

# JUDICIAL COUNCIL MEETING

**Minutes**  
**Monday, July 20th, 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 (by phone)  
Hon. Mark Andrus  
Hon. Judith Atherton  
Hon. Donald Eyre, Jr.  
Hon. Michael Kwan  
Hon. Michael Lyon  
Hon. Anthony Quinn for Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. Gregory Orme  
Hon. Jody Petry  
Hon. Michael Westfall  
Lori Nelson, esq.

## **EXCUSED:**

Hon. Paul Maughan

## **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Jody Gonzales  
Debra Moore  
Ray Wahl  
Rick Schwermer  
Tim Shea  
Matty Branch  
Penny Rainaldi  
Ron Bowmaster  
Nancy Volmer  
Kim Allard

## **GUESTS:**

Judge Dennis Fuchs  
Senator Lyle Hillyard  
Representative Kraig Powell  
Lisa Collins  
Steve Hunt, Salt Lake Tribune

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

Chief Justice Durham welcomed everyone to the meeting. She mentioned that Judge Quinn will be sitting in for Judge Maughan who is excused from the meeting. She also mentioned that this is the first meeting for Lori Nelson as Council representative appointed by the Utah State Bar.

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

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

Chief Justice Durham reported that she attended the Summer Conference of the Utah State Bar at the end of last week. The Honorable Sandra Day O'Connor, retired Associate Justice of the United States Supreme Court, spoke at the general session on Saturday, July 18. She mentioned that Judge Atherton received the Judge of the Year Award during the conference

for her extraordinary work with regards to her efforts to develop and expand the mental health courts concept over a decade of time. The conference went very well.

With the support of the Supreme Court, the Civil Rules Committee is looking at issues regarding simplified civil discovery procedures. Mr. Fran Wikstrom, chair of the committee, is leading the effort to look at some of the proposals for Utah. Chief Justice Durham suggested that the Council members review the committee's report and provide input.

Chief Justice Durham reported that she had an opportunity to attend the ABA Conference on Inter-Branch Relations in May. She briefly previewed details of the conference. Senator Lyle Hillyard and Representative Kraig Powell will report on the conference as part of today's agenda.

She mentioned that Mr. Shea participated in a presentation on the Proposed Legislation on Guardianship/Conservatorships which was given at the Annual Bar Conference. Mr. Kent Alderman was the primary speaker for this presentation. Support for the proposed legislation appeared good.

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

Mr. Becker reported that the NCSC has issued a press release on budget reductions across the country with 48 states affected by such reductions. He reviewed details listed in the press release.

He reviewed the district case filing increases for FY 2009. There was a 15% increase in district case filings in FY 2009. There were 42,413 more cases filed than in FY 2008. The following areas had increases in FY 2009: 1) criminal cases filings, 3% increase; 2) domestic case filings, 8% increase; 3) general civil case filings, 16% increase; and 4) tort case filings, 5% increase. Of the new case filings in FY 2009, judgements represented 24,500 case filings. The affect of these case filings mostly impact clerk personnel.

The Self-Help Center received a \$30,000 grant from the State Justice Institute. This brings the total to \$40,000 in grant monies received to date. This provides one-time money to expand Self-Help Center services. The center currently provides pilot programs in the Second, Seventh and Eighth Districts.

Mr. Becker updated the Council on recruitment numbers for open positions in the Courts. Of nine clerical positions advertised prior to July 1, there was an average of 207 applicants applying for those positions. Of those applicants, 36% hold a Bachelor's Degree and 18% hold an Associate's Degree. Of the three probation officer positions, there was an average of 271 applicants applying for those positions.

He reported that the City of Orem has filed a request for a waiver of the two-year waiting period in applying for the creation of a justice court. It will be discussed further on the August Council agenda, when supporting documentation is received.

Mr. Becker announced that there will be a format change with the upcoming Judicial Council Budget and Planning Session to be held on August 26 and 27. The format change has been discussed with the Management Committee.

