

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, April 26, 2004

Council Room, Matheson Courthouse

450 South State Street
Salt Lake City, Utah

Chief Justice Christine M. Durham, Presiding

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Justice Matthew Durrant
Hon. James Davis
Hon. Jon Memmott
Hon. J. Mark Andrus
Hon. Jerald Jensen
Hon. Clair Poulson
Hon. Robert Hilder
Hon. Lee Dever
Hon. Gary Stott
Hon. Ronald Hare
Hon. K.L. McIff
Hon. Scott Johansen
David Bird, esq.

STAFF PRESENT:

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

GUESTS PRESENT:

Hon. Brendan McCullagh, *Justice Court Judge, West Valley City*
Herb Katz, *Court Administrator, West Valley City Justice Court*
Nicole Cottle, *West Valley City Attorney's Office*
Dennis Norfelt, *Mayor, West Valley City*
Sen. Ed Mayne
Paul Isaac, *Assistant City Manager, West Valley City*
Edward J. Skrobiszewski, *Mayor, Perry City*
Jeff Thorne, *Legal Counsel, Perry City*
Julie Lund, *Attorney General's Office*
Diane Curtis
Barbara Howard
Bruce Howard, *Perry City Council*
Kathleen Hoops
John Hoops
Pam Gardner
Louise Francis
Cory Bennion, *Perry City Council*
Jerry Nelson, *Former Perry City Council Member*

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

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

Motion: Judge Johansen made a motion to approve the minutes. Judge Poulson seconded the motion. The motion carried unanimously.

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

Chief Justice Durham reported the following:

- As an extension of the work of the Supreme Court's Professionalism Committee, a discovery commissioner is being considered which would allow district judges to refer discovery disputes to this commissioner. This would be a pilot program, initially consisting of a single commissioner. It was mentioned that Senator Dave Thomas has expressed support of this idea.

- An informal meeting took place last week with Gary Doxey, of the Governor's Office, in which the judicial nominating and appointment process was discussed.
- The Supreme Court intends to restore Rule 62 which was recently amended by the legislature. It was reported that the Supreme Court will study the rule, and would like to restore it to its previous form.
- The Supreme Court recently heard a request from the Board of Senior Judges to extend the age requirement for active senior judges. Former Chief Justice Richard C. Howe will serve as chair of a committee which will evaluate issues surrounding extending the age requirement beyond age 75, which will make recommendations to the Supreme Court.

- **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Daniel J. Becker reported the following:

- Samuel McVey was sworn in Wednesday of last week as a judge in the Fourth District Court.
- Paul Vance has taken over as Trial Court Executive of the Fourth District Court, replacing Paul Sheffield who recently retired.
- Constantino "Deno" Himonas has been appointed by Governor Walker to serve as judge in the Third District Court, replacing Judge Michael Burton who will retire the end of May.
- Five names have gone to the Governor to fill a judicial vacancy in the Third District Juvenile Court.
- Law Day activities will take place the beginning of May recognizing the 50th anniversary of the U.S. Supreme Court's Brown v. Board of Education decision. Brown bag discussions will take place in courthouses throughout the state.
- The courts are working with the Attorney General's Office and the Office of Legislative Research and General Counsel regarding legal research expenses. A committee has been formed which is looking at Westlaw and Lexis Nexis.

- **REPORTS:**

Management Committee: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that the West Valley Justice Court has posted signs that, as of May 3rd, they intend to be closed on Fridays. It was reported that this item would be discussed by the Council later in the meeting.

Chief Justice Durham reported that the Management Committee discussed a letter received from the Fifth District Court regarding a local rule relating to faxed pleadings. This issue was referred to Policy and Planning to consider whether a uniform fax policy is needed.

Chief Justice Durham then reported that the Management Committee discussed the possibility of reviewing judicial compensation issues, and determined that a study related to judicial salaries should be conducted. Chief Justice Durham has asked Judge Hilder to chair a study committee. The boards will also be asked to recommend representatives to serve on this committee, along with members of the Management Committee.

Policy and Planning: (Hon. Lee Dever)

Judge Dever reported that Policy and Planning discussed mandatory attendance at the annual judicial conference, which would be discussed later in the meeting. They also looked at updated criminal stalking forms.

Liaison Committee: (Hon. Jerald Jensen)

Judge Jensen reported that the Liaison Committee had not met since the Council's last meeting.

Bar Commission: (David Bird, esq.)

David Bird reported the following:

- The ABA president will be in town May 7th.
- Justice Nehring and Debra Moore were recently in Atlanta discussing a justice initiative which deals with meeting legal needs in civil arena.
- An insert was distributed which will be included in local newspapers in the coming week. The insert provides information on the U.S. Supreme Court's Brown v. Board of Education decision and related events that will take place throughout the state.

- The paralegal division of the Bar brought forth a certification requirement regarding a paralegal working with an attorney.
- The ABA has a model rule on non-practice insurance disclosure.
- The Bar Commission's retreat recently took place, and at that time a presentation took place regarding a legal research system called Casemaker.

- **APPROVAL OF RULES FOR COMMENT: (Tim Shea)**

Tim Shea reported that Policy and Planning recommends that attendance at the Annual Judicial Conference be encouraged, but not required, and that amendments to Rule 3-403 be adopted in order to reflect this change. The Committee also recommends amendments to Rule 9-103 to better conform to the mandatory nature of the justice court conference and the reporting requirements of 78-5-127.

