

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, November 25, 2002
Council Room, 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. Andrew Valdez
Hon. Gary Stott
Hon. Ronald Hare
Hon. K.L. McIff
Hon. Scott Johansen
C. Dane Nolan, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Ray Wahl
Tim Shea
Matty Branch
AnNicole Faeth

GUESTS PRESENT:

Colin Winchester, *Executive Director, Judicial Conduct Commission*
Hon. Leslie Brown, *chair, Board of Juvenile Judges*
Debra Moore, esq.

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

All in attendance were welcomed to the meeting. The minutes of the Council's October meeting were discussed. The following motions were then made.

Motion: Judge Hare made a motion to add a sentence to page 8 of the minutes indicating that discussion concerning abolishing retention elections for justice court judges took place.

Motion: Judge Poulson made a motion to approve the minutes as amended. The motion was seconded and carried unanimously.

2. CHAIR'S REPORT: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that she has been attending bench meetings and legislative meetings in many judicial districts. Chief Justice Durham reported that she was also invited to attend the District Board's November meeting, which was very productive and a positive experience.

It was reported that a meeting took place with the Governor in which, among other things, the scheduling of upcoming supreme court appointments was discussed. Additionally, it was reported that the Supreme Court's Committee on the Delivery of Legal Services issued a report, which has been adopted by the supreme court. It is anticipated that the report will be shared with the Judicial Council in a future meeting.

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

Daniel J. Becker reported the following items:

- There are currently several judicial vacancies, in the following locations: the Second District due to Judge Stanton Taylor's retirement, the Third District Juvenile Court created by a vacancy which will occur when Judge David Young's term expires the end of December, the Fifth District due to Judge Robert Braithwaite's retirement, and the Fourth District due to Judge Jeril Wilson's retirement.

- A legislative Interim Session was held November 20th. It was reported that William Ronnow was initially scheduled for a confirmation hearing on November 13th, but their work was carried over to the 20th and Mr. Ronnow has not yet been confirmed to fill a judicial vacancy in the Fifth District Court.
- The Legislative Auditor has issued a report of an audit they performed of the Judicial Conduct Commission. The report expressed a concern about limited access to case files. It was mentioned that Colin Winchester would discuss this issue in his presentation to the Council later in the meeting.
- The Legislative Auditor will also conduct an audit of the Administrative Office of the Courts. This will serve as a follow up to an audit conducted in 1991 in conjunction with the legislative reauthorization. The auditor will examine four questions: 1) growth in office staffing and budget, 2) money spent on education for judges and staff, 3) law clerks, and 4) the extent to which the AOC contributes employee hours and money to programs or task forces (The example given being the Task Force on Racial and Ethnic Fairness). It is anticipated that the audit will begin after the first of the year.
- A bill has been pre-filed titled "Senate Retention", sponsored by Sen. Vallentine. More information about this bill will be shared when details are available.
- Changes in the organization of the Administrative Office of the Courts are being made in order to take into account the staff reductions which have been made in the last year and the departure of a senior administrator, Holly Bullen. It was reported that, the office will be reorganized into five divisions. These divisions include, Management Services (Gordon Bissegger), Education (Diane Cowdrey), Administration (Daniel Becker and Myron March), Court Services (Kim Allard), and Legal Services (Tim Shea), with Kristin Brewer, Heather Mackenzie-Campbell, and Brent Johnson still reporting directly to the State Court Administrator, and the Deputy State Court Administrator. It was reported that court employees will notice little change in their interaction with the AOC, and that business will take place as it has been. Ms. Bullen's duties have been dispersed among the five divisions where they best fit.

Division directors will work with the Management Committee to create a division plan for the coming year. It was reported that Ms. Bullen's position will not be filled as a senior administrator, but rather as a professional level public information officer/communications position. This is intended to enhance internal communications, and external communications regarding various court programs and activities. Additionally, a position which has been vacant for several months in the legal services division, will be filled as a professional administrative support position rather than as a staff attorney position.

4. REPORTS:

Management Committee: (Chief Justice Christine M. Durham)

Chief Justice Durham indicated that she had nothing to report other than that set out in the Management Committee minutes.

Policy and Planning: (Hon. Lee Dever)

Judge Dever reported that an issue regarding Justice Court Standards was on the Council's consent calendar, and that an issue regarding online access to party address would be discussed in the Council meeting. Judge Dever reported that Policy and Planning will receive a presentation from Kim Allard regarding digital audio, and they are looking at issues concerning court reporter qualifications.

Liaison Committee:

It was reported that the Liaison Committee has not met.