The tentative schedule is as follows: August 26 will include an informal workshop format, held in an executive session, to discuss various issues relative to the budget, further reduced spending and other applicable issues. The budget and planning session will be held on August 27 which will be followed by a brief Council meeting at the end of the day. Discussion took place.

Mr. Schwermer provided an update on the Judicial Performance Evaluation Commission.

He mentioned that he presented information on the justice courts to the Commission. The Commission has received the opinion from the Attorney General's office relative to conducting courtroom observations. The subcommittees are working on issues regarding rules and procedures. They are holding focus group meetings with judges to get ideas and feedback. Mr. Schwermer reported that the Commission has contracted with a firm that will conduct independent surveys.

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

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

Chief Justice Durham reported that she had nothing more to add to what is already reflected in the minutes.

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

No July meeting was held.

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

Judge Orem reported that the committee met in July. The recommendations for Rule CJA 03-501 and Rule CJA 03-502 have been withdrawn. He mentioned that the majority of time was spent on a comprehensive revision of the interpreter rule. There is concern with the provision that would preclude a court employee interpreter from doing other work. Judge Orme mentioned that the rationale for this provision would be discussed further with Judge Trease. The revision will be presented to the Council at a later date.

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

Ms. Nelson reported on the following:

Justice O'Connor gave an amazing speech in Sun Valley on "Independence of Judiciary". She mentioned that the Utah State Bar is trying to get permission to reprint her speech. The use of this theme for a future Law Day was mentioned.

Last week, the Bar Commission approved a recommended dues increase of \$75 for the active members over three years. The fee for active members under three years will be handled proportionately. This recommendation will be forwarded to the Supreme Court. The disbarred attorney reinstatement rate increase was also mentioned.

#### **5. REPORT ON ABA CONFERENCE ON INTER-BRANCH RELATIONS (Remarks from: Senator Lyle Hillyard and Representative Kraig Powell): (Chief Justice Christine M. Durham)**

Chief Justice Durham welcomed Senator Hillyard and Representative Powell to the meeting. She thanked them for attending the conference along with the other representatives who included: 1) Mr. Ron Gordon, 2) Mr. Nate Alder, 3) Mr. Daniel J. Becker, 4) Mr. Rick Schwermer, and 5) Chief Justice Durham, herself.

Senator Hillyard reported on the conference and provided his feedback. He mentioned that the ABA president and retired Justice Sandra Day O'Connor, were in attendance at the conference. The conference had a large crowd and provided opportunities for a good dialogue among the attendees. He commented on the challenges in the Utah judiciary from his point of view. He feels that there is a general lack of understanding by many legislative leaders to the role of the Courts. He mentioned that there are very few legislators that are lawyers.

He commented on the following areas in relation to the court system: 1) the courts and budget cuts, 2) the confirmation process, and 3) the changing judicial evaluation process. Discussion took place.

Representative Powell expressed his gratitude for the opportunity to attend and participate in the conference. He commented on the title of the conference: “Separate Branches, Shared Responsibilities” and how it was appropriate for the discussions that took place. The conference provided a wide range of issues for discussion among the attendees. He mentioned that Utah was well represented at the conference, and the State is on the forefront in many of the areas discussed.

An area of importance, in his point of view, deals with how the judicial branch can proactively deal with budget issues going before the legislature. He shared an excerpt from the briefing paper of the conference that stated: “In at least one state, the legislative and executive branches have formally acknowledged that the courts not be treated like an executive-branch department when imposing reductions, and implemented ways of securing stability of court funding from one year to the next.” Representative Powell reported that Utah’s Judicial Branch did very well in this area in the past year. He stated that the legislative meetings that were scheduled by the Judicial branch were very beneficial.

He then touched on interfacing with the legislature and the importance of inter-branch cooperation. Attorney representation in the legislature was also discussed at the conference. Communicating the importance of the work of the judiciary was also a key area of discussion.

Discussion took place regarding more opportunities for all three branches to meet for court related discussions. A day in court opportunities for legislative leaders was mentioned. State of the judiciary address issues were also discussed.

