

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MINUTES

Thursday, March 4, 1999
Holiday Inn - Sabra Ballrooms A & B
850 S Bluff St.
St. George, Utah

Chief Justice Richard C. Howe, Presiding

Members Present:

Chief Justice Richard C. Howe
Hon. Leonard H. Russon
Hon. Russell W. Bench
Hon. Anthony Schofield
Hon. Robert Braithwaite
Hon. Michael K. Burton
Hon. Michael Glasmann
Hon. Ronald Hare
Hon. Scott Johansen
Hon. Kay A. Lindsay
Hon. John L. Sandberg
Hon. Anne M. Stirba
Hon. Stan Truman
Steven Kaufman

Staff Present:

Daniel J. Becker
Myron K. March
Gordon Bissegger
Holly M. Bullen
Kristin G. Brewer
Fred Jayne
D. Mark Jones
Richard H. Schwermer
Tim Shea
Ray Wahl
Cathie A. Montes

Guests:

Hon. Sheila McCleve, *3rd District Court*
Hon. Lee Dever, *3rd District Court*
Hon. Dennis Fuchs, *3rd District Court*
Pat Nolan, *Cache Co. Attorney's Ofc.*
James Slemboski, *Southern UT Bar Assn.*
Larry Gobelman, *3rd Dist. Trial Court Executive*
District & Juvenile Court Executives, *State of Utah*

Welcome and Approval of Minutes

Chief Justice Howe welcomed all those in attendance. The Council reviewed the minutes of the February, 1999 meeting. It was noted for the record that Judge Ronald Hare was in attendance at the February meeting.

Regarding the Family Court presentation by Eric Bjorkland, Judge Stirba said she recalled Mr. Bjorkland's comments to be supportive of the concept of a family court, but that he did not know if a structural change was essential. She suggested the minutes be amended accordingly.

Motion

A motion was made to approve the minutes, as amended. The motion was seconded and carried unanimously.

Report from the Chair

Prior to submitting his report to the Council, Chief Justice Howe acknowledged, on behalf of himself and the Council, the efforts made throughout the legislative session by the AOC staff, including Dan Becker, Rick Schwermer, Mark Jones, and other staff, as well as the judges who contacted legislators.

Chief Justice Howe reported on his attendance at a conference sponsored by the ABA, the Conference of Chief Justices, and the League of Women Voters. The conference theme was on public trust and confidence in the judiciary. Chief Justice Howe reported that attendees discussed the results of a nationwide survey of the public perception of and regard for the judiciary. Attendees concluded that if public trust and confidence in the judiciary is to be restored, the public needs to become better acquainted with their local judges and the work they do. A goal

of this conference will be to encourage judges to go into their respective communities and speak to civic groups, schools, etc., to educate the public on judges and their work.

State Court Administrator's Report

Dan Becker reported public hearings of the Racial and Ethnic Fairness Task Force would be concluded later in the week in the St. George and Cedar City areas. These meetings, along with another to be held in Roosevelt, are the final hearings held by the task force. Mr. Becker reported that the meetings thus far were well attended throughout the state, and that they have been a productive portion of the task force's work.

Subcommittee Reports

Judge Anthony Schofield reported that most of the items discussed at the last meeting of the Management Committee were agenda items for this meeting, and that others were listed on the consent calendar. He noted one item which had been previously discussed in Executive Session, and that this matter would likely be discussed during the Council's Executive Session at this meeting.

Judge Braithwaite informed the Council that the Policy and Planning Committee has not met since the last Council meeting.

Justice Russon indicated that the Legislative Liaison Committee's report would be included in the legislative update.

Legislative Update/Overview

Dan Becker reported to the Council, giving a summary of the legislative session which ended on March 3rd. The courts' budget was the issue of most concern during this session. In the last week of the session, there was heightened concern about the restoration of the one percent amount which had remained unrestored since the session began. Upon reviewing the budgets submitted by the various subcommittee chairs, the Executive Appropriations Committee seemed concerned about the reduction in the courts' budget. There was much support for the restoration of the one-percent amount, and much effort was made by legislative leadership and others toward this end.

