

# JUDICIAL COUNCIL MEETING

## MINUTES

Tuesday, July 25th, 2006

Matheson Courthouse

Council Room

Salt Lake City

*Chief Justice Christine M. Durham, presiding*

### **MEMBERS PRESENT:**

Chief Justice Christine M. Durham  
Hon. James Davis  
Hon. Rand Beacham  
Hon. Hans Chamberlain  
Hon. J. Mark Andrus  
Hon. Robert Hilder  
Hon. William Barrett  
Hon. Jerald Jensen  
Hon. Jody Petry  
Hon. Gary Stott  
David Bird, esq.  
Justice Matthew Durant (for Justice Ronald Nehring)

### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Richard Schwermer  
Mark Jones  
Gordon Bissegger  
Brent Johnson  
Jessica Van Buren  
Holly Frischknecht  
Tim Shea  
Mary Boudreau

### **MEMBERS EXCUSED:**

Justice Ronald Nehring  
Judge Michael Lyon

### **GUESTS PRESENT:**

Judge John Baxter, Chair, Self-Represented  
Litigant Committee  
Judge Rodney Page, Member, Self-  
Represented Litigant Committee  
Ron Heil, Securacom  
Derek Byrne, Fiscal Analyst  
Scott Sabey  
Captain Steve Rapich

### **1. WELCOME AND APPROVAL OF MINUTES:**

Chief Justice welcomed Matthew Durant who is filling in for Justice Ronald Nehring. Chief Justice also excused Judge Michael Lyon from the meeting.

***Motion:*** Judge Hans Chamberlain motioned to approve the minutes, Judge Davis seconded the motion, the motion passed unanimously.

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

Chief Justice Durham reported the following items:

- The 3<sup>rd</sup> Juvenile Court recently hosted members of the IOU Commission to review court proceedings in order to better understand what a child in foster care faces. Chief Justice Durham commented on how educational and helpful this experience was for her and for the IOU Commission members that attended.
- Chief Justice Durham also attended and presented at the Bar Meetings in California last week and reported the educational sessions were excellent.
- Chief Justice Durham reported that she swore in Justice Court Judge Norm Ashton in the Ogden Justice Court earlier this month.
- The Third District Nominating Commission has selected five names for the judicial vacancy in the juvenile court, they are: Judge John Baxter; Julie Lund; Mark May; Julie Stone; and James Mitchie Jr. These names are out for the ten day comment period and then will be sent to the Governor.
- The Fourth District Nominating Commission will be meeting this week for the juvenile vacancy that will be left by Judge Brown.
- The Third District Nominating Commission will meet again to review applicants for Judge Hanson's and Judge Frederick's positions in August.
- David Mortenson will be sworn in as the new 4<sup>th</sup> District Judge in the middle of September.
- Scott Sabey was introduced to the Judicial Council members. Mr. Sabey will be transitioning into the council position to fill David Bird's vacancy when he leaves in September.

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

Mr. Becker reported the following items:

- Russell Pearson has been named the new 8<sup>th</sup> District TCE. He has been working as the assistant city manager in Vernal and comes highly recommended by his previous employers. He also holds a MPA from BYU.
- Mr. Becker recognized Derek Byrne from the Fiscal Analysts Office who was attending the Council Meeting.

**Management Committee:**

Chief Justice Durham highlighted the audit report provided by Heather Mackenzie-Campbell and the audit department. She reported that the Management Committee is continually impressed with the quality of reporting and review that is done by the auditing department.

A report on the Justice Court status in Provo was also provided by letter to the Management Committee that updated the Council on the progress being made for the Provo Court to open in July of 2007.

**Policy and Planning Committee:**

Judge Stott highlighted key discussions that took place about small claims judges pro tem and guardianship and conservatorship accountings. The details of those discussions were

highlighted in the Policy and Planning minutes provided.

**Bar Committee:**

David Bird welcomed Scott Sabey again and reported the quality of representatives from the Bar demonstrate the Bar's view on the importance of their position on the Judicial Council.

Mr. Bird reported that the Bar Convention, held in California was a successful conference and was well attended.

