

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, November 19, 2012

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. Paul Maughan  
Hon. Brendan McCullagh  
Hon. David Mortensen  
Hon. Gregory Orme  
Hon. Reed Parkin  
Hon. Larry Steele  
John Lund, esq.

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Diane Abegglen  
Lisa-Michele Church  
Jody Gonzales  
Debra Moore  
Rick Schwermer  
Tim Shea  
Rosa Oakes  
Rick Smith  
Craig Bunnell  
Lori Brown

### **ESCUSED:**

Hon. John Sandberg

### **GUESTS:**

Joanne Slotnik, JPEC  
Jennifer Yim, JPEC  
Aaron Falk, SL Tribune  
Judge Carolyn McHugh  
Judge Mark May  
Emiley Morgan, Des News  
Kelly Chapman, Fox 13 News  
Marcos Ortiz, ABC 4

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

Chief Justice Durrant welcomed everyone to the meeting.

**Motion:** Justice Parrish moved to approve the minutes from the October 22, 2012 Judicial Council meeting. Judge Harmond seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the following:

Chief Justice Durrant, Mr. Becker and Representative Eric Hutchings participated in a National Press Club Event in Washington DC on November 15 which focused on how the state courts dealt with and continue to deal with the financial crisis. Utah's efforts were highlighted.

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

Mr. Becker reported on the following items:

Facilities Priorities. The Building Board has set its facility priorities for the upcoming Legislative Session with the Ogden Juvenile court facility set as the #1 priority. The priorities for land banking requests have been set, as well, listing the Utah County land banking request as the #1 priority. A meeting was held last week with Mr. Ron Bigelow, GOMB, to discuss the requests further.

Legislative Audit Follow-up. The Legislative Auditor's office is completing a follow-up to the audit prepared on the operational efficiencies of the court system. A report has been filed with them reporting that all issues have been addressed, with the exception of the recommendation on time standards. The adoption of time standards will be on the Council agenda for December, following an 18-month pilot project.

Judgeship/GAL Director Position. Mr. Rick Smith, GAL Director, has been appointed by the Governor to fill the judgeship vacancy in Fourth District Juvenile with the upcoming retirement of Judge Sterling Sainsbury. If he is confirmed, there will be a vacancy for a GAL Director.

Mr. Becker noted that he will work with the GAL Oversight Committee to name a new director, should Mr. Smith be confirmed by the Senate.

2013 Council Meeting Schedule. At the suggestion of a Council member at the October 22 meeting that the Council hold another meeting at a court site during 2013, Mr. Becker recommended the June 24 meeting be held at the newly-remodeled Panguitch court facility. With no objections, a new schedule will be sent to the Council members.

Retention Election Data. Mr. Becker reviewed data relative to the 2012 retention election.

Award. Mr. Becker congratulated Judge Kimberly Hornak as the recipient to the 2012 Governor's Award by the Utah Substance Abuse Advisory Council because of her work with drug courts. The award will be presented on December 11.

Council Photo. Mr. Becker reminded Council members that the Council Photo for the Annual Report will be taken preceding lunch.

JPEC Update. Mr. Becker reported that discussion concerning Appellate opinion evaluations took place at JPEC's November meeting. Mr. Schwermer provided an update to the Management Committee on additional matters discussed at the meeting. The Council's JPEC Workgroup continues their focus on the following two issues: 1) address the technical changes being proposed that would eliminate the ability of a judge to appear before the Judicial Performance Evaluation Commission relative to their evaluation before a vote is taken, and 2) juror surveys.

Mr. Becker mentioned that Ms. Slotnik is scheduled to provide an update to the Council later on the agenda.

### **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 November.

***Policy and Planning Meeting:***

Judge Orme reported on the following:

He highlighted the following in his report: 1) he was re-elected as chair of the committee, 2) discussion of fee waiver guidelines and procedures, and 3) discussion of a rule for removal of a Judicial Council member. The Committee is working on a process that will be proposed as an additional Council norm.

The December Policy and Planning Committee meeting has been re-scheduled and will be held on November 30.

***Bar Commission Report:***

Mr. Lund reported on the following:

Lawyer advertising rule will be addressed by the Supreme Court.

The Commission is weighing their options to keeping the building used by the Utah State Bar or finding another location that will meet their needs.

He reported that there was a positive outreach on behalf of the Bar members relative to the \$50,000 contribution to the SJ Quinney Law School remodel funded from a portion of the Bar dues.

**5. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik and Jennifer Yim)**

Chief Justice Durrant welcomed Ms. Slotnik, and Ms. Yim to the meeting.

Mr. Becker updated the Council on the communication efforts that have taken place over the past several months between the courts and the Judicial Performance Evaluation Commission. Most recently, the Judicial Performance Evaluation Commission has been focusing on the Appellate opinion evaluation process.

Ms. Yim provided her background as relating to her membership on the Commission.

