

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, October 24th, 2011

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

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

### **ATTENDEES:**

Chief Justice Christine M. Durham  
Hon. Kimberly K. Hornak, vice chair  
Justice Jill N. Parrish  
Hon. Judith Atherton  
Hon. George Harmond  
Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. David Mortensen  
Hon. Gregory Orme  
Hon. John Sandberg  
Hon. Larry Steele  
Hon. Keith Stoney  
Hon. Thomas Willmore  
Lori Nelson, esq.

### **EXCUSED:**

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Diane Abegglen  
Jody Gonzales  
Debra Moore  
Rick Schwermer  
Tim Shea  
Nancy Volmer  
Katie Gregory  
Rosa Oakes  
Jessica Van Buren  
Mary Jane Ciccarello

### **GUESTS:**

Aaron Falk, SL Tribune  
Joanne Slotnik, JPEC  
Randy Dryer  
Justice Matthew Durrant  
Hon. John Baxter

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

Chief Justice Durham welcomed everyone to the meeting. She introduced the new Council members: 1) Judge David Mortensen, Fourth District; 2) Judge George Harmond, Seventh District; and 3) Judge John Sandberg, Clearfield and Clinton Justice Courts. She provided a brief background of each new member. A new member orientation was held prior to the Council meeting.

Chief Justice Durham mentioned that Council members serve as constitutional officers and govern the courts in the State of Utah. She welcomed Justice Matthew Durrant to the meeting as he would be administering the Oath of Office to the Council.

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

## **2. COUNCIL OATH OF OFFICE: (Justice Matthew Durrant)**

Justice Durrant administered the Oath of Office to the Council members.

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

Chief Justice Durham reported on the following:

Chief Justice Durham, Mr. Becker, Mr. Wahl, and Mr. Schwermer met with the Governor and his budget and planning staff regarding the court's budget requests for FY 2013. Other topics of discussion included: 1) the move to electronic records, 2) the clerical reorganization, and 3) the civil discovery reform efforts.

Recommendations for the Council committee structure for the coming year will be reviewed later in the agenda.

She mentioned the letter sent to all state entities by the Governor requesting suggestions and a review of policies that would make Utah a more attractive place to do business and provide service to its citizens.

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

Mr. Becker reported on the following items:

He and Mr. Shea represented the courts as delegates at the National Guardianship Conference October 13-15. Delegates from various associations were in attendance. The purpose of the conference was to revisit and update the standards promulgated at earlier conferences.

A representative from the National Center of State Courts (NCSC) visited the Utah courts October 19-21 to gain a better understanding of the Utah State Courts system of governance and steps taken in response to budget reductions. He was interested in determining what elements of our system of governance would fit into the draft *Principles of Judicial Administration* which includes 28 principles.

Mr. Becker reminded the Council of the presentation made by Salt Lake County in April 2011 relative to their desire to build a courtroom as part of the jail complex to support the Early Case Resolution pilot program. At that time, the Council decided to take no action, but they would consider a proposed local rule change if one was brought before them. Currently, Salt Lake County is conducting a feasibility study relative to building a courtroom as part of the jail complex. Mr. Becker will prepare a letter to the director of CJAC reminding him of the Council's position on the courtroom issue.

*A Guide to the Courts* has been translated into Spanish by the Public Outreach Committee. Mr. Becker expressed his appreciation to the Committee for their hard work.

Mr. Becker reviewed statistics on the first quarter case filing and referral data.

In district court, overall case filings were down 10%. He highlighted the following case types: 1) felonies, 8% decrease; 2) criminal case filings, 13% decrease; 3) domestic, 1% decrease; 4) general civil, 26% decrease; 5) contracts, 33% decrease, 6) debt collection, 18% decrease; 7) probate, 5% decrease, 8) property rights 14% decrease; 9) traffic, 41% decrease; and 10) judgments, 13% increase.

In juvenile court, the following referrals were highlighted: 1) felonies, 7% increase; 2) misdemeanors, 11% increase; 3) contempt, 13% decrease; 4) child welfare, 4% decrease, and 5) termination of parental rights, 20% decrease.

