

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MINUTES

February 28, 2000

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

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*Chief Justice Richard C. Howe, Presiding*

#### **Members Present:**

Chief Justice Richard C. Howe  
Hon. Lyle Anderson  
Hon. Russell W. Bench  
Hon. Lynn Davis  
Hon. L.A. Dever  
Hon. Michael Glasmann  
Hon. Ronald Hare  
Hon. Scott Johansen  
Hon. Kay A. Lindsay  
Hon. Clair Poulson  
Hon. Leonard H. Russon  
Hon. Anne M. Stirba  
Hon. Stan Truman

#### **Staff Present:**

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

**Excused:** Scott Daniels, Esq

#### **Welcome/Approval of Minutes**

Chief Justice Howe welcomed all those in attendance. The minutes of the Council's October, 1999, meeting in Kanab, Utah, were reviewed and a motion was then made.

#### **Motion**

A motion was made to approve the minutes of the Council's October meeting. The motion was seconded and carried unanimously.

The minutes of the Council's January 24, 2000, meeting were reviewed, and the following change was suggested:

- To page 5, bottom paragraph, last sentence. It was suggested that the sentence read as follows:  
"Tim Shea will present his proposed changes to the rules at the next meeting, and will work with the clerks of court to ensure compliance with confidentiality requirements."

#### **Report from the Chairman**

Chief Justice Howe reported to the Council on the nominating commission activity. He began by reporting that the two new appointees to the Utah Supreme Court are now in place, and that the court has resumed hearing cases as of the beginning of February.

He informed the Council that he and Myron March attended the meeting of the Sixth District Nominating Commission, which was held on February 23<sup>rd</sup>. This commission convened to screen applicants for the vacancy created by the retirement of Judge Louis Tervort, effective July 1, 2000. Six of the 14 applicants will be interviewed, and following those interviews, three names will be advanced to the Governor for his consideration and appointment.

Chief Justice Howe concluded his report by noting that the Nominating Commission for the Court of Appeals will meet in March. This commission will screen applicants for the vacancy created by the appointment of Hon. Michael Wilkins to the Utah Supreme Court.

#### **Administrator's Report**

Dan Becker had no new items to report to the Council beyond the legislative update. Accordingly, he deferred his report until later in the meeting.

## **Subcommittee Reports**

Judge Stirba presented to the Council a report from the Management Committee. She began by stating that the full committee met on February 15<sup>th</sup>. She reported on the following items:

- A discussion by the committee of a procedure for certification rules. No change is proposed; however, it was clarified that historically, the process begins when the Council considers a proposed rules change, and then refers review of any proposal to its Policy and Planning Committee. The Council has also received for its consideration proposals directly from the Performance Evaluation Committee. Concern has been expressed regarding whether the rules sufficiently reflect the objectives outlined by the Council. In order to further this discussion, staff has proposed to present a paper at the Council's March, 2000, meeting. This paper will outline the ideas and issues currently being considered by the Committee, and will be an item for the Council's March agenda.
- A request by Third District for a pro tem judge. This request was made in anticipation of a second vacancy which will result in the event of the retirement of Judge Pat Brian. The first vacancy resulted from the appointment of Hon. Matthew Durrant to the Utah Supreme Court. These two factors combined will leave the Third District without two judges for a substantial amount of time. The District, therefore, has requested that the Council recommend to the Supreme Court that it consider for approval an appointment for a judge pro tem. Following discussion of the matter, the committee agreed to advance this request to the Supreme Court, through the Council's consent calendar. However, the recommendation is conditional upon these two vacancies occurring simultaneously.
- The Second District presented to the committee for its information the concept of a district court domestic relations case manager. This concept was observed in practice by some of the team members who attended the pro se litigation conference in Phoenix, Arizona. The case manager would be a person within the court system responsible for screening cases at the outset for issues to be resolved and for the appropriate track, e.g., mediation. The objective is to assist in the case management process, and lessen the adversarial nature of domestic relations matters. The Second District is currently developing a formal proposal on such a concept for presentation to and consideration by the committee at a later date.
- Justice Michael Wilkins presented to the committee on behalf of the Technology Committee. He reported that a master plan was developed by the Committee on Justice in the 21<sup>st</sup> Century some ten years earlier, and that the objectives set forth at that time have now been completed. The Technology Committee proposes to develop a new master plan with new objectives, and sought approval of same from the Management Committee. The Technology Committee will proceed accordingly, and will present its draft plan upon its completion.
- The Committee discussed at length the applicants for the Standing Committee on Children and Family Law. There were several recommendations which the committee felt should be advanced to the full Council for discussion and/or approval, since this constitutes a new committee.

