

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Tuesday, January 14, 2003

Council Room, Matheson Courthouse  
450 South State Street  
Salt Lake City, Utah

Chief Justice Christine M. Durham, Presiding

#### **MEMBERS PRESENT:**

Chief Justice Christine M. Durham  
Justice Matthew Durrant  
Hon. James Davis  
Hon. Ben Hadfield  
Hon. Jerald Jensen  
Hon. Clair Poulson  
Hon. Lee Dever  
Hon. Robert Hilder  
Hon. Andrew Valdez  
Hon. Gary Stott  
Hon. Ronald Hare  
Hon. K.L. McIff  
Hon. Scott Johansen  
C. Dane Nolan

#### **STAFF PRESENT:**

Daniel J. Becker  
Myron K. March  
Richard Schwermer  
D. Mark Jones  
Ray Wahl  
Matty Branch  
Tim Shea  
AnNicole Faeth

#### **GUESTS PRESENT:**

Hon. Michael Allphin, *Chair, Board of District Court Judges*  
Jerry Howe, *Office of Legislative Research and General Counsel*  
Dave Walsh, *Governor's Office*  
Elizabeth Neff, *Salt Lake Tribune*

#### • **WELCOME & APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)**

All in attendance were welcomed to the meeting. The minutes of the Council's December meeting were discussed. A few minor changes were mentioned. The following motion was then made.

**Motion:** A motion was made to approve the minutes. The motion was seconded and carried unanimously.

#### • **CHAIR'S REPORT: (Chief Justice Christine M. Durham)**

Chief Justice Durham reported that meetings with legislators in the Second, Third, and Fourth Districts are scheduled to take place the week of January 13<sup>th</sup>. It was also mentioned that a retirement reception for Justice Richard Howe will take place January 15<sup>th</sup>.

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

Daniel J. Becker reported the following items:

- A meeting of Presiding Judges and Court Executives was held December 30<sup>th</sup>, to review budget reduction options in response to the legislature's actions during the Special Session.
- The application process to fill the judicial vacancy in the Fifth District Court closed January 10<sup>th</sup>.
- Judge Roger Livingston has announced his retirement, effective the end of February or March. This judicial vacancy will be transferred from the Third District Court to the Fifth District Court.
- Judge S. Mark Johnson has withdrawn his request to be re-certified as a senior judge.
- The State of the Judiciary Address will take place Tuesday, January 21<sup>st</sup> at 2:00 p.m.

#### • **REPORTS:**

#### **Management Committee: (Chief Justice Christine M. Durham)**

Chief Justice Durham reported that she had nothing to report in addition to what is included in the Management Committee's minutes.

### **Policy and Planning: (Hon. Lee Dever)**

Judge Dever reported that the Policy and Planning Committee discussed a change to rule 4-608. Also, additional discussions took place concerning the Council's request that the 1996 court reporting rule changes be reviewed. Chief Justice Durham suggested that, in the future, the committee could also report on long-term issues they are dealing with.

### **Liaison Committee: (Hon. Jerald Jensen)**

Judge Jensen reported that the Liaison Committee drafted a position paper showing the Council's support of justice courts. The paper has received the support of the Board of Justice Court Judges. After discussion took place, the following motion was made.

**Motion:** Judge Hadfield made a motion to adopt the position paper in support of justice courts. The motion was seconded and carried unanimously.

Judge Jensen then reported that the committee is tracking several issues, including a bill concerning access to child welfare proceedings, retention elections for justice court judges, and HB 238 which deals with the withdrawal of plea provisions in Rule 11 of the Utah Rules of Criminal Procedure.

Discussion took place regarding HB 238. The following motion was then made.

**Motion:** Judge Johansen made a motion to take the position with the Attorney General's Office that this should be a rule change not statutory change, and that the Council would invite discussions by the AG's Office concerning this issue. Judge Hilder seconded the motion. The motion carried unanimously.

Discussions then took place concerning access to child welfare proceedings. It was reported that a subcommittee of the Council's Standing Committee on Children and Family Law supports the bill which would open proceedings, and it was noted that the Supreme Court would need to implement rule changes if the bill passed. It was mentioned that the Board of Juvenile Judges opposes the bill, and would prefer a presumed closed system.

**Motion:** Judge Johansen made a motion to have two pilots implemented, one with presumed open proceedings and one with presumed closed proceedings. It was also moved that if the presumption was not changed to a closed system, the bill would sunset the end of 2003, absent any further action. Judge Valdez seconded the motion. The motion carried with one opposed.

The Council then discussed a bill regarding mandatory sanctions for parents who deny visitation. It was reported that the results of a pilot, which was conducted in 1992, indicated that these mandatory sanctions did not work. The issue is being reintroduced, however. The Liaison Committee raised a number of concerns with the bill, and recommended that the Council take no position at this time, but that their concerns be raised with the bill's sponsor.

**Motion:** Judge Jensen made a motion that the Council take no position on the aforementioned bill at this time, but that the Council's concerns be raised with the bill's sponsor. Judge Stott seconded the motion. The motion carried unanimously.

### **Bar Commission: (C. Dane Nolan)**

Dane Nolan reported that the Bar has not met since the Council's last meeting. Mr. Nolan then mentioned that if there are issues the Bar should be made aware of in anticipation of the Legislative Session, Council members may notify him.

#### **• REPORT: BOARD OF DISTRICT COURT JUDGES: (Hon. Michael Allphin, D. Mark Jones)**

Judge Michael Allphin, chair of the Board of District Court Judges, reported that the Board has appreciated the interaction of Council members who have provided reports in their monthly meetings. Judge Allphin asked that the Council keep the Board aware of issues. It was mentioned that the District Board would recommend that when the Council considers budget reductions, they do not make across the board cuts to all the districts, but that reductions be made where they can best be absorbed. Judge Allphin noted that, if money were to become available, the Board would resubmit their request for additional law clerks.

