

Judicial Council Meeting Minutes

JUDICIAL COUNCIL BUDGET PLANNING SESSION MINUTES

Wednesday, August 27, 2003 & Thursday, August 28, 2003
Large Conference Room, W-19A
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. Ben Hadfield
 Hon. Jerald Jensen
 Hon. Clair Poulson
 Hon. Robert Hilder
 Hon. Lee Dever
 Hon. Gary Stott
 Hon. K.L. McIff
 Hon. Ronald Hare
 Hon. Scott Johansen
 David Bird, esq.
 AnNicole Faeth

STAFF PRESENT:

Daniel J. Becker
 Myron K. March
 Richard Schwermer
 Mark Jones
 Ray Wahl
 Matty Branch
 Tim Shea
 Fred Jayne
 Diane Cowdrey
 Gordon Bissegger
 Jerome Battle
 Kim Allard
 Brian Nelson
 Nancy Volmer
 Heather Mackenzie-Campbell
 Ken Wright

MEMBERS EXCUSED:

Hon. Andrew Valdez

GUESTS PRESENT:

Hon. Paul Lyman (for Judge Valdez)
 Rich McKeown, *Chief of Staff, Governor's Office*
 Lynne Ward, *Director, Governor's Office of Planning and Budget*
 Kevin Walthers, *Legislative Fiscal Analyst*
 John Greene, *Trial Court Executive, Eighth Judicial District*
 Sue Verhoef, *Legislative Auditor*
 Leslie Marks, *Legislative Auditor*
 Elizabeth Neff, *Salt Lake Tribune*
 Beani Martinez, *Trial Court Executive, Second Juvenile Court*
 Jonathan Ball, *Legislative Fiscal Analyst*

WEDNESDAY, AUGUST 27, 2003

- **WELCOME & OVERVIEW OF PLANNING AGENDA: (Chief Justice Christine M. Durham, Daniel J. Becker)**

Chief Justice Christine Durham welcomed all in attendance to the meeting. Judge Lyman, attending on behalf of Judge Valdez, was introduced and welcomed.

Daniel Becker then reviewed the budget planning meeting agenda with the Council.

- **REPORT: GOVERNOR'S OFFICE: (Rich McKeown, Lynne Ward)**

Lynne Ward, director of the Governor's Office of Planning and Budget, reported that the office is currently in the process of evaluating whether or not a state surplus exists from FY 2003. Ms. Ward also reported that \$117 million in federal funds will be dispersed to states on a one time basis in FY 2004. The federal bill authorizing this award of

funds also includes a number of ongoing tax cuts. It was reported, however, that as tax cuts are enacted revenues are decreasing.

Ms. Ward reported that in FY 2004, initial projections indicate that there will be \$72 million in growth. It was reported, however, that \$42 million in one time funds were used this year, and that funding to address those obligations will have to be identified in FY 2005. It was also reported that a number of new costs have been identified such as \$25 million for new kindergartners, and \$50 million for new health care costs. Items such as these equate to approximately \$115 in total new costs.

Rich McKeown reported on the Governor's recent nomination by President Bush as director of the Environmental Protection Agency. Mr. McKeown then discussed judicial appointments, and increased scrutiny on the part of the legislature during the confirmation process. Mr. McKeown expressed a willingness on behalf of the Governor's Office to hear feedback from the courts regarding that process. In relation to the Governor's role in the judicial appointment process, Mr. McKeown mentioned the importance of the Governor receiving information regarding nominees. It was reported that the Governor's Office (particularly upon request) keeps materials related to judicial nominees in strict confidence.

The Council expressed appreciation to Ms. Ward and Mr. McKeown for taking time to share this information with them.

- **PLACING BUDGET PROPOSALS IN CONTEXT:**

-Workload/Demographic Trends: (Daniel J. Becker, Kim Allard, Brian Nelson)

Kim Allard reported that she and Brian Nelson would be presenting information regarding raw filings and referrals, weighted filings, dispositions, clearance rates, and other caseload indicators. Brian Nelson then reported that in the Appellate Courts, Supreme Court case filings have remained fairly stable, while Court of Appeals case filings have been increasing.

Information regarding filings in district court was then shared with the Council. Kim Allard reported that in the district court statewide felony filings have increased in the last year, and misdemeanors as a whole have decreased. Ms. Allard also reported that Utah has high civil clearance rates, and that a 103% clearance rate occurred in district court in FY 2003. It was also mentioned that the number of forms filed per case has been increasing.

Brian Nelson then provided information on juvenile court referrals. It was reported that, overall, referrals have generally been increasing. Other data regarding disposition of cases and clearance rates was also presented.

