

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Tuesday, September 18, 2001

Garden Room
The Homestead Resort
Midway, Utah

Members Present:

Chief Justice Richard C. Howe
Hon. Michael J. Wilkins
Hon. Russell Bench
Hon. Ben Hadfield
Hon. Jerald Jensen
Hon. Ronald Hare
Hon. Clair Poulson
Hon. Lee Dever
Hon. Andrew Valdez
Debra Moore, esq.
Hon. Lynn Davis
Hon. Scott Johansen
Hon. Lyle Anderson
Hon. Robert Hilder

Staff Present:

Daniel J. Becker
Myron K. March
Ray Wahl
D. Mark Jones
Richard H. Schwermer
Matty Branch
Jerome Battle
Ron Oldroyd
Gordon Bissegger
Alicia Davis
AnNicole J. Faeth

GUESTS PRESENT:

Justice Christine Durham, *Chair, Public Outreach Committee*
Hon. Hans Chamberlain, *Chair, Standing Committee on Facilities*
Steve Stewart, *Judicial Conduct Commission*
Brent Tippetts, *VCBO Architects*
Bill Greer, *Legislative Fiscal Analyst*
Steve Crane, *VCBO Architects*
Lynn Hinrichs, *DFCM*

1. WELCOME/APPROVAL OF MINUTES: (Chief Justice Richard C. Howe)

All members and staff were welcomed to the meeting. Bill Greer was introduced and welcomed. The minutes of the Council's Budget/Planning Session and August business meeting were discussed. The following revisions to the Budget/Planning Session minutes were suggested:

- On page ten of the minutes, the third motion should be changed to indicate that Judge Davis made the motion. The fourth motion should be changed to indicate that Judge Dever made the motion.
- On page twelve of the minutes, under "substitute motion", the second item under clerical reallocation was changed to read "23.5 FTE's will be reallocated statewide" the remainder of the sentence was deleted; the paragraph before the motion at the bottom of the page was changed to read "The motion included the understanding that of the 23.5 FTE's, 10.0 FTE's are to be"; the motion at the bottom of page twelve was revised to read "...upon the next two vacancies that occur after July 1, 2002, the first position reallocated to the Third Juvenile Court and the second position to the Fifth District, and to seek"

Motion: A motion was made to approve the Council's August minutes as revised. The motion was seconded and carried unanimously.

2. REPORT FROM CHAIRMAN: (Chief Justice Richard C. Howe)

Chief Justice Howe reported that as a result of the terrible events which took place on September 11th, the State may need to pay more attention to security issues.

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

Daniel Becker reported the following items:

- The next legislative general session will begin Monday, January 21 and end Wednesday, March 6. The Legislature will adjourn Thursday, February 7, during the Olympics, and will resume Monday, February 25. The Legislature is normally in session 45 calendar days. This year, they will be in session a total of 27 calendar days.
- A community outreach program which focused on the juvenile justice system was held August 28, 2001. The program, which appeared to be very well received, was a joint effort between the AOC and the Salt Lake City NAACP. The program was a result of the work of the Public Outreach Sub-Committee which is chaired by Justice Christine Durham.
- The Council of State Governments recognized the Utah State Court website as one of the best judicial branch websites in the country by awarding the site with an honorable mention.
- The Legislative Appropriation Subcommittee that deals with the courts had a special meeting September 5, 2001 in Richfield. Discussions concerning daily court operations took place, as well as a presentation on State Court security needs and related policy issues.
- Daniel Becker, Myron March, and Richard Schwermer met with County Commissioners from across the State, Thursday, September 13, 2001 in Logan regarding security issues.
- The Third District Court presently has 10 vacant clerk positions. In anticipation of the creation of justice courts, discussions have occurred with the Presiding Judge and the Trial Court Executive. Those 10 vacant positions will be reallocated now based on results of the Clerical Weighted Caseload in order to identify court locations with the greatest clerical need. Positions will be reallocated at this time as follows: the Fourth District Court will receive four clerk positions, the Second District Court will receive two clerk positions, the Second Juvenile Court will receive two clerk positions, and the Third District Juvenile Court will receive two clerk positions.
- During the legislative session, the Unauthorized Practice of Law Statute was erroneously removed during re-codification. Attempts to reinstate the statute during the May 2001 special session were not successful. A legislative task force has been formed, and discussions are now taking place regarding the statute and what constitutes the practice of law. The task force held hearings September 11, 2001 concerning the unauthorized practice of law issue. Some changes being recommended by the task force currently include suggestions such as allowing non-attorneys to practice law as long as they don't receive compensation, which could potentially create problems if intent is not clarified. There will be a sunset on that recommendation in 2003. The task force is asking the Judiciary to establish a separate committee to review items as they relate to the unauthorized practice of law such as forms, technology and licensing paralegals. It is anticipated that the Judiciary's committee would provide a report and recommendations to the Legislature in 2003.

