

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, April 28th, 2008

Judicial Council Room

Chief Justice Christine M. Durham, Presiding

### ATTENDEES:

Chief Justice Christine M. Durham  
Judge Hans Chamberlain  
Hon. Gregory Orme  
Hon. Brendan McCullagh  
Hon. Gary D. Stott  
Hon. Michael D. Lyon  
Hon. Judith Atherton  
Hon. Mark Andrus  
Hon. William Barrett  
Hon. Michael Kwan  
Scott Sabey, esq.  
Hon. Michael Westfall  
Hon. Ronald Nehring  
Hon. Jody Petry

### STAFF PRESENT:

Daniel J. Becker  
Myron K. March  
Debra Moore  
Rick Schwermer  
Tim Shea  
Ray Wahl  
Holly Frischknecht  
Nancy Volmer

### EXCUSED:

### GUESTS:

Elizabeth Neff, Salt Lake Tribune  
Gary Syphus, Legislative Fiscal Analyst  
Dave Walsh, CCJJ

#### **1. WELCOME AND APPROVAL OF MINUTES: (Judge Gary Stott)**

Chief Justice Christine Durham welcomed everyone to the meeting. After reviewing the minutes, the following motion was made.

***Motion:*** Judge Petry motioned to approve the minutes, the motion was seconded by Judge Westfall and passed unanimously.

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

-Bob Yeates, Director of CCJJ, has requested a list of potential representatives to serve on the newly created Judicial Retention Commission. Chief Justice reviewed the list of names that the Court has under consideration. The Court will be able to appoint 4 members, two who can be attorneys. Chief Justice Durham asked that Council members provide her with feedback on the names within the next few days.

-The Judicial Council's goal for 2009 was to study appellate representation and post

conviction by creating a task force to analyze these issues. Chief Justice Durham reviewed the membership of that committee with the Council members. These names of committee members will be on the consent calendar of the next Council meeting.

-Justice Matthew Durrant has been named as the new Associate Chief Justice, this is a two year term.

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

Mr. Becker reported the following:

-Dave Walsh with the Governor's Office and CCJJ, and Gary Syphus with the Legislative Fiscal Analysts Office, were recognized. Mr. Becker introduced Mary Shahin as the new Director of Education. Ms. Shahin is an attorney and adult educator with vast international legal and education experience.

-JJS block grants have been awarded to the courts and will help fund juvenile court programs such as PO training, the juvenile report card, and the model delinquency guidelines. Mr. Becker thanked CCJJ for this funding.

-The Court Solutions program will take place in Baltimore in September and the Utah courts have been asked to present to the conference the results of the Comprehensive Clerical Study Committee. Kim Allard will also present Courtools and performance measures at the Association of Canadian Administrators Annual meeting.

-Visitors from the Wisconsin courts are in Utah today reviewing what the Utah courts are doing in the area of performance measures.

-Ms. Shahin and Mr. Becker will meet today with Chinese Judges visiting BYU interested in continuing legal education.

-The New York judiciary has filed a law suit against the Governor and the Legislature for withholding pay raises for the past ten years. In New York, judicial and legislative raises are connected. Trial judges in New York currently make close to the same amount as trial judges in Utah do.

-The Law Day insert that was published in the Salt Lake Tribune and Deseret Morning News was provided to the Council members. The Council commented on how well the insert turned out and thanked Nancy Volmer and those that helped sponsor the publication.

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

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

Chief Justice Durham referred the Council to the minutes for review of the Management Committee meeting.

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

The Committee has finalized most of their work on the computer use policy. The Liaison Committee is taking this policy to each of the boards and will then bring the changes to the Council for consideration. The email retention policy continues to be addressed.

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

The Bar Commission met in Logan on Friday. Many Bar members went to the swearing

in of Judge Allen in the 1<sup>st</sup> District. Bar Commissioners also attended the Senate hearings for Judge Allen to help ensure that the process went smoothly. Chief Justice Durham questioned Mr. Sabey if the Bar perceived that the Nominating Commission could do any more review of candidates to make sure that information pertinent to being placed on the bench was considered before a candidate is nominated. Mr. Sabey indicated that the Nominating Commissions are doing a thorough job and the Bar attended recent hearings mainly to ensure that the nature of questioning was respectful. Mr. Sabey commented on discussions with Senator Valentine regarding the membership of the senate judiciary committee.

**5. UNIFORM FINE AND BAIL COMMITTEE: (Debra Moore, Judge Brent West)**

Ms. Moore provided the most recent Uniform Fine and Bail schedule. The Committee will meet next month to consider recent legislative changes. Ms. Moore indicated that outside presentations are sometimes made to the Fine and Bail Committee if there are issues that other agencies deal with regularly.

Recently, the Fine and Bail Committee has reviewed how some filings are considered in CORIS.

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

Mr. Shea indicated that there are numerous rules for the Council to approve. The first is CJA 03-413 which deletes references to materials no longer published in the judicial library resources rule.

