

Judicial Council Meeting Minutes

MINUTES JUDICIAL COUNCIL MEETING

January 22, 2001
Matheson Courthouse, Council Room
Salt Lake City, Utah

Judge Russell Bench, Presiding

Members Present:

Hon. Lyle Anderson
Hon. Russell Bench
Hon. Lynn Davis
Hon. Lee Dever
Hon. Ben Hadfield
Hon. Ronald Hare
Hon. Jerry Jensen
Hon. Scott Johansen
Debra Moore, esq.
Hon. Anne M. Stirba
Hon. Clair Poulson
Hon. Andrew Valdez
Hon. Michael Wilkins

Staff Present:

Daniel J. Becker
Myron K. March
Ray Wahl
Richard Schwermer
D. Mark Jones
Tim Shea
Matty Branch
Peggy Gentles
Jan Thompson
Diane Cowdrey
Kim Allard
AnNicole J. Faeth

Excused:

Chief Justice Richard C. Howe

Guests:

Hon. Christine Durham
Hon. Larry Steele
Stephen Hunt, *Salt Lake Tribune*
Joe Bauman, *Deseret News*
Marie Titze, *Deseret News*

Welcome and Approval of Minutes:

Judge Bench welcomed all Council members and staff to the meeting. Chief Justice Howe was excused from the meeting due to his attendance of the Conference of Chief Justices. The minutes of the Council's December meeting were then discussed.

Motion:

Justice Wilkins made a motion to approve the minutes of the Council's December meeting. The motion was seconded and carried unanimously.

Administrator's Report:

Daniel Becker reported on the following items:

- Chief Justice Howe delivered the State of the Judiciary Address last Tuesday, January 16, 2001, to the House and the Senate.
- The Appropriations Sub-Committee has begun meeting, with meetings scheduled Monday's, Wednesday's, and Friday's during the session. At this point, the Sub-Committee has not received a dollar amount from Executive Appropriations in funding available for programs.
- The courts' budget will be taken up by the legislature on January 29, 2001. A hearing will be held February 2, 2001 in which the General Government and Capitol Facilities Appropriations Sub-Committee will consider funding the construction of a new Cache County Courthouse and the funding of a Sandy land purchase.
- The Judiciary's Annual Report has been printed and distributed. This year, the report was formatted in such a way that questions were posed that the public might be interested in, and then answers were provided which

supplied information about the courts. The report focused on allowing the public to know what is going on locally as well as statewide. The summary report format instituted several years ago appears to be well received.

- The American Bar Association has created a series called "Road Maps" which evaluates a number of topics related to the administration of justice. The latest topic was on racial and ethnic bias. Three states (Georgia, Oregon, and Utah) were highlighted as excellent models of courts actively addressing bias.
- Judge Claudia Laycock, the new judge in the Fourth District Court, was sworn in January 2, 2001 in Provo. Thomas Higbee is expected to be confirmed by the senate January 23, 2001. The Nominating Commission will meet January 29, 2001 to review applications and February 9, 2001 to conduct interviews for the judicial vacancy in the Third District Court resulting from Judge Homer Wilkinson's retirement.

Reports:

Liaison Committee: Judge Dever reported that the Committee discussed approximately fourteen bills in their last meeting, including House Bill 60 which will allow a justice court judge to be paid 95% of a district court judge's salary rather than the current rate of 72%. Proposed restitution amendments were discussed in which civil prejudgment of attachment of properties belonging to criminal defendants prior to their conviction will be adopted, and several child welfare bills and juvenile court bills. The committee also discussed a bill currently being introduced which will provide (upon the AOC negotiating with counties) the payment of bailiffs for contract services with the local sheriff's department for courts of record. This bill will be a great benefit for juvenile courts currently lacking security services. Judge Dever noted that council members interested in receiving an email of the bills reviewed by the Committee can be added to the list by contacting Mark Jones or Rick Schwermer.

