

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, June 24, 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 Matthew Durrant
Hon. James Davis
Hon. Jerald Jensen
Hon. Clair Poulson
Hon. Robert Hilder
Hon. Andrew Valdez
Hon. Ronald Hare
Hon. Lyle Anderson
Hon. Scott Johansen
Debra Moore, esq.

STAFF PRESENT:

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

MEMBERS EXCUSED:

Hon. Ben Hadfield
Hon. Lee Dever
Hon. Lynn Davis

GUESTS PRESENT:

Hon. Thomas Willmore (for Judge Hadfield)
Hon. Gary Stott (for Judge Lynn Davis)
Hon. Roger Livingston (for Judge Lee Dever)
Commissioner David Dillon

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

All in attendance were welcomed to the meeting. Judge Thomas Willmore (attending for Judge Hadfield), Judge Gary Stott (attending for Judge Lynn Davis), and Judge Livingston (attending for Judge Dever) were introduced and welcomed. The minutes of the Council's May meeting were discussed. A motion was then made.

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

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

Chief Justice Durham reported that she met with legislative leadership Tuesday, June 18th in which it was agreed that the legislature and the judiciary should engage in regular communication on issues related to the court system.

Chief Justice Durham suggested that a one-day communication/governance workshop be held, in which the Council would meet with the boards of judges in order to receive an assessment of current communication between the groups, and to obtain feedback for further improving communication. The cost of the workshop would be kept to a minimum. It was noted that the possibility of holding a workshop was mentioned to the District Board, who was very supportive of the idea. A motion was then made.

Motion: Judge James Davis made a motion to schedule workshop. Judge Hilder seconded the motion. The motion carried unanimously.

The Council congratulated Debra Moore on her recent election as president-elect of the Utah State Bar.

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

Daniel J. Becker reported the following items:

- The Roy City Council has voted to create a justice court. It is expected that they will request a waiver of the two year start up period at the next Council meeting, and, if approved, will begin operation January, 2003.
- Judge Joseph Jackson has submitted notification that he will end his active senior judge status for the next several years.
- Interviews for Third District Juvenile Court Judge, Olof Johansson's, position will be held Tuesday, June 25th.
- The Racial and Ethnic Fairness Commission was recently awarded the public service award by the Department of Corrections.
- A special session of the legislature will be held, Wednesday, June 26th, to adjust the FY 2003 budget.

4. REPORTS:

Management Committee: (Chief Justice Christine M. Durham)

Chief Justice Durham reported the following items:

- Judge Scott Johansen, chair of the Policy and Planning Committee, and Justice Michael Wilkins, chair of the Liaison Committee were invited to discuss decisions made by the Council in their May meeting concerning changes to rule 3-414. Through discussions with the chairs, it was decided that Policy and Planning would review security plans in each district related to the rule, and the issue would be brought before the Council again in August.
- The Management Committee heard a report regarding the U.S. Supreme Court's decision in the case of Alabama v. Shelton. This decision provides additional entitlements to the right to counsel in cases in which individuals may be subject to imprisonment.
- At the May Council meeting, a question was raised about processing time in CORIS. Jerome Battle reported to the Management Committee on this issue, and acknowledged a slow down in the December to January time frame, but assured the committee that the problem has been corrected. Mr. Battle also urged judges and staff to contact the help desk if they encounter problems so they can be resolved.
- Tim Shea provided a report on the issue of getting representation on juries in San Juan County. At the current time, the issue is resolved, and should remain resolved for the foreseeable future.

Chief Justice Durham reported that the Management Committee also heard a report on the budget, which would be shared with the Council later in the meeting.

Policy and Planning: (Hon. Scott Johansen)

Judge Johansen reported that Policy and Planning discussed the Guardian ad Litem issue which would be discussed later in the Council meeting.

Liaison Committee:

The Liaison Committee had not met.

Bar Commission: (Debra Moore, esq.)