During the Bar Commission Meeting, Gus Chin became the president of the Utah State Bar and Lowry Snow is the president elect. The Bar Commission handed out their final draft of the conflict of interest disclosure to the Bar members. The Bar also awarded Max Wheeler as Lawyer of the Year, Judge of the Year was given to Judge Gordon Low.

The Utah minority Bar was also awarded a special Presidents Award and they will also be receiving an ABA award next month. The Bar's ABA delegate will be Charolette Miller.

Chief Justice Durham reported she looks forward to continued work with the Bar and furthering the good relationship the courts have with them. She thanked David Bird for his work on the Council.

**4. JUDICIAL COUNCIL RULE APPROVAL: (Tim Shea)**

Mr. Shea reported that the comment period for the proposed amendments affecting CJA 03-406, CJA 03-414, CJA 04-404, CJA 06-303 and CJA Appendix F has expired and proposed acceptance of those changes.

***Motion:*** Judge Stott motioned to approve the Rule Amendments, Judge Barrett seconded the motion. The motion passed unanimously.

**5. TECHNOLOGY COMMITTEE RECOMMENDATIONS: (Tim Shea)**

Tim Shea reported that the x-change program is the system where the public can access the district court's data base. There are approximately 800 users. There is a set up fee and a charge of \$30 for 200 searches, and 20 cents for additional searches beyond 200. As the use of this system has increased, the profit has increased above the needed amount to maintain the system. The Policy and Planning Committee has suggested the additional search cost be cut to 10 cents because more funds are not necessary to cover operational costs.

***Motion:*** Judge Hilder motioned to adopt the price change of 10 cents for additional x-change searches, Judge Andrus seconded the motion, the motion passed unanimously.

**6. SELF REPRESENTED LITIGANT REPORT: (Mary Boudreau, Judge Baxter, Judge Rodney Page)**

Judge Baxter thanked Tim Shea and Mary Boudreau for their tireless work and guidance on the strategic plan for the Standing Committee on Resources for Self-Represented Parties. This standing committee was created a year ago with the charge to study the needs of self-represented parties within the Utah State Courts and propose policy recommendations concerning those needs to the Judicial Council.

As the committee researched ways to further perform their duties, the Council approved seeking funding from the Center for Court Solutions to provide a statewide survey that had been prepared by the National Center for State Courts and the Standing Committee. After the survey was created, six court sites were identified to be utilized for this survey. The surveys were given to district and justice court judges, attorney's, self-represented parties, court staff, and members of the community. After receiving the data from these surveys, the committee reviewed the report and worked through the information that was provided to determine what was most helpful and accurate to the Utah Courts. During this process, the committee also established the following goals:

1. To ensure access to the legal system
2. To increase education of court users about the courts, and to increase education of court personnel and community organization about self-represented parties' needs
3. To clarify the court system so that it is understandable by ordinary citizens
4. To increase the efficiency and effectiveness of the court system by
  - a. reducing the time required of judges and staff to explain court procedures and
  - b. reducing the number of continuance required to give self-represented parties a further opportunity to prepare
5. To increase understanding of court orders and compliance with their terms

Based on the survey results, and the goals of the Standing Committee for Self-Represented Parties, the following recommendations were made:

1. Financing a pilot program of two judicial districts to make available by telephone and web communication a lawyer who would provide information and assistance;
2. Researching and developing court-sponsored clinics and workshops
3. Setting up a work space in each courthouse to serve as a focal point for providing self-help information
4. Studying the efficacy of staffing such as a self help work space
5. Promoting the state law library as a resource for self-represented parties
6. Continuing to develop forms most needed by self-represented parties
7. Studying how best to meet the needs of self-represented parties through the court's website
8. Continuing training with clerks and studying training with judges on the needs of self-represented parties and effectively responding to those needs
9. Studying how community service organizations can assist in providing self-help information
10. Amending Rule 1.0, Chapter 13A of the Supreme Court Rules of Professional Practice to permit unpaid non-lawyers to complete court forms
11. Promoting clinics and workshops, low-fee and non-fee legal representation, and unbundled legal services among the legal community
12. Promoting a legal service organization to recruit lawyers to provide such services and to raise and distribute funds to do so

Discussion took place about the application of these results. Judge Page provided more information on the challenges the district court faces with self-represented parties based on case type. Although many of the committee's suggestions deal with concerns outside the courtroom, these items will allow in-court proceedings to operate more smoothly. Discussion also took place about utilizing clerk time. The need for institutionalizing court processes that allow greater access to the court instead of only utilizing volunteers was also discussed. Mr. Bird indicated that the Bar has done studies to analyze these needs and have an interest in providing free access to court services without attorney representation.