Mr. Becker reviewed a revenue update that had been presented to the Legislature's Executive Appropriations Committee.

## 5. 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 noted that the Committee was down two members at the October meeting due to the transition before the Council Committee structures were approved.

### *Liaison Committee Report:*

No meeting was held in October.

### *Policy and Planning Meeting:*

Judge Orme reported on the following:

The meeting minutes accurately reflect the issues discussed. The majority of the meeting was spent addressing the following issues: 1) court security, and 2) judicial performance standards. The judicial performance standards will be addressed later on the agenda.

Ms. Price proposed a rule change to address court security. The Policy and Planning Committee sent the request back to Ms. Price asking her to address court security of non-employees with a mechanism for considering exceptions.

### *Bar Commission Report:*

Ms. Nelson reported on the following:

She noted that the Bar Commission has not met since the last Council meeting. They are scheduled to meet on Friday, October 28. In the interim, the Civics Education in High School Committee and the Pro Bono Committee have been meeting.

## 6. COUNCIL COMMITTEE APPOINTMENTS AND SELECTION OF A VICE CHAIR: (Chief Justice Christine M. Durham)

The Management Committee forwarded the recommendations for Council committee appointments as proposed by Chief Justice Durham for approval by the Council. The Committee appointments are as follows:

Management Committee: 1) Chief Justice Christine M. Durham, chair; 2) Judge Kimberly Hornak, vice chair; 3) Judge Judith Atherton; 4) Judge George Harmond; and 5) Judge John Sandberg

Policy and Planning Committee: 1) Judge Greg Orme, 2) Judge Paul Maughan, 3) Ms. Lori Nelson, 4) Judge Keith Stoney, and 5) Judge Thomas Willmore

Liaison Committee: 1) Justice Jill Parrish, 2) Judge Brendan McCullagh, 3) Judge David Mortensen, and 4) Judge Larry Steele.

**Motion:** Judge McCullagh moved to approve the Council committee appointments as proposed. Judge Maughan seconded the motion, and it passed unanimously.

**Motion:** It was moved and seconded to approve Judge Hornak as the vice chair of the Council. It passed unanimously.

**7. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)**

Ms. Slotnik was introduced and welcomed to the meeting.

She reported that legislation dealing with evaluation of part-time and full-time justice court judges passed in a special legislative session. All 2012, 2014, and 2016 part-time justice court judges will be evaluated similar to how they were evaluated in 2010. Full-time justice court judges will be evaluated similar to how state court judges are being evaluated. This legislation will allow the Judicial Performance Evaluation Commission to develop a method for evaluating part-time judges.

The National Center for State Courts (NCSC) is interested in studying the evaluation process for part-time justice court judges. Therefore, a grant requesting funding by the State Justice Institute to study the part-time justice court judge evaluation process is being written. If approved, funding would be available in January of 2012.

The Commission has launched a new website: [www.judges.utah.gov](http://www.judges.utah.gov). The website allows limited public comment by citizens who have had first-hand experience with a judge. Questions and concerns were expressed with the use of the website including: 1) legitimacy of the comment(s), 2) comments dealing with behavior of a judge, 3) comments dealing with conduct of a judge, 4) how the comments will be dealt with, and 5) how the public will be notified of the use of the website. Ms. Slotnik responded to the questions and concerns expressed by Council members and staff. Discussion took place.

Judicial Evaluation Process. Ms. Slotnik highlighted the following regarding the evaluation process: 1) deliberations on 2012 evaluations to begin tomorrow, 2) ran 2012 data under the 2014 standard for review purposes, 3) reports to be emailed to judges and the Judicial Council in January, and 4) 2014 mid-term information will be available, tentatively, by the end of the year. Discussion took place. Concern was expressed relative to survey respondents being aware of the new rating system.

Ms. Slotnik reported that an appellate court judge focus group was held. A pilot appellate court opinion evaluation will be conducted.

