

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, July 22, 2013

Matheson Courthouse

Salt Lake City, UT

**Chief Justice Matthew B. Durrant, Presiding**

### **ATTENDEES:**

Chief Justice Matthew B. Durrant  
Hon. Kimberly K. Hornak, vice chair  
Justice Jill Parrish  
Hon. Judith Atherton  
Hon. Glen Dawson  
Hon. George Harmond  
Hon. David Mortensen  
Hon. Gregory Orme  
Hon. Reed Parkin  
Hon. John Sandberg  
Hon. Larry Steele  
John Lund, esq.

### **EXCUSED:**

Hon. Paul Maughan  
Hon. Brendan McCullagh

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Diane Abegglen  
Jody Gonzales  
Debra Moore  
Rick Schwermer  
Tom Langhorne  
Alyn Lunceford  
Nancy Volmer  
John Bowers  
Kris Prince  
Rob Godfrey  
Shirley Trujillo

### **GUESTS:**

Judge James Davis  
Judge Dennis Fuchs  
Judge Scott Waterfall  
Juana Gutierrez

## **1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant welcomed everyone to the meeting.

He mentioned the selection of Judge Kim Hornak to serve on the Fourth District Nominating Commission to fill the vacancy with the upcoming retirement of Judge Kay Lindsay, and the selection of Justice Jill Parrish to serve on the Appellate Nominating Commission to fill the vacancy with the upcoming retirement of Judge Bill Thorne.

Professor Eric D. de Rosia, Brigham Young University, will replace Mr. Myron March on the Judicial Performance Evaluation Commission as the Supreme Court's appointment.

Chief Justice Durrant noted that this would be Judge Atherton's last meeting prior to her retirement. He thanked her, on behalf of the judiciary, for her dedication and service. Judge Atherton offered a few comments.

**Motion:** Justice Parrish moved to approve the minutes from the June 24, 2013 Judicial Council meeting. Judge Hornak seconded the motion, and it passed unanimously.

**2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant had nothing new to report.

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

Mr. Becker reported on the following items:

Fourth Juvenile Nominating Commission. The nominating commission to fill Judge Kay Lindsay's vacancy with her upcoming retirement has been selected. Judge Kim Hornak will serve on the commission.

Council Term. Judge Atherton's term on the Council does not expire until September 13, 2013. The Board of District Court Judges has selected Judge Kate Toomey to fill the vacancy during August. Judge Randall Skanchy will fill the vacancy during September, and he has been nominated to fill the vacancy for the term beginning September 14, 2013.

Juvenile Court Administrator. Final interviews to fill the Juvenile Court Administrator vacancy took place last week. An offer was extended to the selected applicant over the weekend.

Elected Officials Compensation Commission. The Commission met on June 26. Western states data was presented by the courts. Public attorney compensation was reviewed with more extensive data to be compiled and reviewed.

Huntsville Town/Uintah Justice Court. The Council approved an inter-local agreement, effective September 1, 2013, between Huntsville Town and Uintah Justice Court at their May 2013 meeting. Huntsville Town has requested the inter-local agreement become effective August 1 instead of September 1 as the Huntsville prosecuting attorney passed away last week. This would allow the Uintah prosecutor to handle the caseload. Mr. Becker recommended approval of the expedited effective date.

**Motion:** Judge Steele moved to approve Huntsville Town's request of an August 1 effective date for their inter-local agreement with Uintah Justice Court. Judge Sandberg seconded the motion, and it passed unanimously.

**4. COMMITTEE REPORTS:**

***Management Committee Report:***

Chief Justice Durrant 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.

***Liaison Committee Report:***

No meeting was held in July.

***Policy and Planning Meeting:***

No meeting was held in July.

***Bar Commission Report:***

Chief Justice Durrant thanked Mr. Lund for the role he played in preparing the article “The Importance of Judicial Evaluations” found in the 2013 July/August Bar Journal. Mr. Lund noted that Ms. Lori Nelson was instrumental in preparing the article.

Mr. Lund reported on the following:

The Bar held their Summer Conference in Snowmass, CO last week.

There is debate taking place relative to filling the current Bar Commissioner vacancy with the resignation of Mr. Jim Gilson. The policy in filling the vacancy is being reviewed.

Mr. Rob Jeffs has developed a group benefits program for members of the Bar. Mr. Lund highlighted features of the benefit program.

An upgrade to the Bar’s database is underway.

Justice Thomas Lee reported on the State of the Judiciary at the Bar’s Summer Conference.

