

# JUDICIAL COUNCIL MEETING

## Minutes

Wednesday, March 16th, 2011

Sabra G

St George Lexington Hotel

St George, UT

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

### **ATTENDEES:**

Chief Justice Christine M. Durham  
Hon. Michael Westfall, vice chair  
Justice Jill N. Parrish  
Hon. Judith Atherton  
Hon. Donald Eyre, Jr.  
Hon. Kimberly K. Hornak  
Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. Gregory Orme  
Hon. Jody Petry  
Hon. Larry Steele  
Hon. Keith Stoney  
Hon. Thomas Willmore  
Lori Nelson, esq.

### **EXCUSED:**

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Jody Gonzales  
Lisa-Michele Church  
Debra Moore  
Rick Schwermer  
Tim Shea  
Diane Abegglen  
Ron Bowmaster  
Brent Johnson (by phone)

### **GUESTS:**

Hon. Robert Hilder (by phone)  
Rick Davis, 5<sup>th</sup> Dist TCE  
Duane Betournay, 3<sup>rd</sup> Dist Juv TCE  
Rob Jeffs, President Utah Bar  
JoAnn S. Secrist  
Georgia Barker  
Kevin Jenkins, The Spectrum

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

Chief Justice Durham welcomed everyone to the meeting to include various staff and Mr. Rob Jeffs, Utah State Bar President.

She mentioned that a revised page on the appointment to the Utah Sentencing Committee which is a consent calendar item has been distributed.

**Motion:** Judge Petry moved to approve the minutes. Ms. Nelson seconded the motion, and it passed unanimously.

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

There being such a short time since the last meeting, Chief Justice Durham had nothing new to report.

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

Mr. Becker reported on the following items:

He mentioned that most of his comments will be made later in the agenda when the court's budget is discussed.

Mr. Becker introduced and welcomed Lisa-Michele Church, new Juvenile Court Administrator, who began working for the courts on March 7.

Judge Glenn Iwasaki has submitted a letter announcing his retirement effective October

1. Upon his retirement, he will have over 19 years serving as a judge.

The Legislative Update will be held on April 8 at the Matheson Courthouse.

#### **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 the Council agenda or consent calendar.

A question was asked regarding the placement of the Taylorsville Drug Court certification back on the Council agenda for reconsideration. Chief Justice Durham reported that the Management Committee reviewed additional information on the drug court at their March 8 meeting, and they determined that the Council's earlier action did not require additional Council consideration. The action taken was detailed in a letter to Judge Kwan from Mr. Becker. To request consideration for a future problem-solving court, Judge Kwan would be required to reapply for the court, and get sign off by the local officials to proceed. It was noted that use of the peer review panel in the Taylorsville problem-solving court would not be acceptable.

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

Justice Parrish mentioned that Mr. Schwermer will be providing an update with his report on the FY 2011 legislative action.

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

Nothing to report at this time as no meeting was held in March.

##### ***Bar Committee Report:***

Ms. Nelson reported on the following:

The Bar Commission will not meet until tomorrow.

She expressed thanks on behalf of the Governmental Affairs Committee to Mr. Schwermer for all he did to support them during this legislative session.

She deferred an update on the Bar to Mr. Rob Jeffs, Utah State Bar President.

#### **5. REMARKS FROM UTAH STATE BAR PRESIDENT/PRESIDENT-ELECT: (Rob Jeffs)**

Mr. Jeffs, State Bar President, was welcomed to the meeting. He reported that Mr. Snow, Bar President-Elect, was unable to attend.

He highlighted the following areas: 1) the Bar's mentoring program; 2) 2011 Legislative Session involvement; 3) a proactive approach to addressing public education, public outreach and the perception of lawyers and the bench to the public; 4) strong financial health of the Utah State Bar.

There is interest in the Bar's mentoring program, as copies of the program are being requested by other states.

The Bar is taking a more proactive approach in its media campaign. An area of focus deals with lawyer advertising. Rules for lawyer advertising have been reviewed, as well as, reviewing what other states have been doing in this regard. A definition of what is false, misleading and improper advertising is being addressed.

There will be an increase to the licensing fee.

Chief Justice Durham thanked Mr. Jeffs for his comments.

