

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, November 26, 2001

Council Room, Matheson Courthouse
450 South State
Salt Lake City, Utah

Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
Sandy Iwasaki

PRESENTING/TOPIC RELATED STAFF:

Ray Wahl
D. Mark Jones
Richard H. Schwermer
Jan Thompson
Joyce Robbins

MEMBER EXCUSED:

Hon. Jerald Jensen

GUESTS PRESENT:

Hon. Russell W. Bench, *Judge, Court of Appeals*

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

All members and staff were welcomed to the meeting. Chief Justice Richard Howe asked for a motion on the October minutes.

Motion: Judge Clair Poulson moved to approve as written the October Judicial Council meeting minutes. Justice Michael Wilkins seconded the motion. The motion carried unanimously.

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

Chief Justice Richard Howe advised the Judicial Council that the revenue shortfall continues to grow and Mr. Daniel Becker will be reporting on how this will impact the judiciary. Chief Justice Howe also advised the Judicial Council that the Supreme Court Study Committee on the Delivery of Legal Services, which is chaired by Justice Michael Wilkins, has met. Justice Wilkins and Mr. Richard Schwermer will give an update of that meeting.

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

Mr. Daniel J. Becker reported on the following items:

- Chief Justice Howe, Mr. Becker, Mr. Myron March, Mr. Richard Schwermer and Mr. Mark Jones had met with Governor Leavitt, Mr. Dave Walsh and Ms. Camille Anthony on November 6th. They discussed the budgets for FY 2003 which only includes the contract and leases budget which is considered a mandate and the supplemental request for the jury/witness/interpreter budget which is also a mandate. The Governor's staff has recommended that both requests be advanced to the legislature. They advised the Governor of the judiciary's plans to shift resources resulting from the impact of the formation of justice courts in Salt Lake City and West Valley City. They also advised him of the budget cuts the judiciary has found necessary to impose as a result of reacting to the Governor's 4% budget reduction. They reported that the courts have very few options in cutting the budget other than eliminating some of the court personnel. The Governor appeared to be sensitive to the impact the cuts will have on the courts. The Governor has increased his revenue shortfall projection to \$200 million by an adding \$23 million to the previous projection of \$177

million. However, he has exempted the courts from the next round of budget reductions, which would have been an additional 2% for the courts.

- The legislature and the Governor disagree on how the reductions should take place. The Governor continues to rely on the use of one-half of the "rainy day" fund to help offset the budget reductions. It is anticipated that there may be a reconsideration of how best to take the reductions once the legislature is in session.
- The State Justice Institute (SJI) funding is in jeopardy. SJI funding has been in effect for approximately 15 years. The funding has been reduced to \$3 million this year, which is essentially enough to shut down SJI operation. Therefore, SJI is not entertaining any new grants and will be laying off staff in April and should be out of business by August. This will impact court programs in Utah as well as nationally.
- An amnesty program for child support is being proposed by the Governor's office. The amnesty would relate to the amount due to the state. The purpose of the amnesty program would be to generate short-term revenue. Mr. Becker will be meeting with the Governor's office today to discuss this proposal.
- The Executive Committee of the Commission on Criminal and Juvenile Justice has approved two Byrne grant concept papers submitted by the courts. The Executive Committee will forward the concept papers to the Commission for final approval. The two approved concept papers are for justice court automation and mental health court funding.
- The report from the Citizen's Committee on Judicial Compensation was distributed. The report recommends a 4% increase in judicial pay for this year.

4. REPORTS FROM COMMITTEES:

Management Committee: (Hon. Lyle Anderson)

Judge Anderson briefly reviewed the Management Committee minutes with the Council. The Management Committee approved for the consent calendar the appointments of Judge Glen Dawson to the Standing Committee on Judicial Performance Evaluation, Judge Russell Bench to the Standing Committee on Court Facilities Planning and Judge Judith Billings to the Standing Committee on Education. The survey of presiding judges and TCEs to evaluate senior judges was also approved. The Management Committee approved the recommendation to cancel individual subscriptions to Utah Advance Reports and Annotations, which would result in a savings of at least \$14,274 annually.

