

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Thursday, March 10, 2005

Sabra A, Holiday Inn
850 South Bluff Street
St. George, Utah

Chief Justice Christine M. Durham, presiding

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Hon. James Davis
Hon. Kevin Nelson
Hon. Jon Memmott
Hon. J. Mark Andrus
Hon. Robert Hilder
Hon. Lee Dever
Hon. Jerald Jensen
Hon. Clair Poulson
Hon. Gary Stott
Hon. K.L. McIff
Hon. Hans Chamberlain
David Bird, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Richard Schwermer
Mark Jones
Ray Wahl
Rob Parkes
Fred Jayne
Gordon Bissegger
AnNicole Faeth

MEMBERS EXCUSED:

Justice Ronald Nehring

GUESTS PRESENT:

Hon. Sheila McCleve (by telephone), *Chair, Standing Committee on Facilities*
John Baldwin, *Executive Director, Utah State Bar*
George Daines, *President, Utah State Bar*
Sharon Hancey, *Trial Court Executive, First District Court*
Sylvester Daniels, *Trial Court Executive, Second District Court*
Beani Martinez, *Trial Court Executive, Second District Juvenile Court*
Peggy Gentles, *Trial Court Executive, Third District Court*
Bruce Thomas, *Trial Court Executive, Third District Juvenile Court*
Paul Vance, *Trial Court Executive, Fourth District Court*
John Day, *Trial Court Executive, Fourth District Juvenile Court*
Rick Davis, *Trial Court Executive, Fifth District Court*
Brent Bowcutt, *Trial Court Executive, Sixth District Court*
Bill Engle, *Trial Court Executive, Seventh District Court*
John Greene, *Trial Court Executive, Eighth District Court*

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

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

Motion: Judge Poulson made a motion to approve the minutes. Judge Davis seconded the motion was seconded and carried unanimously.

2. REMARKS BY THE UTAH STATE BAR: (George Daines, President, Utah State Bar, John Baldwin, Executive Director, Utah State Bar)

John Baldwin and George Daines discussed the recent legislative session with the Council. The Council acknowledged the integral role the Bar played in leading judicial salary increases to be passed, and expressed appreciation to those involved for their assistance. Additional pieces of legislation were then briefly discussed.

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

Chief Justice Durham reported that a coalition has been formed in conjunction with the Education for Justice Project. The coalition includes the courts, the Bar, the Board of Education, the Education Curriculum Committee, and Education for Caring.

4. ADMINISTRATIVE UPDATE: (Daniel J. Becker)

Daniel J. Becker reported the following items:

- The final report of a district court timeliness audit, that is being conducted by the Legislative Auditor's Office, should be released shortly.
- Robert Adkins was recently sworn in as a judge in the Third District Court, filling the vacancy created by Judge Frank Noel's retirement.
- July 1, 2005 will be the 20th anniversary of the Revised Judicial Article's passage. It was suggested that the Council plan to recognize this anniversary in some way.
- The Appellate Nominating Commission is still being formed.

5. REPORTS:

Management Committee: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that the Management Committee heard a report from Fred Jayne, in which he indicated that there are typically 26 pay periods in a fiscal year, but due to leap years, once every ten years there will be 27 pay periods in a year. Mr. Jayne reported that this will occur in the coming fiscal year, therefore, the total judicial salary amount will be spread out over 27 pay periods rather than 26. This will result in an additional paycheck during the fiscal year, but individual checks will be slightly lower than the current amount., even though judges will receive a pay increase. Mr. Jayne presented two possible options to the Management Committee for addressing this issue: the first was to make no changes to the judicial pay schedule, and have judges' salaries be paid over 27 pay periods. The second option is to have judges be paid twice a month, instead of every other week. Chief Justice Durham reported that the Management Committee elected to go with a twice-monthly pay system, beginning July 1, 2005. This option will be explored with State Finance to see if it is possible.

