

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, July 15, 2002
Council Room, Matheson Courthouse
450 South State Street
Salt Lake City, Utah

MEMBERS PRESENT:

Chief Justice Christine M. Durham
 Justice Matthew Durrant
 Hon. James Davis
 Hon. Ben Hadfield
 Hon. Jerald Jensen
 Hon. Clair Poulson
 Hon. Robert Hilder
 Hon. Lee Dever
 Hon. Andrew Valdez
 Hon. Lynn Davis
 Hon. Ronald Hare
 Hon. Lyle Anderson (by telephone)
 Hon. Scott Johansen
 Debra Moore, esq.

STAFF PRESENT:

Daniel J. Becker
 Myron K. March
 D. Mark Jones
 Richard Schwermer
 Ray Wahl
 Holly Bullen
 Tim Shea
 Matty Branch
 Gordon Bissegger
 AnNicole Faeth

GUESTS PRESENT:

Jerry Howe, *Office of Legislative Research and General Counsel*
 Dave Walsh, *Commission on Criminal and Juvenile Justice*
 Collin Winchester, *Judicial Conduct Commission*

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

All in attendance were welcomed to the meeting. The minutes of the Council's June meeting were discussed. A minor change was mentioned, the following motion was then made.

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

2. DISCUSSION OF VOTER INFORMATION PAMPHLET: (Tim Shea)

Tim Shea reported that the day after the last Council meeting, Chief Justice Durham received a letter signed by President Al Mansell, Speaker Martin R. Stephens, Sen. David L. Gladwell, Rep. Glenn L. Way, Sen. Terry R. Spencer, and Rep. Greg J. Curtis which expressed two concerns about the content of the Voter Information Pamphlet. Mr. Shea reported that the legislators were concerned that a description for two judges in the pamphlet did not indicate that they failed to meet the minimum certification standards. Mr. Shea clarified that there were three judges who failed to meet minimum standards, but they were certified based on a showing of good cause. It was suggested that the language be changed to say that a judge was certified or that the judge met the minimum certification standards in all areas but one in which they were certified for good cause.

Mr. Shea mentioned that the second concern raised by the legislators related to the reporting of attorney survey scores. They have requested that the "Total Favorable Responses" column be removed from the table. Mr. Shea reported that the Council has always included the column in order to notify the public when a judge's performance in an area is less than satisfactory, and that removing the column eliminates that notice. After discussion took place, the following motion was made.

Motion: Judge Anderson made a motion to accept Mr. Shea's recommendation to remove the "Total Favorable Responses" column, and to include the addition of language to certify. Judge Hilder seconded the motion. The motion carried unanimously.

3. ROY CITY JUSTICE COURT: (Richard Schwermer)

Richard Schwermer reported that, during the legislature's special session, a resolution was passed which allows for the closure of the State Court location in the City of Roy as part of the court's budget reduction. Roy City has since submitted an application to create a justice court, which requests a waiver of the two year start-up period, in order to allow for an opening date of January 1, 2003.

Motion: Judge Poulson made a motion to approve Roy City's request to form a justice court, including the accelerated time frame. The motion was seconded and carried unanimously.

4. BUDGET DISCUSSION and LEGISLATIVE UPDATE: (Daniel J. Becker, Myron K. March, Richard Schwermer)

The legislature met in a special session, June 26th and July 8th and 9th in order to address a \$173 million deficit in the state's FY 2003 budget.

Discussion of Legislation:

Richard Schwermer reported that several items of legislation which affect the courts, passed during the special session. Changes were summarized as follows:

When justice courts begin filing electronically to the Department of Public Safety, they will need to include new data elements which were required of the State Court System during the 2002 general session.

Legislation was passed in the 2002 general session which requires judges to order felons to submit to DNA testing. There has been a challenge to the way the bill handles indigents because felons are required to pay \$75 fee when the testing is conducted. In an effort to address this issue, the legislature passed a bill during the special session which requires the agencies involved to form a process of identifying indigence. The language was removed from the bill, however, which required district and juvenile courts to order a defendant to undergo DNA testing

Legislation passed a few years ago which allowed employees to apply up to \$250 of annual leave hours (over the maximum accrual of 320 hours) to their 401K. This option was terminated during the special session in order to save approximately \$600,000.

Mr. Becker mentioned that one item the legislature looked at was eliminating two Third District Court judgeships once vacancies occur. This would have been in addition to two judgeships that will be moved to the Third District Juvenile Court and the Fifth District Court. It was reported that Rep. Greg Curtis reasoned that this would be possible as a result of the movement of cases to the West Valley and Salt Lake City Justice Courts. No action was taken on this during the special session.