**6. SALT LAKE COUNTY COURTROOMS AT JAIL PROPOSAL: (Judge Robert Hilder and Daniel J. Becker)**

Mr. Becker reported that the Salt Lake County Council is considering funding a planning effort to evaluate the cost and other issues related to putting courtrooms at the County jail.

Judge Hilder joined the meeting via teleconference, and he was welcomed to the meeting. He mentioned that several county commissioners have discussed constructing courtroom facilities at the County jail to have available to hold hearings relative to the Early Case Resolution (ECR) pilot program. He mentioned that county officials would like to have the opportunity to address the issue at the April Council meeting. Discussion took place.

It was noted that there has been a longstanding concern about the placement of courtrooms at any jail facility from a policy standpoint, without regard to the pilot program.

The question was raised with Early Case Resolution existing as a pilot program, is it premature to make decisions relative to possible courtroom construction. Several members of the Council offered their opinions relative to placement of courtrooms at a jail.

Judge Hilder was thanked for his briefing. The item will be carried forward to the April agenda, and County officials will be invited to offer their perspective.

**7. PROPOSED CHANGES TO RULE 3-109 - ETHICS ADVISORY COMMITTEE: (Brent Johnson)**

Mr. Johnson was welcomed to the meeting.

He reminded the Council of the discussion at the February meeting where concern was expressed about the Committee being unable to interpret statute in their opinions. At the Council's request, Mr. Johnson reviewed Rule 3-109 - Ethics Advisory Committee, identified several issues for consideration, and drafted proposed changes to the rule. He proposed that the Ethics Advisory Committee be able to interpret laws as necessary to respond to a request.

Chief Justice Durham noted that the proposed changes are in the handouts contained in the Council materials. She asked Council members if the proposed language was acceptable or if Policy and Planning should review it. Judge Orme and Mr. Shea mentioned that the proposed amendments seemed to be in order.

**Motion:** Judge Orme moved to adopt the proposed amendments to Rule 3-109 and send them out for comment. Ms. Nelson seconded the motion. A question was asked regarding distribution of opinions. Clarification was provided. The motion passed unanimously.

**8. TCE UPDATE: (Rick Davis and Duane Betournay)**

Chief Justice Durham welcomed Mr. Davis and Mr. Betournay to the meeting.

Mr. Davis will provide an update on the use of electronic records and technology in each district, and Mr. Betournay will provide an update on the innovative practices being utilized by each district.

Mr. Davis highlighted the following areas relative to the use of electronic records and technology in the courts: 1) e-filing, e-warrants, e-payments, and the use of XChange; 2) document uploading of domestic and civil cases; 3) document uploading of delinquency and child welfare matters; and 4) the focus on going paperless with the move towards the electronic record in the court system. The move towards the electronic record will add more efficiency in the courts.

Mr. Betournay highlighted the following innovative practices being utilized by the courts: 1) unified front counters with cross training of juvenile and district court matters in some districts; 2) cross training of clerical managers in both district and juvenile court matters in some districts; 3) the existence of total electronic storage in the 2<sup>nd</sup> District; 4) the use of video conferencing for detention and some shelter hearings in 2<sup>nd</sup> District Juvenile; 5) block calendaring; 6) the use of the Early Resolution (ECR) pilot program in the 3<sup>rd</sup> District; 7) the use of the VIDA program to provide culturally appropriate resources to Latino youth who come in contact with the court and probation; 8) all new filings in American Fork went paperless, effective January 1; 9) the Manti court site moved from a contract-managed court site to a state-managed court site; 10) test piloting remote interpretation; and 11) judges meetings are being facilitated through video conferencing to reduce travel time and the use of resources.

Chief Justice Durham thanked Mr. Davis and Mr. Betournay for their presentation.

## **9. 2011 LEGISLATIVE REPORT:**

### **Budget and Facility Action: (Daniel J. Becker and Ray Wahl)**

Mr. Wahl provided an update on the progress of the courts budget during the 2011 Legislative Session. He highlighted the following action taken: 1) original recommendation by the legislative fiscal analyst for a 10% reduction, 2) EOCJ recommendation of a 7% reduction for all agencies, 3) the courts reduction of 5.9%, and 4) the final reduction for the courts of 2.3% in the amount of \$2,385,100.

