

Judicial Council Meeting Minutes

**JUDICIAL COUNCIL
MINUTES
December 18, 2000
Matheson Courthouse, Council Room
Salt Lake City, Utah
Chief Justice Richard C. Howe, Presiding**

Members Present:

Chief Justice Richard C. Howe
Hon. Russell Bench
Hon. Lynn Davis
Hon. Lee Dever
Hon. Ben Hadfield
Hon. Ronald Hare
Hon. Jerry Jensen
Hon. Scott Johansen
Debra Moore, esq.
Hon. Andrew Valdez
Hon. Michael Wilkins

Staff Present:

Daniel J. Becker
Myron K. March
Ray Wahl
Richard Schwermer
D. Mark Jones
Tim Shea
Matty Branch
Jan Thompson
AnNicole J. Faeth

Excused:

Hon. Anne M. Stirba
Hon. Lyle Anderson

Guests:

Representative-Elect Scott Daniels
Stephen Hunt, *Salt Lake Tribune*
Maria Titze, *Deseret News*

Welcome and Approval of Minutes:

Chief Justice Richard C. Howe called the meeting to order at 9:10 a.m., and excused Judge Anne M. Stirba, Judge Clair Poulson, and Judge Lyle Anderson from the meeting. The minutes of the Council's November meeting were then discussed. Judge Davis noted that page four of the minutes reflect that "Michael Ryan" took part in the discussion when in fact the name is "Michael O'Brien".

Motion:

Judge Davis made a motion to approve the minutes with the above mentioned correction. The motion was seconded and approved unanimously.

Report From Chairman:

Chief Justice Richard C. Howe reported on the following items:

- Judge Homer Wilkinson will retire January 27, 2001. A notice of judicial vacancy has been posted, which will close December 18, 2000 at 5:00 p.m. The nominating commission of the Third District will meet in January to select five candidates to be forwarded to the Governor.
- Thomas Higbee has been appointed to fill the judicial vacancy in the Fifth District Juvenile Court, resulting from the retirement of Judge Joseph Jackson.

Reports:

Policy and Planning:

Judge Scott Johansen reported that the Policy and Planning Committee discussed the Judicial Retirement Fund Surplus at their last meeting. The committee decided to recommend the adherence to the options and priorities that were adopted in 1993. The committee felt that portions of the surplus could be used to fund judicial salary increases, with other portions fed into judicial retirement. Judge Johansen noted that the surplus is not one time money, but should be continuous.

Motion:

Judge Johansen made a motion to adopt Policy and Planning's recommendation as outlined above. The motion was seconded and approved unanimously.

Management Committee:

Judge Russell Bench reported on the status of the Management Committee, on behalf of Judge Stirba who was unable to be in attendance. Judge Bench mentioned that most items discussed by the committee were on the Council's consent calendar. A motion was required and made, however, regarding the appointment of Judge Sharon McCully as chair of the Ethics Advisory Committee.

Motion:

Judge Bench made a motion to approve the appointment of Judge McCully as chair of Ethics Advisory Committee. The motion was seconded and carried unanimously.

Liaison Committee:

Judge Lee Dever reported that the Liaison Committee reviewed several bills in their last meeting which are reflected in the committee's minutes. The judiciary amendment bill has been reworked so that the declaration of intent by a judge to seek retention and the paying of the declaration fee will be filed with the Court Administrator's office instead of with the Lt. Governor's office.

Judge Dever also reported that the Liaison Committee passed a motion to oppose the reduction of certain traffic offenses from class C misdemeanors to infractions. Judge Dever mentioned that the Liaison Committee's next meeting will be held in January. If there are any bills that anyone would like to have addressed at the meeting, contact a committee member and they will arrange that.

Bar Commission:

Debra Moore reported the following items on behalf of the Bar Commission:

