

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Thursday, March 21, 2002
Mezzanine Room, Holiday Inn
850 South Bluff Street

St. George, Utah

MEMBERS PRESENT:

Chief Justice Richard C. Howe
Justice Michael Wilkins
Hon. James Z. Davis
Hon. Ben Hadfield
Hon. Jerald Jensen
Hon. Clair Poulson
Hon. Robert Hilder
Hon. Lee Dever
Hon. Andrew Valdez
Hon. Lynn Davis
Hon. Ronald Hare
Hon. Lyle Anderson
Hon. Scott Johansen
Debra Moore, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
D. Mark Jones
Richard Schwermer
Ray Wahl
Holly Bullen
Gordon Bissegger
Fred Jayne
AnNicole Faeth

GUESTS PRESENT:

Rep. Scott Daniels, *President, Utah State Bar*
John Baldwin, *Executive Director, Utah State Bar*

1. WELCOME/LUNCH:

All members, staff, and guests were welcomed to the meeting.

2. REMARKS: BAR COMMISSION: (Rep. Scott Daniels, John Baldwin)

Representative Scott Daniels, President of the Utah State Bar, expressed gratitude to the courts for their participation in dealing with issues of civility and professionalism in the legal profession. Representative Daniels reported on the Bar's efforts in putting together a co-location of agencies to deliver services to the disadvantaged. It was also reported that Representative Kathryn Bryson may advance additional legislation to change the composition of the Judicial Conduct Commission.

John Baldwin, Executive Director of the Utah State Bar, expressed appreciation to the Council for joining the Bar at their Mid-Year Conference, and commented on the importance of the Judiciary's presence at the Bar's Conferences. Mr. Baldwin also reported that the Bar is considering reciprocity agreements with other states, which would allow out of state lawyers to practice in Utah, and Utah lawyers to practice out of state.

Judge James Davis, vice chair of the Judicial Council, then made a presentation to Chief Justice Howe on behalf of the Judicial Council. A photograph of the Council and a plate were presented to the Chief Justice in appreciation and recognition of his service as chair of the Judicial Council.

3. APPROVAL OF MINUTES: (Chief Justice Richard C. Howe)

The minutes of the Judicial Council's February meeting were discussed. A motion was then made.

Motion: A motion was made to approve the minutes, the motion was seconded and carried unanimously.

4. CHAIRMAN'S REPORT: (Chief Justice Richard C. Howe)

Chief Justice Howe mentioned that any items he had to report would be addressed later in the meeting.

5. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Daniel J. Becker reported the following items:

- Judge Braithwaite will not be filing for retention, and plans to retire once his term expires. All other judges who are presently up for retention have filed.
- The Board of District Court Judges, Board of Senior Judges, and Board of Juvenile Judges are also meeting in St. George in conjunction with the Mid-Year Bar Conference.
- A legislative update will be held April 5th.

6.REPORTS:

Management Committee: (Hon. Lyle Anderson)

Judge Anderson reported that the Management Committee reviewed a number of items which appear on the Council's consent calendar. These items include: appointments to the Interpreter Advisory Panel, the addition of one interpreter position to the membership of the Interpreter Advisory Panel, the extension of Judge Joseph Anderson's term on the IT Standing Committee by one year, and a few minor revisions to the Guidelines for Education Programs for Judges, Commissioners and Court Employees. Judge Anderson mentioned that a revision to the guidelines for the award of education credit had been handed out to Council members during the meeting. The revision allowed for the award of credit to judges participating in public outreach activities.

Liaison Committee: (Justice Michael Wilkins)

Justice Wilkins reported that the Liaison Committee had met a number of times during the Legislative Session, at which time they reviewed a number of bills and made recommendations when appropriate.

Policy and Planning: (Hon. Scott Johansen)

Judge Johansen reported that the Policy and Planning Committee reviewed and approved a number of items for submission to the Council, and that they had referred several items to the Council's consent calendar. Judge Johansen also reported that Policy and Planning had looked at the placement of the Guardian ad Litem Office in the Administrative Office of the Courts, and that questions the Committee is considering thus far include: 1) whether housing the Guardian ad Litem Office in the Administrative Office of the Courts presents a legal problem; 2) are there other methods of administering the Guardian ad Litem Office outside of the Judiciary; and, 3) does daily contact between guardians ad litem and judges in courthouses present a problem. The Committee will make a report to the Council once thorough review and discussion have taken place.

