

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Tuesday, May 27, 2003

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. Ben Hadfield
Hon. Jerald Jensen
Hon. Robert Hilder
Hon. Lee Dever
Hon. Andrew Valdez
Hon. Gary Stott
Hon. K.L. McIff
Hon. Ronald Hare
Hon. Scott Johansen
David Bird, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Richard Schwermer
Mark Jones
Ray Wahl
Matty Branch
Tim Shea
Jerome Battle
Diane Cowdrey
AnNicole Faeth

MEMBERS EXCUSED:

Hon. Clair Poulson

GUESTS PRESENT:

Ralph Dewsnup, *Chair, Committee on Improving Jury Service*
Hon. William Thorne, *Chair, Standing Committee on Technology*
Hon. W. Brent West, *Presiding Judge, Second District Court*
Rick Davis, *Trial Court Executive, Second District Court*
Hon. Kimberly Hornak, *Chair, Standing Committee on Education*
Dave Walsh, *Governor's Office of Planning and Budget*
Rick Coleman, *Legislative Auditor*
Sue Vierhoff, *Legislative Auditor*

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

All in attendance were welcomed to the meeting. David Bird was introduced and welcomed as a new Council member, replacing C. Dane Nolan who has been appointed to serve as a judge in the Third Juvenile Court.

The minutes of the Council's April meeting were discussed. The following motion was then made.

Motion: Judge Stott made a motion to approve the minutes. Judge Davis seconded the motion. The motion carried unanimously.

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

Chief Justice Durham reported that she has continued to attend bench meetings throughout the state, and that the visits have proven to be a positive experience.

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

Daniel J. Becker reported the following items:

- Rick Coleman was introduced as a legislative auditor working on an audit of the AOC.

- On May 20th the Senate confirmed new judges C. Dane Nolan (Third Juvenile Court), Mary Noonan (Fourth Juvenile Court), and Eric Ludlow (Fifth District Court).

- The Third District Nominating Commission will conduct interviews May 30th.
- Evaluations of the District Judges' Conference and the Juvenile Judges' Conference indicate that they were both very well received.
- Kristin Brewer, Director of the Guardian ad Litem Program, is being honored by Utah Children as "Child Advocate of the Year".
- Rick Schwermer has been selected to receive an award from Mothers Against Drunk Driving (MADD) for his work on the Governor's DUI Task Force.
- Blaine Austin, Chief Probation Officer in the First District, recently passed away due to a heart attack.

Rick Schwermer reported that the Judiciary Interim Committee recently met, and that they discussed the certification process for judicial retention. Legislative staff presented a historical perspective reflecting all the changes which have been instituted in the certification process as well as the Voter Information Pamphlet. This agenda item originated with HB 370 which would have moved the certification of judges from the Judicial Council to the Supreme Court. This legislation was never debated nor did it pass. The committee took no action on the information presented. Mr. Schwermer mentioned that the committee also discussed divorce, custody, and mediation issues.

- **REPORTS:**

Management Committee: (Hon. James Davis)

Judge Davis reported that the Management Committee received a presentation from Kim Allard which outlined a plan for the Public Information Officer position. It was mentioned that interviews were conducted May 23rd and a decision related to filling the position should be made soon.

Policy and Planning: (Hon. Lee Dever)

Judge Dever reported that the Policy and Planning Committee discussed the record of trial court proceedings, senior justice court judges, judicial assistance from retired judges, and protective order forms.

Liaison Committee: (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, esq. reported that the Bar has been involved with improving legislative relations, particularly regarding the unauthorized practice of law issue. Additionally, efforts are being made to educate members of the legislature through classes such as constitutional law, etc.

- **RECOMMENDATIONS OF THE COMMITTEE ON IMPROVING JURY SERVICE: (Ralph Dewsnap)**

Ralph Dewsnap, chair of the Committee on Improving Jury Service, reported that the committee was asked to review recommendations made by the Task Force on Racial and Ethnic Fairness related to juries. Mr. Dewsnap reported that one of these recommendations is already being addressed by the Standing Committee on Education. It was reported that the remaining Commission recommendations focus on research, and it is the committee's feeling that only one of these research projects is feasible at this time. Mr. Dewsnap reported that this recommendation is "(14) The Administrative Office of the Courts should sponsor significant research on...the jury qualification process...for racial and ethnic bias. Research should also study whether and to what extent jurors feel they have been the object of racial or ethnic bias in their capacity as jurors."