Judge Michael Glasmann presented the report of the Policy and Planning Committee's February 11<sup>th</sup> meeting. The committee received, pursuant to its request, a report from Dan Becker which detailed the current composition and operations of the Administrative Office of the Courts. This report will be presented to the committee periodically. The report was well received by the committee, and no recommendations for change were made.

Other matters discussed were:

- Discussion of the basic role of the Policy and Planning Committee. Judge Robert Braithwaite, the previous committee chair, proposed more active planning by the committee. The idea of changing the name to the Policy and Rules Committee was discussed, and Judge Glasmann indicated that these discussions will likely continue. The committee remains occupied in its current role in reviewing and examining matters referred by the Council.
- A request from an attorney for an increase in the attorneys' fee schedule. It was requested that fees awarded at the district court level should be proportionate to judgments which are awarded. After discussing the matter, the committee determined that the fees should remain as currently set. That further, any fees will automatically adjust according to inflationary increases.

The Liaison Committee deferred its report until noon, when Dan Becker,

Richard Schwermer, and Mark Jones are scheduled to present same to the Council.

Scott Daniels was excused, as he was out of town. However, his report on Bar Commission activities was submitted, distributed to, and reviewed by the Council. This report summarized the Bar Commission's meeting with the Third District to discuss the survey undertaken by the Bar's Courts and Judges Committee. A question was

asked regarding moving the metal detector (or magnetometer) in the Matheson Courthouse a few feet from its current location. Myron March indicated that the magnetometer will be moved a few feet to the east of its current location, just outside the glass doors. Doing so will: 1) alleviate the congestion created while the public is being screened for admittance to the building; 2) facilitate a better view of the monitors which are in close proximity to the glass doors; 3) allow for better access to the Information Desk; and 4) eliminate the magnetometer alarm sounding from the metal in the pillars.

Dan Becker added that he spoke with Charles Brown, the President of the State Bar, regarding the meeting reported by Scott Daniels. Mr. Becker indicated that the Bar is pleased with the results of the meeting, and the response by the Third District to the issues presented. It is uncertain whether another survey will be conducted in the future. An article will be featured in the Bar Journal which will disseminate information to the Bar membership regarding the results of the aforementioned discussions. Judge Stirba also reported on the matter of access to judges and clerks in the Matheson Courthouse by attorneys. Access on the 3<sup>rd</sup> and 4<sup>th</sup> floors is gained primarily through the reception areas. These reception areas are inadequately staffed, due to budget constraints which would allow for increased personnel. Judge Stirba reported that the District and the Bar have worked together to examine alternative ways to resolve this problem. This problem is likely specific to the 3<sup>rd</sup> District because of insufficient staff. There was discussion on the possibility of utilizing a telephone system, similar to that used in the Fourth District. Mr. Becker said this is one alternative solution.

### **Appointments to Standing Committee on Children and Family Law**

Tim Shea presented this matter to the Council for its consideration, discussion, and action. The Management Committee met to consider the applications from those individuals expressing an interest in serving on the newly established committee. Because the entire membership of the committee is being appointed, the Management Committee was of the view that the recommendations it made should be discussed by the full Council.

The Council received a memorandum from Mr. Shea which listed those members designated by authority other than the Council, as well as the recommendations of the Management Committee. All other applicants for the positions were also listed. Robin Arnold-Williams, Executive Director of the Department of Human Services, and Kristin Brewer, Executive Director of the Office of the Guardian ad Litem, will automatically take their positions on the committee. To date, neither the President of the Senate nor the Speaker of the House has notified the Chief Justice of their designee.

The names of the following individuals and the respective areas they would represent were advanced to the Council:

#### **District Court Judge (2):**

Hon. Judith Atherton (3<sup>rd</sup> Dist.), Co-chair  
Hon. James R. Taylor (4<sup>th</sup> Dist.)

#### **Juvenile Court Judge (2):**

Hon. Jeril B. Wilson (4<sup>th</sup> Dist.), Co-chair  
Hon. Frederic M. Oddone (3<sup>rd</sup> Dist.)

#### **Court Commissioner:**

Hon. Scott M. Hadley (2<sup>nd</sup> Dist.)

#### **Executive Committee, Family Law Section, Utah State Bar:**

Lori W. Nelson

#### **Attorney experienced in dependency, neglect, & abuse cases:**

Mary T. Noonan

#### **Representative of a child advocacy organization:**

Mary Boudreau

#### **Mediator:**

William W. Downes, Jr.

#### **Professional in child development:**

Lori A. Roggman or Matthew V. Davies

The committee reviewed the five applicants for the community representative position, and deferred any selection to the full Council following discussion. In addition, the Management Committee suggested that Judge Michael Glasmann serve as the Council's liaison to the standing committee, and he has agreed to do so. The Board of District Judges recommended that the commissioner position be filled from a district not otherwise represented by a judge.

