

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MINUTES

Monday, January 25, 1999

Scott M. Matheson Courthouse
450 South State
Salt Lake City, Utah

Members Present:

Chief Justice Richard C. Howe
Hon. Leonard H. Russon
Hon. Russell W. Bench
Hon. Anthony Schofield
Hon. Robert Braithwaite
Hon. Michael K. Burton
Hon. Michael Glasmann
Hon. Scott Johansen
Hon. Kay A. Lindsay
Hon. John L. Sandberg
Hon. Anne M. Stirba
Hon. Stan Truman
Steven Kaufman

Staff Present:

Daniel J. Becker
Myron K. March
Marilyn Branch
D. Mark Jones
Richard H. Schwermer
Holly Bullen
Brent Johnson
Tim Shea
Ray Wahl
Jan Thompson
Peggy Gentles

Guests:

Hon. Lane Beattie, *President, Utah State Senate*
Hon. Guy Burningham
Hon. Michael D. Zimmerman
Hon. Paul Maughan
Hon. Larry A. Steele
Commissioner William Russell
Reed Richards, *Assistant Attorney General, Executive Division*
Karma Dixon, *Assistant Attorney General, Division Chief, Child Support Collections Division*
Dave Carlson, *Assistant Attorney General, Child Protection Division*

Welcome and Approval of Minutes

Chief Justice Howe opened the meeting by welcoming Judge Paul Maughan & Commissioner William Russell as guests in attendance.

Motion

Judge Kay Lindsay moved to approve the minutes of the December 18, 1998 meeting. The motion was seconded and carried unanimously. It was noted for the record that Steven Kaufman was in attendance at the December Council meeting.

Update on Board of District Court Judges' Meeting

Judge Guy Burningham presented his report of the Board of District Court Judges' meeting. He expressed gratitude for the raising of entry level clerks' salaries. The Board sees this as a positive move for new people that have been hired, and hopes this will be an incentive for personnel to remain longer with the courts. More clerks are needed and the Board appreciates the Council's position on this issue, and the Board is willing to provide whatever assistance they can.

The Board is pleased with the results of the In re: Young matter. The majority of trial court judges feel the Judicial Conduct Commission is the appropriate way to deal with complaints against the judiciary, and judicial members on the Commission expressed the feeling that the legislative members have been a positive part of this. It was also

felt that the legislative members have gained an appreciation of some of the problems and difficulties judges face. Special appreciation to Judge Schofield for his leadership in both this endeavor as well as others.

The Board is still interested in the Council's consideration of the Family Court issue. They have tried to coordinate a meeting where more information can be gained. Family court is something they want to see carefully studied, and they would like to be able to give input and recommendations as to what form a family court might take (i.e., a separate court with a foundation of the juvenile courts, or a division of the District Court). The Board currently seeks to obtain input from other states with various Family Court formats. The Board hopes to report back to the Council on this matter in a timely fashion after looking at available alternatives. Judge Burningham also thanked Dan Becker, Mark Jones, and other AOC staff members for their efforts.

Chief Justice Howe concluded by thanking Judge Burningham for his presentation, expressing his appreciation to the Board of District Court Judges for their interest on the issues on which they work together with the Council, particularly family court. He indicated that it is the Council's desire to work with the Board, since whatever is adopted by the Council must be administered by district and juvenile judges and must therefore be mutually acceptable.

Report from the Chief Justice

Chief Justice Howe reported on Supreme Court's recent decision in In re: Young. He began by saying that the Supreme Court does not often reverse itself on petitions for rehearing, although over the years there have been instances where this has occurred. Upon petition of the Judicial Conduct Commission and others, the Court revisited and re-examined the original opinion, and the majority decided it was necessary to review prior cases dealing with separation of powers through the Utah Constitution. The Court found that there has never been a "very high wall" between the branches of government in the state. Some functions are clearly judicial (i.e. sentencing a criminal defendant to prison, the imposition of a monetary judgment on an individual, or the interpretation of a statute or a constitution). However, other than those clear judicial functions, the Court could find little or no case law stating that judicial discipline is exclusively a judicial function. It is hoped that the issuance of this opinion clarifies the matter and that it can be put to rest.

