

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

April 23, 2001

Council Room, Matheson Courthouse
Salt Lake City, Utah

Members Present:

Chief Justice Richard C. Howe
Hon. Michael J. Wilkins
Hon. Russell Bench
Hon. Clair Poulson
Hon. Lyle Anderson
Hon. Lynn Davis
Hon. Scott Johansen
Debra Moore, esq.
Hon. Andrew Valdez
Hon. Ben Hadfield
Hon. Ronald Hare
Hon. Lee Dever
Hon. Jerald Jensen
Hon. Anne M. Stirba (joined Council for part of meeting by phone)

Staff Present:

Daniel J. Becker
Myron K. March
D. Mark Jones
Ray Wahl
Richard H. Schwermer
Tim Shea
Matty Branch
Holly Bullen
Gordon Bissegger
Jerome Battle
AnNicole J. Faeth

GUESTS PRESENT:

Justice Leonard Russon
Hon. Ronald Nehring (for Judge Stirba)
Larry Gobelman, *Trial Court Executive Third District Court*
Jerry Howe, *Office of Legislative Research and Legal Counsel*

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

Chief Justice Howe welcomed all members and staff to the meeting. The minutes of the Council's March meeting were discussed. A motion was then made.

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

REPORT FROM CHAIRMAN:(Chief Justice Richard C. Howe)

Chief Justice Howe reported the following items:

- Bruce Lubeck has been confirmed as a new judge in the Third District Court, replacing retired Judge Homer Wilkinson. The swearing in will take place Monday, May 7, 2001 in the Supreme Court.
- The Committee which has been charged with carrying on the work of the Jury Improvement Committee has met. Tim Shea is staffing the Committee.
- A large number of applications have been received for the Task Force on Racial and Ethnic Fairness Project Coordinator position. Interviews will be held Tuesday, April 24, 2001.

ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Daniel J. Becker reported on the following items:

- The Interim Committees met Wednesday, April 18, 2001. There are a number of subjects the Committees have considered in regards to study issues, including: Bailiff funding, The Family Court System, An Integrated Bar for Attorneys, Parental Rights in Juvenile Court, Child Welfare Issues, Sentencing Alternatives, Visitation Rights, and Juvenile Records Expungements. The Law Enforcement/Criminal Justice Committee is looking at the possibility of studying mandatory minimum sentences.

- The Courts have received a grant from the Commission on Criminal and Juvenile Justice for \$18,000 to study Justice Court Automation. This will allow the courts to provide for reporting standards and to decipher the type of technology that would be best advanced for trying to provide for information sharing amongst justice courts, the Bureau of Criminal Information and the Drivers License Division. The first meeting will take place May 4, 2001. The committee will be comprised of members of various related agencies.
- Kristin Brewer received the University of Utah's Par Excellence Award Thursday, April 19, 2001. The distinguished award recognized her work over the years with children.

REPORTS:

Management Committee: (Hon. Anne M. Stirba)

Judge Stirba reported that the Committee discussed and approved a 4% salary increase for commissioners, new guardianship of a minor forms, the reappointment of Bruce Thomas to the Standing Committee on Technology, and senior judge status for W. Paul Thompson.

Liaison Committee: (Hon. Lee Dever)

Judge Dever reported that the Liaison Committee has not met, and has nothing to report.

Policy and Planning: (Hon. Scott Johansen)

The Policy and Planning Committee approved a Workplace Violence Policy which will be placed on the Council's consent calendar in May.

Bar Commission: (Debra Moore)

Debra Moore reported that the Bar Commission's elections are underway. The Bar Commission has a new Deputy General Counsel in charge of admissions, Joni Seko. Ms. Seko will review the admissions process to improve the integrity of process. The Commission has decided to give a grant of \$75,000 to the Unauthorized Practice of Law Committee. The Committee will take on a public information campaign to inform different segments of the population of what is going on and will give them a resource to go to in getting assistance from licensed members of the Bar.

