

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, October 30th, 2006

Matheson Courthouse

Salt Lake City, Utah

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*Chief Justice Christine M. Durham, Presiding*

### **ATTENDEES:**

Chief Justice Christine Durham  
Hon. James Davis  
Hon. Ronald Nehring  
Hon. Gary D. Stott  
Hon. Michael Lyon  
Hon. Robert Hilder  
Hon. Mark Andrus  
Hon. Kevin Nelson  
Hon. William Barrett  
Hon. Michael Kwan  
Scott Sabey, esq.  
Hon. Hans Chamberlain

### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Rick Schwermer  
Mark Jones  
Matty Branch  
Holly Frischknecht  
Tim Shea  
Nancy Volmer  
Ray Wahl  
Mary Boudreau  
Rob Parks

### **EXCUSED:**

Hon. Jody Petry  
Hon. Rand Beacham

### **GUESTS:**

Hon. Lynn Davis

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

Chief Justice Durham welcomed everyone to the meeting and asked for a review of the minutes. After the spelling of Urquhart was corrected, the following motion was made:

**Motion:** A motion was made to approve the minutes the motion was seconded and passed unanimously.

## **2. CHAIR'S REPORT**

Chief Justice Durham reported the following items:

- She recently got back from a conference in Oregon where she presented information on judicial independence.
- There were only five applicants that applied for the 7<sup>th</sup> District Judicial vacancy. The position has been reopened in order for more to apply.
- She and Mr. Becker recently met with Kay Cornaby and Scott Anderson, members of the Judicial Compensation Committee to discuss judicial salaries. In addition to

discussing the approach to be taken in the 2007 Legislature, the Bar's survey results on the opinions attorney's have about judicial positions was presented. The survey indicated that a reduction in salary appears to play a role in preventing individuals from applying for judicial vacancies.

### **3. ADMINISTRATOR'S REPORT**

Mr. Becker reported the following items:

- Dan Becker and Kay Cornaby reported to the Executive and Judicial Compensation Committee and were received very well. It is unclear whether they will recommend a 7% increase, or the 11% increase that the Citizen's Committee is supporting. Mr. Becker will provide a copy of the Citizen's Committee report to the Council members and to the judiciary. Mr. Cornaby and Mr. Anderson are also discussing other individuals who could offer valuable insight on the Citizen's Committee
- An initiative in South Dakota will be voted on next week called jail for judges that abolishes judicial immunity. If the amendment passes, a grand jury could indict judges if the public didn't agree with their rulings. This bill would fund the grand jury with a 5% decrease in judicial salary's. In Colorado, there is also an initiative for term limits for the appellate court judges
- The Building Board met last week and listed the St. George Courthouse as number seven on their priority list. They have \$180 million one time funds for new construction, and with the priority of number seven, the courthouse is under the \$180 million mark. The Ogden Juvenile Court request came in as priority 23.
- Ron Bowmaster has been hired as the Court Information Director, he comes from Nebraska where he worked for the executive branch. He will start December 4<sup>th</sup>.
- Senator Bell has agreed to sponsor the court management bill creating two caseload management positions in third district and juvenile court.
- Meetings have been set up in each district for judges to visit with their legislators. The Chief Justice will be attending each of these meetings and Council members are encouraged to attend the meetings in their district and any others they are available for.
- The Chief and administrators will be meeting with the Governor on Wednesday to discuss the courts budget.

### **4. REPORTS:**

#### **Management Committee: (Chief Justice Durham)**

- The Bar has reactivated the Courts and Judges Committee which Dan will serve on. They are currently determining what issues the committee will address.
- There was recently an email sent out from Dr. Diane Cowdrey regarding a CLE approved education opportunity at the Zen Center titled "Justice and Compassion, Realizing Unbiased Mind." A concern was raised about judges attending classes sponsored by a religious group. The Education Committee reviewed the complaint and the Committee's policy on education credit. The policy states that regardless of its sponsor, a course is eligible for judicial education credit if the Bar's CLE Committee has approved it for credit and if it is relevant to the role and work of the judge. Another issue arose over whether using the Judicial Operations funds for a program like this was

appropriate. The Management Committee reviewed this response and agreed with the Education Committee's decision and agreed that the Judicial Operation funds are utilized by the individual discretion of the judge within the safeguards and standards set by the Education Committee.