- **APPOINTMENT TO THE EDUCATION COMMITTEE AND CORIS USER GROUP: (Tim Shea)**

Tim Shea reported that there were a number of appointments that the Council's Management Committee would normally consider, but that due to time constraints they were coming before the Council as a whole. Mr. Shea reported that Judge James Taylor has applied to serve on the CORIS User Group, and that Judge Claudia Laycock, Judge Michael Lyon, and Judge Paul Maughan have applied to serve on the Education Standing Committee. It was mentioned that the District Board recommends that Judge Claudia Laycock be appointed to the Education Committee.

Motion: Judge Dever made a motion to approve the appointment of Judge James Taylor to the CORIS User Group, and Judge Claudia Laycock to the Education Committee. Judge Davis seconded the motion. The motion carried unanimously.

- **SANPETE COUNTY YOUTH REPORTING CENTER GRANT APPLICATION: (Ray Wahl)**

Ray Wahl reported that in a 2001 legislative audit, Sanpete County was found to have the highest rate of juvenile felonies in the state. Mr. Wahl reported that the Sixth District is applying for a Youth Reporting Center grant

through the Commission on Criminal and Juvenile Justice (CCJJ). This three year grant would provide \$82,000 a year to create a center to deliver services to youth including academic tutoring, life skills, therapy, assessments, etc.

Motion: Judge Johansen made a motion to approve the court's participation in this grant. The motion was seconded and carried unanimously.

- **RECOMMENDATIONS ON ELECTRONIC FILING PILOT PROJECT: (Hon. William Thorne, Jerome Battle, Tim Shea)**

Jerome Battle reported that an e-filing system has been implemented on a pilot basis which allows two attorneys' offices to perform a number of civil filings in an electronic format. Thus far, these filings have been received, filed with a digital signature, and confirmed in CORIS. The filing party is sent a confirmation which serves as a receipt. Mr. Battle reported that an average of two filings have been received per day, although, as many as twenty have been received in a day.

Tim Shea reported that the users of the e-filing program would need to be trained, and he suggested that a "train the trainers" program could be instituted. Additionally, Mr. Shea introduced a number of amendments to the Rules of Civil Procedure.

It was also mentioned that a draft resolution in support of e-filing was before the Council for thier consideration. It was reported that this resolution would support the implementation of Utah Code Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies. After discussion took place, the following motions were made.

Motion: Judge Dever made a motion to amend the wording on number 11 of the resolution. Judge Hadfield seconded the motion. No action was taken on this motion.

Substitute Motion: Judge Jensen made a motion to delete number 11 from the resolution. Judge Dever seconded the motion. The motion carried unanimously.

Motion: A motion was made to insert the word "available" in number 8 of the resolution. The motion was seconded and carried unanimously.

Motion: Judge McIff made a motion to approve the resolution as modified. The motion was seconded and carried unanimously.

- **PILOT PROJECT FOR OPEN JUVENILE HEARINGS - SITE SELECTION: (Ray Wahl)**

Ray Wahl reported that a bill was passed during the legislative session which opened hearings in juvenile court in two districts on a pilot basis. It was reported that the Board of Juvenile Court Judges recommends that the Third District and the Sixth District serve as the pilot locations. It was reported that the pilot will take effect in November.

Motion: A motion was made to approve the aforementioned locations for the pilot project. The motion was seconded and carried unanimously.

- **AMENDMENT TO RULE 11-203: SENIOR JUSTICE COURT JUDGES: (Tim Shea)**

Tim Shea reported that Policy and Planning has reviewed a question that was raised regarding rules related to senior justice court judges serving past the age of 75. Mr. Shea reported the Policy and Planning recommends that Rule 11-201 be modified to include applicability to senior justice court judges. After reviewing the rule, the following motions were made.