State Court Administrator's Report

Dan Becker distributed copies of the 1999 State of the Judiciary address, as delivered by Chief Justice Howe to the Utah State Senate and the Utah House of Representatives at the opening of the legislative session. The address was very well received and focused on two programs, each highlighted with stories of specific individuals as they related to each program:

1) a drug court defendant; and 2) a victim in a juvenile proceeding wherein a victim/offender mediation session was held. Mr. Becker felt these stories showed the human side of what is happening in the courts. In addition, the Chief commented on the Racial and Ethnic Fairness study, the upcoming Family Court study, and he also informed the Legislature that the Court would soon reach and hand down its decision in In re: Young. Mr. Becker noted that it was not the Court's usual practice to speak to the timing of a decision, and he felt that such a step was an important one, in view of the important matters the Legislature was about to undertake.

The Annual Report was disseminated to the Council. In keeping with a request by the Legislature some years ago to agencies for brief summary reports, the courts prepared a more streamlined report, one which is more easily read and understood. Also included was a reference to the courts' webpage, where anyone interested can obtain more detailed information on any of the aforementioned programs, statistics, etc. This format also allows copies to be made available to a much broader audience, which results in the public learning more about court programs. Copies will be furnished to court executives and clerks of court for placement where they can be obtained by attorneys, jurors, and other visitors to the courthouses.

Mr. Becker noted that referenced on the Council's agenda was the first day of the hearings format re: Family Court, wherein others outside the judiciary were invited to voice their thoughts on the practice of family law, the problems they see and impressions how they believe a family court should look. Representatives from the Attorney General's office were invited to attend, as well as representatives from the CCJJ, the Governor's and Lt. Governor's office. The latter three have expressed their interest in meeting with the Council for a presentation at a future date.

In conclusion, Mr. Becker informed the Council of the departure of his and their assistant, Cindy Williamson, from the AOC to accept a position as case manager in the domestic violence court with Judge McCleve. He congratulated her on her new position, and thanked her for all her hard work and dedication to the AOC and the Council. Chief Justice Howe and the full Council voiced their appreciation and commended her on her service to the Council.

Visit from Utah State Senate President

Chief Justice Howe introduced Senate President Lane F. Beattie, who had asked for the opportunity to meet with the Council. The Chief Justice noted that President Beattie was supportive of the courts, noting that last year he sponsored the bill to add new judges in the Second and Third Districts. President Beattie expressed his

appreciation to the Council for the manner in which the In Re: Young matter was handled. From a personal standpoint, he was most impressed with the efforts by all concerned to seek answers to the questions posed by the Court's earlier opinion. He added that he felt the Legislature has come to learn much more about the judicial process "than any Legislature has known in a long, long time". He feels this issue has made the Legislature a better body, has given them a better awareness of the needs of the State, and has instilled in them a greater sensitivity toward the courts and what the Legislature is trying to protect. His thanks were expressed on behalf of himself and the Legislature, and concluded by saying he honors what judges do and what they need to know in serving the public.

Judicial Council Management Committee Report

Judge Schofield reported on the Management Committee's meeting. He began by informing the Council that the Management Committee will hold its meetings on Tuesdays instead of Wednesdays for the remainder of the year. Copies of the revised list will be distributed to both the Judicial Council and Management Committee members.

A limited audit was prepared concerning the issue of court reporters' transcript fees. This was done because the level of revenue anticipated from court reporter changes had not yet been realized. The audit committee examined this carefully and has resolved to ensure that the procedures and rules adopted in this area are appropriately followed, and the recommendations of the audit implemented.

