

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, February 23, 2015

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

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

### **ATTENDEES:**

Chief Justice Matthew B. Durrant  
Hon. Kimberly K. Hornak, Vice Chair  
Justice Jill Parrish  
Hon. Marvin Bagley  
Hon. Ann Boyden  
Hon. James Davis  
Hon. Glen Dawson  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. David Mortensen  
Hon. Reed Parkin  
Hon. John Sandberg  
Hon. Randall Skanchy  
John Lund, esq.

### **EXCUSED:**

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Jody Gonzales  
Dawn Marie Rubio  
Debra Moore  
Rick Schwermer  
Tim Shea  
Alison Adams-Perlac  
Brent Johnson  
Nancy Volmer

### **GUESTS:**

Jeremy Harmon, SL Tribune  
Judge Michele Christiansen  
Judge Brian Cannell  
Judge Royal Hansen  
Kerri Nakamura, SL Co. Council  
Michael Postma, SL Co. DA  
Max Burdick, SL Co. Council  
Teresa Welch, SL Legal Def Assn  
Janine Hansen, SL Co. Crim. Just  
David Litvack, CJAC  
Jim Bradley, SL Co. Council  
Kent Hart, UACDL

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

**Motion:** Judge Hornak moved to approve the minutes from the January 26, 2015 Judicial Council meeting. Justice Parrish seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the following items:

He spoke at the following events in February: 1) the Justice Rising breakfast, and 2) the Legislative CLE.

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

Mr. Becker reported on the following items:

Legislative Session Update. He highlighted the following in his update: 1) the respective appropriations subcommittees have completed their work relative to budgets, and they have submitted their reports to Executive Appropriations; 2) restoration of the general fund appropriation for trust revenue, in the amount of \$581,000, is still being considered, 3) funding of the juror/witness/ interpreter supplemental for FY 14 deficit, FY 15 supplemental, in the amount of \$814,200, has been placed on a “must-fund” list; 4) judgeship requests for the Fourth District Juvenile Court and Fifth District Court have passed the Senate and the House Judiciary Committee, and are awaiting fiscal note funding decisions; 5) ADR Fee bill has passed the House and is pending a hearing in the Senate; 6) the Provo Courthouse expansion project is on a list of approved revenue bond items; 7) Judicial Compensation – a recommendation has been made to place the proposed increase of judicial salaries to \$160,000 over a two-year period; 8) the Justice Reinvestment Initiative appropriations is being considered as a package.

The State of State Courts. Mr. Becker distributed information prepared by the National Center of State Courts (NCSC) relative to a 2014 poll on the state of state courts. Mr. Becker reviewed key findings from the poll.

**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:***

Justice Parrish reported that the Liaison Committee has been meeting weekly, and the meeting minutes accurately reflect the issues discussed. Mr. Schwermer will address bills pertinent to the courts with his legislative update later in the meeting.

***Policy and Planning Meeting:***

Judge Parkin reported on the following items: 1) Rule 4-401.01 – Electronic media coverage of court proceedings which is on today’s agenda for final action, and 2) consideration to have the Policy and Planning Committee proactively review all rules and procedures, as time permits.

***Bar Commission Report:***

Mr. Lund reported on the following items: 1) the Bar’s continued focus on SJR 3 – Proposal to Amend Utah Constitution – regarding the practice of law, and 2) the work of the Future’s Commission on the practice of law is progressing.

**5. RULE 4-401.01 – ELECTRONIC MEDIA COVERAGE OF COURT PROCEEDINGS: (Alison Adams-Perlac)**

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

Ms. Adams-Perlac provided background information on action taken by the Council at their April 2014 meeting with regard to amendments made to Rule 4-401.01 – Electronic media coverage of court proceedings. The proposed amendments to Rule 4-401.01 were approved, on an expedited basis, to allow for the rule to be sent out for public comment immediately.

Many unfavorable comments were received regarding the amendment which removed the presumption of allowing electronic media coverage in divorce, guardianship, conservatorship

and protective order cases. Ms. Adams-Perlac mentioned that the public comments relative to this amendment were included with the Council materials.

As a result of the public comments received, the Management Committee requested Policy and Planning to review the rule further and determine what action, if any should be taken.

Review of Rule 4-401.01 – Electronic media coverage of court proceedings by the Policy and Planning Committee has been ongoing since August 2014.

The Policy and Planning Committee recommended the following amendments to Rule 4-401.01: 1) provides a presumption that electronic media coverage shall be permitted by a news reporter in public proceedings where “the predominant purpose is journalism or the dissemination of news to the public”; 2) provides that all requests for electronic media coverage shall come through the court’s public information office, and that the news reporter whose request is granted shall provide pool coverage; 3) requires that pooling arrangements be reached before the proceedings, without imposing on the judge or court staff, and that judges and court staff shall not be called upon to resolve pool coverage disputes; and 4) provides that the approved news reporter shall promptly share their files with other news reporters and must be willing and able to share their files to be approved to provide pool coverage.