Bar Commission: (Debra Moore, esq.)

Debra Moore expressed that she had nothing to report, as a result of the report from the Bar president and executive director earlier in the meeting.

7. REPORT: BOARD OF JUSTICE COURT JUDGES: (Hon. John Sandberg, Richard Schwermer)

Judge Sandberg, chair of the Board of Justice Court Judges, provided an update to the Council. Judge Sandberg reported that the Board was grateful for the support of the Council in opposing a bill which would have created administrative law judges, and also thanked the Council for opposing SB 148.

Judge Sandberg then reported on the success of an auditor position which was created to work specifically with justice courts. It was mentioned that the position has been very beneficial in identifying ways to improve current processes in the justice courts, and Judge Sandberg thanked the Council for allowing for the creation of the position.

It was reported that justice courts are focusing on improving community outreach efforts. In addition to other outreach activities that are being conducted, it was mentioned that two substance abuse courts are operating in justice courts in Salt Lake County.

Judge Sandberg shared a few goals with the Council that the Board has identified for the future, which include:

- Continuing implementation of the justice court mission, "The mission of Utah's Justice Court is to improve the quality of life in our communities"
- Receiving IT support to reach justice court electronic data transmission standards
- Promoting the appellate decisions email notification service
- Resolving areas of consistent disparity between district and justice court sentencing by giving justice courts jurisdiction over class A misdemeanors, and
- Introducing a justice court video which would explain the justice court process

8. APPLICATION FOR NEW JUSTICE COURT: RICHFIELD CITY: (Richard Schwermer)

Richard Schwermer reported that the City of Richfield has submitted an application for the formation of a new justice court. Since the city is a former circuit court site, the Judicial Council may be obligated to certify them as a justice court, provided they meet the outlined requirements. It was mentioned that they appear to meet the operational standards, and that the city currently contracts with Sevier County to handle cases so the creation of justice court in Richfield would not affect current caseloads.

Motion: A motion was made to approve the formation of a new justice court in the city of Richfield. The motion was seconded and carried unanimously.

9. LEGISLATIVE OVERVIEW/ADOPTION OF FY 2003 SPENDING PLAN: (Daniel J. Becker, Richard Schwermer, D. Mark Jones, Fred Jayne)

Mr. Becker recognized the work of Richard Schwermer, Mark Jones, Fred Jayne, and Gordon Bissegger during the Legislative Session, as well as the fine work of the Liaison Committee. Richard Schwermer then distributed a list of bills to the Council. The Council briefly discussed the following bills:

- HB 18 Court Records of Driving Under the Influence Cases: requires the courts to maintain more detailed records in CORIS (does not apply to justice courts yet).
- HB 35 Expungement of Juvenile Records.
- HB 47 Extension of Sunset Dates on Office of Court Administrator and Alternative Dispute Resolution: extended by one year.
- HB 66 Judiciary Amendments.
- HB 82 Storage of Firearms on Facilities with Secure Areas: A \$163,000 fiscal note was attached to the bill in order to purchase storage facilities for firearms in courthouses.
- HB 99 Consecutive Sentencing.
- HB 135 Judicial Conduct Commission Amendments: the Council raised concerns with the original bill in their January meeting, all five concerns were addressed in the final version of the bill which passed.
- HB 154 Expansion of DNA Database: applies to both adult and juvenile felons. They are now required to give a DNA sample. Juvenile Probation Officers will take sample from juvenile felons, Corrections will take sample from adult felons. Samples will be required in the case of some class A misdemeanors such as burglary as well.
- HB 226 Termination of Parental Rights Amendments: cannot terminate a parent's rights because they neglected a treatment plan.
- HB 287 Constitutional Rights of State Employees: the State cannot deny employment as a result of an employee not agreeing to waive any of their constitutional rights. Implications of this bill pertain to first amendment rights which could include violating confidentiality, campaigning, etc.
- HB 295 Taking a Minor into Protective Custody Without a Warrant: if DCFS wants to remove a child, they need to obtain a warrant. There is a fiscal note of \$75,000 attached to the bill.
- HB 303 Expungement of Driving Under the Influence Convictions: changes expungement to ten years.
- SB 106 Divorce - Children's Testimony Limited: a child can't be called to testify unless they have something serious to testify, and that information can't be obtained from another source.
- SB 141 Punitive Damage Awards.