Motion: Judge Jensen made a motion to recommend to the Supreme Court that Rule 11-201 modified to apply to senior justice court judges, and to indicate that senior justice court judges may serve in any justice court in the state. The motion was seconded and carried unanimously.

A question was then raised regarding terms of office for senior justice court judges who are over the age of 75 and still in office. The following motion was then made.

Motion: Judge Davis made a motion to refer the aforementioned question to Policy and Planning for review. The motion was seconded and carried unanimously.

- **CERTIFICATION OF JUDGE OLOF JOHANSSON FOR ACTIVE SENIOR JUDGE STATUS: (Tim Shea)**

Tim Shea reported that Judge Olof Johannsson has submitted an application for active senior judge status. It was mentioned that the Management Committee raised a question regarding whether another attorney survey should be conducted since Judge Johannsson has been serving as a judge pro tem for the last several months, and his last attorney survey was conducted in 2001. After discussion took place, the following motion was made.

Motion: Judge Dever made a motion to use the results of the 2001 attorney survey to certify Judge Johannsson for senior judge status. Judge McIff seconded the motion. The motion carried unanimously.

- **APPOINTMENT OF COMMISSIONER: SECOND JUDICIAL DISTRICT: (Hon. W. Brent West)**

Judge West reported that there were 33 applicants for the vacant Court Commissioner position in the Second District, of which 9 were interviewed and, ultimately, 3 names were forwarded to the Second District Bench for final selection. It was mentioned that this position was previously held by Scott Hadley, who has been appointed to be a judge in that district. Judge West reported that the Second District has selected Doug Thomas to fill the commissioner position. After discussion took place, the following motion was made.

Motion: Judge Hadfield made a motion to approve the appointment of Doug Thomas as a Court Commissioner in the Second Judicial District. Judge Davis seconded the motion. The motion carried unanimously.

- **FY 2004 BUDGET: (Daniel J. Becker)**

Daniel Becker reported that action needed to be taken to reduce the FY 2004 budget by \$832,000, and to establish a spending plan with one time and ongoing funds for the same year. It was mentioned that since the Council's last meeting, it has been announced that the state is facing another shortfall in the current fiscal year. It was reported that \$30 million will need to be reduced from the state's budget in the last weeks of FY 2003, and that the Governor's response was to require every entity in state government to reduce spending by 1%, which would have been \$872,000 for the courts. Since the courts have already implemented cost saving measures suggested by the Governor's Office such as implementing a hiring freeze and limiting out of state travel, the court's budget was reduced by \$450,000 in the current fiscal year. A plan for addressing this reduction was shared with the Council.

Mr. Becker then presented information to the Council regarding the FY 2004 budget. This was the same information that was shared with them in their April meeting.

Judge Kimberly Hornak and Diane Cowdrey, at Judge Johansen's request, shared information regarding a projected \$25,000 reduction from the education budget.

After discussion took place, the following motions were made.

Motion: Judge Johansen made a motion to identify ongoing reductions by examining workload and making reductions consistent with workload reductions. The motion was seconded and carried unanimously.

Motion: Judge Hadfield made a motion to reduce \$439,550 by:

- eliminating 4 temporary positions (\$75,300),
- returning fiscal note funding (\$93,200),
- taking a reduction in AOC personnel (\$102,900),
- eliminating a court reporter vacancy (\$67,000),
- taking a reduction in the education program (\$25,000),
- reducing technology capital (\$25,000), and
- moving secondary site costs to the Lease and Contract Budget (\$51,150).

Judge Johansen seconded the motion. The motion was carried unanimously.

After additional discussion took place, the following motions were made.

Motion: Judge McIff made a motion to reduce the court's FY 2004 by an additional \$280,000, which will be taken from the personnel budget. The actual positions to be eliminated will be identified at the Council's June 23rd meeting. It was also moved that the remaining \$112,450 needed to reach the full \$832,000 reduction in FY 2004 be covered by one time monies, and the actual cuts will be identified at a later time during FY 2004. Judge Hilder seconded the motion. The motion carried unanimously.