Mr. Becker commended Judge Baxter and the committee for their hard work and indicated that this study creates a pilot program that gives a focused direction to the self-represented efforts.

Judge Baxter reported that if the Judicial Council approves this plan, the committee will return in August to make a budget request to fund some of these recommendations that were made.

The Council supported this strategic plan in theory and agreed to receive further information about funding these proposals in the Budget and Planning Meeting in August.

## **7. PERIMETER SECURITY STUDY RESULTS: (Daniel J. Becker, Ron Heil, Gordon Bissegger)**

Chief Justice Durham welcomed Gordon Bissegger and Ron Heil from Securacom who recently conducted a perimeter security study for the courthouses along the Wasatch Front area. Mr. Becker reported that approximately a year ago the Council received a survey with the increases the Sheriff's Department was seeking for perimeter security costs. Those results led to the Council seeking a cost benefit analysis to focus on the cost associated with providing perimeter security in one of three ways: through an independent contractor; by employing our own security staff; or through continuing use of the Sheriff's services. The courts should be in a position to determine their own needs in regard to perimeter security instead of allowing others define those needs and then lead the courts to a specific contract. Regardless of the outcome with perimeter security, the Council must be more informed in regards to security so as a system the courts can define what the needs and requirements are for safety independent of outside agencies. Mr. Bissegger reported an oversight committee, including the TCE's, Brad Slater from Sheriff's Department, and Captain Steve Rapich had worked with Securacom and this report also had been heard by the Facilities Committee.

Securacom reviewed the activities the company went through to determine their findings. The evaluation included an analysis of the type of enforcement officer needed for perimeter security, the type of training required for officers to perform those duties, bench marking perimeter security services with courthouses in other states that have similar security needs, evaluating the effectiveness of the perimeter security provided by the County Sheriff's Office, a review of the physical arrangement of security equipment, an evaluation of traffic flow to the main entrances and allocation and utilization of security forces. Securacom provided the Council with the identifiable risks of each alternative.

After reviewing the cost benefit analysis of the three options, Securacom recommended

that a properly implemented contract with a private security firm would provide an acceptable level of service at a more than 20 percent annual cost savings. An in-house force would also be acceptable, but at a lower cost savings. Through a contract service the courts would be able to have a more hands-on managing approach and have the freedom to determine their own security needs.

The Council discussed Securacom's proposal. Mr. Heil answered questions about the report and responded to individual situations Council members reported. The Judicial Council determined that further discussion and review will take place during next month's Budget and Planning Meeting.

**8. SECURITY SITE VISIT REVIEW: (Myron K. March, Captain Steve Rapich)**

Mr. March reported that Commissioner of Public Safety Flowers and Homeland Security Director Verde White met with he and Mr. Becker to discuss the possibility of having a full time security officer available to the courts. Utah's homeland security funds cannot be used for personnel, but they did provide Captain Steve Rapich from Utah Highway Patrol to analyze security needs at each court location throughout the state.

Captain Rapich has reviewed all districts except for 3<sup>rd</sup> District and part of 2<sup>nd</sup> District. These areas will be completed in the next few weeks. Captain Rapich indicated that many of the older buildings in the rural areas have significant safety concerns because of their floor plans.

Captain Rapich reported that security is more about mind set and preparation than technology. The level of awareness about court security is the most vital thing in each area of the state. The TCE's are in the process of sharing and reviewing each district's security plans to combine the best policies possible.

