

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, February 23, 2004

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. Jon Memmott
Hon. J. Mark Andrus
Hon. Jerald Jensen
Hon. Clair Poulson
Hon. Robert Hilder
Hon. Lee Dever
Hon. Gary Stott
Hon. Ronald Hare
Hon. K.L. McIff
Hon. Scott Johansen
David Bird, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Richard Schwermer
Mark Jones
Ray Wahl
Matty Branch
Tim Shea
Nancy Volmer
Kim Allard
Janice Ashby
AnNicole Faeth

GUESTS PRESENT:

Elizabeth Neff, *Salt Lake Tribune*
Colin Winchester, *Executive Director,*
Judicial Conduct Commission
Hon. William Bohling
John Ashton, *Chair, Performance*
Evaluation Standing Committee

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

All in attendance were welcomed to the meeting. The minutes of the Council's January meeting were discussed, and the following motion was then made.

Motion: Judge Davis made a motion to approve the minutes. Judge Hare seconded the motion. the motion carried unanimously.

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

Chief Justice Durham reported that she and Justice Nehring have been discussing the possibility of beginning an initiative with the Supreme Court which would look at the extent to which legal service needs within the civil arena are being met throughout the state. It was mentioned that there may be some interest on the part of the Bar in participating in this initiative. Chief Justice Durham also reported that the Supreme Court has determined that it does not intend to go any further in discussions regarding the Bar dues structure for judges.

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

Daniel Becker reported that there are seven days remaining in the Legislative Session. The appropriations subcommittee which reviews the court's budget concluded their work last week. Mr. Becker reported that the committee was given a continuation budget, but they have also created a list that has been forwarded to Executive Appropriations of thirteen items they would like to see funded if money becomes available. Four of the court's five funding requests have been included on that list. The only item advanced by the courts that wasn't included on that list was a restoration of State Supervision funds. The committee also approved \$559,300 for juror, witness,

and interpreter fees, as well as authorizing the use of \$100,000 from the Court Reporter Restricted fund for digital recording equipment.

It was reported that the court's request for a new judge in the Second District passed in the Senate, and is awaiting funding before it proceeds in the House. Additionally, no decision had been made yet regarding approving the construction of a new courthouse in Tooele.

It was then reported that current revenue projections indicate that there will be an additional \$134 million available in the next fiscal year. It was noted that if the legislature approved funding a 2% pay increase for state employees and increases in health benefits, it would cost approximately \$125 million.

Mr. Becker also reported that the Senate recently confirmed Samuel McVey as a judge in the Fourth District Court. He will take the oath of office sometime near the end of March.

- **REPORTS:**

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

Chief Justice Durham reported that the Management Committee heard a presentation from Brent Johnson regarding possible revisions to the judicial application form. Chief Justice Durham indicated that she had nothing else to report in addition to what is included in the committee minutes.

- **Policy and Planning Committee: (Hon. Lee Dever)**

Judge Dever reported that the Policy and Planning Committee had not met since the Council's last meeting.

- **Bar Commission: (David Bird, esq.)**

David Bird reported that the Bar Commission had not met since the Council's last meeting.

- **RECONSIDERATION OF RULE 4-202.08: (Tim Shea)**

Tim Shea reported that at its last meeting the Council amended Rule 4-202.08 to change the courts charge for mailing from actual expense to a flat rate of \$3.00. Since that time, it has come to Mr. Shea's attention that this change is not necessary. Therefore, Mr. Shea requested that the Council rescind approval of this rule change.

Motion: David Bird made a motion to repeal the change, and return to a rule that provides for actual cost. The motion was seconded and carried unanimously.

- **ARRAIGNMENT VIDEO: (Nancy Volmer)**

Nancy Volmer reported that she had been working, along with Judge Denise Lindberg, on an update of the criminal rights video. A recently filmed update was shared with the Council. It was reported that the video has been distributed to Trial Court Executives in each district for use in arraignments. The Council suggested that the video be distributed to Justice Courts as well.

