

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MINUTES

Tuesday, May 29, 2001
Council Room, Matheson Courthouse
450 S State
Salt Lake City, Utah

Chief Justice Richard C. Howe, Presiding

Members Present:

Chief Justice Richard C. Howe
 Hon. Michael J. Wilkins
 Hon. Russell Bench
 Hon. Ben Hadfield
 Hon. Jerald Jensen
 Hon. Lee Dever
 Hon. Anne M. Stirba
 Hon. Andrew Valdez
 Hon. Lynn Davis
 Hon. Clair Poulson
 Hon. Ronald Hare
 Hon. Lyle Anderson
 Hon. Scott Johansen
 Debra Moore, esq.

Staff Present:

Daniel J. Becker
 Myron K. March
 D. Mark Jones
 Ray Wahl
 Holly Bullen
 Richard H. Schwermer
 Tim Shea
 Kim Allard
 Kathy Elton
 AnNicole J. Faeth

GUESTS PRESENT:

Hon. Matthew Durrant
 Hon. David L. Mower
 Hon. John Sandberg
 Hon. William Bohling
 Elizabeth Neff, *Salt Lake Tribune*
 Katie Gregory, *Utah Children*
 Conrad Lloyd (public member)

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

All members and staff in attendance were welcomed to the meeting. The minutes of the Judicial Council's April meeting were discussed. The following modifications to the minutes were mentioned:

- 1) in the Bar Commission's report on page three, the spelling of the name "Joanie Seko" should be changed to "Joni Seko";
- 2) under the item on page three discussing senior judges, the third sentence should be changed to read "The Board of District Court Judges is requesting that the Supreme Court reevaluate the rule of senior judges over 75 not serving as judges.";
- 3) and, the first sentence in the section entitled "Conversion of Coalville and Park City Court Sites" should be modified to read, "...Council's approval to convert two contract sites in Summit County to state operated non-contract court sites."

A motion was then made.

Motion: Judge Davis made a motion to approve the Council's April minutes as modified. The motion was seconded by Judge Johansen. The motion carried unanimously.

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

Chief Justice Howe reported the following items:

- It was noted that Judge Andrew Valdez recently received an honorary degree from the Salt Lake Community College.
- Last week, the Governor asked state agencies and departments to pull back spending 4% due to anticipated reduced revenue.

3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Daniel J. Becker reported the following items:

- Alicia Davis was introduced to the Council as a new staff attorney replacing Peggy Gentles.
- Sandra Kinoshita has been hired as the new Project Coordinator for the Task Force on Racial and Ethnic Fairness. Ms. Kinoshita has a Masters Degree in Social Work with a concentration in multi-ethnic practice, and brings several years experience in the subject matter to the position.
- Bill Greer and Gary Ricks are the new legislative fiscal analysts assigned to the courts. Andrea Wilko has been reassigned, and Bill Dinehart has retired.
- During the Council's meeting in September, the certification of the West Valley and Salt Lake City Justice Courts was discussed. The certification of the West Valley Justice Court was conditional on them utilizing a court facility which complies with existing facility requirements. West Valley has informed the Administrative Office of the Courts that it will use a courtroom in the Third District Court, West Valley court location, and therefore, will meet facility requirements.
- Presentations outlining action taken by the Judicial Council regarding the Judicial Performance Evaluation process were made to the district and juvenile court judges at their annual conferences. Summary minutes of the comments were taken at both conferences. The issue of Judicial Performance Evaluation will be discussed by the Council again at their August 24th business meeting.
- The Judicial Interim Committee has decided that Judicial Performance Evaluation will be a study item. The Committee is expected to consider the issue in September or October and will likely expect a report from the Judicial Council at that time. Visitation, parental rights, termination cases and family court, an integrated bar, legislative authority to enact rules of civil procedure by a 2/3 majority, and bailiff funding will also be studied.
- Revenue projections for FY 2001 are down and it is projected that they will continue to be down from what the Legislature projected during their recent session for FY 2002. The Governor is taking a proactive stance by requiring agencies to identify 4% of their budgets to be set aside through an administrative hold back. 4% of the State's budget for FY 2002 equates to approximately \$80 million. 4% of the court's budget for FY 2002 equates to \$3.8 million, \$2.7 million of which is ongoing money. Agency responses are due to the Governor by June 26, 2001. If permanent reductions are necessary in FY 2002, the reductions will likely be carried into agencies' FY 2003 base budgets.

