

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, April 27th, 2009

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

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

### **ATTENDEES:**

Chief Justice Christine M. Durham, Chair  
Hon. Hans Chamberlain, Vice Chair  
Justice Ron Nehring  
Hon. Mark Andrus  
Hon. Judith Atherton  
Hon. Donald Eyre, Jr.  
Hon. Michael Kwan  
Hon. Michael Lyon  
Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. Gregory Orme  
Hon. Jody Petry  
Hon. Michael Westfall  
Scott Sabey, esq.

### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Jody Gonzales  
Debra Moore  
Rick Schwermer  
Tim Shea  
Ray Wahl  
Matty Branch  
Derek Byrne  
Fred Jayne  
Brent Johnson  
Alyn Lunceford  
Rob Parkes  
Nancy Volmer

### **GUESTS:**

Judge L.A. Dever  
Judge Jerald Jensen  
Judge Thomas Kay  
Judge Dane Nolan  
James Peters  
Diane Flanagan  
Laurie Shingle  
David Walsh  
Steve Hunt, Salt Lake Tribune

### **EXCUSED:**

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

Chief Justice Durham welcomed everyone to the meeting.

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

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

Chief Justice Durham reported that she participated in a Law-Day related panel at the

Hinckley Institute last week. The event was broadcast on KUER.

She also attended a symposium at the University of Utah College of Law last weekend dealing with access to legal services, access to justice. It was a collaboration between the law schools, legal services, and solo practitioners to leverage lawyer and student time. The focus was on low bono cases vs pro bono cases.

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

Mr. Becker reported on the following:

He mentioned that due to several court locations reaching a 10% minimum staffing level, several positions were opened and posted to be filled. Due to the state of the economy, a large number of applicants applied for the open positions.

Mr. Becker reported that CCJJ has approved \$585,000 in Byrne Grant stimulus funds for the courts to use to fund ten deputy clerks on a temporary basis.

There will be an executive session later in the meeting.

**4. COMMITTEE REPORTS:**

***Management Committee Report:***

Chief Justice Durham reported that she had nothing more to add to what is already reflected in the Management Committee minutes or will be discussed later in the agenda.

***Liaison Committee Report:***

No report at this time.

***Policy and Planning Meeting:***

Judge Orme reported there will be a full agenda at the meeting on Friday, May 1. He also commented that summary minutes would be taken at future meetings.

Mr. Becker mentioned that summary minutes would be taken at all committee meetings in the future. The exception to this would be the Judicial Council meeting, the Management Committee meeting, and the Board of Judges meetings.

***Bar Committee Report:***

Mr. Sabey reported on the following:

He reported that the Bar Commission held its meeting on Friday, April 24 in Ogden. The main item of discussion centered around a bar dues increase. He mentioned that there has not been an increase in dues in 20 years. At the present time, an increase of \$75 is being discussed. Further discussion will take place at the May 29 Bar Commission meeting.

**5. COURT FACILITIES STANDING COMMITTEE: (Judge Dever & Alyn Lunceford)**

Judge Dever introduced Mr. Lunceford. He updated the Council on what was appropriated to the contracts and leases budget request for FY 2010 and the reductions which were taken in the lease and contract budget.

He reported on the following court facilities: 1) the Spanish Fork Courthouse opened in September, is operational, and is getting good reviews, 2) a progress report on the St. George Courthouse was given, and 3) a location for the Ogden Juvenile Court was previewed with an

update given.

Judge Dever previewed the FY 2010 court facilities improvement projects. They will be funded and completed in the order they are listed on a handout provided. These are funded through the Division of Facilities and Contract Management budget, not the court's budget. If the money is not used for these improvement projects, we lose it.

The three projects at the Matheson Courthouse include: 1) jury box remodel, 2) ADA ramp replacement, and 3) replacing worn tile in certain areas.