Judge Schofield also reported on the data warehouse. This is a program allowing information to be gathered, reported, and accessed by individual judges, court level administrators, and executives to see the types of cases being handled and whether they are being handled in a timely manner. This program is in the development stage and is nearly completed. It is similar to CORIS, and allows for judges to access information to monitor their work with regard to the timely disposition of cases. It has the potential to be very useful to judges and administrators.

Report on State, Federal, and Tribal Court

Justice Michael D. Zimmerman reported on the State, Federal, and Tribal Court Forum. This forum resulted from an initiative of the Conference of Chief Justices. The CCJ was asked to form a program wherein state and tribal courts could come together and discuss issues of jurisdiction, enforcement of orders from the others' courts, juvenile probation, state and tribal court histories, etc. During his term as Chief Justice, Justice Zimmerman held discussions with Third District Judge William Thorne and U.S. District Judge David Winder to develop this forum. Of six similar programs nationwide only three have been successful. Judge Thorne, the national evaluator of these programs, concluded that one cause of failure is the state courts' attempts to dominate the tribal courts. The key to the programs' success is mutual respect. After a slowdown in launching discussions due to the lawsuit in San Juan County regarding jury composition, a meeting was coordinated on January 7th. Justice Zimmerman listed the members of the extensive group, which consisted of members of the federal, state and tribal courts, and various law professors.

Justice Zimmerman pointed out that it takes a great deal of time to develop trust with the tribal courts, and because of this, the agreed upon objective is to select problems that appear simple to solve and use the successes achieved to develop mutual respect and the realization that the two courts can work together to resolve the more difficult problems, e.g., criminal histories.

Four meetings are scheduled for the coming year, and the tribal judges will be invited to attend the Judicial Conference in September. Seven topics will be addressed during the course of these meetings: Domestic violence protective order enforcement; jury issues (i.e., composition), information technology assistance and exchange of records; service of process; juvenile probation; interpreters (there is only 1 certified Navajo interpreter in the state); and, as mentioned earlier, invitations to attend judicial conferences. Subcommittees for each of these issues will be formed by Justice Zimmerman, Judge Thorne, Jim Zion, Solicitor for the Navajo Tribal Court, and Brent Johnson. Justice Russon asked if there was a language common to all tribes in Utah so that one interpreter could interpret in any of the courts. Justice Zimmerman said no, and continued by saying that each tribe has its own language group. The Navajos and Utes have many people who do not speak English.

Justice Zimmerman explained the financial needs for this undertaking. Because the tribes have so few resources, funding assistance has been necessary for tribal judges to attend the meetings. The National Indian Justice Center gave the group \$7500 to get the program underway. If it proves successful, particularly in the Basin and in 7th District, the judges in those areas may seek some additional monies from the Council. Judges Steele, Halliday and Anderson feel there are many areas where this program could benefit their courts.

Clarification was requested regarding tribes being "uncomfortable with criminal histories". It was explained that the reason may be suspicion on the part of tribal courts. Anything their justice system undertakes must be authorized by the Tribal Council. The sentiment is that tribe members are dealt with unduly harshly by the Anglo justice system and that if prior histories are furnished, the problem will be aggravated. This is one of the more serious problems which must be addressed in the future.

Judge Bench asked about ongoing funding, and how the successful programs are being funded. They started in the same manner; however, the problem goes back to the fact that tribes have a major lack of resources and funds. However, the estimated cost to keep the program operative is \$10,000 per year. Ray Wahl made the Council aware of a letter from the U.S. Attorney's office regarding juvenile probation officer jurisdiction, and the follow up action taken.

Justice Zimmerman concluded that the development and implementation of this program is a big step forward in improving federal, state and tribal court relations.

