

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, October 26, 2015

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

**Chief Justice Matthew B. Durrant, Presiding**

### ATTENDEES:

Chief Justice Matthew B. Durrant  
Justice Thomas Lee  
Hon. Marvin Bagley  
Hon. Ann Boyden  
Hon. Mark DeCaria  
Hon. Paul Farr  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. David Mortensen  
Hon. Reed Parkin  
Hon. Randall Skanchy  
Hon. Kate Toomey  
John Lund, esq.

### GUESTS:

Hon. Stephen Roth  
Ben Winslow  
Elly Kalfus  
David Brickey  
Adam Trupp  
Marina Lowe  
Anna Brower  
Bob Bornchowicz  
Kent Hart  
Mary Westby  
Jon Mosher  
Roger Tew  
Michael Zimmerman  
McKenzie Romero  
Jessica Miller  
Brian Gimmett  
Michelle Pub  
Cameron Diehl  
Hon. Brendan McCullagh  
Hon. Todd Shaughnessy  
Jared Eldredge  
Kelly Wright  
Wendell Roberts

### STAFF PRESENT:

Daniel J. Becker  
Ray Wahl  
Jody Gonzales  
Dawn Marie Rubio  
Rick Schwermer  
Tim Shea  
Alison Adams-Perlac  
Ron Bowmaster  
Nancy Sylvester  
Jessica Van Buren  
Nancy Volmer

### EXCUSED:

Hon. Mary Noonan

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. A special welcome was extended to Judge Mark DeCaria, a new member to the Council.

**Motion:** Mr. Lund moved to approve the minutes from the September 22, 2015 Judicial Council meeting. Judge Skanchy seconded the motion, and it passed unanimously.

2. **OATH OF OFFICE: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant administered the Oath of Office to Judge Mark DeCaria.

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

Chief Justice Durrant reported on the following items:

He, Judge Michael DiReda, Mr. Ron Gordon, and Mr. Dan Becker attended a conference entitled *National Summit on Human Trafficking and the State Courts* at the beginning of October, and he administered the oath of office for Judge Paige Petersen on October 23.

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

Mr. Becker reported on the following items:

NAWJ Conference. The National Association of Women Judges (NAWJ) held their annual conference in Salt Lake City at the beginning of October with more than 150 attendees.

Budget Request Meeting. Chief Justice Durrant, Dan Becker, Ray Wahl, and Rick Schwermer will meet with the Governor to discuss the courts budget requests for FY 2017.

New-Council Member Orientation. An orientation was held for new Council members, this morning, prior to the Council meeting.

November Council Meeting. The November 23 Council meeting will be held at the SJ Quinney Law School at the University of Utah. Transportation, from the Matheson Courthouse, will be provided for members of the Council.

5. **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 October.

***Policy and Planning Meeting:***

Judge Parkin reported that several rules will be recommended for final action later in the meeting.

***Bar Commission Report:***

Mr. Lund reported on the following items: 1) the Bar Commission is scheduled to meet on October 30, and 2) focus on the AAA Task Force and the Supreme Court Task Force to Examine Limited Legal Licensing as they relate to access to justice.

**6. 2016 COUNCIL COMMITTEE APPOINTMENTS: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant reviewed the proposed 2016 Council committee appointments. He recommended the following appointments: 1) Judge Thomas Higbee to replace Judge Kimberly Hornak on the Management Committee, 2) Judge Mary Noonan to replace Judge Thomas Higbee on the Liaison Committee and (ex-officio on the Policy and Planning Committee), 3) Judge Mark DeCaria to replace Judge Glen Dawson on the Policy and Planning Committee, and 4) Judge Randall Skanchy to serve as the vice-chair of the Council.

**Motion:** Judge Higbee moved to approve the Council committee appointments as proposed by Chief Justice Durrant. Judge Parkin seconded the motion, and it passed unanimously.

**7. 2016 COUNCIL CALENDAR APPROVAL: (Ray Wahl)**

Mr. Wahl reviewed the 2016 Council calendar. He highlighted the following relative to the 2016 Judicial Council meeting dates: 1) the State of the Judiciary is scheduled to follow the January meeting, 2) the March meeting will be held in St. George in conjunction with the Bar's Spring Convention, 3) the August meeting will be held in conjunction with the Council's Budget and Planning Session, and 4) the September meeting will be determined at a later date, once the Annual Judicial Conference has been scheduled.