Policy and Planning: (Debra Moore, esq.)

Ms. Moore reported that the Policy and Planning Committee had reviewed a proposed policy on equal opportunity for judicial applications. There was some question regarding the form which requests information on Viet Nam era veterans or disabled veterans, but does not request information for other veterans.

The committee also considered the extraction of rules that are in the exclusive province of the Supreme Court from the Code of Judicial Administration. The committee decided to propose to the Judicial Council that the rules of procedure or practice be extracted from the Code of Judicial Administration and referred to the Supreme Court for further action. The possible outcome of these rules could be that some would be blended into the existing rules of procedure or that separate rules of practice could be created that would correspond to the rules of procedure.

The committee discussed the possibility of rescheduling Judicial Council meetings from Mondays to Fridays because Mondays are typically high-volume days for trial court judges. The proposal to reschedule the Judicial Council meetings would not be implemented this year because the schedule has already been set. Therefore, a decision regarding this issue will not be made until later.

Justice Wilkins pointed out that the equal opportunity form is on the consent calendar and that the memo dated November 9th from Barbara Hanson to the Judicial Council (under Tab 7) indicates that the form was approved for implementation by the Policy and Planning Committee. The Policy and Planning Committee members responded that they had not approved the form.

Motion: Ms. Moore moved to remove the form from the consent calendar since it was the intent of the Policy and Planning Committee to have the form revised and presented to the Policy and Planning

Committee for reconsideration. Justice Wilkins seconded the motion. The motion carried unanimously.

Liaison Committee:(Justice Michael Wilkins)

Justice Wilkins reported that the Liaison Committee met briefly after the Judicial Council meeting in Vernal. The committee discussed three items of legislation that were being advanced in the interim committees. Judge Lynn Davis reported that the three items of legislation which the Liaison Committee considered were related to the following:

- Minimum fines for providing tobacco to underage persons - Liaison Committee took the position of not supporting this legislation because the fines were too high.
- Appointment of a guardian ad litem - Liaison Committee felt that there may have been a misinterpretation of the *Harrison* decision relating to this item.
- Parent Time amendments - Liaison Committee took no position, but recommended that the "the best interest" language should be retained.

Justice Wilkins reported that the proposed legislation relating to the guardians ad litem was an attempt to recognize language in the Supreme Court's *Harrison* decision and to try to resolve any potential problems which might arise. The Liaison Committee concluded that the effort might have opened up a broader scope of potential responsibility for guardians ad litem. This did not appear to be the intent of the subcommittee drafting the legislation. Justice Wilkins has discussed the proposed legislation with Ms. Kristin Brewer, Guardian ad Litem Director, and the plan is to hold off on the proposed legislation and to wait to see how the *Harrison* decision is treated. Justice Wilkins also indicated that in his discussion with Ms. Brewer the issue of the Council's consideration of the administrative placement of the Guardian ad Litem program was raised.

Bar Commission: (Debra Moore, esq.)

Ms. Moore reported that the Bar Commission discussed the impact of the budget cuts on the courts. The Executive Committee of the Bar Commission will be considering how to encourage judges to attend the bar conferences in light of the budget cuts.

The Bar Commission also discussed the formation of a task force or committee to respond to criticism of judges. This item has been referred to the Courts and Judges Committee to consider. Judge James Davis indicated that he has discussed this issue with the Juvenile Court Board and the board was fairly enthusiastic about proceeding with forming some type of structure to respond to criticism of judges.

5. BUDGET REDUCTION UPDATE: (Daniel J. Becker)

Mr. Becker reported that he and Mr. Myron March have identified two items that need to be brought to the Judicial Council's attention.