Report on Court Information Line

Peggy Gentles reported on the first year's operation of the Court Information Line, which began as a pilot program with a goal of better service to the public, and something which could be implemented with the courts' limited means. Objectives were identified: 1) try to solve problems encountered by court users; 2) enhance customer service, satisfaction, and public perception of the courts while resolving problems early on and at the least formal level; and 3) identify recurring problems so systemic issues can be addressed.

Ms. Gentles noted the number of calls received within the first 11 months: 1402, which averaged out to 30 calls per week. However, there is a fair amount of fluctuation, which is due, in part, to the season (i.e. not many calls during holiday season). Calls have been tracked by a set of criteria: By entity/department; substantive area of law; and nature of call. After sharing the statistics (which have remained constant), Ms. Gentles was asked to explain the call process. She indicated that either she or another staff person will field incoming calls; the goal is to have someone available during business hours. Times were divided and a separate phone line was established for this project, including a toll-free number for callers outside S.L. county. If either person is unavailable, callers may leave a voice mail message and number in order to have their calls returned. Information was also requested as per cost involved. Ms. Gentles indicated the average cost monthly for phone service is about \$100. The information line does not require full-time staffing, and has therefore been made adjunct to a staff person's other responsibilities. Ms. Gentles was also asked about the percentage of calls that could be answered by non-law trained staff. She indicated that at least half of the calls could be answered by someone other than an attorney. More importantly, she said many calls could be answered by someone familiar with court rules, or who could direct callers to the appropriate staff/court person.

The Administrative Office was asked to provide information to the Council regarding the cost of service.

Chief Justice Howe said this project has helped the courts come a long way from the days when callers were simply referred to private attorneys.

Report on Juvenile Court Video

Ray Wahl reported on a proposed juvenile court video. He has taken this to the Board of Juvenile Justice, and it does not appear that they will fund the total amount of the video, but will reconsider this with the Executive Committee of the Commission on Criminal and Juvenile Justice. They will likely give a response in mid-February. He will either have to seek funding from other sources or perhaps seek approval for funding through the Juvenile Court budget. The Management Committee, after reviewing the issue, asked that it be put on the Council agenda. They support production of the video & suggested outside funding be sought.

The purpose of the video is for use at the 100th anniversary of the juvenile court, to be held in Chicago at the National Council of Family & Juvenile Court Judges. This Council will convene in Salt Lake City the next year and the video would be a big help in promoting the city at the anniversary conference. During the coming year Mr. Wahl indicates that the intention is to work with PTAs and other civic groups to have juvenile court judges & staff present the video and discuss factors that 1) may prevent a child from becoming involved with the juvenile system; and 2) how parents can help support juvenile court system.

Judge Lindsay expressed that this is a very good opportunity for juvenile judges to have contact with and educate both the community and parents. Judges could use this opportunity as a tool to increase awareness regarding options for helping children in cases of referral, or to educate youth on avoiding referral.

Concern was raised about how frequently the video would be used, in order to make the most of the money spent for production. Mr. Wahl acknowledged the need for a marketing strategy, and reiterated his plan to approach the PTAs and civic groups for their input. Mr. Wahl was asked if he will have sufficient time to complete the video. He assured the Council that this could be done, and will enlist Jan Thompson's assistance.

Report from Brent Johnson

Brent Johnson reported on the letter to Judge Frank Noel from attorneys representing the major media, addressing the practice and policy of sealing court records. The attorneys claim that there are inconsistent procedures for sealing court records, and that proper procedures are not being followed. Case law is cited and at the conclusion of the letter, General Counsel and the Judicial Council were asked to consider adoption of a rule for sealing court records. An example of such a rule from Texas was submitted. In reviewing the case law cited, it was found that

the procedures for closing a proceeding and closing a record were different, while the standards were the same. Mr. Johnson stated that since no rule is in place, one should be crafted to help judges, attorneys, and others to understand standards and procedures for closing records and proceedings. That further, his recommendation is that the attorneys' letter be formally referred to the Policy and Planning Committee for the purpose of crafting a rule for the Code of Judicial Administration.

