

JUDICIAL COUNCIL MEETING

Minutes
Wednesday, March 7, 2007
Holiday Inn
St. George, Utah

Hon. James Davis, Presiding

ATTENDEES:

Chief Justice Christine Durham (by phone)
Hon. James Davis
Hon. Ronald Nehring
Hon. Gary D. Stott
Hon. Michael D. Lyon
Hon. Robert Hilder
Hon. Mark Andrus
Hon. William Barrett
Hon. Michael Kwan
Scott Sabey, esq.
Hon. Hans Chamberlain
Hon. Jody Petry
Hon. Kevin Nelson

ABSENT:

Hon. Rand Beacham

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Rick Schwermer
Rob Parkes
Ray Wahl
Holly Frischknecht
Brent Johnson
Fred Jayne
Gordon Bissegger
Susan Burke
Matty Branch

GUESTS:

Sharon Hancey, TCE 1st District
Sylvester Daniels, TCE 2nd District
Beani Martinez, TCE 2nd Juvenile
Peggy Gentles, TCE 3rd District
Bruce Thomas, TCE 3rd, Juvenile
Paul Vance, TCE, 4th District
John Day, TCE 4th Juvenile
Rick Davis, TCE 5th District
Brent Bowcutt, TCE 6th District
Bill Engle, TCE 7th District
Russell Pearson, TCE 8th District

1. WELCOME AND APPROVAL OF MINUTES:

Judge James Davis welcomed everyone to the meeting and reported that Chief Justice Durham would be attending the Council meeting by phone later on the agenda. The Council reviewed the minutes and the following motion was made:

Motion: Judge Lyon motioned to approve the minutes, Judge Stott seconded the motion and the motion passed unanimously.

2. CHAIR'S REPORT:

Judge Davis indicated that he and the Chief had nothing to report outside of the legislative items that would be discussed in the meeting.

3. ADMINISTRATOR'S REPORT:

Mr. Becker reported the following items:

-Dr. Diane Cowdrey has been chosen to receive the National Distinguished Service Award by the National Center for State Courts. This is a wonderful honor recognizing the work she's done with the Institute of Court Management and for her work with court education statewide and nationally.

-Michele Christianson, Counsel to the Governor, has been appointed as the new 3rd District Judge. Tani Downing, the director of Workforce Services, will be the new Counsel to Governor Huntsman. Kristin Cox will replace Ms. Downing at Workforce Services.

-Four individuals are being considered for the District Court Administrator position. The Board will review those names during their meeting tomorrow and the position will be filled in April.

4. REPORTS:

Members of the Management, Bar, Liaison, and Policy and Planning Committee's reported that there are no new updates since the Council met in February.

5. REPORT: TRIAL COURT EXECUTIVES: (John Day, Brent Bowcutt)

John Day, TCE in the 4th Juvenile District, and Brent Bowcutt, TCE in the 6th District, introduced themselves and the other TCE's who were also attending the Judicial Council meeting.

Mr. Day presented the statewide accomplishments that the TCE's have achieved this year. They include: CARE statewide visits; systemwide CARE advancements; court improvement project grants and additional grants for continued training for protective and risk assessments; JJS partnerships, and; the juvenile delinquency guidelines pilot project. Mr. Day reviewed the accomplishments and challenges TCE's are facing in their individual districts.

Mr. Bowcutt indicated that the TCE's are very concerned with the wages and turnover of their employees. These concerns include small applicant pools, less qualified applicants and employees leaving for higher pay and less stress. Mr. Bowcutt reported that this high turnover results in a reduction of productivity, risks to the organization through compromised data integrity, compromised records quality, and a degradation of services. Mr. Bowcutt indicated the

TCE's would like to see market comparability adjustments made and a pay for performance program adopted.

Mr. Bowcutt thanked the Council for their commitment to facilities and court security. Mr. Bowcutt indicated that CourTools has been a valuable service that provides each TCE with information to review how their districts are performing. Mr. Bowcutt reported that case flow management has also been emphasized with additional training during the past year. Imaging is another area the TCE's have been working on. Imaged records are protected from destruction, easy to receive, provide record portability, requests for records can be handled more efficiently, provides a greater quality of record, easier to store, and the records retention is automated.

Judge Davis thanked the TCE's for the valuable work they are providing throughout the state. Mr. Becker recognized John Day who is retiring in April after 34 years of service to the courts.

