

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MINUTES

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**Monday, February 22, 1999**  
**Scott M. 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. 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  
Steven Kaufman

#### **Staff Present:**

Daniel J. Becker  
Myron K. March  
Marilyn Branch  
D. Mark Jones  
Richard H. Schwermer  
Holly Bullen  
Tim Shea  
Ray Wahl  
Jan Thompson  
Jennifer Yim  
Diane Cowdrey  
Cathie A. Montes

#### **Excused:**

Hon. Leonard H. Russon  
Hon. Stan Truman

#### **Guests:**

Hon. Michael D. Zimmerman  
Hon. Frank G. Noel  
Hon. Robin W. Reese  
Hon. Larry A. Steele  
George Berkeley  
Eric Bjorkland, *Utah Youth Providers' Network*  
Nano Podolsky, *Project HOPE, S. L. School District*  
Linda Perry, *KSL*  
Mary Boudreaux, *Utah Children*

#### **Welcome and Approval of Minutes**

Chief Justice Howe welcomed all those in attendance. Justice Leonard H. Russon and Judge Stan Truman were excused.

A motion was made to approve the minutes of the January 25<sup>th</sup> Council meeting, as amended by the Council. The motion was seconded and carried unanimously.

#### **Report from Chair**

Chief Justice Howe reported to the Council the following:

With regard to the legislative session, the bill concerning the addition of two juvenile judges would, in all likelihood, be passed by the House and Senate. Also likely to pass is the bill to provide funds for mediation in the Court of Appeals. No final decision has been made with regard to the restoration of the 1% to the courts' base budget. He indicated that additional information would be provided in the legislative update.

#### **State Court Administrator's Report**

Dan Becker updated the Council on the following personnel changes in the courts:

Rick Davis has been appointed Trial Court Executive in the Second District. He is the former operations officer in the Third Juvenile Court.

Chuck Spence is the new Clerk of Court for the Third District Juvenile Court. He was previously the Human Resources Director at the American Fork Training School.

As a result of grant monies awarded, the Utah Supreme Court has appointed two pro tem judges: Larry Jones (First District), and Shirl Don LeBaron (Seventh District). The appointments are both six months in duration, but may be renewed for another six months by the court.

Mr. Becker informed the Council about the audit conducted by the Legislative Auditor General regarding juvenile justice. This report was given to the legislative audit committee. Initially, there was discussion about the introduction of a bill to the Legislature to direct that the findings in the report be implemented. However, this has not happened. Rather, the audit will likely be referred to an interim committee, such as the Judiciary Interim Committee.

Mr. Becker noted, for the Council's planning purposes, that several presenters on the Family Court issue are scheduled for next week's Council meeting in St. George.

### **Subcommittee Reports**

Judge Schofield reported that the Management Committee met on February 9<sup>th</sup>. He provided some follow-up on the issue of the court information line costs. He indicated that part of the difficulty is calculating the cost savings of staff members receiving benefits from the information line. Peggy Gentles has been asked to provide to the committee a more detailed estimate on the cost. She will report back to the committee at a later date.

Judge Schofield then followed up on the issue of the rule concerning chairing of the Management Committee. After some discussion, it was noted that Rule 1-204 includes a proposal that "the presiding officer of the Council or the presiding officer's designee shall serve as chair."

Judge Robert Braithwaite reported to the Council on behalf of the Policy and Planning Committee. He discussed the issue of the insurance plan for judges. Judge Braithwaite discussed the insurance coverage for retired judges and indicated that the Policy and Planning Committee is currently awaiting information from the State retirement system.

### **Report from Judicial Performance Evaluation Committee**

Tim Shea reported to the Council on behalf of John Ashton. Two items were discussed: First, an update on the pilot program for justice court judges' evaluations. While justice court judges are part of the Council's performance evaluation program, no surveys are involved as with judges of courts of record. The pilot program would introduce lawyer surveys in the class 1 and 2 courts (largest justice court classifications), and a litigant survey in all justice courts. System-wide, judges were rated high in the performance survey. Twenty courts opted not to participate in the survey. If the program becomes a permanent part of the evaluation process, those courts will need to be made aware that their participation is required.