**Motion:** Judge Kwan motioned to approve the amendment to CJA 03-413. The motion was seconded and passed unanimously.

CJA 04-203 is a new rule that designates a case historically significant. The rule establishes a process by which a person can request that a case become historically significant in order to retain those records permanently.

**Motion:** A motion was made to approve Rule 04-203, the motion was seconded and passed unanimously.

An amendment to Rule 6-601 was proposed that would prohibit a judge substituting for a Board member from making or voting on motions during a Board meeting.

**Motion:** Judge Lyon motioned to approve changes to Rule 6-601. The motion was seconded and passed unanimously.

The media in the courtroom rule CJA 04-401 amendment would permit audio and video from the courtroom. The rule prohibits photographing documents and exhibits not on the public record. The amendment clarifies that the judge can control areas adjacent to the courtroom without automatic restriction. Mr. Shea reviewed some of the comments that were submitted regarding the rule. The Council discussed the rule for clarification on a judge's discretion in their courtroom and the photographer's knowledge of what documents are admitted as exhibits. The

Council discussed that education should be provided for judges to explain the differences between the old rule and the proposed rule. This topic could be a useful training item at the Annual Judicial Conference in September. Discussion took place that judges often have a greater concern with the public's cell phone cameras more than professional photographers. Judge Kwan indicated that this rule is governing all people in the courtroom, not just reporters. Mr. Shea reported that the attorney's for the press would prefer more latitude in the rule's language to allow for the photographers to have some flexibility. Justice Nehring commended the committee for their work.

***Motion:*** Judge Kwan motioned to approve the rule, Judge Andrus seconded the motion and the motion passed unanimously.

Elizabeth Neff from the Salt Lake Tribune requested that the Council further consider Rule 4-202.02 which makes the dates of birth on a court record private. Judge Orme indicated that the this rule change could be further considered when the policy and planning committee meets on Friday and the press are welcome to attend and comment at that meeting.

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

Mr. Johnson reviewed the Ethics Advisory Committee membership. There is currently a district court vacancy on the committee. The Committee has issued two opinions since the last report made to the Council. The first opinion stated that a judge may not serve on the Board of the National Alliance for the Mentally Ill because the judge conducted a mental health court and representatives from the National Alliance regularly appeared in the judge's court as advocates.

The second opinion determined that a judge could teach a class at a local university, even though the class would require the judge to take an additional twenty minutes of the judge's lunch break to teach the class. The committee determined that the time did not significantly interfere with the judge's regular duties.

Mr. Johnson reported that the Committee releases two opinions each year on average. This is partly due to the large number of opinions already issued and the time frame in which the judge needs the opinion. When a new opinion is issued, it is available on the web page immediately and Mr. Johnson will also work to provide these opinions to the bench via email.

**8. FY 2009 BUDGET APPROVAL COMMITTEE: (Daniel J. Becker, Myron K. March)**

Mr. Becker reviewed the Council's budget proposal based on the Executive Budget Committee's recommendations. Mr. Becker provided handouts that outlined obligated appropriations, one-time funding, on going funding, and fiscal notes. After considering each of these items, the Executive Budget Committee recommended a budget that supported the Council's top priorities that were determined in the Budget and Planning Meeting last August.

There is a total of 1,500,000 unobligated one time funds available. Mr. Becker reviewed the recommended expenditures.

Small claims clerks	87,900
Second language stipend	50,000
Employee Assistance Program	15,000

Employee Tuition Assistance	35,000
(3) time limited deputy clerks	150,000
(2) time limited law clerks	152,400
Case management pilot project	166,300
Self-represented pilot project	79,400
Access survey	15,000
Federal grant match	50,000
Executive development program	44,000
Contract court site adjustment	15,000
Pro tem judge training	7,000
Interpreter/jury clerk training	2,000
Guardian-conservator volunteer coord.	50,000
Selected to serve video	15,000
Reserve	416,000

Mr. Becker reported on the obligated appropriations from ongoing funds.

Leases and contracts	623,900
4 <sup>th</sup> District court commissioner	200,000
Guardian ad Litem staffing	271,400
Justice Court Amend. Staffing	36,800
Juvenile non-judicial increase	194,300
Justice Court sec, educ, tech. increase	100,000
Salaries and benefits	3,472,700

One time funds are available to cover the following expenditures.

Drug courts	130,000
Juror, witness, interpreter suppl.	310,000
Guardian ad Litem	13,200
Ogden Juvenile Court land	3,250,000

Mr. Becker reviewed the available ongoing funding.

Unobligated on going funds:

fiscal note funds	294,100
FY 2008 surplus	200,000
turnover savings	<u>300,000</u>
Total	794,100

Recommended expenditures:

deputy clerk compensation plan	310,000
4 <sup>th</sup> District court commissioner shortfall	64,400
Probation officer career track	150,000
Reserve	269,700
(Pending comprehensive clerical study recommendations)	

Mr. Becker reviewed each of the suggested budget items. Mr. Becker highlighted that

once the access survey is completed this third consecutive year consideration could be given to conducting the survey only every other year. Mr. Becker also reported that the Probate Committee will be requesting funds for a volunteer coordinator to follow up on their recommendations that will come out of the study committee, so funds will be set aside in the event the recommendation is approved. Mr. Becker reported that a higher reserve is being proposed this year due to the instability within the economy.