When the Judicial Council decided to retain the use of freed up clerk resources to fund the creation of a juvenile court commissioner position, the decision was based on the assumption that it would require five clerk positions to fund the commissioner position (three clerk resources to create the commissioner position and two clerks to accompany the commissioner position). In actuality, it should require only three clerk positions to create the commissioner position since the Ad Hoc Committee on Resources had recommended that deputy clerks should only be considered in the context of the weighted caseload and that deputy clerks should not be assigned to any judicial positions relating to reallocation. As a consequence, the creation of a commissioner position from reallocated clerk resources was overfunded by approximately \$60,000. Therefore, this amount can be put back on the table for reconsideration by the Judicial Council.

The second area identified for reconsideration is the \$60,000 which had been allotted for funding interns. Mr. Becker and Mr. March decided that if court positions are being eliminated, funding for interns should also be put back on the table for reconsideration by the Judicial Council.

After discussion as to what to do with the additional \$120,000 identified as being available, the following motion was made.

Motion: Judge Lynn Davis moved to reinstate funding of two district court law clerk positions. Judge Hadfield seconded the motion. The motion carried with one opposition.

Mr. Becker reminded the Judicial Council that the consideration of every other month meetings for the Judicial Council, Committees, Boards, TCEs, Clerks and CPOs in order to reduce travel costs by \$50,000 had been deferred from the last Judicial Council meeting. Mr. Becker stated that the Judicial Council's position had been that the Judicial Council, its Committees and the Boards should continue to meet monthly. Mr. Becker has discussed with the TCEs, Clerks and CPOs the recommendation of having them go to an every other month meeting schedule. This would reduce travel costs by approximately \$40,000. Mr. Becker proposed that the additional \$10,000 could be generated by expediting the cancellation of the lease on the probation unit on 53rd South before July 1st.

Motion: Judge Valdez moved to have the TCEs, Clerks and CPOs as well as committees which are non-Council committees go to an every other month meeting schedule. Justice Wilkins seconded the motion. The motion carried unanimously.

6. SPECIAL SESSION UPDATE: (Richard Schwermer)

Mr. Schwermer advised the Council that during the 2001 Special Session there was an attempt to get back some authority for the Bar to pursue people who are engaging in the unauthorized practice of law. Mr. Schwermer reviewed with the Judicial Council the proposed legislation, sponsored by Representative Stephen Urquhart, entitled Unauthorized Practice of Law Amendments. The legislation creates legislative findings on the accessibility of legal services and charges the judiciary to study the issue and suggest changes. Justice Wilkins has been made Chair of the Supreme Court Study Committee on Delivery of Legal Services which will study this issue.

Justice Wilkins reported that the committee is comprised of: five legislators (Representative Greg Curtis, Representative Stephen Urquhart, Representative Patrice Arent, Senator Karen Hale and Senator Michael Waddoups), two Supreme Court Justices (Justice Michael Wilkins and Justice Leonard Russon), one District Court Judge (Judge Rodney Page) and two representatives of the State Bar (Mr. John Adams and Mr. John Baldwin). The first meeting of the committee was spent discussing what the committee should be studying. Justice Wilkins stated that no final conclusions were made as to what will be studied. The committee will meet monthly except during the legislative session.

Mr. Schwermer reported on three proposed bill requests which he wanted the Judicial Council to be aware of.

- Senator Beverly Evans has a bill request which would eliminate the unopposed judicial retention election process for county justice court judges. Currently, county justice court judges (approximately 44 judges) go through the same type of retention election process as other judges do. However, municipal justice court judges are reappointed every four years. This bill would require county justice court judges to be reappointed by the county commissions rather than standing for unopposed retention election.
- Representative Katherine Bryson has a bill request regarding the amount of Judicial Conduct Commission complaint information which is made public. She would like the facts of a complaint made known to the public and earlier in the process.
- Senator Terry Spencer, during an Interim Judiciary Committee meeting, proposed an amendment to the Parent Time (formerly known as Visitation) bill which would eliminate the mandatory requirement for the Parent Time Mediation Program. The mediation program operates primarily in the Third District. It also does some work in the Second and Fourth Districts. The Interim Judiciary Committee approved the amendment and it will proceed to the legislative session. If the requirement is not restored, the Parent Time Mediation Program will be in jeopardy which could result in additional judicial time being used for parent time issues.

