

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MINUTES

August 25, 2000 - 9:00 a.m.
Radisson Hotel & Conference Center
2121 Park Avenue - Park City, Utah

Chief Justice Richard C. Howe, Presiding

Members Present:

Chief Justice Richard C. Howe
 Hon. Lyle Anderson
 Hon. Russell W. Bench
 Hon. Lynn Davis
 Hon. L. A. Dever
 Hon. Scott Johansen
 Hon Rodney Page
 Hon. Clair Poulson
 Hon. Anne M. Stirba
 Hon. Stan Truman
 Hon. Michael J. Wilkins
 Debra Moore

Staff Present:

Daniel J. Becker
 Myron K. March
 Holly Bullen
 Matty Branch
 D. Mark Jones
 Richard H. Schwermer
 Tim Shea
 Cathie A. Montes

Excused:

Hon. Kay A. Lindsay

Welcome/Approval of Minutes

Chief Justice Howe welcomed all those in attendance. The minutes of the Council's July meeting were reviewed, and the following correction was recommended:

Page 2, the last sentence in the second full paragraph of the Administrator's Report should be changed to read as follows: ". . . Both Judge Bohling and Ms. Dragoo have a four-year term on the Conduct Commission, effective July 1st. . ."

A motion was then made.

Motion

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

Report of the Chairman

Chief Justice Howe reported to the Council that Ernest (Ernie) Jones will be sworn in as the new Second District Court judge on August 31st at noon, in the Supreme Court courtroom.

Administrator's Report

Dan Becker reported to the Council the following items:
 The Board and committee chairs were thanked for their reports, presentations, and efforts which went into same for the Council's budget planning session.

Former state representative Blake Chard has been appointed as the new director of the Division of Youth Corrections. He replaces Gary Dalton in this position.

A presentation was made to the Third District bench and the Board of Juvenile Court Judges concerning developments on the formation of justice courts. Similar presentations will be made to the Boards of District and Appellate Judges, as well as the court executives and the clerks of court.

A breakdown of the \$1.3 million in drug court funding was presented to the Council. Six of the eight judicial districts will have some type of drug court in operation, the majority of which will have drug courts serving the district and juvenile courts. The Fifth and Sixth Districts are currently planning for drug courts, and Wasatch County is planning a similar operation. The allocation of the funding is as follows:

- First District: \$125,000 for both adult and juvenile drug court
- Second District, Davis County: \$250,000
- Second District, Weber County: \$41,250 (this county will also receive \$500,000 in federal funding)
- Third District Juvenile Court, Tooele: \$35,000
- Seventh District, Emery County: \$160,000 to serve both adult and juvenile courts
- Third District Court: \$250,000
- Third District Juvenile Court: \$105,000 for dependency for child welfare cases
- Fourth District Court: \$200,000
- Fourth District Juvenile Court: \$75,000 for dependency cases
- Eighth District: \$120,000

The aforementioned allocation was announced by the Governor in Judge Frederic Oddone's courtroom.

Subcommittee Reports

Management Committee: Judge Anne Stirba began by commending Dan Becker, Tim Shea, Richard Schwermer, Myron March and Mark Jones for their presentation to the Third District bench regarding justice courts. The presentation was both informative and helpful.

Judge Stirba informed the Council that Judge Russell Bench chaired the Management Committee's August meeting on her behalf. Chief Justice Howe and Dan Becker attended the annual meeting of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA). Chief Justice Howe was named to the CCJ Board of Directors, and Mr. Becker is currently a member of the COSCA Board of Directors.

- The names of the five candidates selected by the Third District Nominating Commission have been advanced to the Governor. The appointee will fill the vacancy created by the appointment of Judge William Thorne to the Utah Court of Appeals. The Governor has until September 21st to make his selection.
- The Fourth and Fifth District Nominating Commissions will meet to begin the selection process for the vacancies created by the retirements of Judge Ray Harding, Sr., and Judge Joe Jackson, respectively.
- Judge Donald Eyre and Judge Lee Bunnell were appointed to the Justice Court Standards Committee. This matter appears on the Council's consent calendar.
- Several rules which have been approved by the Management Committee to be published for comment are also on the consent calendar.
- The Council's September business meeting will be held at the Snowbird Resort, in conjunction with the Annual Judicial Conference. The October business meeting is a site visit to Junction, Utah.

Policy and Planning Committee: Judge Scott Johansen presented his report, indicating that the committee's main focus has been on the issue of judicial performance evaluation. Final recommendations will be advanced to the Council at the September meeting. Peggy Gentles and Tim Shea were commended for their continuing efforts in staffing this committee.