Policy and Planning: (Hon. Lee Dever)

Judge Dever reported that Policy and Planning considered an issue concerning court commissioner term of office. It was reported that the Board of District Court Judges discussed the notion of moving commissioners from a four-year term of office to a six-year term. Judge Dever reported that Policy and Planning recommends that Tim Shea review past Council minutes to see what the Council's previous position on this issue has been, and that the present Council discuss the request of the commissioners as a policy issue.

Judge Dever also reported that Policy and Planning discussed: court reporter fees; eliminating a rule that requires judges to keep an inventory list of all personal items in their chambers; and, the types of personal information the court needs to verify an individual's identity.

Liaison Committee: (Hon. Jerald Jensen)

Judge Jensen reported that a legislative update would take place later in the meeting.

Bar Commission: (David Bird, esq.)

Mr. Bird indicated that he had nothing to report, in addition to the remarks already given by the Bar president and executive director.

6. REPORT: STANDING COMMITTEE ON FACILITIES: (Hon. Sheila McCleve, Gordon Bissegger)

Gordon Bissegger reported that the city of St. George has developed a new master plan for its city center. Mr. Bissegger displayed charts and photographs of St. George, and described the city's master plan. It was mentioned that the legislature recently approved a land exchange between the city of St. George and the Utah State Courts in which the courts will exchange the property the present courthouse is constructed upon for land closer to the new city center. It was reported that it is anticipated that the new courthouse will house 10 courtrooms, and will be able to be expanded to 20 courtrooms, if a need arises.

Mr. Bissegger then reviewed the results of the 2005 Legislative Session with the Council, as it relates to facilities. It was mentioned that, in addition to the St. George land exchange, the legislature authorized the purchase of land adjacent to the Provo Courthouse. Intent language was approved to exercise the option on the purchase (no new

funds required) of the West Valley Courthouse for use by juvenile probation. Authorization to close both Sandy and West Valley District Court sites as a result of the opening of the new West Jordan Courthouse was provided.

In regards to the Lease and Contracts budget, \$718,600 in new general funds were provided for lease and contract obligations. The balance of the increase was from court complex fund receipts. This new funding will be used to cover the cost of operating the new West Jordan Courthouse and to cover operations and maintenance, lease and security contract increases in facilities across the state.

7. REPORT: TRIAL COURT EXECUTIVES: (Sylvester Daniels, TCE 2nd District, Bill Engle, 7th District)

Each of the Trial Court Executives in attendance at the meeting were introduced and welcomed to the meeting. Bill Engle and Sylvester Daniels indicated that they would provide an overview of what has occurred in districts throughout the state since their last report approximately a year prior.

Sylvester Daniels reported that customer service is a concern of all districts. It was reported that surveys are made available statewide to allow the courts to receive customer feedback. Mr. Daniels reported that community outreach is taking place in districts throughout the state. This includes career days which allow students from local high schools to spend a day in the court system observing operations; judge provide groups of students with an opportunity to observe the court process; also, recruitment notices are sent to minority groups/offices.

In regards to the juvenile court, Bill Engle reported: 48,589 referrals, 49,247 dispositions. The highest number of cases are misdemeanors, followed by status offenses, and dependency-neglect-and abuse cases, which are very time consuming cases. Mr. Engle mentioned that there is presently a 94% collection rate on restitution, which is a very good percentage. Additionally, 698,620 hours of community service was completed in the last year in various communities under juvenile court monitoring.

Mr. Engle reported that the Court Access Record Exchange (CARE) is in the final stages of development, and that two modules are currently in operation. Others should be released shortly. Drug testing results are now being entered in CARE system data base. Also, correction plans are using the assessment results on each probationer.

Specialized programs highlighted in districts throughout the state include:

- The Sanpete County Day Treatment Center, which serves as a place for kids to go and learn necessary life skills;
- Educational Enhancement: where teachers provide tutoring services after school to kids;
- Drug Courts: including child welfare drug court, and delinquency drug court;
- A 5th District Recidivism Study: this was a two-part study conducted in conjunction with Southern Utah University. The first study is looking at first time drug and alcohol offenders and the effect on recidivism. The second is looking at tobacco offenders;
- Victim Offender Mediation;
- Citation Program: an early intervention program in which a juvenile is given a citation and instructed to appear before a non-judicial officer such as a probation officer.