6. LEGISLATIVE/BUDGET UPDATE: (Daniel J. Becker, Myron K. March, Richard Schwermer, Brent Johnson, Fred Jayne)

Mr. Becker indicated that this has been a very good year for the courts budget. Almost every request made by the Judicial Council was addressed in whole or in part by the legislature. Overall, the courts budget increased from \$120,840,400 for FY 2007 to approximately \$131,146,000. This represents approximately an 8.5% increase. Mr. Becker reported on the following increases:

Salaries and Benefits \$5,806,900

Judicial Salaries: The new salary for District and Juvenile Court judges will be \$125,850, effective July 1, 2007. This represents a 10% increase. The contribution to judicial retirement was increased by \$321,000. The compensation for eligible presiding judges and associate presiding judges will increase from \$1,000 to \$2,000.

Employee Salaries: A 3.5% cost of living adjustment for all court staff is effective July 1, 2007. An additional 1.5% in discretionary increases was also provided. The discretionary increases will be converted to 2.75% step increase for better than half of all employees. Mr. Becker and Mr. March have been considering ways to offer most employees this increase. A more detailed proposal will be provided to the Council in April when the budget will be considered.

Law Clerks \$243,900

Funding for three additional law clerks has been provided. The allocation of these positions will be determined by the Board of District Court Judges. Mr. Becker indicated that there will be funds to provide up to three additional law clerks with some permanent and one time funding available. The Council will also discuss this proposal in April.

Juvenile Court Judge \$192,800

An additional Juvenile Court Judge position has been established for the Third District

Juvenile Court, effective, July 1, 2007.

Leases and Contracts \$328,900

The courts contract and lease budget has been increased by \$328,900 in FY 2008 and by an additional \$373,200 in FY 2009 which will help restore the fund. These funds will be directed to lease, security contracts, and operations and maintenance increases in courthouses across the state.

Guardian ad Litem Office \$890,000

This funding will be used to add seven additional attorneys and several support staff to the Office of the Guardian ad Litem. The program director will decide where the additional staffing will be allocated.

Case Management Coordinators \$145,500

This funds a two year pilot program in the 3rd District Court and the 3rd Juvenile Court to experiment with the use of case management coordinator positions. The legislation establishing this pilot project requires an evaluation and reporting to the Judiciary Interim Committee.

Mr. Becker indicated that one time funding in the amount of \$350,000 has been received for data processing equipment and software, a \$500,000 increase was provided for bailiff funding, and the court security officer has been funded with \$86,400. A fee increase in the ADR Restricted Fund will provide funding for two additional child welfare mediators with \$140,000. Funds were provided for the design and building of the new St. George Courthouse, Mr. Bissegger will report on facilities in more detail later in the meeting.

Other

The following funding was provided above what was requested by the Judicial Council:

- Drug Court Funding \$260,000

Drug Court funds were increased by \$1,000,000 on-going as well as \$1,000,000 one time. Of this amount, \$130,000 in on-going and \$130,000 in one time funds is provided directly to the courts. The remaining is for testing, case management, and treatment costs and will be awarded through an existing grant process administered by the Department of Human Services.

- Drug Offender Reform Act (DORA) \$50,000

The DORA program has been funded at \$8,000,000 and will extend state-wide the program operating in the Third District Court on a pilot basis.

- Juvenile Mental Health Court \$75,000

Fund to establish a Mental Health Court for the First District Juvenile Court were provided.

- Fiscal Note Funding \$181,500 on-going \$11,300 one time

Seven pieces of legislation containing fiscal notes for the courts passed. The Judicial Council will consider how best to allocate these funds.

Third District Court Commissioner

Last year the legislature passed intent language allowing the Judicial Council to create a court commissioner for the 3rd District with existing funds. The Council used fiscal note funding to fund half of the position for District Court and grant funding was used to fund the other half for the Juvenile Court. With the funding for a new Juvenile Court Judge, this position will now be full time in the Third District Court. The Judicial Council has set aside sufficient on-going funds for this conversion, effective July 1, 2007.

The actual operating budget for the courts for FY 2008 will be established by the Judicial Council at the April 23rd meeting. The Council will rely on funds projected to be carried forward from the current fiscal year, projected turnover savings, grant funding, and fiscal note funding to set a spending plan for the coming fiscal year. This will include consideration of any item requested of the legislature, but not funded, which this year was only the self-represented pilot project, and items partially funded.

Legislative Update

Mr. Schwermer and Mr. Johnson provided a summary of the bills that passed. These bills will also be reviewed in detail at the legislative update that will be on Friday, March 30th.