Liaison Committee: The committee had no new report as of this date.

Bar Commission: Debra Moore introduced herself to the Council as the new representative from the State Bar Commission. She replaces Scott Daniels. Ms. Moore reported that the Bar Commission recently met with the Utah Supreme Court, and that the meeting was productive.

- The Executive Committee of the Bar Commission has met and discussed in detail the recommendations made by the Racial and Ethnic Fairness Task Force. This committee has placed a high priority on the issue of diversity training and an implementation plan for same. The committee also plans to attend the press conference scheduled for September 6th.
- A report is anticipated from the Multi-Disciplinary Task Force. This has been a controversial issue, and additional reports will be presented to the Council as developments occur.

- A leadership retreat is scheduled between the Bar Commission and committee and section chairs. The purpose of the retreat is to address more substantive issues of interest and concern to the State Bar.

Jury Improvement Committee Report Recommendations

Tim Shea discussed with the Council the final report and recommendations which were advanced by the Jury Improvement Committee. Many of the recommendations do not fall into the areas of rules or statutes. One of the principal recommendations made was for a more permanent presence for an ad hoc jury committee. A study for such a committee was done in Arizona, and this state has approved a more permanent committee to continue efforts toward jury improvement. Education is a key factor in this effort. Many states are considering ways to improve jury service. The strongest recommendation made by the Jury Improvement Committee is for the creation of an advisory committee to continue this effort, and the recommendations are before the Council for approval.

The Management Committee discussed the recommendations and advanced its own recommendation for the creation of an advisory committee, similar to that of the Court Interpreter Advisory Committee. A review or sunset provision after a three-year period was suggested to maintain the focus of the committee and review progress reports. It was clarified that the Management Committee's recommendation was made to avoid a proliferation of standing committees. It was also noted that the Jury Improvement Committee recommended that such a committee need not meet on a monthly basis.

Chief Justice Howe further clarified the action of the Management Committee, as well as the difference between this committee and the creation of a standing committee such as the Standing Committee on Children and Family Law.

Additional discussion followed, and it was stated that the rule provisions which apply to standing committees are more formal than those for advisory committees. A motion was made following the Council's discussion.

Motion

A motion was made to establish an advisory committee on improving jury service, with the composition as recommended by the Jury Improvement Committee, and with a three-year sunset provision. The motion was seconded and carried unanimously.

An additional motion was then made.

Motion

A motion was made to direct staff to draft for the Council's review and consideration definitions of factors to be considered in determining the establishment of standing and ad hoc or advisory committees. That further, consideration should be given to the imposition of a uniform sunset review on either ad hoc or standing committees. The motion was seconded and carried unanimously.

Olympic Courts Follow-Up to Request from David Schwendiman

Myron March presented this matter to the Council. The Council received a copy of the minutes of the July meeting which reflect the request made by Mr. Schwendiman regarding court operations during the 2002 Olympic Winter Games to be held in Salt Lake City. A formal letter from Mr. Schwendiman was also distributed to the Council, wherein a specific request was made with regard to court operations. This request was also reviewed by Mr. March.

It was clarified that in each proposed "designated Olympic court" ("DOC"), local committees will meet to review the impact on each district of constitutionally mandated hearings. However, no analysis or data has been conducted or prepared which reflects such an impact.

Concern was also expressed regarding issues such as: overtime compensation for "DOC" employees; the nature and number of staffing required to meet constitutionally and statutory mandated hearings; facilities operations, and issues relevant to these concerns. The Council extensively discussed the request, and a suggestion was made to designate the General Counsel for the Administrative Office of the Courts to review the impact and feasibility on districts and the public over a two-week period as relates to constitutionally mandated hearings.

Additional discussion followed, and a motion was then made.

Motion

A motion was made to request staff counsel to identify the courts' constitutional and statutory obligations which cannot be abrogated, and return this information to the Council for further discussion and debate prior to any approval. The motion was seconded and carried unanimously.

An amended motion was made. There was further discussion on both motions, and a request was made to act on each motion separately.

Motion

A motion was made to amend the aforementioned motion, to include a provision that the Utah Judicial Council and the judiciary will cooperate with the Utah Olympic Public Safety Command (UOPSC) to the fullest extent possible, while remaining within its constitutional parameters to do so, and assuming there are funds available to do so. The motion was seconded and carried unanimously.