Debra Moore reported that the Bar Commission has selected its annual award recipients. The awards will be given as follows: Brent Hogan, lawyer of year; Steven Anderson and Jeril B. Wilson, (joint award) judge of the year; Character and Fitness Committee, committee of the year; Young Lawyers Division, section of the year; Wayne Riches, pro bono lawyer of the year; Silvia Bennion, community member of the year; Kent B. Scott, district service award; and, Rep. Afton Bradshaw and Rep. Lamont Tyler, distinguished public service award.

Ms. Moore also reported that the Bar has a surplus of \$300,000 in the current year, and they are looking at ways to spend the surplus. It was mentioned that a retreat was held in which communication issues between the Bar and the Supreme Court were discussed.

5. REPORT FROM POLICY AND PLANNING ON THE GUARDIAN AD LITEM OFFICE: (Alicia Davis)

Alicia Davis reported that the Policy and Planning Committee has performed a study on the presence of the Guardian ad Litem's (GAL) Office in the judiciary. Ms. Davis reported that the GAL Office was created as a result of a 1994 legislative audit, in order to improve the representation of children. There are currently 35 GAL attorneys who represent 4,900 children throughout the state. The director of the GAL program is housed in the Administrative Office of the Courts which provides administrative support to the program, but the director of the GAL program serves at the pleasure of the Judicial Council. The GAL budget is a separate line item, representing 3.9% of the court's budget.

It was reported that in 1992 the GAL Office was studied, at which time it was determined that there was no constitutional prohibition regarding the placement of the office in the judicial branch. Another study was conducted in 1996 in which it was decided that the placement of the office in a public corporation or an independent state agency may threaten the program's funding, and that no viable alternative was available. Ms. Davis noted that in the present study, the issue of physical separation of GAL attorneys from judges' chambers was also examined.

Ms. Davis reported that she had researched statutes concerning GAL offices nationwide and that none of the statutes indicate a conflict with the GAL being housed in the judiciary. Additionally, research has indicated that the administration of the GAL Office in the Administrative Office of the Courts does not create an ethical problem. It was also mentioned that the Department of Administrative Services is not a viable option because they have expressed extreme reluctance about housing a program as large as the GAL. Furthermore, such placement could lead to the program being subsumed into the AG's Office. This would prevent CAPTA (Child Abuse Prevention and Treatment Act) funding, because under CAPTA the GAL cannot be in the same agency as the agency that filed the petition.

Ms. Davis reported that Policy and Planning recommends that the existing administration of the GAL program be retained, and the physical separation of GAL attorneys from judges' chambers be implemented where possible.

Discussion was had that because the GAL is part of the Administrative Office of the Courts, that some judges believed the AOC should be interceding when the GAL has a complaint against any individual judge. It was pointed out that the Administrative Office of the Courts provides only administrative support and that if it were to intercede, as suggested, that the propriety of placement in the judiciary could be questioned. It was suggested that the fact that the AOC does not interject itself into such issues illustrated the appropriate relationship is in place.

Motion: Judge Johansen made a motion to separate various parties including GAL attorneys from judges' chambers and to refer the issue back to the Council's Standing Committee on Court Facilities to implement physical separation by revising the master plan, in order to avoid the appearance of impropriety. The Standing Committee would then bring a rule change back to the Council for their review. Judge Hilder seconded the motion. The motion carried unanimously.

Motion: Judge Hilder made a motion to keep the GAL Office in the judiciary, but to address concerns that have been raised. Judge Anderson seconded the motion. The motion carried with 6 in favor and 3 opposed. Four individuals present couldn't vote because they were attending for members. Justice Durrant abstained from voting.

Alicia Davis was also thanked for her work on this issue.

6. VOTER INFORMATION PAMPHLET: (Tim Shea)

Tim Shea reported that he had informed the Council in May that biographical data to be included in the voter information pamphlet had not been received from two justice court judges, Judge Adams and Judge Brown. Mr. Shea reported that both judges had since submitted the requested information.

Mr. Shea also reported that, in the Council's May meeting, Jerry Howe had raised a question concerning tables in the voter information pamphlet. Mr. Shea suggested that the description of one of the columns be changed from "satisfactory" to "favorable", as Mr. Howe had suggested. The following motion was then made.

