

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, February 27th, 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. Larry Steele  
Hon. Thomas Willmore  
Lori Nelson, esq.

### **GUESTS:**

Justice Matthew Durrant  
Judge Kate Toomey  
Judge Royal Hansen  
Peyton Smith, 3<sup>rd</sup> Dist TCE  
Joanne Slotnik, JPEC  
Tony Schofield, JPEC  
Brent Tippitts  
Stephen Carter  
Randy Dryer  
Olivia Shaughnessy, intern  
Angela Slade, intern  
Representative David Litvack

### **STAFF PRESENT:**

Daniel J. Becker  
Diane Abegglen  
Jody Gonzales  
Lisa-Michele Church  
Debra Moore  
Rick Schwermer  
Tim Shea  
Nancy Volmer  
Brent Johnson  
Ron Bowmaster  
Rob Parkes  
Alyn Lunceford  
Jessica Van Buren  
Nini Rich  
Derek Byrne  
Katie Gregory

### **EXCUSED:**

Hon. Keith Stoney

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

Chief Justice Durham welcomed everyone to the meeting. She extended a special welcome to Justice Durrant and Olivia Shaughnessy, a Hinckley Institute intern.

**Motion:** Justice Parrish moved to approve the minutes. Judge Hornak seconded the motion, and

it passed unanimously.

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

Chief Justice Durham reported on the following:

Chief Justice Durham, Justice Durrant, Mr. Becker, and Mr. Schwermer met with the Speaker of the House to discuss issues relating to the courts for the 2012 legislative session.

She was invited to participate at the Bar's Legislative Day CLE workshop including leadership from the House, Senate and Governor's office attending. She spoke briefly about the *System of Governance for Utah's Courts*.

Chief Justice Durham and Justice Durrant attended the Conference of Chief Justices Mid-Year meeting held January 27 - February 1 in Wilmington, Delaware with the theme of the meeting "*Business and Business Courts*". The Honorable Joseph R. Biden, Jr, Vice President of the United States, offered a keynote address at the conference with the focus on the significance of the state courts in the United States as engines of not just economic health and welfare in the United States but the impact of American competitiveness in the international arena.

She noted that the agenda item relative to the recertification of municipal justice courts which had originally been placed on the Council consent calendar was now on the regular Council agenda as an action item.

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

Mr. Becker reported on the following items:

Recertification of Municipal Justice Courts. Mr. Becker mentioned that this item is on the February agenda for action as the justice courts that were found to be in compliance had not been formally approved following discussion at the January meeting.

Legislative Session. The 2012 Legislative Session ends on Thursday, March 8. Mr. Becker provided an update on where the courts stand in the appropriations process. All requests submitted by the courts are being recommended. Mr. Becker highlighted the following areas of interest: 1) status of the Self-Help Center bill, 2) the Subcommittee addition of two law clerks and data processing funds, and 3) the one-time expenditures.

Ogden Juvenile Court Facility. Approval of funding for buildings is not anticipated this session.

Criminal E-Filings. A pilot program has begun in Weber County to test e-filing of criminal cases. The second phase of the pilot program will be conducted in Davis County.

Juab County Court Facility. The planning process for building a new court facility in Juab County is underway. A meeting was held last week with all of the Juab County Commissioners.

March Council Meeting. The March Council meeting will be held on Thursday, March 15 in St George beginning at 9:45 a.m..

April Council Meeting. The April 30 Council meeting will begin at Noon with Justice Durrant taking on his role of chair of the Council. A reception to honor Chief Justice Durham for her year's of service as chief justice will take place following the meeting. All Council members are invited to attend.

Mandatory E-Filing. Mr. Becker provided an update on the proposal for mandatory e-filing. The issue has been referred to Policy and Planning to prepare a proposed rule which would be brought to the Council for consideration in April and would set a date for mandatory e-filing, provide guidelines for dealing with self-represented litigants, and provide for possible

waivers for attorneys who declare a hardship.

A change to mandatory e-filing will impact the workforce required to staff the front counter operations of courts. The courts will require less court staff in this area due to the volume of transactions which would be handled as e-filings and e-payments. The number of court staff affected by this change and the options to managing the change will be discussed. It was noted that court staff affected will not lose their jobs, it will be managed through attrition.

Chief Justice Durham commended the court staff for all they have done relative to the court's budget during the economic downturn.

#### **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.

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

Justice Parrish reported on the following:

The Committee has been meeting weekly since the beginning of January. She deferred a more substantive report to be provided by Mr. Schwermer with his legislative update. She noted that the proposed Judicial Performance Evaluation Commission (JPEC) legislation which would have excluded juror responses relative to the minimum performance standards has been withdrawn.

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

Judge Orme reported on the following:

The majority of the items discussed at the last meeting will be discussed later in the meeting as several rules are being considered for final action or listed on the consent calendar as rules published for comment.

