

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING

MINUTES

Tuesday, May 28, 2002
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 Michael Wilkins
 Hon. James Z. Davis
 Hon. Lynn Davis
 Hon. Ben Hadfield
 Hon. Lyle Anderson
 Hon. Scott Johansen
 Hon. Lee Dever
 Debra Moore, esq.
 Hon. Clair Poulson
 Hon. Ronald Hare
 Hon. Andrew Valdez
 Hon. Jerald Jensen

STAFF PRESENT:

Daniel J. Becker
 Myron K. March
 Richard Schwermer
 D. Mark Jones
 Ray Wahl
 Tim Shea
 Brent Johnson
 Holly Bullen
 Matty Branch
 Jan Thompson
 AnNicole Faeth

MEMBERS EXCUSED:

Hon. Robert Hilder

GUESTS PRESENT:

Hon. Ron Nehring (for Judge Hilder)
 Hon. Pat Brian
 Jerry Howe, *Office of Legislative Research and General Counsel*
 Bill Greer, *Legislative Fiscal Analyst*
 Katie Gregory, *Utah Children*
 Hon. K.L. McIff
 Hon. Phillip Eves, *Chair, Committee on Improving Legal Services*
 Various members of the media
 Members of the Mongolian Delegation
 Zane Gill, *Salt Lake City*
 Larry Spendlove, *Salt Lake City*

1. WELCOME/APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)

All members, staff, and guests were welcomed to the meeting. The minutes of the Judicial Council's April meeting were discussed. Two minor changes were mentioned. A motion was then made.

Motion: Judge Lynn Davis made a motion to approve the minutes as amended. The motion was seconded and carried unanimously.

2. INTRODUCTION OF MONGOLIAN DELEGATION:

Chief Justice Durham welcomed members of a delegation from Mongolia to the meeting. The delegation was observing a Judicial Council system of governance, for possible implementation in Mongolia. The members of the Utah Judicial Council introduced themselves to the delegation. Dr. Heike Gramckow, of the National Center for State Courts, then provided some background on Mongolia's General Council of Courts and information concerning the purpose of the delegation's visit.

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

Chief Justice Durham reported that the legislature considers the Administrative Office of the Courts (AOC) for re-authorization once every ten years. The Judiciary Interim Committee recently discussed the re-authorization of the AOC and the Alternative Dispute Resolution Program. During the meeting, presentations were made to the committee concerning the Council's relationship with the AOC, types of support services the AOC provides, and staffing numbers. The committee requested that a legislative audit of the AOC be conducted. This audit will serve as a follow up to an audit that was conducted in 1992, when the AOC was last considered for re-authorization. The legislature will act on the re-authorization of the AOC in the 2003 Legislative Session.

4. CORIS CASE SEARCH DEMONSTRATION: (Tim Shea)

Tim Shea reported that the Information Technology Standing Committee informed the Council several months ago that a search tool had been developed in CORIS that would allow for the search of a record on a statewide basis rather than on a jurisdictional basis. Mr. Shea provided an overview of the Statewide Case Search System to the Council. It was demonstrated that identifying information is entered on the first screen of the system, and a statewide search will occur for the name. All cases for that individual will then appear.

It was mentioned that this system does not yet include justice court data due to various policy and budget issues. Council members suggested, however, that efforts be made to make this system available to the justice courts due to the great benefit this search feature would provide to the State through those courts. It was also suggested that a search feature be added to the system which would allow for search by date of birth.

Mr. Shea expressed that the Council needs to decide if this feature should be applied statewide on a uniform basis rather than a jurisdictional basis. After some discussion took place, Justice Wilkins recommended that the Trial Court Executives be asked to forward a policy to the Council for implementation, and that they be asked if performing these searches is something clerks should be asked to do.

5. RULE 3-414: COURT SECURITY: (Tim Shea)

Chief Justice Durham reported that HB 82, section 78-7-6, subparagraph 2, used to contain only one subsection, A, now contains subsection A and subsection B. Subsection B contains several sub-parts. The statutes give the Judicial Council two separate options with respect to its security plans. The first is contained in subparagraph A which says that the courts may provide, through the rules of Judicial Administration, for security in or about a courthouse or a courtroom, or establish a secure area as is prescribed in the later portion of the statute. Chief Justice Durham reported that the definition of a secure area, which is covered later in the statute, exists solely for the purpose of permitting a prosecution of a person who knowingly or intentionally possesses a firearm, ammunition, or dangerous weapon within a secure area established by the Council under this section. Chief Justice Durham reported that the second option is contained under option B of HB 82, the legislature has provided that if the Council establishes such a secure area, under 2A for purposes of felony prosecutions, it shall provide a secure firearm storage area on site so that persons may store their weapons.

