

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, June 28, 2004
District Courtroom, Emery County Courthouse
1850 North 560 West
Castle Dale, Utah

Chief Justice Christine M. Durham, Presiding

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Justice Matthew Durrant
Hon. James Davis
Hon. Jon Memmott
Hon. J. Mark Andrus
Hon. Jerald Jensen
Hon. Clair Poulson
Hon. Robert Hilder
Hon. Gary Stott
Hon. K.L. McIff
Hon. Scott Johansen
Hon. Ronald Hare
David Bird, esq.

STAFF PRESENT:

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

MEMBERS EXCUSED:

Hon. Lee Dever

GUESTS PRESENT:

Hon. Gordon Low (by telephone)

1. WELCOME & APPROVAL OF MINUTES:

On behalf of the Council, Chief Justice Durham thanked the Johansen family for their hospitality and the wonderful meal the prior evening. The minutes of the Council's May meeting were then discussed, and the following motion was made.

Motion: A motion was made to approve the minutes. The motion was seconded and carried unanimously.

2. CHAIR'S REPORT:

Chief Justice Durham reminded the Council that the Conference of Chief Justices and State Court Administrators will take place in Salt Lake City the end of July. Chief Justice Durham also reported that Judge Jerald Jensen has been named justice court judge of the year.

3. ADMINISTRATOR'S REPORT:

Daniel Becker reported the following items:

- Judge Stan Truman, Judge Merrill Hermansen and Judge John Walquist, all retired judges, recently passed away.
- Alicia Davis, Assistant Juvenile Court Administrator, has been appointed to serve as director of the newly created Office of Child Welfare and Parental Rights. Her last day with the AOC will be July 30th. Janica Bisharat, Education Coordinator left the AOC last week to complete her MPA and to care for her new baby daughter. Jah Juin Ho, Director of the Racial and Ethnic Fairness Commission, is leaving the AOC to attend law school.
- In its April meeting, the Council determined that one-time funds would be used to fund two law clerks for one year, and that the Board of District Court Judges would be asked to determine where the law clerks would be allocated. It was reported that the Board determined that one law clerk will go to the 2nd District, and the 6th and 7th Districts will share the other.
- An e-filing presentation was made to the Legislature's Executive Appropriations Committee on June 15th.

- A follow-up hearing with the Judicial Interim Committee took place June 16th, in which the final report of the legislative audit of the AOC was discussed. The committee accepted the report.
- The courts were awarded a \$56,000 grant through the Commission on Criminal and Juvenile Justice, which will fund the expansion of Truancy Mediation throughout the state.
- An ABA study recently reviewed state court budgets throughout the U.S., and made recommendations for strengthening the court budgeting process. Many of the recommendations are already in place in Utah.
- Christine Decker has been appointed by the Governor, and confirmed by the Senate, to serve as a judge in the Third Juvenile District Court.
- Council member, David Bird, has been elected president-elect of the Utah State Bar.

4. REPORTS:

Management Committee:

Chief Justice Durham reported that the Council asked the Management Committee to review recommendations made in the final report of the legislative audit of the AOC, as they relate to the Council. It was reported that the committee reviewed each of the recommendations, and the committee's recommendations were shared with the Council as follows:

- We recommend that the Judicial Council use the ongoing program-based budgeting process to comprehensively review the Judiciary's financial organization structure to relocate budget/expense accounts to the program budgets responsible for those activities.

The Management Committee determined that funds used for education and ADR functions should be relocated into specific education and ADR budgets. The procedures for use, approval, and oversight of funds would remain as they have been. For example, the District and Juvenile Board's will still determine the location of each court's Spring conference. **Recommendation: Adopt.**

- We recommend that the Judicial Council determine whether a reevaluation of council membership is needed to address concerns about the council's composition and voting on budget issues. Any changes they feel are warranted should be forwarded to the Legislature for consideration.

The Management Committee's initial feeling is that the present composition and voting structure of the Council is adequate, however, the committee recommended that the Council discuss this suggestion during a strategic planning workshop in the Fall. **Recommendation: Defer discussion and action.**

- We recommend that the Judicial Council consider posting the minutes of its budget meetings on its website.

Recommendation: Adopt.

- We recommend that the Judicial Council and the AOC continue to encourage and facilitate communication outreach efforts including:

- a. council member attendance at board of judges meetings.
- b. the AOC newsletter.

Recommendation: Adopt.

- We recommend that the Judicial Council use on-going communication outreach efforts to provide:

- a. information on the Judicial Council's prioritization process and its philosophy of adopting a system-wide focus on the good of the entire Judiciary to all judges.
- b. information on the rationale for current council composition and voting rights.
- c. information on the important factors in the weighted caseload studies along with information on efforts to improve the studies.

Recommendation: Adopt.

- We recommend that the Judicial Council proceed with a reconciliation of differences between the District and Juvenile Court judicial weighted caseload studies.

Recommendation: The Management Committee noted that a committee consisting of members of the District and Juvenile Boards has developed a uniform judicial weighted caseload formula that would be

presented to the Council in their meeting on June 28th.

