

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MINUTES

Thursday

May 28, 1998

Wasatch County

1361 South, Highway 40

Heber City, Utah 84032

Chief Justice Richard C. Howe, Presiding

Members Present:

Chief Justice Richard C. Howe
Hon. Pamela T. Greenwood
Hon. Kent Nielsen
Hon. John Sandberg
Hon. Stan Truman
James Jenkins, Esq.
Hon. Anne M. Stirba
Hon. Anthony W. Schofield
Hon. Kay A. Lindsay
Hon. Robert Braithwaite
Hon. Leonard H. Russon
Hon. Michael Burton
Hon. Stephen Van Dyke
Hon. Michael Glasmann

Excused:

Dan Becker

Staff Present:

Myron K. March
Richard H. Schwermer
Raymond H. Wahl
Timothy Shea
Jan Thompson

Guests:

Hon. Darwin Hansen
John Ashton, Esq.
John Day
Dennis Roberts
Hon. Guy Burningham

Welcome/Approval of Minutes:

Chief Justice Howe welcomed guests, members and staff to the meeting. The Chief Justice extended a special welcome to Hon. Darwin Hansen. Judge Hansen was recently appointed to the bench in the Second Judicial District.

Motion:

A motion was made by Judge Schofield to approve the minutes of April 27, 1998. The motion was seconded by Judge Stirba and carried unanimously.

Report from Chairman:

Chief Justice Howe indicated that he recently attended the Appellate Courts' Conference which was a fine educational program. In addition, the Chief Justice has attended the District Court Conference held in Moab and a Family Court Conference held in Philadelphia, Pennsylvania. Chief Justice Howe stated that the Judicial Council will begin talking about the merits of a family court this October.

Steven Stewart, Executive Director of the Judicial Conduct Commission, has requested that the Judicial Council recommend three names to the Conduct Commission, one of which will be selected to fill an alternate judge position on the Commission. Recommendations were considered and the names of the following individuals were selected to be forwarded to the Judicial Conduct Commission for consideration: Judge Rodney Page, Judge Brent West and Judge Lynn Davis.

Motion:

A motion was made by Judge Stirba that the names of Judges Page, West, and Davis be forwarded to the Judicial Conduct Commission for consideration of appointment to that Commission. The motion was seconded by Judge

Sandberg and carried unanimously.

Currently, a vacancy exists on the Utah Sentencing Commission which is the result of Judge Leslie A. Lewis resigning. Members of the Judicial Council considered several individuals for the vacancy on the Commission.

Motion:

A motion was made by Judge Schofield that Judge David Mower be appointed to serve on the Utah Sentencing Commission. The motion was seconded by Judge Burton and carried unanimously.

State Court Administrator's Report:

On behalf of Dan Becker, Myron March presented the State Court Administrator's Report.

Judge Burton Harris has announced his retirement effective September 30, 1998. There will be a delay in appointing a new judge to this position because of the Governor's request to wait until the appointment of new nominating commission members statewide.

The Juvenile Justice Task Force has reconvened for another year. During the last meeting Ray Wahl, Juvenile Court Administrator, made an excellent presentation on state supervision. The Task Force has four agenda items which include: a) preventive efforts, b) aftercare, c) getting juveniles into court quickly, and d) the serious juvenile offender.

The next Judicial Council meeting will be held in Sun Valley, Idaho on July 1, 1998 in conjunction with the Annual Bar Conference. There is also a meeting scheduled for the morning of July 3, 1998. The Executive Director of the Utah State Bar, the President of the Bar and the President Elect will be invited to attend the meeting on July 3. In addition to engaging in conversation with bar officials, the Council will also discuss how to address the issue of the Family Court proposal, i.e., time frames, formats, etc.

In the Third Judicial District, Judge Frank Noel replaces Judge Lewis A. Lewis as presiding judge. Judge Noel's term will begin in August.

June 10-12, 1998 administrators from Utah will meet with their peers from Idaho in Park City, to discuss trial court performance standards among other issues which are of interest to each group.

