

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MINUTES

June 26, 2000 - 9:00 a.m.

3rd District Court - Tooele Courthouse
Tooele, Utah

Chief Justice Richard C. Howe, Presiding

Members Present:

Chief Justice Richard C. Howe
Hon. Lyle Anderson
Hon. L.A. Dever
Hon. Ronald Hare
Hon. Scott Johansen
Hon. Kay Lindsay
Hon. Rodney Page
Hon. Clair Poulson
Hon. Anne M. Stirba
Hon. Stan Truman
Hon. Michael J. Wilkins
Scott Daniels, Esq.

Staff Present:

Daniel J. Becker
Myron K. March
Gordon Bissegger
Matty Branch
Holly Bullen
D. Mark Jones
Richard H. Schwermer
Tim Shea
Adam Trupp
Ray Wahl
Cathie A. Montes

Excused: Hon. Russell W. Bench

Absent: Hon. Lynn Davis

Guests: Bruce Thomas, *Court Executive, Third District Juvenile Court*
Larry Gobelman, *Court Executive, Third Judicial District Court*
Steven Stewart, *Executive Director, Judicial Conduct Commission*
Steve Crane, *Architect, Valentin Crane Brunjes Onyon Architects, PC*

Welcome/Approval of Minutes

Chief Justice Howe welcomed all those in attendance. Judge Russell Bench was excused due to illness. The minutes of the Council's May meeting were reviewed, and the following change was suggested: Page 6, the first paragraph, sixth sentence of the report from the Policy and Planning Committee should be amended as follows: ". . . the Commission is supportive of the approach being taken by the Legislature, and feels that the 2000 legislative session addressed most of the concerns regarding judicial conduct." A motion was then made.

Motion

A motion to approve the minutes of the Council's May meeting, as amended. The motion was seconded and carried unanimously.

Report of the Chairman

Chief Justice Howe reported the following items to the Council:

- Judge William Thorne was sworn in on June 19th as the newest member of the Utah Court of Appeals, filling the vacancy created by Justice Michael Wilkins' appointment to the Utah Supreme Court. He will begin his duties on that court as of July 1st. He has agreed to assist the Third District Court in hearing cases in the interim.

- The swearing-in ceremony for Judge Terry Christiansen is scheduled for July 5th,

4:00 p.m., at the Utah Supreme Court. Judge Christiansen fills the vacancy created by Justice Michael Durrant's appointment to the Utah Supreme Court.

- Judge Paul Lyman is scheduled to be sworn in as a judge in the Sixth District on

July 3rd at 11:00 a.m. in Richfield. Judge Lyman fills the vacancy created by the retirement of Judge Louis Tervort.

- The Third District Nominating Commission will meet in July to make its selection of names to advance to the Governor to fill the vacancy created by Judge William Thorne's appointment to the Utah Court of Appeals.
- A nomination for pro tem judge has been made. The Council will address this issue later in the meeting.
- The Second District Nominating Commission has advanced to the Governor the names of five candidates to fill the position created by Judge Michael Glasmann's departure from the bench.

Administrator's Report

Dan Becker reported to the Council the following items:

- A groundbreaking ceremony for the Vernal courthouse is scheduled for July 1st.
- The State Justice Institute (SJI) has declined the grant request submitted by staff for the pro se study. SJI received a total of 29 applications for 11 grants. The Administrative Office of the Courts (AOC) staff will now examine other possible avenues by which funding may be pursued.
- The National Center for State Courts has awarded the AOC a grant in the amount of \$15,000 to replicate a leadership program for trial court presiding judges and trial court executives. A team from the courts attended this program and felt it would be beneficial to conduct such a program for the Utah courts. Preparations for the program are currently underway, and the program is scheduled to be presented in March, 2001.
- The drug court RFP process is underway, and a total of 15 applications have been received from seven of eight districts. However, a delay of up to six weeks is expected, since the federal government has not yet released information regarding the distribution of the federal funds. The results of the federal government's allocation is needed before funds may be awarded on the state level.
- A program was held at Orem Middle School as part of the courts' public trust and confidence effort. The purpose of the program was to inform the public of juvenile courts as a community resource. Justice Christine M. Durham (Utah Supreme Court) was the keynote speaker, and it was reported that the program was well attended.
- Time will be devoted at the Council's next meeting to discuss two issues of particular importance to the courts: 1) security at court locations; and 2) the formation of justice courts.