- We recommend that the Judicial Council's Education Standing Committee review data on the amount of education actually taken by judges to determine whether the cost of judicial education can be reduced.

The Management Committee discussed the possibility of updating the form on which judicial education hours are recorded. **Recommendation: Ask the Education Standing Committee to review data on the amount of education actually taken by judges.**

- We recommend that the Judicial Council review their Rule 3-403 and determine whether the minimum number of education hours required of judges, clerks, and other staff should be changed.

Recommendation: Refer this issue to the Education Standing Committee.

- We recommend that the Judicial Council implement a mechanism to monitor whether clerks and other staff are complying with the education requirements.

It was reported that this was a personnel issue in a single district, and that the issue had already been addressed.

Recommendation: Consider recommendation done.

- We recommend that in the future when the Judicial Council authorizes creation of a task force, it should instruct the AOC on how cost information should be tracked. At a minimum, we recommend expenditures be tracked in dedicated organization codes.

Recommendation: Consider recommendation done.

- We recommend that the Judicial Council should consider whether time spent by staff or judges on future task forces merits tracking.

Recommendation: The need for such tracking should be considered at the time the Judicial Council considers the establishment of any future task force.

Motion: David Bird made a motion to adopt the Management Committee's recommendations, listed above. Judge Davis seconded the motion. The motion carried unanimously.

Policy and Planning:

Tim Shea reported that Policy and Planning met and discussed a number of items included in the committee's minutes, which the Council may review.

Liaison Committee:

Judge Jensen reported that the Liaison Committee has not met since the Council's last meeting.

Bar Commission:

David Bird, esq. reported that during the Council's last meeting, racial and ethnic fairness composition data was shared. Mr. Bird distributed data concerning the Bar's racial and ethnic composition data. Mr. Bird reported that self-reported data of 7,800 lawyers in the state indicates that 79% of members are male, and 21% are female. 4% indicate that they are of races other than white.

Justice for All reported that legal service related offices saved approximately \$440,000 in the last year by being co-located in a single facility named in honor of Senator Pete Suazo.

5. JUDICIAL WEIGHTED CASELOAD:

Mark Jones reported that the juvenile weighted caseload formula was created approximately 15 years ago to compare caseloads within the juvenile court. In 1995 the district court weighted caseload formula was created, independent of the juvenile weighted caseload formula, since then the difference in how a judicial year is calculated has been a topic of discussion. Mr. Jones reported that a committee consisting of both District and Juvenile Board members was recently created, with the goal of establishing a uniform judge year to use in both the district and juvenile formulas.

Ray Wahl reviewed the new calculation of the judge year with the Council. (can get graph from Tim) It was reported that both boards are recommending the Council adopt the uniform judge year advanced by the committee. After discussion took place, the following motion was made.

Motion: Judge Hilder made a motion to approve the uniform judge year for use in both the district and juvenile court. Judge McIff seconded the motion. The motion carried unanimously.

6. PROTECTIVE ORDER UPDATE:

Ray Wahl reported the time spent on child protective orders is continuing to be tracked. Mr. Wahl reviewed the number of child protective order cases filed in the juvenile court in July through December of 2003, and the time spent on these cases by judges and clerks. It was determined that judges spend an average of 21 minutes per case, and clerks spend an average of 95 minutes per case. It was originally determined that this work-time equates to .76 judges and 2.49 clerks. With the passage of HB 97, however, it is estimated that court volume of protective orders will decrease by half. Given this data, one can project a need for at least 1 FTE clerk and almost 1/2 a judge in juvenile court to address the impact of the child protective order legislation. After discussion took place, the following motion was made.

Motion: Judge Hilder made a motion to allocate to the juvenile court \$50,000 in one-time funds for FY 2005, and ask the Board of Juvenile Court Judges to determine how it will be allocated to address child protective order workload. Judge Andrus seconded the motion. The motion carried unanimously.

7. VOTER INFORMATION PAMPHLET:

Tim Shea reported that the voter information pamphlet contains a section approved by the Judicial Council that describes merit selection, judicial evaluation and retention election and provides information about each judge standing for election. It was reported that the general description and the information about the individual judges were being submitted for the Council's approval. After discussion took place, the following motion was made.

Motion: David Bird made a motion to approve the aforementioned information to be included in the pamphlet. The motion was seconded and carried unanimously.

8. REPORTS ON PROGRAM BASED BUDGETING:

- BOARD OF APPELLATE COURT JUDGES:

Matty Branch reported that the Appellate Board met at the beginning of the Program Based Budgeting process, and again at the end. Each court met in the interim. Ms. Branch reported that the Appellate Board determined that staff attorneys, secretaries, law clerk salaries, and travel are their highest priorities. Ms. Branch then reviewed remaining appellate programs with the Council, and reported that the Board determined that funding in these areas should remain as it is for the present time. The Board did not identify areas that could be reduced or eliminated.

