

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, January 23rd, 2012

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

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

### **ATTENDEES:**

Chief Justice Christine M. Durham  
Hon. Kimberly K. Hornak, vice chair  
Justice Jill N. Parrish  
Hon. Judith Atherton  
Hon. George Harmond  
Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. David Mortensen  
Hon. Gregory Orme  
Hon. John Sandberg  
Hon. Paul Lyman for Hon. Larry Steele  
Hon. Keith Stoney  
Hon. Thomas Willmore  
Lori Nelson, esq.

### **EXCUSED:**

Hon. Larry Steele

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Diane Abegglen  
Jody Gonzales  
Lisa-Michele Church  
Debra Moore  
Rick Schwermer  
Tim Shea  
Nancy Volmer  
Tom Langhorne  
Shari Veverka  
Ron Bowmaster

### **GUESTS:**

Aaron Falk, SL Tribune  
Joanne Slotnik, JPEC  
J. Daniel Bertch, Draper City  
Jonna Crump, Draper City  
Doug Ahlstrom, Draper City  
Rodney Snow, Utah State Bar  
Robert Rice, Utah State Bar  
John Baldwin, Utah State Bar  
Michelle Harvey, Utah State Bar  
Sue Crisman

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

Chief Justice Durham welcomed everyone to the meeting. She excused Judge Steele from the meeting, and she noted that Judge Paul Lyman would be sitting in for Judge Steele.

**Motion:** Judge Hornak moved to approve the minutes. Judge Stoney seconded the motion, and it passed unanimously.

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

Chief Justice Durham reported on the following:

Judge Tyrone Medley received the Civil Rights Award at an event held by the Salt Lake Chapter of the NAACP on January 16.

The State of the Judiciary will be given later this afternoon. A legislative leadership meeting is scheduled for February 2.

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

Mr. Becker reported on the following items:

State of the Judiciary Address. The State of the Judiciary will be given this afternoon; once to the House and once to the Senate. Transportation details were provided to Council members who planned to attend the State of Judiciary.

Legislative Appropriations Process. The Appropriations Subcommittee will begin their work on Wednesday, January 25. Mr. Becker mentioned the dates the Executive Appropriations Committee is scheduled to meet during the 2012 Legislative Session. Preliminary numbers relative to the State's budget were provided. The courts budget will be considered by the Appropriations Subcommittee on Friday, February 3. Mr. Becker, Mr. Wahl and Mr. Schwermer met with Representative Hutchings, co-chair of Appropriations, on January 18.

Juab County Court Facility Update. A letter was sent to the Juab County Attorney on behalf of the courts to express our understanding of the county's desire to move forward with building a new court facility, but if the project does not move forward; the Judicial Council will consider moving court to an adjacent county. Mr. Becker highlighted the following areas being addressed, temporarily, to help with the current needs of the court facility: 1) Viack is being set up to reduce the need to transport prisoners from the county jail to the court facility, and 2) addressing issues to improve building security. Mr. Becker noted that Viack would be operational in the court facility in approximately four weeks.

The first planning session with the Juab County Commission and the Juab County Attorney has been held to address the needs of the new court facility. Monthly meetings will be held during the planning process.

Judicial Performance Evaluation Commission. Ms. Slotnik will provide an update on behalf of the Commission later in the meeting. Vacancies on the Commission were noted and included: 1) a vacancy to fill Mr. Chris Buttars' position who recently resigned, and 2) a vacancy to fill Mr. V. Lowry Snow's, commission chair, who resigned to fill Representative David Clark's vacancy in the House of Representatives.

Judicial Appointments. Mr. Curt Garner, the Governor's appointee to fill Judge Peuler's position in the Third District, has withdrawn his application.

Judge Tyrone Medley has announced his upcoming retirement effective June 29, 2012.

The Nominating Commission will post notices to fill Judge Peuler's and Judge Medley's vacancies at the same time.

Annual Report. Mr. Becker noted that a copy of the current Annual Report was provided to each member. He commended Ms. Volmer for a well-prepared report.

April Council Meeting. Mr. Becker made a request to the Management Committee to change the April 23 meeting to April 30. The Committee approved the date change. Ms. Jody Gonzales will send a notice to the Council with the April meeting date change.

Executive Session. An executive session will need to be held later in the meeting.

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

##### ***Management Committee Report:***

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda. Chief Justice Durham noted that the minutes reflect a vacancy on the Judicial Conduct Commission for a lawyer representative. Mr. Jim Jardine has replaced the current Commission chair.

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

Justice Parrish reported on the following:

She mentioned that the Committee has held two meetings. She updated the Council on the types of legislation being introduced and the position being taken by the Committee on particular pieces of legislation.