Subcommittee Reports

The Council received the following subcommittee reports:

Management Committee: Judge Clair Poulson reported that at its last meeting, the committee discussed the differences between the juvenile and adult Uniform Fine and Bail Schedules. The Council will be presented with information regarding the juvenile Uniform Fine and Bail Schedule later in the meeting.

The Alternate Dispute Resolution Committee has requested an increase in its membership from the current 10 members to 15 members. The Management Committee approved this request following brief discussion, a summary of which can be found in the committee's meeting minutes. Other matters discussed by the committee are on the Council's agenda.

Policy and Planning Committee: Judge Scott Johansen reported that the committee continues its discussions on the issue of certification and evaluation of judges. He summarized those items which were discussed at the committee's last meeting, among them: issues relating to senior judges; recommendation of the adoption of the change to Rule 4-202.02; and proposed changes to child support worksheets.

The committee will not meet in July.

Liaison Committee: The committee has not met since the last Council meeting.

Bar Commission: Scott Daniels reported to the Council the following items discussed by the Bar Commission:

- The Commission has discussed the issue of appointments to the judicial bench. The Commission has received a suggestion by the State Bar that the Commission should examine those candidates under consideration for judicial appointments, using a model similar to that of the American Bar Association.
- The Courts and Judges Committee has received and is reviewing a joint request from legislative staff and the Bar Commission regarding the role of the Bar in the performance evaluation process.
- Effective in August, Debra Moore will replace Scott Daniels as the Bar representative to the Council.
- The Commission held extensive discussions regarding comments in the press related to the judicial evaluation of Third District Judge Dennis Frederick.

Request for Ethics Advisory Opinion

Tim Shea discussed this matter with the Council, pursuant to a recommendation from the Policy and Planning Committee. He explained that the committee is investigating issues related to judicial evaluation, certification and retention elections. As part of that investigation, the committee reviewed a question and answer pamphlet published by the AOC in conjunction with the video, "The Judges". The pamphlet contains the question, "Can a judge campaign for retention if the judge receives a 'do not retain' recommendation from the Judicial Council?", and the answer, "No, unless there is an active campaign against the judge." The Policy and Planning Committee was of the view that if this is a correct interpretation of the Code of Judicial Conduct, it produces a harsh result, and that the Judicial Council should request an opinion from the Ethics Advisory Committee to determine whether it is a correct interpretation.

It was stated that a judge standing for election may be faced with negative publicity despite being certified by the Council, and that the request should also include that scenario. Mr. Shea stated that the Ethics Advisory Committee has difficulty with broadly framed questions, but that they might be able to explore some of the limits of judicial campaigns under a limited number of scenarios. A motion was made following additional discussion.

Motion

A motion was made to direct staff to draft a letter to be signed by the Chief Justice requesting an opinion from the Ethics Advisory Committee regarding whether a negative certification by the Council constitutes active public opposition which would allow a judge to operate a campaign. That further, the request should include whether negative publicity constitutes active public opposition which would allow a judge to operate a campaign. The motion was seconded and carried unanimously.

Private Vehicle Reimbursement

Myron March presented this item to the Council for review and action. Mr. March began by presenting brief background information. He indicated that a policy was developed by the courts in keeping with intent language passed by the Legislature regarding private vehicle reimbursement. The State's Department of Administrative Services has also drafted and implemented a similar policy.

Mr. March summarized the courts' policy for the Council, as follows:

- The mileage reimbursement amount has been reduced to 25 cents per mile from 31 cents per mile;
- Local court executives are authorized to approve reimbursement at the greater amount only when state vehicles are not available;
- Private vehicles may not be used when appropriate state vehicles are available.

The policy was reviewed and recommended to the Council by the Management Committee at its last meeting. It is proposed that the policy take effect on July 1, 2000, and that the policy should be incorporated into the courts' Accounting Manual. A motion was made at the conclusion of Mr. March's presentation.

Motion

A motion was made to adopt the proposed policy per the Management Committee's recommendation. The motion was seconded and carried with one opposed.

Update: Judicial Conduct Commission

Steven Stewart, Executive Director of the Judicial Conduct Commission, presented his quarterly report to the Council. The Council was informed that the Commission has received a total of 87 complaints since July 1, 1999. He presented a summary of three cases which the Commission dismissed after preliminary review. He indicated that most complaints involve issues relating to court decisions where the Commission has no jurisdiction.

The Commission has recently adopted its own set of ethical guidelines, a copy of which was received by the Council. Mr. Stewart summarized these guidelines, which address the following items: scope of rules; orientation; confidentiality; public statements; inquiries by the press; file destruction; avoiding impropriety and the appearance of same; financial and business dealings; disqualification; attendance; demeanor during the hearing process; review of rulings by the presiding officer; and prohibition against representing judges before the Commission. There was some discussion of the guidelines, and Mr. Stewart answered questions from the Council concerning same.