The 1998 Legislature appropriated money for merit increases. Employees will receive a 2.75% increase which will be effective July 1, 1998. Employees who have not been with the judiciary for six months or employees in longevity will not receive an increase. The Legislature also appropriated enough money to allow an additional one step increase to 15% of the court's outstanding employees. Two years ago there was a market survey which indicated that clerks' and probation officers' salaries were not as competitive as they could be. This resulted in a market adjustment. Currently, salaries of entry level clerks are being reviewed.

Management Committee Report:

Judge Greenwood indicated that most of the issues discussed during the Management Committee meeting will be on the Council agenda during today's meeting.

Policy and Planning Committee Report:

Judge Burton indicated that the minutes are reflective of the committee's last meeting.

Liaison Committee Report:

Richard Schwermer informed the Council that Judicial Nominating Commission statutory provisions are up for sunset review. This is generally a perfunctory review but this year it did not appear to be so in that two separate committees chose to review the statute. However, both committees proposed that the current language remain in effect for a period of one year at which time the issue will then be more fully examined.

Next, Mr. Schwermer reported on an issue which was raised by Judge Rigtrup at a meeting of the Judiciary Interim Committee. The issue is that of private interviews between the court and children because some individuals consider this to be ex parte communication. Judges concur that interviews are common practice but not without notice to, and/or permission of the parties and counsel. An argument was raised that ex parte communication cannot be waived.

Motion:

A motion was made by James Jenkins to refer the issue of court/child interviews to both the Liaison Committee and the Policy and Planning Committee. The motion was seconded by Judge Greenwood. The motion carried unanimously.

Report of the Judicial Performance Committee:

John Ashton, Chair of the Judicial Performance Committee, thanked members of the Council for appointing him to the committee. Mr. Ashton reported that the committee has a total of eleven members, five of whom are new members. New members include Mr. Ashton, Justice Daniel Stewart, Judge Robert Hilder, Commissioner Scott Hadley, and Ms. Kay Cash.

The committee is considering several issues, one of which is the survey of jurors. The survey to evaluate district court judges is going well. Judges and clerks have not reported any difficulties in administering the survey. The survey scores generally are very high, and the actual score results will be used for the first time in the November 1998 elections.

The pilot program of survey data for justice court judges is progressing under an SJI grant. The pilot program consists of a lawyer survey for judges of the Class I and II justice courts and a survey of litigants in all justice courts. The clerks and survey consultant have completed the data gathering, and the consultant is preparing its report to the committee.

The committee worked last year to simplify the lawyer survey and to improve the survey response rate. To this end, the committee's recommendations include that the number of survey cycles be reduced and that the questionnaire be streamlined. The committee recommends that a judge be the subject of a lawyer survey during the year prior to retention election, for certification, and two years prior to that, for self improvement. The committee recommends that the lawyer survey for Supreme Court justices be administered also during the third year of the ten-year term. The committee recommends the commissioners' surveys be administered with the judges' surveys whenever possible, but that, if a commissioner's term of office expires more than a year after that typical survey is administered, then the commissioner's survey should be postponed to a time closer to the expiration of the term of office.

The committee substantially redrafted the survey form to reduce its length from six pages to two. To accomplish this the committee has recommended that: a) the respondent demographic questions be eliminated; b) the instructions from the survey consultant be incorporated with the cover letter of the Chief Justice; c) most of the self improvement questions be eliminated and the rest integrated with the certification questions; and d) the personal comments to the judge be integrated with the questionnaire rather than mailed on a separate note card.

Mr. Ashton stated that if the Judicial Council approved the two recommendations, the committee will prepare the necessary amendments to Rule 3-111.

Motion:

A motion was made by Judge Braithwaite to approve the recommendation both to reduce the number of survey cycles and to shorten the survey questionnaire. The motion was seconded by Judge Lindsay. The motion carried unanimously.

Justice Court Study Committee:

The Justice Court Study Committee issued an interim report in which there are basic proposals and primary recommendations that maintain the status quo of district and justice court jurisdiction. Additionally, one recommendation proposes that an exclusive body of cases belong to the justice court; the district court and that there be no overlap. During a recent meeting of the Committee, members voted to stop discussing jurisdiction which will essentially bring the Committee's work to an end. Basically, the mixed system previously discussed was abandoned.