Daniel J. Becker reported that the Judicial Council's action in October advanced a budget plan for FY 2003 which anticipated a reduction of \$3.8 million in ongoing base budget funds. The Legislature took the following action:

1. reduced the amount of reduction to \$3,415,000, or \$385,000 less than anticipated;
2. appropriated \$523,000 in new money for Leases and Contracts, the entire amount of on-going funds requested;
3. appropriated \$584,000, \$173,000 of which is ongoing funds, to implement 6 pieces of legislation; (Note: fiscal note funds have to be used for specific purposes, which include the establishment of a number of new positions.)
4. and, reduced the amount of the reduction required in FY 2002 by \$700,000, allowing a projected carryforward of \$500,000 in one-time funds into FY 2003.

The cumulative implications are: 1) a reduction less severe than what had been planned for; 2) the ability to revisit the number and type of positions which had been slated for elimination as of July 1, 2002; and, 3) the option of restoring funds on a one-time basis for certain needs which had been previously cut.

The Council reviewed a worksheet which identified decisions the Council made last Fall based upon a need to reduce 72 positions. It was mentioned that the Council now needed to reduce 55.5 positions rather than 72. It was reported that there are currently 40 general fund positions vacant as a result of a hiring freeze, and it was recommended that the freeze remain in place once 55.5 positions are vacant, but that it be capped at 55.5 FTE's. At that time, vacancies would be filled on a first in first out basis. The freeze would remain in place until the Third District Court has been downsized by 47 clerks.

It was recommended that 34 Deputy Court Clerk positions be eliminated from the Third District Court as previously planned, due to the shift in caseload to the Salt Lake City and West Valley City Justice Courts; that 9 fiscal

note/drug court positions that were funded by the 2001 Legislature be eliminated because Human Services will not be able to fund the services accompanying the positions; that 6 positions be eliminated in the Administrative Office of the Courts; and, that 1 Court Reporter position be eliminated due to an anticipated retirement. The elimination of these positions would total 50 FTE's.

Motion: Judge Hadfield made a motion to eliminate 34 Deputy Clerk positions, 9 fiscal note/drug court positions, 6 positions in the Administrative Office of the Courts, 1 Court Reporter position, and 5.5 Deputy Probation Officer positions, as previously planned. Those reductions will total 55.5 positions, which need to be eliminated. It was further moved that 13.5 Deputy Probation Officer positions, one Court Reporter position, one Appellate Court position, and the Guardian ad Litem position which had been previously identified for elimination, be restored. The motion was seconded and carried unanimously.

Discussion then took place concerning \$1,450,000 the courts will have in FY 03 in one time funding. The Council reviewed a list of items they had previously approved for funding, but reduced, eliminated, or postponed last Fall with the 4% budget reduction. The total dollar amount of items which had been previously funded exceeded the amount of one time money the courts had available in FY 03 by approximately \$300,000. Daniel Becker recommended that \$950,000 be allocated for full year funding, and that \$500,000 be set aside for second half year funding if the budget allows at that time. \$950,000 of this money is the 2% set aside anticipating turnover savings in personnel. It was noted that the Council should be cautious with this money because turnover has not occurred at the same rate as in previous years.

Motion: Judge Valdez made a motion to add \$150,000 to the current expense budget for the full year. Judge Anderson seconded the motion. The motion carried unanimously.

Motion: Judge Poulson made a motion to fund \$20,000 for a Byrne Grant match for a full year. Judges Lynn Davis and Ben Hadfield seconded the motion. The motion carried unanimously.

Motion: Judge Lynn Davis made a motion to add \$50,000 to the travel budget for a full year. Judge Hadfield seconded the motion. The motion carried with two opposed.

Motion: Judge Lynn Davis made a motion to fund \$35,000 for the second language stipend program for a full year. Judge Valdez seconded the motion. The motion was defeated.

Motion: Judge Johansen made a motion to fund \$100,000 of alterations, repairs and improvements for a full year, and \$50,000 of alterations, repairs and improvements for a half year. Judge Lynn Davis seconded the motion. The motion carried unanimously.

