

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, November 27th, 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. Paul Maughan (for Hon. Barrett)  
Hon. Michael Kwan  
Scott Sabey, esq.  
Hon. Scott Johansen (for Hon. 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

### **EXCUSED:**

Hon. Hans Chamberlain  
Hon. William Barrett

### **GUESTS:**

Hon. Sandra Peuler  
Hon. Kimberly Hornak  
Bruce Thomas  
Anthony Ferdon  
Hon. John Baxter

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

Chief Justice Durham welcomed Judge Scott Johansen and Judge Paul Maughan to the meeting who are attending for Judge Hans Chamberlain and Judge William Barrett.

***Motion:*** Judge Beacham motioned to approve the minutes, Judge Kwan seconded the motion, the motion passed unanimously.

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

Chief Justice Durham reported the following items:

- She recently attended the Board of District Court Judges meeting. The Chief reported to the Board on the issues the Council has considered recently and on the outcome of the elections.
- The Third Annual Dialogue on Democracy took place last week. This program was

sponsored by a number of community groups, including the Judicial Outreach Committee and the Supreme Court. Professor Sabato, a Political Science Professor from the University of Virginia, was the keynote speaker.

-Last month the 2007 Council schedule was approved. The March meeting will be held in conjunction with the Bar Meeting in St. George. Chief Justice Durham proposed that the Council meeting be changed from Thursday, March 8<sup>th</sup>, to Wednesday afternoon, March 7<sup>th</sup>. This would allow the Council members to participate in the Board meetings and in more Bar activities.

**Motion:** Judge Stott motioned to approve the changed Council meeting date from March 8<sup>th</sup> to March 7<sup>th</sup>. Judge Hilder seconded the motion. The motion passed unanimously.

-Vernice Trease has been named the new 3<sup>rd</sup> District Judge. The 7<sup>th</sup> District received 13 applicants for the open judicial position. Interviews for that vacancy be taking place in the next three weeks.

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

Mr. Becker reported the following items:

- Rick Schwermer will receive the Governor's Award on Substance Abuse tomorrow. He has been involved with USAAV for the last few years and has been a very effective advocate for substance abuse.

-Chief Justice Durham, Mr. Becker, Mr. March, Mr. Schwermer and Mr. Jones met with the Governor and GOPB earlier this month where they learned that the majority of the requests the courts made will be advanced as part of the Governor's budget. GOPB will support 5 law clerks, the 3<sup>rd</sup> Juvenile Court Judge, the bailiff security increase, the court security officer, the entire lease and contract budget, the jury witness and interpreter fee increase, \$1,133,800 of the \$1,700,000 GAL request, one time appropriations for data processing equipment replacement, and imaging software. The GOPB did not include the 3<sup>rd</sup> District Commissioner because that position will be funded internally through remaining HB 213 funds. GOPB also did not recommend funding for the pro-se litigant pilot program. Judicial and employee salaries were also discussed.

-The Executive Compensation Committee recommended 11% for a judicial salary increase. If the 11% were given this year, 7% would be requested next year based on the original recommendation of the Citizen's Compensation Committee of a 21% increase.

-Voter participation in this years retention elections indicated similar patterns to years past with the exception of Judge Lewis's retention. Discussion took place about how judges can respond to criticism during elections. The extent of the Bar's involvement was discussed in situations where judges are being attacked.

### **4. REPORTS:**

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

Chief Justice Durham highlighted the Management Committee's discussion on Senator Bell's concerns about the timeliness and cost of civil cases. Mr. Schwermer and Mr. Jones will create a white paper about the programs the courts participate in to manage civil cases and

Senator Bell will then be invited to meet with the Presiding Judges in the Spring.

**Bar Report: (Scott Sabey)**

-The Bar has set up a breakfast with the leadership in the Senate and House and all attorney representatives and senators for January 18<sup>th</sup>.

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

-The Policy and Planning Committee met and further discussed guardianship and conservatorship and will finalize those issues in their upcoming meeting this Friday.

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

Mr. Schwermer reported that leadership elections occurred last week and the interim packet provided to the Council members outline the results. Mr. Schwermer reviewed the topics of discussion covered in the interim committees. Pre-filed bills will be numbered this Friday, December 1<sup>st</sup>. The Liaison Committee will begin meeting shortly and the schedule of those meetings will be distributed. The Legislature's Management Committee approved schedules for the appropriation subcommittees and the court's will present on January 10<sup>th</sup>.

Mr. Jones indicated that all eight meetings in the districts have been scheduled. Judges in each district are encouraged to attend to become better acquainted with their representatives. The following are the scheduled visits:

- 1<sup>st</sup> 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

**6. GAL CASELOAD MANAGEMENT PROJECT: (Debra Moore, Kristin Brewer)**

Debra Moore reported that the purpose for the GAL's presentation is to begin a dialogue about GAL caseload management with the Council. Ms. Moore reported that the GAL Standing Committee has begun looking at alternative options for managing caseloads besides increasing the GAL budget and FTE's.

It is statutorily mandated that GAL's be appointed in the juvenile court, but those mandates do not exist in the district court. For that reason, the Standing Committee began focusing on how those cases in district court can be better managed. Ms. Moore indicated that it is important for the committee to work more closely with the judges to ensure that the district assignments being made represent the need for a GAL.

Ms. Moore reviewed the ethical dilemma's a GAL faces when accepting or declining a

high caseload. Chief Justice Durham requested a further review into the ethical dilemma's of maintaining such high caseloads. The Council recommended the GAL Standing Committee meet with the District Court Board to have more discussion on the options to address the GAL's high caseload. Judge Maughan indicated this would be a good topic of consideration for the District Court Board and commissioners to explore possible accommodations and education that could be done at the district level.

