

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

9:00 a.m.- February 26, 2001
Matheson Courthouse, Council Room
Salt Lake City, Utah

Chief Justice Richard C. Howe, Presiding

Members Present:

Chief Justice Richard C. Howe
Hon. Lyle Anderson
Hon. Russell Bench
Hon. Lynn Davis
Hon. Lee Dever
Hon. Ben Hadfield
Hon. Ronald Hare
Hon. Scott Johansen
Debra Moore, esq.
Hon. Clair Poulson
Hon. Anne M. Stirba
Hon. Andrew Valdez
Hon. Michael J. Wilkins

Staff Present:

Daniel J. Becker
Myron K. March
D. Mark Jones
Richard H. Schwermer
Ray Wahl
Holly Bullen
Tim Shea
Brent Johnson
Gordon Bissegger
Matty Branch
AnNicole J. Faeth
Jan Thompson

MEMBERS EXCUSED:

Hon. Jerald Jensen

GUESTS:

Hon. Frederic Oddone
Hon. Don V. Tibbs
Hon. K. Roger Bean
Hon. Timothy Hanson
Hon. Dennis Frederick

WELCOME AND APPROVAL OF MINUTES:

All Council members and staff were welcomed to the meeting. It was noted that Judge Jerald Jensen was unable to be in attendance. The minutes of the Council's January meeting were then discussed. It was mentioned that a comma needs to be inserted in place of a period in the fourth sentence of the first paragraph of the section entitled "Report on Judicial Performance Evaluation Program Presentation to Boards of Judges", the first sub-section under "Juror Names and Addresses" needs to indicate that "prospective jurors' " names, addresses and telephone numbers.... (etc.), and under the "Report From Juvenile Court Judges" the word "mediation" needs to be inserted after "child welfare" in the third sentence of the first paragraph.

Motion: Judge Davis made a motion to approve the Council's January minutes with the aforementioned revisions. The motion was seconded and carried unanimously.

REPORT FROM CHAIRMAN: (Chief Justice Richard C. Howe)

The names of five applicants will be submitted to the Governor Tuesday, February 27, 2001 to fill the judicial vacancy in the Third District Court resulting from retirement of Judge Homer Wilkinson. The Governor will have 30 days to make his appointment. The names will then go to the legislature who have 60 days for confirmation. We're hopeful that the new judge will be on board by June 1st. The names of the five applicants are D. Miles Holman, Stephen Roth, Bruce C. Lubeck, Carolyn Nichols, and Scott W. Reed.

ADMINISTRATION REPORT: (Daniel J. Becker)

Daniel Becker reported on the following items:

The legislative session will conclude on Wednesday, February 28, 2001. The appropriations subcommittee and executive committee have approved the courts' budget requests as follows:

One-Time Funding:

- Jury/Witness Interpreter Fees

\$600,000

- Project Coordinator for Racial and Ethnic Fairness Implementation \$60,000
- Diversity Training \$28,000
- Olympic Funds \$220,000

On-Going Funding:

- Guardian ad Litem (addressing staffing needs) \$ 250,000
- Contracts and Leases \$1,765,000
- Child Welfare Mediation (for statewide implementation) \$170,000
- Law Clerks \$130,000

Capitol Facilities:

- Cache County Courthouse \$12,493,800
- Sandy Land Purchase \$ 950,000

Other:

- Drug Court Funding \$168,700

Fiscal Note Funding:

- Various Fiscal Notes are under consideration by the legislature.

If legislation passes, the courts will receive \$300,000

Supplementals:

- Reimbursement for Legislatures' failure to fund the courts' benefits last year \$424,600
- Allowing the courts to use additional funds generated
 - under the Court Reporting Technology Fund \$50,000
- Earmarked last year for Online Court Assistance Program \$35,000
- State employees will receive a 2.75% merit increase.
- The courts will receive a limited amount of discretionary money to award a percentage of employees an additional merit step.
- Judges will receive a 4% increase.
- The courts will received \$600,000 for salary selective market adjustments.
- The courts received authorization to establish a commissioner position in the Fourth District Court through IV-D funds.