Management Committee: Judge Bench reported that the Management Committee has discussed salary selective increases for employees. The increases would equalize pay for a number of positions with the executive branch as well as implement the results of a market analysis for position unique to the courts. This year, the courts are in line for salary selective market adjustments in addition to merit increases, pending approval by the legislature. All other items discussed by the Management Committee are on the Council's agenda.

Policy and Planning: Judge Johansen reported that Policy and Planning has looked at a number of rules which are on the Council's consent calendar. The Committee is also evaluating executive committee rules and attempting to determine if changes need to be made. Policy and Planning's next meeting will be held on February 9, 2001. The Committee is eager to finalize the aforementioned issues, therefore, input from Council members and staff is welcome.

Bar Commission: Debra Moore reported that there has not been a meeting of the Bar Commission since the Council's December meeting. Ms. Moore also reported that the Executive Committee will be meeting Friday, January 26 to implement the Supreme Court order on bar governance.

Public Outreach Committee Report:

Justice Christine Durham reported that the Public Outreach Committee has been focused on the general public trust and confidence movement as well as issues raised in the recently released Task Force on Racial and Ethnic Fairness final report. There has also been an increasing interest by the Public Outreach Committee in collaborating with the Education Committee to use the results of the Task Force report to create training and increase public trust and confidence. It was decided by the Committee to focus on pilot projects, with rural representation increasing as the programs spread beyond the Wasatch Front. Justice Durham mentioned that she's been involved in a project called the Education for Justice Project in which the court's services were offered to the State Department of Education. This project, proposes a statewide overhaul of the civics curriculum for the seventh through the twelfth grades, with particular emphasis on the role of the courts. The project is attempting to form a partnership between local courts and local schools by having representatives of the justice system go into the schools and teach about the administration of justice, problem solving, alternative dispute resolution, and so forth.

Diane Cowdrey also reported on behalf of the Public Outreach Committee. Dr. Cowdrey remarked that Community Court Forums are being organized in which the justice system communicates with the public through public education of various topics. The Committee saw the importance of continuing a dialogue with groups that were contacted by the Task Force, and hearing those groups' issues and the problems in their communities. The Education Committee has approved education credit for participation in the forums. The Committee is also looking at other agencies to determine if additional collaboration is possible.

It was suggested that it would be helpful if some type of guidebook with resources and materials were made available to the rural districts who may not initially have the programs of the Education for Justice Project available to them, and that education programs for adults also be considered.

Report on Judicial Performance Evaluation Program Presentation to Boards of Judges:

Peggy Gentles reported that the Council asked that each Board of Judges hear a presentation on the conceptual decisions the Council made concerning the Judicial Performance Evaluation program. The presentation was made to the boards of judges as well as to the executive committees of the Council. The comments received in reaction to the presentation focused on the areas of presumptive certification, elimination of the general retention question, and changing the role of the presiding judge. In regards to the topic of presumptive certification decisions, some board members expressed the need for a clear process to be followed in making certification decisions. The elimination of general retention question raised comments in favor of general retention or offering suggestions concerning the question. In relation to changing the role of the presiding judge, some board members expressed concerns about potential difficulties in a presiding judge addressing performance issues with a peer. The Standing Committee on Judicial Performance Evaluation is working to operationalize the decisions of the Council to facilitate implementation after the plan goes out for comment in March. The presentation will be shared with the Juvenile and District Judges at the spring conferences in April and May.

Juror Names and Addresses:

Tim Shea provided a draft rule as requested by the Council in their December meeting. The following is a summary of the draft rule.

- The rule classifies as private records prospective jurors' names, addresses and telephone numbers, which the courts currently collect, plus email addresses and other information, which the courts currently do not collect but might prove more effective in the future. A later provision reclassifies the names of jurors as public at the close of a trial.
- Permits the judge to release the jurors' records to parties or counsel. The Government Records Access and Management Act (GRAMA) permits the court to order disclosure of any private record under specified circumstances.
- Classifies the names of the jurors who tried the case as a public record unless a juror requests his or her name be classified as private. Permits the judge to delay release for up to ten days in the interest of justice (see motion below).