SENIOR JUDGES: (Hon. Ronald Nehring)

Judge Nehring reported that, recently, many senior judges have reached the age of 75 years. These judges are still capable, and serve as an invaluable resource to the Courts. The Board of District Court Judges is requesting that the Supreme Court reevaluate the rule of senior judges over 75 not serving as judges. The Board of District Court Judges recommends that the 75 year age bar for senior judges be removed and replaced with a mandatory annual performance evaluation review.

Motion: Judge Stirba made a motion to have the Council recommend that the Supreme Court modify Rule 11-201 to remove the bar to post 75 active senior judge status, and to substitute that post 75 age limit for senior judges with an annual performance review. The motion was seconded and carried with three opposed.

CONVERSION OF COALVILLE AND PARK CITY COURT SITES: (Larry Gobelman)

Larry Gobelman requested the Council's approval to convert two contract sites in Summit County to state operated non-contract court sites. Mr. Gobelman provided the Council information outlining events which have transpired over the past year making the aforementioned request possible.

Motion: Judge Bench made a motion to approve the conversion of the Silver Summit and Coalville court sites to primary court sites. The motion was seconded and carried unanimously.

PERFORMANCE EVALUATION RULES: (Tim Shea)

A draft of Performance Evaluation Rules were presented to the Judicial Council.

Motion: Debra Moore made a motion to approve the certification standard from mandatory to presumptive as outlined by Tim Shea. The motion was seconded and carried with one opposed.

Rule 3-111-05 Evaluation of Judges and Commissioners

Motion: A motion was made to strike the sentence on lines 14 - 16 on page 30. The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion that wherever the term "recommendation" or "recommend" is used in the proposed rule, it be changed to "certification" or "certification decision" where appropriate, in order to be in compliance with the law. The motion was seconded and carried unanimously.

Motion: Debra Moore made a motion to approve rule 3-111-05 as modified. The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion to remove all material in the proposed rules that relates only to self improvement, and that they be separated out from the performance evaluation rules and provide a section that relates only to self improvement. The motion was seconded and carried unanimously.

Motion: Judge Davis made a motion to move the last paragraph on page 28 to page 30 in paragraph C which begins on line 9. It is possible that the paragraph could be placed in line 18. The paragraph reads "At the request of the Council the presiding judge and other reviewing judge shall report to the Council any meetings held with the subject judge, the steps toward self improvement identified as a result of those meetings, and the efforts to complete those steps." Transitional language will be added, as appropriate, to the paragraph. The motion was seconded and carried unanimously.

Rule 3-111-03 Standards of Judicial Performance

Motion: Debra Moore made a motion to place rule 3-111-03 out for comment as it relates to elimination of the general retention question. The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion to approve language in rule 3-111-03 section E which states "Substantial compliance with the Code of Judicial Conduct. Satisfactory performance is established if the response of the judge or commissioner demonstrates substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the judge is in substantial compliance with the Code of Judicial Conduct." The motion was seconded carried unanimously.

Motion: Justice Wilkins made a motion to strike sub paragraph F from rule 3-111-03. The motion was seconded and carried unanimously.

Motion: Judge Anderson made a motion to change the case under advisement standard to permit an average of three exceptional cases per year for the entire term of office with no more than half the maximum in any given year. The motion was seconded and carried with one opposed.

Motion: Justice Wilkins made a motion to ask the Administrative Office of the Courts to come up with numbers regarding cases under advisement. The motion was seconded and carried unanimously.

LUNCH:

During lunch, Justice Leonard Russon was presented an award for his service on the Judicial Council.

Following lunch, the Council returned to a discussion of the proposed judicial performance evaluation rules.

Motion: Justice Wilkins made a motion to adopt the proposed language to limit the discretion of a judge to remove an attorney from the attorney survey to affidavits of bias that allege the personal animus of the judge against the lawyer. The motion was seconded and carried unanimously.

Motion: Judge Johansen made a motion to make the following changes to page 23 of the proposed rules:

- 1) Eliminate lines 5 and 6,
- 2) Lines 7 through 11 should read "A judge may request that the Management Committee of the Judicial Council exclude from the survey an attorney who does not qualify for exclusion under (b) if the judge believes the attorney will not respond objectively to the survey. The request must be submitted to the Administrative Office of the Courts within 14 days of receipt of the attorney exclusion form."
- 3) Lines 15 through 17 should read "If the Management Committee determines that the attorney will not respond objectively to the survey, the Administrative Office of the Courts shall inform the Judicial Council for ratification, the Judge, and the Surveyor and the Surveyor shall exclude the attorney from the judge's respondent pool."
- 4) Lines 18 through 19 should read "The Judicial Council's decision applies only to the pending attorney survey."