Chief Justice Durham and Mr. Becker thanked Senator Hillyard and Representative Powell for their comments.

## **6. STRATEGIC PLAN OF THE ALTERNATIVE SENTENCING COMMITTEE: (Debra Moore)**

Ms. Moore reported that Judge Maughan is the chair of the committee. The committee was formed by the Board of District Court judges over a year ago. She reported that in addition to the chair, the committee is comprised of seven members which include the director of the Adult Probation and Parole, the Department of Corrections, and a prosecutor. The committee’s charge was to work in collaboration with other stakeholders to create an accountable criminal justice system that promotes evidence-based policies and practices in order to promote public safety, address victim needs, improve the functioning of offenders, and reduce taxpayer costs.

The committee continues to become educated on evidence-based practices. They are also in the process of creating a strategic plan to determine actions to be addressed for the upcoming year. The committee has been receiving technical assistance from the National Institute of Corrections on developing a strategic plan.

An Evidence-Based Symposium was held on June 24. Dr. Ed Latessa was a featured speaker. The symposium has proven to be a very successful event.

The Alternative Sentencing Committee’s goals and objectives include: 1) provide education to the public and key stakeholders on the principles of evidence-based practices and the policy and practice recommendations of the Alternative Sentencing Committee, 2) align sentencing with evidence-based principles, 3) hold probationers accountable for probation violations through a graduated sanctioning approach without compromising public safety, and 4)

improve capacity for data collection, data sharing, and evaluation.

Ms. Moore addressed a few ongoing areas of focus to include: 1) development of a report card to the community, 2) defining a goal for reducing recidivism by a desired percentage over the next three years, 3) and continued stakeholder education.

Judge Chamberlain offered remarks on Dr. Latessa and his presentation.

Ms. Moore reported that the committee is working with the PEW Commission on the possibility of becoming one of a number of states working directly with the PEW Commission in such issues. Ms. Moore provided details on this endeavor.

Judge Ron Reinstein and Ms. Kathy Waters from the Arizona Supreme Court will present at the Annual Judicial Conference on what they have done with evidence-based practices.

Chief Justice Durham commented on Dr. Latessa's presentation in reference to reducing recidivism. Chief Justice Durham and Mr. Becker commended the staff and the board on their hard work in this area of focus.

**7. REQUEST FOR DISSOLUTION OF A JUSTICE COURT: FRUIT HEIGHTS: (Rick Schwermer)**

Mr. Schwermer distributed a copy of a letter of intent to dissolve the Fruit Heights City Justice Court dated July 8, 2009 from the Fruit Heights City Manager. Mr. Schwermer reported that the agreement is similar to the one submitted by West Bountiful. Fruit Heights is seeking approval from the Council to enter into an inter-local agreement with Davis County with an effective date of dissolution of November 1, 2009.

The following are issues being dealt with in regards to the dissolution: 1) CORIS conversion, 2) receipt of the inter-local agreement, and 3) continued compensation to Judge David Miller for the remainder of his term of office.

Mr. Schwermer reported that the Fruit Heights CORIS conversion date has been switched with Clearfield. He mentioned that Judge Miller has two other courts which he provides service for. Members of the Council questioned the affect this change would have on the judge. Discussion took place regarding the filing of new cases as of August 1 and where they would be filed. Judge McCullagh commented that the agreement should include the details regarding continued compensation to Judge Miller. Discussion regarding the agreement took place.

**Motion:** Judge Andrus moved to approve the dissolution of the Fruit Heights Justice Court and enter into an inter-local agreement with Davis County contingent on seeing a signed copy of the inter-local agreement. The motion was seconded. It passed with Judge Kwan and Judge McCullagh opposing the motion.

**8. APPELLATE REPRESENTATION COMMITTEE UPDATE: (Judge Stephen Roth)**

This item will be deferred until the September Council meeting.