The ultimate goal is to provide some subjective data upon which to make an evaluation for the purpose of certification for retention election. Mr. Shea indicated that final recommendations will be submitted by the committee to the Council this Fall.

The second item was the report by the American Judicature Society on judicial retention evaluation. Concern was expressed regarding the statistical information dealing with the feeling that judges have regarding the Council's understanding of judges' workloads, roles, and understanding of judicial independence. Judge Schofield indicated that if these statistics are accurate, consideration should be given to educating judges in better understanding the evaluation process. The report states that a gap exists between the judicial and public perception of the value of the evaluation information. It is the recommendation of the Evaluation Committee to hold a meeting with the judges in a plenary session at the Annual Judicial Conference in September. The purpose of the meeting would be to explain, educate, and inform the judiciary of the importance of judicial performance evaluations.

The second recommendation made by the committee is to include the performance evaluation program as part of the new judges' orientation presented by the Education Department.

Mr. Shea concluded the presentation with a request from the committee for the Council's support in working with the Education Department to develop an appropriate format to address the issue at the annual conference in September.

Chief Justice Howe expressed a hope that judges in Utah would realize that Utah's retention election system is far superior to those of other states. He reported to the Council on his attendance at a recent conference where one topic discussed was that of partisan judicial elections. He recalled a video presentation featuring campaign ads between the candidates, and said that the amount spent totaled to nearly \$9 million. Interest was expressed in obtaining the video for the purpose of presenting it to the Utah judiciary to emphasize the importance of judicial performance evaluations.

**Motion**

A motion was made to support the goal as set out by the report of the Performance Evaluation Committee. The motion was seconded and carried unanimously.

Another motion was made to support the staff recommendations regarding a session at the annual Judicial Conference and new judge orientations. This motion was seconded and also carried unanimously.

As a follow-up to the discussion on the results of the AJS report, Judge Stirba raised an issue before the Council. She noted that the results may reflect something other than unhappiness with the performance evaluation. Among many judges, there seems to be a breakdown in the relationship between some district judges or districts and the Council and/or the Administrative Office. Other Council members shared similar comments and observations. Chief Justice Howe said he believes this is an issue that has always existed, and that judges have not always known the specifics of what administration does; he stated that it may be a matter of educating judges as to the role of the Administrative Office and the service their staff provides. He added that he has learned more about administration since becoming a member of the Council, and recalled how the courts operated prior to the formation of the Judicial Council. The system is much improved because of the presence of the Council and Administrative Office of the Courts.

Dan Becker stated that his perception is that communication with boards of judges, court executives, clerks, and probations officers is good, but that problems exist in the area of communication with some individual trial judges. Toward this end, he suggested that more effort be placed on improving that communication. An important point of emphasis for the Administrative Office, he said, has been to better serve judges by working with their staff, supervisors and managers.

**Location of Council Planning Session: August, 1999**

Dan Becker presented to the Council for discussion and action the issue of determining a location for the Council's planning session in August. This issue was discussed by the Management Committee at its February 9th meeting, and at that meeting, there was discussion about the advantages and disadvantages of convening outside Salt Lake City. In the past, the sessions have been held away from court sites in order to assure that judges would give their full attention to the agenda items. It was decided to present the issue before the full Council.

Chief Justice Howe indicated that last year he received a number of comments and inquiries as to whether it was necessary to meet outside of Salt Lake City. The cost difference between meeting in Salt Lake and a location outside the city was discussed, and while it was agreed that there is real value in meeting in a location away from court sites, it was determined that convening in Salt Lake City would be cost-saving. Another factor seriously considered was the budget matters the courts face during this legislative session. It was therefore suggested that the August planning session be held in Salt Lake City.