- HB 51 - Adoption amendments
- HB 85 - Sentence reduction clarification
- HB 128- Establishes a Divorce Education program
- HB 202 - Court or DCFS may not remove children from parents for sole purpose of not following a medical recommendation for child
- HB 206 - County jail work release process amendments
- HB 207 - School truancy
- HB 231 - Controlled substances penalty amendments
- HB 216 - Secondary employment bill
- HB 262 - Search warrant language
- HB263 - Jail expenses amendment creates restitution automatically
- HB 438 - Jail contracting and jail compensation amendments
- SB 4 - DUI Bill
- SB 35 - Child Abduction
- SB 50 - DORA funding
- SB 114 - Aggravated murder amendments
- SB 136 - Unlawful detainer bill requiring no exhibited measures
- SB 151 - Case management pilot program
- SB 196 - Establishes some state employee salaries tied to district judges salaries
- SB 224 - Court's housekeeping bill, increases amount pj's receive, removes increased amount of children legal defense fund and increase civil filings to allow for additional child welfare mediators
- SB 221 - Judicial Selection procedures and retention election task force

The Judicial Council agreed that Chief Justice Durham should have the discretion to work with senate and house leadership to determine what Council or previous Council members should serve on the judicial selection task force.

Mr. Becker thanked Mr. Schwermer, Mr. Johnson, Mr. March and all those who worked to make this legislative session so successful for the courts.

7. LEGISLATIVE FACILITY ACTION: (Daniel J. Becker, Gordon Bissegger)

Mr. Bissegger reviewed the challenges the courts faced in obtaining support for the St. George courthouse. The money becomes available for the new project on July 1st, 2007 . The architect and builder will be selected in the next months and demolition and construction will then begin in December. The site of the new courthouse will be on Tabernacle street and 150 west.

Finding land available for the juvenile courthouse in Ogden has also been difficult. The court had planned on purchasing land from the LDS church until they decided not to sell the property under consideration shortly before a request for funding the project was presented to the legislature.

The Sanpete County Courthouse will face a bond election in November. The County Commission has been very supportive of the new building, and are working on gaining greater community support for the project.

Mr. Bissegger indicated that the Spanish Fork building construction costs have increased. The budget was recently reviewed with Spanish Fork City to discuss the additional needs.

The Tooele Courthouse is finished and opened March 1st. The dedication ceremony will be held in conjunction with the next Judicial Council meeting on Monday, April 23rd.

Mr. Becker thanked Mr. Bissegger for his wonderful work and his involvement in building every new courthouse in the state. Utah is one of the few states where the court facilities are state owned. Mr. Becker indicated that Gordon's effectiveness has been remarkable and his credibility with the legislature has been outstanding.

8. PRESIDING JUDGE RULE CHANGE: (Rick Schwermer)

Mr. Schwermer indicated that the Management Committee reviewed three draft presiding judge rules that covered the pj proposed rule, the district court suggestions, and a combination of the two.

The combination rule that the Management Committee approved includes the following substantive changes:

- The bench can remove the presiding judge by a 2/3's vote
- Presiding judges have judicial immunity when acting in the role of pj

- Presiding judges, or the majority of judges, can call additional meetings for the bench
- When conducting an evaluation of the TCE, the perspective of the pj, court administrator, and all judges in the district will be considered
- When dealing with challenging judges, presiding judge's can request the Judicial Council's assistance. The original proposed language dealing with challenging judges also remains in the pj rule.

Chief Justice Durham indicated that the Council has taken suggestions from the District, Juvenile, and presiding judges and hopes each group has felt they have been heard.

Motion: Judge Stott motioned to approve the proposed presiding judge rule to go out for public comment, Judge Barrett seconded motion, the motion passed unanimously.

9. JURY TRAINING REQUEST: (Daniel J. Becker)

Mr. Becker indicated that during the last Management meeting, Larry Weiss and other members from the American Board of Trial Advocacy presented information on a conference they had recently attended regarding juries. ABOTA would like to replicate this program for Utah judges and attorney's. The speakers from the national program would be able to attend and the training would be held next winter.

ABOTA requested that the Council or AOC co-sponsor the event in order to gain broader support and participation from the judiciary. The only cost to the courts would be to cover the expenditures of judges traveling to Salt Lake from other areas in the state.

Motion: Judge Hilder motioned to approve that the AOC co-sponsor the jury program, Judge Barrett seconded the motion. The motion passed unanimously.

10. CERTIFICATION OF SENIOR JUDGE:(Daniel J. Becker)

Judge Richard Carr has re-applied to be an active senior justice court judge who serves in Hildale until they are able to appoint a permanent judge. Judge Carr meets all of the qualifications for certification and appointment.

Motion: Judge Stott motioned to approve Judge Carr as an active senior justice court judge for one year. Judge Nelson seconded the motion, the motion passed unanimously.

11. ADJOURN

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