- **REPORT: JUDICIAL PERFORMANCE EVALUATION COMMITTEE: (John Ashton)**

John Ashton, chair of the Performance Evaluation Committee, reported that in the last year the committee has tried to focus more specifically on issues of self-improvement. Mr. Ashton reported that the committee has looked at creating opportunities for informal communication with the Bar regarding performance issues. This communication would take place prior to the formal performance evaluation process as a means of self-improvement for judges. Mr. Ashton reported that emphasis would be placed on obtaining feedback from attorneys that have had significant interaction with the judge in the courtroom in order to receive increasingly meaningful information.

Discussion took place regarding issues related to small respondent pools in the performance evaluation process, and peer review. After additional discussion took place, it was requested on behalf of appellate judges that the committee look at performance criteria related to those judges and justices.

The Council expressed appreciation to Mr. Ashton and the Performance Evaluation Committee for their many efforts.

- **REPORT: JUDICIAL CONDUCT COMMISSION: (Colin Winchester)**

Colin Winchester reported that the House Judiciary Committee had met that morning and voted to delete Senator Bell's amendment to the Judicial Conduct Commission bill. Mr. Winchester then inquired of the Council what constitutes a complaint in light of the recent Supreme Court opinion on the Anderson matter. Chief Justice Durham indicated that this issue would be considered.

Mr. Winchester then reported that the pending JCC caseload has continued to decrease, and the JCC is currently operating well with present staffing and funding levels.

The Council thanked Mr. Winchester for his report.

- **FORMAL ACTION ON IVINS JUSTICE COURT RECERTIFICATION: (Richard Schwermer)**

Richard Schwermer reported that in the last Council's last meeting a vote was made to not certify the Ivins Justice Court. Following notice made to the justice court, the city submitted a letter addressing issues raised by the Council and requesting that they be reconsidered for certification. An informal vote was made via email which indicated support of recertifying the justice court based upon information provided to the Council by the city. The following motion was then made.

Motion: A motion was made to go into executive session to discuss personnel matters. 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.

The following motion was then made related to the Perry Justice Court.

Motion: Judge Poulson made a motion to recind the certification of the Perry Justice Court per information received in a recent audit. Judge Hilder seconded the motion. The motion carried unanimously.

Representatives of the Perry Justice Court will be asked to discuss this issue with the Council in April.

Discussion then took place regarding the Ivins Justice Court, and the following motions were made.

Motion: Judge Hilder made a motion to ratify the certification of the Ivins Justice Court. Judge Davis seconded the motion. The motion failed with five in favor and eight opposed.

Motion: David Bird made a motion to delay action today, to notify Ivins City that a motion to ratify certification failed, and that Ivins City be asked to discuss this issue with the Council in their March meeting. Judge Hilder seconded the motion. The motion carried with three opposed.

- **REPORT: THIRD DISTRICT MENTAL HEALTH COURT: (Hon. William Bohling)**

Judge Bohling reported that results of the mental health court in the Third District indicate that both bookings and days in jail have decreased for defendants with mental health issues. Judge Bohling reported that the program has been very busy, and has been perceived by parties involved to be a very positive and successful program. Judge Bohling reported that the key to a successful program, in addition to a judge who is strongly committed, is coordinating a strong mental health court team. Team players in the Third District include Valley Mental Health, Salt Lake County Criminal Justice Services, the county jail mental health provider, the Salt Lake County District Attorney, the Salt Lake Prosecutor, the Legal Defenders Association, the Salt Lake City Police Crisis Intervention Team, Adult Probation and Parole, and the National Alliance for the Mentally Ill. In regards to a request submitted by the Fourth District Court to create a mental health court, Judge Bohling indicated that he believed the program is ready to be expanded beyond the Third District.

- **LIAISON COMMITTEE REPORT: (Hon. Jerald Jensen, Richard Schwermer)**

Richard Schwermer distributed and discussed a list which summarizes the positions taken by the Liaison Committee on a number of bills and the status of those bills. The following bills in particular were discussed:

HB 234 - Sunset Extension on Unauthorized Practice of Law

SB 219 - Amendments to Justice Court Operations

HB 268 - Child Welfare Processes

SB 54s2 - Restructuring DCFS

SB 161 - Judicial Conduct Commission Amendments

SB150 - Judicial Confirmation Process Amendments

- **ADJOURN:**

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