A motion was made in the Executive Appropriations Committee to transfer (at the courts' request) monies from the leases and contracts budget to the main line item. The motion passed, and by the next meeting of the committee, the main line item was restored. There remains a reduction in the lease and contract budget; however, this will be made up by a supplemental during the next legislative session.

Mr. Becker outlined the items which were considered and approved by the Legislature:

- 1) \$1,214,800 for contracts and leases; 2) \$196,300 for internal service fund rate adjustments (an inflation figure built into the budget which would otherwise have been paid out of courts' base budget); 3) \$59,400 for the capital law clerk position; and 4) \$90,500 for appellate mediation;
- 5) two juvenile court judges, to be located in the First and Seventh Districts, and four deputy court clerks; 6) \$50,000 for conversion of the QuickCourt to the Internet.

Fiscal note funding was also provided which will allow for five additional deputy clerks. An issue for future consideration by the Management Committee and/or the Council will be allocation of available positions, as well as the clerk positions for the new judges.

An increase in judicial salaries was also approved, as was a 2.75% merit increase for employees. Since this is not a COLA (cost of living adjustment) increase, this would only apply to employees receiving a satisfactory evaluation, do not have longevity status, and have been in their respective positions for longer than six months.

The last item approved by the Legislature was for \$7.5 million for the construction of the Vernal courthouse. Additional materials regarding individual building block requests, supplementals, fiscal notes, etc. were distributed to the Council. Mr. Becker also brought to the Council's attention that several pieces of intent language were introduced by the Legislature. This language provides authority for the courts to have non-lapsing authority from the general fund that could be directed into three different areas. Non-lapsing authority was also provided for contracts and leases.

Mr. Becker indicated that the next step of the process with regard to the budget, as discussed with the Council some months ago, would be to examine putting new budget procedures in place. The AOC staff will make recommendations to the Management Committee at its March meeting regarding the allocation of personal services budget funds. Mr. Becker, Mr. Schwermer, and Mr. Jones also explained how requests and priorities made at the Council's yearly planning session evolve and result in appropriations during the legislative process.

Legislative Review

Rick Schwermer and Mark Jones summarized for the Council the legislation that passed in 1999 legislative session. Of the 650 bills filed this year, 408 passed; 200 of the bills that were tracked related to the judiciary. The Liaison Committee read 60 bills, and their research efforts served to lend credibility to the staff who work closely with legislative committees as bills are introduced and discussed during the session. Among the bills that passed are:

SB 104 Housekeeping Bill
SB 105 New juvenile judges
SB 124 Appellate mediation
SB 210 Divorce Law - Alimony Amendments
HB 5 Court Interviews of Children
HB 11 Judicial Debt Collection
HB 48 Approval Required for Marriage of a Minor
HB 64 Youth Court Act
HB 79 Criminal Stalking Amendments
HB 85 Compulsory Education/Truancy Amendments
HB 118 Sentencing of Convicted Felons
HB 130 Constitutional Defense Council Amendments
HB 158 Wrongful Lien Amendments
HB 166 Daytime Arrest Defined
HB 227 Domestic Violence Dismissal Amendments
HB 317 Juvenile Court Act Amendments
HB 355 Expungement of Records
356 Expungement of Juvenile Records
HB 374 Juvenile Justice Amendments

Dan Becker concluded by adding that intent language on the Juvenile Justice Audit was approved, and will be reviewed by the Interim Judiciary Committee. The Administrative Office of the Courts, Youth Corrections, and Human Services, in conjunction with the Commission on Criminal and Juvenile Justice and the Sentencing Commission, will work on the audit issues in the interim.