Motion: Judge Anderson made a motion to fund \$20,000 for senior judge benefits for a full year. Judge Lynn Davis seconded the motion. The motion carried unanimously.

Motion: Judge Anderson made a motion to add \$300,000 for career ladder increases. The motion was seconded and carried unanimously.

Motion: Judge Anderson made a motion to restore \$25,000 to reimburse justice courts for conducting preliminary hearings. Judge Jensen seconded the motion. The motion was withdrawn.

Motion: Judge Hadfield made a motion to restore \$225,000 of reserves for a full year, and \$250,000 for a half year. Judge Anderson seconded the motion. The motion carried with 6 in favor of the motion, 6 opposed, and Chief Justice Howe breaking the tie by voting in favor of the motion.

Motion: Judge Johansen made a motion to spend the remainder of available full year funding (\$85,000) on state supervision. Judge Valdez seconded the motion. The motion carried with one opposed.

Motion: Judge Johansen made a motion to fund a \$9,000 adjustment to contract sites for a full year by reducing the full year reserve from \$225,000. The motion was seconded and carried unanimously.

Motion: Judge Anderson made a motion to defer to the last six months of the year capital equipment and IT/services (\$100,000). Judge Lynn Davis seconded the motion. The motion carried with one opposed.

Motion: Judge Johansen made a motion to fund \$65,000 in state supervision contract funds for a half year. Judge Valdez seconded the motion. The motion carried with one opposed.

Motion: Judge Anderson made a motion to restore \$5,000 to half year funding for justice courts conducting preliminary hearings with the intent that those funds be used for the Sixth District. The motion was seconded and carried unanimously.

Motion: Judge Lynn Davis made a motion to restore \$30,000 for the second language stipend program in the second half of the year. Judge Valdez seconded the motion.

Substitute Motion: A substitute motion was made to fund the second language stipend program for a full year by increasing the amount of available funds for full year funding to \$985,000 by reducing funds from half year funding to \$465,000. Judge Lynn Davis seconded the motion. The motion carried with three opposed.

The aforementioned decisions of the Council are listed below:

Personnel:

34 Deputy Clerk positions	34
9 fiscal note/drug court positions (approved but never implemented)	9
6 AOC positions	6
2 Court Reporter positions	1
19 Deputy Probation Officer positions	5.5
1 Appellate Court position	0
<u>1 GAL attorney position</u>	0
72 Total Positions	55.5 Total Positions

One Time Funding Allocation:

		Full Year Funding	Half Year Funding (if available)
(ARI)(d)	100,000	100,000	
ARI (Deferred)	50,000		50,000
Byrne grant match (b)	20,000	20,000	
Capital Equip. (Deferred) (d)			
Court Executives	50,000		50,000
IT/Services	50,000		50,000
Career Ladder (d)	300,000	300,000	
Commissioner. Bonus (c)	20,000		
Adj. Contract Sites (a)	9,000	9,000	
(for current expense)			
Incentive Awds (Deferred) (d)	50,000		5,000
IT Contract Position (d)	75,000		
Justice Crt Prel. Hearings (d)	25,000		
Reserve (a)	225,000	216,000	250,000
Reserve (Deferred)	250,000		
Restore 3% Reduction (d)	150,000	150,000	
(current expense)			
Restore 10% Reduction (d)	50,000	50,000	
(travel)			
Second Language Stipend (a)	35,000	35,000	
Senior Judge Benefits (a)	20,000	20,000	
State Sup. Contract Fund (d)	150,000	85,000	65,000
		Total \$985,000	Total \$465,000

Key: 1) items which have been presumed funded in the past or are provided by Rule (a); 2) items which required funding to support earlier Council decisions (b); 3) proposals deferred by Council (c); and, 4) items cut from FY 2002 spending or FY 2003 base budget (d).

10. EXECUTIVE SESSION:

Motion: A motion was made to go into executive session to discuss personnel matters. The motion was seconded and carried unanimously.

Debra Moore recused herself from the executive session.

11. OTHER BUSINESS:

Motion: Judge Lyle Anderson made a motion to have a letter prepared by the vice-chair of the Council, Judge James Davis, responding to Judge Joseph Anderson's correspondence to the Council. The motion was seconded and carried unanimously.

12. ADJOURN:

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