Bar Commission: (Dane Nolan, esq.)

Dane Nolan reported that the Bar Commission has not met.

5. REPORT: JUDICIAL CONDUCT COMMISSION: (Colin Winchester, Executive Director, Judicial Conduct Commission)

Colin Winchester reported that caseloads are currently being reduced by the Judicial Conduct Commission (JCC). The JCC has also increased the number of confidential hearings with a date certain, in order to expedite resolutions. It was reported that it appears the Utah Association of Counties has backed away from the idea of having a separate judicial conduct commission for justice court judges, an issue which had been discussed at the Council's previous meeting. Discussion then took place concerning the legislative audit of the JCC.

6. DISCUSSION OF CONSTITUTIONAL REVISION COMMISSION: (Richard Schwermer)

Richard Schwermer reported that the Constitutional Revision Commission is looking at impeachment in general, and the ability of the legislature to call itself into session. They have also recently discussed extending impeachment authority to justice court judges, which would include them within the same category as state level officials.

Discussion took place regarding justice courts being included on a state level vs. a local level. Judge Jensen, Judge Poulson, and Judge Hare expressed support of including justice courts on a state level in order to add to the credibility and effectiveness of the courts, as well as to preserve independence. Concerns were expressed by the three judges that not including them on a state level can leave justice courts susceptible to local pressures. It was suggested that Policy and Planning prepare a resolution expressing the Council's view in opposing the proposed legislation which would abolish retention elections for justice court judges.

Motion: Judge McIff made a motion to have staff draft a resolution to take to Policy and Planning in support of justice courts being included in the category of "state level officials". Judge Poulson seconded the motion. The motion carried unanimously.

Discussion then took place concerning the notion of justice court judges being subject to the state impeachment process. Due to the importance of justice court judges being included with other state level officials, the Council expressed support of this idea.

7. ROY CITY JUSTICE COURT REQUEST: (Richard Schwermer)

Richard Schwermer reported that he received a letter from the Roy City Attorney, Andrew Blackburn, in which it was requested that the implementation date for the new Roy City Justice Court be changed from January 1, 2003 to December 1, 2003.

Motion: Judge Jensen made a motion to approve the request. The motion was seconded and carried unanimously.

8. ONLINE COURT ASSISTANCE PROGRAM PROTECTIVE ORDER UPDATE: (Richard Schwermer)

Richard Schwermer reported that protective order materials have been drafted to be placed on the Online Court Assistance Program (OCAP). This module has been field tested in the Second District, and it is anticipated that the protective order capability will be released in January.

9. REPORT: STANDING COMMITTEE ON JUDICIAL PERFORMANCE EVALUATION: (John Ashton)

John Ashton, chair of the Standing Committee on Judicial Performance Evaluation, reported on recommendations of the committee concerning reconsideration of certification, juror survey questions, and senior judge evaluations. The committee made the following recommendations.

1) Reconsideration of Certification: The Council should have the discretion to reconsider a judge's certification in light of information arising after the fact.

2) Juror Survey Questions: Two questions being asked of jurors about district court judges should be rephrased as follows:

Question # 5- Did this judge clearly explain reasons for delay?

Question #14- Did you find the recesses to be:

- a) frequent enough and long enough to attend to your personal needs?
- b) too frequent and/or too long?
- c) too infrequent and/or too short?

3) Senior Judge Evaluations: The Council should add to the evaluation process and the rule a right for the senior judge to meet with the Council under the same circumstances a sitting judge would meet with the Council, prior to a decision against certification. If the Council, upon reviewing the evaluation materials, determines the senior judge should be certified, there is not need for a meeting, but just as with a sitting judge, the senior judge should have the opportunity to meet with the Council to address specific concerns before a negative decision.

Appreciation was expressed to Mr. Ashton for his report, as well as for the Committee's work.

Motion: Judge Davis made a motion to adopt all three proposed recommendations. The motion was seconded and carried with one opposed.

10. ONLINE ACCESS TO PARTY ADDRESS: (Tim Shea)

Tim Shea reported that the address of parties in district court records has historically been public information. It was reported that, via the internet, people have the ability to access parts of district court records. The Clerks of Court are requesting a rule change that would make party address available electronically. Policy and Planning have concurred with the clerks' request, on an emergency rule making basis. After discussion took place, the following motion was made.

Motion: Judge Dever made a motion to add addresses to the electronic database on an emergency rule making basis. The motion was seconded and carried unanimously.

11. LUNCH:

Former Council member, Debra Moore, joined the Council for lunch. Chief Justice Durham recognized Ms. Moore for her service on the Council.