Judge Parkin mentioned that feedback was sought from members of the local media and members of the media coalition.

Discussion took place.

**Motion:** Mr. Lund moved to approve the recommended amendments to Rule 4-401.01 – Electronic media coverage of court proceedings and send the rule out for public comments. Justice Parrish seconded the motion, and it passed unanimously.

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

Ms. Adams-Perlac reviewed the proposed amendment to Rule 4-202.02 – Records classification. The rule has been amended to classify qualified domestic relations orders (QDROs) and records in an action regarding removal from the National Instant Check database as private. No public comments were received.

**Motion:** Justice Parrish moved to approve the recommended amendment to Rule 4-202.02 – Records classification which will become effective May 1, 2015. Judge Dawson seconded the motion, and it passed unanimously.

#### **7. TECHNICAL CORRECTIONS TO RULE 3-111 – PERFORMANCE EVALUATION OF SENIOR JUDGES AND COURT COMMISSIONERS AND TO RULE 11-201 – SENIOR JUDGES: (Daniel J. Becker and Alison Adams-Perlac)**

Mr. Becker reminded the Council that Rule CJA 3-111 – Performance evaluation of senior judges and court commissioners and Rule CJA 11-201 – Senior judges were recommended for final action at the January Council meeting. They were approved with several Council members voting no.

The Management Committee was asked to revisit the action taken relative to these rules at their February meeting. Mr. Becker highlighted the concerns relative to these rules to include: 1) part of the change to Rule 11-201 addresses the Supreme Court’s power to appoint senior judges which needed to be considered by the Supreme Court prior to being published, and 2) was there adequate discussion on the differences and frequency of the performance evaluation for trial court and appellate judges relative to the proposal of two different processes in Rule 3-111.

The Management Committee agreed that Rule 11-201 – Senior judges should be placed on the February Council agenda to amend the technical corrections to the rule. Rule 3-111 would be placed on the February Council agenda if members of the Council deemed it necessary to reconsider the rule.

**Motion:** Judge Mortensen moved to reconsider Rule CJA 3-111 – Performance evaluation of senior judges and court commissioners and Rule CJA 11-201 – Senior judges. Justice Parrish seconded the motion, and it passed unanimously.

Ms. Adams-Perlac reviewed the changes to Rule 3-111 to reflect “Court of Appeals” rather than “Appellate Court”. She also noted that Rule 11-201 was amended to reflect the recommended changes.

Discussion took place relative to the matter of the different processes and frequency of the performance evaluation for trial court and appellate judges.

**Motion:** Mr. Lund moved to amend the rule to allow for senior judges in the Court of Appeals to have their performance evaluations conducted every 18 months similar to trial court judges and approve the technical changes to Rule CJA 3-111 – Performance evaluation of senior judges and court commissioners and Rule CJA 11-201 – Senior judges as recommended, effective May 1. Justice Parrish seconded the motion, and it passed unanimously.

**8. ETHICS ADVISORY COMMITTEE UPDATE: (Judge Michele Christiansen and Brent Johnson)**

Chief Justice Durrant welcomed Judge Christiansen to the meeting.

Judge Christiansen reported that the Ethics Advisory Committee has not met since the last update was given to the Council in February 2014. She listed the names of the current committee membership noting that there is a vacancy on the committee for a juvenile court judge representative and a district court judge representative.

Chief Justice Durrant thanked Judge Christiansen for her update.

**Motion:** Judge Hornak moved to enter into an executive session to address possible litigation issues. Judge Higbee seconded the motion, and it passed unanimously.

**Motion:** Judge Hornak moved to go out of executive session. Judge Bagley seconded the motion, and it passed unanimously.

**Motion:** Judge Mortensen moved to refer the issue discussed in executive session to the Management Committee, to result in creation of a study group. Judge Hornak seconded the motion, and it passed unanimously.

**9. BOX ELDER MENTAL HEALTH COURT APPLICATION: (Judge Brian Cannell and Rick Schwermer)**

Chief Justice Durrant welcomed Judge Cannell to the meeting.

Mr. Schwermer provided background information on the First District Mental Health Court expansion project, noting that a mental health court is currently being operated in Cache County.

Additional handouts were provided to members of the Council relative to the proposed mental health court expansion project.

With the exception of two concerns, expressed by the Management Committee, at their

February meeting, the application and process is in order. Mr. Schwermer highlighted the concerns to include: 1) target and eligibility standards which includes subjective criteria...as well as motivational history and apparent readiness for change, represent additional factors that may be taken into consideration...; and 2) concern with the gap in community supervision.

