

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Thursday, March 9, 2006

Sabra G, 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. Hans Chamberlain
Hon. J. Mark Andrus
Hon. Robert Hilder
Hon. William Barrett
Hon. Jerald Jensen
Hon. Jody Petry
Hon. Gary Stott
Hon. Rand Beacham
David Bird, esq.

STAFF PRESENT:

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

MEMBERS EXCUSED:

Hon. Jon Memmott

GUESTS PRESENT:

Hon. Sheila McCleve, *Chair, Standing Committee on Facilities*
John Baldwin, *Executive Director, Utah State Bar*
Gus Chin, *President-elect, Utah State Bar*
Joe Derring, *Clerk of Court, First District*
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*

WELCOME AND APPROVAL OF MINUTES:

Chief Justice Durham welcomed members, staff, and guests to the meeting.

Motion: Judge Chamberlain motioned to approved the minutes Judge Davis seconded the motion. The motion passed unanimously.

REMARKS BY UTAH STATE BAR:

David Bird thanked the Judicial Council for their invitation to present at the meeting. Mr. Bird introduced Mr. Baldwin, Executive Director for the Utah State Bar and Mr. Chin the President-elect of the Bar. Mr. Bird reported

that the spring convention will begin this afternoon and go through Saturday, March 11th.

Mr. Bird reported that two surveys have recently been distributed to Bar members. One is from the courts that was sent out to gauge the feelings the Bar members have regarding judicial vacancies. He shared some early results but summarized that these numbers could change as additional responses are received. He reported that after being sent out two days ago, the preliminary number of respondents were 134. The final results will be presented to the Council when the survey is complete.

Mr. Bird also reported on a survey that was sent out by the Bar regarding attorney's who have experienced violence while practicing law. More than 900 individuals responded to this survey and a compiled report will be given to the Council when it is finalized.

Mr. Bird reported that the Bar is celebrating their 75th Birthday and provided a memento for each Judicial Council member to show appreciation for their support. The Annual Bar Conference will be held in Newport Beach this year.

CHAIR'S REPORT:

Chief Justice Durham reported the following

- A Presiding Judge and TCE workshop was held last week at the Homestead. The group discussed the current Rules for presiding judges and also reviewed the best way to deal with the impaired judge. Mr. Schwermer reported that the examination of the Rules led to a productive discussion that will be helpful in the future.

- The Court of Appeals is holding court in St. George today at 1:30 at the St. George Court House.

- Dan Becker, Ray Wahl, Katie Gregory and Chief Justice Durham have participated in an "immersion" program to learn more about the issues surrounding child protection services in DCFS. The IOU Commission is working with legislators to gain a better understanding of the child welfare process that foster care children experience. The goal of this involvement is to educate individuals in policy making positions.

- The Management Committee will have a discussion with the Citizens Committee to assess legislature's response to compensation issues. In addition, the committee to examine long term compensation issues will begin its work within the next month.

ADMINISTRATOR'S REPORT: (Dan Becker)

Mr. Becker reported the following:

- The Presiding Judge and TCE meeting last week involved the discussion of a court culture survey that was given to all judges. The results were very informative and generated a good deal of discussion.

- Sr. Judge Roger Livingston has been asked by the Governor to serve as the Director of the Office of Risk Management and he has resigned his Sr. Judge position.

- A copy of the Utah State Courts Employee's Guide was handed out and Mr. Becker encouraged the Council to offer input.

- Mr. Becker thanked Rick Schwermer, Mark Jones, Myron March, Ray Wahl, Gordon Bissegger and Fred Jayne for their effort and hard work during the legislative session. Mr. Becker also reported that the GAL Standing Committee and Kristin Brewer worked tirelessly to gain support for the bill for increased funding of the GAL office.

REPORTS:

Management Committee:

Chief Justice Durham reported that the minutes provided covered the Management Meeting discussion.

Policy and Planning Committee:

Judge Stott indicated that the Policy and Planning Committee met last week and discussed a challenge that had been raised about the jury selection in fourth district. The Policy and Planning Committee also approved the use of a new a new fax policy in 3rd District.