Mr. Johnson was asked about a response to the letter. He felt it would be appropriate to say that the attorneys' concerns were well founded, to inform them that their letter would be referred to Policy and Planning, and that until a formal rule was crafted, approved and adopted, judges would rely on case law. It was also felt that the Texas rule would not fit Utah's needs. Judge Stirba felt that since the letter was addressed to Judge Noel, he should be allowed to respond. Dan Becker said he spoke with Judge Noel prior to placement of this item on the Council agenda. Judge Noel agreed that this situation was not unique to the 3rd District, that he would also look into the matter, and that he appreciated the matter being brought before the Council. Mr. Becker said he would inform Judge Noel of the Council's referral, and that together he and Judge Noel would prepare a response. A final concern was that this issue seems unique to the district courts, and it was unclear whether this would be an issue in the justice court. It was suggested that input from the Boards of District and Justice Courts would be helpful, as well as input from the Bar.

The motion was made that the letter be referred to the Policy and Planning Committee; motion was seconded and carried, and the letter will be referred accordingly.

Legislative Audit on Juvenile Justice

Ray Wahl reported on the juvenile justice audit, which was requested by the Juvenile Justice Task force and conducted by the Legislative Auditor. Draft was received December 22nd, and Mr. Wahl met with the auditors to discuss draft on December 31st. The auditors made some changes in the audit, and another meeting was held with the Auditor General and his staff on January 7th. Final draft of the audit was received on January 14th, and a response was required from our juvenile administrators by January 22nd. The 94-page report, which was prepared with the assistance of an outside consultant contracted by the Legislative Auditor, measured the juvenile justice system based on a document published by OJJDP (Office of Juvenile Justice Delinquency and Prevention), a federal agency within the Department of Justice.

The points agreed with are: 1) earlier intervention with juveniles in the system, as outlined in the original sentencing guidelines draft (not implemented due to budget constraints; 2) assessment after first contact a child has with juvenile court, to determine risk needs of that child; 3) comments concerning short and long-term objectives set out for program evaluation; and 4) the need for a more comprehensive group of graduated sanctions available to juveniles.

The points disagreed with are: 1) Legislative Auditor suggested that administration and delivery of all services for delinquent youth come from an executive branch of government. This means that the juvenile courts would be responsible for intake. However, probation and other services would be provided through some form of the executive branch, such as Youth Corrections. 2) The recommendation that Youth Corrections or another agency within the executive branch make all decisions regarding youth placement. There is no provision for this in the statute. 3) the report's "philosophical" approach outlined in the guide. The report suggests that there be even more youth placed on probation, rather than in more expensive community placement. It is felt that such a move would not be in keeping with the direction desired two years ago by the Governor, Juvenile Justice Task Force and the Legislature itself. 4) the statement that state supervision had not been properly implemented.

The audit will be presented to the Legislature's audit committee, then made available to the public. Dan Becker added that it is difficult to determine what will happen with regard to the audit and its use. The Juvenile Justice Task Force, the body initially requesting the audit, expired in November, well before they could have received and reviewed same. It is unlikely that the task force will be reinstated; however, it may be used in the context of the court's and corrections' budgets.

Mr. Wahl was asked why probation is viewed differently in the juvenile court than in adult court, where it is administered by the executive branch. Mr. Wahl stated that probation is not always under the executive branch; that in nearly half of the states, probation remains under the judiciary, and the same number applies to adult corrections. Mr. Wahl outlined the benefits for the philosophy of probation to remain under the court system are: more stability, better chances for the juvenile system's needs to be met, and the sentencing function.

Dan Becker stated that differences will always exist between the two branches of government regarding the issue of probation and the juvenile system, by virtue of the work performed. These differences could be seen in a positive light, and could be a contributing factor when considering the need for resources in this area. He concluded that this report contained really nothing new or different, that all of these issues have been discussed or addressed at some prior time.