The motion was seconded and carried unanimously.

Rule 3-111-06 Evaluation of Senior Judges

Motion: Justice Wilkins made a motion to extract lines 14 - 17 on page 33. The motion was seconded and carried unanimously.

Motion: Judge Davis made a motion to approve rule 3-111-06 subject to the word "shall" being removed from page 32 line 25. The motion was seconded and carried unanimously.

Rule 3-111-07 Administration of the Judicial Performance Evaluation Program

Motion: Judge Anderson made a motion that in rule 3-111-07 on page 35, the boundaries of the regions be changed as follows: Region 1 will include Districts 1 and 2. Districts 5, 6, 7, and 8 be made into one separate region. The motion was seconded and carried unanimously.

Motion: Justice Wilkins made motion that information received by the council that would otherwise be classified by rule as confidential shall remain confidential. Information that wouldn't be classified as confidential shall remain public. The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion to present at the Council's May meeting a draft regarding confidentiality and public access to evaluation records. The motion was seconded and carried unanimously.

Motion: Justice Wilkins made a motion to approve the remainder of Rule 3-111 with the understanding that self improvement language is to be removed, and that "findings and recommendations" be changed to certification language. The motion was seconded and carried unanimously.

Motion: Judge Davis made a motion to send certification and self improvement out as a package. The motion was seconded and carried unanimously.

JUDICIAL PERFORMANCE EVALUATION TIMELINE: (Tim Shea)

Tim Shea discussed a timeline for judicial performance evaluation with the Council. The timeline indicates that the proposed judicial performance evaluation rules will go out for comment May and June of 2001, the Judicial Council will consider the proposed rules for final action in their August meeting, changes will become effective with attorney surveys conducted in the Fall, and the Judicial Council starts the evaluation process December of 2001.

JUROR SOURCE LISTS AND JURY DATA BASE MANAGEMENT: (Jerome Battle, Tim Shea)

Jerome Battle and Tim Shea presented a proposal to the Council concerning an improved jury list project. The project would use multiple sources of names (beyond those lists currently being used) to create a "virtual master list" which will constantly be updated and verified.

Motion: Justice Wilkins made a motion to approve the proposed plan for juror source lists and jury data base management and urged the AOC to finance the project using funds from this fiscal year. The motion was seconded and carried unanimously.

FY 2002 BUDGET PLAN: (Daniel J. Becker, Myron K. March)

A presentation of the proposed budget plan for fiscal year 2002 was made as follows:

- **FY2002 Budget Plan Recommendations**

One time Funds

| | |
|--|-----------|
| Continue Employee Incentive Award Program | 185,000 |
| Continue Second Language Incentive Program | 50,000 |
| Education Standing Committee Programs | 44,000 |
| Increased Operating Costs | 111,000 |
| DP Contractual Personnel | 75,000 |
| Information Technology Equipment Replacement | 100,000 |
| Digital Recording Equipment | 100,000 |
| Court Executive Capital Budget | 100,000 |
| Local Program Incentive Funds | 65,000 |
| Employee Assistance Program | 30,000 |
| Reserve | 393,900 |
| Total | 1,253,900 |

On going Funds (Non Salary).

| | |
|------------------------|---------|
| 5 Deputy Clerks | 194,600 |
| 4 Drug Court Positions | 168,700 |
| Data Processing | 20,000 |
| Subtotal | 383,300 |

On going Funds (Salary Increases, Market Adjustments, Benefits, and Second Step Funding).

| | |
|------------------------------------|-----------|
| Judicial and Employee Salary Funds | 1,326,200 |
| Market Comparability Funds | 595,900 |
| 2% Set Aside (on going) | 300,000 |
| Fiscal Note Funding | 100,000 |
| 1.25% Discretionary Funds | 306,000 |
| Contract Site Increases | 65,000 |
| Senior Judge Benefits | 20,000 |
| Subtotal | 2,628,100 |
| Total | 3,011,400 |