The purpose of the ten day delay in the release of information is to allow jurors to get their lives back in order before answering questions related to the trial, and to recognize the burden placed upon citizens who serve.

Motion:

Justice Wilkins made a motion to adopt the proposed rule with one change, which will change line 23 from saying "the judge may delay the release of the names for up to **10 days** after discharge of the jurors." to saying " the judge may delay the release of the names for up to **5 business days** after discharge of the jurors." The motion was seconded and carried with three opposed.

The rule will now proceed forward for public comment.

Motion:

Justice Wilkins made a motion to ask the Committee on Improving Jury Service consider how to implement the rule, how the rule will be communicated with the bench, jurors, and potential jurors. The motion was seconded and carried unanimously.

Drug Court Funding:

Daniel Becker reported that this issue is being brought before the Council in order to anticipate options and prepare a plan of what the courts will do if the legislature grants drug court funding this year. Last year, the legislature passed legislation which identified drug court funds originating from the tobacco settlement funds and how to divide those drug court funds. It was determined by the legislature that a percentage of the funds would be directed to the Department of Human Services, and that thirteen percent of what they receive would be directed to the courts in order to support the operation of drug courts. Last year clerical positions and a Probation Officer position were established with the drug court money the courts received. This year the Governor has recommended 3 million dollars to the Department of Human Services in new money for testing, treatment, and case management. If the funding is approved by the legislature, Courts would receive approximately \$448,000 for judicial and clerical resources for drug courts.

Mr. Becker reported that the Management Committee discussed how the drug court funds could be applied. The prospect of not applying all of the money to clerical positions, but using part of the money to fund a judicial position was raised. In August, as part of the Budget and Planning session the Board of Juvenile Court Judges

requested a new judge for the Third District Juvenile Court and a new commissioner. At that time, the Council took the request under advisement and agreed to consider the request based upon funds that may be freed in the future. Based on this request and the fact that the Third District Juvenile Court is generating three dependency drug courts and two delinquency drug courts, it was recommended that staff be authorized to seek the creation of a Third Juvenile Court judgeship should the proposed funding be approved.

Motion:

Judge Johansen made a motion stating that the Council will authorize the Administrative Office of the Courts to have a bill prepared requesting a judge in the Third District Juvenile court, if the opportunity arises for drug court funding. The motion was seconded and carried unanimously.

Report from Board of Juvenile Court Judges:

Judge Larry Steele reported on the status of the Board of Juvenile Court Judges to the Council. Judge Steele shared with the Council a story of a case he had heard regarding a child charged with arson. The case was handled in such a careful manner that the five year old boy never new he had been cross examined or that he had spoken with a judge. Judge Steele reported on the success of child welfare mediation, as well as victim offender and juvenile mediation programs. Judge Steele asserted that mediation programs are experiencing an amazing success rate, a rate that has tripled in the last year.

Judge Steele then reported on the following items:

- Drug Courts are very popular and effective, and were even mentioned in the Governors State of the State Address. There are currently five child welfare/dependency drug courts and delinquency drug courts in juvenile courts throughout the state. Delinquency drug courts are in place in the Second, Third, Fourth, and Seventh District Juvenile courts.
- The new juvenile computer system will be implemented incrementally, with the first phase going on line in February, the second phase going on line in late March, and security, personal calendars, and email messaging going on line later in the spring. Judge Steele expressed that the new system will be a great advancement compared to the program the juvenile courts have been using to this point which was developed in 1979.
- The new Eighth District Courthouse is scheduled to be completed in September of this year.