Ms. Slotnik and Ms. Yim highlighted the following in their updates: 1) Mr. Myron March has been appointed to fill the vacancy left with Mr. Russ Van Vleet's resignation; 2) the option for voters to opt in to receive a voter's information pamphlet; 3) a brief review of the retention results; 4) the status of the Appellate opinion evaluation pilot project, noting Chief Justice Durrant's remarks to the Commission at their November meeting concerning the opinion evaluations; 5) provided examples of additional data points used relative to the survey of judges, and other types of qualitative data; 6) the status of the part-time justice court judge project; and 7) proposed legislation for the 2013 Legislative Session.

Discussion took place.

Ms. Slotnik and Ms. Yim were thanked for their update.

**6. ETHICS ADVISORY—INFORMAL OPINION 12-01: (Brent Johnson)**

This item was deferred to the December Council meeting.

**7. APPEALS PROCESS FOR PURCHASING DECISIONS: (Daniel J. Becker)**

Mr. Becker mentioned that Mr. Brent Johnson discussed this matter with the Management Committee at their November meeting. Background information was provided. As

a separate branch of government, the judicial branch is its own purchasing entity. There is a need for an appellate process when an award is challenged. A recommendation to place this responsibility with the Management Committee has been made.

**Motion:** Judge McCullagh moved to approve the change to Rule 1-204 – Executive Committee, on an expedited basis, giving the Management Committee responsibility for deciding procurement protest appeals. Judge Steele seconded the motion, and it passed unanimously.

**8. RULES FOR FINAL ACTION: CJA 04-0401.01 AND CJA 04-0401.02: (Tim Shea)**

Mr. Shea provided background information regarding rules CJA 04-0401.01 – Electronic media coverage of court proceedings and CJA 04-0401.02 – Possession and use of portable electronic devices. The Policy and Planning Committee recommended approval of both rules.

Mr. Shea reviewed the proposed rule CJA 04-0401.02 – Possession and use of portable electronic devices. He highlighted the following proposed changes to the proposed rule in his review to include: 1) use of portable electronic devices are prohibited from the judge’s chambers without prior approval from a judge, and 2) a judge may regulate the use of portable devices in his or her courtroom.

Mr. Shea reviewed the proposed rule CJA 04-0401.01 – Electronic media coverage of court proceedings. He highlighted the following in his review to include: 1) provisions for news reporters requesting permission to provide electronic media coverage of a proceeding which is modeled after the provisions of still photography requests, 2) provisions regulating the use of equipment, placement of equipment, and the number of operators, and 3) provisions for presentation of the media coverage. Discussion took place.

Questions were asked regarding the following sections of the proposed rule: 1) electronic media coverage of a juror or prospective juror, 2) audio recording or transmission of the content of bench conferences or in-chambers hearings, 3) presumption of electronic media coverage, 4) intention of limited equipment in the courtroom, and 5) modifications...shall be installed and maintained without public expense. Discussion took place, and clarification was provided.

**Motion:** Judge Mortensen moved to amend Line 113 of proposed rule CJA 4-401.01. Judge Dawson seconded the motion, and it passed unanimously.

**Motion:** Judge McCullagh moved to amend Line 82 of proposed rule CJA 4-401.01. Judge Parkin seconded the motion, and it passed unanimously.

**Motion:** Judge McCullagh moved to amend Line 67 of proposed rule CJA 4-401.01. Mr. Lund seconded the motion, and it passed unanimously.

**Motion:** Judge McCullagh moved to amend Line 53 of proposed rule CJA 4-401.01. Justice Parrish seconded the motion, and it passed unanimously.

**Motion:** Judge Hornak moved to approve CJA 4-401.01 as amended. Judge Parkin seconded the motion. The motion passed with Judge Mortensen, Judge Maughan and Judge Dawson voting no.

**Motion:** Judge Orme moved to approve the effective date of April 1, 2013 for the proposed rules. Mr. Lund seconded the motion, and it passed unanimously.

**Motion:** Judge Mortensen moved to approve CJA 4-401.02 as proposed. Mr. Lund seconded the motion, and it passed unanimously.

**9. JUDICIAL OUTREACH COMMITTEE UPDATE: (Judge Carolyn McHugh)**

Chief Justice Durrant welcomed Judge McHugh to the meeting.

Judge McHugh provided an update to the Council. She highlighted the following in her update: 1) committee membership, 2) subcommittee membership, 3) survey recommendations from the Public Trust and Confidence Survey and the Committee's plan to address these recommendations, and 4) Utah will host the 2013 CCPIO meeting.

The survey recommendations include the following: 1) communication messaging and methods, 2) court performance reporting, 3) diversity outreach, 4) employees as ambassadors, and 5) juror experience.

Judge McHugh was thanked for her update.

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

Legislative Leadership. Mr. Schwermer mentioned the changes to Legislative leadership. Senate leadership include: 1) Mr. Wayne Niederhauser, Senate President; 2) Mr. Ralph Okerland, Majority Leader; 3) Mr. Stuart Adams, Majority Whip; and 4) Mr. Pete Knudson, Assistant Majority Whip. House leadership included one change with the newest member, Ms. Ronda Rudd Menlove. Senator Lyle Hillyard remains the chair of the Executive Appropriations Committee.

