

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, November 24, 2003

Council Room, Matheson Courthouse

450 South State

Salt Lake City, Utah

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Justice Matthew Durrant
Hon. James Davis
Hon. Jon Memmott
Hon. J. Mark Andrus
Hon. Jerald Jensen
Hon. Clair Poulson
Hon. Robert Hilder
Hon. Lee Dever
Hon. Gary Stott
Hon. Ronald Hare
Hon. Scott Johansen
Hon. K.L. McIff
David Bird, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Richard Schwermer
Mark Jones
Ray Wahl
Matty Branch
Tim Shea
Nancy Volmer
Brian Nelson
Alicia Davis
Kathy Elton
AnNicole Faeth

GUESTS PRESENT:

Hon. Homer Wilkinson, *chair, Board of Senior Judges*
Hon. Paul Lyman, *chair, Board of Juvenile Court Judges*
Hon. John Sandberg, *chair, Board of Justice Court Judges*
Hon. William Barrett, *chair, Board of District Court Judges*
Hon. Judith Atherton, *co-chair, Standing Committee on Children and Family Law*
Hon. Charles Behrens, *co-chair, Standing Committee on Children and Family Law*
Hon. William Bohling, *chair, Alternative Dispute Resolution Committee*
Elizabeth Neff, *Salt Lake Tribune*

• **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 motion was then made.

Motion: Judge Johansen made a motion to approve the minutes. Judge Poulson seconded the motion. The motion carried unanimously.

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

Chief Justice Durham reported that she recently met with Governor Olene Walker and several members of her staff. This was the court's annual budget meeting with the Governor. It was mentioned that, among other items discussed, discussion took place between Chief Justice Durham and Governor Walker regarding civility among the three branches of government in order to enhance confidence in government by the public.

Chief Justice Durham reported that meetings also recently took place with legislative leadership. It was mentioned that the legislature is trying to lower expectations regarding new funding becoming available. The legislature is aware, however, of the need for salary increases for state employees.

It was reported that a diversity pledge has been developed by the Utah State Bar, and that twenty-four law firms and state agencies have already signed the pledge indicating their support for a diversified workforce. Chief Justice

Durham suggested that the courts may want to consider signing the pledge.

Chief Justice Durham then reported that she recently attended a meeting of the Board of District Court Judges. It was reported that Rep. Greg Curtis was present during a portion of the meeting, and that he discussed retention elections with the Board.

- **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Daniel J. Becker reported the following items:

- The issue of equalizing the court's security fee bill with justice courts was discussed with legislative leadership.
- The Management Committee approved lifting the eight week hiring slowdown which had been in place.
- The court's technical change to the security fee bill was approved during the Legislative Special Session which took place November 19th.
- The Judiciary Interim Committee discussed a number of sunset review issues on November 19th. The entities being reviewed include the Board of Pardons, the Appellate Nominating Commission, and the Trial Court Nominating Commissions. All three were recommended for continuation.
- Legislative Executive Committee recently received recommendations of the Citizen Committee on Judicial Compensation and the Committee on Judicial and Elected Official Compensation, at which time a recommendation was made to increase the compensation for judges and elected officials by 4%.
- The program based budgeting process is underway with boards and committees. The process appears to be going well.
- A recent publication by the National Conference of Juvenile and Family Court Judges highlighted Utah's model court project. This publication was shared with Council members.

- **REPORTS:**

Management Committee: (Hon. James Davis)

Judge James Davis indicated that he had nothing to report in addition to what was included in the Management Committee's minutes.

Policy and Planning: (Hon. Lee Dever)

Judge Dever reported that Policy and Planning had not met since the Council's last meeting. Their next meeting is scheduled to take place December 5th.

Liaison Committee: (Hon. Jerald Jensen)

Judge Jensen reported that the Liaison Committee had not met since the Council's last meeting. It was also mentioned that it appears Sen. Dave Thomas will be advancing a bill dealing with the Judicial Conduct Commission.

Bar Commission: (David Bird, esq.)

David Bird, esq. reported that the Bar Commission had not met since the Council's last meeting. However, Mr. Bird reported that the Bar is still dealing with the definition of the "practice of law" issue. Mr. Bird then discussed the diversity pledge and encouraged the judiciary to sign it.

Additionally, Mr. Bird reported that the Bar will be repeating its constitution education program for legislators. It was reported that the Bar annually sponsors a dinner for legislators in which constitutional issues are discussed.

- **REQUEST - BOARD OF SENIOR JUDGES: (Hon. Homer Wilkinson)**

Judge Homer Wilkinson, chair of Board of Senior Judges, reported that in the Senior Board's September meeting, a motion was passed unanimously to ask the Supreme Court to reconsider the rule prohibiting senior judges over the age of 75 to serve as active senior judges. It was mentioned that active senior judges hear cases and provide judicial assistance to the districts. Judge Wilkinson reported that if the Supreme Court has a concern about a particular judge's physical or mental ability to continue hearing cases, the Supreme Court can make that determination and elect not to certify the judge for active status. Judge Wilkinson mentioned that the Board of District Court Judges also recently passed a motion expressing support for this request.

After discussion took place, the following motion was made.

Motion: Judge Hilder made a motion that the Council recommend that the Supreme Court examine the request of the Board of Senior Judges regarding the 75 year age limit on active senior judge status. Judge Memmott seconded the motion. The motion carried with three opposed.