New Justice Court Certification - Taylorsville/Murray:

Richard Schwermer presented two applications for permission from the Judicial Council to create two new justice courts. However, the applications are in different procedural forms. The first of the applications is from Taylorsville. Procedurally, Taylorsville is in the posture of having appeared before the Council before and are waiting for approval to create a court which was actually given before. The second step for certification that the city must meet and abide by are operational standards. The operational standards are met by essentially submitting an application, a resolution, an affirmation, and an attorney opinion letter. The application is before the Council for final approval and certification. A question was raised about the level of Taylorsville justice court being a level I or II. Mr. Schwermer will clarify the issue of the justice court level.

Motion:

A motion was made by Judge Schofield that the Taylorsville justice court be certified as a level I justice court. The motion was seconded by Judge Braithwaite. The motion carried.

Next, Mr. Schwermer stated that the Judicial Council talked about Murray City's request for a justice court in March. The Council agreed that since legislation passed, the city would be allowed to create a justice court. However, now the request is more appropriately before the Council because of the effective legislation date. The Council now has the authority to allow the city to create a court.

Motion:

A motion was made by Judge Burton to allow Murray City to create a justice court. The motion was seconded by Judge Braithwaite. The motion carried.

Update on Drug Court and New Grant Application to OJJDP:

Ray Wahl, Juvenile Court Administrator, reported that Hon. Kimberly Hornak had a scheduling conflict and could not attend this meeting. However, Judge Hornak is 100 percent supportive of this grant request.

Next, Mr. Wahl introduced, Jim Grundhauser, a supervisor with the Assessment and Diversion Unit in Murray, and Krista Murray, substance abuse specialist with the Drug Court. Mr. Grundhauser indicated that Russell Hagood was not able to be present because he is out of town making a presentation on drug courts.

Mr. Grundhauser requested an extension of a Bryne grant that the Juvenile Court is currently operating under. The extension would last through 1999. The other grant that the court is hoping to implement is an enhancement grant through OJJDP. The OJJDP grant would be used to expand services the court is currently providing. These requests were presented to the Management Committee at their last meeting and were approved.

Ms. Murray indicated that the drug court is currently operating under Bryne grant funds which were first awarded on July 1, 1997. The Bryne grant funds are available until June 30, 2000 but the grant has to be renewed every year. Funds are in the amount of \$100,000 with a 25% case match from the Juvenile Court supported from non judicial fees. Non judicial fees are fees received from non judicial adjustments. This is not general fund money and is not appropriated by the Legislature. However, the Legislature does have to authorize the court's use of the money. The Legislature has appropriated up to \$600,000 for the juvenile court's use this year. The grant pays for staff which includes two full time probation officers and one half time deputy probation officer.

Mr. Grundhauser requested approval of an enhancement grant through OJJDP in the amount of \$166,000. This is an enhancement of the Bryne grant. This funding is also available for an additional two years. The grant requires a 25% match that may or may not be a cash match. The 25% match will come from in-kind funding, i.e., building space, chief probation officer's salary, telephones, clerical staff, judges' time and supplies. This match does not increase in 1999. In anticipation of the continuation of the program, the juvenile court has a commitment to request a building block to continue the program in the year 2000. The enhancement will assist the juvenile court in improving services in a number of different areas. It would allow participation by all of the juvenile court judges in the Third District Juvenile Court. Currently, only Judge Hornak is participating in the drug court program. The grant will also assist in increasing staff in the juvenile court by adding two full time deputy probation officers and one additional probation officer.

Mr. Grundhauser and Ms. Murray were thanked for their presentations after which the Council discussed the merits of the requests. A proposal was made that perhaps other entities seek out grants such as this and provide specialized services.

Motion:

A motion was made by Judge Greenwood to approve the Bryne grant application for 1999. The motion was seconded by Judge Lindsay. The motion carried with one opposing vote and one vote abstaining.

Motion:

A motion was made by Judge Greenwood to approve the application for the enhancement grant. The motion was seconded by Judge Lindsay.

Judge Sandberg suggested that a statement be added to the motion that prior to approval of the application there should be a commitment that alternative funding measures be investigated in the year 2000 when the grant expires. James Jenkins indicated that he had mixed feelings about approving the enhancement grant until there are more definitive answers about the use of the grant

Amended Motion:

Judge Greenwood amended her motion by clarifying that approval of the application in no ways commits the judiciary to permanently fund the program.