Judge Steele also shared a list of priorities provided by the Board with the Council in response to a request issued by the Council in November. The Council had asked for a list of priorities from each Board to guide in their decision making process when determining how potential resources freed by the formation of justice courts could be utilized. The list is as follows:

- Additional Judicial Resources
- Security for the Juvenile Court
- Funding Parent Defense Counsel: suggest a statewide plan for problem solving attorneys to represent parents.
- Innovative Approaches/Quality of Justices
- Clerical Pay

OCAP Presentation:

Kim Allard reported that the Online Court Assistance Program (OCAP) may be viewed as a reincarnation of the quick court program which was implemented in 1995 to help pro se litigants. OCAP was released November of 2000, and thus far, there has been much coverage of the program by the media. One useful feature of the program is its ability to store all user information in a data base, in either landlord/tenant and/or divorce cases. When evaluating the information, the focus is on people who completed the entire program. The first reports show that there have been 226 completed divorces, 37 claimed to be impecunious, 83 people declared property, 115 of the divorces had children, 69 claimed real property, and 15 had pensions. There were 79 landlord/tenant cases, of which 69 were landlords and 10 were tenants. Filings for divorce and landlord/tenant cases came from counties

throughout the state. Ms. Allard also mentioned that presently, the fee for OCAP filing is \$20, while the fee for paper forms is \$10. The Policy Board is considering increasing the paper forms to \$20.

Legislative Update:

Richard Schwermer and Mark Jones reported the following items:

- House Bill 82, the court security bill, requests 1.8 million for bailiff services in the courts, and is trying to move juvenile security from a county function to a state function.
- If the legislature bonds this year, the Sandy land purchase and facility issues may be included.
- In regards to the Provo parking issue, two years ago the land adjacent to the Provo courthouse was secured for future expansion. The land was then paved and people parked on the lot free of charge. People are now being charged to park in the lot, and many groups who visit the facility often are saying that requiring payment is restricting public access to the court facility. The court is trying to reach a resolution. There will be a meeting Wednesday, January 24 with city and county leaders.
- Senate Bill 13 which was advanced by Senator Terry R. Spencer has already passed the Senate and is in committee in the House. The Bill discussed the legislature's role vs. the court's role. It is the position of the courts to not voice an opinion about the bill unless the supreme court raises objections to the bill.
- Justice Michael Wilkins will serve on both Policy and Planning and the Liaison Committee during the legislative session.
- Ogden City has been inquiring about caseloads, process, and so forth and seems to be gaining a stronger directive to apply for the formation of a justice court by July 1, 2001. Also, the West Valley justice court bill went to the House floor Friday, January 19.

Inclusion of Rockville in Springdale/Hurricane Justice Court Jurisdiction:

Richard Schwermer reported that the Hurricane court was the original court in the region to obtain a charter. The Hurricane court then wanted to add Springdale to their jurisdiction, at which time they applied for the creation of a new court. The Hurricane/Springdale justice court now wants to add Rockville to their jurisdiction, and they are asking the Council to approve an amendment of the Hurricane/Springdale courts' charter to add Rockville in their jurisdiction in order to avoid formally applying to be a new court.

Motion:

Judge Poulson made a motion to approve the request via the interlocal agreement. The motion was seconded, and defeated with four for approval and seven opposed.

Motion:

Judge Jensen made a motion to inform the Hurricane/Springdale justice court that they need to follow normal procedure. The motion was seconded and carried unanimously.

Justice Court Judges Application and Certification:

Motion:

Judge Bench made a motion to approve the certification of justice court judges Lynn Henry Stevens and Richard Ted London. The motion was seconded and carried unanimously.

Motion:

A motion was made to go into executive session. The motion was seconded and carried unanimously.

Motion:

A motion was made to come out of executive session. The motion was seconded and carried unanimously.

Other Business:

Judge Dever mentioned that the Third District judges met last week and the issue of 5% health insurance premiums paid by judges was raised. The judges would like the Council to reconsider the issue. The issue is to be

placed on the Council's next agenda.

Motion:

A motion was made to adjourn. The motion was seconded and carried unanimously.