- The Bar Commission has received the Supreme Court's decision on the Task Force on Bar Governance Issues that were raised. The Executive Committee will be meeting sometime before the end of the month to discuss implementing the Court's decision. The most significant change the Supreme Court ordered the bar to implement, was changing the election of the president procedures so that Bar members generally elect the president. It is hoped that by opening up the election process to Bar members, communication will be enhanced between the Bar Commission and members of the Bar. Under the new procedures, the Bar Commission would select a slate of two Bar members, and the general membership of the Bar would select the president.
- With respect to the president elect, there is currently only one person expected to declare interest by the December 31 deadline. Emergency procedures will be discussed by the Bar Commission in consultation with the Supreme Court to evaluate how to handle this situation.
- There has been a proposal by the Task Force to eliminate one of the public members of the Bar Commission. The Supreme Court followed the Bar Commission's recommendation to maintain membership of two public members and reject the recommendation of the Task Force. It was decided that public members are an invaluable resource to the Commission.
- There are changes that are currently being made to particular Bar programs such as the client security fund which reimburses individuals for financial wrongs that cannot be recovered by the client in any other way. The Bar is planning to eliminate the per attorney cap of \$25,000/year, and increase the per client award from \$10,000 to \$25,000.
- Currently, the Ethics Advisory Committee's opinions must be reviewed by the Bar Commission before they can be distributed by the committee. It has been suggested that a model be adopted which is similar to other models used by the Bar, in which the commission's review of opinions is more appellate in nature and the committee itself issues the opinion rather than bar.
- The Executive Committee met with the MCLE Board concerning granting ethics credit for Professionalism and Diversity training courses. The committee wanted to meet with the board to get an early assessment of whether or not they would be amenable to granting credit for those types of courses. The board is very supportive of the concept of providing credit for those types of courses but hesitant under current rules to endorse credit unless the program carefully packaged to be directly related to the practice of law. The committee will discuss this issue further.

- The Task Force has been evaluating the admissions process for a number of years. The Bar Commission has been troubled by problems in the admissions process for a while now, particularly, the lack of review or control over ADA accommodation requests. The Bar is taking steps to enhance integrity of process. One way they are doing this is by the hiring of an attorney to supervise the admissions process to the Bar.
- Ms Moore reported that she recently met with the Courts and Judges Committee of the Bar. The committee is looking at a number of issues, including the issue of whether the Bar should have an expanded role in the judicial nomination, evaluation, and retention process. They are looking at the federal nomination process. Tim Shea may make a presentation to the committee regarding the courts current processes and findings related to this issue.

Administrator's Report:

Daniel J. Becker reported the following items:

- The Governor has selected Thomas Higbee as a Juvenile Judge in the Fifth District replacing the retired Judge Joseph Jackson. Confirmation by the Senate will likely take place shortly after the Legislative session begins in January.
- The last of eight legislative meetings will occur December 18, 2000 in Richfield. Thus far, the meetings have been well attended by both judges and legislators and have been quite productive.
- The Governor has released his budget recommendations for fiscal year 2001. It appears that he has recommended everything, at least in part, submitted in the court's budget request with the exception of the Interpreter Manager position. The Department of Human Services has requested three million dollars for the expansion of drug courts. Based upon the formula that was created last year, the courts have requested 500,000 dollars (approximately thirteen percent of what the Department of Human Services receives).

The following new appointments have been made to the Legislative Executive Appropriations Committee:

Sen. Leonard Blackham, co-chair; Rep. Jeff Alexander, co-chair; Sen. Bill Hickman, co-vice-chair; and Rep. Ron Bigelow, co-vice-chair.

The following appointments have been made to the Legislative Appropriations Subcommittee Executive Offices, Criminal Justice, and Legislature:

Sen. Chris Buttars, co-chair; Rep. Lamont Tyler, co-chair; Sen. Pete Knudson; Rep. Paul Ray; Rep. Mike Thompson; and Rep. Scott Daniels. Sen. Pete Suazo, Rep. Ron Bigelow, and Sen. Gary F. Cox are reappointments to the subcommittee.

The following are appointments to the Senate Judiciary Committee:

David Gladwell, Chair; Lyle Hillyard; John Valentine, Chris Buttars; Millie Peterson; and Pete Suazo.

The following are appointments to the House Judiciary Committee:

Glenn L. Way, Chair; James A. Ferrin, Vice Chair; Chad E. Bennion; Ron Bigelow; Katherine M. Bryson; Greg J. Curtis; Ben C. Ferry; Mike Thompson; Lamont Tyler; Patrice M. Arent; Gary F. Cox; Scott Daniels; and Neal B. Hendrickson.

Performance Evaluation presentations were made to the Appellate, District, and Juvenile boards of judges last week.

Report: Board of District Court Judges:

In response to the Council's request that the Board of Judges provide input on how freed up resources might be applied, Judge Stanton Taylor expressed the following planning priorities on behalf of the Board of District Court Judges:

- Over the next five years increase the number of law clerks to lower the ratio of judges to law clerks to 2:1 statewide.
- Add clerical staff according to the clerical weighted caseload. Monitor the clerical weighted caseload and make modifications when necessary so as to assure that each district is adequately staffed.
- Hire court child custody evaluators for each judicial district.
- Expand non judicial staffing to domestic case managers, mediators, and paralegal professionals.
- Adequately staff each judicial district with judges and commissioners and monitor the judicial clerical workload through the judicial weighted caseload formula and other viable measurements.
- Provide and maintain proper security and bailiff services to every judge and every judicial district.
- Increase funding for judicial training and education.

