion was seconded and passed unanimously.

Chief Justice Durham indicated that legal counsel had been instructed to file an amicus brief and that the three appellate judges did not participate in the vote to determine that action.

***Motion:*** Judge Davis motioned that Judge Cox, Judge Thomas, and Judge Dunlap, be certified as Justice Court Judges, Judge Lyon seconded the motion, the motion passed unanimously.

**14. COURT OF APPEALS RESOLUTION:**

Justice Durham presented a resolution to the Council in Appreciation of the 20<sup>th</sup> anniversary of the Court of Appeals.

***Motion:*** Judge Beacham motioned to accept this resolution, Scott Sabey seconded the motion, the motion passed unanimously.

**15. ADJOURN**

***Motion:*** A motion was made to adjourn the meeting, the motion was seconded and passed unanimously.