The courts will submit a response to the Governor by the stated deadline. The Governor's Office has agreed, however, that the courts will govern their own financial affairs. The courts will set up a budget plan parallel to that which the Governor is proposing and the courts will maintain control over the administration of necessary reductions.

At this time, a hiring freeze has been implemented. If management feels it is absolutely necessary to fill a vacant position, appeals may be made to their court level administrator. Daniel Becker or Myron March will make the ultimate decision. Additionally, non-essential purchase orders will be frozen.

Trial Court Executives and managers in the Administrative Office have been asked to submit budget plans for a 4% reduction to Fred Jayne by noon Tuesday, June 5, 2001. The Budget Planning Committee will meet Thursday, June 7 at 1:00 p.m. to review options.

It is expected that all eligible court employees will still receive a two step increase effective July 1, 2001.

4. REPORTS:

Management Committee: (Hon. Russell Bench)

Judge Bench reported that the Management Committee decided that the Council will meet the afternoon of October 22nd and the morning of the 23rd in Vernal, in order to be present for the dedication of the new Vernal courthouse.

Liaison Committee: (Hon. Lee Dever)

Judge Dever reported that the Liaison Committee has not met.

Policy and Planning: (Hon. Scott Johansen)

Judge Johansen reported that in regards to the subject of private records for certification of judges, the Policy and Planning Committee is proposing that rules be drafted which state that any request from a judge to exclude an attorney from a survey be protected. Furthermore, Policy and Planning recommends that in regards to the evaluation process, reports from presiding judges should also be protected. The Policy and Planning Committee also discussed the Judicial Council executive committee rules. The Committee is attempting to make the rules and practices conform with one another, which they currently do not.

Justice Wilkins mentioned that Policy and Planning also discussed the possibility of conducting a follow up to the Justice in the 21st Century Study which was performed approximately ten years ago. It may now be a good time to consider organizing another study to evaluate the evolution of the Council and its role, the appellate process, the impact technology is having on the courts, as well as other issues such as justice courts. Policy and Planning felt it may be appropriate to hold a plenary session at the Annual Judicial Conference to obtain input from the bench and solicit involvement from the beginning of the process. Policy and Planning will bring a specific plan for a process to the Judicial Council at a future meeting, to be suggested and discussed by the bench at the Annual Conference.

Bar Commission: (Debra Moore, esq.)

Debra Moore reported that the Bar Commission's annual retreat will be held in Moab June 8th and 9th, 2001. The focus of the retreat this year will be on core functions. At the Bar's last meeting, they underwent diversity training which appeared to be very beneficial. Ms. Moore also reported that decisions have been made regarding this year's award recipients. The following individuals will receive awards at the Annual Conference in Sun Valley: Allen Sullivan will receive the Lawyer of the Year Award; Judge Ray Harding, Sr., Judge Sharon McCully and Judge Anne Stirba will each receive the judge of the year award; the Legal Assistant's Division will receive a Section Award; awards will be presented to the Ethics Advisory Committee; and Mitchell Barker will receive the Pro Bono Lawyer of the Year Award.

**5. REORGANIZATION OF THE CODE OF JUDICIAL ADMINISTRATION:
(Tim Shea)**

Tim Shea reported that, some time ago, Attorney Andrew McCullough wrote with the observation that the Code of Judicial Administration might be better organized to place rules together which regulate similar types of cases. Policy and Planning discussed this issue, but rather than forming a recommendation, they chose to defer to the Council. It was decided that the outlines of chapters 4, 5, and 6 be redesigned and brought back to the Council through Policy and Planning.