**Motion:** Judge Toomey moved to approve the 2016 Council calendar as proposed, with the September date to still be determined. It was seconded, and it passed unanimously.

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

Mr. Schwermer highlighted the following in his legislative update: 1) an interim session was held last week; 2) DUI report provided; 3) ADR was up for sunset – ADR programs were reported on – it was authorized for another 10 years; 4) budget and ongoing funding for the next legislative session; and 5) Medicaid expansion will be deferred until the legislative session.

**9. INDIGENT DEFENSE COMMITTEE FINAL REPORT: (Judge Stephen Roth and Rick Schwermer)**

Chief Justice Durrant welcomed Judge Roth, committee members, members of the press, and any other interested parties to the meeting.

Judge Roth highlighted the following as he presented the Indigent Defense Final Report: 1) summary of the committee's charge; 2) acknowledged committee members in attendance; 3) reviewed membership of the committee; 4) the Sixth Amendment to the United States Constitution provides "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . . and to have the assistance of Counsel for his defense;" 5) In Utah, the legislature has delegated the responsibility to provide indigent defense counsel to county and municipal governments; 6) in 2011, the Council received recommendations of appellate representation of indigent defendants from a study committee formed in 2008; 7) additionally, a Study Committee on the Representation of Indigent Criminal Defendants was formed by the Judicial Council; 8) noted the study conducted by the Sixth Amendment Center with a copy of their report distributed to members of the Council; 9) compiled a set of principles (the Pullan Principles) which was provided to the Sixth Amendment Center as a guide for assessing and improving Utah's indigent defense system and securing the right to counsel guaranteed by the state and federal constitutions; 10) three areas of concern dealt with: a) Indigent Defense Commission, b) fixed-fee contracts, and c) justice court concerns; 11) creation of proposed principles for an effective Indigent Defense Commission; 12) implement appropriate training and

mentoring programs; 13) comments were provided by Mr. Trupp, Mr. Tew, Mr. Hart, and former Justice Zimmerman; and 14) noted Jon Mosher, Sixth Amendment Center's attendance at the meeting.

Questions were asked of Judge Roth. He provided responses to questions asked of him.

Chief Justice Durrant thanked Judge Roth and members of the Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts for their work addressing the matter of indigent defense.

**Motion:** Judge Mortensen moved to accept the Indigent Defense Report, endorse recommendation #1, and forward recommendation #3 to the Council's Policy and Planning Committee. Judge Toomey seconded the motion, and it passed unanimously.

#### 10. **RULES FOR FINAL ACTION: (Alison Adams-Perlac)**

Chief Justice Durrant welcomed Ms. Adams-Perlac to the meeting.

Ms. Adams-Perlac reported that the public comment period has ended for the following rules with no comments being received, and they are being recommended for final action by the Policy and Planning Committee:

Rule CJA 04-0202.02 – Records classification. The rule has been amended to classify appellate filings, including brief, as public; and it will classify records maintained and prepared by juvenile probation, except for those filed with the court, as protected.

**Motion:** Judge Skanchy moved to approve Rule CJA 04-0202.02 – Records classification as recommended with a November 1, 2015 effective date. Judge Toomey seconded the motion, and it passed unanimously.

Rule CJA 04-0202.03 – Records access. The rule has been amended to provide that a person given access to a record in order for juvenile probation to fulfill a probation responsibility may access a safeguarded record.

**Motion:** Judge Skanchy moved to approve Rule CJA 04-0202.03 – Records access as recommended with a November 1, 2015 effective date. Judge Toomey seconded the motion, and it passed unanimously.

CJA 04-0202.04 – Request to access a record associated with a case; request to classify a record associated with a case. The rule has been amended to provide that a party with an interest in a case may move or petition a court with jurisdiction or a court that no longer has jurisdiction to reclassify a record or to have information readacted from the record.

**Motion:** Judge Skanchy moved to approve Rule CJA 04-0202.04 – Request to access a record associated with a case; request to classify a record associated with a case as recommended with a May 1, 2016 effective date. Judge Toomey seconded the motion, and it passed unanimously.