Other

| | |
|---|--|
| 4 th District Court Commissioner | IV-D Funds |
| Additional DP Position | Savings from Contract Renegotiation |
| Perimeter Security for Ogden and Provo Juv. Court | 160,000 from Lease and Contract Carry forward (will obligate seeking a FY2003 increase in Contact and Leases Budget) Funds Available |

• **FY2002 Specific Appropriations**

| | |
|-------------------------------|-----------|
| Leases and Contracts | 1,765,000 |
| Guardian ad Litem | 520,000 |
| County Contract Increases | 23,291 |
| Child Welfare Mediation | 170,000 |
| Law Clerks | 130,000 |
| Diversity Training | 28,000 |
| Racial and Ethnic Coordinator | 60,000 |

• **FY2002 Available Funds**

| | |
|------------------------------------|-----------|
| Judicial and Employee Salary Funds | 1,326,200 |
| 2% Set Aside Funds (one time) | 853,900 |
| 2% Set Aside Funds (on going) | 300,000 |
| Projected Carry Forward | 400,000 |
| Fiscal Note Funds | 314,600 |
| Drug Court Funds | 168,700 |
| Market Comparability Funds | 595,900 |
| 1.25% Salary Discretionary Funds | 306,000 |

Total 4,265,300

One Time 1,253,900
On Going 3,011,400

• **Comparison of Judicial Council Planning Objectives with Proposed FY 2002 Budget Plan**

- A. Leases and Contracts Funds Appropriated
- B. Guardian ad Litem Funds Appropriated
- C. Juror, Witness, Interpreter Fees Funds Appropriated
- D. County Contract Increases Funds Appropriated/ Budget Plan
 - 1. DP Staffing Partially Funded in Budget Plan

2. Child Welfare Mediation Funds Appropriated
3. Lease perimeter Security Partially Funded in Budget Plan
4. Law Clerks Funds Appropriated
5. Diversity Training Funds Appropriated
6. Project Coordinator Funds Appropriated
7. Interpreter Program Manager No New Funding
8. Market Comparability Funds Appropriated

- Compensation Guidelines

Intent Language:

It is the intent of the Legislature that the four percent compensation increase for state employees for FY 2002 be used first, to fund a one-step merit increase and associated salary driven costs for all eligible employees. Second, the Legislature intends to give one-time bonuses to employees in longevity, regardless of other pay advancements, at a rate of \$500 for above standard performance or \$700 for exceptional performance. Third, remaining funds are for discretionary salary increases to employees based upon performance and other salary related issues...

Sequence of Compensation Changes:

- A. Merit Increases - including longevity merit increases**
- B. Longevity Bonuses - \$500 for above standard performance, \$700 for exceptional performance**
- C. Market Comparability Adjustments (MCA's) - raising employees who fall below the minimum of the new pay range to the new entry level after the MCA's are implemented. For clerks who have been employed for less than six months, this adjustment to the new range minimum will include the first career track increase**
- D. Discretionary increases - a second step is available for employees who have completed their career track or who are in a non-career track job classification and whose performance is successful or above**
- E. Career track increases to be received during FY 2002 and FY 2003 will occur as before, based upon completion of a career track segment and the time frame established for the particular career track**

Following the presentation of the FY 2002 budget plan, the following motions were made.

Motion: Judge Davis made a motion to approve the FY 2002 Budget Plan as presented. The motion was seconded and carried with one opposed.

Amended Motion: Judge Johansen made an amended motion to fund a third Information Technology position not funded under the plan. The motion was seconded and carried with one opposed.

Amended Motion: Judge Johansen made a motion to fund the additional Information Technology position by reducing the number of proposed Deputy Court Clerk positions from five to three. The motion was seconded and carried with five opposed.

OTHER BUSINESS:

Concerns were raised regarding guardianship of a minor forms listed on the consent calendar.

Motion: Judge Hadfield made a motion that the forms not be approved at this time, and that Holly Bullen bring the forms back next month. The motion was seconded and carried unanimously.