Kim Allard then presented information regarding justice court filings. It was reported that DUI cases have increased in the last year, and that 73% of those cases are now filed in justice courts.

The Council expressed appreciation to Ms. Allard and Mr. Nelson for their presentation.

- Fiscal Trends & Budget Process: (Daniel J. Becker, Fred Jayne)

Daniel Becker reported that Kim Allard and Brian Nelson may begin presenting case filing statistics to the Council on a quarterly basis, and that Council members should feel free to make suggestions if they would like to see additional information included in the presentation.

Mr. Becker then discussed the court's budget cycle with the Council. It was reported that Fred Jayne sends information soliciting budget requests for the coming year to Trial Court Executives (TCE's). The TCE's meet with their bench, Chief Probation Officers, and Clerks of Court to determine priorities and funding requests. Their requests are submitted to the court level administrators who review them, and formulate their own recommendations which are presented to the boards. The boards consider the court level administrator's recommendations, and then determine what the most immediate demands for their court level are and formulate recommendations which are presented to the Council. It was reported that at the same time, Council standing committees go through a parallel process to formulate their own funding requests which are presented to the Council for consideration.

Mr. Becker reported that in advance of the Council meeting, all of these requests are forwarded to him. He works with a budget committee, which consists of administrators and two TCE's, to review the requests and to formulate the Court Administrator's review and recommendations. The Council then meets, reviews information on workload trends, hears presentations from the boards and committees, and then votes on budget requests. The Council's decisions are then forwarded to the Legislature and Governor.

- FY 2003 Proposals in Summary: (Daniel J. Becker)

Daniel Becker presented a summary of general fund building blocks. Fred Jayne discussed the status of the court's budget over the last four years, and then reviewed restricted funds such as the Children's Legal Defense Fund.

The Court Reporter Technology fund, the Law Library non-lapsing fund, and the Court Security Fee were also discussed.

- **APPELLATE BOARD REPORT: (Hon. Norman Jackson, Matty Branch, Michele Mattsson)**

Judge Norman Jackson, presiding judge of the Court of Appeals, reported that several years ago the Court of Appeals had accumulated a large backlog. At that time, an Appellate Mediation Office was created to contribute to the timely handling of these cases. This office handles the equivalent caseload of one appellate judge. It was reported that the office was created through an existing FTE and matching funds.

Judge Jackson and Matty Branch reported that the program has been quite successful, but as a relatively new program, was selected by the legislature near the end of the 2003 General Session for elimination in order to address the state's budget shortfall. The program was temporarily saved through one time funds. It was mentioned that if funding is not restored, it could be expected that a backlog in the Court of Appeals would resume, particularly in light of increasing case filings. It was reported that they are requesting \$157,000 to reestablish funding for the Appellate Mediation program, which includes two present staff positions.

- **DISTRICT BOARD REPORT: (Hon. Michael Allphin, Mark Jones)**

Judge Michael Allphin, chair of the Board of District Court Judges, began his remarks by expressing appreciation to the Council for their hard work in addressing budget cuts in recent years. Judge Allphin also expressed appreciation to Chief Justice Durham for her positive interaction with the Board and District Court Judges.

Judge Allphin reported that the District Board identified a number of funding priorities as follows:

1) One judge, and two clerks in the Second District: According to the District Court Judicial Workload, the Second District is currently understaffed by 2.8 judges. Additionally, caseloads are continually increasing in that district.

2) Law Clerks 3/Clerks 2: Information was distributed regarding the ratio of law clerks to judges in Utah, and law clerk to judge ratios in other states.

3) Law Clerks 2/Clerks 2: if additional funds are requested, more law clerks and deputy court clerks are needed.

- **JUVENILE BOARD REPORT: (Hon. Leslie Brown, Ray Wahl)**

Judge Leslie Brown, chair of the Board of Juvenile Court Judges, reported that a number of changes have taken place over the 24 years he's been on the juvenile court bench. Judge Brown reported that in recent years the 10-17 years of age at-risk population has remained stable, but will begin increasing again in 2005. Jurisdictional changes in the law have also recently occurred. Some of these include Serious Youth Offender Legislation (which led to the creation of State Supervision - intensive supervision and rehabilitative resources), the Child Welfare Reform Act of 1994, and the Protective Order Statute which was amended in the 2003 Legislative Session.

Judge Brown then reported that the Juvenile Board identified a number of funding priorities as follows:

1) Judicial Resources - Commissioner: Second District Juvenile Court.

2) State Supervision Restoration: These funds were reduced during the 2002 General Session and during the June/July Special Session.