Judge Taylor commended the Judicial Council and AOC Staff for the work they do, and expressed particular thanks for the manner in which issues are anticipated and the Boards are consulted.

Classification of Juror Names and Addresses:

Tim Shea made the following recommendations to the Council regarding the classification of juror names and addresses:

- Juror addresses and telephone numbers are qualitatively different from juror names, and therefore, should be kept private. If a juror chooses not to keep that information private, they don't have to. Names may remain public after the conclusion of a trial because a jury is a democratic institution and the public has a legitimate interest in knowing who is representing them on the jury. Juror names should remain private during the course of a trial.
- Judges should have discretion to delay the release of a juror's name. If a juror's name is needed for a legitimate in depth analysis of a trial rather than sensationalism, the issue of *when* the names are released should be irrelevant.
- Prospective juror names should remain private for ease in administration, eliminating potential problems such as analyzing demographics.

Tim reported to the council that they could express their desires of how to address this issue to him, and he could use that information to develop and present a proposed rule at the council's next meeting. The rule, however, would then be published for public comment before it becomes effective. Judge Davis expressed that he would like to maintain a juror's confidentiality while preserving the freedoms and desires of the press, questioning a juror's right of privacy vs. the public's right of access.

Motion:

Judge Hadfield made a motion to have the staff prepare a proposed rule for consideration at the council's meeting next month which would:

Classify as private the records of the addresses, telephone numbers and other information for contacting jurors and prospective jurors. Classify as private the names of jurors and prospective jurors until the jurors are discharged. The names of prospective jurors would remain private. Permit the judge to withhold public inspection of the jurors' names in the interests of justice for up to 10 days after the jurors are discharged. Permit the court to seal records of the jurors' names upon its own motion, or upon a request by a juror by following constitutional procedures and imposing constitutional standards:

- 1) Provide advance written notice of closure to any media representative who has requested such notice in that particular case, to the parties, and to the juror.
- 2) Hold a closure hearing, which must be open to the greatest extent possible. Close only that portion of the hearing as necessary to protect countervailing interests. If allegedly prejudicial information must be disclosed, the court may close the hearing only after first attempting unsuccessfully to procure a voluntary non-disclosure agreement.
- 3) Permit any responsible person to participate in the closure hearing to the extent consistent with orderly court procedures.
- 4) Determine whether there are sufficient countervailing interests ("substantial probability of prejudice," "compelling interests") supporting closure to outweigh the interests favoring public access.
- 5) Determine that there are no reasonable alternatives to closure sufficient to protect the countervailing interests.
- 6) Support the closure order by written findings and conclusions.

The motion was seconded, and carried with one opposed.

Judicial Retirement and Medical Insurance Premiums:

Brent Johnson reported that the subject of judicial retirement and medical insurance premiums was introduced at the council's last meeting. At that time, the council requested a memo outlining the potential cost to the courts to cover the premiums across eight or nine years. Mr. Johnson provided such a memo to the Council. The Council reviewed options such as continuing the benefit at 100%, requiring judges pay the 5% premium cost, or covering the 5% premium cost for judges who had earned the seven years by July of 2000. A motion was then made.

Motion:

Debra Moore made a motion to not fund the 5% premium amount at retirement unless the amount can be funded through legislative enhancements to the retirement program. The motion was seconded and carried unanimously.

Update - Judicial Conduct Commission:

Steve Stewart of the Judicial Conduct Commission reported that there are currently seventy-four open files of conduct complaints. The sources of the complaints and how they are directed will be included in the Judicial Conduct Commission's annual report. Mr. Stewart also mentioned that, on average, approximately 78% of the complaints filed result in dismissal. Mr. Stewart also reviewed with the Council several examples of cases dismissed after a "preliminary investigation".

Inclusion of Trenton and Cornish Towns in Clarkston Municipal Justice Court Jurisdiction:

Motion:

Justice Wilkins made a motion to approve the inclusion of Trenton and Cornish towns in the Clarkston Municipal Justice Court jurisdiction. The motion was seconded and approved unanimously.

Other:

A presentation of recognizing service on the Judicial Council was made to Representative-Elect Scott Daniels, a former Judicial Council Member.

Motion:

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

The meeting adjourned following lunch.