CJA 04-0202.09 – Miscellaneous. The rule has been amended to provide that a party may move, or a non-party interested in a record may petition, to classify a record as private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social, or to readact non-public information from a public record.

**Motion:** Judge Skanchy moved to approve Rule CJA 04-0202.09 – Miscellaneous as

recommended with a May 1, 2016 effective date. Judge Toomey seconded the motion, and it passed unanimously.

CJA 04-0205 – Security of court records. The rule has been amended to provide that an appellate clerk is responsible for expunging records upon an order of expungement, but that a brief will be public unless it is otherwise classified through an order on a motion or petition.

**Motion:** Judge Skanchy moved to approve Rule CJA 04-0205 – Security of court records as recommended with a May 1, 2016 effective date. Judge Toomey seconded the motion, and it passed unanimously.

CJA 04-0901 – Mandatory electronic filing in juvenile court. The rule is new and it requires that pleadings and other papers filed in existing juvenile court cases on or after December 1, 2015 shall be filed electronically in CARE. The rule requires that pleadings and other papers filed to initiate juvenile court cases on or after August 1, 2016 shall be filed electronically in CARE.

**Motion:** Judge Skanchy moved to approve Rule CJA 04-0901 – Mandatory electronic filing in juvenile court as recommended with a November 1, 2015 effective date. Judge Toomey seconded the motion, and it passed unanimously.

**11. ACCESS AND FAIRNESS SURVEY: (Jessica Van Buren)**

Chief Justice Durrant welcomed Ms. Van Buren to the meeting.

Ms. Van Buren highlighted the following in her update to the Council on the 2015 Access and Fairness Survey: 1) the survey was first administered in 2006 and repeated bi-annually, 2) Utah’s Access and Fairness Survey is compared to other states as outlined on a handout included in the Council materials, 3) three surveyors at 38 court locations over an eight-week period, 4) a full day at each court location with the busiest calendar was selected, 5) every court visitor was eligible to complete the survey, 6) the survey was available in English and Spanish, 7) the survey was available online or on paper, and 8) the survey was completed by 850 people in 2015 compared to 1,392 in 2013.

Ms. Van Buren reviewed the results per survey question.

**12. 2016 STUDY ITEM DISCUSSION: (Daniel J. Becker and Rick Schwermer)**

Mr. Becker reminded the Council of their discussion of potential study items to be considered for study in 2016. The items included: 1) domestic court, 2) examining judicial district boundaries, and 3) court security.

From the discussion that took place at the September Council meeting, interest was shown in the domestic court matter. Mr. Becker asked members of the Council whether the matter of domestic court should be considered as the 2016 study item or should the matter be referred to the Standing Committee on Children and Family Law for their consideration.

Mr. Becker met with the Board of District Court Judges at their last meeting where he discussed the potential study item with them. The Board of District Court Judges expressed support of domestic court as the 2016 Council study item.

Mr. Schwermer provided background information relative to the matter of domestic court.

Discussion took place.

A draft charge will be prepared for the Council to consider at the November Council meeting, along with a determination of whether to have the matter of domestic court be

considered as a Council study item or have the matter studied by the Standing Committee on Children and Family Law (SCCFL).

**13. TECHNOLOGY COMMITTEE UPDATE: (Ron Bowmaster)**

Chief Justice Durrant welcomed Mr. Bowmaster to the meeting.

Mr. Bowmaster mentioned that Judge Pearce was unable to attend. Mr. Bowmaster highlighted the following in his update to the Council on the activities of the Technology Committee: 1) committee's oversight role, 2) technology in the courtroom, 3) justice court documents, and 4) technology initiatives for 2016.

The Technology Committee exercised oversight over the Council's e-filing mandates to include: 1) criminal e-filing, 2) juvenile e-filing, 3) enhancements to the Appellate computing systems, and 4) proposed changes in the rules for document retention.

Over the past year, the installation and upgrade of the audio/video capability in remote courthouses was completed.