12. REPORT: BOARD OF JUVENILE COURT JUDGES: (Hon. Leslie Brown, Ray Wahl)

Judge Leslie Brown, chair of the Board of Juvenile Court Judges, reported that juvenile court referrals have generally been declining. Time consuming child welfare cases, however, have been steadily increasing. Judge Brown reported that the juvenile court has undergone two audits in the juvenile delinquency area. The results of the audits have led to the creation of a module in the CARE System which will assist with early intervention, and the use of the Functional Family Probation Resource System (FFPRS). It was mentioned that FFPRS uses many elements of functional family therapy and which has been shown to be very effective. Judge Brown reported that both the CARE and FFPRS programs involved extensive training, the cost of which was borne by federal grants. Also, the reaction of juvenile court staff has been very positive to the new programs.

Judge Brown reported that several years ago the Child Welfare Oversight Panel was formed to review practices in the child welfare system. The panel requires an annual report from the Juvenile Court, the Office of Guardian ad Litem, the Division of Child and Family Services, and others regarding reporting practices. The juvenile court's timelines were very good. Additionally, the Court Improvement Project conducted a review of how the juvenile court handles child welfare proceedings. A draft report was recently issued, and the final report will be released at the Case Management and Delay Reduction Workshop which will take place December 9th and 10th.

Judge Brown also reported that a probation officer manual is being prepared, which will take a large step towards uniformity in probation practices throughout the state.

The Council thanked Judge Brown for his presentation, and expressed appreciation to the Juvenile Board for their fine work.

13. BUDGET DISCUSSION: (Daniel J. Becker)

Daniel Becker reported that the Governor's office announced November 22nd that there is a \$117 million shortfall in the state's FY 2003 budget. It is also anticipated that the shortfall will continue into the FY 2004 budget. A special session of the legislature will begin December 18th to discuss reductions in the FY 2003 budget. The courts have been asked to prepare scenarios for addressing a 1% (\$909,000), 2% (\$1.8 million), 3% (\$2.7 million), and 4% (\$3.6 million) reduction in their budget. It is possible that some of the shortfall could be addressed by using the remaining \$22 million in the state's Rainy Day Fund, using the next installment of tobacco settlement funds, increasing the gasoline tax, delaying highway projects, restructuring water funding, and restructuring hazardous waste tax. It won't be clear until the special session, however, what specific actions will be considered.

Mr. Becker suggested that the court's share of the shortfall could be addressed in part by substituting an alternative revenue source for bailiff security, which would free up approximately \$2.2 million in general fund money. It was suggested that the legislature could adopt a fee that would be attached to every civil and criminal action, and that the money generated from this fee would be deposited in a restricted account which would be used to fund bailiff security. It was reported that projected filings for FY 2004 are approximately 291,000. At a filing fee of \$5, \$1.1 million would be generated; at a \$10 fee, \$2.3 million would be generated; at a \$15 fee, \$3.5 million would be generated; and, at a \$20 fee, \$4 million would be generated. It is hoped that by generating additional revenue, the courts would be spared from taking any deeper cuts in personnel.

Mr. Becker reported that if the legislature did not approve the aforementioned option, the courts might have to look at whether there are services that could be provided in a different, less costly, manner. For example, the courts could continue to deliver services by providing court reporters in criminal actions (as the rule provides for now), but if court reporters are used in other proceedings, a fee could be assessed which would go into a fund to pay court reporter salaries, increased reliance on digital recording, or privatizing the preparation of transcripts.

Mr. Becker mentioned a third option, across the board reductions in the court system, which he recommends the courts should seek to avoid. Mr. Becker reported that the courts have already taken significant permanent reductions in operating expenses, therefore, additional reductions would have to be taken in personnel.

Mr. Becker inquired if the Council thought the security fee proposal should be advanced. After discussion took place, the following motions were made.

Motion: Judge Johansen made a motion to advance the aforementioned security fee proposal to the legislature in negotiating the court's budget cuts. Judge Valdez seconded the motion. The motion carried with two opposed

Amended motion: Judge Stott made a motion to have the Council approve negotiations to take place between the AOC and the legislature within the framework of discussion that took place in the Council meeting that day. The motion failed for lack of a second.

Motion: Judge Stott made a motion to provide the authority to the AOC to negotiate budget issues within the framework of options proposed in the Council meeting, in the order they were advanced including an 8 week hiring delay. The motion was seconded and carried with two opposed.

Motion: Judge Dever made a motion that no new individuals be hired until decisions have been made concerning the budget on December 16th. Judge Johansen seconded the motion. The motion was defeated.

14. ADJOURN:

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