An update on what budget requests were approved during the 2011 Legislative Session included: 1) Online Court Assistance Program (OCAP) - increased the cap by \$100,000, 2) restoration of Law Library DC - \$62,600, and 3) passage of SB 274 - Court Budget Amendments which makes changes in two court restricted accounts to allow more flexibility within the court's budget.

Mr. Wahl reviewed statistical data in the following categories: 1) district court case filings and juvenile court referrals from FY 2006 - FY 2011, 2) district court and juvenile court judicial weighted caseloads, 3) district court and juvenile court clerical weighted caseloads, and 4) juvenile court probation officer weighted caseload.

With the district court case filings, there was a significant increase in district court case filings between FY 2008 - FY 2009. The FY 2011 projection for district court case filings is 312,197 filings which would reflect a slight decrease in filings. Overall, there is a 4% reduction in district court case filings.

For juvenile court referrals, there is an overall decrease of 8%. In the past year, each category showed a decrease, with the exception of termination of parental rights cases.

Mr. Becker provided information regarding the court's budget reductions for FY 2012.

He distributed a State Budget summary overview and a copy of the FY 2012 budget reduction recommendations.

Mr. Becker reviewed the following principles to consider when reducing the court's budget: 1) protect access to the courts by minimizing reductions which will impact access or contribute to unreasonable delay, 2) largest reductions should be taken from areas where workload is declining, 3) hold Information Technology harmless in order to keep the transition to an electronic record moving forward, 4) rely on weighted caseload for identifying specific clerical and probation reductions, and 5) avoid having to use the reduction in force policy by instituting a hiring freeze April 1, 2011.

He reviewed a budget reduction plan which consisted of the following recommended actions: 1) Provo lease expiration, 2) capital court reporting, 3) contract court sites (Phase 2 reduction), 4) DORA funds, 5) fiscal note funds, 6) ARI current expense funds, and 7) staff reductions.

Mr. Becker reviewed the recommended staff reductions for FY 2012.

Concerns were expressed regarding the reduction to law clerk personnel. Feedback on the volunteer lawyer program was provided. It was reported that the program was not as helpful as planned. Discussion took place regarding the recommended budget reductions.

Mr. Becker mentioned that a decision regarding instituting a hiring freeze would need to be made today. The remainder of the budget actions could be deferred until the April Council meeting. The Board of District Court Judges and the Board of Juvenile Court Judges would be updated on the recommended budget actions at their meetings tomorrow.

**Motion:** Judge Steele moved to institute a hiring freeze effective April 1, 2011. Judge Hornak seconded the motion, and it passed unanimously.

If there are any questions relative to the budget recommendations or any other options should be considered, please contact Mr. Becker, Mr. Wahl or your trial court executive.

Mr. Becker reminded the Council that the court's current budget process includes: 1) reducing the FY 2012 budget, and 2) incrementally adding money back as it is available. He reminded the Council that the court's permanent workforce has been reduced a total of 11% in the past three years.

Facilities Actions. The court's submitted three requests for consideration during the 2011 Legislative Session to include: 1) request for funding of a new Ogden Juvenile Court facility, 2) Northern Utah County land bank request, and 3) request for funding to purchase the (county-owned) Farmington courthouse. The request for funding the purchase of the Farmington courthouse was the only request that was approved.

Chief Justice Durham expressed her appreciation to Dan for his leadership during this legislative session.

Mr. Becker thanked Mr. Wahl, Mr. Schwermer, Mr. Byrne, and Mr. Lunceford and all staff who provided support during the 2011 Legislative Session.

**Legislative Action: (Rick Schwermer)**

Mr Schwermer reviewed the following bills from the 2011 Legislative Session:

SB 28 - Alcohol or Drug Related Offense Amendments. This bill modifies provisions relating to the driver license suspension period and other sentencing requirements for certain alcohol or drug-related offenses. It passed.

SB 52 - Tortious Act Arbitration. This bill creates a new chapter in Title 78B to promote arbitration in tort cases. It passed.

SB 96 - Alimony Amendments. This bill creates a new section for alimony. It failed.