4. REPORTS:

Management Committee: (Hon. Russell Bench)

Judge Bench reported that the Management Committee decided to forward the issues of retirement for commissioners and the placement of the Guardian ad Litem Office to Policy and Planning for their review. All other items that were discussed by the Management Committee were covered in the Administrator's report or are included on the Council's agenda.

Policy and Planning: (Hon. Scott Johansen)

Judge Johansen reported that Policy and Planning referred a number of items to the Council's consent calendar, including Personnel Policy 430.01: Retirement, Amendments to Rule 3-306: Court Interpreter Rule, Justice Court Standards, and Amendments to the Record Retention Schedule.

Liaison Committee: (Hon. Lee Dever)

Judge Dever reported that Liaison Committee meeting times should be identified soon for remainder of the year.

Bar Commission: (Debra Moore, esq.)

Debra Moore reported that the main items of discussion at the last Bar Commission meeting were the unauthorized practice of law issue and professionalism. Ms. Moore mentioned that the Bar feels that if they are to be effective in addressing professionalism, they need the support of the courts. Members of the judiciary may be invited to an upcoming leadership conference. It was also reported that there has been an interest in establishing a discovery commission similar to that in the federal court system. The creation of such a commission would separate issues of uncivil or unprofessional conduct at the commission level.

Judge Dever raised a question regarding the number of clerks to be reallocated to other districts from the Third District, and whether the Third District should use some of those resources to fund additional security in the Matheson Courthouse. Judge Jensen mentioned that a review of the entire security system statewide should be performed before assets are reallocated to security.

5. PUBLIC OUTREACH COMMITTEE REPORT AND PROPOSED RULE CHANGE: (Justice Christine Durham, Alicia Davis)

Justice Durham reported that the Public Outreach Subcommittee of the Education Standing Committee wants to instill the value of public outreach to the court. The subcommittee proposes an addition to Rule 3-103 in the Code of Judicial Administration. The provisions would provide that "it is the duty and responsibility of individual judges to manage their court responsibilities consistently with the administrative goals of the Council and the fair and efficient administration of justice". The addition to the rule would encourage the judiciary to be involved in public outreach, but would not impose requirements. The addition does not intrude on the canon's restrictions. It does, however, encourage involvement in communities and urges judges to share their understanding of the system with the public.

The Council suggested that in section A, the word "address" replace the word "resolve", and in section B, the words "and other" be added after "charitable".

Motion: Justice Wilkins made a motion to adopt the additions to the rule and send it out for comment in the next rule cycle, with the changes suggested by the Council. The motion was seconded and carried unanimously.

6. OLYMPIC UPDATE: (Myron K. March)

Myron March reported that Dave Schwendiman was unable to attend the Council meeting due to an important last minute conflict. Mr. March reported that draft plans and operation manuals have been submitted to the Council by each Olympic Court. The manuals include lists of Olympic Court judges, Olympic Court sites, matters handled in each Olympic Court site, hours of operation, an operating schedule, a list of critical personnel, a mass arrest plan, and forms. A schedule of table top exercises was discussed. The exercises will serve as practice sessions in which different emergency scenarios are practiced. Mr. March mentioned that Bill Shaw of the Salt Lake Organizing Committee will attend the September 19th dinner at the Judicial Conference.

Mr. March also reported that Heather Mackenzie-Campbell and Paul Barron are developing a plan to handle fines processed through the Olympic Courts and disbursement of those funds. The fines will be processed through CORIS.

7. PROPOSED CLOSURE OF MURRAY COURTHOUSE: (Daniel J. Becker)

Daniel Becker reported that Judge Ronald Nehring, Presiding Judge of the Third District Court and Judge Sandra Peuler, Associate Presiding Judge of the Third District Court had approached him concerning the possibility of closing the Murray Courthouse. Mr. Becker reported that the Standing Committee on Facilities had anticipated the closure of the Murray Courthouse in a few years, in coordination with expansion of the Sandy Court facility. However, the Murray Courthouse is currently privately leased and the landlord is now increasing the lease by \$10,000 a year. It is possible that as cases shift to the Salt Lake City and West Valley City Justice Courts, space will be freed in the Matheson Courthouse and staff who are now located in Murray could be moved to Matheson. Such a consolidation would be able to begin July 1, 2002. Judge Nehring would like the Murray facility closed no later than January of 2003. The contract in Murray requires one year's notice. Mr. Becker also reported that a justice court was established in Murray three years ago, therefore, the City is not opposed to the relocation of the state court site.

