

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, December 13th, 2010

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

**Judge Michael Westfall, Presiding**

### **ATTENDEES:**

Hon. Michael Westfall, vice chair  
Justice Jill N. Parrish  
Hon. Judith Atherton  
Hon. Donald Eyre, Jr.  
Hon. Kimberly K. Hornak  
Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. Gregory Orme  
Hon. Larry Steele  
Hon. Keith Stoney  
Hon. Thomas Willmore  
Lori Nelson, esq.

### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Jody Gonzales  
Debra Moore  
Rick Schwermer  
Tim Shea  
Ray Wahl  
Diane Abegglen  
Ron Bowmaster  
Brent Johnson

### **GUESTS:**

Dan Weist, Tribune  
Judge Kent Bachman

### **EXCUSED:**

Chief Justice Christine M. Durham  
Hon. Jody Petry

#### **1. WELCOME AND APPROVAL OF MINUTES: (Judge Michael Westfall)**

Judge Westfall welcomed everyone to the meeting. Mr. Dan Weist from the Salt Lake Tribune was welcomed to the meeting. Chief Justice Durham was excused from the meeting.

**Motion:** Judge Maughan moved to approve the minutes. Ms. Nelson seconded the motion, and it passed unanimously.

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

Mr. Becker reported on the following items:

He mentioned that this would be Mr. March's last Council meeting due to his upcoming retirement. During his time with the courts, he has served the Council exceptionally well. A retirement reception is scheduled for December 20 in the Supreme Courtroom. Mr. March commented on his years of involvement with the Council.

Mr. Becker reported that an opinion editorial was submitted and printed in the Salt Lake Tribune to correct the impression left from the original article, "Utah Courts may ask litigants to pay for interpreters".

He reviewed with the Council the membership of 2011 Legislative Committees.

A meeting with the presiding judges and court executives will be held on December 20. Discussion topics will include: 1) use of senior judges, 2) upcoming legislative meetings, 3) case management data, and 4) reports from the individual districts regarding efficiency measures.

He provided an update to the Council on the changes taking place in the Governor's office with the departure of Mr. John Nixon, Director - Office of Planning and Budget, and the departure of Mr. Jason Perry, Chief of Staff. Both have accepted positions elsewhere.

The State Justice Institute Board met last week. He reported that a \$270,000 grant was awarded to Utah. The grant will be spread over a three-year period for use in the following areas: 1) to contract for coordinators to help with recruiting and training volunteers for the court visitor program, and 2) to help advance the recommendations of the guardianship/conservatorship study.

Judge Stanton Taylor has completed the required education hours to be certified as a senior judge.

Council photos have been distributed to each member.

### **3. COMMITTEE REPORTS:**

#### ***Management Committee Report:***

Judge Westfall reported that the Management Committee meeting minutes accurately reflect the issues discussed, and he had nothing else to report.

#### ***Liaison Committee Report:***

A short meeting will be held after today's Council meeting where a Committee chair will also be selected.

#### ***Policy and Planning Meeting:***

Mr. Shea reported that the Committee did not meet in December.

#### ***Bar Committee Report:***

Ms. Nelson reported on the following:

The Bar Commission met last week, and included in their discussion was the three-year practice rule. Currently, the rule ends when a candidate graduates. A change to extend the rule to when the candidate is eligible to be admitted to the Bar was reviewed.

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

Mr. Schwermer provided an update on the legislative highlights to the Council. A copy of the fiscal highlights were distributed to members of the Council.

He highlighted the following in his update: 1) the revenue report, 2) the Fiscal Analyst's office report on Paid Time Off (PTO) which combines annual and sick leave accounts into one account, and 3) the FY 2012 state building board rankings with the Ogden Juvenile Court Facility ranked at #3.

Mr. Schwermer provided the following schedule of upcoming meetings: 1) Executive Appropriations meeting, December 14; 2) Legislative Appropriations meetings to be held on January 11 and January 19; and 3) legislative update meetings in each district are being scheduled for the first part of January.

He updated the Council on the most recent Constitutional Revision Commission (CRC) meeting. He highlighted two proposals for potential legislation submitted by Senator Hillyard to

include: 1) joint resolution of judicial retention elections, and 2) geographic diversity in appellate courts. He noted that the potential legislation will not be advanced this legislative session. Discussion took place.

**5. RE-CERTIFICATION OF COUNTY JUSTICE COURTS: (Rick Schwermer)**

Mr. Schwermer reported that every justice court requires re-certification every four years. The operational standards of the court are reviewed at this time. The Standing Committee on Justice Court Standards recommends that all county justice courts be re-certified with the exception of the following, where some additional consideration or waiver is recommended: 1) Beaver County Justice Court (Beaver Precinct), 2) Beaver County Justice Court (Milford Precinct), 3) Duchesne County Justice Courts (West and East Precincts), 4) Emery County Justice Court (Green River Precinct), 5) Grand County Justice Court, 6) Juab County Justice Court, and 7) Weber County/Roy City Justice Court.