Liaison Committee:

Justice Nehring thanked Mark Jones, Rick Scwhermer, and the members of the Liaison Committee for all their hard work and effort during the legislative session.

Bar Committee:

Mr. Bird gave his full report at the beginning of the meeting.

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

Judge Sheila McCleve reported that despite some challenges, the legislative session was a success for the Standing Committee on Facilities.

Mr. March indicated that the Council originally requested \$882,000 to cover the Lease and Contracts budget and that initially it had appeared that the request would be cut in half. Because funding of the bond retirement was provided in a separate action, the leases and contract request was nearly met in its entirety. Mr. Bissegger reported on legislative action on leases, contracts and building requests.

Mr. Bissegger reported that it is anticipated that only \$4,400,000 of the \$4,700,000 GFR appropriation for the court complex fund will be available in FY 07. The revised FY 07 expenditure plan anticipates moving forward with the new Manti Courthouse.

Judge McCleve reported on the progress of funding for a new St. George Courthouse. The land purchase and bond retirement funds were approved during the session but the design costs were not. This could extend construction on the St. George Courthouse for an additional year. The Old Ogden Post Office that the courts had originally considered purchasing for 2nd Juvenile Court has been sold to another party. Mr. Bissegger also indicated that the Community Impact Board is willing to offer assistance with the Manti Courthouse which will reduce the interest rate, thereby, lessen the amount that the Council will need to request during the next legislative session.

Chief Justice Durham thanked Judge McCleve for her leadership and good work. Judge McCleve recognized Mr. Bissegger for all his work throughout the legislative session.

BENEFIT POLICIES: (Rob Parkes)

Mr. Parkes provided information on the changes made in the post retirement employment policy that would require individuals who had worked in the courts and then retired to go through the full hiring process if they wished to be considered for re-employment at a later date.

Motion: Judge Hilder motioned to approve the changes in the post retirement employment policy. The motion was seconded, the motion was approved unanimously.

Mr. Parkes provided information on the retirement policy and the changes that became necessary when HB 213 was passed. The changes made in this policy were only those required to comply with HB 213.

Motion: Judge Hilder motioned to approve the changes to the retirement policy, Judge Chamberlain seconded the motion, the motion passed unanimously.

Motion: Judge Davis motioned to go into executive session. The motion was seconded and passed unanimously.

TCE PRESENTATION: (Bill Engle)

Bill Engle thanked the Judicial Council for their invitation to make this annual presentation. Each TCE was introduced. Mr. Engle indicated that personnel is a main responsibility of the TCE's and there are 1,140 non judicial employees throughout the state. Mr. Engle reported on the experience of these employees and how they contribute to the judiciary. HB 213 led to an increase in retirement throughout the year that impacted each district and the TCE's that managed those areas. Mr. Engle reported on the numerous awards that were received by employees, administrative staff and judges both nationally and locally that was indicative of the quality of people employed by the courts.

Mr. Engle reported on the caseload totals experienced in Juvenile Court. Mr. Engle highlighted the numerous programs the Juvenile Courts are involved in statewide such as the IOU Committee. Work associated with the successful immersion to the new CARE information system was also highlighted. During the transition there were some challenges but the CARE system is now operating successfully.

The TCE's reported that the Presiding Judges workshop was very useful and provided valuable time for the TCE's and judges to work together in a more informal setting.

Chief Justice Durham thanked the TCE's for all their efforts and service.

LEGISLATIVE UPDATE: (Dan Becker, Myron March, Rick Schwermer, Mark Jones)

Mr. Becker reported that not a great deal had changed since the legislative budget summary provided at the last Judicial Council Meeting two weeks ago. Mr. Jayne provided information on the details of the building block requests and what requests were funded by the legislature.

Since the last meeting, compensation was clarified. The employees salary will increase from 2.5% to 3.5%. The deductible on surgery costs will most likely change, but nothing formal regarding that change has been provided. The judges will receive a 3% increase. Mr. Becker reported that other elected officials, cabinet officials and executive directors of state agencies did not receive a salary increase.