Mr. Schwermer mentioned that best practice standards 1-5 governs the criteria used relative to selection of specialty court target population. It was suggested that a member of law enforcement be included on the mental health court team.

Discussion took place.

Judge Cannell responded to the request to address the concerns expressed by the Management Committee and make the appropriate changes to the proposed Mental Health Court application.

**Motion:** Judge Dawson moved to approved the Box Elder Mental Health Court application with the recommended changes to include: 1) use of the best practice standards relative to the target and eligibility standards of the court, 2) use of the Risk and Needs Triage (RANT) risk assessment tool up front, and 3) addressing the need of a member of law enforcement be involved in the mental health court as the community supervision aspect of the court. Judge Higbee seconded the motion, and it passed unanimously.

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

Mr. Schwermer provided a legislative update to the Council. He highlighted the following bills:

SB 214 – Veteran’s Court

HB 348 – Criminal Justice Programs and Amendments

SB 167 – Juvenile Offender Amendments

SJR 3 – Proposal to Amend Utah Constitution – Regarding the Practice of Law

HB 278 – Justice Court Judge Compensation

HB 137 – Change to Mandatory Retirement Age for Judges

SB 183 – Judicial Salaries and Compensation

SB 141 – Judiciary Amendments

SB 46 – Juvenile Court Judge Amendments

SB 81 – District Court Judge Amendments

**11. EARLY CASE RESOLUTION (ECR) PILOT PROGRAM: (Rick Schwermer, Judge Royal Hansen, Jim Bradley, and David Litvack)**

Chief Justice Durrant welcomed Judge Hansen and Salt Lake County officials to the meeting.

Mr. Schwermer provided background information on the Early Case Resolution (ECR) Pilot Program as approved by the Council for a three-year period. Upon approval by the Council, a request to have an outcome evaluation report of the pilot program be completed at the end of the three-year period was made. The Utah Criminal Justice Center of the University of Utah completed an outcome evaluation report which was released in December 2014.

At the January 26 Council meeting, the matter was deferred to the February Management Committee meeting to allow for the Third District Court to prepare further program analysis for consideration by the committee.

Judge Hansen reported that an ECR Subcommittee has been formed and is chaired by Judge Vernice Trease. He mentioned that Judge Ann Boyden and Judge Randall Skanchy, Current Council members, sit as members on the subcommittee. The subcommittee is charged with the following: 1) gain input from the appropriate stakeholders by discussing any concerns

and matters of importance relating to the ECR pilot program, and 2) determine what action(s) to take relative to early case resolution.

Judge Hansen mentioned that he and Judge Trease provided an update to the Management Committee on what actions the Third District Court is taking to address the matter of early case resolution and what direction to take regarding the future of early case resolution.

The ECR Subcommittee is considering what aspects of the Early Case Resolution (ECR) Pilot Program to retain and what aspects to correct. The subcommittee's recommendations will be presented to members of the Third District Court bench on February 26. After that time, a report will be prepared for presentation to the Council on what was recommended and what the bench adopted with regard to early case resolution.

Positive aspects of the program included: 1) provided a system to exchange discovery electronically, in advance of the first deterrent, and 2) legal defender's office representative visited defendant, in jail, prior to the first hearing.

Areas to address included: 1) improved screening of cases; 2) target population – low risk vs. high risk; and 3) consider addressing the high risk, high needs target population in a specialty-court environment.

Discussion took place.

Mr. Bradley and Mr. Litvack, commented on the current early case resolution program and expressed, on behalf of Salt Lake County, their interest in keeping the program up and running.

Chief Justice Durrant thanked Judge Hansen, Mr. Bradley and Mr. Litvack for their remarks and their interest in the Early Case Resolution (ECR) Program.

**Motion:** Judge Mortensen moved to terminate the Early Case Resolution (ECR) Pilot program as it is presently established, effective April 1 with a proposal to be presented to the Council at their March meeting by the Third District Court on what action(s) will be taken. Judge Dawson seconded the motion, and it passed unanimously.

## **12. DRUG COURT AUDIT RESULTS: (Rick Schwermer)**

Mr. Schwermer provided an update to the Council on the audit – *A Performance Audit of Utah's Adult Felony Drug Courts* performed by the Office of the Utah State Auditor. He highlighted the key findings to include: 1) better coordination, upfront, relative to identifying insurance and Medicaid eligibility; 2) improved statewide data collection; and 3) improved administrative infrastructure and oversight of the adult drug courts.

**Motion:** Judge Hornak moved to enter into an executive session to address personnel matters. Judge Higbee seconded the motion, and it passed unanimously.

## **13. EXECUTIVE SESSION**

An executive session was entered into at this time.

## **14. ADJOURN**

The meeting was adjourned.