Clarification was sought regarding court operations for those courts in the rural districts, whether these courts were to refrain from holding any hearings, such as divorce cases or other civil matters, or whether these courts should anticipate that no law enforcement personnel would be available to staff the courtrooms. Mr. March indicated that these courthouses will be staffed with law enforcement personnel; however, the local committees will need to determine the number required, based on their own assessments. The recommendation for courts -- including those outside the Olympic theater of operations -- to schedule only those hearings which may be necessary is based on the presumption that the games will require law enforcement on all levels from the entire state to assist in the Olympic theater of operations.

Staff was requested to gather additional information concerning the impact of issues such as overtime compensation, staffing needs, facilities operations, etc. and to present this information to the Council for its consideration.

Ethics Committee Correspondence

Brent Johnson discussed with the Council an informal advisory opinion by the Ethics Advisory Committee regarding the disqualification of judges. This opinion was prepared in response to the Council's request. The committee concluded that a judge is required to enter disqualification when an attorney representing a judge in a Judicial Conduct Commission proceeding appears and for a period of six months after the representation has ended. The committee addressed the following questions: 1) whether conduct commission proceedings would be in the judge's official capacity; and 2) whether the confidential nature of the proceeding relates to disqualification. The committee was of the view that the private or public nature of the representation should not matter, particularly if the representation may become public at a later date.

One question still outstanding is that of disqualification possibly being remitted by the parties. Representation could be disclosed and the parties could waive disqualification. However, the question remains as to whether a judge must disclose the details of representation in addition to the fact of representation itself.

Mr. Johnson clarified that no formal action is required by the Council on an informal advisory opinion. There was discussion of the differences between formal and informal advisory opinions. Mr. Johnson fielded additional questions following his presentation.

Report of the Standing Committee on Children and Family Law

Lori Nelson, Chair of the Utah State Bar's Family Law Committee, presented to the Council the first report from the Standing Committee on Children and Family Law. She presented this report on behalf of Judge Judith Atherton and Judge Jeril Wilson, the committee co-chairs. Ms. Nelson indicated that the committee has held five meetings thus far. The meetings are held on the first Friday of each month, and are open to anyone who wishes to attend.

The standing committee's first action was to divide into subcommittees, each reflecting the initiatives resulting from the Family Law Workshop. These subcommittees are:

- Protective Order Subcommittee
- Alternate Dispute Resolution (ADR) Subcommittee
- Guardian ad Litem Subcommittee
- Proffer in Lieu of Direct Testimony Subcommittee
- Improvement in the Speed, Quality, and Consistency of Custody Evaluations Subcommittee
- Communication between the Courts Subcommittee

Members and their terms of service were assigned to each subcommittee, and it was determined that terms would be rotated to a maximum of five years, with staggered terms. All the subcommittees have met more than once. When the full committee meets, priorities and agendas are discussed, and the committee then divides into its subcommittees, and each subcommittee discusses its respective priorities and agendas. The committee then reconvenes to vote on any actions advanced by the subcommittees.

The objective is to identify priority issues and set initial goals. The subcommittees' efforts are geared toward obtaining as much information from outside sources as possible.

Ms. Nelson outlined the objectives of the Guardian ad Litem subcommittee, and also reported on the activities of each of the other subcommittees. Several speakers have also been invited to address the committee, among them: Commissioner Michael Evans, Sen. Terry Spencer, and Stewart Ralphs, chair of the Domestic Violence Task Force. A suggestion was made to include justice courts in the initiative concerning communication between courts.

Ms. Nelson answered additional questions from the Council.

Review of Judicial Council/Management Committee 2001 Meeting Dates

Dan Becker reviewed with the Council the proposed 2001 meeting dates for both the Management Committee and the Council. The Management Committee reviewed these dates at its last meeting and advanced same to the Council for its consideration and approval.

The Council will again hold two meetings in conjunction with the Utah State Bar's Midyear and Annual meetings in St. George, Utah and Sun Valley, Idaho, respectively. The June 25th Council meeting date and the July 10th Management Committee meeting dates were stricken from the list. One site visit has been scheduled for the Council thus far; however, the location is to be determined. Other dates were discussed as listed, and a motion was then made.

Motion

A motion was made to approve the proposed 2001 Judicial Council and Management Committee meeting dates, as amended. The motion was seconded and carried unanimously.

It was clarified that the Council's July business meeting will be held on July 4th, and a breakfast meeting will be held on July 6th.

There being no further business, the meeting was adjourned.