Court Interpreter Payment Policy

Holly Bullen reported on the court interpreter payment policy on behalf of Judge Lynn Davis, who had a scheduling conflict. Holly reviewed with Judge Davis his remarks, and began by acknowledging that this rule and the policy has been before the Council several time. The reason for this presentation is that the profession of court interpretation is evolving into a new field. Because of this evolution, the policy requires periodic monitoring. There are valid and legitimate complaints and inequities which have been brought to the attention of the court interpreter advisory panel (appointed by the Council). The Council is asked to review and approve an amendment to the court's accounting policy, and a companion rule change.

Ms. Bullen explained the original fee structure. Certified interpreters (those who completed training and a stringent exam) were paid \$30/hr. Qualified interpreters (those receiving no training, no exam, simply answering the court's questions as to their background), were paid \$25/hr. No pay was given to those who did not fall under either category. The concern was the insufficient differential between the two levels. The panel passing the rule in 1996 noted on the rule that the Council should revisit this issue. The panel now proposes that pay for "certified" interpreters remain at the same rate, and that those who are "qualified" (in languages for which there is no certification program), remain at \$25/hr. Those interpreters in languages for which there is a certification program but who are not certified should be paid \$20/hr.

A proposal to pay minimum amounts to interpreters based on the distance they must travel is also before the Council. The prior policy provided reimbursement for mileage, but not their time. This is seen as a problem for those in rural areas. This proposal is based in part on a system used in New Mexico, wherein the further an interpreter must travel, the more of a minimum fee is guaranteed. Another problem to be addressed is that of an interpreter who travels to court for a case which has subsequently been canceled. The current system provides for one hour of reimbursement. The new proposal states that if a matter is canceled in 48 hours or less, and the interpreter is notified of the cancellation, he or she is guaranteed a fee of one hour's pay. However, if no notification is given and the interpreter makes the trip, their fee is guaranteed pursuant to the provisions in the rule. An addition to the rule makes firm the provision for minimum amount of pay beyond application of guaranteed fees on a given assignment, as is mileage, travel, and request for reimbursement.

The motion was made for approval of the changes to the court's accounting policy. The motion was seconded and carried unanimously.

Approval of New Certification of County Justice Courts

Richard Schwermer reported on the aforementioned approval. This year, justice courts are due for re-certification by the Judicial Council. This is part of the standards process, partially statutory and partially established by rule of the Council. The list of courts, along with the recommendation for and approval of certification was presented to the Council. Most of those on the list requested some type of waiver, also for the Council's approval.

Mr. Schwermer was asked if there was a reason some courts (3 of 50) request 2 clerks instead of 3, and if perhaps the rule or standard is too stringent. He explained that the number varies, and that the standards are a tool for justice court judges.

The motion for approval was made, with the 3 exceptions noted. The motion was seconded and carried unanimously.

Legislative Update

Justice Russon reported that the Liaison Committee is up to speed on all matters. He commended Richard Schwermer and D. Mark Jones on their remarkable work, and emphasized that they are very valuable to the courts system.

Mr. Schwermer noted that thus far in the legislative session, the attention has been focused on some 30 bills, the majority on which no formal position is taken. The bills on which the Liaison Committee has taken a position are as follows:

- HB5: Court Interviews of Children. This is a bill which was discussed last summer, and on which the committee worked with with the sponsor. It is in response to a private admonition a judge received for conducting a private, in-chambers interview with a child who was the subject of a custody dispute. The admonition was given because it was felt that this was an ex parte communication, which violates the Ex Parte Canon. The bill provides a legal exception to the Code of Judicial Conduct, stating that children may be interviewed on camera, so long as prior notice is given to the parties. Further, it specifically authorizes the judge to meet solely with the child.
- Minimum Age for Marriage Bill: This bill states that no marriages will be allowed for individuals 14 years of age. 15 year-olds may marry upon discussion of the conditions. The response from the Board of Juvenile Judges is that no one under the age of 16 should be allowed to marry. However, if such marriages are permitted, a standard (i.e. best interest of the child) should be set forth. The bill was amended to provide that 15 year-olds may marry only with permission of a juvenile judge, who shall

determine if the marriage is in the best interest of the child. If that determination is not made, permission is denied. There is much debate on this issue.