3) Sanpete Day Reporting Center: Recidivism rates in this region are significantly higher than in other areas of the state. Furthermore, the Sixth District Juvenile Court has the highest rate of felony referrals in the state. This reporting center would aid in the early intervention of the target population.

4) Judicial Resources - Commissioner: Third District Juvenile Court.

5) Deputy Court Clerks: The Board requested 8.5 Deputy Court Clerk positions, which would be distributed statewide.

6) Judicial Resources - Commissioner: Fourth District Juvenile Court.

- **INFORMATION TECHNOLOGY STANDING COMMITTEE REPORT: (Hon. Sharon McCully, Jerome Battle, Kim Allard)**

Judge Sharon McCully, a member of the Information Technology Standing Committee, shared the committee's funding priorities with the Council. These include:

1) CARE Hardware: This would ensure that juvenile courts' benches and desktops are ready to utilize the system.

2) E-Filing Hardware and Software:

3) Hardware Replacement: A significant amount of the court's hardware will not support future applications and operating system upgrades.

4) Digital Audio: This would be funded through the Court Reporter Technology Fund, which is through the General Fund Restricted account.

- **FACILITIES STANDING COMMITTEE REPORT: (Hon. Hans Chamberlain, Gordon Bissegger)**

Judge Hans Chamberlain, chair of the Facilities Standing Committee, reported that a new West Jordan courthouse was funded by the Legislature during their 2003 General Session. Judge Chamberlain reported that a proposal regarding the appearance of the structure would be presented to the Council in their business meeting the following day.

Judge Chamberlain then reported that the committee identified funding priorities as follows:

1) Tooele Courthouse: This would be a county owned facility with space leased to the state.

2) Purchase of land adjacent to the Cedar City Hall of Justice: This request was not funded by legislature last year. It continues to be the committee's recommendation that this land be acquired for future expansion of the courthouse.

3) Obtain sufficient general funds to sustain ongoing lease and contract obligations: Unless \$600,000 is restored to this fund, a deficit will be faced in the near future. This could be divided into \$300,000 in FY 2005 and \$300,000 in FY 2006. The committee is requesting a total budget increase of \$149,600.

It was mentioned a future St. George facility project is likely to be requested in coming years, but is not being requested at this time due to acknowledged budget constraints.

- **OTHER REQUESTS:**

- **Juror/Witness/Interpreters: (Fred Jayne)**

Fred Jayne reported that this fund has been used more frequently in recent years due to increased use of interpreters and jurors. Mr. Jayne reported that an increase of \$150,000 and a supplemental of \$566,700 is being requested.

- **Base Budget: (Myron K. March)**

Myron March reported that there is no inflationary increase for the base budget, and that an increase has not been awarded for some time. It was reported that \$532,800 is being requested to supplement the base budget.

- **Interpreter Pay: (Myron K. March)**

Myron March reported that two years ago, the Council approved a pay increase for Court Interpreters. As a result of the state's budget shortfall, however, this increase was rescinded before it was implemented. Mr. March reported that \$160,000 was being requested in order to implement this pay increase.

- **Jury MIS: (Tim Shea)**

Tim Shea reported that Utah's Jury Management Information System was recently evaluated by a national jury specialist, Tom Munsterman of the National Center for State Courts. Mr. Munsterman was very favorable in his evaluation, and he identified only a few areas for improvement. These include generating a more diverse and representative jury pool, which would require a more advanced jury database through improvements to the current Information System. Mr. Shea reported that the Committee on Improving Jury Service is requesting \$280,000 to accomplish this.

- **Employee Assistance: (Myron K. March)**

Myron March reported that some state agencies offer employee assistance programs which provide counseling and crisis services, as well as fitness for duty assessments. It was reported that \$76,000 is being requested to implement a similar program within the court system.

- **EDUCATION STANDING COMMITTEE: (Hon. Kimberly Hornak, Diane Cowdrey)**

Judge Kimberly Hornak, outgoing chair of the Education Standing Committee, reported on the importance of education, especially as changes occur that affect the decisions judges make on the bench and how court staff handle cases that they encounter. Judge Hornak mentioned that in ten years the Education Standing Committee has not received an increase, while the number of judges and employees has increased. Furthermore, it's budget was recently reduced by \$30,000. It was reported that the committee's only funding request this year is for a restoration of that \$30,000.

THURSDAY, AUGUST 28, 2003

- **LEGISLATION: (Richard Schwermer, Mark Jones, Tim Shea)**

Richard Schwermer presented a list of proposed legislation for the 2004 General Session. This list included: the cleaning up of transition language regarding the number of judges in the Third and Fifth Districts, requiring a notice of appeal in small claims cases to be filed within 30 days after entry of the judgement, permitting justice court judges to set bail in first degree felonies, permitting parties to stipulate to a change in venue, but requiring a decision by the judge, and child protective order technical changes. Discussion by the Council related to this legislation then took place.