Discussion on the court referee issue will continue at the next meeting with Judge Kay scheduled to attend to offer his comments.

The Pro Bono resolution was deferred to the March meeting for further discussion and action. The Committee hopes to provide an update on the resolution at the March Council meeting.

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

Ms. Nelson reported on the following:

She provided highlights from the last Bar Commission meeting to include: 1) approval of the Uniform Bar Exam rules to take effect with the July 2012 exam; 2) approval of a \$2,000 grant for the Law Day insert; 3) selection of Judge Sandra Peuler as the Dorothy Merrill Brothers award recipient, and David Dominguez as the Raymond Uno award recipient; 4) summary reports were provided on the pro bono program, the lawyer referral program, and the civics education program.

#### **5. JUDICIAL PERFORMANCE EVALUATION COMMISSION: (Tony Schofield and Joanne Slotnik)**

Mr. Schofield, JPEC Commission Chair, and Ms. Slotnik, Director of JPEC, were welcomed to the meeting.

Chief Justice Durham expressed her gratitude to the Commission and their staff on behalf of the Council for hearing the concerns expressed by the courts relative to the JPEC legislation which would have eliminated juror surveys from the minimum performance standards by withdrawing the legislation.

The Council would like the Commission to consider meeting with Council representation at a future meeting, to discuss the manner by which the Commission considers changes in the judicial performance evaluation process. Mr. Schofield commented on the Judicial Performance Evaluation Amendments in response to the concerns expressed by the judiciary.

Mr. Schofield provided background information regarding the Commission's charge. The first set of retention reports for the judges up for retention in 2012 have been distributed. Feedback has been received by the Commission from some judges regarding their reports. At the end of the application period, applicable data for the judges up for retention, will be placed on the Commission's website.

An invitation to attend the Commission's April 10 meeting was extended to the Council. Discussion relative to jury survey results as part of the minimum performance standards at the April meeting will be welcomed. Chief Justice Durham expressed concerns with removing the jury survey information from the minimum performance standards.

Discussion took place. Council members posed questions to Mr. Schofield and Ms. Slotnik on the following areas relative to judicial performance evaluations: 1) narrative summarizations included on the retention reports, 2) courtroom observation comments, and 3) the status of the 2014 mid-term reports.

Mr. Schofield and Ms. Slotnik reviewed the process undertaken by Commission members in creating the narrative summarizations included on the retention reports. Clarification was provided on the courtroom observations. They anticipate sending out the 2014 mid-term reports by the end of the week.

Mr. Schofield and Ms. Slotnik were thanked for their time.

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

Chief Justice Durham welcomed Mr. Shea to the meeting. She asked the Council if there were any questions relative to the recommendations of the rules for final action submitted by Policy and Planning.

**Motion:** Judge McCullagh moved to approve the rules for final action as recommended by Policy and Planning. Judge Harmond seconded the motion, and it passed unanimously.

## **7. ETHICS ADVISORY COMMITTEE UPDATE: (Brent Johnson)**

Chief Justice Durham welcomed Mr. Johnson to the meeting.

Mr. Johnson provided an update on the activities of the Ethics Advisory Committee. He highlighted the following in his update: 1) listed the current committee membership, 2) the committee is in the process of filling vacancies for a justice court representative and an attorney representative, 3) the committee has only received one opinion request since the last update, and 4) reviewed the process by which opinion requests are managed.

Mr. Johnson was thanked for his update.

**8. LEGISLATIVE UPDATE: (Rick Schwermer and Daniel J. Becker)**

Chief Justice Durham welcomed Mr. Schwermer to the meeting.

Mr. Schwermer provided an update on the following bills being considered during the 2012 legislative session, including where they fall in the legislative process:

SB 100 - Law Library Self-Help Center

SB 154 - Judiciary Amendments

SB 200 - Justice Court Housekeeping

HB 231 - Guardianship Amendments

HB 393 - Juvenile Competency Amendments

HB 328 - Judicial Performance Evaluations Amendments (withdrawn)

SB 214 - Justice Court Process Amendments

HB161 - Rights of Parents and Children

HB 235 Offer of Judgment in Civil Cases

HB 237 - Child Welfare Amendments

SJR 15 - Joint Resolution Amending Rules of Civil Procedure on Peer Review

HB 435 - Reclassification of Traffic Offenses

HJR 16 - Joint Resolution - Judicial Service Commendation

HB 49 - Firearms Resolution

HB 38 - Competency to Stand Trial Amendments

Discussion took place. Mr. Schwermer provided clarification to questions asked.

Chief Justice Durham thanked Mr. Schwermer for his update.

**9. EMPLOYEE SURVEY RESULTS: (Rob Parkes)**

Mr. Parkes was welcomed to the meeting.