- Venue of Action Bill: Deals with sexual offenses against minors. A provision for venue would be the core of this bill, allowing an action to be brought not only where the offense occurred, but also where the victim and defendant reside, or where the act was discovered. In reviewing the bill, Tim Shea noted that there is a constitutional provision stating that in Utah, a defendant has a constitutional right to be tried for an offense in the county where the offense occurred. Mr. Schwermer and Mr. Jones brought this to the attention of those who initiated the bill, as well as the legislative counsel who drafted same. After those discussions, our liaisons will take a position opposing the bill on a constitutional basis.

- Private Property Ombudsman: This bill deals with private property disputes wherein a mediation arbitration partner is allowed. A portion of this bill would procedurally allow the mediator to stay an action in district court by simply filing a notice. This bill will be opposed as well.

Two of the Council's bills have now been numbered: SB105, the Juvenile Judge Bill, and the SB104, the Housekeeping Bill. The final bill, dealing with the appellate mediation program, was sent to legislative counsel at the same time as the other bills mentioned.

Dan Becker reported back to the Council on the Council's request that a meeting be held with President Beattie regarding service by legislators on the Conduct Commission. The meeting was held on Friday, January 22nd, with Judge Schofield participating, and it was very productive.

Mr. Becker also informed the Council as to the meetings of the Senate and the House, held the morning of the release of the In Re: Young opinion. He continued by reporting to the Council on budgetary matters. He outlined these matters as follows: There is about \$200 million in new monies, with only \$25 million being released by executive appropriations to go through building block requests. In a typical year, our committee alone would be sent more than \$25 million (there are 11 committees total). Rep. Bigelow made a motion that 1% be taken from the general fund of each agency and be set aside, to either be restored to that agency or re-distributed to other agencies. This motion was approved. The 1% amount for the courts equals \$830,000. Rep. Bigelow then made a second motion to take an additional 2%, only from the courts' budget. This motion also passed, which subsequently totaled \$2.7 million being taken from the courts' budget. The representative explained that it is "a good practice" for the committee to look at individual budgets in more detail, and select a budget each year to examine closely. Mr. Becker inquired if there was any specific reason for the selection of the courts' budget, and was told that the feeling of the constituents is that too much time is taken to get cases through the courts. Rep. Bigelow went on to say he has also heard that the courts "don't care much about customers". He added that this is a real opportunity for the courts to educate and inform the Legislature as to their efforts toward this end.

When the motion to make the \$2.7 million cut was passed, individual members were invited to ask questions. Typically, the process consists of an analyst presenting recommendations with respect to a given department. That department is then given advance notice of questions to be posed to subcommittee members for their response. Consequently, a great deal of time will be spent on items other than the original building block requests.

The requests made are as follows:

- Sen. Waddoups is interested in the average number of Supreme Court opinions per justice in the 10 years prior to, and 10 years following, the establishment of the Court of Appeals.
- Rep. Bigelow is interested in the efficiencies associated with the move to the Matheson Courthouse.
- Rep. Zolman asked about the cost of jury reimbursement, since the passage of his bill last year raising juror reimbursement.
- Rep. Katherine Bryson asked about the use of court time in 3rd District Court: How much time are judges spending on the bench?

Mr. Becker stated that he is prepared to answer the above questions, as well as any others, as thoroughly as possible. He spoke of the need to discuss the impact of the 3% cut, as well as how best to deal with same. He felt that the best approach to take was a position wherein the Legislature is informed that in order for the courts to reduce their budget at that level, certain court sites with lease payments face closure. A sum of all the lease payments on all facilities not in a county seat and therefore required by statute to be a site, equals \$1.5 million. Layoffs would also be likely. The courts' budget is made up of 71% as personnel, and 16% in leases and O & M obligations.