Mr. Schwermer highlighted the following in his update: 1) state security standards for personal information, 2) children's participation in custody proceedings, 2) expungement process, 3) justice courts' jurisdiction, 4) rights of parents and children, 5) dating protection act, 6) clarification on the matter of capital punishment, and 7) enticing a minor.

Mr. Schwermer mentioned that local legislative meetings will be scheduled in each judicial district. He encouraged all Council members to attend their local meetings once they have been scheduled.

**11. LANGUAGE ACCESS REPORT: (Tim Shea and Rosa Oakes)**

Chief Justice Durrant welcomed Mr. Shea and Ms. Oakes to the meeting.

Mr. Shea introduced Ms. Rosa Oakes, Court Program Coordinator for the interpreter program. Mr. Shea highlighted the following in his report: 1) Utah has a strong language access program, 2) a new qualification status, "approved" has been introduced, 3) provided an update on the staff interpreter pilot program, and 4) provided an update on remote interpretation.

Mr. Shea noted that there was no plan to expand remote interpretation at the present time.

It was recommended to the Council to retain the four staff interpreters as full-time, fully-benefited employees. Ms. Oakes provided detailed information on the services currently being provided by the staff interpreters. Discussion took place. Questions were asked of Mr. Shea and Ms. Oakes, and they provided clarification. Mr. Becker provided his input in support of the recommendation.

**Motion:** Judge Hornak moved to approve the recommendations to retain the four staff interpreters as full-time, fully-benefited employees. Judge Parkin seconded the motion. The motion passed with Judge Parkin voting no.

**12. GAL OVERSIGHT COMMITTEE UPDATE: (Rick Smith)**

Mr. Smith was welcomed to the meeting. He introduced Mr. Craig Bunnell, GAL Deputy Director. Mr. Smith noted that the GAL Oversight Committee is currently without a chair; therefore, he will be providing the update to the Council.

A copy of the Office of Guardian ad Litem and CASA Annual Report for 2012 was distributed to members of the Council.

Mr. Smith highlighted the following in his update: 1) CASA program; 2) CASA volunteer advocates donated 28,786 hours in 2012, serving hundreds of Utah children; 3) child welfare law specialist certification, noting 36 attorneys in the Office of Guardian ad Litem have earned the certification; and 4) new VOICE case management system.

Mr. Bunnell provided an update on the steps being taken by the Office of Guardian ad Litem transitioning from district court cases relative to HB 357 which provides for the elimination of Guardian ad Litem attorney representation in all district court cases, effective July 1, 2013. The only alternative will be private attorney GALs. A summary and action plan was distributed.

The following action plan was highlighted: 1) the Office of Guardian ad Litem will begin withdrawing from or closing out district court cases as much as possible; 2) request the judiciary to prioritize appointments, only appointing Guardian ad Litem until the end of December 2012 and stop making appointments effective January 1, 2013; and 3) the Office of Guardian ad Litem will develop a more compact, user-friendly, online training program for private Guardian ad Litem eligibility certification. The legislation's intent was to reduce Guardian ad Litem workloads. It was noted that discussion has taken place with various local benches.

Mr. Smith provided workload numbers for juvenile and district court.

Chief Justice Durrant thanked Mr. Smith and Mr. Bunnell for their update.

**13. CERTIFICATION OF SENIOR JUDGES: (Tim Shea)**

The terms for the following senior judges will expire on December 31, and they have applied for reappointment: 1) Judge Kent Bachman, 2) Judge Pamela Greenwood, 3) Judge Lynn Payne, 4) Judge Russell Bench, 5) Judge Gordon Low, 6) Judge Stephen Van Dyke, 7) Judge Roger Dutson, 8) Judge Sharon McCully, and 9) Judge Jeril Wilson. Mr. Shea noted that all senior judges requesting reappointment meet the minimum qualifications.

**Motion:** Judge Maughan moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify the senior judges applying for reappointment as active senior judges. Judge Steele seconded the motion, and it passed unanimously.

Mr. Shea provided an update on the status of the necessary programming for the exit survey of lawyers who appear before a senior judge required in Rule 3-111.

**14. EXECUTIVE SESSION:**

An executive session was not needed at this time.

**15. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Mark May and Lisa-Michele Church)**

Chief Justice Durrant welcomed Judge May and Ms. Church to the meeting.

Judge May provided an update to the Council on the Board of Juvenile Court Judges activities. He highlighted the Board's goals to include: 1) design "best practices" guide regarding juvenile court practices on immigration, 2) implement first year of juvenile court two-year electronic conversion project (#1 priority), 3) improve permanency for older youth, and 4) give input to Juvenile Sentencing Guidelines Revision Committee.

A handout was distributed highlighting programs of Utah's Juvenile Court. Judge May reviewed the information provided to the Council.

Judge May and Ms. Church were thanked for their presentation.

**16. ADJOURN**

The meeting was adjourned.