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

Mr. Johnson mentioned that the Ethics Advisory Committee is chaired by Judge Dane Nolan. He reported that the committee has not met since the last report was given. Most of the advisory questions are answered as they are received.

Chief Justice Durham thanked Mr. Johnson for the work he does to keep the judges and commissioners in compliance.

**7. BOARD OF JUSTICE COURT JUDGES: (Judge Jerald Jensen and Rick Schwermer)**

Chief Justice Durham welcomed Judge Jerald Jensen to the meeting.

Judge Jensen reported on the justice court judges feedback regarding the proposal to move small claims to the justice courts. The following were concerns that had been raised by some judges: 1) storage issues, 2) housing new staff, 3) hiring and training issues, 4) administrative issues, and 5) jurisdiction issues. Discussion took place.

Judge Jensen thanked Justice Nehring for his support of the Justice Court reform. Justice Nehring expressed his gratitude to the justice court judges.

A bar journal article on justice courts was mentioned. A brief discussion took place regarding the article.

He reported on the problem-solving courts that exist in the justice courts. There are some extraordinary things taking place in these courts. They are different in nature than the ones available at the district court level.

Judge Jensen welcomed the Council members to become familiar with the day-to-day operations of the justice courts.

**8. CHANGES TO REDUCTION IN FORCE (RIF) POLICY: (Rob Parkes)**

The Management Committee recommended that the Judicial Branch's reduction in force policy be brought in line with the Executive Branch's policy on reduction in force. Mr. Parkes provided a background of the change made to the reduction in force policy during the legislative session with the SB 126 bill change which affects the Executive Branch. This bill eliminates the reappointment register from which certain career service employees must be rehired.

The change would be reflected on number 8 of the policy by striking out the reappointment roster wording and insert the preferential consideration wording in its place. Discussion took place. Questions were raised regarding the current and proposed policy. Mr. Parkes offered examples of what would take place with either policy.

**Motion:** Judge Orme moved to adopt the revised reduction in force policy. Judge Lyon seconded the motion, and it passed unanimously.

Ms. Shingle asked members of the Council if the new reduction in force policy would apply to the court reporters. She commented on the court reporters situation. Discussion took place.

**Motion:** Judge Lyon moved to include the court reporter employment status in the reduction in force policy. Judge Atherton seconded the motion, and it passed unanimously.

**9. WEST BOUNTIFUL JUSTICE COURT DISSOLUTION: (Rick Schwermer)**

Mr. Schwermer reported on the proposed inter-local agreement between West Bountiful City and Davis County in regards to transferring the justice court from West Bountiful City to Davis County. He stated that West Bountiful City intends to honor the judge's current contract. Discussion regarding the inter-local agreement took place. It was asked as to whether the judge was amenable to the agreement. Mr. Schwermer stated that the judge assured him that he was.

**Motion:** Judge McCullagh moved to dissolve the West Bountiful Justice Court effective July 1, 2009. Judge Chamberlain seconded the motion, and it passed unanimously.

**10. THIRD QUARTER FILING REPORT: (Daniel J. Becker)**

Mr. Becker provided information on case filings from July 2007 - April 23, 2008 and July 2008 - April 23, 2009. He reported that there has been an increase in case filings over the past months in district court of 17%.

Some of the numbers reflected in the increased filings in district court include: 1) misdemeanors are up 3%, 2) criminal is up 4%, 3) domestic is up 8%, 4) custody and support is up 20%, 5) general civil is up 19%, 6) contracts are up 46%, 7) small claims are up 12%, 8) judgements are up 139%, and 9) tax liens are up 54%.

Mr. Becker reported that the juvenile court case filings by comparison are down 3%: 1) felonies are down 9%, 2) misdemeanors are down 6%, 3) infractions are down 10%, 4) traffic is down 22%, 5) contempt is up 5%, 6) adult violations are down 7%, 7) shelter hearings are up 14%, and 8) child welfare cases are up 10%.

He mentioned that the increase in case filings impacts the clerks' workload significantly.