6. SELF REPRESENTED LITIGANTS: (Hon. David L. Mower)

Judge Mower discussed the importance of serving self represented litigants and reevaluating current business practices. He mentioned the benefits of giving clerks the tools to better serve self represented litigants, and improving forms so that they are understandable to the general public. Judge Mower shared a number of forms with the Council which have been designed to be clear to litigants and clerks. Sample forms are available on Judge Mower's website.

7. TECHNOLOGY STANDING COMMITTEE REPORT AND E-FILING PROPOSAL: (Justice Matthew Durrant, Kim Allard)

Justice Durrant reported that in January of this year, the Standing Committee on Technology formed an E-Filing Sub-Committee. The ultimate goal of the Sub-Committee is that by 2010, any document that can be filed manually will be capable of being filed electronically. It is hoped that by FY 2003 partnerships will continue to be developed with selected filers and that initial projects will be completed. By FY 2006, the Sub-Committee hopes to focus on juvenile court e-filing issues, once the CARE system is online. The largest expenditure for the program will be \$149,000 to cover the content server. After the initial expense, there will be an ongoing cost of \$30,000 associated with the program for hardware and software maintenance. The Sub-Committee also hopes to add a full time employee, as well as moving two existing full time Information Technology employees to work on the e-filing program, after the CARE project is underway. It is hoped that e-filing will save the courts money, as it has in other agencies. E-filing would be a gradual transition from paper documents to electronic documents, which would avoid redundancy and streamline the forms process. It is not anticipated, however, that e-filing would completely

eliminate the use of paper. The Council requested that the Sub-Committee return at a future meeting to discuss potential fiscal benefits of implementing an e-filing program.

8. POST RETIREMENT INSURANCE BENEFITS FOR JUDGES APPOINTED AFTER JULY 1, 2001: (Tim Shea)

Tim Shea reported that the Policy and Planning Committee discussed what benefits should be extended to judges hired after July 1, 2001, and came to the conclusion that the same benefits should be extended to new judges as those benefits currently being extended to judges hired before that date.

Motion: Justice Wilkins made a motion to approve the recommendation of the Policy and Planning Committee as outlined above. Judge Davis seconded the motion. The motion carried unanimously.

9. PROPOSAL FOR AD HOC COMMITTEE ON COURT RESOURCE PLANNING: (Daniel J. Becker)

Daniel Becker proposed the formation of an ad hoc committee to investigate the implications of the shift in cases from district to justice courts, and to form recommendations which respond to those implications. It is expected that the committee will meet during June and July, providing an interim report to the Council in July and a final report in August. It is anticipated that the committee will serve as a forum for all interests to be heard and options arrayed for the Council to consider. The proposed membership of the committee is as follows:

Hon. Russell Bench, *Vice-Chair of the Judicial Council, Chair of the Ad Hoc Committee*

Hon. Lee Dever and Hon. Lynn Davis, *District Court Council Representatives*

Hon. Andrew Valdez, *Juvenile Court Council Representative*

Hon. Jerald Jensen, *Justice Court Council Representative*

Hon. Stanton Taylor, *Representative of the District Court Board*

Hon. Larry Steele, *Representative of the Juvenile Court Board*

Hon. Frank Noel, *Presiding Judge of the Third District Court*

Larry Gobelman and Tim Simmons, *Court Executives*

Daniel Becker, *State Court Administrator*

Richard Schwermer, *Staff*

Alicia Davis, *Staff*

Motion: Judge Anderson made a motion to approve the formation of the proposed ad hoc committee. Judge Davis seconded motion. The motion carried unanimously.