Chief Justice Durham indicated that after these reports from Securacom and Captain Rapich, it has become more evident that an in house court security officer is needed. After Captain Rapich's report is finished, this information will be disseminated and the Council will further discuss the security needs of the courts.

**9. ORDERS TO SHOW CAUSE: (Rick Schwermer)**

Mr. Schwermer reported Judge Beacham had helped draft a localized rule addressing Orders to Show Cause for the Fifth District. Mr. Schwermer reviewed the language and breadth of the proposed rule that was provided to Council members. This is a civil only rule. The Management Committee had discussed that, although they don't normally encourage localized rules, the 5<sup>th</sup> District could help test this rule and determine if it could eventually be adopted statewide.

***Motion:*** Judge Hilder motioned to approve the proposed localized orders to show cause rule, Judge Davis seconded the motion, the motion passed unanimously.

**10. LEGISLATIVE INTERIM COMMITTEE REPORT: (Rick Schwermer)**

Mr. Schwermer reported that he recently met with Senator Bell to review domestic issues. Two pieces of legislation could come out of this meeting. The first could deal with child support, the second could be legislation helping with parent time. Mr. Schwermer pointed out that

expedited parent time has been supported by all sides and it is likely proposed legislation will be created.

The Executive Appropriations Committee discussed turnover savings. HB 213 led to a number of retirements that impacted the budget. Last year 815 state employees retired, 72 of those positions are still not filled. There was 3.9 million ongoing savings and some one time savings. It was recommended that this money help replenish the termination fund, which was exhausted because of HB 213. This study did not include the courts' data, but it appears proportional to the status of the court employees who retired.

The Management Committee discussed re-codification of title 78. The Judiciary Interim Committee is working on this. Mr. Schwermer provided the draft alternatives that were being considered. There would be no substantive changes in this re-codification, just organizational changes.

The Law Enforcement Criminal Justice Interim Committee met and discussed substance abuse. Mr. Schwermer participated in this discussion and emphasized how effective drug court treatment has proven. He also highlighted the next phase the Council is leading drug courts to based on data and research.

The Judiciary Interim Committee met and discussed judicial rulemaking. There was a concern of the degree the Legislature has in the court's rulemaking process based on a previous case dealing with a statute that had not been updated based on a court ruling. No subsequent proposal or motion was made.

Mr. Jones thanked David Bird for his support and help with the legislature and indicated he is one of the most respected lobbyist on the hill. Mr. Jones also mentioned that Representative Urqhart will be attending the Board of District Judges' meeting next month to discuss ways to improve relations between the court and the legislature.

#### **11. INFORMAL ETHICS OPINION APPEAL: (Brent Johnson)**

Chief Justice Durham reported that there has been an appeal of an informal ethics opinion that was issued based on a judge's wife working for IHC when the judge also heard debt collection cases. Mr. Johnson reported the Council's options were to do nothing and let the opinion stand, send it back to the ethics advisory committee, revise the opinion, vacate the opinion, or make it an official Council opinion. Mr. Johnson reported that this case was a difficult decision based on the de minimus interest standard, but that a bright line for employment needed to be established.

The Council discussed the perception of this case. The fourth district would prefer that the judge have the discretion to make the decision about his involvement based on the type of case. Mr. Johnson indicated that the Ethics Committee does not discuss the administrative impact of the ethical opinions they make their decisions based only on the canon's.

***Motion:*** Mr. Bird motioned to vacate ethics opinion, this motion is not reversing the de minimus status, it simply withdraws the opinion. Judge Hilder seconded the motion. The motion passed with Judge Jensen and Judge Davis opposing the motion.

Chief Justice Durham will write a letter to the Ethics Committee regarding this decision.

**12. COMMISSIONER CERTIFICATION: (Rick Schwermer)**

***Motion:*** A motion was made to go into executive session, the motion was seconded and passed unanimously.

The Council returned from executive session and the following motion was made.

***Motion:*** Judge Stott motioned to extend consideration of the commissioner certification until the September Judicial Council Meeting, Judge Hilder seconded the motion, the motion passed unanimously.

**13. ADJOURN**

***Motion:*** A motion was made to adjourn the meeting, the motion was seconded and approved unanimously.