- STANDING COMMITTEE ON EDUCATION:

Diane Cowdrey reported that on February 3, 2004, the Standing Committee on Judicial Branch Education met with a facilitator to examine and prioritize nearly 20 program categories of judicial branch education. Dr. Cowdrey reported that the committee's top priorities are clerk career education, district court education, justice court clerk education (with local funds being used, rather than state funds, to increase the program), justice court education (with the condition of exploring funding options), and pro tem training. The committee determined that remaining programs should be maintained at their present funding level. The committee did not identify programs that could be reduced or eliminated.

9. COUNCIL PROGRAM BASED BUDGETING DISCUSSION:

Richard Schwermer provided a program based budget summary to the Council. The summary included bookkeeping changes, policy/rule changes, and program recommendations.

In terms of bookkeeping changes, it was recommended that the Education budget be combined into one, the ADR budget be broken out by court level served, and state drug court funds be broken out by court level.

Motion: Judge Davs made a motion to adopt the aforementioned bookkeeping changes. Judge Hare seconded the motion. The motion carried unanimously.

Recommended policy/rule changes include the following:

- Senior judge compensation for education and board attendance
- Utah Advance Report distribution, including senior judges
- Criteria for using senior judges
- Senior Judge Board advisability
- Bar membership status (related to senior judges)
- Bailiff services (standard contract rates, control over allocation, etc.)

- Expand Court Commissioner authority, consistent with *Ohms*
- Mental Health Court funding split
- Commissioner participation with the District Court Board
- Support Services Coordinator role, ad for CWC purposes (send to TCEs for consideration)

The Council determined that the Management Committee would assign policy/rule changes to appropriate committees and/or individuals to consider.

The Council then reviewed recommendations made by the boards and committees regarding programs they were asked to evaluate as part of the program based budgeting exercise. After discussion took place regarding the recommendations made, the following motions were made.

Motion: Judge Davis made a motion to adopt the recommendation made by the Board of Juvenile Court Judges to move \$120,000 from Statewide Supervision and from Probation to the Child Welfare Mediation program, for two years, to fund 2 FTE mediators. Judge Johansen seconded the motion. The motion carried unanimously.

Motion: Judge Memmott made a motion to authorize the administration to fill a vacancy in the Court Services Division, and to move an existing vacancy to the Human Resources Office. Judge Davis seconded the motion. The motion carried unanimously.

10. 7TH DISTRICT UPDATE:

Judge Johansen reported that there are three district judges and two juvenile court judges in the Seventh District. Judge Johansen reported that the district is leading the state in the implementation of the new CARE System, and then provided information about several counties in the district.

11. TOUR OF EMERY COUNTY COURTHOUSE:

The Council was led on a tour of the new Emery County Courthouse, which was completed in 2002.

12. DRUG COURT GUIDELINES:

Richard Schwermer reported that in its last meeting, the Council reviewed 10 key components of drug courts and proposed minimum guidelines for the creation of adult drug courts. At that time, the Council asked Mr. Schwermer to share the guidelines with judges who work with drug courts, and to report their feedback to the Council. Mr. Schwermer reported that judges' comments were generally supportive. Comments regarding how often judicial reviews should take place were discussed, and an updated version of the guidelines reflecting those comments was shared with the Council. It was determined that a guideline should be added which indicates that drug courts in Utah use plea and abeyance, rather than diversion. After discussion took place, the following motion was made.

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

13. PROPOSAL FOR SETTING A 2005 COUNCIL AGENDA:

Daniel Becker discussed a Judicial Council Leadership Initiative proposal with the Council. This would establish a proactive Council agenda through assessment of the judiciary's core values, and then selecting several of these values for concentrated attention and development of specific projects/initiatives aimed at strengthening the court's position relative to those values.

Mr. Becker suggested that a one-day facilitated Council workshop take place in the coming year in which particular areas of focus are addressed and specific projects be developed to be undertaken in the coming fiscal year. Plans would then be developed to undertake projects, including the preparation of a strategic agenda, and the establishment of specific outcome measures. Values would be reaffirmed on an annual basis, and different areas of focus would be addressed each year. Values/principles would be used as another tool in assessing the relative merits of budget requests each year. It was also determined that a separate one-day workshop would be scheduled in the Fall to work on the proposal described by Mr. Becker's.

Also discussed was the challenge and opportunity presented by the upcoming change in Governor, and House and Senate Leadership. In discussion that took place, it was determined that a joint meeting of the Liaison Committee and the Management Committee take place August 27th to discuss issues related to transitioning to a new administration in the Governor's Office and new leadership in the legislature. The Management Committee was asked to consider this further at their upcoming meeting.

14. OTHER BUSINESS:

Judge McIff reported that he was asked by the Council to serve as chair of a committee to look at issues surrounding hours of operation at the West Valley Justice Court. Judge McIff reported that the committee came to the conclusion that what is decided in relation to West Valley will have statewide implications, and that the

committee believed that courts should be accessible Monday through Friday, 8:00 a.m. to 5:00 p.m. He reported that his committee would be meeting with representatives of West Valley on Friday, July 2nd.

15. ADJOURN:

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