**9. TRANSCRIPT MANAGEMENT SYSTEM: (Matty Branch, Lisa Collins and Penny Rainaldi)**

Ms. Branch introduced Ms. Collins and Ms. Rainaldi. The new system has come together very well and is operating even better than expected. Ms. Collins and Ms. Rainaldi reviewed the new transcript management system workflow online. The workflow consists of: 1) public

submits an on-line request, 2) transcript coordinator researches the case, 3) transcriber involvement, 4) posting of a transcript, and 5) nightly processing of transcripts. Each area in the process was shown and reviewed briefly.

All transcribers have been trained on the new system. The new system is saving entry time with automated documentaries. The new system accesses three systems: 1) CORIS, 2) CARE, and 3) AIS as well as automating processes.

Discussion on what is accessible to the appropriate parties took place. It was mentioned that any information that is sealed will not be accessible. Ms. Branch offered comments on this area.

Accessing an e-file transcript was shown. Ms. Collins reported that the TCEs of the respective districts will receive notification when a transcript is available. Authorized users will be able to view the transcripts when they have been completed.

The question was asked as to whether the new system has a quicker turnaround time than the previous system. It was reported that there is no data yet to answer this question.

Ms. Branch reported that 112 transcripts have been ordered since July 1, 2009.

Chief Justice Durham thanked Ms. Branch, Ms. Collins, and Ms. Rainaldi for their presentation.

#### **10. PROBLEM SOLVING COURTS CERTIFICATION: (Judge Dennis Fuchs and Rick Schwermer)**

Chief Justice Durham welcomed Judge Fuchs and Mr. Schwermer to the meeting.

Judge Fuchs reported that he has visited all drug courts within the last year. He has followed up with the suggested changes made during his visits. Currently, there are 54 drug courts operating in the State of Utah. He has also visited the Justice Court Drug Courts as well as the DUI Courts.

There are five different levels of drug courts in operation which include: 1) adult felony, 2) juvenile family or dependency, 3) juvenile, 4) justice misdemeanor, and 5) justice DUI courts. Most are state funded with the exception of the justice courts. He commented by stating that the majority of the drug courts operating with state funds are complying with evidence-based practices. Four of the adult felony drug courts were not, but have applied for and have been awarded new grants which require the necessary changes. Two of the justice court drug courts are operated as peer review courts.

The following are recommendations regarding problem-solving court certification:

- The Council adopt a rule requiring formal certification of all drug courts every two years. As a minimum, the rule should require the Courts to follow all evidence-based practices. It should require all drug courts and DUI courts to only take participants who are high risk, high needs, and at a minimum require at least a judge, prosecutor, defense attorney, and treatment provider; and in the case of dependency court, a guardian ad litem be present at all staffing and drug court sessions.
- Adopt a rule that requires courts to schedule juvenile, dependency, and adult drug courts separately.
- Require DUI and drug offenders be separated into separate courts although they may be treated together.
- Require courts to show that they are engaged in an efficient use of their time along with the drug court staff.

Judge Fuchs suggested that it is time for Utah to require full certification of the drug courts within the state. The changes dealing with certification of drug courts is outlined in Rule 4-409. He is asking for the Council to approve the concept and send the rule to Policy and Planning to review it for the proper language. Discussion took place.

Mr. Schwermer offered his opinion relative to the rule changes.

Judge Atherton offered comments regarding mental health courts in comparison to drug courts. She mentioned that the mental health courts and certification would need to be handled differently.

Chief Justice Durham commented that the certification process looked similar to certification of the justice courts to include fewer requirements but more required observations. Expansion in capacity of the existing courts would be expected. Mr. Schwermer provided clarification on issues relative to the certification of drug courts.

**Motion:** Judge Lyon moved to require certification of problem solving courts every two years based on the guidelines and to refer Rule 4-409 to Policy and Planning to review the rule for the proper language. The motion was amended to include certification of drug courts and DUI courts. The amended motion was approved. Judge Eyre seconded the motion. Judge McCullagh asked for clarification relative to drug, alcohol and felony DUI issues. Discussion took place. The motion passed unanimously.