Mr. Stewart stated that the Commission is currently in the process of replacing its judicial representative, since the term of Hon. Timothy Hanson expires June 30, 2000.

Proposed Changes in Personnel Policies and Procedures

Ray Wahl and Barbara Hanson presented to the Council two proposed changes in the courts' personnel policies and procedures. Mr. Wahl discussed a major change in the secondary employment policy. In the past, juvenile court employees have expressed frustration regarding the restrictions in the existing secondary employment policy. As a result, an effort to redraft the policy was undertaken by some juvenile court supervisory staff. The Council received a copy of the draft policy, and Mr. Wahl indicated that the policy has been reviewed by the Boards of Judges, trial court executives, clerks of court, and chief probation officers.

The following changes in the policy were noted: 1) the responsibility to identify conflicts with secondary employment is shifted from the courts to the employee; 2) obtaining secondary employment in an area unrelated to the court level of the individual's primary employment is not a conflict; and 3) a process is created allowing the court executive more responsibility to authorize secondary employment. He reiterated that the goal of this effort was to loosen some of the existing restrictions while preventing conflicts. It was emphasized that the policy will benefit all court levels. Barbara Hanson noted that the courts have experienced a high turnover rate, and that this change may serve as an incentive to maintain quality employees.

A recommendation was made to add language which would make sections 11.5.3 and 11.5.4 consistent with one another. Myron March presented to the Council a brief history of the past policy. In 1991 the Judicial Council discussed the policy at length, and at that time favored a policy which would ensure the avoidance of both direct and perceived conflicts between primary and secondary employment. Staff agrees with the efforts undertaken to modify the policy. However, some areas remain which should be excluded from secondary employment. These are: law firms or attorneys, law enforcement, collection agencies, and bail bond agencies. It was clarified that the first three areas are in the existing policy. Staff was asked whether court reporters are include in the existing or redrafted policy, and a suggestion was made for a provision which relates to court reporters. There was additional, brief discussion followed by a motion.

Motion

A motion was made to adopt the redrafted secondary employment policy with the addition of the word "level" at the end of section 11.5.4, and that this policy should not apply to court reporters. The motion was seconded.

Further discussion ensued regarding inclusion of the four categories where secondary employment should not be permitted. The second was withdrawn and the motion was opposed. An amended motion was then made.

Amended Motion

An amended motion to the original motion was made to include the four categories which presume disqualification for secondary employment. The substitute motion was seconded.

Dan Becker reiterated that the redrafted policy provides for greater discretion on the part of court executives. He recommended that, if the policy is adopted, an addendum to the policy should be included which provides additional guidance to court executives which enhances the authorization process for secondary employment. There was also discussion on how secondary employment may affect court employees in rural areas.

A vote was held on the amended motion, and the motion failed. The original motion was reinstated, and seconded.

A question was asked regarding the intent of section 11.5.3. The intent language was clarified. It was suggested that the language of this section should be rewritten to specifically state that court executives will carefully evaluate the type of secondary employment, the duties involved in the secondary employment, and whether any connection exists between the two employments.

The original motion was amended to direct staff to prepare an addendum to the policy including guidelines as and for specificity for court executives in the authorization process. An additional recommendation was made to add the following clause: ". . . of the court level within which the employee works . . ."

Amended Motion

The amended motion was as follows:

- To adopt the redrafted secondary employment policy, with the addition of the words,

" . . . of the court level within which the employee works . . ." at the end of section 11.5.4,;

- That this policy should not apply to court reporters;

- To direct staff to prepare an addendum to the policy which includes guidelines as and for specificity for court executives in the authorization process.

The motion was seconded and carried unanimously.

Clerk Allocation

Dan Becker presented this item to the Council for informational purposes. He informed the Council that the deputy clerk positions which are available for allocation during this fiscal year are those which resulted from the drug court funding. The Council previously made decisions which created seven deputy clerk positions as a result of fiscal note funding. Those positions were allocated per temporary positions which the Council established last year.

Mr. Becker briefly reviewed with the Council the following information: district court case filings, juvenile court referrals, results of the clerical weighted caseload study, and a summary of prior decisions made by the caseload committee. It was noted that overall district filings have decreased by 12 percent, and juvenile referrals have decreased by 10 percent. However, this decrease for juvenile court is offset by a 25 percent increase in child welfare cases.