SB 133 - Grand Jury Amendments. This bill amends the provision regarding written requests for a grand jury. It failed.

SB 143 - Judiciary Amendments. This bill makes changes throughout code regarding the judiciary and the courts. There was one item removed, and the remainder of the bill passed.

SB 212 - Judicial Evaluation Amendments. This bill makes amendments to the Judicial Performance Evaluation Commission. It passed. A few of the highlighted provisions include: 1) establishes a clear minimum performance standard; and 2) establishes that the judicial performance evaluation survey is to be reported in three categories: legal ability, judicial temperament and integrity, and administrative abilities. Mr Schwermer noted that the Liaison Committee took no position on these amendments. He provided an explanation on what the amendments provide for. The standards will be in place for the 2014 election. Discussion took place.

SB 274 - Court Budget Amendments. This bill makes changes in two court restricted accounts to allow more flexibility within the court's budget. It passed.

SB 279 - Grand Jury Modifications. This bill requires a grand jury subpoena to be issued a certain amount of time before the person is required to testify. It passed.

SB 318 - Justice Court Modifications. This bill establishes that justice courts may not be created or certified by the Judicial Council unless the justice court operates a recording device in each court room. This bill passed. The effective date for the digital audio recording to be operating is July 1, 2012.

HB 10 - Renewal of Judgment Act. This bill establishes a process and fee for renewal of judgements. It passed.

HB 74 - Municipal Justice Court Judge Elections. This bill changes the requirements for a retention election vote for justice court judges. It passed.

HB 207 - Juvenile Amendments. This bill amends the Juvenile Court Act of 1996 in relation to identifying the responsibilities of a parent in a child and family plan. It passed.

HB 284 - Guardianship Amendments. This bill creates the Utah Protective Proceedings Act within the Probate Code. It failed.

HB 349. Expedited Jury Trials. This bill creates a new part in Title 78B, Chapter 3, allowing for expedited jury trials. It passed.

HB 392 - Retention Elections for Justice Court Judges. This bill allows justice court judges to be evaluated for the 2012, 2014, and 2016 retention election under two different standards. It failed.

HB 341 - Interview of a Child Not in Protective or Legal State Custody. This bill enacts provisions within Title 53A, State System of Public Education, and the Juvenile Court Act of 1996, relating to the interviewing of children who are not in protective custody or court-ordered legal custody of the Division of Child and Family Services. It failed.

HB 281 - Sex Offender and Kidnapping Amendments. This bill modifies the Code of Criminal Procedure regarding information on the Sex Offender and Kidnap Offender Notification and Registration website.

HB 389 - Offender Registry Review. This bill allows a person on the Sex Offender and Kidnap Offender Registry to petition the courts for removal after five years for certain offenses. Both these bills failed. The issues will be studied further and will be discussed in the next

legislative session.

HB 364- Disarming a Peace Officer. This bill amends provisions of Title 78A, Chapter 2, Judicial Administration, related to the carrying of firearms in or about a courthouse by a peace officer. It failed. Mr. Schwermer provided a summary relative to the bill. There was concern with the lack of uniformity among court locations.

HJR 38 - Joint Resolution to Amend Rules of Evidence. This joint resolution amends Utah Rule of Evidence, Rule 409 regarding expressions of apology by health care professionals and employees. It failed.

Mr. Schwermer highlighted several topics being considered by the legislature as study items.

**10. CERTIFICATION OF SENIOR JUDGES: (Tim Shea)**

Mr. Shea reported that the following judges have applied for certification as active senior judges: 1) Judge Parley R. Baldwin, 2) Judge Pamela G. Heffernan, and 3) Judge Allan D. Vail.

The education requirements for Judge Baldwin were questioned. Mr. Shea provided an explanation stating that it has been less than three years since he met the continuing education requirements of an active senior judge, therefore, he meets the requirement. Judge Baldwin will need to begin accruing education hours again.

**Motion:** Judge McCullagh moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify Judge Baldwin, Judge Heffernan, and Judge Vail as active senior judges. It was seconded, and it passed unanimously.

**11. EXECUTIVE SESSION**

No executive session was needed at this time.

**12. ADJOURN**

The meeting was adjourned.