Presentation by Attorney General's Office Re: Family Court

Several representatives of the Attorney General's office addressed the Council regarding the Family Court. Reed Richards expressed support for the family court, citing little, if any, communication between juvenile and district

judges in family law cases as one disadvantage of the current system. It would benefit families if all issues in a given domestic case can be handled by the same judge. However, there are other issues of which to be aware if the family court system is adopted. Of most concern is staffing the court with judges who have a genuine commitment to family law. Increased costs are another concern. A new system should not be implemented without funding adequate to make the change. The cost issue should be studied and determined, with the resulting cost covered by the necessary appropriations.

Karma Dixon presented a report entitled, "Position Paper Regarding Family Court". The report suggested that the present design of the system with regard to family/domestic matters is harmful, not helpful, to families. A divorce case with children involved as an example. The issue of child support alone would be handled through the district and juvenile courts, as well as an administrative agency, with little or no communication between the judges and administrators. There are other cases where children are removed from a home on the juvenile court level, only to be returned to the home by the district court, with no changes in the fact situation. The Family Court Task Force has examined other family court models and found them to be successful. Proper funding, as well as placement of the judges who have an interest in family courts will ensure its success.

Ms. Dixon was asked if the proposals in the report adequately re-design the system to meet the committee's concerns. She indicated that she had two concerns: 1) Rotation. Ms. Dixon reported that in her experience with a rotation system in domestic cases heard in district court, she saw many absences on the bench due to vacations and surgeries. She fears the same thing will happen again if a rotation system is used for family court; 2) Duplication of services already provided by state agencies. In some cases recommendations regarding supervision by a case manager should not be duplicated by another case manager in another program. This results in confusion.

Dave Carlson reported that some in the juvenile system are cautious about the family court proposal. Much effort has been made in recent years to make the juvenile court system successful; in certain areas, such as child welfare reform, Utah's juvenile system is a model examined by other states. Hence there is some anxiety about the prospect of a family court. In commenting on the proposal, his concerns were threefold: First, the possibility of dockets becoming clogged and affecting the time frame in disposition of cases: The Legislature's passing of the Child Welfare Reform Act, created tight time frames for the prosecution of child protection cases. This has caused cases to move slowly toward disposition, sometimes leaving children too long in foster care. The tightened time frames place a burden on the court, on the attorneys, and most importantly, on children. Second, the possible drain caused on resources. Allocation of resources is given primarily through the Division of Child and Family Services. These resources (Child Protective Services, intense social work services, etc.) are provided to families with abused, neglected children. He is concerned about what may happen if judges in domestic cases also have access to these services. Third, the attitude of judges. The report suggests a reluctance in some district judges to become family court judges, while assuming that juvenile court judges would be more willing. After speaking with juvenile judges, he found that the majority are opposed to the idea of a family court. They would prefer to focus on helping children, as opposed to becoming involved in domestic disputes or divorces. He also listed positive aspects: Better communication, and addressing all issues in one court.

Karma Dixon cited two cases (one as recently as 2 years ago) where conflicting orders from juvenile and district courts were issued. In one case, the district court had knowledge (through representation of counsel) of what transpired in juvenile court, but had no jurisdiction at that time. In a family court situation, one judge would have the entire fact situation, orders would be issued from one court.

Reed Richards concluded the presentation by saying that communication between courts, whether it be between judges or "cross-accessing" either court's records, would serve to improve the system. He felt it helpful to share the frustrations felt by the Attorney General's office.

Consent Calendar; Motion to Adjourn

The consent calendar was approved, at which time a motion was made to adjourn.

NEXT MEETING: FEBRUARY 22, 1999