It was noted that Mr. Chris Buttars was appointed by President Waddoups to fill a public non-lawyer vacancy on the Judicial Performance Evaluation Commission.

Ms. Slotnik was thanked for her report and responsiveness to the Judicial Council's questions and comments.

**8. OPEN AND PUBLIC MEETING LAW ORIENTATION: (Tim Shea)**

Mr. Shea provided an orientation on the Open and Public Meeting Law to include the following: 1) the basic principles—the meeting must be open unless closed in the proper way for a proper purpose, what an open meeting consists of, and the intent to establish procedures consistent with the philosophy of the Utah Open and Public Meetings Act; 2) definition of a public body; 3) public bodies within the judiciary; 4) what a meeting is; 5) public notice must be given; 6) public participation; 7) public's right at an open meeting; 8) closed meetings; 9) how a meeting is closed; 10) reasons for closing a meeting; 11) limits on decisions in a closed meeting; 12) outside discussions; 13) recordings and minutes; 14) what the minutes shall include; and 15) access to the meeting recording and minutes.

Chief Justice Durham thanked Mr. Shea for the orientation on the Open and Public Meetings Law.

**9. PROPOSED HR POLICY ON SOCIAL MEDIA: (Randy Dryer and Nancy Volmer)**

Chief Justice Durham welcomed Mr. Dryer to the meeting, and she reported that the Management Committee recommended the adoption of the proposed HR Policy on Social Media.

Mr. Dryer provided an introduction to the process that the Social Media Subcommittee took to develop and identify provisions of the policy. The Social Media Subcommittee is part of the Standing Committee on Judicial Outreach.

He highlighted the following sequence of events that took place in preparing the proposed HR Policy on Social Media: 1) reviewed the current court's policy in place regarding the use of Social Media, 2) surveyed other courts and governmental agencies on their Social Media policies, and 3) solicited input from other groups within the Utah court system. A draft policy was circulated in May. The Standing Committee on Judicial Outreach approved the proposed policy at their July meeting. In September, the proposed policy was circulated to the court executives and clerks of court. In October, the Management Committee reviewed the policy.

Mr. Dryer noted that the policy does not apply to judges. A separate report on judges' use of Social Media is being finalized.

Mr. Dryer highlighted the following aspects of the policy: 1) scope; 2) official business and employment related use of Social Media; 3) use of court technology resources; 4) personal use of Social Media during and after work hours where you identify yourself, directly or indirectly, as a judicial employee; 5) use of personal equipment during non-work time where you do not work, directly or indirectly, identify yourself as a judicial employee; 6) prohibited activities; and 7) monitoring employees' use of Social Media.

Discussion and questions were asked. Mr. Dryer provided clarification to the questions asked. He was thanked for his presentation of the proposed policy.

**Motion:** Justice Parrish moved to adopt the HR Policy on Social Media as presented. Judge Orme seconded the motion, and it passed unanimously.

**10. COUNCIL HISTORY: (Nancy Volmer)**

Ms. Volmer was welcomed to the meeting.

She mentioned that a copy of the Judicial Council history had been distributed to each member. She asked that after they had an opportunity to review the information, that they provide her with any comments, changes or feedback.

Ms. Volmer outlined the process she undertook to prepare the current Council history. She noted that the current history would focus on the Council's implementation and focus on streamlining of programs including the following: 1) increase for access, 2) increased accountability by committees and task force work, and 3) the role of technology in the past decade. The history includes a chronological listing of important programs and events undertaken by the Council. A technology time line is included as well.

A look to the next 10 years will be the focus for updating the Council history. Ms. Volmer will track information yearly in compiling future updates.

**11. RULE FOR FINAL ACTION: (Tim Shea)**

Mr. Shea provided details relative to the request by the Judicial Performance Evaluation Commission, to re-establish minimum performance standards in Rule 3-101 - Judicial Performance Standards to include: 1) annual judicial education hourly requirement, 2) case-under-advisement standard, and 3) physical and mental competence to hold office.