Mr. Becker reviewed data as of May 30th, and indicated that more accurate data will be presented to the Council at its August planning meeting. Projections from the clerical weighted caseload study were reviewed. Based on the methodology, the Fourth District has the greatest need for added clerk positions. All other districts are within acceptable staffing levels under the formula.

Mr. Becker detailed the allocation of clerk positions statewide with drug court funds. Those factors which were taken into consideration for the allocation were: drug court operations within each district; staffing needs for those courts; the frequency of drug court sessions; and volume of clients being supervised by the courts. The funds will provide support to every operating drug court in the state. The positions will be allocated as follows:

- 2nd District: 1-1/2 positions
- 2nd District Juvenile Court: ½ position
- 3rd District Court: 1 position
- 3rd District Juvenile Court: 1-1/2 positions
- 4th District Court: 1 position
- 4th District Juvenile Court: ½ position

Proposed Rule Regarding Senior Judges

Tim Shea discussed this matter with the Council, recalling that nearly one year ago the Constitutional Revision Commission reviewed the rules regarding senior judges. The Commission, after considering the rules, concluded that this was not a constitutional issue. The Council and the Utah Supreme Court subsequently volunteered to review these rules. The draft rule has now been published for comment. The Council is considering the draft rule, excluding 11-201, for final action. These rules are Council rules, and are intended to be integrated with the revised 11-201, which is a Supreme Court rule.

Mr. Shea noted in particular the following provision in the rule: the addition of a requirement that a senior judge demonstrate appropriate ability and character. He also noted the proposal that Section A(v) should be stricken from the rule. This clause states that to be a senior judge, a judge should be receiving retirement compensation under the Judges' Retirement Act. There was extensive discussion on whether a judge could retire without receiving retirement compensation, and on the interpretation and definition of the term "retirement". Clarification was also sought on the meaning of meeting the qualifications for senior judge status.

Provisions regarding disqualification were also reviewed. The Policy and Planning Committee recommended that if a judge is suspended during his or her final term of office or final six years - whichever is greater - that the judge not be qualified for service as a senior judge. An additional recommendation was made that active senior judges 75 years of age should apply for active senior judge status on a yearly basis. Mr. Shea also briefly addressed

Rule 3-108. A motion was made following his presentation.

Motion

A motion was made to recommend Rule 11-201 to the Utah Supreme Court, with the following amendment on page 1, line 16: ". . . be eligible to receive retirement. . . ." The motion was seconded and carried. Justice Michael J. Wilkins abstained from the vote.

Another motion was then made.

Motion

A motion was made to recommend that the Council adopt the balance of the rules, including Rule 3-108, 3-113, and 3-403. The motion was seconded and carried unanimously.

Pro Tem Judge

Larry Gobelman, Third District Trial Court Executive, presented this item to the Council. By way of background, Mr. Gobelman recalled for the Council that the Third District advanced to the Management Committee a request for a judge pro tempore. This request was made in anticipation of the possible retirement of Judge Pat Brian, and the appointment of former Third District Judge Matthew Durrant to the Utah Supreme Court. The Council subsequently approved the Management Committee's recommendation for a pro tem judge.

The Council was informed that Judge Brian will remain on the bench, and the position vacated by Justice Durrant will be filled by the swearing-in of Judge Terry Christiansen on July 6th. However, a vacancy still exists with the appointment of Judge William Thorne to the Utah Court of Appeals. This vacancy is not likely to be filled for a few more months. Therefore, the need still remains for a pro tem judge. This position will likely be housed at the West Valley Court.

The position was advertised and 11 applications were received. The Utah Supreme Court directed that a nominating commission be created to select three candidates for consideration. This was done accordingly, and of the individuals whose names were selected, the nominating commission advanced the name of Walter H. ("Bud") Ellett to Judge Frank Noel, Third District Presiding Judge. The presiding judge recommends Mr. Ellett's name to the Council for its subsequent recommendation to and appointment by the Utah Supreme Court. The following motion was then made.

Motion

A motion was made for the Council to approve the recommendation to the Utah Supreme Court of Walter H. ("Bud") Ellett for appointment as Third District Judge Pro Tempore. The motion was seconded and carried unanimously.

Juvenile Uniform Fine and Bail Schedule

Adam Trupp presented this matter to the Council. At its last meeting the Management Committee was presented with a request to approve a proposed Juvenile Uniform Fine and Bail Schedule. The schedule had not been updated since 1995. The committee asked how this schedule coordinated with the Adult Uniform Fine and Bail Schedule, or the schedule used by justice courts in assigning bails and fines for actions committed by minors. Upon further examination of the schedule, it was determined that there were discrepancies between the two schedules, and staff was directed to identify said discrepancies. Staff investigated the matter accordingly, and found that there were significant differences in the fines for minor traffic offenses.

