

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, December 15, 2003

Council Room, Matheson Courthouse

450 South State Street
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. 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
D. Mark Jones
Ray Wahl
Matty Branch
Tim Shea
Gordon Bissegger
AnNicole Faeth

MEMBERS EXCUSED:

Hon. Clair Poulson

GUESTS PRESENT:

Colin Winchester, *Executive Director,
Judicial Conduct Commission*
J. Richard Catten, *West Valley City*
Herb Katz, *Court Administrator, West
Valley Justice Court*
Kevin Miller, *GSBS Architects*

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

All in attendance were welcomed to the meeting. The minutes of the Council= s November meeting were discussed. The following motion was then made.

Motion: Judge Dever made a motion to approve the minutes. Judge Hare seconded the motion. The motion carried unanimously.

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

Chief Justice Durham reported that she and Daniel Becker recently met with the State Superintendent of Education, Steve Laing, regarding the mandatory civics education curriculum. The possibility of having members of the judiciary participate in civics education in schools was also discussed.

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

Daniel J. Becker reported the following items:

- Governor Walker will include the court= s lease and contract increase request, and Juror, Witness, Interpreter fund increase request in her proposed budget. This is in addition to the restoration of State Supervision funds, as well as funding for the appellate mediation program.
- Chief Justice Durham and Mr. Becker will visit the Eighth District, December 16th.
- The Commission on Criminal and Juvenile Justice has approved Byrne funding for the courts which includes funding for jury system enhancements, funding for a statewide training program on drug courts, and funds to assist with justice court technology.

- Judge Michael Burton, of the Third District Court, has announced his retirement effective May 30, 2004.

4. REPORTS:

Management Committee: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that the Management Committee approved an audit schedule for 2004. They also previewed and approved items included on the Council's agenda.

Policy and Planning: (Hon. Lee Dever)

Judge Dever reported that Tim Shea would be making a report later that day regarding long term disability benefits for judges. It was also reported that a number of personnel policies were reviewed by Policy and Planning and placed on the Council's consent calendar.

Liaison Committee: (Hon. Jerald Jensen)

Judge Jensen reported that the Liaison Committee had not met since the Council's last meeting.

Bar Commission: (David Bird, esq.)

David Bird reported that the Bar is moving forward on professionalism awards, which will honor lawyers in each of the Bar's divisions. Mr. Bird also reported that at a recent meeting of the Small Claims Committee the possibility of implementing a \$7,500 cap was reviewed. It was reported that this was done at the request of members of the Legislature. Mr. Bird then reported that the Bar has entered a contract with Casemaker which will allow Bar members to perform activities similar to those performed with Lexis-Nexis. It was reported that this service would be free to members of the Bar.

5. REPORT: JUDICIAL CONDUCT COMMISSION: (Colin Winchester)

Colin Winchester reported that the final report of the legislative audit of the Judicial Conduct Commission would be released that day. It was reported that over 600 cases were reviewed in the course of the audit, and it is anticipated that their recommendations will indicate that there should be increased consistency in sanctions guidelines. It was also mentioned that Gayle Mckeachie is no longer a member of the JCC, as a result of his appointment as Lt. Governor.

6. WEST VALLEY CITY JUSTICE COURT: (Richard Schwermer, J. Richard Catten, Herb Katz)

Richard Schwermer reported that every four years the Judicial Council recertifies justice courts, and that this year the Council is considering recertification of municipal justice courts. It was reported that the Council's Justice Court Standards Committee recently met and reviewed the West Valley Justice Court's application for recertification. That committee recommended that the justice court not be recertified since they are not open on Fridays, consistent with Utah Code Annotated ' 78-5-108.

Richard Catten, Assistant City Attorney of West Valley City, reported that West Valley City has been opened four days a week with extended work hours for several years now. It was reported that the West Valley Justice Court has been operating on a four day work week since July of 2002, open to the public from 8:00 a.m. to 6:00 p.m. Additionally, Mr. Catten reported that a city ordinance was passed which states A The Justice Court shall be open to the public and shall conduct judicial business Monday through Thursday from 8:00 a.m. to 6:00 p.m. with the exception of legal holidays.@ West Valley City Municipal Code ' 3-2-103(2). Mr. Catten then reviewed statutory requirements related to days and hours of operation with the Council.