Discussion took place relative to the evaluation process when a judge is short of education hours. It was noted that the Commission will have discretion in dealing with the educational requirements for judges.

The Policy and Planning Committee recommended that the Council adopt, on an expedited basis, the standards as they existed when they were responsible for evaluating judges.

**Motion:** Judge Maughan moved to adopt the minimum performance standards as proposed in Rule 3-101 on an expedited basis. Judge Hornak seconded the motion, and it passed unanimously.

**12. FY 2012 BUDGET ISSUES: (Daniel J. Becker)**

Mr. Becker reminded the Council that he had reported at the last meeting that the carry forward funding for FY 2012 was under projected, and a plan would be presented at today's meeting for use of the additional funding. He mentioned that he and Mr. Wahl have looked at possible areas for use of the additional carry forward funding.

The total amount in additional carry forward funding is \$193,500. Mr. Becker proposed the following areas to receive funding from the additional carry forward amount: 1) additional reserve of \$99,500; 2) additional clerical assistance for use with senior judge support, \$ 30,000; 3) pilot testing of an online security training program, \$4,000; 4) public trust and confidence survey, \$20,000; 5) support of an Early Case Resolution (ECR) evaluation, \$30,000; and 6) replace the current education/event management program with an updated system, \$10,000.

Questions and observations relative to the Early Case Resolution (ECR) program were addressed.

Clarification between the Access and Fairness Survey and the Public Trust Survey was provided by Mr. Becker.

**Motion:** Judge Hornak moved to accept the recommendations as presented on use of the additional carry-forward funding. Judge Orme seconded the motion, and it passed unanimously.

**13. COURT INTERPRETERS 2009-2011: (Tim Shea)**

Mr. Shea provided a report to the Council on Interpreters in the Trial Courts of Record from 2009-2011. He recognized Ms. Rosa Oakes for all she does with the interpreter program.

He highlighted the following in his report: 1) Hispanic or Latino population, 13% of Utah's population; 2) total payments to interpreters; 3) assignments in district court; 4) language categories; 5) travel reimbursement; 6) interpreter credentials; 7) interpreter scheduling; 8) web page translations; 9) 2011 policy changes; 10) remote interpretation pilot program; 11) staff interpreter pilot program; 12) interpreter recruitment; and 13) community outreach.

Remote Interpretation. Mr. Shea noted that Vernal and Richfield have been using remote interpretation equipment since October 2010, and Roosevelt and Moab have been using remote interpretation since June 2011. Judge Steele provided feedback on the use of remote interpretation in Vernal.

Staff Interpreter Pilot Program. Mr. Shea mentioned that two full-time staff interpreters were hired in the Third District in April 2011 on a one-year basis. The pilot will measure the use of staff interpreters vs contract interpreters. A full report and recommendations will be presented once the pilot project has been completed.

**14. JUSTICE COURT JUDGE CERTIFICATION: (Rick Schwermer)**

Mr. Schwermer presented the recommendations for justice court judge certification for Ms. Catherine Elizabeth Roberts, Salt Lake Justice Court; and Mr. Augustus G. Chin, Holladay Justice Court.

**Motion:** Judge McCullagh moved to approve the certification of Ms. Catherine Elizabeth Roberts and Mr. Augustus G. Chin as justice court judges. Judge Stoney seconded the motion, and it passed unanimously.

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

Mr. Schwermer provided a legislative update to the Council. He highlighted the following relative to the September meeting: 1) involuntary civil commitment, 2) kidnap offender registry amendments, 3) sex offender registry amendments, and 4) retirement contribution rates.

He mentioned that a presentation was received from the Utah Retirement Systems on the proposed retirement contributions for FY 2013. Discussion took place.

Mr. Schwermer highlighted the following relative to the October meeting: 1) licensing of court reporters, 2) child support advisory guidelines report, 3) civil commitment amendments, and 4) drug offender reform act (DORA).

He reported that he and Mr. Becker would be meeting with Senator Hillyard on October 25 to discuss legislative matters. He noted that internal legislation is moving forward, and legislative sponsorship is being addressed.