TCE Update

Larry Gobelman, Third District Trial Court Executive, presented to the Council an update on the work of the trial court executives in the state. Mr. Gobelman introduced to the Council the trial court executives from other districts in attendance. He stated that he has enjoyed his work for the past four and a half years as a trial court executive, and thanked the Council for making the court clerks -- particularly the issue of obtaining new clerks for the courts - a priority for the legislative session. He expressed the court executives' appreciation of the Council's efforts both for and on behalf of the deputy clerks in the court system, saying that their efforts show the Council's understanding of the clerks' needs. He also thanked Mr. Becker, Mr. Schwermer, and Mr. Jones for their successful efforts to restore the final one percent amount cut from the courts' budget.

He informed the Council on the work currently being done to improve each district and the service each district provides to the public:

- Cross-training district and juvenile court clerks in the rural courts, where coverage is difficult;
- Improved understanding of targeted services for groups such as violent youth offenders, drug offenders, domestic violence perpetrators, etc.
- Exploring the possibility of utilizing paralegals to assist pro se litigants (e.g., Legal Aid Society's assistance in preparing ex parte protective orders; this is a one-year pilot project);
- Electronic filing of high-volume misdemeanor cases in urban courts;
- Relying on attorney certifications for post-judgment filings (e.g., writs of garnishment) in district court;
- Considering recommendations of the legislative audit of juvenile justice system and working with subcommittee of participating agencies;
- Establishment of \$100,000 emergency temporary employee fund.

Mr. Gobelman invited other trial court executives to add any comments. Brent Bowcutt, Sixth District Juvenile Court Executive, thanked Mr. Becker and the Administrative Office staff for their leadership and efforts in working with the trial court executives toward improving court operations. Tim Simmons, Sixth District Trial Court Executive, informed the Council of two areas of improvement: 1) in-grade pay adjustments for clerks, and an increase in salaries for entry level clerks. He sees these adjustments as a factor in retaining clerk personnel. He also mentioned the work now being done to assist the juvenile courts in auditing services provided under the state supervision program.

Second District Consolidation

Rick Davis, Second District Trial Court Executive, informed the Council of two items of correspondence he received from private attorneys expressing concern about the consolidation plan in the Second District, Davis County area. Mr. Davis noted that the Davis County courts are in a unique situation, as there are three court sites located within a 15-mile radius. Mr. Davis and the court personnel discussed the matter, and determined that one step toward resolving the problem would be to better educate the Bar and the public about the consolidation plan, since the complaints mainly come from outside the district.

Steven Kaufman brought to the Council's attention his first-hand experience with the Second District clerks hand-carrying files from one court site to another. He noted that the clerks delivered files, affidavits, and other documents pertaining to a case in which he was participating, and that the clerks delivered these materials as requested on a daily basis in a timely manner. Another observation he made was that of attorneys' and litigants' concerns over where matters were to be heard in a given case. He felt that educating both groups would help to resolve this issue. He concluded by saying that overall the consolidation plan seems to be working well.

There was discussion on how best to educate the Bar and the public. Judge Schofield echoed Judge Stirba's comments from an earlier meeting that the public and the Bar would be best served by being informed that not all court sites are full service courts. He suggested the idea of an article to be submitted to the Utah Bar Journal explaining the consolidation plan, and the differences in each of the districts.

Motion

A motion was made for a member of the AOC staff to prepare an article summarizing the consolidation plan for publication in the Utah Bar Journal. The motion was seconded and carried unanimously.

Other Business

Dan Becker raised with the Council the need for the Council to consider at a future Council meeting a discussion on whether the Council should articulate principles which should be considered in evaluating future proposed changes to individual district consolidation plans. The observation was made that there is little institutional memory on this issue and those who will prepare amendments to plans in the future would benefit from the Council setting out what overarching principles ought to be incorporated into any proposed changes.

Judge Burton commented that had there been an awareness of what positions had been taken by past Councils, additional questions may have been raised on plans which have been approved. Observations were made about the need for flexibility to take into account differences, such as the number of facilities. Judge Stirba expressed an opinion that there had not been enough experience to say what principles ought to apply.

Chief Justice Howe asked if there were any interest at this time in setting this matter on a Council agenda. None was expressed.