Judge Van Dyke indicated that if the Council approves the grant request and allows the Juvenile Court to build the programs, he does not think it is realistic to say that in the year 2000 the judiciary would not be under a tremendous pressure to include the programs into the court's budget. Mr. Jenkins has mixed feelings about approving the first grant. He stated that the juvenile court could continue on with the Bryne grant but he is troubled with the enhancement grant and expansion of the program until an evaluation has been completed. Judge Lindsay said that representatives of the Juvenile Court came before the Judicial Council a year ago and discussed building block funds. At that time the representatives were told to apply for a grant before they requested any additional building block funds.

Substitute Motion:

A motion was made by Judge Stirba that the Council defer action on the enhancement grant at this time and request that Ray Wahl, Juvenile Court Administrator, work with court representatives and others to see if there could be other funding approaches in addition to what has been presented. The motion failed for lack of a second.

Original Motion:

Currently, Judge Greenwood's motion to approve the enhancement grant with the caveat that it is not permanent and that other alternatives should be pursued is before the Council.

A comment was made that the Council should exercise caution and not lose site of the fact that the judiciary is independent and not a service agency. In addition, a question was raised about whether the grant requests had been presented to the Board of Juvenile Court Judges. The request did not go before the Board because of the status of it being a grant continuation.

Original Motion - Vote:

Judge Greenwood's motion to approve the enhancement grant with the caveats that approval does not commit the Council to fund the program in the future and that alternative measures investigated was before the Council. The motion was seconded by Judge Lindsay. The motion failed.

Judge Burton expressed concern that the juvenile court is acting like a social service provider. The judge indicated that he is not arguing with the fact that these programs are not valuable but it seems to him that they are not core functions of the judiciary. Judge Russon said he agreed with Judge Burton that the judiciary should not lose its independence. Myron March indicated that the Legislature has appropriated \$6 million that affects the state supervision category. This decision sends the message that the juvenile courts will be in the business of providing services, contracting for services and will be the provider for serious juvenile offenders. Mr. March then discussed state services, prioritization and the \$6 million. Next, he suggested that the grant be received if approved and in two years, if the program is successful, then the juvenile court would have to prioritize its requests.

Motion:

A motion was made by Judge Lindsay that members of the Council reconsider the request for the grants based upon Mr. March's statement.

Motion to Reconsider:

A motion was made by Judge Glasmann that Judge Greenwood's motion be reconsidered based upon Mr. March's comments. The motion was seconded by Judge Van Dyke. The motion to reconsider carried with seven in favor and six opposed.

Members of the Judicial Council continued to discuss the merits of the enhancement grant request and long term budgetary impacts.

Motion:

A motion was made by Judge Van Dyke that the grant request be approved with the understanding that the Judicial Council will not entertain a building block request unless the Board of Juvenile Court Judges makes it a priority request for the particular budget year. The motion was seconded by Judge Lindsay.

Motion Withdrawn:

Judge Van Dyke withdrew his previous motion.

Motion:

A motion was made by Judge Lindsay that the request for enhancement grant be approved with the understanding that the Judicial Council will not entertain a building block request unless the Board of Juvenile Court Judges set it as a priority. The motion was seconded by Judge Greenwood. The motion failed.

Move to Scott M. Matheson Courthouse:

Myron March reported on the move to the Scott M. Matheson Courthouse. This is the first time this many court levels and offices have been in the same building. This is a building not just for the Third Judicial District, but a state building for everyone. The Judicial Council was instrumental in the development of this building that reaches back approximately 8-10 years. The public portions of the building are impressive and staff facilities are functional. The telephone system has presented some problems that will hopefully be worked out soon. There are more than 450 employees within the courthouse. The first employees moved on or about March 6, and the move will be completed with the State Law Library moving between June 2-8, 1998.

Amendments to the Judicial Nominating Commission Manual:

Tim Shea addressed Sections 20A-12-104 and 20A-12-105 which amend the Judicial Nominating Commission Manual. The changes go into effect July 1, 1998. The changes address the maximum number of nominees to be sent to the Governor, voting procedures, and multiple vacancies.

Motion:

A motion was made by Judge Schofield to approve amendments to the Judicial Nominating Commission in accordance with Rule 2-205, effective for the upcoming Nominating Commission. The motion was seconded by Judge Van Dyke. The motion carried unanimously.