Chief Justice Durham thanked Mr. Schwermer for his legislative update.

**16. COMMITTEE ON RESOURCES FOR SELF-REPRESENTED PARTIES STRATEGIC PLAN: (Judge John Baxter and Tim Shea)**

Chief Justice Durham welcomed Judge Baxter to the meeting.

Judge Baxter provided an update relative to the work of the Committee on Resources for Self-Represented Parties, and he presented the Committee's strategic plan for approval by the Council.

Judge Baxter highlighted the following in his update: 1) reviewed the membership of the Committee, 2) reviewed the Committee's charge, 3) reviewed the goals and principles, 4) reviewed evaluation of work to date, and 5) reviewed future priorities.

The Self-Help Center is staffed with full-time and part-time attorneys, funded by a combination of permanent and one-time appropriations and grants. The level of funding allows the center to serve six of the eight judicial districts or approximately 40% of the population.

Listed are a few of the accomplishments of the Committee: 1) develop court-sponsored clinics and workshops, 2) promote the state law library as a resource for self-represented parties, 3) develop forms most needed by self-represented parties, 4) study how best to meet the needs of self-represented parties through the court's website, 5) develop training tools for clerks and judges on the needs of self-represented parties and effectively responding to those needs, 6)

amend Rule 1.0, Chapter 13A of the Supreme Court Rules of Professional Practice to permit unpaid non-lawyers to complete court forms, and 7) promote clinics and workshops, low-fee and no-fee legal representation, and unbundled legal services among the legal community.

Questions were asked relative to forms and video availability for representation in juvenile court. The forms and videos available were mentioned.

The information available in Spanish was noted. It was mentioned that an increasing number of web pages are being translated.

**Motion:** Judge Orme moved to approve the strategic plan for the Committee on Resources for Self-Represented Parties. Judge Atherton seconded the motion, and it passed unanimously.

**17. 2012 CALENDAR APPROVAL: (Ray Wahl)**

Judge Atherton asked for clarification of the March Council meeting date. Clarification was provided to the correct date for the March meeting.

Mr. Wahl highlighted the meetings scheduled offsite to include: 1) the March Council meeting will be held in conjunction with the Bar's Spring Conference in St. George; 2) the May meeting will be held in Vernal to get feedback on how the judicial support between the Seventh and Eighth Districts has been working, and 3) the October meeting will be held in Moab, allowing the Judicial Council to assess the impact of the assistance being provided to the Eighth District by the Seventh District and to thank the Seventh District for their support in providing judicial assistance to the Eighth District.

Discussion took place.

**Motion:** Judge Orme moved to accept the 2012 calendar with the amendment to the March date. Judge Maughan seconded the motion, and it passed unanimously.

**Motion:** Judge Hornak moved to enter into an executive session for the purpose of discussing the competency of an individual. Judge Atherton seconded the motion, and it passed unanimously.

**18. EXECUTIVE SESSION**

An executive session was held.

**Motion:** Judge Hornak moved to direct the court staff to submit the matter discussed in executive session to the Judicial Conduct Commission. Judge Steele seconded the motion, and it passed unanimously.

**19. AOC ORIENTATION AND TOUR: (Daniel J. Becker and Ray Wahl)**

Mr. Becker provided an overview of the Administrative Office of the Courts. He noted that the office has approximately 90 employees, with 40% working in Information Technology. He mentioned that the AOC Information Technology Department provides 100% IT support for the Judicial Branch with no support from the Executive Branch in this area. He reviewed the following: 1) Governance/Administrative Structure of the Utah State Courts, and 2) the Court Administration. He noted that the capital law clerk and the Guardian ad Litem office are housed in the AOC.

He reminded the Council, as a separate branch of government, the AOC is responsible for independently providing: 1) a human resource department, 2) a purchasing department, 3) an internal audit department, and 4) legal counsel.

The Council was given a tour of the administrative office of the courts.

**20. ADJOURN**

The meeting was adjourned.