Chief Justice Durham commented on appellate representation as part of the Attorney General's initiative in regards to post-conviction relief review. The Attorney General's office has formed a discussion committee to look at the issues surrounding appellate review. Their office requested a court representative. Chief Justice Durham declined to include a court representative. Mr. Fran Wikstrom and Mr. Schwermer have been invited to attend as well as Judge John Memmott, chair of the Constitutional Revision Commission.

#### **11. VACANCY PRIORITIZATION: (Chief Justice Christine M. Durham)**

Chief Justice Durham reported that there are three additional judgeship vacancies to consider as listed in the Management Committee minutes.

The following vacancies are being processed through their respective nominating commissions: 1) Eighth District vacancy, 2) Court of Appeals vacancy, 3) Fourth District vacancy, 4) Third District vacancy, and 5) Second District vacancy. The three remaining vacancies to prioritize include the two Court of Appeals vacancies and the most recent Fourth District vacancy.

The most recent announcement of the City of Orem's intent to form a justice court may impact the filling of the most recent Fourth District vacancy. There will also be several judgeship requests presented to the Judicial Council at the budget and planning session that will need to be considered. Chief Justice Durham provided background information to consider in regards to prioritizing the vacancies.

Mr. Becker reported that the Management Committee had asked the AOC to provide data on the workload of the Court of Appeals. Ms. Allard will present that data as well as the impact of the City of Orem's intent to form a justice court.

Ms. Allard reviewed the following categories relative to data available for the Court of Appeals to help with the decision-making process in prioritizing the two vacancies in their court

system: 1) Court of Appeals case filings, 2) Court of Appeals filings, 3) Court of Appeals FY 09 dispositions, 4) Court of Appeals decisions by fiscal year, and 5) the average number of decisions per judge. Each category was reviewed and briefly discussed.

She reviewed the number of case filings in FY 07-09 which include: 1) FY 07, 922 case filings; 2) FY 08, 875 case filings; and 3) FY 09, 936 case filings. Of the filings, juvenile child welfare appeals were reflected by the following numbers: 1) FY 07, 73; 2) FY 08, 75; and FY 09, 48. Criminal appeals include: 1) FY 07, 274; 2) FY 08, 211, and 3) FY 09, 229. Discussion took place regarding the data that was presented.

A question was raised as to comparable data from other states. Mr. Becker indicated he only had data from a select group of western states, which was shared.

The Court of Appeals Nominating Commission will hold its first meeting on August 4 to fill the first vacancy. They will meet on August 10 to hold interviews.

Mr. Becker suggested that the Court of Appeals not be down more than 2 positions at any given time. Possible scenarios of filling the remainder of the vacancies were discussed. The caseload of the Orem courts was discussed as well.

**Motion:** Judge Orme moved to fill one of the two Court of Appeals vacancies immediately and defer a decision on the other one. The motion was amended to fill one of the new vacancies in the Court of Appeals at the same time as the Second District judgeship vacancy. Judge Lyon seconded the motion, and it passed unanimously.

## **12. AOC DOWNSIZING/PRIORITIES: (Daniel J. Becker)**

Dan reported that the Administrative Office of the Courts eliminated 11 positions effective FY 2010.

The staff of the Administrative Office of the Courts was organized into teams. The managers will work together as a team on setting priorities; establishing and monitoring project management goals, objectives, and timelines; and allocating resources and staff time to best meet the team assignments. The teams include: 1) management services team, 2) human resources - education team, 3) court operations team, 4) legal team, and 5) court programs team.

Certain priorities have been established for the teams to focus on in FY 2010. They include: 1) restructuring of the Office of Clerk of Court, 2) accelerating all electronic solutions, 3) improving trial court performance, 4) maximizing the use of proven trial court programs, 5) justice court system improvements, 6) centralization of transcript management, and 7) implementation of probate recommendations.

Mr. Becker discussed the team organization and system priorities briefly.

Chief Justice Durham mentioned that disseminating the AOC's plan to the judges would provide a useful resource to them.

## **13. EXECUTIVE SESSION**

No executive session was needed at this time.

## **14. ADJOURN**

The meeting was adjourned.