-It was also determined during the Management meeting that Dan Becker will serve a one year term as chair of the Facilities Committee. Gordon Bissegger will also be retiring in the spring and continuity on that committee will be important during that transition time. Judge McCleve has served the maximum amount of time on the Committee.

### **Bar Report: (Scott Sabey)**

-The Bar Leadership Conference was held earlier this week.

-The Bar is set to meet with both President Valentine and Speaker Curtis after the leadership elections.

-The Fall Forum Education Program will be offered this Friday. The attendance is usually near 550 people.

-Membership on the Bar's Committees are still being determined. The Government Relations Committee will remain Scott Sabey and Lori Nielsen.

-The Access to Justice Council, which Justice Nehring and Scott Sabey are members of, will begin their first project focusing on elder needs and elder law. The two main goals for Access to Justice is to coordinate services amongst all the different organizations and determine where there's a lack of service and funding.

-Scott Sabey also offered his assistance to any efforts where his lobbying experience could benefit the courts.

Mr. Becker provided a copy of the survey the Bar sent out gauging the attitudes local attorneys have about judicial positions. The Council discussed the results of the survey and reviewed how it supported the judiciary's concern that a lack of competitive salaries prevented quality attorney's from applying.

### **Policy and Planning:(Judge Gary Stott)**

Judge Stott indicated that the Policy and Planning Committee have been discussing alternative dispute resolution, small claims judges pro tem, and guardianship and conservatorship issues throughout the past few months as the Council had requested they do. The pro tem judges presentation will be made later in the meeting, and the ADR resolution on the consent calendar will further address these issues. The ADR information on the consent calendar are rules out for comment strengthens the regulations for those who act as mediators or arbitrators.

The Policy and Planning Committee has also been considering guardian and conservator accounting. During the next meeting the Committee will have a proposal that will address the following four issues: the filing of accountings through a rule amendment; the establishment of forms and website interviews for those appointed as guardians and conservators; a change in CORIS could also assist judges and clerks in monitoring the reports that come in, and; better education for guardians, conservators, clerks and lawyers on rule changes and forms.

## 5. **REPORT ON PRO-TEM JUDGES: (Tim Shea)**

Mr. Shea reported that the Council had asked the Policy and Planning Committee to consider and propose a resolution to the issues surrounding judges pro-tem. Mr. Shea provided a handout that detailed the role of judges pro tem, their discipline, minimum qualifications, and education.

### *Judges pro Tem in Utah*

Judges pro tem are assigned to hear and decide small claims cases. They serve two year terms and the appointment authority lies with the Supreme Court, primarily to the Chief Justice. Mr. Shea reviewed the application process a judge pro tem must go through in order to be appointed and reappointment.

The Council discussed how the complexity of cases have greatly increased in the last few years and determined this could be connected to the increase to \$7,500 in small claims complaints.

### *Discipline*

The Judicial Conduct Commission believes that they do not currently have an appropriate option to discipline pro tem judges.

The Policy and Planning Committee researched the laws of other states to identify alternative discipline procedures for judges pro tem. The Committee concluded that the best resolution is found in CJA 2-211, Rule 2-211(1) as the discipline mechanism which states: “allegations of failure to comply with the provisions of... the Code of Judicial Conduct may be submitted to the presiding officer of the Council by the Judicial Conduct Commission”

Under this rule, if the Commission’s investigation of a complaint shows evidence of serious misconduct, the Commission would use its discretion and procedures to decide the case and recommend an appropriate public sanction to the Supreme Court. If the Commission’s investigation shows a minor infraction or behavior that warrants corrective action but does not rise to the level of a public sanction the Commission could dismiss, warn or refer the allegations to the chief justice. The public will continue to make complaints against judges to the Commission, but this Rule allows the Commission an appropriate process for addressing performance or competence issues that do not rise to the level of a public sanction by the Supreme Court. The Judicial Conduct Commission endorses this alternative and is willing to adopt an internal rule to limit its referrals to complaints against judges pro tem.

### *Qualifications*

The Policy and Planning Committee recommends that judges pro tem should have a minimum of five years experience and must be admitted to practice law in Utah for a minimum of one year in order to become a judge pro tem.

The Committee also recommends that more continuing education is necessary for judges pro tem to have the resources they need to do their job. In addition to the introductory course judges pro tem are required to take, three additional hours of CLE will now be required.