Motion: Judge Bench made a motion to give the landlord of the Murray facility notice that we will vacate in 12-14 months contingent upon legislative approval. The motion was seconded and carried unanimously.

8. REPORT: JUDICIAL CONDUCT COMMISSION: (Steve Stewart)

Steve Stewart reported to the Judicial Council on behalf of the Judicial Conduct Commission. Mr. Stewart presented information concerning the number of complaints received in the past month against district and juvenile court judges. Additionally, the Council discussed a case summary which was distributed. The case summary included examples of inappropriate conduct in various states in the United States.

9. DISCUSSION OF ARTICLE DISTRIBUTED BY APPELLATE BOARD IN JULY COUNCIL MEETING: (Hon. Russell Bench)

Judge Bench reported that last April, Judge James Davis read an article in Trial Magazine entitled *A Shadow Over Justice*. The Board of Appellate Judges discussed the article in their meeting in May and in their report to the Council in July. The Council felt that they should discuss the article after they'd had a chance to review it. The importance of making this a multi-group effort was expressed. Debra Moore would be willing to ask one of the Bar's committee's to review this issue. It was clarified that this effort would involve other members of the community in addition to the Bar. It was suggested that the Council set up a community based committee to evaluate and scrutinize negative feedback towards judges. It was further expressed that there is a difference between harsh but legitimate criticism, and intimidation.

Motion: Justice Wilkins made a motion to ask Judge James Davis to present the article to the boards of judges and ask the boards to report back to the Council with recommendations for addressing the issue. The motion was seconded and carried unanimously.

10. UPDATE: CARE SYSTEM: (Jerome Battle, Ron Oldroyd)

Ron Oldroyd reported that CARE (Court Agencies Record Exchange) is the name of the new information system being developed for the juvenile court. An overview of the system was provided. Mr. Oldroyd reported that the amount of information collected will be increased, and the system will streamline current clerical processes and allow for the management of more information. The system will also identify demographics, include an assessment engine, a calendaring function, accounting capabilities, incident tracking, fulfillment tracking, and reporting functions. The system will interface with the CORIS and the Department of Child and Family Services. The CARE System will also track relationships of related youth and parents within the court system. It was mentioned that the system will be implemented incrementally and will hopefully be fully implemented within two years. CARE will likely be a model for other court systems throughout the country.

11. PROTOTYPE COURT FACILITY PROPOSAL: (Gordon Bissegger, Hon. Hans Chamberlain, Brent Tippetts and Steve Crane, VCBO Architects, Lynn Henrichs)

Gordon Bissegger and representatives from VCBO Architects provided a presentation to the Council concerning a prototypical court facility approach to construction and design. Mr. Bissegger reported that there are different zones in courthouses which include public areas, courtrooms, holding cells, jury rooms, and other regions. In order to reduce costs, all agencies are beginning to look at using standard designs for buildings, and then customizing the outside appearance of the building. This approach would reduce design fees and reduce construction time. A handout was distributed which outlined the construction and project costs of recently constructed courthouses.

This issue was before the Council for approval as the manner by which future construction projects will proceed.

Motion: Justice Wilkins made a motion to approve the proposed prototype court facility concept for future projects. The motion was seconded and carried unanimously.

12. EAGLE MOUNTAIN JUSTICE COURT: (Richard Schwermer)

Richard Schwermer reported that an application had been received from the City of Eagle Mountain to form a justice court. There were concerns about the starting date of the justice court, and the City didn't adopt the correct resolution which affirms that they are willing to conform to the standards that we set forth based on a four year term. Additionally, on the court certification affidavit the City submitted, it was stated that they intend to be open only four days a week rather than five because no city offices are open Fridays. All court offices are required to be open each weekday/ business day, therefore the City would not be in compliance with the statute.

Motion: Justice Wilkins made a motion to decline to approve Eagle Mountain City's application at this time, and that the reasons why their application will not be approved should be indicated in a notice to the City. The Council will welcome their application in the future. The motion was seconded and carried unanimously.

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