Motion: Judge Johansen made a motion to take the aforementioned \$280,000 in 8 clerical FTE's based upon the clerical weighted caseload. The motion failed for lack of a second.

The Council then discussed FY 2004 spending plan options with one-time and ongoing funds. After discussion took place, the following motions were made.

Motion: Judge Davis made a motion to eliminate tuition assistance from consideration. The motion was withdrawn.

Motion: A motion was made to approve funding of (with one-time funds):

- appellate mediation (\$157,800),
- the career ladder program (\$165,255),

- senior judge benefits (\$14,000),
- the second language stipend program (\$35,000),
- performance awards (\$319,045), and
- 4 temporary employees (\$75,300)

It was also moved that employee tuition assistance not be funded in FY 2004, and that \$20,000 associated with this program be added to the reserve. The motion was seconded and carried unanimously.

Judge Johansen then suggested that other cuts be made in order to restore law clerks and deputy probation officer positions. After discussion took place, the following motions were made.

Motion: Judge Johansen made a motion to place the funding of three law clerks and seven deputy probation officers back on table for consideration, and to ask AOC to recommend how to fund these positions if the Council chose to do so. Justice Durrant seconded the motion. The motion failed with three in favor and five opposed.

Motion: Judge Johansen made a motion to proceed with filling the court's Public Information Officer position. Judge Davis seconded the motion. The motion carried unanimously. It was acknowledged that the Council would need to revisit at their June meeting the specific reductions needed for reducing the \$280,000.

- **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.

- **CERTIFICATION OF MUNICIPAL JUSTICE COURT JUDGES: (Tim Shea)**

The Judicial Council discussed certification of municipal justice court judges. After discussion took place, the following motions were made.

Motion: Judge McIff made a motion to certify Judge Daniel Bertch, Judge Richard Halliday, Judge Gerry Hoyt, Judge Ronald Koonz, and Judge Darwin Poulson. Judge Hadfield seconded the motion. No vote was taken on the motion.

Amended motion: A motion was made to certify all the aforementioned judges, with the exception of Judge Daniel Bertch at this time.

Both of the previous two motions were withdrawn.

Motion: Justice Durrant made a motion to request further information pertaining to questions the Council had regarding Judge Daniel Bertch before they made a final decision regarding certification. Judge Davis seconded the motion. The motion carried unanimously.

Motion: David Bird made a motion to certify Judge Richard Halliday. Judge Hadfield seconded the motion. The motion carried with two opposed. (Judge Hilder and Judge Jensen recused themselves from this vote).

Motion: Judge McIff made a motion to certify Judge Gerry Hoyt. Judge Hilder seconded the motion. The motion carried unanimously.

Motion: Judge Hilder made a motion to certify Judge Ronald Kunz. Judge Davis seconded the motion. The motion carried unanimously.

Motion: Judge McIff made a motion to certify Judge Darwin Poulson. Judge Stott seconded the motion. The motion carried unanimously.

Motion: Judge McIff made a motion to certify Judge Almus Barlow. The motion was seconded and carried unanimously.

Motion: Judge Jensen made a motion to certify Judge Brent Bullock. The motion was seconded and carried unanimously.

Motion: Judge Hilder made a motion to NOT certify Judge Samuel Bylsma. The motion was seconded and carried unanimously. (Judge Hadfield recused himself from the discussion and vote on this motion)

Motion: Judge Hilder made a motion to certify Judge Sterling Gardiner. The motion was seconded and carried unanimously.

Motion: Judge McIff made a motion to certify Judge Darla Serrasio. The motion was seconded and carried unanimously.

Motion: A motion was made to certify Judge Joel Campbell and other municipal justice court judges as was listed on a handout provided to the Council. The motion was seconded and carried unanimously. (Judge Jensen and Judge Hare recused themselves from the vote as it pertained to their own certification)

- **OTHER BUSINESS:**

It was noted that the membership of a security committee was included on the Council's consent calendar. It was decided that Judge Jensen should be added to this committee.

- **ADJOURN:**

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