**Motion**

A motion was made to hold the Council's 1999 planning session in Salt Lake City. The motion was seconded and unanimously carried.

**Records Retention**

Tim Shea made a presentation to the Council on the final records retention schedule, per the recommendation of the Policy and Planning Committee. George Berkeley was also present and available to answer any questions from the Council. Mr. Shea reviewed the proposed schedule in detail, noting that since it is an appendix to the Code of Judicial Administration, it requires Council approval. The following questions were raised:

- Res judicata: Mr. Shea indicated that this was discussed by the Policy and Planning Committee. He said that in such matters the computer record would still be available, but that much would depend on a clerk having made a docket entry or minute entry stating that a case was dismissed with prejudice. However, this would not resolve the problem of the original complaint having been destroyed. Mr. Shea will amend the draft to retain cases dismissed with prejudice for the same period as civil cases in which a judgment has been entered.
- The purging of files. The question was asked that, acknowledging the need to keep only critical documents, at what point is it more cost-efficient to store more than to spend time in reviewing and purging case files. Mr. Shea responded that this determination would have to be made by the clerk in each district, since some sites (e.g., the Matheson Courthouse) do not have adequate records storage space. Clerks would purge files after the completion of appellate proceedings on an ongoing basis, as their time permits.
- Regarding misdemeanor domestic violence cases: Collateral effects (such as firearms) are usually involved in this type of case. Mr. Shea will research the need for a longer retention period for this particular case type.

Chief Justice Howe asked how soon this schedule would go into effect. Mr. Shea said the recommendation is that it be implemented as soon as possible.

### **Motion**

A motion was made to defer this item to the Council's next meeting in St. George, thus allowing Tim Shea to

- 1) amend the language in the schedule concerning cases dismissed with prejudice and
- 2) research the issue concerning misdemeanor domestic violence cases.

The motion was seconded and carried unanimously.

### **Presentation on Hate Crimes Symposium**

Justice Michael Zimmerman and Jennifer Yim gave a presentation to the full Council on an upcoming symposium which addresses the subject of hate crimes. This presentation was made before the Management Committee at its February 9<sup>th</sup> meeting and, pursuant to that committee's recommendation, the matter was brought before the Council.

Justice Zimmerman provided to the Council background information on the purpose of this symposium, which will be held on May 18<sup>th</sup> and 19<sup>th</sup> in Ogden at the Egyptian Theater. The symposium will be presented and paid for by the Simon Wiesenthal Center.

The first day's agenda will focus on three areas:

- 1) hate crimes;
- 2) hate groups; and
- 3) hate on the Internet.

The second day will concentrate on efforts that local communities can make in increasing awareness of and dealing with the issue of hate crimes. The Operations Committee of the Racial and Ethnic Fairness Task Force agreed, as did the U. S. Attorney's office, to co-sponsor the symposium, since there is no cost involved in putting on the conference.

Justice Zimmerman stated that the task force seeks the Council's approval for the Education Department to offer reimbursement to those judges who desire to attend the symposium. While no costs are associated in presenting the symposium, there is an \$85 fee charged to attend. These fees are then applied toward costs of meals, honoraria, etc.

Jennifer Yim has contacted the Bar and made the necessary application for approval for CLE credit. Diane Cowdrey addressed the issue of reimbursement costs by the Education Department. She stated that if the Council feels that judges' attendance at the symposium is a priority, the Education Department will assist with monies available. Registration for judges would be processed in-house, and Dr. Cowdrey also suggested that judges could also use a portion of their \$400 yearly allotment, if they are able to do so. If they are not able to use any portion of their allotment, requests for monies to cover the fee, travel, and lodging costs could be made to the Education Department. Dr. Cowdrey estimated that up to \$2,000 could be contributed from the education budget. Jennifer Yim will send a follow-up letter to judges informing them of the \$85 tuition fee.

