

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, July 18th, 2011

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

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

### **ATTENDEES:**

Chief Justice Christine M. Durham  
Hon. Michael Westfall, vice chair  
Hon. Judith Atherton  
Hon. Donald Eyre, Jr.  
Hon. Kimberly K. Hornak  
Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. Jody Petry  
Hon. Larry Steele  
Hon. Thomas Willmore  
Hon. Fred Voros for Hon. Gregory Orme

### **EXCUSED:**

Justice Jill N. Parrish  
Hon. Gregory Orme  
Hon. Keith Stoney  
Lori Nelson, esq.

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Jody Gonzales  
Lisa-Michele Church  
Debra Moore  
Rick Schwermer  
Nancy Volmer  
Diane Abegglen  
Ron Bowmaster  
Kim Allard

### **GUESTS:**

Joanne Slotnik  
Hon. Carolyn McHugh  
Aaron Falk, SL Tribune  
Emily Morgan, Deseret News

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

Chief Justice Durham welcomed everyone to the meeting, including Ms. Emily Morgan from the Deseret News. Ms. Nelson, Judge Stoney, Judge Orme, and Justice Parrish were excused. She noted that Judge Voros would be sitting in for Judge Orme.

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

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

Chief Justice Durham reported on the following:

She attended the Annual Bar Conference in San Diego. The conference was well attended, and it had a good program. Social Media and internet use were a big focus at the conference. Chief Justice Durham participated on a panel regarding *Civility and Professionalism in the Courts*. Mr. Rod Snow was sworn in as the new Bar President, and Ms. Lori Nelson as the President-Elect.

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

Mr. Becker reported on the following items:

Ms. Susan Burke has been appointed by the Department of Human Services as the new director for the Division of Juvenile Justice Services. He wished her the best in her new position.

The First Annual Intermountain Mental Health Court Conference was held June 29-July 1 in Logan. The conference was well attended. He noted that Judge Judith Atherton and Judge Kevin Allen participated in the conference as speakers.

Mr. Becker reminded the Council that the proposal for the Project "Safe Surrender" was referred to the Board of District Court judges for consideration at the end of the May meeting. After consideration, the Board of District Court judges has determined not to pursue the proposal any further.

Due to no building block requests being advanced by the boards, the August Budget and Planning Session will be held on the morning of Thursday, August 18 only instead of two days as originally planned. The Council and Management Committee meetings will be held that same afternoon.

Judge Sandra Peuler, Third District, has announced her retirement, effective January 1, 2012.

Mr. Becker reminded the Council of the Technology Standing Committee's strategic plan emphasizing electronic records which was approved by the Council in 2007. He referenced the availability of documents on the XChange system. Discussion relative to documents in domestic related cases has taken place. The Policy and Planning Committee will be recommending that only divorce decree related documents be accessible on XChange, and all other domestic related documents would be categorized as private. He asked the Council if they were in consensus that by approving the strategic plan, the details relative to implementing aspects of the plan would be handled by the IT Standing Committee. He mentioned that the Technology Standing Committee is chaired by Judge Carolyn McHugh. Discussion took place. There was consensus that such detailed decisions should rest with the IT Standing Committee.

District court case filing and juvenile court referral statistics from July 6, 2010 to July 6, 2011 were provided. Mr. Becker highlighted the following district court case filing statistics to include: 1) criminal cases, an 8% decrease, 2) general civil cases, a 9% decrease, 3) judgements, a 3% increase, 4) property rights, a 10% increase, and 5) overall district court case filings, a 5% decrease. The following juvenile court referral statistics were highlighted: 1) child welfare proceedings, an 8% decrease, 2) termination of parental rights, an 8% increase, and 3) overall juvenile court referrals, an 8% decrease.

### **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 today's agenda. She highlighted the security review as presented by Ms. Price. Systemic problems will be addressed by the courts as a result of the security reviews as well as the development of online security training for employees. A more consistent use of signage in court facilities will also be addressed.

***Liaison Committee Report:***

No July meeting was held.

***Policy and Planning Meeting:***

No July meeting was held.

***Bar Committee Report:***

No report was provided.

**5. JUDICIAL PERFORMANCE EVALUATION COMMISSION: (Joanne Slotnik)**

Chief Justice Durham welcomed Ms. Slotnik to the meeting.

Ms. Slotnik provided an update to the Council on the activities of the Judicial Performance Evaluation Commission (JPEC).