**5. PROBLEM SOLVING COURT APPROVAL: (Rick Schwermer)**

Mr. Schwermer provided background information relative to a proposed problem solving court submitted by Judge James Blanch.

The proposal is for an Alternative Court for High Needs (HN)/Low Risk (LR) offenders and would serve as an alternative track to drug court. It would be categorized more as a compliance court.

Discussion took place. Judge Fuchs provided an explanation on the specialty court that Judge Bill Barrett held which was similar to the proposed problem solving court.

It was noted that the Management Committee endorsed a two-year pilot court to include an evaluation process.

**Motion:** Judge Steele moved to approve the court as a two-year pilot court and provide for a review at the completion of the two years. Judge Orme seconded the motion, and it passed unanimously.

**6. COURT FACILITIES PLANNING COMMITTEE UPDATE: (Judge James Davis and Mr. Alyn Lunceford)**

Chief Justice Durrant welcomed Judge James Davis and Mr. Alyn Lunceford to the meeting.

Judge Davis highlighted the following in his update: 1) completion of the Ogden juvenile court facility sometime in 2015, 2) Juab County court facility fully funded and will be completed in January 2014, 3) approval for a security upgrade to the Carbon County court facility, and 4) expansion to the Duchesne County court facility to allow for multiple judges and multiple courts with the approved new judgeships in the Eighth District.

Mr. Lunceford highlighted the responsibilities of the Standing Committee on Court Facilities Planning to include: 1) review trends and projections in population, caseload and other growth indicators to anticipate courthouse construction needs, 2) review the evaluations of courthouses required by rule and recommend the prioritized placement of courthouse construction projects within the Master Plan, 3) review recommendations from the facility coordinator on construction projects and the Master Plan, 4) make recommendations to the Council regarding the reordering of Master Plan priorities and amendments to Design and Space

Guidelines, 5) compare construction requests with the Design and Space Guidelines of the Master Plan to ensure the current and anticipated needs of the court are met, 6) develop timetable for construction requests so the Committee presents recommendations to the Council in advance of the Annual Planning Workshop, 7) make recommendations to the Council for the approval, modification, or disapproval of construction requests, and 8) develop procedures for the delegation of committee responsibilities to the facility coordinator.

The following projects on the courts' ten-year building were highlighted: 1) Ogden Juvenile Court Facility, 2) Provo District Court expansion, 3) Davis County Court Facility – additional courtrooms, 4) Juab County Court Facility, and 4) Duchesne County Court Facility – addition to the current facility for multiple judges and multiple courts.

Mr. Lunceford highlighted the following county court sites activities in his update: 1) Wayne County will conduct a feasibility study to review the need for a new court facility, and 2) Summit County will study the need for additional courtrooms.

He noted that the Council approved the Design Guidelines in 2012.

The Subcommittee on Security and Emergency Preparedness update included the following update: 1) security reviews, 2) the revised Continuity of Operations Plan (COOP) was approved by the Council in June 2013, 3) incident reporting, and 4) judicial security survey.

Questions were asked relative to Summit County, Duchesne County and the Provo District Court expansion. Mr. Lunceford provided responses.

Judge Davis and Mr. Lunceford were thanked for their updates.

#### **7. PROBLEM SOLVING COURT CERTIFICATIONS: (Judge Dennis Fuchs and Mr. Rick Schwermer)**

Judge Fuchs and Mr. Schwermer were welcomed to the meeting.

The following aspects of certification of problem-solving courts were highlighted: 1) the process for reviewing the courts, 2) adoption of more specific recertification standards, and 3) review of the template used for the site visits.

The courts being recommended for certification include seven drug courts and three mental health courts.

The following drug courts were highlighted: 1) Carbon County Family Dependency Court, and 2) Washington County Adult Drug Court.

Discussion took place including the following aspects of drug court: 1) fee charged to participants, and 2) types of incentives.

The criteria for reviewing mental health courts was mentioned.

Judge Fuchs mentioned one drug court reviewed that had several issues to address. They were given six months to address the issues raised in the drug court site visit, and their court certification would come before the Council at that time.

**Motion:** Judge Hornak moved to certify the problem-solving courts being recommended for recertification. Judge Dawson seconded the motion, and it passed unanimously.

#### **8. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwermer provided a legislative update for members of the Council. He highlighted the following in his update: 1) a special session was held this month, 2) practicing law without a license, 3) sunset review—guardian ad litem in district court cases, 4) enacted felonies and enhancements on existing punishments, 5) Mr. Paul Parker was confirmed by the

Senate Judicial Confirmation Committee as a judge for the Third District, and 6) Veteran's Reintegration Task Force.