It was reported that the Management Committee met to discuss those options on May 14th, in light of the concerns expressed by a number of district court judges about actual safety conditions in their courthouses. It was the recommendation of the Management Committee that the Judicial Council, pursuant to its authority under 2A of the statute, delete the existing definition of secure areas. That will mean that we will not be able to prosecute people for felonies for carrying weapons in those particular areas, but it will also mean that the provisions of subparagraph B will not be triggered. If there are no secure areas designated by Council rule, there is no need for the Council to provide for the storage areas that the statute requires.

Chief Justice Durham also reported that she had discussed this matter with the Speaker of the House and the President of the Senate, and that she had been assured that their primary concern is that the judges and the judicial branch be in conformance with the law. She also explained that she had reviewed with them the recommendation of the Management Committee and that they had indicated their support of this approach.

Tim Shea discussed draft revisions to rule 3-414 with the Council, and reported that it is being proposed that any references to guns in secure areas in the rule would be deleted. By eliminating this designation, the statutory provision for gun lockers would not apply.

Motion: Judge Dever made a motion to accept the Management Committee's recommendation and that all references to gun locker and secure areas in rule 3-414 be deleted through the emergency rule making process. Judge Lynn Davis seconded the motion. No vote was taken on the motion.

Justice Wilkins spoke against the motion and suggested that, rather than revoking the rule, the operation of the rule be suspended for 90 days. The following motion was then made.

Substitute Motion: Justice Wilkins made a motion to suspend the operation of the language in rule 3-414 relating to guns in secure areas in order to accomplish the purpose proposed by Tim Shea. The motion was seconded and passed unanimously. Debra Moore recused herself from the vote.

Motion: Justice Wilkins made a motion to refer this issue to Policy and Planning and the Liaison committee for study, and that they report to the Council within 90 days. Judge Lynn Davis seconded the motion. The motion carried unanimously. Debra Moore recused herself.

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

Daniel J. Becker reported the following items:

- Judge Olof Johannsen has announced his plans to retire July 30, 2002. The announcement of the judicial vacancy has been distributed. Announcements are also out for vacancies that will occur as a result of the retirements of Judge Robert Braithwaite and Justice Richard Howe.
- Collin Winchester has been selected to replace Steve Stewart at the Judicial Conduct Commission. Mr. Winchester will begin in June.
- Juvenile dependency drug courts will receive \$407,000 in additional funding for Fiscal Year 2003 through TANF funds. The funds may be used for one year only, and will allow for an increase of approximately 75 participants.
- Heather Mackenzie-Campbell received an award of recognition from the Utah Justice Courts recently at the Justice Court Judges' Conference. Jerome Battle received the Governor's Chief Information Officer award, and the Department of Corrections will be awarding the Racial and Ethnic Fairness Commission their 2002 Public Service Award. Matty Branch was awarded the Mentor or the Year Award for her work with the organization, Bringing Hope to Single Moms.

Mr. Becker then reported that the State's budget shortfall has grown. The legislature had balanced the state's budget by the end of their session in March, but the deficit has since grown another \$138 million in FY 2002, and \$173 million in 2003. It was reported that the shortfall is likely the result of a steep drop in personal and corporate income tax collections. The most current shortfall means that the state is approaching \$450 million in reductions since June of 2001, and that approximately 12% of the state's budget has been reduced in the last year.

It was reported that, in a special session held on May 22nd, the legislature addressed the FY 2002 reduction through use of the Rainy Day Fund and bonding for capital facilities. Agencies have been told that reductions for FY 2003 could range anywhere between 4.28% and 7.98%, depending on if public education and higher education are held harmless from additional cuts. Information has not yet been received from the legislature in terms of what exact percentage may be anticipated. A special session of the legislature may be held in June to discuss the FY 2003 budget shortfall. It was mentioned that this issue will be discussed again with the Management Committee on June 11th, and with the Council on June 24th.

7. REPORTS:

Management Committee: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that the Council had already addressed most of the issues the Management Committee discussed in their meeting. Chief Justice Durham did mention, however, that the Management Committee had discussed the possibility of changing the date of the Council's December meeting. The Management Committee proposed moving the meeting date to Monday, December 23rd. After discussion took place by the Council, it was determined that the Council's meeting would remain on December 16th, and that Judge James Davis would preside at that meeting.

Policy and Planning Committee: (Hon. Scott Johansen)

Judge Johansen reported that, at Policy and Planning's request, the District and Juvenile Boards had both discussed the issue of the Guardian ad Litem's Office being housed in the judiciary, and that they are both of the opinion that the issue of physical separation from judges' chambers needs to be resolved. The Boards also determined, however, that the Guardian ad Litem program should remain in the judiciary. Judge Johansen expressed that Policy and Planning will provide a formal report to the Council on this issue in June.

Liaison Committee: (Justice Michael Wilkins)

There was no report from the Liaison Committee because they haven't met.