Chief Justice Durham questioned what kind of data exists about pro tem judges case load. She indicated that there is an equal amount of pro tem judges as there is justice court judges and state judges. This process could also be used to talk to the presiding judges about tracking data

and begin gathering a more broad understanding of the small claims courts. Scott Sabey suggested that tracking the judges who are being appealed and what types of cases are being heard could be helpful. Mr. Shea indicated that putting the name of the judge in the minute entry could be done.

#### *Application Process*

In addition to the current application process, the Policy and Planning Committee recommends adding a check of Judicial Conduct Commission records before a judge pro tem can be hired.

#### *Pro Tempore Appointments of Commissioners and Justice Court Judges*

Currently, judges pro tem are appointed on a case by case basis when assistance is needed from the district or juvenile bench. The Committee recommends amending rule 11-202 to allow for a longer amount of days a judge pro tem can serve instead of only a case by case basis.

**Motion:** Judge Michael Lyon motioned to recommend that the Supreme Court accept this proposal, Judge Chamberlain seconded the motion, the motion passed unanimously.

#### **6. PRESIDING JUDGE RULE CHANGES: (Rick Schwermer)**

Mr. Schwermer reported that the presiding judges and associate presiding judges have reviewed this language of the proposed rule and support the changes. Mr. Schwermer highlighted some of the changes the proposal will effect. They are:

- The board of district and juvenile judges will meet with the presiding judges annually, most likely during the spring conferences
- If a judge receives a score of less than 70% on one or more survey questions, the presiding judge or other reviewing judge shall meet with the subject judge
- The TCE must be in attendance if a meeting is being held with the bench to discuss court business
- The presiding judge should receive a reduction in case load, to create more time for administrative duties, and to create an assumption that the presiding judge has a specific set amount of duties
- The presiding judge also has administrative responsibilities for the Commissioners.
- If a problem persists with a specific judge, and the presiding judge makes the appropriate attempts for a viable solution such as reassigning, referring the problem, or suggesting appropriate counseling, and the behavior has not changed, the presiding judge can bring the issue to the Council or Judicial Conduct Commission. Additional education was also added to the list of options for presiding judges to attempt.

Subject to any proposed changes by the Board of District Judges or Board of Juvenile Judges, and given the suggestions offered today, the following motion was made:

**Motion:** Judge Stott motioned to approve the proposed rule changes if the Juvenile, District, and Appellate Boards also support the amendment, Judge Barrett seconded the motion, the motion passed unanimously.

One exception

**7. INTERIM COMMITTEE REPORT: (Rick Schwermer, Mark Jones)**

Mr. Schwermer provided handouts on the Interim Committee highlights. The courts have sponsors for almost all of their bills at this time.

The Child Oversight Committee met and were very supportive of the Guardian ad Litem's request. The Executive Appropriation's Committee met and discussed defined contribution plans. This option appears to be supported by many and at this point would only effect the future employees.

The Government Operations Committee also discussed state employee salaries. The Judiciary Committee discussed 'Divorce Day' and expedited parent-time enforcement. This program is being considered for statewide rollout There is a \$250,000 fiscal note on this bill and would include 3 new employees. Driver license privilege suspension for failure to pay child support was also discussed.

Mr. Jones indicated that starting in November, the visits with legislators will begin in each district. Mr. Becker and the Chief will also be attending each of these meetings. Mr. Jones encouraged all the Council members to attend as many of these meetings as possible, or at least those in their districts. Justice Court Judges are also encouraged to attend. A list of talking points will be provided to each presiding judge. The following is the schedule of visits:

- 1st District, Thursday, January 4<sup>th</sup>, lunch, Maddox
- 2<sup>nd</sup> District, Wednesday, January 11<sup>th</sup>, lunch, location tbd
- Supreme Court, 3<sup>rd</sup> District, Thursday, December 14<sup>th</sup>, Breakfast 7:30 a.m.
- 4<sup>th</sup> District, Wednesday, January 3<sup>rd</sup>, lunch, Provo Marriott
- 5<sup>th</sup> District, Thursday, December 14<sup>th</sup>, dinner at 6:30 p.m., St. George
- 6<sup>th</sup> District, Monday, January 8<sup>th</sup>, lunch, Richfield
- 7<sup>th</sup> District, Friday, December 15<sup>th</sup>, lunch in Price
- 8<sup>th</sup> District, Wednesday, November 29<sup>th</sup>, lunch in Vernal

November 10<sup>th</sup> is the date set for leadership elections. Senator Bell attended October's District Court Board Meeting. He talked about how the cost and time of litigation is hurting the lower and middle class. The Board created a study group to discuss ways to address this concern outside of legislation. He would like the judges to take more control of the cases. Senator Bell is an advocate for increasing the amount of law clerks available to judges.