Sylvester Daniels reported that in the district court, there were 243,541 filings in FY 2004, and 265,793 dispositions. An e-filing pilot is underway in 2nd District in civil medical malpractice cases. It was reported that the program has proved to be a great time saver thus far. Document scanning is taking place in the 2nd and 3rd districts. Mr. Daniels reported that most districts have allotted of victim coordinator of some type to assist victims in submitting restitution claims, receiving notification of hearing, and being available to answer questions regarding the court process for victims. Mr. Daniels also mentioned the success of specialized courts such as the mental health court that is currently operating in the Third District, DUI courts, and domestic violence courts.

Mr. Engle and Mr. Daniels reported that future project development should focus on partnering with communities on growth studies; engaging in pilot projects such as e-filing and scanning; continuing the operation and creation of specialized courts; and, working to improve personnel compensation and benefits.

The Council thanked Mr. Engle and Mr. Daniels for their report, and expressed appreciation to the TCEs for all that they do.

8. HERRIMAN JUSTICE COURT APPLICATION: (Richard Schwermer)

Richard Schwermer reported that the Management Committee reviewed a request from Herriman City in January, in which Herriman requested that the Council approve their request to form a justice court. At that time, the Management Committee requested that Herriman submit additional information regarding need of a justice court in

the area. Mr. Schwermer discussed materials submitted by Herriman which provide further information regarding the need for a justice court in the city. After the Council reviewed the materials and discussion took place, the following motion was made.

Motion: Judge Hilder made a motion to approve Herriman City's request to form a justice court. The motion was seconded and carried unanimously.

Motion: Judge Stott made a motion to not waive the time requirement, unless Bluffdale indicates that they're ok with it. Judge Hilder seconded the motion. **The motion was withdrawn.**

The Council then discussed criteria for approving or denying the creation of a justice court. After further discussion took place, it was determined that this issue would be referred to the Management Committee for consideration and recommendation to the Council.

9. LEGISLATIVE/BUDGET UPDATE: (Daniel J. Becker, Myron K. March, Richard Schwermer, Mark Jones)

Richard Schwermer discussed the following pieces of legislation with the Council:

HB 4 - Divorce Mediation Program: The courts supported this bill. It moves the pilot project from the Third District statewide. All divorce cases will now go through mediation first.

HB 42 - Medical Recommendations for Children: This bill creates a domestic mediation program for divorce actions, made the mediation program mandatory, and allows parties to be excused for good cause.

HB 213 - Unused Sick Leave at Retirement Amendments: This bill prohibits school personnel from making certain medical recommendations for a minor, including the use of psychotropic drugs, and prohibits consideration of a petition for removal of a minor, and removal of a minor from parental custody based on a parent's refusal to consent to the administration of psychotropic drugs.

HB 235 - Insurance Arbitration Amendments: This bill modifies the Insurance Code by amending provisions related to using arbitration for third party motor vehicle accident claims.

HB 338 - Child and Family Welfare Revisions: This bill amends provisions of the Utah Human Services Code and the Judicial Code relating to child welfare and the rights of parents.

SB 30 - Amendments to Search Warrants: This bill repeals and reenacts the Code of Criminal Procedure provision regarding the evidence and procedures involved in a magistrate's issuance of a search warrant. The reenacted section refers to the procedures in Rule 40 of the Rules of Criminal Procedure. This bill also amends the Code of Criminal Procedure regarding the management of the records and information a magistrate relies upon in issuing a search warrant to reflect use of remotely communicated search warrants.

SB 72 - Child Welfare Amendments: This bill amends provisions of the Human Services Code, the Judicial Code, and provision relating to child welfare. The bill replaces the term "treatment plan" with the term "child and family plan" ; it clarifies access to certain protected and confidential records; provides that the inability to identify or locate an alleged perpetrator of child abuse may not be used by the division as a basis for determining that a report is unsupported; it provides that a child and family plan may only include requirements that: address findings made by the court or are requested or approved by a parent or guardian of the child, and are agreed to by the division and the guardian ad litem; it addresses the circumstances under which parent-time may be denied; and, it makes technical changes.