Bar Commission: (Debra Moore, esq.)

Debra Moore reported that the Bar Commission voted to donate an additional \$40,000 to the Multi-Cultural Legal Center. This donation will bring the Bar's total donation to \$100,000. Ms. Moore also reported that John Adams, president-elect of the Bar, is launching a program encouraging lawyers, legislators, judges and others to go into

their communities to discuss the democratic system of government. It was also reported that on September 11, 2002, Mr. Adams would like to have a week devoted to the "dialogue for freedom" program in which judges are encouraged to make presentations in schools.

Ms. Moore also reported that the Bar Commission voted to adopt a multi-state performance test which will test the practical application of lawyering skills of individuals who wish to be admitted to bar. The exam will be administered in a two hour time frame, in which the examinees are asked to answer problems presented to them.

8. FINAL APPROVAL OF THE VOTER INFORMATION PAMPHLET: (Tim Shea)

Tim Shea reported that, in their last meeting, the Council approved general descriptions of judges who are being considered for retention/election this year, to be placed in the voter information pamphlet. The information in the pamphlet reports whether the judge was certified by the Council, and how the judge fared in regards to each of the individual standards. Information relating to a total favorable score, and (for district judges) results of the juror survey will also be included. Mr. Shea reported that there were a few justice court judges who had not provided biographical materials to be placed in the pamphlet, and asked the Council's direction in contacting those judges.

Motion: Judge Jensen made a motion to have Tim Shea contact the judges who had failed to submit biographical information, and to give them seven days to submit those materials. If they don't submit the requested materials, it should be indicated in the Voter Information Pamphlet that the judge failed to submit biographical data. Judge Lynn Davis seconded the motion. The motion carried unanimously.

Motion: Judge Dever made a motion to approve the materials to be included in the Voter Information Pamphlet as it was presented, in compliance with the previous motion. Judge Lynn Davis seconded the motion. The motion carried unanimously.

Jerry Howe, of the Governor's Office of Legislative Research and General Counsel, raised an issue concerning a column on the materials which reports a total percent of favorable responses. Mr. Howe expressed that this information may not be relevant to voters. The Council expressed appreciation to Mr. Howe for the feedback.

9. REPORT: COMMITTEE ON IMPROVING JURY SERVICE: (Hon. Phillip Eves, Tim Shea)

Judge Eves reported that an ad hoc committee was formed four or five years ago which was charged with the responsibility of looking at the jury system in Utah and finding ways to improve its effectiveness. The committee worked three years, and formed a number of recommendations. At that time, an advisory committee on improving jury service was created. There are currently 8-9 members on the committee, including lawyers, 3 district court judges, and 1 justice court judge.

Judge Eves reported that the committee was able to see the One-Day/One-Trial Rule implemented, which allows jurors to complete their service by reporting one time. The committee has also dealt with privacy issues for jurors in order to prevent improper contact with the jurors during a trial; they have implemented a rule that sets a new standard for challenges for cause; and, they have amended pertinent rules in order to allow note taking by jurors. The committee has also amended rules to allow preliminary or "mini opening statements" at the beginning of a trial (before the selection of jurors occurs) so jurors have some context in which to answer questions; they have amended rules to allow the court to give jury instructions before opening statements are given; and, they are continuing to educate judges and lawyers about the jury process.

It was mentioned that there are currently several projects underway, including reviewing the proper procedure to allow jurors to ask questions of witnesses during a trial. That rule is presently out for comment. Judge Eves also mentioned that the Supreme Court is considering, at the committee's request, the formation of two new advisory committees on jury instructions.

10. SALT LAKE CITY JUSTICE COURT: (Richard Schwermer)

Richard Schwermer reported that Salt Lake City applied for the creation of a justice court almost two years ago, and that their request was approved by the Council, beginning operation July 1, 2002. Mr. Schwermer then expressed that when a justice court is close to beginning operation, they are required to submit details about the operation of their court that they wouldn't necessarily know at an earlier date. It was then reported that Salt Lake City has recently informed the AOC that they are proposing to use part time judges, and that two statutes are implicated by this proposal. It was also mentioned that Salt Lake City had not yet submitted a security plan. After discussing these issues, the following motion was made.

Motion: Justice Wilkins made a motion to approve the certification of Salt Lake City's Justice court because, based upon the information provided in their application, they appear to be in compliance with relevant statutes. This approval is subject to Salt Lake City's compliance with the requirement of submitting a security plan. Judge Valdez seconded the motion. The motion carried unanimously.

11. LUNCH: REMARKS BY JUDGE PAT BRIAN AND QUESTION AND ANSWER PERIOD WITH GUESTS FROM THE MONGOLIAN DELEGATION

During lunch, the Council participated in a question and answer period with members of the delegation from Mongolia that was observing the meeting.

12. EXECUTIVE SESSION:

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

13. ADJOURN:

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