Not Funded:

- Additional Information Technology Staff
- Additional Perimeter Security
- An Interpreter Manager Position
- County Contract Increases
- The Guardian ad Litem Budget Requests were partially funded
- The request for law clerks was partially funded

Mr. Becker also reported that:

- An audit of the juvenile justice system was performed by the Auditor General a few years ago, and the legislature has requested that a follow-up audit be performed. That process has begun.
- A grant has been received through Violence Against Women Act (VAWA) funds which will allow the institution of a new component of the Online Court Assistance Program (OCAP). The grant will be provided immediately and requires no cash match

REPORTS:**Liaison Committee:**

Judge Dever reported that four sets of the Committee's minutes are included in Council's packet. The Committee has been meeting weekly during the legislative session.

Bar Commission:

Debra Moore reported that it was recommended that the Bar petition the Supreme Court to adopt the recommendations of the Multi-Disciplinary Practice Task Force. The recommended action will go to rules committee first. The Bar has approved a new president elect selection process which has now been approved by the Supreme Court. Award recipients have been selected and will be presented at the Mid-Year Bar Conference in March in St. George. The recipient of the Dorothy Merrill Brothers Award is Laura Gray, and the recipient of the Ray Uno Award is Judge Tyrone Medley.

Policy and Planning:

Judge Johansen mentioned that the minutes of the Committee's January meeting are included in the Council's packet.

Management Committee:

Chief Justice Howe reported that the Committee authorized the administration to pursue a bill to create a judgeship in the Third District Juvenile court with the funding of the drug court money. Peggy Gentles and Jennifer Yim have left their respective positions in the Administrative Offices after several years of excellent service to the courts. Chief Justice Howe also mentioned that the Committee approved several appointments which are listed on the Council's consent calendar, and additionally, the Committee approved the Council holding its August budget and planning meeting at Snowbird.

ETHICS ADVISORY COMMITTEE OPINION: (Brent Johnson)

The Ethics Advisory Committee received an opinion request asking the extent to which a judge may support or oppose a bill that is pending before the Utah Legislature. It was also asked the extent to which a judge may express support or opposition to proposals that are not yet in bill form, that are before the legislature or the constitution revision commission. The Committee issued an informal opinion which states that a judge may voice opinions concerning matters that directly involve the legal system, the law, or the administration of justice.

JUDICIAL RETIREMENT AND MEDICAL INSURANCE PREMIUMS: (Judge Timothy Hanson and Judge Dennis Frederick)

Judges Hanson and Frederick asked the Council to reconsider a decision they made last December which stated that 5% of a judge's premium costs for medical insurance benefits will not be funded at retirement unless the amount can be funded through legislative enhancements. The judges expressed, on behalf of a number of judges, that the retirement program shouldn't change, but if it is changed the changes shouldn't be retroactive. It was noted that the formula was originally created in order to equalize judicial retirement benefits with those of other state employees.

Motion: Justice Wilkins made a motion to revisit the prior issue of judicial retirement and medical insurance premiums and commit the judiciary to pay for 8 months of paid up medical/dental insurance for each year a judge uses less than four days of sick leave, up to seven years, for any judge appointed to the court before July 1, 2001. The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion to refer the issue, as outlined in the previous motion, to Policy and Planning in order to evaluate adjustments and implementation of the rule. The motion was seconded and carried unanimously.

Motion: Judge Dever made a motion to refer the issue to Policy and Planning the issue of judges appointed to the bench after July 1, 2001, and develop a rule regarding health and dental benefits upon retirement. Staff should prepare options for presentation to the Policy and Planning Committee and the Committee would present recommendation back to the Council. The motion was seconded and carried unanimously.