Mr. Bowmaster highlighted the following regarding justice court documents: 1) a recommendation was reviewed and approved to make justice court documents available through the Xchange system, effective August 1, 2015; and 2) the fee to access documents through Xchange was reduced from \$2.50 per document to \$0.50 per document.

A review of the 2016 IT project priorities included: 1) compliance for chip card technology and standard, 2) hardening the courts data centers to further protect our systems from intrusion, and 3) centralizing the accounting system for CARE, CORIS, AIS, translators, and other applications that collect money as identified in the committee's strategic plan.

Mr. Bowmaster reminded the Council of their approval of the following projects: 1) rewrite of the current jury, AIS and CORIS computing systems, and 2) create an online dispute resolution system.

Discussion took place throughout. Questions were asked, with Mr. Bowmaster responding to the questions asked of him.

Mr. Bowmaster was asked a question regarding the status of mandatory e-filing of B and C misdemeanors in justice courts. He reported that the capability is there, approval would be needed to proceed.

**Motion:** Judge Mortensen moved to refer the matter of mandatory e-filing of B and C misdemeanors to Policy and Planning for consideration of a rule change. The motion was seconded, and it passed unanimously.

**14. FARMINGTON/DAVIS COUNTY JUSTICE COURT: (Rick Schwermer)**

Mr. Schwermer mentioned that no action will be taken today relative to the Farmington/Davis County Justice Court. The last action taken was to approve the creation of the Farmington Justice Court and an inter-local agreement with interested governing entities which took place at the July Council meeting.

Lease agreements for both Farmington and Davis County are in question.

A meeting is scheduled later today to discuss the matter further.

Discussion took place.

**15. KANE COUNTY COURT AS A STATE-OWNED SITE: (Wendell Roberts and Ray Wahl)**

Chief Justice Durrant welcomed Mr. Wahl and Mr. Roberts to the meeting.

Mr. Wahl provided background information relative to contract court sites.

Kane County is requesting to transfer responsibility for operations of the Kane County

District Court from a contract site to a state-owned site, with a December 1 effective date.

**Motion:** Judge Parkin moved to approve Kane County's request to transfer responsibility for operations of the Kane County District Court from a contract site to a state-owned site, with a December 1 effective date and bypass the need to require any action taken by the Policy and Planning Committee. Judge Higbee seconded the motion, and it passed unanimously.

**16. SENIOR JUDGE RULE CHANGE: (Nancy Sylvester)**

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Ms. Sylvester reported on a request made by the senior judge bench at their annual meeting held on September 23. The senior judges proposed that rather than having an annual education requirement of 30 hours, that an amendment be made to Rule 11-201 – Senior Judges to allow for a biannual requirement of 60 hours.

Ms. Sylvester provided background information relative to the request.

The proposed amendment to the rule included:

(1)(C) If an active senior judge has not met the annual education requirements set forth in Rule 3-111(4)(D) of this Code, then the Council may look to the total of two years of education hours to satisfy (1)(B)(v).

Discussion took place.

**Motion:** Judge Skanchy moved to send the rule, along with the proposed amendment, to the Policy and Planning Committee for further review and recommendation. Judge Toomey seconded the motion, and it passed unanimously.

**17. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)**

Judge Betty Burns has applied to be reappointed as an inactive senior judge. She is in compliance with the minimum qualifications and judicial performance standards. She has been recommended by the Board of Justice Court Judges for reappointment.

**Motion:** Judge Marx moved to forward the recommendation, on behalf of the Council, to the Supreme Court to reappoint Judge Betty Burns as an inactive senior judge. Judge Higbee seconded the motion, and it passed unanimously.

Judge Gary Stott has applied to be reappointed as an active senior judge. He is in compliance with the minimum qualifications and judicial performance standards.

**Motion:** Judge Skanchy moved to enter into an executive session to discuss a matter of professional competence. It was seconded, and it passed unanimously.

**Motion:** Judge Mortensen moved to forward the recommendation, on behalf of the Council, to the Supreme Court to reappoint Judge Gary Stott as an active senior judge, nunc pro tunc, effective June 1, 2015. Judge Skanchy seconded the motion, and it passed unanimously.

**18. EXECUTIVE SESSION**

An executive session was held at this time.

**19. ADJOURN**

The meeting was adjourned.