She provided followup to include: 1) juror surveys, 2) statutory change to the pass rate, 3) exclusion issue, and 4) justice court bill.

She reminded the Council of the discussion that took place previously relative to juror surveys and the protocol that was established. She reported that only 50% of the surveys were being completed. Upon modifying the protocol, the number of juror surveys being completed raised to 73%. Ms. Slotnik will meet with the court services staff, to determine what can be done to raise the number of juror surveys being completed.

Ms. Slotnik commented that a note in the cover letter and the instructions to attorneys will reflect the new pass rate of 3.6 for the 2014 judges up for retention election. For the 2012 judges up for retention election, the pass rate remains at 3.0.

Under the new protocol, starting with the 2014 judges; the attorney, court staff and juror scores will be combined for the three categories. The three categories include: 1) legal ability, 2) administrative ability, and 3) judicial temperament. The Commission has determined not to include exclusions through the 2012 retention elections and monitor the outcome.

Attorney surveys for the 2012 elections and the 2014 mid term will be launched in August.

She provided an update on the justice court bill that was introduced during the 2011 Legislative Session. The bill would remove part-time justice court judges from being considered under the statutory requirements for evaluation purposes. The bill, sponsored by Senator Hillyard, is on the agenda for the Special Session of the Legislature to be held on Wednesday, July 20.

At the suggestion of Mr. Becker, Ms. Slotnik contacted the State Justice Institute to request funding of a pilot program on justice court performance evaluation. She was referred to the National Center for State Courts. The National Center for State Courts is interested in supporting a pilot program with a two prong evaluation to include: 1) court observation, and 2) a blast approach where volunteers would visit part-time justice courts and administer a short questionnaire to select individuals. The National Center for State Courts would like to prepare a technical assistance grant to the State Justice Institute in November with funding available in January, if approved.

The Judicial Performance Evaluation Commission has launched a new website: [judges@utah.gov](mailto:judges@utah.gov).

Ms. Slotnik was asked when the attorney surveys were to be completed. She mentioned the 2012 retention reports and the 2014 mid-term reports will be out before the end of the year. The Commission is also developing an interactive data management analysis tool.

An explanation of how the attorney surveys will be evaluated under the revised statute of 2014 was provided by Ms. Slotnik. The use of the court visitor information is being considered as well.

Concern was expressed with the decrease in juror surveys. Ms. Slotnik was asked if the Commission would consider conducting the surveys at the time of the jury trial. She provided an explanation for the method being used. Discussion took place relative to juror surveys.

Ms. Slotnik was thanked for her update.

## **6. PRIVATE ACCESS TO COURT RECORDS: (Kim Allard)**

Ms. Allard was welcomed to the meeting.

She presented a report on access to court records and referred to indexed and bulk data requests. The issue came up based upon an article that appeared in the Salt Lake Tribune recently. The article provide a summary of what happens with data, and it talks about court data, and corrections data. The summary of the article referenced the fact that once data is released, the data never goes away.

The courts provides data to various entities based upon the rule that governs records classification. Ms. Allard reviewed the Rule 4-202.02 - Judicial Council Rules of Judicial Administration - Records Classification as it relates to indexed and bulk data requests. She highlighted the item referring to indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information: 1) amount in controversy, 2) attorney name, 3) case number, 4) case status, 5) civil case type or criminal violation, 6) civil judgment or criminal disposition, 7) daily calendar, 8) file date, and 9) party name.

A question was asked relative to the reference to criminal violation rather than criminal charge in the rule. Clarification of this reference in the rule will be asked of Mr. Shea.

She reviewed the process for filling indexed and bulk data requests to include the uses of indexed data. Ms. Allard provided an example of the type of requests received by the courts for indexed and bulk data.

Based upon the article, a proposed policy that would be used internally in conjunction with the rule has been drafted. Ms. Allard is requesting feedback from the Council on the proposal. A contract was recently approved by the Management Committee for use with these requests. She reviewed the conditions of the proposed policy to include: 1) purchase of bulk data requires a signed contract, 2) commitment to purchase on-going monthly updates of data, 3) commitment by requester to update their database completely—wipe out the old, add the new, and 4) commitment by the requester to require the same of downline users.

She highlighted the assumptions relative to the requests to include: 1) access to bulk data can be denied if contract not honored, 2) bulk data includes the data elements in UCJA 4-202 only. Electronic documents are not provided in bulk, and 3) the same data elements provided for district court will be provided for justice courts and should follow the same policy for access.