**9. CONCURRENT JURISDICTION DISCUSSION: (Ray Wahl)**

Mr. Wahl mentioned that a summary and other documents relative to the issue of concurrent jurisdiction were included with the Council materials for review.

He provided background information on the issue of concurrent jurisdiction. In October 2010, the Council charged the Standing Committee on Children and Family Law (SCCFL) to review "the narrow issue of concurrent jurisdiction, the issues raised by concurrent jurisdiction and in differing standards for termination of parental rights in juvenile and district courts." He noted the formation of an adoption subcommittee by the SCCFL to address the matter of concurrent jurisdiction which reviewed aspects of the matter during a two-year timeframe.

The differences regarding the functions before the juvenile and district courts relative to concurrent jurisdiction were highlighted in the report prepared by the SCCFL with the following highlighted issues: 1) the jurisdiction and procedure for termination of parental rights when connected to adoptions is too restrictive in juvenile court and too broad in district court, 2) juvenile courts should have jurisdiction to grant both terminations and adoptions for children within its jurisdiction, 3) contested terminations are not always best handled in district court, 4) defending parents get a state appointed attorney in juvenile court but do not in district court, 5) the appeal times for termination cases are different in district court rather than in juvenile court, and 6) the persons authorized to receive consents and relinquishments differ between the two courts.

The Standing Committee on Children and Family Law (SCCFL) provided general updates on their findings and views to the Boards and Council throughout the two-year study. In concluding the study, the Committee made no recommendations; and they had no plans to continue studying the matter further.

The issue of concurrent jurisdiction was highlighted in the update from the Committee to the Council at their June meeting. At that time, the Council asked to review the matter further at their July meeting.

Discussion took place.

It was suggested to provide an education program on available solutions to judges be considered.

**Motion:** Judge Sandberg moved to accept the recommendation to follow-up with education and move forward. Judge Orme seconded the motion, and it passed unanimously.

**10. JUDICIAL BRANCH EDUCATION COMMITTEE UPDATE: (Tom Langhorne)**

Chief Justice Durrant welcomed Mr. Tom Langhorne to the meeting.

Mr. Langhorne provided an update to the Council on the activities of the Standing Education Committee. He highlighted the following in his update: 1) greater community collaborations with the University Ed Network, the University of Utah Law School, the National Judicial College and Michigan State University; 2) development of four online modules for judges; 3) development of a Michigan State University certificate program to include a ten-core course curriculum for court executives, clerks of court, and chief probation officers; 4) development of individualized new judge orientation curriculum; 5) development of interpreter training focused on civil litigation; 6) revised and enhanced new judge orientation to be offered

twice yearly; 7) developed a “train the faculty” curriculum; 8) restructured the Probation Officer Education Committee; 9) migrating to “paperless” judicial conferences; 10) developed an audit “course observer evaluation” form; 11) over 100 individual half-day and full-day courses offered; and 12) conducted 26 major statewide conferences.

Mr. Langhorne introduced Juana Gutierrez, court interpreter and members of the education staff to include: 1) Mr. John Bowers, 2) Ms. Kris Prince, 3) Mr. Rob Godfrey, 4) Ms. Shirley Trujillo, and 5) Ms Nancy Nelson (not present).

Discussion took place relative to the judicial conferences going paperless.

It was noted that new judge orientation for the justice court judges was revised three or four years ago.

Members of the Education Department were thanked for all their efforts and hard work.

**11. ROY JUSTICE COURT – REQUEST FOR COURT HOURS WAIVER: (Judge Scott Waterfall)**

Judge Waterfall was welcomed to the meeting.

Mr. Schwermer provided background information regarding Roy Justice Court’s request for a waiver of the statutory five day open requirement to a modified four and one-half day schedule during the three summer months, consistent with the Roy City office schedule.

As a Class I justice court, the statutory requirement for being open to the public is not being met with the modified schedule.

Judge Scott Waterfall provided input relative to the requested waiver of the modified schedule. He mentioned that the Roy Justice Court is located in the Roy City Office building.

Discussion took place. It was mentioned that the summer hours for the Roy City Offices can be found online and in the city newsletter.

It was noted that the Management Committee recommended the Council not approve the requested waiver.

**Motion:** Judge Steele moved to deny the Roy Justice Court’s requested waiver. Judge Harmond seconded the motion, and it passed unanimously.

**12. EXECUTIVE SESSION:**

An executive session was not needed at this time.

**13. ADJOURN**

The meeting was adjourned.