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

Mr. Shea presented the request for senior judge status from Judge Beth S. Skidmore.

**Motion:** Judge McCullagh moved to approve the senior judge request. Mr. Sabey seconded the motion, and it passed unanimously.

**12. SMALL CLAIMS RULE CHANGE: (Tim Shea and Rick Schwermer)**

Chief Justice Durham summarized what happened during the 2009 Legislative session relative to small claims.

Mr. Shea commented on the proposed rule change for filing small claims cases in the justice courts. He mentioned that no comments have been received on the rule. Discussion took place regarding the policy, rules, and issues relative to moving small claims to the justice courts.

Mr. Schwermer gave background to the passing of SB 176 - Civil Fees in Small Claims Courts Amendments.

The following issues were discussed relative to moving small claims to the justice courts:

1) jurisdiction limits, 2) non-lawyer judges, 3) pro tem availability in the justice courts, and 4) prediction of case load of small claims in the justice courts. It was noted that with a change in jurisdiction, there could be a concern over the lack of discovery in personal injury cases. Discussion took place.

The following are options relative to small claims: 1) modify the rule for filing small claims cases in the justice courts, 2) go forward with the proposed plan, 3) defer the filing of small claims to the justice courts to a later date, or 4) abandon the proposed plan.

A final decision of what to do with small claims was deferred until after the budget recommendations were presented, reviewed and discussed later in the meeting.

### **13. FY 2010 BUDGET PLAN RECOMMENDATIONS: (Daniel J. Becker)**

Mr. Becker briefly discussed the work of the Executive Budget Committee in preparation of the budget plan recommendations.

He reviewed the FY 2010 budget plan recommendations. The budget plan recommendations include: 1) assumptions, 2) recommendations for addressing FY 2010 shortfall, and 3) recommendations for an FY 2010 budget plan using one time funds.

Mr. Becker addressed the areas not funded from the FY 2009 budget plan.

Discussion took place. Clarification was given regarding the \$1.6 million from the original reduction plan for small claims that was backed out of the plan.

Areas of discussion included: 1) length of time for the hiring slowdown, 2) clerk staffing, 3) law clerks and 4) possible other areas where reductions could be taken.

Mr. Becker was asked about requests for additional judicial resources for FY 2011 and the likelihood of the requests being considered. He offered his views on the prospect for new judgeships being approved in the 2010 Legislative Session.

Mr. March reviewed the available one-time funding as well as the FY 2010 budget plan recommendations (one-time funds).

**Motion.** Judge Lyon moved to extend the hiring slowdown to six weeks instead of four weeks. Judge McCullagh seconded the motion. It passed with Judge Andrus's vote against the motion.

**Motion:** Judge Maughan moved to allocate the anticipated \$225,000 savings that would result from increasing the hiring slowdown to six weeks to retain three law clerks for one year. Judge Eyre seconded the motion with Judge Andrus's and Judge Kwan's vote against the motion.

**Motion:** Justice Nehring moved to approve the remainder of the ongoing and one time FY 2010 budget recommendations, including deferring small claims for one year. Judge Westfall seconded the motion, and it passed unanimously.

**Motion:** It was moved and seconded to enter into an executive session at this time.

### **14. EXECUTIVE SESSION**

Upon coming out of an executive session, the following motion was made:

**Motion:** Justice Nehring moved to proceed with the judicial nomination process to fill judicial

vacancies in the following way: 1) the Council will delegate to the Board of District Court Judges to assess the need(s) in the districts in which the judicial openings exist and prioritize such vacancies, 2) in the current vacancies, the Court of Appeals vacancy will proceed as the second position to be filled, 3) the chair of the Board of District Court Judges will present their list of priorities for filling the vacancies to the Council at their May meeting, and 4) have the Board include a list of needs and reasons of how they arrived at their list of priorities. Judge Orme seconded the motion, and it passed unanimously.

**15. ADJOURN**

The meeting was adjourned.