The committee discussed the applicants for the professional in child development position, and sought additional information on Lori Roggman. Judge Stirba informed the Council that Professor Roggman is an associate professor at Utah State University, and has extensive experience in early child development.

Dan Becker was asked to offer his perspective regarding the representative of the community. He indicated that a member of the public could offer a perspective separate from the professional or legal community perspective. Alternative suggestions were discussed, and the Council then discussed the Management Committee's recommendations. Regarding the representative of the child advocacy organization, Tim Shea indicated that Mary Boudreau will continue to remain with Utah Children for the foreseeable future. Dan Becker recommended that those court commissioners who expressed an interest in serving on the committee be considered for possible

membership on any subcommittees which the standing committee may establish. There was further discussion regarding the representative of the professional in child development, and the following motions were made.

### **Motion**

A motion was made to appoint Matthew Davies as the representative of the professional in child development, and Lori Roggman as the community representative. The motion was seconded and carried unanimously.

### **Motion**

A motion was made to approve all other recommendations advanced to the Council by the Management Committee, including Judge Glasmann as the Council's liaison to the standing committee. The motion was seconded and carried unanimously.

### **Federal Funds Update**

Dan Becker and Peggy Gentles provided to the Council, for informational purposes, an update regarding efforts by the staff to explore federal funds as an alternative funding source. He recalled for the Council his proposal, which he first presented at the August planning session, that staff would undertake efforts to seek federal funds as an alternative revenue source.

The staff has pursued these efforts and is currently seeking reimbursement through IV-D funds. These funds would be reimbursed for IV-D cases processed by the courts.

Mr. Becker informed the Council that discussions with the Office of Recovery Services have taken place. A cooperative agreement is being developed between ORS and the AOC. Any contract entered into is effective as of the signing date, regardless of the length of time taken by the federal government to approve said agreement. Any reimbursement money which is approved and paid is retroactive to the effective date of the agreement. Peggy Gentles is currently developing a methodology to calculate the amount by which reimbursement can be sought for time spent by court commissioners and clerk staff. Mr. Becker emphasized that this money is a reimbursement and not a grant; therefore, it is discretionary in use. Receipt of any reimbursement amount is contingent on the filings recorded by clerk staff. An increase in filings equates to a larger amount received. Mr. Becker and Ms. Gentles clarified that IV-D cases are those in which a plaintiff has applied for IV-D services, e.g., assistance from the Office of Recovery Services. When ORS is involved and the filing is recorded, the information will also be recorded on the CORIS system. The staff is also examining efforts by other state already receiving these reimbursement funds.

Mr. Becker added that staff is also exploring the possibility of receiving similar reimbursement under Title IV-E funding. These are cases involving children at risk to be placed in foster care. The Department of Child and Family Services (DCFS) has discussed this matter with an individual from South Dakota who has extensive knowledge of the federal regulations related to this reimbursement. The AOC staff was able to discuss with him the possibility of the courts' eligibility for these funds, particularly in the areas of child welfare mediation and guardian ad litem cases. The discussions were productive, and the possibility exists for reimbursement of select types of activities. A cooperative agreement would be entered into with DCFS, and this agency is currently receiving IV-E reimbursement funds. Efforts on the part of AOC staff in this second area are in the initial development stage. Mr. Becker concluded by saying that more information and a better understanding of the direction which staff is taking on both projects will be available by the August budget planning session.

There was no further discussion of this item. The Council then convened in an Executive Session. A motion was made at the conclusion of the Executive Session:

### **Motion**

A motion was made to re-certify all judges whose names were submitted to the Council for certification for retention. The motion was seconded and carried with one opposed.

Judge Anne M. Stirba abstained as to her re-certification.

A subsequent motion was then made.

### **Motion**

A motion was made to certify those commissioners who are eligible for re-certification. The motion was seconded and carried unanimously.

It was recommended that any information to be included in the Voter Information Pamphlet be deferred to discussion at a later date.