##### ***Policy and Planning Meeting:***

Judge Orme reported on the following:

The meeting minutes accurately reflect the issues discussed.

Several rules are being considered for final action later on the agenda and published for comment on the consent calendar. Judge Orme mentioned that discussion took place relative to a rule for court referees and social media.

##### ***Bar Commission Report:***

Chief Justice Durham reported that Ms. Nelson and other members of the Bar were meeting with the Governor, and she would be late to the meeting. Chief Justice Durham mentioned that she and Mr. Becker met with Bar leadership last week to discuss the pro bono initiative which will be presented later on the agenda.

#### **5. SIX MONTH WORKLOAD REVIEW: (Kim Allard)**

Chief Justice Durham welcomed Ms. Allard to the meeting.

Ms. Allard reviewed district court case filings and juvenile court referrals for the first six months of FY 2012 compared to FY 2008.

Overall, district court case filings show an overall increase of 5% for the first six months of FY 2012 compared to FY 2008. The increase is due to a 72% increase in judgements. She highlighted the following district court case filing data to include: 1) criminal, 10% decrease; 2) felonies, 2% decrease; 3) misdemeanors, 23% decrease; 4) domestic, 6% increase; 5) divorce, 3% increase; 6) custody and support, 82% increase; 7) paternity, 2% decrease; 8) general civil, 10% decrease; and 9) debt collection, 17% increase. She noted the change to the small claims category with the move of small claims to justice courts.

Juvenile court referral data included: 1) felony, 28% decrease; 2) misdemeanor, 16% decrease; 3) adult violations, 25% increase; 4) child welfare proceedings, 4% decrease; 5) termination of parental rights, 17% decrease; 6) voluntary relinquishment, 24% increase; and 7) domestic/probate, 33% increase.

Discussion took place.

Ms. Allard was thanked for her update.

**6. RULES FOR FINAL ACTION: (Tim Shea)**

Chief Justice Durham welcomed Mr. Shea to the meeting.

Mr. Shea reported that there were six rules being recommended for approval. The first three rules included:

CJA 03-0101. Judicial Performance Standards. This is a new rule that establishes standards of performance for minimum education and cases under advisement for application by the Judicial Performance Evaluation Commission.

CJA 04-0704. Authority of county clerks to extend payment schedule and dismiss citations. The rule has been amended to allow clerks to dismiss citations as permitted in the Uniform Fine/Bail Schedule.

CJA 04-0907. Mandatory divorce education. The rule simplifies the policy on access to divorce orientation courses and divorce education courses.

**Motion:** Judge Hornak moved to approve CJA 03-0101 as recommended. Judge Atherton seconded the motion, and it passed unanimously.

**Motion:** Judge Maughan moved to approve CJA 04-0704 and CJA 04-0907 as recommended. Judge Stoney seconded the motion, and it passed unanimously.

Mr. Shea reviewed the following rules being recommended for approval:

CJA 04-0202.02. Records classification. The rule has been amended to modify records to be classified as sealed, private and protected.

CJA 04-0202.04. Request to access a record associated with a case; request to classify a record associated with a case. The rule has been amended to move from Rule 4-202.02 to this rule descriptions of records that require judicial approval to classify as non-public.

CJA 04-0202.09. Miscellaneous. This rule has been amended to require a person filing a record with the court to identify the record as non-public if it qualifies as non-public.

CJA Appendix I. Summary of Classification of Court Records. This rule is new and summarizes the classification of record series by case type.

**Motion:** Judge Mortensen moved to approve the rules as recommended. Judge Harmond seconded the motion, and it passed unanimously.

**7. NEW JUSTICE COURT JUDGE CERTIFICATION: (Rick Schwermer)**

Mr. Schwermer presented the recommendations for justice court judge certification for Mr. Ray Robert Richards.

**Motion:** Judge McCullagh moved to certify Mr. Ray Robert Richards as a justice court judge. The motion was seconded, and it passed unanimously.

**8. MUNICIPAL JUSTICE COURT RECERTIFICATION: (Rick Schwermer)**

Mr. Schwermer reminded the Council that justice courts are certified every four years by the Council. The certification process involves application by the sponsoring governmental entity, and a review of compliance with statutes and with Judicial Council operational standards. He reviewed the courts not found in compliance to include:

Delta. They are open Monday through Thursday, and they hold court two Fridays per month. Two to three Fridays per month they are not open. The committee recommends a waiver if the city agrees to post its hours on their website, and if they add a drop-box so filings and payments can be made on Fridays when the court is not open. Delta has agreed to the conditions.

**Motion**: Judge Mortensen moved to grant a waiver to the Delta Justice Court as recommended by the committee. Judge Orme seconded the motion, and it passed unanimously.