Justice Nehring indicated that children's access to justice would also be a good topic to discuss in the Utah Access to Justice Council. Chief Justice Durham invited the GAL Standing Committee to report back on their progress with this issue and encouraged them to work with the Access to Justice Council.

**7. CERTIFICATION OF SR. JUDGES: (Tim Shea)**

Mr. Shea indicated that Judge Stanton Taylor, Judge Louis Tervort and Judge Douglas Cornaby have reapplied to be senior judges. Judge Hansen has also expressed interest and his application should arrive before the end of the Council meeting.

***Motion:*** Judge Davis motioned to approve Judge Taylor, Judge Tervort and Judge Cornaby as senior judges, Judge Stott seconded the motion, the motion was approved unanimously.

Judge Hansen's application for a Sr. Judge was provided and after the Council reviewed it, the following motion was made:

***Motion:*** Judge Hilder motioned to approve Judge Hansen as an active Sr. Judge, Judge Stott seconded the motion, the motion passed unanimously.

**8. 3<sup>rd</sup> JUVENILE COMMISSIONER APPOINTMENT: (Judge Kimberly Hornak, Bruce Thomas)**

Judge Hornak reported that Anthony Ferdon has been chosen as the new 3<sup>rd</sup> Juvenile Commissioner. Mr. Ferdon has been a GAL, primarily practicing in Judge Valdez's courtroom. He also previously worked as Judge Davis's Law Clerk.

***Motion:*** Judge Davis motioned that Mr. Ferdon be approved as the new 3<sup>rd</sup> Juvenile Commissioner, Judge Lyon seconded the motion, the motion passed unanimously.

Mr. Ferdon was then introduced to the Judicial Council and he reported on his experiences with the Guardian ad Litem and other positions he has had that will help him serve as a commissioner.

Judge Hornak also reported that Governor Huntsman came to observe the Juvenile Court last week and observed a wide variety of hearings throughout the day. Mr. Wahl indicated that he received very positive feedback from the Governor and his staff about this experience.

**9. COURT CULTURE WORKSHOP REPORT: (Judge Sandra Peuler, Judge Kimberly Hornak)**

Judge Peuler indicated that the National Center for State Courts provided a court culture survey to the 3<sup>rd</sup> District and Juvenile Courts in the spring. A workshop was recently held for judges and staff to discuss some of the issues that came out of the survey. Presenters from NCSC attended to facilitate discussion and assist the juvenile and district court in making the changes the judges indicated they would like to see from the survey. The workshop was voluntary and many judges and commissioners participated.

Judge Peuler indicated that the feedback she has received from the district court has been very positive. Further follow up discussion will take place on first Thursday luncheons that the district court holds monthly.

Judge Hornak reported that the juvenile judges and staff also felt the workshop was successful. The juvenile court identified six areas they want to focus on and those topics will be further discussed in bench meetings.

Mr. Becker indicated that this process has been a very unique opportunity for the 3<sup>rd</sup> District and Juvenile Benches. This project is intended to benefit both courts, as well as the National Center for State Courts which will gather information on this effort to share with other courts across the country.

**10. SELF-REPRESENTED SURVEY RESULTS: (Judge John Baxter, Mary Boudreau)**

Judge Baxter thanked the Council for receiving this survey. Judge Baxter reported that the Bar has been concerned about the courts encouraging individuals representing themselves. Judge Baxter indicated that the courts do not encourage this, yet self-represented litigants are still choosing to act on their own behalf.

Judge Baxter reviewed the results of the survey provided to the Council members and highlighted the trends of self-represented litigants. Judge Baxter reported that overall, the survey indicated that individuals could judge between fair treatment by the court and rulings that were not in their favor.

Judge Baxter reported that the Self-represented Committee is hopeful the Council's request for funding a pilot project will be approved by the Legislature. The Self-rep Committee also has an Education Sub-Committee that will address educational needs for court staff and judges to help implement the pilot program if it were to be funded.

The Self-rep Committee continues to work with the U of U and BYU to provide plain English forms to the public. The newly formed Bar Liaison Subcommittee has been created to address the issues surrounding those self-represented party's who can afford attorney's, yet chose not to, and what programs can be done for that population.

The Council discussed that any question about the relevance of considering self-represented issues has been and should continue to be a Council responsibility. The Self-represented Committee is appropriately following its mandate in developing responses and programs to address the self-represented.

**11. COURTOOLS: (Heather Mackenzie-Campbell)**

Heather Mackenzie-Campbell indicated that in 2005 the Judicial Council adopted the CourTool measure collection of monetary penalties. Ms. Mackenzie-Campbell demonstrated how to run district and juvenile reports for accounts receivable from the CourTools website. The goal is to have the majority of cases resolved in under 90 days. After 91 days the debt goes to OSD. The amount of receivables are reported by quarter. By reviewing this data, the judge's intentions when assigning monetary penalties can be better tracked and the data will reflect the actual amounts.

Ms. Mackenzie-Campbell reviewed the accounts receivable information in both district and juvenile court. It was clarified that local policies can effect how individual districts report this information and the TCE's are working with court administrator's to clarify how to display this information.

Mr. Shea indicated that this is a snapshot of a moving picture and day to day reports wouldn't be as helpful as having the quarterly updates.

Ms. Mackenzie-Campbell reported that the clerks have been trained on this information and procedures to correctly document the judges specific rulings are being created.

**12. ADJOURN:**

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