**Motion:** Judge Stoney moved to approve the recommended re-certifications excluding the exceptions as submitted by the Standing Committee on Justice Court Standards. Judge Atherton seconded the motion, and it passed unanimously.

Beaver County Justice Court (Beaver Precinct). Beaver County has requested a waiver of the requirement that a Class I Justice Court have three full-time clerks. They currently have two full-time clerks and one half-time clerk. The justification for the waiver is due to the fact that this court hears a large percentage of simple speeding on the interstate cases with a large number of bail forfeitures. The committee recommends the waiver.

Discussion relative to reviewing the classifications of the courts regarding weighted caseload took place. Mr. Schwermer reported that this topic will be reviewed once all courts are on CORIS. Mr. Becker reported that justice courts have 49% of all their collections coming in through e-payments.

**Motion:** Judge McCullagh moved to grant the waiver as requested by the Beaver County Justice Court (Beaver Precinct) and re-certify their court. Judge Eyre seconded the motion, and it passed unanimously.

Beaver County Justice Court (Milford Precinct). The re-certification form was left blank on the question about a security plan being filed. The committee recommends they be re-certified conditionally upon receiving a security plan or once it has been verified that the plan hasn't changed.

**Motion:** Ms. Nelson moved to defer re-certification of the Beaver County Justice Court (Milford Precinct) until the February meeting. Judge McCullagh seconded the motion, and it passed unanimously.

Duchesne County Justice Courts (West and East Precincts). It was noted that the county commission requests re-certification of the West Precinct, but not of the East Precinct. Mr. Schwermer reminded the Council that the East Precinct will be dissolving in July.

Discussion took place regarding the rules set forth by the Judicial Council regarding certification of county justice courts. Mr. Schwermer reported on a meeting held several weeks ago with Duchesne County officials and a member of the Utah House of Representatives.

**Motion:** Judge McCullagh moved to re-certify the Duchesne County Justice Courts (West and East Precincts) once the county has met the qualification criteria for both precincts. Judge Stoney seconded the motion, and it passed with Judge Eyre voting no and Judge Steele abstaining from the vote.

Emery County Justice Court (Green River Precinct). Their application requests a waiver of the requirement that the trial calendar be set at least every other week for the Green River Precinct due to their judge retiring and the use of the Castledale judge to hear their cases. Discussion took place. It was recommended that the trial calendar remain the same, and if there are no courts scheduled on one of the dates, cancel court. The committee recommends that the request be denied. The committee's concern is for public access and public convenience.

**Motion:** Justice Parrish moved to follow the committee's recommendation and deny the request for waiver. Judge Eyre seconded the motion, and it passed unanimously.

Grand County Justice Court. The re-certification packet was not submitted. Staff contacted the Grand County Administrator. She indicated that she is working on getting the re-certification packet processed as quickly as possible.

**Motion:** Judge McCullagh moved to defer a decision on re-certifying the Grand County Justice Court until January to give them time to complete and submit the re-certification application. Judge Stoney seconded the motion, and it passed unanimously.

Juab County Justice Court. The standard requires two full time clerks. It is noted that the caseload is over by 18 cases. The court has one full-time clerk and one half-time clerk. The committee recommends that the waiver be granted.

**Motion:** Judge Eyre moved to grant the waiver requiring two full time clerks and re-certify the Juab County Justice Court. Judge McCullagh seconded the motion, and it passed unanimously.

Weber County/Roy City Justice Court. A requirement of a Class I Court requires that the courtroom be a "dedicated courtroom". It is dedicated to court business during normal business hours, but may be used for government/civic meetings at other times. The committee recommends that a waiver be granted if assurance is provided that the justice court's use of the courtroom takes precedence when there is a conflict.

**Motion:** Judge Atherton moves to grant the waiver of the dedicated courtroom requirement contingent upon receipt of written assurance that the justice court's use of the courtroom takes precedence when there is a conflict and re-certify the Weber County/Roy City Justice Court. Judge McCullagh seconded the motion, and it passed unanimously.

## **6. DRUG COURT CERTIFICATION PROCESS: (Rick Schwermer)**

Mr. Schwermer asked that Judge Fuchs be excused. He was unable to attend the meeting today.

Mr. Schwermer updated the Council on the drug court certification process. He reviewed the protocol for site visits. The purpose of the review is to provide oversight and assistance to drug courts operating in the State of Utah. The certification process included: 1) a review of drug court policies, procedures and practices and the 10 key components, 2) interviews are conducted with drug court staff, team members, and other persons involved in the operation of the drug court, and 3) a focus group is also conducted with a number of drug court participants. The drug courts are funded by the Division of Substance Abuse.