The Council received a memo from Mr. Trupp which detailed the offenses, their classifications, and the fine amounts in the juvenile and adult fine and bail schedules. The amounts set were reviewed and approved by both the Board of Juvenile Judges and the Juvenile Court Bail Committee. Accordingly, the Council was requested to approve the proposed schedule as written, recognizing the discrepancies. An additional request was made to direct Juvenile Court administration to coordinate with the Justice Court Board on the application of the schedules, particularly in the area of non-traffic offenses.

Concern was expressed that many juvenile offenders may pay a higher amount than is outlined in the Adult Uniform Fine and Bail Schedule. There was additional discussion on this matter, and a suggestion was made that fines imposed on juvenile offenders should not be higher than those listed in the Adult Uniform Fine and Bail Schedule.

A motion was made following additional discussion.

Motion

A motion was made that in no event should any fines imposed on juvenile offenders be greater than the amount imposed in the Adult Uniform Fine and Bail Schedule. The motion was seconded and carried unanimously.

An additional motion was then made.

Motion

A motion was made to approve the Juvenile Uniform Fine and Bail Schedule as written, with an adjustment of any fines which may exceed those listed in the Adult Uniform Fine and Bail Schedule, and that the Juvenile Court and Justice Court should be directed to coordinate in addressing the discrepancies in the area of traffic offenses and other offenses wherein two separate schedules are used to impose fines. The motion was seconded and carried with one opposed.

Tooele Court Facilities Proposal

Gordon Bissegger presented to the Council a proposal regarding the Third District, Tooele court location. Mr. Bissegger introduced Steve Crane, architect, of Valentiner, Crane, Brunjes and Onyon (VCBO). VCBO conducted a study of this facility to address the needs of the county and the state. The study, funded by the county and the

state, was completed last year and offered specific recommendations regarding security, structural, spacial, and mechanical issues. The Council received a summary of the findings and recommendations regarding the Tooele court.

Mr. Bissegger outlined two options with respect to the facility. Option A involves remodeling the existing building into county offices and building a new court facility, at a cost of between \$10,200,000 - \$11,000,000. The cost of a new courts facility is projected at \$6,600,000 - \$7,000,000. Option B involves remodeling the existing building into court offices and building a new county facility, at a cost of between \$8,800,000 - \$9,600,000. The projected cost of remodeling the existing facility for the courts is \$4,300,000 - \$4,800,000. The findings note that the facility is well built, structurally sound and suitable for remodeling. The building would require a new mechanical system and roof, as well as an updated electrical system and minor structural enhancement.

Option B is recommended by the consultant, the state and the county. It is proposed that the courts would occupy the third level, and other state agencies, e.g., Youth Corrections, would also be housed in the building. The third level would continue to house certain county agencies, although the facility would essentially be a state-occupied building. The county currently owns the building. The proposed funding mechanism is a revenue bond.

Mr. Bissegger summarized the total space needs in the Tooele facility through the year 2020. He also outlined the square footage projections for state and county use. Steve Crane then reviewed for the Council the projections for each court level based on the caseload study, and the needs of the county. He reviewed the schematics and makeup of the building by level. It was noted that security is the item of foremost concern. A suggestion was made to improve security by relocating the justice court from its current location on the lower level to the upper level, where the county commission is currently located, then blocking the stairways and placing the magnetometer near the elevator. The county opposed this suggestion. Alternate, short-term solutions are also being considered. Mr. Crane emphasized that the plans presented are conceptual in nature. Mr. Bissegger stated that the state has agreed to bear a portion of the costs for remodeling if the county agrees to do the same. No action was sought from the Council at this time.

Presentation on Tooele Facility/Introduction of Clerk of Court

Larry Gobelman introduced Sharon Callister to the Council. Ms. Callister is the Clerk of the Court at the Tooele courthouse. She has been employed by in the Third District for 25 years, and will retire on June 30th. She was acknowledged for her contribution to the courts and commended for her service.

Bruce Thomas offered additional comments on the Tooele facility, and offered to answer any questions which the Council might have as they toured the court. A motion was then made.

Motion

A motion was made to adjourn the meeting. The motion was seconded, carried unanimously, and the meeting adjourned immediately thereafter in order for the Council to tour the Tooele court building.