Mr. Becker clarified that a savings is also being set aside in preparation for the recommendations from the Clerical Study Committee. This money is more of a hold than a reserve and will be used by July for the study committee's recommendations and will not remain unobligated. Mr. Becker reviewed the Council's budget priorities that were determined last August in the Budget and Planning meeting and reported that all of the Council's priorities will be funded with the recommended budget provided.

Mr. March reviewed how the salary increases for deputy court clerks would be funded. The proposed compensation increase will raise the entry level by 5% and will increase the steps within the clerks career ladder. This funding would also address compression so that new clerks' salary would not surpass those clerks who have been here longer. This proposal will bring the deputy court clerks salary very close to the Council's original request made to the legislature. Mr. March reported that all other positions within the system have been held constant in order to address the priority need of deputy court clerk salaries.

Chief Justice Durham thanked all the those involved in preparing the budget proposal.

**Motion:** Judge Lyon motioned to approve the budget, Judge Barrett seconded the motion, the motion passed unanimously.

Mr. March indicated that the interpreter committee has suggested that interpreter pay be increased and this request will come before the Council in the near future.

#### **9 COMMISSIONER COMPENSATION: (Rob Parkes)**

Mr. Parkes reviewed the proposal for the compensation of court commissioner's. Mr. Parkes indicated the Council considers the commissioner compensation yearly. The Management Committee recommends the commissioner's salary remain within 10% of a district and juvenile court judge which has been the historical difference in salaries. This would equate to the commissioner's receiving a 5% increase making their annual salary be \$118,870.

**Motion:** Judge Atherton motioned to approve the 5% increase in commissioner salary's, the motion was seconded and passed unanimously.

#### **10. INTERIM LEGISLATIVE UPDATE: (Rick Schwermer)**

Mr. Schwermer indicated that the Legislative Interim Committees have been discussing study items during the past month. The Utah Sentencing Commission presented information on minimum mandatory sentencing and the effects on prison populations due to changes in criminal statutes. Mr. Schwermer indicated that the GAL audit is expected to be complete in August. Mr. Schwermer reported that the Legislature is not expecting a deficit for this years budget.

Mr. Schwermer also reported that the Justice Court Judges Conference was held last week and Judge Petry was nominated to serve another three years on the Council.

**11. COMMON CASE MANAGEMENT SYSTEM S.B. 72: (Daniel J. Becker)**

Mr. Becker reported that S.B. 72 states that by July 1, 2011, all justice courts must be under a common case management system. Currently, Coris, Caselle, GEM, and various smaller management systems are used throughout the state for case management purposes. The Board of Justice Court Judges and the IT Department has been working to convert many justice courts from their current system to Coris. As the Management Committee discussed this issue during their last meeting, they determined the following questions must be considered in order to arrive at the best decision for a common case management system:

- What is meant by a common management system?
- What system can meet the time frames of the July 2011 deadline?
- Should the District and Justice Courts use the same system?

Mr. Becker indicated there have been issues with Caselle in the past which have caused audit control concern. Caselle was able to fix some of these problems, but only through making courts buy an updated version of Caselle, resulting in a lack of uniformity. After each legislative session, multiple changes are made to Coris at one time to ensure compliance with new laws and statutes, but other case management systems often are unable to make all the necessary changes. These examples demonstrate some of the difficulties of having individual court sites work with multiple case management vendors. District Court Judges are also unable to access court documents on any other system than Coris.

The Council discussed how the system as a whole will benefit if there is a universal operational and reporting system. Although arguments have been made that a common system is one where information can be collected in a data warehouse and then distributed, this would not create a real time system, which is important when information is being shared between the justice and district court.

Mr. Schwermer indicated that many cities have kept Caselle because they provide the technological infrastructure for the rest of the city's services. Caselle provides a court module, which is a relatively small part of Caselle's overall services. Caselle is a city management system with a court accounting module, not a case management system. The Council determined that the language common management system in S.B. 72 was intended to mean a singular system, and that Coris was the only system capable of transitioning all of the justice courts successfully by July 2011. The Council agreed that it was important that the District and Justice Courts use the same case management system.

**Motion:** Scott Sabey motioned to implement Coris statewide as the only approved case management system in order to meet the Council's statutory requirement in S. B. 72 to determine a common case management system by July 2011. The motion was seconded. The motion passed with Judge Brendan McCullagh abstaining from the vote.

**12. JUSTICE COURT JUDGE APPROVAL: (Rick Schwermer)**

**Motion:** A motion was made to move into executive session. 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.

**Motion:** Judge McCullagh motioned to approve Judge Dahlquist and Judge Ron Wothuis as Justice Court Judges. The motion was seconded and passed unanimously.

**13. ADJOURN**

The meeting was adjourned.