Motion: Judge Johansen made a motion to adopt the Liaison Committee's recommendations related to this proposed legislation. The motion was seconded and carried unanimously.

- **ANALYSIS, DISCUSSION, & PRIORITIZATION:**

Daniel Becker reported that there are a total of \$4.2 million requests before the Council this year, where in a typical year, requests have been around \$8 or \$9 million. Mr. Becker then reviewed his recommendations for FY 2005 budget requests with the Council.

- **DISCUSSION AND VOTE ON BUDGET PRIORITIES:**

Council discussion took place regarding the various funding requests made by the boards and committees.

Motion: Judge Johansen made a motion to place a request in the amount of \$471,400 for leases, contracts and O&M in the mandates/obligations category. The motion was seconded and carried unanimously.

Motion: Judge Johansen made a motion to place a request in the amount of \$562,600 for a juror, witness, interpreter fee supplemental in the mandates/obligations category. The motion was seconded and carried unanimously.

Motion: Judge Hadfield made a motion to request a 1% increase in the court's budget as proposed by Daniel Becker, with modifications as follows: 1) a judge in the Second District Court, 2) a commissioner in the Second Juvenile Court, 3) the restoration of State Supervision funds, 4) funding of the Appellate Mediation Program, and 5) funding for a Sanpete Day Reporting Center. Judge Johansen seconded the motion. No vote was taken on the motion.

Motion: Judge Hilder made a motion to table Judge Hadfield's motion. Judge Dever seconded the motion. The motion carried unanimously.

Motion: Justice Durrant made a motion to eliminate an increase in the base budget from consideration. Judge Poulson seconded the motion. The motion carried unanimously.

Motion: Judge Johansen made a motion to include Juror/Witness 2005 in the mandate category. The motion was seconded and carried unanimously.

Motion: Judge Stott made a motion to eliminate Jury MIS from consideration. Judge Davis seconded the motion. No vote was taken on the motion.

Substitute Motion: David Bird made a substitute motion to move the Jury MIS to the deferral category rather than elimination, in order for Tim Shea to conduct further examination of what upgrades would need to be made to the system. Judge Stott and Judge Davis accepted the substitute motion. The motion carried unanimously.

Discussion took place regarding a request made to the Council for an interpreter pay increase. It was mentioned that the Juror, Witness, Interpreter fund is currently \$150,000 in the red, and that it may be important to wait until the legislature takes action on this fund to determine if pay increases should be implemented or not. In the mean time, it was also mentioned that it may be useful for the Council to receive information regarding what interpreters are currently paid in justice courts and in the Federal Court System.

Motion: Judge Dever made a motion to defer consideration of an interpreter pay increase until the Spring, and that further information should be gathered regarding interpreter pay rates in other systems. Judge Hilder seconded the motion. The motion carried unanimously.

Motion: Judge Hilder made a motion to defer consideration of an Employee Assistance Program. The motion was seconded and carried unanimously.

Motion: Judge Davis made a motion to approve a funding request for appellate mediation as an appropriation building block. The motion was seconded and carried unanimously.

Motion: Judge Hadfield made a motion to request funding for a Second District Judge through a fiscal note. The motion was seconded and carried unanimously.

Motion: Judge Hadfield made a motion to forward approximately a 1% increase to the legislature, prioritized as follows: 1) a judge in the Second District Court, \$267,800; a commissioner in the Second Juvenile Court,

\$227,200; 3) restoration of \$384,300 for State Supervision; 4) funding for the Appellate Mediation program, \$157,800; and, the Sanpete Day Reporting center, \$127,500, and that all other requests that were not already addressed through a motion should be deferred for Council consideration in the Spring. Judge Johansen seconded the motion. The motion carried with two opposed.

After voting took place, it was noted that a majority of the Council was convinced that there were reasons to shortcut the Council's budget process in this particular year, but that is won't be bypassed or rejected in the future.

Motion: A motion was made to approve the plan of financing contract and leases as outlined. The motion was seconded and carried unanimously.

Motion: Judge Stott made a motion to approve a facilities request for Tooele and Cedar City. the motion was seconded and carried unanimously.

Motion: Judge Hilder made a motion to request the use of \$100,000 from the Court Reporter Technology Fund for digital recording. The motion was seconded and carried unanimously.

Motion: Judge McIff made a motion that, if restoration of State Supervision funds is not awarded by the legislature, it should be considered by the Council again in the Spring with other deferred items. The motion was seconded and carried unanimously.

- **ADJOURN:**

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