Draper. As a Class I court, the judge is presumed to be full time. Mr. Schwermer reminded the Council that a waiver was granted in 2009 relative to the full-time judge requirement. The Management Committee discussed the matter in their January meeting and recommended the issue of what constitutes a full-time justice court judge be referred to Policy and Planning for further review and a one-year waiver be granted to Draper while the issue is studied further. Discussion took place and input was given by Draper Justice Court officials.

**Motion**: Judge Hornak moved to allow Policy and Planning to review the issue of what constitutes a full-time justice court judge further and grant the Draper Justice Court a one-year waiver while the issue is being addressed. Judge Stoney seconded the motion, and it passed unanimously.

Heber. There is no victim/witness room available in the facility, and the judge finds a gavel “unnecessary”. A letter has been sent to the Heber Justice Court with no response. Judge Stoney provided information relative to the Heber Justice Court building. Discussion took place.

**Motion**: Judge Hornak moved to conditionally decertify the Heber Justice Court if they do not comply by February 1. Judge Sandberg seconded the motion. Judge McCullagh moved to amend the motion to allow the Heber Justice Court to comply by February 27. Judge Maughan seconded the amendment, and it passed unanimously. The motion passed as amended.

Hildale. They do not appear to be open on Fridays, and the judge has been “temporary” for several years. A senior judge has been holding court ever since the previous judge left office. Hildale has responded noting that they will be open on Fridays, but they would like permission to keep using a senior judge for a year, while the process to replace him takes place. Options and discussion took place relative to the continued use of a senior judge.

**Motion**: Judge Stoney moved to decertify Hildale if they have not begun the process to fill their justice court judge vacancy by June 1. Judge Hornak seconded the motion, and it passed unanimously.

Naples. The Naples facility is not within the boundaries of the municipality. This is a recent move, based on the new county facility opening and security concerns. Naples has responded that they will comply.

Orderville. There is no space for a jury, and there is no jury deliberation room. The judge responded that he will comply.

Parowan. The requirement is for two separate tables for counsel. The city uses a 12 foot long table with sufficient separation provided. The city requests a waiver.

**Motion**: It was moved and seconded to allow a waiver of the requirement for two separate tables for counsel. The motion passed unanimously.

Santa Clara. The court is not open on Fridays. Santa Clara has responded that they will be open on Fridays as required.

Kanab. The judge, rather than the city, submitted a recertification affidavit. Separately, the city has asked for an extension of time to consider all of their options relative to the court, rather than providing the required ordinance for recertification. Discussion took place.

**Motion**: Judge McCullagh moved to certify Kanab, waiving the requirement to pass an ordinance for recertification until July 1, 2012. If the recertification ordinance has not been received by that date, it will then be treated as a request to dissolve the court, [inaction by Kanab] and the court will be dissolved effective, July 1, 2013. Judge Stoney seconded the motion, and it passed unanimously.

Mr. Tom Langhorne, new Education Director, was introduced and welcomed.

**9. LEGISLATIVE UPDATE: (Rick Schwermer)**

Mr. Schwermer provided a legislative update to the Council. He noted that all the courts bills have sponsors, and he highlighted the status of the Self-Help Center Bill.

**10. SENIOR JUDGE CERTIFICATION: (Tim Shea)**

Mr. Shea reported that Judge J. Dennis Frederick has applied to be appointed as an Inactive Senior Judge.

**Motion**: Judge Orme moved to forward the recommendation, on behalf of the Council, to the Supreme Court to certify Judge J. Dennis Frederick as an Inactive Senior Judge. Judge McCullagh seconded the motion, and it passed unanimously.

**11. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)**

Chief Justice Durham welcomed Ms. Slotnik to the meeting.

Ms. Slotnik highlighted the Commission's proposed 2012 statutory changes and rationale for changing the following statutes: 1) 78A-12-203 - Judicial performance evaluations, 2) 78A-12-204 - Judicial performance survey, 3) 78A-12-205 - Minimum performance standards, and 4) 78A-12-206 - Publication of the judicial performance evaluation. She noted that the proposed change to the minimum performance standards would exclude juror responses.

Court-room observation feedback and their weight will be used with regards to a minimum performance standard for procedural fairness with the 2014 judges up for retention. She mentioned that training for courtroom observers is ongoing.

Discussion took place with concern being expressed over the proposal to eliminate juror survey responses from the minimum performance standards.

Reports relative to 2012 judges up for retention and 2014 mid-term will be sent out between now and mid-February.

Ms. Slotnik reported that the Commission received grant funding from the State Justice Institute (SJI) to work with the National Center for State Courts (NCSC) on the pilot program relative to evaluating part-time justice court judges. The pilot, which includes the 2014 part-time justice court judges up for retention, will begin in mid-February and run for six months.