10. ADR COMMITTEE REPORT: (Hon. William Bohling, Kathy Elton)

Judge Bohling reported to the Judicial Council on behalf of the ADR Committee. Kathy Elton, Director of ADR Programs was introduced and commended for her work with the Committee. Judge Bohling then reported the following items:

- An ADR Symposium was held in May, and appeared to be very well received.
- Legislation was passed allowing funding for three new mediator positions.
- A sub-committee has been established to guide the implementation of restorative justice programs in the juvenile court system throughout the state.
- The ADR section of the court's website is being updated.
- Outreach and training to landlords and tenants is being conducted in the Salt Lake County area related to the Landlord-Tenant Mediation Program and the Online Court Assistance program.
- The Committee is focusing on creating a sub-committee to study and make recommendations on the issue of certification/licensing requirements for a mediator to be on the Court Annexed Roster.
- The Committee is also keeping up to date on issues related to the unlicensed practice of law and the Uniform Mediation Act.

11. MENTAL HEALTH COURT: (Hon. William Bohling)

Judge Bohling reported that mentally ill patients/offenders can often be treated with medication, but fail to take medications for various reasons. Mental health courts have been established in some states across the country to deal with this problem. In mental health courts, mentally ill offenders are identified as such in a county jail. They are then referred to the mental health court where a treatment plan is developed and therapeutic manager and case manager work with the person to move them through program. The offender becomes medicated and is in compliance.

Daniel Becker reported that three years ago, the Council decided that drug courts, domestic violence courts, and tobacco courts should be implemented. At that time, the Council also decided that other types of specialty courts should be presented to the Council as they come to the court's attention. It was being proposed that the formation of a mental health court be approved as a pilot program. It was also mentioned that Judge Bohling is willing to take on a mental health court caseload in addition to his regular caseload on a pilot basis for one year, and that

federal legislation was passed last year authorizing \$10 million in grant money for the funding of these types of courts. The grant requires no cash match.

Motion: Judge Jensen made a motion to approve the aforementioned proposal. Justice Wilkins seconded the motion. The motion carried unanimously.

12. JUSTICE COURT JUDGES BOARD REPORT: (Hon. John Sandberg)

Judge Sandberg reported to the Council on behalf of the Board of Justice Court Judges. Judge Sandberg mentioned that the mission statement of the justice courts had not been revised since 1991. The mission statement was recently revised and now reads "The mission of Utah's justice courts is to improve the quality of life in our communities." The Board has also developed a number of objectives for justice courts throughout the state, as follows:

- 1) Jurisdiction: Justice courts should handle all small claims cases and, eventually, all misdemeanors.
- 2) Training: Revisit core curriculum, strengthen district directors, form a mentor program, constantly update and improve the Legal Institute, conduct training through audits, and create a new bench book.
- 3) Public Relations: Create a justice court brochure, a justice court video, and an outreach program through speakers in communities and a computer video production. A plaque of the new mission statement is displayed in public areas.
- 4) Community Focused Courts: Concerned with the quality of life in their communities, and in providing a fair, impartial and efficient forum for the public.
- 5) Funding: Seek independence in the funding process, compatible computer hardware and software, and a retirement program.
- 6) Technology: Look at computer software compatible with CORIS, evaluate processes within the courts, and improve the transfer of data between agencies.

13. 4TH DISTRICT COURT COMMISSIONER: (D. Mark Jones)

Mark Jones reported that Thomas R. Patton has been selected as a new commissioner in the 4th District Court. A motion was then made.

Motion: Judge Stirba made a motion to approve the appointment of Thomas R. Patton as a commissioner in the 4th District Court. The motion was seconded and carried unanimously.

14. OTHER BUSINESS:

- It was decided that the Guardianship of a Minor Forms listed on the Council's consent calender should not be approved at this time. Revisions should be made, and the forms brought back at a later date.
- Judge Hadfield raised the prospect of judicial conferences being held in the Salt Lake City area to avoid unnecessary travel costs. It was suggested that the issue be referred to the Judicial Education Committee for consideration. The issue will also be referred to the Boards, as they decide the location of the annual court level conferences.

Motion: A motion was made to go into executive session. 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.

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