A question was asked relative to the charge for these type of requests. Ms. Allard reported that the rule allows for \$32 an hour for a senior analyst with no charge for the first 15 minutes. Discussion took place.

Ms. Allard will discuss the proposed policy with Mr. Shea in the form of a rule change.

Chief Justice Durham thanked Ms. Allard for her update.

**7. LEGISLATIVE UPDATE/INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwermer provided the following update:

A Legislative Interim meeting was not held prior to the Council meeting.

An Executive Offices and Criminal Justice (EOCJ) Appropriation Subcommittee meeting was held on July 13. Each agency was to report on what actions were taken to reduce their budgets and any issues they were experiencing as a result of the reductions. Mr. Becker highlighted the following in his report: 1) actions taken, 2) principles considered when determining the court's reductions, 3) emphasis on minimizing any delays when downsizing the workforce, and 3) review of the court's performance measures.

Mr. Schwermer reported that a Legislative special session will be held on Wednesday, July 20. The Judicial Performance Evaluation Commission (JPEC) bill relative to evaluating justice court judges is on the agenda for discussion during the session. Discussion took place.

**8. MORGAN JUSTICE COURT DISSOLUTION: (Rick Schwermer)**

Mr. Schwermer reported that Morgan City is requesting that the Morgan City Justice Court, a Class IV Court, be dissolved and that the waiting period be shortened. A key factor in considering dissolution of the court was the pending replacement of their justice court judge. Judge Richard London submitted his letter of resignation, effective September 15, 2011.

The Management Committee recommended to the Council that the Morgan City Justice Court be approved to dissolve their court, effective September 1, and the waiting period be waived. Morgan County has agreed to handle Morgan City's caseload.

**Motion:** Judge McCullagh moved to approve Morgan City Justice Court's request to dissolve their court, effective September 1, and waive the waiting period. Judge Petry seconded the motion, and it passed unanimously.

**9. TECHNOLOGY STANDING COMMITTEE UPDATE: (Judge Carolyn McHugh and Ron Bowmaster)**

Judge McHugh and Mr. Bowmaster were welcomed to the meeting.

Judge McHugh provided an update to the Council on behalf of the Technology Standing Committee.

She highlighted the following areas: 1) justice court conversion, 2) access to records through XChange, 3) new initiatives, and 4) committee oversight.

With the completion of the justice court conversion, 102 justice courts were converted to the CORIS case management system. All court cases in the State of Utah are managed under one computing system.

Judge McHugh reported that the State of Utah issued an RFP for cloud hosted email service. The Technology Standing Committee formed a subcommittee charged with the task of reviewing what the hosted service has to offer, and they will make a recommendation to the full standing committee on their findings.

The following projects completed during the last year were highlighted: 1) new document management system; 2) new document signature process; 3) new forms generator service; 4) new statewide uniform offense table; 5) new web services for CARE/Safe interfaces; 6) new

electronic juvenile e-warrant process, currently being piloted; and 7) consolidation of justice court systems to a single case management system (CORIS).

Chief Justice Durham thanked Judge McHugh for her update.

**10. PROPOSED “CAMERAS IN THE COURTROOM” PILOT PROJECT: (Diane Abegglen)**

Ms. Abegglen was welcomed to the meeting. She is the staff representative to the Council Study Committee and Justice Parrish, chair of the Council Study Committee, has asked to be excused from today’s meeting.

Ms. Abegglen reminded the Council that the Committee is charged with studying technology brought into the courtroom. The Committee is in the early stages of the study.

Ms. Abegglen reported that the Committee considered the direction to be taken with studying cameras in the courtroom at their June meeting. The Council was asked to consider the following: 1) whether or not they would like to move in the direction of discussing the literature, discussing policies, making a rule change, and then receipt of recommendations upon completion of the study, or 2) a more in-depth study, whereas more time would be invested by completing a pilot project that would include cameras in the courtroom and possibly live streaming to compare and contrast the two technologies.

The Committee would like clarification as to whether they are interpreting the charge correctly in studying cameras in the courtroom. Resources and time are of importance when considering the charge. Discussion took place.

Benefits of a pilot would include: 1) practical experience gained, 2) receipt of additional information with the improvement of technology.

The Council was in consensus to have a thorough look, not only to the rules and policies, but the actual experiences from others, but not proceeding with a pilot project. Upon completion of the charge, return to the Council with a status report and possible recommendations.

**11. ADJOURN**

The meeting was adjourned.