He provided an update on the 2011 employee survey which was administered during November and December where all staff were invited to participate. Mr. Parkes mentioned that no survey was administered in 2010. The 2011 survey was redesigned with the goal of measuring the factors which contribute to establishing a positive work environment. The survey focused on the following four factors: 1) an employee's immediate supervisor, 2) the management team, 3) the work environment, and 4) engagement.

The survey netted the highest response with 785 responses received statewide which represents 72% of the total court workforce. As a whole, the survey was very positive. He reviewed responses to include the following: 1) work environment, 2) advancement opportunities, 3) employee recognition, and 4) communication.

The results of the survey are reported on both a statewide and district basis for ease of addressing key areas. The court executives received the results for their districts as well, and they will have the opportunity to address areas of concern.

Mr. Becker noted that the employee survey along with the access and fairness survey should be reviewed by the court executives and presiding judges jointly, as well as discussed at both bench and staff meetings.

Mr. Parkes was thanked for his report.

**10. UTAH JUDICIAL FACILITY DESIGN STANDARDS - EXECUTIVE SUMMARY: (Alyn Lunceford and Brent Tippitts)**

Chief Justice Durham welcomed Mr. Lunceford and Mr. Tippitts to the meeting.

Mr. Lunceford mentioned that the executive summary distributed to the Council provides background information on the creation and use of the *Judicial System Master Plan* for Capital Facilities and the newly proposed *Utah Judicial Facilities Design Standards*, which merges the goals and objectives from the original document and adds a number of sections to address current and future building procedures, systems and technologies.

Mr. Tippitts acknowledged key players who were instrumental in creating the proposed design standards. Areas of focus in the design standards update included: 1) building security, 2) technology, 3) audio/visual improvements, 4) enhanced accessibility, 5) sustainable design, and 6) create a living document which can easily be updated.

He identified the additions and modifications within each section. He highlighted the sections of the design standards to include: 1) Section 1: Operational and Facility Planning Principles, 2) Section 2: Judicial Building Requirements, 3) Section 3: Judicial Facility Security, 4) Section 4: Facility Types and Roles, and 5) Section 5: Judicial Facility Space Standards.

Upon approval, the standards will be included on the court's website, and they will be forwarded to the National Center for State Courts.

Mr. Lunceford and Mr. Tippitts were thanked for their presentation.

Mr. Lunceford mentioned that copies of the new design standards were available for anyone interested in obtaining a copy.

**Motion:** Judge Maughan moved to approve the Utah Judicial Facility Design Standards. The motion was seconded, and it passed unanimously.

**11. THIRD DISTRICT COURT COMMISSIONER APPROVAL: (Judge Royal Hansen)**

Chief Justice Durham welcomed Judge Hansen to the meeting.

Judge Hansen reviewed the final three candidates to fill the Third District Commissioner vacancy left with the retirement of Commissioner Michael Evans. The Third District bench recommended Ms. Joanna Sagers fill the Commissioner vacancy.

Judge Atherton provided feedback on behalf of the Third District Bench relative to the recommendation.

**Motion:** Ms. Nelson moved to approve the selection of Ms. Joanna Sagers, to fill the commissioner vacancy in the Third District. Judge Atherton seconded the motion, and it passed unanimously.

**12. FEASIBILITY STUDY FOR COURTROOMS AT SALT LAKE COUNTY JAIL: (Stephen Carter)**

Mr. Carter of Carter Goble Lee, was welcomed to the meeting.

He provided an update on the feasibility study conducted for Salt Lake County to examine the feasibility of developing special purpose court space at or near the Salt Lake County Adult Detention Center for use with the Early Case Resolution (ECR) program.

Mr. Carter provided copies of the draft feasibility study to the Council.

Spacial requirements to support a court program at or near the Salt Lake County Adult Detention Center were reviewed. Mr. Carter highlighted the options summarized in the study to include: 1) Option 1 - construction of a new site at a location between the Matheson Courthouse

and the detention center with an estimated cost of \$14,292,036; 2) Option 2 - construct a two-story courthouse adjacent to the jail on the north side with an estimated cost of \$12,810,487; 3) Option 3 - reuse the visitation entrance at the jail for a video courtroom with an estimated cost of \$2,644,445; 4) Option 4 - add a complete video arraignment court at the jail by reusing and adding onto the visitation entrance with an estimated cost of \$6,291,894; and 5) Option 5 - add a space for court staff and support spaces in the Matheson parking lot with an estimated cost \$2,596,561.

Mr. Carter reported that the study was presented to CJAC where they looked more closely at Option 3 with the suggestion to find a space near the visitation entrance where a video courtroom and support offices could be accommodated.

Chief Justice Durham reminded Council members that the Council would consider the issue if a request for a local rule change was advanced to the Council by the Third District Bench and Board of District Court Judges.