### **Legislative Update**

Dan Becker, Richard Schwermer, and Mark Jones provided to the Council for its information an update on the legislative session. Mr. Becker began by addressing the appropriations items, and stated that the Executive

Appropriations Committee has concluded its business. The following were mentioned:

- Cache County Courthouse: \$2 million in general fund money was appropriated to cover the purchase of land and design work on the building. The issue of location has yet to be firmed; however, the proposed site is on land one block from Main Street.
- \$400,000 to data processing
- \$185,000 for career track advancements
- \$500,000 for juror/witness/interpreter fees (this is for FY2001)
- \$ 68,000 for the Justice Court auditor position
- \$150,000 for child welfare mediation. This will allow the program as presently operated to continue in the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> Districts
- \$150,000 in fiscal note funding for a DUI bill
- \$3 million from the tobacco settlement. This money will be divided between drug courts, drug boards, funding for existing drug courts and expansion of drug courts, treatment, testing, and case management in adult and juvenile courts.
- \$1.2 million in increases for leases and contracts
- \$250,000 for salary selectives (this has not yet been firmed)
- A 4% cost of living increase for all state employees, effective June 24, 2000. Judges will receive the same percentage increase, and this increase will be effective as of July 1, 2000

With respect to the current budget, Mr. Becker stated that \$363,700 was requested in supplementals for the FY2000 contracts and leases budget. This request was not granted.

FY2000 supplementals were not provided for juror/witness/interpreter fees. He noted his disappointment that no new funding was provided for the Guardian ad Litem program.

Richard Schwermer and Mark Jones reported on the substantive legislation. The following bills were discussed:

**- HB285 Judicial Conduct Commission Amendments and Supreme Court Oversight of Judges**

Mr. Schwermer offered a twofold observation on this bill. First, he indicated that the bill attempts to comport the Judicial Conduct Commission procedures with the Utah Constitution. Second, the bill places some of the responsibility and provides some mechanism to the Judicial Council and the Supreme Court to internally resolve errant judicial behavior. The definitions of two terms were discussed; specifically, the term "complaint" is defined in detail. The bill also has a provision regarding placement of judges on administrative leave as pertains to the criminal investigation of a judge. Other provisions address referrals of attorney misconduct; involuntary disability retirement or removal of a judge; authority of the Judicial Conduct Commission, procedure for reprimand, censure, removal, suspension, or involuntary retirement, and disclosure of criminal misconduct and orders made public; and subpoena power of the Commission.

Mr. Schwermer informed the Council that this bill passed out of the House Committee and was advanced to the floor. However, the House adjourned without further activity, although it is possible that an attempt will be made to bring this particular bill back to the floor for consideration.

**- SB240: Decriminalization of Traffic Offenses:**

This bill has passed, and contains three sections. The first section prohibits the decriminalization of moving traffic offenses and the disposition of same administratively. Section two makes exception for any administrative law court in place as of January 1, 2000.

The last section provides for further study of the issue of decriminalization by a task force for a period of no less than one year. Funding has also been provided for the task force. Further, those municipalities with an administrative law court in operation, as outlined in the legislation, and with a population of over 250,000, will be required to pay \$580,000 to the General Fund in 2001.

Similar municipalities with a population of less than 250,000 will be required to pay \$400,000 to the General Fund in 2001. The exception for those cities expires July 1, 2001.

The following bills were also discussed:

- **HB18: Judicial Retention Election Amendments:** this bill is still circled, but is not likely to pass
- **HB67: Task Force on Family Conflict Resolution:** this bill was not prioritized by the House and may not advance
- **HB204: Judicial Information to Voters:** Any sanctions within a judge's current and previous term will be reported in the Voter Information Pamphlet. Information in the pamphlet does not include county justice court judges. This bill has passed the House and is now before the Senate.
- **HB281: Appropriation for Drug Courts and Drug Board Pilot Project:** This bill provides for decision-making on both by the State Court Administrator, and the Executive Directors of the Departments of Corrections, and Human Services.
- **HB329: Child Welfare Mediation:** this has passed and funding has been appropriated.
- **HB330: Judicial Amendments:** this bill has passed the House and is now before the Senate.
- **SB15: Use of Tobacco Settlement Revenues:** the outcome of this bill will determine where the money will be directed.
- **SB39: Expedited Visitation Enforcement Program:** this bill contains the extension of the ending date for the visitation mediation program in the Third District. If this bill does not pass, the program will end.
- **SB151: Justice Court Accountability:** this bill has passed, and will provide an auditor for the justice courts.
- **SB221: Sheriff's Classification of Jail Inmates and Jail Facilities:** This bill states that a sheriff shall classify inmates with certain criteria, and explicitly allows a sheriff who oversees a jail to classify an inmate as qualifying for a jail alternative. Flexibility is sought in managing the number of inmates incarcerated based on the number of staff and resources available.

Mr. Schwermer sought clarification from the Council regarding the position taken by the staff. Staff stated its willingness to compromise if provisions were included which allow classification of an inmate for a jail alternative program only if: a) the jail is at its maximum capacity; or b) if the court so orders. The Council discussed this matter, but no further action was taken.

A motion was made following this presentation.

### **Motion**

A motion was made to convene in Executive Session. The motion was seconded and carried unanimously.

The Council convened in Executive Session, and, there being no further business, adjourned its meeting immediately thereafter.