Discussion of Budget:

Daniel J. Becker reported that the legislature balanced the budget through budget cuts and the use of \$70 million in one-time funds such as the Centennial Highway Fund, Tobacco Settlement funds, and bonding for construction projects that had previously been funded with cash. It was mentioned that \$200 million in additional revenue will need to be generated in FY 2003 in order to just sustain spending in FY 2004.

During the special session, the legislature initially looked at the courts taking a \$4.8 million reduction, which would include approximately \$2.6 million in across the board cuts and \$1.1 million from state supervision funds. As a result of the court's efforts to retain state supervision, those funds were restored on the last day of the special session and the courts ultimately took a reduction of \$2,983,600 in its budget. Since this amount is significantly lower than anticipated, it was suggested that the Council implement the tentatively approved reduction of \$2.6 million and then ask the Appellate Court Administrator and Trial Court Executives to determine how their share of the remaining \$299,000 should be taken from their area, rather than asking the boards of judges to make that determination.

It was also mentioned that there are 26 employees who would be eligible to receive a longevity pay increase this year, which would equate to \$41,527. It was suggested that these increases be frozen in FY 2003, in addition to the freeze of other increases the Council had considered. The following motions were then made.

Motion: Judge Valdez made a motion to adopt the proposals for taking \$2.6 million in across the board reductions, as presented by Daniel Becker, and refer \$340,000 to the Appellate Court Administrator and Trial Court Administrators for reduction from their districts. Judge James Davis seconded the motion.

Judge Lynn Davis suggested that the delay of awarding longevity increases be substituted for the elimination of 1 court reporter position.

Amended Motion: Judge Valdez amended his motion to adopt the recommendations for \$2.6 million in across the board reductions and to substitute the delay in awarding longevity increases for the elimination of 1 court reporter position. Judge James Davis withdrew his second. Judge Lynn Davis seconded the motion. The motion was defeated with 2 in favor and 11 opposed.

Motion: Judge Johansen made a motion to adopt \$2.6 million in across the board cuts, and freeze the longevity plan in FY 2003 (\$45,000), and to defer the remaining \$299,000 to the districts and appellate court to reduce from their budget accordingly. Justice Durrant seconded the motion. The motion carried with 12 in favor and one opposed.

Motion: Judge Johansen made a motion to instruct the districts that State Supervision funds may not be used to address their share of the reductions. Judge Valdez seconded the motion. The motion carried unanimously.

A summary of the Council's decisions concerning the FY 2003 budget are listed below:

	Amount
Base Budget Reductions	
2% Travel Reduction	9,500
2% Current Expense Reduction	150,600
Subtotal	160,100
Return to original FTE Reduction	
Withdraw 13.5 FTE DPO authorization	297,500
Withdraw 1.0 Appellate Clerk authorization	35,000
Withdraw 1.0 Court Reporter authorization	65,000
Subtotal	397,500
Eliminate Balance of Positions Resulting from Reduced Workload	
Withdraw 10.0 FTE Clerk Distribution	330,000
Withdraw 1.0 Court Commissioner authorization	123,500
Subtotal	453,500
Other Budget Reductions	
Freeze Career Ladder for 1 year	250,000
Longevity freeze	41,500
Market Salary Survey	240,000
DP Current/Contractual	75,000
Eliminate Education Assistance	20,000
Reduce Appellate Security from Full time to in-court contractual arrangement.	20,000
Reduce Bailiff	30,000
	676,500
AOC	
Reduce AOC Staffing by 7 FTEs	368,900
Subtotal	2,056,500
OTHER LINE ITEMS	
Reduce contractual services in Lease Budget	410,000
Reduce Juror/Witness/Interpreter	76,100
Reduce GAL (2 to 3 FTEs)	142,000
Subtotal	628,100
Subtotal	2,684,600
<u>ADDITION TO MAIN LINE ITEM</u>	
Distribution to Court Executives	299,000
GRAND TOTAL	2,983,600

The Council then discussed lifting the hiring freeze which has been in place, once the districts and appellate court submit a plan to address their share of the \$299,000 reduction. The Council also discussed allowing the one-time spending plan, which was adopted in April, to be implemented.

5. OTHER BUSINESS:

- Chief Justice Durham reported that she had signed an administrative order placing Judge Ray Harding, Jr. on administrative leave, pending the outcome of criminal proceedings.

6. ADJOURN:

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