Family Court Presentations

James Slemboski offered a presentation to the Council on behalf of the Southern Utah Bar Association. As a private attorney who handles domestic law cases, he noted two areas of concern regarding the impact of the court system on families of parties in family law cases. The first area of concern is women who are seeking a divorce and in need temporary financial relief or support. The second issue of concern is that of the welfare of children. Relief sought in either area of concern can sometimes be delayed due to the backlog in the courts' dockets. He indicated that the process should be examined in the southern Utah area, noting that services available in other districts, such as mediation, are not as easily available in this area.

Mr. Slemboski informed the Council that with respect to custody issues, completion of home studies ordered by the court takes no less than six months. That further, no mechanism is currently in place to have matters relating to custody heard in order to have the needs of children promptly addressed. In this respect, the current system is adversely affecting children. He stated that domestic cases involving custody matters should be second in priority after criminal cases. He added that he felt a mandatory mediation process in custody matters would be beneficial, in that this process might serve to reduce a lengthy litigation process. He concluded by saying that too much expense and energy are currently being devoted by each party trying to assail the other. This process is not beneficial to the children, who ultimately need to have an equal amount of respect and love for both parents.

Kristin Brewer, Director of the Guardian Ad Litem program in Utah, offered her presentation to the Council with a focus on how abused and neglected children are treated in the district and juvenile courts. She explained that guardians ad litem handle cases in either the district or juvenile court, or sometimes in both courts, depending on the district. Attorneys who deal solely in either court each feel that the respective courts with which they work handle abuse/neglect cases satisfactorily. However, a difference is noted in the manner in which each court handles domestic matters involving custody. In the district court, because parties are more adversarial, there is less focus on issues concerning the children. There is also a difference in the agencies that work with each court. Ms. Brewer indicated that, from a guardian ad litem stance, the issue is not necessarily whether a family court is needed; rather, access to equivalent services for abused and neglected children in each court. She stated that there are procedural mechanisms short of a family court that could be help with certain issues, but that at least one of these mechanisms is not self-effectuating.

Ms. Brewer indicated that one benefit of a family court to children in delinquency cases might be an increased awareness by the court of the family's situation. A one-judge, one-family approach would be beneficial to the family as a whole. She concluded by saying that the concept of a family court should be examined slowly and cautiously. With regard to handling domestic cases involving children, she stated that the more coordinated the approach and the more a court knows about a family, the better the results will be for the children.

Pat Nolan of the Cache County Attorney's Office made his presentation on behalf of the Utah Prosecution Council and the Statewide Association of Public Attorneys. He addressed three issues and how these issues might affect implementation of a family court system: 1) the need for the juvenile court to retain its separate identity; 2) the need to retain the ability to transfer jurisdiction from the juvenile court to the district court; and 3) the impact of the January, 1999 juvenile justice audit.

Mr. Nolan said that in his opinion it would be ill-advised to consider the proposal to merge juvenile court into the district court, then take the cases heard by juvenile court for placement into a family court division of a district court. He said prosecutors are of the view that the juvenile court system is not "broken". They would like to see the juvenile court retain its criminal jurisdiction. Due to the nature of most of the delinquency cases in juvenile courts, these cases can stand on their own and are handled in much the same manner as proceedings against adults in the district court, and would therefore not be processed in a family court.

He noted that the recent legislative audit of the juvenile justice system failed to mention a family court proposal, and listed examples of items raised within the audit and their impact on a family court as originally proposed:

- 1) issue of assessments in juvenile court; and
- 2) the separation of the judicial and adjudicatory functions of the juvenile court from the sentencing and supervision functions currently being handled by probation as an adjunct to the court.

The recommendations made in the audit seem to conflict with the task force proposals in these two areas. Mr. Nolan concluded by saying that in his opinion, and in the opinion of other prosecutors, the proposal made by the task force does not make sense from a juvenile perspective. He expressed his hope that the concept of a family court would be given careful and cautious consideration.

Motion

A motion was made for the Council to go into Executive Session. The motion was seconded and carried unanimously. The Council adjourned immediately after their Executive Session.