Rule 4-409 states: 1) the court is required to conduct an assessment that measures levels of addiction, criminality, and/or other appropriate criteria as a part of determining eligibility, and 2) any fees assessed by the court must be pursuant to a fee schedule, and reasonable.

The 10 key components were adopted as criteria for reviewing the problem-solving courts. The final three areas include: 1) requirements, 2) recommendations, and 3) certification recommendation.

Mr. Schwermer reported that seven courts were reviewed and will be considered by the Council for certification in January. A copy of the report prepared by Judge Fuchs will be sent to the seven courts at the end of the week to allow them to review the report and respond to it. They will have 30 days to respond. Certification by the Judicial Council allows them to receive state funding.

**7. NOTICE OF INTENT TO DISSOLVE EAST MILLARD JUSTICE COURT: (Rick Schwermer)**

Mr. Schwermer provided a brief history of the Millard County Justice Court, which is comprised of the East Millard Justice Court precinct and the West Millard Justice Court precinct.

Millard County proposes to dissolve the East Millard Justice Court precinct, effective January 3, 2011, and combine the court operations into one precinct to be known as the Millard County Justice Court. It was noted that the East Millard Justice Court judge is currently on administrative leave. Additional caseload issues were discussed.

Mr. Schwermer reported that a discussion with Judge Halveron has taken place regarding the consolidation of court operations within Millard County.

**Motion:** Judge McCullagh moved to allow Millard County to dissolve the East Millard Justice Court and create one county-wide justice court effective January 3, 2011. Judge Stoney seconded the motion, and it passed unanimously.

**8. REPORT ON STATUS OF CASELOAD - DISTRICT AND JUVENILE COURT: (Kim Allard)**

This item was deferred to the January meeting.

**9. XCHANGE ENHANCEMENTS: (Ron Bowmaster)**

Mr. Bowmaster updated the Council on the enhancements made in Xchange. He reported that public documents will be made available on Xchange in January, 2011.

The current system includes four separate systems to include: 1) Xchange, 2) Xchange Admin, 3) Quickbooks and 4) ModPay. The new Xchange system combines the functionality of

all four systems into one system. He highlighted the added functionality and benefits for the following: 1) Phase 1 - system for users and administration, and 2) Phase 2 - casual user access.

He provided a view of the current Xchange system and the future system. Other areas reviewed included: 1) option for short case history/long case history, 2) document access and purchase, 3) user self management, 4) online payment, 5) court management of users, and 6) monthly billing.

He noted the following: 1) everything scanned from July 1, 2009 forward will be available, 2) any electronic document submitted up to that point will be available, 3) e-payments are included, 4) 1,000 documents per week are being e-filed, and 5) all passwords will change every 90 days.

**10. WARRANT TRANSPORTATION RECOMMENDATION: (Rick Schwermer and Debra Moore)**

Mr. Schwermer reviewed the final recommendations from the Work Group on Transportation and Warrants.

Transportation designations include: 1) intra-county transportation, 2) adjacent county transportation, and 3) statewide transportation. He highlighted case types and their transportation designations. He noted the following: 1) the option of “adjacent county transportation ordered” would not be used as a default but could be used by any judge to aggravate or mitigate the default codes listed; 2) for any warrant, a judge can override the transportation default designation, but this should only be done in consultation with the local law enforcement agency responsible for transportation; 3) once established, transportation designations will be maintained by the Uniform Fine and Bail Committee; 4) warrants currently on the Statewide Warrants System will be changed to reflect the new transportation standards; and 5) any change to the default designations must be entered by the appropriate court prior to January 1, 2011 or the defaults put in place will be implemented.

With the recommendations, changes to CORIS would need to take place and the responsibility of maintaining the transportation designations by the Uniform Fine and Bail committee would need to be added.

Mr. Schwermer reported that the recommendations have been approved by the Board of District Court Judges and the Board of Justice Court Judges. The use of the system for Juvenile Court will need to be discussed further. Discussion took place.

**Motion:** Judge McCullagh moved to approve the recommendations from the Working Group on Transportation and Warrants to be implemented January 1, 2011, authorize the programming changes be made in CORIS, and add the required responsibility to the Uniform Fine and Bail Committee. Judge Hornak seconded the motion, and it passed unanimously.

**Motion:** Judge Maughan moved to enter into an executive session to review an individual’s competency. It was seconded and passed unanimously.

**11. EXECUTIVE SESSION**

An executive session was entered into at this time.

**12. ADJOURN**

The meeting was adjourned.