She highlighted the following changes in membership to the Commission: 1) Mr. Chris Buttars has resigned from his position on the commission leaving a vacancy, and 2) Commission chair, V. Lowry Snow has resigned his position to fill the vacancy in the House of Representatives left by Representative David Clark. Mr. Tony Schofield will step in as Commission chair until the elections are held in July.

Ms. Slotnik highlighted the following relative to public comments: 1) they are not viewable by the public, 2) comments will be part of the 2012 retention evaluation reports, and 3) public comments in the 2012 reports will be placed on the website.

Chief Justice Durham thanked Ms. Slotnik for her update.

## **12. UTAH STATE BAR PRO BONO PROGRAM: (Rod Snow and Rob Rice)**

Chief Justice Durham welcomed Mr. Rod Snow, Bar president and other State Bar leadership in attendance.

Mr. Snow introduced members of the State Bar Commission who were present. He mentioned that the Bar is working to create a voluntary program whereby more lawyers are available to provide pro bono services in Utah.

Mr. Rice provided an overview of the Pro Bono Commission which will be a program of the Utah State Bar. The basic concept is three fold and will include the following areas of focus: 1) to develop and maintain a list of volunteer lawyers who are willing to provide pro bono legal services; 2) to institute a “check yes” campaign that will work in connection with the Bar’s annual application process allowing for members to check a box saying that they are willing to be part of a pool of lawyers that will provide pro bono legal services, with this, a centralized electronic database will collect the information gathered by participating lawyers; and 3) to create district-based pro bono committees in each of the eight judicial districts statewide.

It was noted that similar district-based pro bono commissions currently exist in other states. Mr. Rice highlighted other non-profit services that currently provide legal representation for low-income Utahns. However, there is still a large number of civil legal cases where no attorney has been able to assist low-income Utahns in resolving those problems. Creation of the Pro Bono Commission would be a partial solution and would help make a dent in resolving those matters.

The Pro Bono Commission would consist of 15 members in the legal community to serve on the statewide commission. Ms. Michele Harvey would support the Commission as the coordinator by assisting with the overall statewide needs as well as the creation of individual committees in each judicial district. The basic charge for each district-based committee will include: 1) creating a committee suited to the needs of district, and 2) create a vehicle through which volunteer lawyers will be matched with pro bono clients.

The Bar Commissioners will be serve as co chairs in each of the district committees. Ms. Sue Crisman will be involved in supporting the Commission at the district and statewide levels. In the future, the Bar intends to fund part-time private staff members to assist in the matching of lawyers and pro bono clients.

Mr. Rice noted that several members of the Bar had the opportunity to review the program set up in Albuquerque. Upon review of Albuquerque's program, it was determined that judicial support and involvement in the process of recruiting lawyers to become involved in providing pro bono legal services was important to success of the program.

A draft copy of the proposed resolution was distributed to members of the Judicial Council. Mr. Rice asked the Council to consider passing a resolution to include the following: 1) to endorse conceptual support for the Pro Bono Commission, 2) to allow district court judges and other judiciary staff to participate as members of the Pro Bono Commission, and 3) if the Council supports the concept, allow district court judges to serve on the district-based committees as co chairs.

The question was asked regarding participation by the federal court. Mr. Rice mentioned that there currently is participation on behalf of the federal courts. It was noted that the focus has primarily been on state court judges with the program being district-based.

Questions were asked and discussion took place.

Mr. Rice was asked if the Board of District Board Judges were apprised of the Pro Bono Commission. He mentioned that a slightly different concept was presented to the Board of District Court judges at the end of 2011 than what is called for in the proposed resolution, but it reflects input provided by the Board of District Court judges. Ms. Moore provided her opinion on behalf of the Board regarding their view of the concept.

The need for pro bono services in rural districts relative to juvenile court cases was discussed. Mr. Rice provided clarification relative to training, mentoring and resource availability in areas outside of the lawyer's expertise.

Mr. Rice reviewed the logistics in setting up the Pro Bono Commission. He mentioned that participation by the judiciary would be made by invitation and be voluntary.

**Motion:** Judge Orme moved to defer the Council's consideration of the resolution until the February meeting, refer it to Policy & Planning for any suggestions and simultaneously send it to the Board of District Court judges for their consideration. It was amended to allow for the Council to accept in concept the Bar's process to create the Pro Bono Commission and move forward with creation of the committees. Judge Orme accepted the amendment. Judge Hornak seconded the motion to include the amendment. The motion passed with Judge Maughan voting no.

**Motion:** Judge Hornak moved to enter into an executive session to discuss matters of security and personnel issues. Ms. Nelson seconded the motion, and it passed unanimously.

**13. EXECUTIVE SESSION:**

An executive session was entered into at this time.

**14. ADJOURN**

The meeting was adjourned.