Judge Allphin suggested that individuals who are going through the confirmation process should receive support of some sort, possibly from the Governor's Office. The Council supported the notion of assistance to judicial nominees going through the confirmation process, and agreed that this assistance would best be provided by the Governor's Office. Discussion then took place concerning informing legislators and judicial nominees about judicial canons which apply to nominees. Jerry Howe, of the Office of Legislative Research and General Counsel, expressed support of the notion of providing information to legislators about judicial canons that apply to nominees.

In closing, Judge Allphin expressed appreciation to Mark Jones, staff to the District Board, for his efforts.

- **JUSTICE COURT CERTIFICATION: (Richard Schwermer)**

Richard Schwermer reported that the Standing Committee on Justice Court Standards recommends that all applicants before the Council for certification, be re-certified for a term of four years, effective February 3, 2003.

**Motion:** Judge Stott made a motion to accept the aforementioned recommendations. Dane Nolan seconded the motion. The motion carried unanimously. Judges Hare, Jensen, and Poulson abstained from the vote as it pertained to their own court.

- **BUDGET DISCUSSION: (Daniel J. Becker)**

Daniel J. Becker reported that the legislative session will begin January 20<sup>th</sup>. Mr. Becker discussed the make-up of the court's budget, reductions that have already taken place within the last year, the court's response to those reductions, and reductions that will be taken in FY '03 and potentially in FY '04. It was reported that the Governor vetoed actions taken by the legislature in the special session regarding reductions in the court's budget.

Daniel Becker reviewed with the Council the following options which could be considered if additional reductions in the Main Line Item in FY 2003 were made by the legislature:

- Use of carry forward funds from FY '02 (\$629,400)
- Hiring freeze implemented for remainder of fiscal year (\$680,000)
- Money generated from existing and anticipated judicial vacancies (\$97,900)
- Reduce contract sites by 4.2% (\$19,600)
- Cancel spring conferences and judicial out of state travel (\$63,050)
- Reduce current expense/work related travel (\$100,000)

Mr. Becker recommended that efforts be made to take as few personnel reductions as possible, and mentioned that a furlough could be considered in the current fiscal year in lieu of reductions in force.

The Council discussed the possibility of reducing the amount spent on the court level spring conferences and judicial out of state travel by \$23,050 leaving \$40,000 to be used for those purposes. The following motion was then made.

**Motion:** Judge Hadfield, made a motion to reduce education by \$23,050 this year, and that the remaining \$40,000 (including \$12,000 in out of state judicial travel) be used for the spring court level conferences. Judge McIff seconded the motion. The motion carried with one opposed.

The Council also asked that the Education Standing Committee present a plan at their next meeting for holding the spring conferences at this lower amount.

**Motion:** Judge Hadfield made a motion to approve the options for reducing the Main Line Item, if necessary, as outlined above. Judge Hilder seconded the motion. The motion carried unanimously.

Discussion then took place concerning the Council and Boards holding meetings in St. George in conjunction with the Mid-Year Bar Conference in March. The following motion was made.

**Motion:** Judge Johansen made a motion to hold the March Council and Board meetings in Salt Lake City. Judge Davis seconded the motion. The motion was defeated with 5 in favor 6 opposed.

The Council then discussed the possibility of Council and Board members using \$200 of the \$400 set aside for attending Bar meetings, to attend the Mid-Year Bar Conference. Dane Nolan also mentioned that he would look into the possibility of the Bar monitarily contributing to the attendance of the Council and Boards.

Discussion then took place concerning the possibility of implementing a furlough in the current fiscal year.

**Motion:** Judge Hilder made a motion to authorize the AOC to work with the Legislature using a furlough and a reduction in force as options to deal with reductions in the court's budget, if necessary. The motion was seconded and carried unanimously.

- **COMMENTS TO RULES: (Tim Shea)**

Tim Shea reported that the comment period for several Judicial Council rules has closed. The rules included the following:

- Rule 2-203. Forty-five day comment period.

- Rule 3-306. Court Interpreters.
- Rule 4-207. Expungement and sealing of records.
- Rule 4-405. Juror and witness fees and expenses.
- Rule 4-408. Locations of trial courts of record.
- Rule 9-102. Caseload report requirements.
- Rule 3-414. Court security.
- Rule 4-608. Trials de novo of justice court proceedings in criminal cases.
- Rule 4-903. Uniform custody evaluations.

**Motion:** Judge Johansen made a motion to continue the moratorium on an increase in the hourly rate for court interpreters by \$5.00, referred to in rule 3-306. The motion was seconded and carried.

**Motion:** Judge Johansen made a motion to approve the aforementioned rules. The motion was seconded and carried unanimously.

- **NOTIFICATION OF DISBARMENTS: (Daniel J. Becker)**

Daniel J. Becker reported that a request was received by the Bar to send notification of disbarments directly to judges by email. Mr. Becker mentioned that the courts rarely allow parties to have access to judges' email addresses. The Bar assures the courts that the addresses will not be used for any other purpose, and will not be shared with any other individuals or parties.

**Motion:** Judge Dever made a motion not to grant the Bar's request. The motion failed for lack of a second.

**Motion:** Judge Hadfield made a motion to grant the Bar's request, with the understanding that the email addresses will only be used for this purpose. Dane Nolan seconded the motion. The motion carried with one opposed.

- **ADJOURN:**

**Motion:** A motion was made to adjourn the meeting. The motion was seconded and carried unanimously.