Motion: Judge Anderson made a motion to use word "favorable" rather than "satisfactory" in the column heading. Debra Moore seconded the motion. The motion carried unanimously.

It was mentioned that Jerry Howe had also suggested that the "favorable" column be moved from the left side of the table to the right. After discussion took place, the following motion was made.

Motion: Judge Anderson made a motion to move the "favorable" column to the right side of the table. Judge Valdez seconded the motion. The motion carried unanimously.

7. ONLINE COURT ASSISTANCE PROGRAM UPDATE: (Commissioner David Dillon)

Commissioner David Dillon, chair of the Online Court Assistance Program (OCAP) Board, provided an update on the program. The concept of OCAP (formerly Quick Court) was created by statute in 1995. OCAP began development in 1998, and is now serving judges, clerks, and the public. OCAP is accessed through the court's internet address, <http://courtlink.utcourts.gov>, and can be used in divorce and landlord/tenant cases.

It was reported that one of the main goals of the system is ease of use, which was partially accomplished by giving the program a 7th Grade readability level. A document is then generated, from information entered on a number of screens, which can be printed and submitted to the court. It was mentioned that the program creates high quality documents, customized to the case, in place of fill in forms generated by the Quick Court system.

Commissioner Dillon reported that between November of 2000 and November of 2001, 2,803 divorce documents were downloaded, and 1,100 cases were subsequently filed. Those numbers represent 8% of total divorce filings in

that year. In the same time period, 582 landlord/tenant documents were downloaded, and 92 cases were filed.

It was reported that OCAP has received a number of national and public awards. It was also mentioned that the program is in the process of having features added which would allow individuals to prepare protective orders petitions and for the guardianship of a minor.

A concern was raised regarding paper divorce packets that are available for purchase in courthouses throughout the state. It was mentioned that these packets create findings and decrees that are often very poor quality. Commissioner Dillon agreed to take the issue of discontinuing the use of the packets to the policy board.

8. REPORT: UNIFORM FINE/BAIL STANDING COMMITTEE: (D. Mark Jones)

Mark Jones provided an updated Uniform Fine/Bail schedule to the Council. Mr. Jones reported that the committee met in May and implemented a number of changes that had been made to statutes during the general session. It was also mentioned that the committee would like to see a rule change made in order to add a justice court clerk to its composition. After reviewing the revised schedule, the following motion was made.

Motion: Judge Poulson made a motion to approve the Uniform Fine/Bail schedule. Judge Hare seconded the motion. The motion carried unanimously.

9. REPORT: STANDING COMMITTEE ON CHILDREN AND FAMILY LAW: (Hon. Judith Atherton)

Judge Judith Atherton, chair of the Standing Committee on Children and Family Law, reported that there are seven subcommittees of the Standing Committee: Communication, ADR/Mediation, Custody Evaluation, Child Witness/Victim, Protective Orders, Parent Visitation, and Public Access to the Juvenile Court. Judge Atherton provided a brief description of each of these subcommittees to the Council.

Judge Atherton then discussed rule 4-901 with the Council. It was reported that the rule places the affirmative duty on counsel when there are multiple cases before the court within the same family. The rule permits communication among judges and commissioners assigned to cases related to the same family in order to consolidate and coordinate proceedings.

10. ETHICS ADVISORY OPINION 02-1: (Brent Johnson)

Brent Johnson reported that the Ethics Advisory Committee had reviewed the issue of judges voting in the primary election this year, in which voters will now be required to declare their party affiliation. It was mentioned that this issue was being brought before the Council because the Committee had been unable to reach a resolution. Judge Livingston mentioned that the Board of District Court Judges had passed a resolution which expressed an opinion that judges should be able to vote in the primary election. It was also mentioned that allowing the judges to vote does not appear to be a direct violation of the canon which deals with this issue. After discussion took place, the following motion was made.

Motion: Judge Anderson made a motion to adopt the version of the Ethics Advisory Opinion which says that a judge cannot attend a party conference, but they can vote in a primary election, even if they need to declare party affiliation. The motion was seconded and carried with one opposed.