SB 83 - Medical Decisions of a Parent or Guardian: This bill modifies provisions of Child and Family Services, the Utah Criminal Code, and the Judicial Code regarding child abuse and neglect. The bill also modifies the Judicial Code regarding malpractice actions against health care providers.

SB 135 - Drug Courts Pilot Project: This bill allows for the creation of drug courts in any judicial district, and the creation of a Drug Court Pilot Project in Davis and Weber counties for intensive substance abuse treatment. The bill sets out participant screening criteria, and requires participation by the Board of Pardons and Parole. The bill allows any judicial district to create a drug court; and allows creation of a pilot drug board to oversee intensive substance abuse treatment for parolees under conditions set out by the Board of Pardons and Parole and the Department of Corrections.

After discussion took place, the Council expressed appreciation to Mr. Schwermer and Mark Jones for their work in advance of, and during the Legislative Session on behalf of the court system.

Daniel Becker then reviewed budget actions taken by the legislature with the Council. Mr. Becker reported that the court's budget increased by approximately 9% this year. A brief review of items funded by the legislature was presented to the Council, as follows:

FY 2006 Appropriations Summary

Overall Budget:

2004 Budget \$103,497,300 2005 Budget \$112,896,800

Summary of New Funding:

- Salaries and Benefit Increases	\$4,724,600
- Lease and Contract Increases	\$1,326,800
- Second Juvenile Court Judge	\$ 245,100
- General Fund Restricted (Juv. Security & Justice Ct. Tech)	\$2,700,000
- Fiscal Note Funding	\$ 328,000
- Juror, Witness, Interpreter Fund (Supplemental)	\$ 145,900
- Provo Land Purchase	\$ 225,000

Other:

- Non lapsing authority for all line items
- Authority to exercise purchase option on West Valley Courthouse (Probation Offices)
- Authority for land exchange for future courthouse in St. George
- Authority to close West Valley and Sandy court sites

It was reported that the legislature followed the Council' s priorities very closely, and that in addition to the first two Council priorities, the legislature funded Leases and Contracts, the Juror, Witness, Interpreter fund, and a Provo land purchase.

Mr. Becker then reported the Council needs to take action in a few areas. The first of these areas pertains to \$224,600 in fiscal note funding the courts received. Mr. Becker mentioned that judicial retirement contributions, in the amount of \$127,000, was not funded by the legislature for the coming year. After discussion took place, the following motion was made.

Motion: Judge Hilder made a motion to fund judicial retirement contributions for the coming year, in the amount of \$127,000, from the \$224,600 in fiscal note funding the courts received. Judge Davis seconded the motion. The motion carried unanimously.

Mr. Becker reported that another area the Council needed to take action on, pertains to the application of the market comparability increases. It was reported that 95% of court employees will receive a 2.75 - 5.5% market comparability increase in addition to the 2.5% cost of living that will be awarded to employees. It was recommended that the Council decide that employees must have been hired by March 2, 2005 in order to receive the Market Comparability Increase. This is due to the fact that funding for the increases was based on the present payroll. Furthermore, this cutoff date would reduce compression issues by awarding increases to employees who have been with the courts for a greater length of time.

Motion: Judge Davis made a motion to only award market comparability increases to employees who were employed as of March 2, 2005. Judge McIff seconded the motion. The motion carried unanimously.

Mr. Becker that the remaining issue the Council needed to address is related to HB 213 - Unused Sick Leave Benefits at Retirement. Mr. March reported that as a result of HB 213, employees lose the automatic five years of paid up health insurance; The option of an employee contributing 25% their 401(k), converting to cash, or using the 25% for paid up health insurance has been eliminated; employees lose the ability to keep sick leave and converted sick leave separate at the time of retirement, and employees move from a system that is time based to a system that is dollar based. It was mentioned that judges aren't directly affected by the bill, and that Judges already in the system will retain their current benefits.

10. ADJOURN:

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