Mr. Becker indicated that case management issue dealt with creating and managing expectations. Justice Nehring suggested that the Bar could consider reviewing the rules of discovery. Mr. Schwermer reported that the perception of this issue throughout the judiciary has changed and many judges view the control of cases as their responsibility. Senator Bell expressed a willingness to work with the Council.

Speaker Curtis has agreed to meet with the Board of District Judges in November. He will also meet with Dan and Gordon on the St. George building request.

**8. APPROVAL OF 2007 JUDICIAL COUNCIL SCHEDULE: (Daniel J. Becker)**

Chief Justice Durham welcomed Judge Kwan and Scott Sabey to their first official

Council meeting. After reviewing the 2007 Judicial Council schedule, the following motion was made:

**Motion:** Judge Davis motioned to approve the 2007 schedule, Judge Stott seconded the motion, the motion passed unanimously.

**9. ACCESS TO FAIRNESS, SURVEY RESULTS: (Tim Shea)**

Tim Shea presented the results of the Access to Fairness survey. The survey was conducted at each court location during July. The survey was not conducted in the Justice Courts unless it was co-located with a district or juvenile court.

Mr. Shea reviewed the demographics of the individuals responding. Questions on access and fairness were also asked. The responses to the fairness questions were not clearly reported and will be reviewed before the report is published.

The survey results will be presented to other boards and then be made available on the intranet. Once this information is able to be reported in a more detailed format, the districts will be able to gain a closer look at the responses from their courthouse locations

Chief Justice Durham thanked Tim and all the work that has gone into this project.

**10. EMPLOYEE SURVEY RESULTS: (Rob Parkes)**

Rob Parkes reported that the employee survey was conducted over a two week time period in September. There were a total of 447 responses, which represents 42% of court employees. Of that amount, 102 managers responded and 345 staff responded. Mr. Parkes reported on the outcomes of the survey.

Mr. Parkes reported the survey explained the courts were doing well in the following areas:

- Employees take pride in their work
- Employees understand the connection between their work and the mission and goals of the court
- Employees understand what is expected of them

Mr. Parkes indicated the following were areas where improvement could be made:

- Provide more training for new employees
- Communication of performance expectations related feedback
- Increase communication flow
- Creating an environment where employees feel safe to express their opinions

Mr. Becker reported that training has already been developed to help train managers and more options will be considered on how to better address the results of the survey. This information will also be presented to the TCE's during their next meeting. Mr. Becker indicated that the employee survey and access to fairness survey will be repeated on an annual basis. This information creates a baseline for improvements to be made in the future.

**11. INTERPRETER COMMITTEE REPORT: (Judge Lynn Davis, Mary Boudreau)**

Judge Davis indicated that Rosa Oakes is doing a wonderful job with the interpreters and

she has made excellent headway with the Asian Community. Judge Davis introduced each member of the Court Interpreter Committee.

Judge Davis introduced the Court Interpreter Standing Committee Strategic Plan. Judge Davis outlined the goals the Committee has set. They are:

1. Improve recruitment of qualified interpreters
2. Improve interpreter training
3. Improve interpreter availability
4. Improve interpreter accountability
5. Improve translation services
6. Establish the role of the committee

Judge Davis reported on the tasks being done that supported each of the Committee's goals. Judge Davis indicated that more training needed to be done with the trial judges. Judge Davis also thanked Tim Shea for all his work and effort to help the Committee.

## **12. EXECUTIVE SESSION**

**Motion:** Justice Nehring motioned to move to executive session, the motion was seconded and passed unanimously.

**Motion:** A motion was made to come out of executive session, the motion was seconded and approved unanimously.

**Motion:** Judge motioned to approve Judge Fuchs and Judge Brown as Sr. Judges. The motion was seconded and approved unanimously

## **13. ADJOURN:**

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