The final amount of fiscal notes on passed legislation will total approximately \$110,000, not counting the 4th District Judge. Other requests that were funded include Lease and Contracts, Jury, Witness, Interpreter supplemental funding, DORA, one time funding for equipment replacement, an increase in the bailiff restricted account and additional drug court funding.

The requests that were not funded was the district court law clerks, the juvenile court judge, the GAL request, 3rd district commissioner, child welfare mediator, and the law library publishing costs. Mr. Becker reported that he and Mr. March had reviewed the funds available to cover the requests left unfunded and offered the following possibilities for the Council to consider for their April meeting:

-With the \$65,000 drug court funding and staff potentially lost in Ogden when the justice court opens in July, there would be funding available to cover 4 ongoing law clerks for the district court.

- Mr. Becker proposed that the Council consider the creation of a commissioner position that would split time equally between juvenile and district court. Funding would be provided to support the district court time through on going fiscal notes. The juvenile time would be compensated through one time grant juvenile money. A request for a 3rd District Juvenile Judge and the remainder of the commissioner position would be advanced to the legislature next year. This proposal would only support the commissioner position and not clerical assistance. Intent language allowing for the creation of the commissioner position was included in the approved appropriations act.

-The child welfare mediator request could be funded by one time money approved by the Council. The Board of Juvenile Judges will request that Court Improvement funds be used to support a second child welfare mediator.

-Mr. Becker suggested that the law library costs could be addressed through Exchange funds which have increased during the last year due to an increase in subscriptions. The law library along with the Exchange program, e-filing, and OCAP are all programs designed to encourage access to the court information.

Mr. Becker reported that the legislature's focus on tax relief, education, compensation and roads limited the amount of expansion for other needs. There was also a feeling among the legislators that government should not grow. Funding on crime prevention and control on both the state and national level has become less of a priority.

Handouts were provided to the Council members that outlined the caseload trends in both district and juvenile court from 1996-2005. These trends, coupled with the creation of the justice courts in Ogden and Provo, will have a bearing on future court requests and the need to examine the most productive use of existing resources.

Chief Justice Durham thanked Mr. Becker and Mr. March for their work on budget options and the information that was provided to focus the group's discussion.

LEGISLATIVE UPDATE: (Rick Schwermer, Mark Jones)

Mr. Schwermer reported that the Liaison Committee reviewed 178 bills. Only one bill passed that the Liaison Committee opposed, the physicians apology bill. Apparently, there is some question as to whether this bill is one which the Governor may have concerns.

Mr. Schwermer provided information on the bills that passed. Mr. Schwermer and Mr. Jones highlighted the following bills that will affect the courts.

HB 21 Child Welfare Revisions

HB 30 Emancipation of a Minor

HB 85 Abortion by a Minor-Parental Notification and Consent

HB 90 Criminal Penalty Amendments

HB 100 Environmental Litigation Bond

HB 102 Sentencing for First Degree Felony Murder

HB 103 Changes to Definitions of a Child and a Minor

HB 124 Parent-time Amendments

HB 130 Adoption Amendments
HB 148 Parents and Child Amendments
HB 212 DNA Database Amendments
HB 219 Child Protection - Clandestine Laboratory Operation
HB 247 Plea in Abeyance Fee
HB 278 Out-of-state Parent-time Amendments
HB 295 Child Support Amendments
HB 322 Costs of Divorce
HB 403 Bailbond Amendments
HB 414 Petition for Involuntary Medication of Incompetent Persons
SB 7 Child Protection Amendments
SB 18 Driving Under the Influence Amendments
SB 41 Restrictions on Use of Physician Disclosures
SB 61 Uniform Mediation Act
SB 62 Judicial Conduct Commission Amendments
SB 106 Uniform Interstate Enforcement of Domestic Violence Protection Orders
SB 150 Restitution Amendments
SB 159 District Court Judge
SB 167 Juvenile Offenses - Diversion Amendment
SB 171 Judiciary Amendments
SB 185 Drug Offender Reform Act Amendments

Chief Justice Durham thanked Mr. Schwermer and Mr. Jones and the Liaison Committee again for all of their hard work and effort.

Motion: A motion was made to adjourn the meeting, the motion was seconded and approved unanimously.