- **CRIMINAL CASE FILINGS UPDATE: (Brian Nelson)**

Brian Nelson distributed a chart of criminal case filings for the first quarter of FY 2004 for district and justice courts. It was reported that, statewide, death penalty/capital cases have increased 100%, first degree felony cases have increased 74%, second degree felony cases have increased 27%, and third degree felonies have increased 26%. Class A misdemeanors have increased 16%, Class B's have increased 2%, and Class C's have decreased 17%. Total DUI filings have decreased 25%, while Class B DUI's have increased 40%. Additionally, total justice court filings have increased 1%.

- **REPORT: BOARD OF JUVENILE COURT JUDGES: (Hon. Paul Lyman)**

Judge Lyman, chair of the Board of Juvenile Court Judges, reported that the juvenile court is grateful to the Council for their support during the Council's recent budget planning process, and the assistance provided for child protective order work. Judge Lyman then reported that a pilot process is currently underway in the Third and Sixth Districts in which juvenile court proceedings have been opened to the public. Judge Lyman reported that, thus far, the pilot has gone well. Judge Lyman then reported on child protective orders. He indicated that a joint district/juvenile board subcommittee is working to evaluate issues associated with this shift. It was mentioned that one issue associated with this shift is that litigants engaged in divorce proceedings in district court are taking advantage of the system by using child protective orders in the juvenile court to bypass the custody process. The subcommittee is looking at how to deal with this issue. The Council discussed this issue and decided to ask the Liaison Committee to conduct further examination.

Judge Lyman then reported that the first phase of the CARE program, the assessments module, has been implemented smoothly and has been well received, and that the minutes module is now being pilot tested.

- **REPORT: BOARD OF JUSTICE COURT JUDGES: (Hon. John Sandberg)**

Judge Sandberg, chair of the Board of Justice Court Judges, began by sharing the mission statement of Utah's justice courts with the Council "The mission of Utah's justice courts is to improve the quality of life in our communities." Judge Sandberg reported that a number of outreach videos are being used in justice courts, both for people coming into justice courts and in educating the public through outreach activities. A portion of a sample video was shared with the Council.

Judge Sandberg reported that justice courts are seeing approximately 75% of all DUI cases, leaving district courts with approximately 25% of the DUI caseload. All precinct justice courts are now transmitting DUI data electronically to the Department of Public Safety, and municipal justice courts should be transmitting data electronically by February of 2004.

Judge Sandberg then discussed a new substance abuse model program with the Council. It was reported that a new model program is being tested in which referrals are made from several different courts to a single court which deals directly with substance abuse.

Judge Sandberg also mentioned that attempts are being made to preserve judicial independence through a proposal which would extend the retention election process to municipal courts.

- **REPORT: BOARD OF DISTRICT COURT JUDGES: (Hon. William Barrett)**

Judge Barrett, chair of the Board of District Court Judges, thanked the Council for allocating one-time carry forward funds for senior judge assistance in the Second District. Judge Barrett then reported that the Board has been inviting several individual senators and representatives to Board meetings over the course of the last year, and that this has been a positive process for the Board to engage in.

Judge Barrett also reported that they've been looking at the judicial weighted caseload, and that they hope to meet with the chair of the Juvenile Board to standardize the judicial weighted caseload standard for the judge year.

Judge Barrett also expressed a hope that district court Council members would continue to attend Board meetings, since their perspective and input is of great value to the Board. Judge Barrett then reported that the Board has appreciated the Council willingness to involve them in policy decisions, such as the Program Based Budgeting initiative.

- **REPORT: STANDING COMMITTEE ON CHILDREN AND FAMILY LAW: (Hon. Judith Atherton, Hon. Charles Behrens)**

Judge Atherton discussed the rule establishing the Standing Committee on Children and Family Law, Rule 4-908, with the Council. The juvenile court open proceedings pilot in the Third and Sixth Districts was also discussed. Judge Atherton also reported that a committee has been formed which consists of both district and juvenile judges that is dealing with protective order issues.

Judge Atherton thanked Alicia Davis, Assistant Juvenile Court Administrator, for her staff support. The Council thanked Judge Atherton and Judge Behrens for their report, and for the work of their committee.

- **REPORT: STANDING COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION: (Hon. William Bohling)**

Judge Bohling thanked Kathy Elton for her fine work as ADR Director. Judge Bohling then shared a number of the committee's accomplishments with the Council, which included: the committee co-sponsoring the Fifth Annual ADR Symposium in May of 2002, the expansion of truancy mediation and restorative dialogue programs in the First, Second, Fifth, and Sixth judicial districts, the successful implementation of the online ethical exam for court roster mediators, completion of policies and procedures for the Child Welfare Mediation Program, and completion of follow-up research on probate mediation.

Judge Bohling reported that ongoing committee projects include the creation and implementation of an online reporting system for mediators, follow-up domestic violence training for domestic mediators which is scheduled to take place in January, and the expansion of the Landlord-Tenant Mediation Program with the Salt Lake City Housing Authority.

Judge Bohling also mentioned that during the committee's recent annual planning retreat, the main area of discussion was education of the public, private organizations, and justice professionals on the opportunities to utilize ADR in the community. He also indicated the committee's support of the idea of mandatory divorce mediation.

Chief Justice Durham suggested that ADR training take place at a future judicial conference.

- **EXECUTIVE SESSION:**

Motion: A motion was made to go into executive session to discuss personnel matters. The motion was seconded and carried unanimously.

Motion: A motion was made to come out of executive session. The motion was seconded and carried unanimously.

- **ADJOURN:**

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