Motion: Judge Johansen made a motion to approve the rules, and that they be placed out for comment. Judge Poulson seconded the motion. The motion carried unanimously.

- **EXECUTIVE SESSION:**

Motion: A motion was made to go into executive session to discuss a certification matter. The motion was seconded and carried unanimously.

Motion: A motion was made to come out of executive session. The motion was seconded and carried unanimously.

- **PERRY JUSTICE COURT CERTIFICATION: (Richard Schwermer)**

Chief Justice Durham reported that the Judicial Council voted several months ago to decertify the Perry City Justice Court, and then determined that they would stay the implementation of that order pending further information and investigation. Chief Justice Durham reported that an audit was recently conducted by the Audit Division of the Administrative Office of the Courts, and it appears that issues have been raised as a result. It was reported that it has come to the Council's attention that a resolution requesting the recertification of the Perry City Justice Court, that was submitted to the Council in January of this year, does not reflect a vote of the Perry City Council. Perry City Mayor Edward J. Skrobiszewski confirmed that that information is correct. Chief Justice Durham reported that based upon that information, the Judicial Council could elect to not certify the Perry Justice Court. However, Perry City would be allowed to reapply for certification at a later date.

Mayor Skrobiszewski and Mr. Thorne expressed that the City Council would like to request an additional 30 days to determine if they wish to keep a justice court. They also indicated that they only wish to operate a court, if it can meet the requirements of the Judicial Council.

Motion: Judge Poulson made a motion to impose the decertification of the Perry Justice Court, effective April 26th. Judge Andrus seconded the motion. The motion carried unanimously.

- **RACIAL AND ETHNIC FAIRNESS COMMISSION ANNUAL REPORT: (Hon. William Thorne)**

Judge Thorne distributed copies of the Second Annual Commission on Racial and Ethnic Fairness in the Criminal and Juvenile Justice Implementation Report, and thanked the Council for their ongoing support of the Commission's activities. Judge Thorne reported that the Commission has been working to ensure that the system is both fair, and perceived to be fair. It was reported that the Commission will be meeting soon to discuss future direction. The Council expressed appreciation for his work with the Commission.

- **KIDS AND JUDGES DAY: (Hon. Kimberly Hornak)**

Judge Hornak reported that Kids and Judges Day took place the end of February. The program was designed for children in adoptive or foster situations to dispel their fears about attending court, the court process, and judges by allowing them to learn about the courtroom and meet judges in a friendly, informal setting. Five juvenile judges agreed to participate and open their courtroom to children. Thirty-two children attended, accompanied by twenty-seven responsible adults. The program was a positive experience for both children and judges who participated, and it is anticipated that it will be repeated in the future.

- **WEST VALLEY CITY JUSTICE COURT UPDATE: (Chief Justice Christine M. Durham)**

Chief Justice Durham reported that the Council has become aware that the West Valley City Justice Court has posted notices in the courthouse that they will begin being closed on Fridays, effective May 3rd.

Judge McCullough of the West Valley Justice Court discussed the history of this issue with the Council, and the justice court's perspective on the issue. Sen. Ed Mayne, who sponsored SB 219 - Amendments to Justice Court Operations, then discussed the intent of the legislation with the Council.

Motion: Judge Hilder made a motion to do nothing to impede West Valley City from proceeding with a four day work week, 11 hours/day, but that the Council preserve the right to revisit or modify its rule related to operating hours and days. Judge Dever seconded the motion. **The motion failed with 4 in favor and 10 opposed.**

Motion: Judge McIff made a motion that the West Valley City Justice Court should maintain a skeletal staff with a five day, 8 hour/day work week, and that policy issues be studied for 90 days regarding what requirements had to be in place to consider the possibility of moving to a four day work week. Judge Dever seconded the motion. The motion passed with three opposed.

It was determined that a subcommittee of the Council would be formed to study policy issues related to a four day work week. Judge McIff will serve as chair of the committee. Additional members will include Judge Dever, Judge Hilder, Judge Memmott, Judge Jensen, and Judge Hare. Richard Schwermer will serve as staff.

- **FY 2005 BUDGET PLAN: (Daniel J. Becker)**

Daniel Becker reported that the Council needed to establish an operating budget for FY 2005, and at that time, in particular, the Council needed to look at one-time funds that would be available for use in the coming fiscal year. Mr. Becker discussed budget priorities from the 2003 Council Budget Planning Session with the Council, and highlighted which items have been addressed and which have yet to receive funding. Mr. Becker then discussed sources of available funds.

Mr. Becker reported that an executive budget committee recently met, whose membership consists of court executives and members of the AOC. It was reported that the committee reviewed the Council's budget priorities and funds available, and created a proposed list of how available funds could be allocated. That list was shared with the Council for their review and discussion.

Motion: Judge Memmott made a motion to approve the proposed allocation of funds, plus the funding of 2 law clerks (to be allocated by the District Board) with one time funds, and one deputy clerk with one-time funds. It was also moved that senior judge assistance for the Second District Juvenile Court be approved. Also, if there are additional carry forward funds, the Council could consider additional funding options. Judge Davis seconded the motion. The motion carried with six in favor and five opposed.

There was a clarification that current temporary Deputy Court Clerks in the 2nd and 4th District Courts would be presumptively continued, pending consideration of any change in need resulting from the year ending calculation of the weighted caseload and any Juvenile Board request for protective order assistance. There was also discussion regarding the potential need to cover state supervision funding.

- **ADJOURN:**

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