Summit County Facilities Update:

Gordon Bissegger stated that approximately a year ago there was a meeting between staff at the Administrative Office and officials from Summit County to discuss Summit County's project to build a new justice center. Essentially, Summit County representatives requested that the courts move from Coalville to a new justice center where there is already a jail constructed and a justice court. Summit County officials will make their presentation to the Standing Committee of Facilities Planning in June/July of this year. Thereafter, there will be a presentation to the Judicial Council regarding study, cost and impact.

Fourth District Juvenile Court Update:

John Day, Court Executive from the Fourth District Juvenile Court, provided an update of juvenile court issues to the Council. The juvenile court received funding for 60 new probation officers and the Fourth District received 11.5 of these officers. The additional probation officers will enable the court to make a bigger impact on juveniles throughout the state by reducing recidivism and the number of referrals to Youth Corrections. A new program has been implemented in the Fourth District Juvenile Court wherein juveniles and their parents meet with a probation officer and are instructed on the law, consequences, and responsibilities. The program is receiving positive feedback from juveniles and their parents.

Another successful program within the Fourth District is the work restitution program supervised by Wanda Santiago. The "Graffiti Tag Program" is a nationally recognized program aimed at cleaning up graffiti in 22 cities within a 24-hour time period. The city reimburses the court the cost of employees, equipment and materials.

Dennis Roberts, Chief Probation Office in Wasatch County, is attempting through early intervention and increased supervision, to send fewer referrals to Youth Corrections. In Wasatch County juveniles are involved in vocational training through a classroom setting. In addition, there is an apartment equipped to provide training in independent living.

Fourth District Court - Consolidation Update:

The Fourth District Court covers four counties; Wasatch, Utah, Millard and Juab. Consolidation in the Fourth District has resulted in a total of twelve judges within the district. The court has been divided into three separate divisions; criminal, civil and municipal with judges rotating through each division on a staggered basis. Wasatch County cases are handled by judges from the municipal division, Juab County cases by judges from the criminal division and Millard County by judges from the civil division. There are five judges in the civil division, three in the criminal division and four in the municipal division. In Utah County there are nine court rooms and ten judges. The tenth judge is a roving judge who also handles the mental health hearings in the county and also handles matters in Millard County.

Judge Burningham stressed that the consolidation took a lot of effort and cooperation on part of all of the judges and staff. The district has been consolidated for approximately two years. If the judge stays in the standard location, his/her clerk remains with that judge. However, if the judge rotates out of the standard location, his/her clerk is considered to be in the clerk rotation and then when the judge returns, that clerk will again work with the judge.

Next, Judge Burningham praised staff within the district for their hard and never tiring work for the courts. He stated that clerks are overworked and underpaid.

Ethics Advisory Opinion:

Brent Johnson presented Informal Opinions 98-4 and 98-6 to members of the Council. The Ethics Advisory Committee having referred these opinions to the Judicial Council pursuant to Rule 3-109(6), Utah Code of Judicial Administration. The Committee is concerned that judges are increasingly being asked to serve on governmental committees. The Committee feels that some of these committees are, in fact, advocacy groups on certain issues. Because the Council is perceived as encouraging service by judges, the Committee felt that referring these opinions to the Council might assist judges in determining whether service is appropriate. The Council has the option of discussing the opinions and issuing them as formal opinions, or referring them back to the Ethics Advisory Committee for issuance as informal opinions.

Motion:

A motion was made by Judge Greenwood that the Judicial Council send the opinions back to the Ethics Advisory Committee and have the Committee issue an opinion in whatever form they deem appropriate. The motion was seconded by Mr. Jenkins and carried unanimously.

Executive Session:

A motion was made to move into executive session after which a record was made on the following:

Motion:

A motion was made by Judge Burton to resist the motion in the San Juan County jury pool litigation. The motion was seconded by Judge Van Dyke and carried unanimously.

Justice Russon indicated that the record should reflect legal counsel has advised the Council what has been done, that everything has been done as per agreement in an effort to meet the stated goals, that the other side is in disagreement and this is the basis for the Council's decision on the motion.

Adjourn:

There being no further business, Chief Justice Howe adjourned the meeting.