After discussion took place, it was suggested that the West Valley Justice Court prepare a written proposal for addressing issues related to being closed on Fridays which had been raised by the Council. One of these issues included how West Valley plans to have certain cases heard on Fridays. The Council further requested Brent Johnson advise the Council on what the statutory requirements relating to this issue and the Council's discretion in such matters.

7. LONG TERM DISABILITY BENEFITS: (Tim Shea)

Tim Shea reported findings of the Policy and Planning Committee regarding long term disability benefits for judges. Mr. Shea reported that the Public Employees' Long Term Disability Act applies to judges just as it applies to any other public employee. According to the act, a judge (or any other employee) must stop work in order to apply for disability benefits. It was reported that after an application and investigation takes place, the state retirement office determines whether an employee is A totally disabled@ . The date of disability, however, does not commence until after the last day of actual work. In order to qualify as totally disabled during the elimination

period and the first 24 months of benefits, the judge must be completely unable to perform the duties of their occupation.

Mr. Shea reported that the first three months (90 days) after the stop work date is called the A elimination period@ , and that during this period there are no benefits. It was reported that a judge= s salary would be paid during the interim absent an order from the Supreme Court to the contrary. It was mentioned that the cost to the court as an organization is principally monetary in the sense that the courts will continue to pay the judge= s salary until the judge resigns, qualifies for LTD benefits or is removed or suspended without pay by the Supreme Court. At the same time other judges would pick up the judge= s caseload, or the court would pay for substitute coverage by senior judges or a judge pro tempore. Once the judge is awarded LTD benefits, the money that would have been paid for salary can be used for substitute coverage.

Mr. Shea mentioned that throughout this process a judge risks removal by the Judicial Conduct Commission or the Supreme Court for stopping work. Also, if a judge has been awarded long term disability benefits, and resigns as a result, and they then recover, the judge will lose LTD benefits, but the judge cannot be reinstated as a judge except by gubernatorial appointment.

8. COURT REFEREES: (Tim Shea)

Tim Shea reported that the Second District Court would like to create a contract position with an active attorney to act as a part-time Traffic Court Referee. It was reported that under Rule 3-302, only two types of referees are authorized: A full-time referee, entitled to all the same benefits as other employees or a clerk of the court serving as a part-time referee. It was reported that the Second District would like to have a law-trained individual serving as a Traffic Court Referee, but that a law trained individual would be unlikely to be able to perform these duties on a full-time basis as the rule presently requires. The rule would need to be modified to allow a non-court clerk to serve as a Traffic Court Referee on a part-time basis. It was reported that the Management Committee recommends that the Council approve a proposed rule change on an emergency basis. After discussion took place, the following motion was made.

Motion: Judge Davis made a motion to approve the proposed rule change on an emergency basis. The motion was seconded and carried unanimously.

9. 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.

10. STANDING COMMITTEE ON FACILITIES: WEST JORDAN COURTHOUSE: (Gordon Bissegger)

Gordon Bissegger reported that West Jordan City has requested that a few changes be made to the exterior of the West Jordan Courthouse. These changes include round columns rather than square columns, the inclusion of a mansard roof on the building, and a red-toned brick stripe around the building. They feel that these elements would allow the courthouse to have a similar architectural theme of surrounding buildings. It was mentioned that the Standing Committee voted not to include round columns, since square columns fit better with the architectural design, and the committee supports a mansard roof if it fits within the construction budget. The Council then considered a proposal to modify the exterior design to include a red-brick stripe around the courthouse.

Motion: Judge Hilder made a motion to add a mansard roof if funding becomes available, but to deny implementing the City= s other suggestions. Judge McIff seconded the motion. No vote was taken on the motion.

Substitute Motion: David Bird made a motion to accept the proposal for a small, single red-brick stripe around the exterior of the courthouse. Judge Memmott seconded the motion. The motion carried with three opposed.

11. ADJOURN:

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