### **Motion**

A motion was made for the Council to endorse judges' attendance at the symposium, and to authorize expenditure of funds regarding payment of the tuition fee as outlined by Dr. Diane Cowdrey. The motion was seconded and carried unanimously.

### **Report from the Ethics Advisory Committee**

Brent Johnson submitted to the Council on behalf of the committee's Chair, Hon. Ben Hadfield, a report from the Ethics Advisory Committee. Mr. Johnson began by listing the current committee members:

Hon. Fred Howard, Hon. Elaine Storrs, Hon. Sharon McCully; Hon. Pamela T. Greenwood; and Prof. George Harris.

The 1998 update was completed, and a letter was sent to judges telling them where and how to locate ethics opinions on the courts' Internet site. Mr. Johnson asked the Council if there was any problem in placing these opinions on the courts' website, the external Internet site. These opinions would be accessible to the public, and they could then be accessed by justice court judges. Mr. Johnson said doing so would be a benefit to the courts; however, this has not yet been discussed by the committee.

Mr. Johnson also indicated that upon the issuance of an ethics opinion, that opinion is also automatically sent to the courts' website. He informed the Council that in his future mailings to judges, he would include a letter

informing the judges of the opinions placed on the website, and include the holdings with his letter.

Mr. Johnson concluded his report by saying that as of February 22<sup>nd</sup>, no opinion requests are pending. The Council thanked him for the report, and expressed thanks to the committee for their work.

### **Legislative Update**

Dan Becker, Richard Schwermer, and Mark Jones updated the Council on the legislative session. Regarding the budget: The Appropriations Subcommittee held its final meeting on Wednesday, February 17<sup>th</sup>. They approved an expansion of \$1.2 million for contracts and leases, \$167,000 for "internal services adjustments", or inflationary costs. \$59,000 was approved for the capital law clerk. A "wish list" was created which included 15 new deputy clerks, salary selectives, \$318,000 for data processing, and \$100,000 for the guardian ad litem program. \$50,000 was passed for the QuickCourt conversion to the Internet. No recommendations had been made with respect to judicial salary increases. The one percent reduction in the base budget remains unrestored.

The Vernal courthouse project will most likely be approved, as it is eighth on a list of 11 projects to be funded. The bill providing for the juvenile court judges was approved by the Senate and House, and is pending fiscal note prioritization.

Richard Schwermer and Mark Jones discussed the bills which have either passed or are likely to pass, as follows:

SB 104 Housekeeping Bill

SB 105 New juvenile judges

SB 124 Appellate mediation

SB 196 Residence of Justice Court judges **(not likely to pass)**

SB 208 Cohabitant Abuse Acts

SB 209 Divorce Law - Custody Amendments

SB 210 Divorce Law - Alimony Amendments

SJR 6 Resolution Requiring Sen. Reconfirmation of Certain Judges

HB 11 Judicial Debt Collection

HB 64 Youth Court Act

HB 77 Rule 4.2

HB 78,79 Stalking Amendments (civil and criminal, respectively)

HB 85 Compulsory Education/Truancy Amendments

HB 118 Sentencing of Convicted Felons

HB 227 Domestic Violence Dismissal Amendments

HB 317 Juvenile Court Act Amendments

HB 322 Expansion of Judicial Conduct Commission Recommendations

(This bill has no content)

HJR 7 Judges' Retention Resolution

### **Proposal for Reorganization of 3<sup>rd</sup> District**

Judges Frank Noel and Robin Reese appeared before the Council to present a proposal for reorganization in the Third District. When the consolidation plan was implemented in April, 1998, the plan was for all judges to handle all case types. However, problems were soon encountered with respect to calendaring, timely appearances by attorneys, standardizing procedures between district and circuit courts, etc. In November, Judge Noel was authorized by the Third District Judges to begin discussion of another approach. This approach involved dividing the workload among judges, and to facilitate this approach, meetings were held with various interested groups. Regular meetings were held with the Legal Defenders' Association, the District Attorney's office, the County Bar, etc.