7. GOVERNOR'S DUI TASK FORCE: (Richard Schwermer)

Mr. Schwermer distributed copies of the draft report from the Governor's Council on Driving Under the Influence. He has been serving on the Governor's Council on DUI for the last two years. He briefly reviewed the items from the draft report which affect the courts.

- DUI Case Records Study - requests access to the courts DUI records so that the University of Utah Social Research Institute can do a study on DUIs. This item is on hold until it is determined what information is needed.
- House Bill Relating to Court Records of DUI Cases - directs state courts to collect and maintain data necessary to allow sentencing and enhancement decisions in DUI and reckless driving offenses.
- Better Informed DUI Sentencing and Post-Sentencing Accountability - requires courts to have on-line access to BCI and DLD records and requires courts to use defendant-signed enhancement forms. Provides prosecutors and judges with an updated statutory sentencing matrix for DUI offenders.
- Senate Bill Amendments to DUI - increases the required hours in a compensatory-service work program.

Mr. Schwermer informed the Judicial Council that some people are encouraging the notion of separate DUI courts either in district courts or justice courts. The University of Utah is looking at the Substance Abuse Court that Justice Court Judge Michael Kwan has implemented in his Taylorsville Justice Court.

8. RETIREMENT BENEFITS FOR COURT COMMISSIONERS: (Tim Shea)

Mr. Shea joined the Judicial Council to present his memo outlining the recommendations from the Policy and Planning Committee regarding the issue of supplementing the court commissioner's retirement benefits. He indicated that the Policy and Planning Committee had considered two alternatives:

- Opt out of state retirement system and deposit equivalent amount in an alternative qualified plan. The committee does not recommend this option because the existing statute that recognizes this plan for other state officials is limited to people of short-term employment. This option could not be done without legislation.
- Years of service bonus deposited in 401(k) account. The committee considered several implementation plans. It appears that Prospective (c) is the fairest application. Prospective (c) would provide an award bonus this year to all commissioners with at least five years of service, a second bonus on their next 5-year anniversary and every five years thereafter. It would provide an award bonus to commissioners with less than five years upon their fifth anniversary and every five years thereafter. Prospective (c) treats the six commissioners receiving a bonus this year equally, although years of service range from 5 to 12 years. One commissioner would receive a second bonus (in 2006) before or at the same time a three more senior commissioners.

Motion: Justice Wilkins moved to refer the recommendations to the Board of District Court Judges, the Board of Juvenile Court Judges and the Court Commissioners for their review and comment. Judge James Davis seconded the motion. The motion carried unanimously.

9. "CHOOSE FREEDOM: KIDS AND THE LAW": (Jan Thompson)

Ms. Thompson informed the Judicial Council that a new video has been produced to be shown in schools. Most of the video is excerpted from the "Parent to Parent" video. Judge Ric Oddone, Third District Juvenile Court Judge, speaks directly to the juveniles in the new video. The video has been enthusiastically reviewed by the Jordan School District and the Granite School District. It will be sent to the Utah State Board of Education to be part of the curriculum to be used on a statewide basis. The production of the video was funded by grant money provided by the Commission on Criminal and Juvenile Justice. The total funding was \$5,000. The Judicial Council viewed the video and Ms. Thompson distributed copies of the video to all Judicial Council members.

10. LUNCH - PRESENTATION OF SERVICE AWARD:

Judge Russell Bench, former Judicial Council member, joined the Judicial Council for lunch. Chief Justice Howe presented an award to Judge Bench for recognition of his three-year service on the Judicial Council.

11. EXECUTIVE SESSION:

There was no Executive Session held.

11. NEXT MEETING:

Monday - December 17, 2001

There being no further business to discuss, the meeting adjourned at 12:20 p.m.