Discussion took place. Questions were asked, and Mr. Carter provided clarification. Mr. Carter was thanked for his presentation.

### **13. REPORT ON JUDICIAL USE OF SOCIAL MEDIA: (Randy Dryer and Nancy Volmer)**

Mr. Dryer was welcomed to the meeting.

He reported that the *Recommendations for the Court's Use of Social Media* would be the final report from the Social Media Subcommittee. The recommendations have been approved by the Judicial Outreach Committee and recommended for consideration and approval by the Management Committee.

The following observations were noted relative to the use of social media: 1) social media usage by judiciaries across the country is rapidly increasing, 2) Utah is on the forefront of social media usage, and 3) the judicial branch is behind the other two branches of government in their use of social media.

Mr. Dryer referred to the National Center for State Courts (NCSC) New Media State List which compares the usage of new media by State Supreme Courts and AOCs as of April 2011.

The recommendations, general and specific, relative to the use of social media by the courts include: 1) integrate social media and other emerging communication platforms into existing and future court functions and programs as appropriate for the purpose of fostering transparency and promoting public trust and understanding the judicial system, 2) emphasize the development of tools and applications to make court information easily accessible by the public and the media through mobile devices, 3) educate judges and court staff about the appropriate use of social media, 4) post educational videos on video sharing sites to educate and inform the public about the courts and how they operate, 5) add social media monitoring to existing media monitoring activities for stories and commentary about the courts and judges, 6) create apps or mobile-friendly web pages to enhance access to court dockets, court calendaring, hearings, court website and other information, 7) provide video or live Internet streaming of Judicial Council meetings on the judiciary's website, 8) expand access to wireless networks in court facilities to allow the media and the public to use mobile devices, and 9) explore a pilot program for judges interested in having an electronic bench book to facilitate dissemination to various audiences.

Questions relative to the recommendations were asked. Mr. Dryer provided clarification. Mr. Dryer and Ms. Volmer were thanked for the report.

**Motion:** Judge Harmond moved to receive the report as prepared. Judge Harmond seconded the motion, and it passed unanimously.

**14. RECOMMENDATION FOR ADOPTING GOOGLE MAIL SERVICE: (Ron Bowmaster)**

Chief Justice Durham welcomed Mr. Bowmaster to the meeting.

Mr. Bowmaster mentioned that Judge McHugh, chair of the Standing Committee on Technology was unable to attend the meeting.

Background information was provided relative to the recommendation of the Standing Committee on Technology to migrate the court email system from GroupWise to the Google Apps cloud-hosted email.

He noted that the executive branch will be moving from GroupWise to the Google Apps cloud-hosted email system before the courts. If the Council approves the conversion, the courts will follow the executive branch move and learn from their implementation experience, with an estimated changeover effective July 1.

Mr. Bowmaster highlighted the following available applications and services included with the Google Apps contract: 1) mail, 2) calendaring, 3) GoogleTalk, 4) office production tools, 5) templates and webpages, 6) video storage capabilities, 7) instant messaging, 8) smart device synchronization, 9) application interfaces that were not provided with GroupWise, and 10) data storage, server and software maintenance, real-time failover, and backup and recovery support will be provided by Google.

Discussion took place. Mr. Bowmaster provided clarification to questions asked relative to smart phone compatibility. Judge McCullagh provided feedback relative to the switch over to Google Apps by West Valley City.

Mr. Bowmaster highlighted the following in his report: 1) a one-time cost of approximately \$17,750 to convert from the GroupWise email system to Google, 2) an additional annual cost of \$20,000, 3) protection of security and confidentiality as a service option, and 4) the ability to implement the court's email retention policy.

**Motion:** Judge Orme moved to authorize the IT Division to migrate the court email system from GroupWise to the Google Apps cloud-hosted email. Judge Sandberg seconded the motion, and it passed unanimously.

**15. REAUTHORIZATION OF STANDING COMMITTEE ON TECHNOLOGY: (Ron Bowmaster)**

The Standing Committee on Technology is requesting to be reauthorized for another four years. If they are not reauthorized, they will sunset effective June 30, 2012.

**Motion:** Judge Maughan moved to reauthorize the Standing Committee on Technology for an additional four years. Judge Steele seconded the motion, and it passed unanimously.

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

Mr. Schwermer reported to the Council that at their January meeting a motion to approve the municipal justice courts in compliance for recertification was overlooked, and a formal approval of the municipal courts not specifically considered at that time needed to take place.

**Motion:** Judge Mccullagh moved to approve the recertification of the municipal justice courts found to be in compliance. The motion was seconded and passed unanimously.

**17. EXECUTIVE SESSION:**

An executive session was not needed.

**18. ADJOURN**

The meeting was adjourned.