Motion: Judge Anderson made a motion to adopt this opinion as a formal Council opinion. The motion was seconded and carried unanimously.

Brent Johnson was asked to notify judges immediately by email that they can vote.

11. FY 2003 BUDGET REDUCTIONS: (Daniel J. Becker, Myron K. March)

Daniel Becker reported that appropriations subcommittees will hold hearings from 9:00 a.m. - 12:00 p.m., June 26th to address the state's \$173 million budget shortfall, but it is not anticipated that they will make decisions concerning the agencies' FY 2003 budgets until they meet again, July 8th and 9th. The Governor's analysts and the legislative analysts are working together to provide options for reductions that could be considered in the range of 4.75% to 9%, depending on if education is held harmless from additional cuts or not. A 4.75% reduction from the court's budget would equate to \$4,442,500, and a 9% reduction from the court's budget would equate to \$8,417,300. It was also mentioned that the legislature may look at the Centennial Highway Fund to buffer the effects of statewide cuts. It was also mentioned that the Governor recently issued his budget principles for addressing the budget shortfall which include financial management, assuring efficiency in state government, flexibility, ensuring an educated workforce, forming a new infrastructure for approved building/construction projects, and maintaining vital human services.

It was reported that after the legislature's general session, it was decided that the courts would take a reduction of 3.1% in FY 2003. At that time, the Council made decisions to take prioritized/targeted reductions. As reductions become deeper, however, it may be necessary to take across the board reductions in the court's budget. It was mentioned that one way to approach taking additional reductions would be to have the Council look at ongoing permanent reductions that could be taken system wide such as travel, current expense, and other areas. Mr.

Becker provided a list of areas in which ongoing across the board cuts could be taken, which would equate to a 2.8% reduction in the judiciary's general fund budget. It was suggested that if the court's are required to take reductions beyond 2.8%, that the Council actively engage the boards of judges by asking them to make recommendations concerning where additional reductions should be made. It was noted that, based upon an average position cost of \$35,000, it would take 51.5 positions for the court's to reach \$4.4 million in reductions if they were required to do so. If reductions in force need to be taken, the clerical weighted caseload formula could be applied in reverse by lowering the base level of adequate staffing across the state.

Mr. Becker reported that this approach to addressing budget reductions has been shared with the Boards of Judges. The boards expressed strong support of the approach, and appreciated the notion of the Council including them in the decision making process.

Mr. Becker suggested that there are three issues the Council will need to consider related to the \$2.6 million that could be taken in across the board reductions: 1) Are those the right areas to take cuts, and if the legislature takes less a 2.8% reduction from the court's budget should non-personnel cuts be taken first, followed by vacant positions, and finally reductions regarding a reduction in force; 2) Does the Council agree with the concept of delegating the decision making responsibility for cuts above 2.8% to the boards of judges; and, 3) Should the implementation of the one time spending plan the Council adopted in March be frozen until the Council's next meeting.

Motion: Judge Jensen made a motion to freeze the implementation of the one time spending plan adopted by the Council in March. Judge Hare seconded the motion. The motion carried unanimously.

Judge Johansen suggested that the Council look into taking additional across the board reductions before asking the boards to take reductions on each court level. Judge Johansen suggested that the Council look closer at reducing the overall education budget (including how education funds are used for travel), discontinuing the payment of judges' bar dues, looking at education conference budgets, and reviewing security budgets on a district by district basis. Judge James Davis suggested that certain court location closures might be looked at as well.

Motion: Judge Valdez made a motion to support the approach presented by Mr. Becker for taking reductions. Judge James Davis seconded the motion. The motion carried unanimously.

The Council decided that they would hold a special meeting July 15th at 4:00 p.m. to discuss the decisions of the legislature concerning the court's FY 2003 budget. The boards will then be asked to meet and bring recommendations for addressing reductions to the Council in their August meeting. It was noted that reductions should be implemented by September 30th (the end of the first fiscal quarter) since reductions will become deeper and more difficult to take as the fiscal year progresses.

12. EXECUTIVE SESSION:

Motion: A motion was made to go into executive session to discuss the character and fitness of an individual. 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.