After considering various proposals, the judges voted to adopt the following proposed plan: Cases would be divided into civil (including domestic) and criminal (including felonies and misdemeanors). Arraignments are handled by all

judges, as are adoptions, uncontested probate matters, and ex parte protective orders. This plan would not apply to "grandparent" judges; they will continue to handle the types of cases outlined in the original consolidation plan.

In the beginning, judges are allowed to select the division of their choice, based on their seniority. After a period of four years, judges can then decide on another area to handle. In this way, judges would have a sufficient opportunity to handle a variety of matters, and rotation is avoided. Judges cannot exercise their seniority to move into another division until they have served four years in the area they selected. After one year of serving in that particular division, judges have the opportunity to trade calendars.

Judge Noel said that this plan seemed to be the best in terms of how the public would be best served, a factor that was foremost in the judges' minds. The vote to adopt the plan was not unanimous, but a large majority favored the plan. Those who had opposed the plan are now supportive and are working toward its successful implementation. Letters were sent to Bar members and thus far, Judge Noel reported that the response has been positive. Some additional suggestions have been made and taken into consideration by the judges. A program to phase the plan in is in the development process, and July 1<sup>st</sup> is the target date to have the plan fully operational and implemented.

Dan Becker asked Judge Noel to specifically address the impact of the plan on ensuring that the principle of rotation be preserved. Judge Braithwaite raised concerns regarding the continued use of grandparenting.

### **Motion**

A motion was made to approve the proposal for the revised consolidation plan in the Third District. The motion was seconded and was approved with one no vote.

### **Family Court Presentations**

Eric Bjorkland, President of Utah Youth Village, offered a presentation as part of the Family Court hearings. The Utah Youth Village cares for abused and neglected children, and thus deals mainly with the juvenile court rather than the district court. Mr. Bjorkland offered observations on both courts from the Utah Youth Providers Association. It is the perception of these agencies that the juvenile court has two functions: 1) the effective administration of justice, and 2) assisting children in remaining good citizens through their adolescent years. He stated that the juvenile court seems able to balance both missions. The district court's mission is to efficiently and effectively dispense justice. The benefit of a family court is that its mission would be to attend to the needs of children, particularly in family dissolution situations. He said that a family court could exercise leadership over families in domestic cases just as juvenile court deals with juveniles. Mr. Bjorkland stated that he did not know if a family court structure was essential but he was supportive of a concept that would more effectively advocate programs addressing the needs of children and the family, and focus on assisting children in dealing with issues they face as a result of divorce.

He distributed statistical information to the Council, and presented each member of the Council with a book entitled Second Chances, a summary of an extended study on divorce and its effects on the family, conducted by Judith Wallerstein. Mr. Bjorkland also presented to the Council a results summary of a program his agency utilizes in the Second and Third District Court, called "Families First".

Nano Podolsky of FACT/Project HOPE was the second presenter to the Council. She informed the Council of the agency's purpose, and provided statistical information. The agency's primary function is to provide a mechanism to bring collaborative services together to serve the needs of at-risk children and youth. She described the court liaison program, a grant-based program which provides services to youth already in the juvenile court system. Although the program is small, the early intervention efforts for some youth in the system has been successful, in that they have not become more serious youth offenders.

She indicated that while their agency is well acquainted with juvenile court operations and procedures, nothing is known about the operations in the district court. This lack of knowledge is ultimately to the disadvantage of the youth they serve. She concluded by saying that focus must be directed on a delivery system that serves the best of interest of children and youth.

### **Motion to Adjourn**

There being no other business, a motion was made to adjourn the meeting. The motion was seconded and carried unanimously.

**NEXT MEETING: MARCH 4, 1999, 12:30 p.m.  
SABRA BALLROOM A & B  
HOLIDAY INN -- ST. GEORGE, UTAH**