FACILITIES MASTER PLAN: (Gordon Bissegger)

The Standing Committee on Facilities met in January and addressed suggestions to the Facilities Master Plan that the Council made last October. Gordon Bissegger reviewed those revisions with the Council. The following motions were made:

Motion: Judge Stirba made a motion to replace "foreign language interpreter services" with "non-english services" on page 13 section 4.10. The motion was seconded carried unanimously.

Motion: Judge Dever made motion to keep the language on page 21 section 6.23 which, in relation to jury boxes, states " for flexibility the preferred seating alignment is eight seats on the back row". The motion was seconded and failed.

Motion: Judge Stirba made a motion to include in section 6.27 on page 22 language which states that "The well should accommodate a third table in all juvenile courts in cases which include Guardians ad Litem or cases with large number of attorneys and litigants". The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion to strike language on page 35 section 12.5 which states "In order to accommodate future growth, the Supreme Court Bench should accommodate seven Justices". The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion to strike the language on page 36 section 12.8 which mentions that "a bailiff's station should be provided in the well near the rail". The motion was seconded and carried unanimously.

Motion: Judge Davis made a motion to change the language on page 37 section 12.16 to state that "The space should be large enough to accommodate space for a judicial secretary". The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion to approve the Facility Master Plan as modified. The motion was seconded and carried unanimously.

REPORT FROM CHILDREN AND FAMILY LAW STANDING COMMITTEE:

(Judge Frederic Oddone)

The Standing committee on Children and Family Law has continued to meet on a monthly basis. Subcommittees meet separately from the whole committee. The Standing Committee has been looking at and developing recommendations for addressing issues in several areas.

The Protective Order subcommittee has had hearings on and agreed on statutory changes to both Juvenile court and District court protective order processes. The Standing Committee has not adopted those recommendations yet and work on this issue is continuing.

A second subcommittee is looking at the concept of requiring that evidence in divorce cases be provided through proffer instead of direct testimony. This idea was one which the Standing Committee was asked to look at first. The "Proffer in Lieu" subcommittee did so by meeting with judges in the Second District, speaking with family law practitioners from around the state, and considering ramifications of employing this procedure during a series of meetings. Once that process was completed, the subcommittee determined that the idea of codifying a practice of proffering evidence in non-custody cases would not be well accepted. The details and reasons for the subcommittee's decision are set forth in a memorandum from Commissioner Scott Hadley that was distributed at the meeting. The subcommittee intends to pursue implementation of a voluntary pilot project and to evaluate whether a voluntary process is successful and accepted and to reexamine the idea of a mandatory process in six months.

The Standing Committee is also focusing attention on intra-court communication. One result has been the adoption of three statements of principle relating to development and enhancement of Court data systems in future. A second effort has been the drafting of a rule relating to consolidation of a single family's cases before a single judge. This rule is still being worked on. Both these ideas will be presented to the Judicial Council at the next update in 90 days.

Finally, the Standing Committee has been working with the Office of the Guardian ad Litem on legislation that was offered in the 2001 session. The Guardian ad Litem subcommittee will continue to work on issues relating to the office and court needs with regard to these attorneys.

EXECUTIVE SESSION:

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.

Motion: A motion was made to refer to the Policy and Planning Committee the issue of the Council receiving information regarding judges and the process of referring information/complaints to the Judicial Conduct Commission. The motion was seconded and carried unanimously.

PRESENTATION TO RETIRING SENIOR JUDGES:

The Council made a presentation to retiring senior judges Don V. Tibbs and K. Roger Bean, thanking them for their many years of excellent service to the judiciary.

LEGISLATIVE UPDATE: (Richard Schwermer and Mark Jones)

Richard Schwermer and Mark Jones reported on the following issues:

- The legislative parking issue is still being considered. It has passed the Senate, and is now in the House.
- Child welfare issues are still being considered.

It was again mentioned that the courts will receive \$168,700 in drug court money which would be sufficient for a juvenile court judge's salary and benefits and one clerk.

Motion: Judge Johansen made a motion to seek a juvenile judgeship in the Third District. The motion was seconded and carried with one opposed.

The meeting adjourned at 1:10 p.m.