

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

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February 23, 1998  
Administrative Office of the Courts  
230 South 500 East, Suite 300  
Salt Lake City, Utah

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*Chief Justice Michael D. Zimmerman, Presiding*

#### **Members Present:**

Chief Justice Michael D. Zimmerman  
Hon. Pamela T. Greenwood  
Hon. John Sandberg  
Hon. Stanley Truman  
Hon. Robert Braithwaite  
Hon. Kay A. Lindsay  
Hon. Anthony W. Schofield  
Hon. Leonard H. Russon  
Hon. Michael Glasmann  
Hon. Michael K. Burton  
Hon. Stephen Van Dyke

#### **Members Excused:**

Hon. Kent Nielsen  
James C. Jenkins

#### **Staff Present:**

Daniel J. Becker  
Myron K. March  
Marilyn Branch  
Timothy Shea  
Jan Thompson  
Raymond Wahl  
Holly M. Bullen  
Cindy Williamson

#### **Guests:**

Hon. Kimberly Hornak

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#### **Welcome:**

Chief Justice Zimmerman welcomed guests, members and staff to the meeting. The Chief Justice extended a special welcome to Associate Chief Justice Richard C. Howe. Justice Howe will replace Chief Justice Zimmerman as Chief Justice on April 1, 1998.

#### **Approval of Minutes:**

A motion was made by Judge Stirba to approve the minutes as amended. The motion was seconded by Judge Greenwood and carried unanimously.

The minutes of January 26, 1998, will be amended to read:

Page 12, first full paragraph, last sentence: The motion was seconded by Judge Van Dyke and carried unanimously.

#### **Court Improvement Project Update:**

Judge Kimberly Hornak reported that in 1995 Utah received a federal grant. The grant's intent was to assess and improve the Juvenile Court system. A committee was formed and has made recommendations, some of which include: a) court teams; b) the setting of child welfare cases in blocks on judges' calendars; c) an allocation of \$50,000 for printers in court rooms and use of specific forms; and d) legislation. Monies have also been allotted for defense attorney education, conferences, and mediation programs.

Next, Judge Hornak stated that additional federal grant money is available and there have been discussions about applying for the grant to aid in developing a family drug court as a pilot program.

The Second, Third and Seventh Juvenile Districts currently have mediation programs for neglect and dependency cases. The program is being managed by the Alternative Dispute Resolution Dept., headed by Diane Hamilton. Ms. Hamilton regularly sends E-mail to judges stating how many cases they have in mediation.

Judge Hornak expressed her appreciation for the foresight which lead to replacing the deputy juvenile administrator position with two positions; one for delinquency and one for child welfare. She indicated that this is a tremendous step forward in the juvenile court system.

Members of the Judicial Council thanked Judge Hornak for her presentation.

### **Report from Chair:**

Chief Justice Zimmerman said that the Judicial Council previously passed a resolution opposing the statute proposed by Rep. Gladwell which would have changed the

Doperto Supreme Court decision which excludes evidence of prior bad acts. The statute also had a second provision which enacted federal rule amendments to the effect that prior sexual conduct is admissible at almost any time.

The Supreme Court was approached and informed that if the rules of evidence were amended to change the burden shifting the presumption, the bill would be withdrawn. The Supreme Court Advisory Rules Committee convened and on an emergency basis the Court amended Rule 404, effective immediately.

### **State Court Administrator's Report:**

Judge Alfred Van Wagenan has announced his intent to retire as of July 1, 1998. The judicial selection process for that position is underway. The position announcement closes March 11, 1998.

Trisha Attwood, Clerk of Court for the Seventh Judicial District, was involved in an automobile accident and is in critical condition. Dan Becker encouraged everyone to keep Ms. Attwood in their thoughts.

The Administrative Office survey has been distributed to presiding judges, clerks of court, court executives, chief probation officers, and Administrative Office Management Staff. In the future a more general survey will be distributed to all court staff.

The Customer Service Number became operational on February 2, 1998. Posters announcing the number were distributed to court executives during their meeting on February 6, 1998. The number will be announced in Salt Lake City in the near future. Judge Stirba suggested minor revisions to the poster. The judge's suggestion will be considered once additional data is gathered. The Judicial Council will receive regular updates on the Customer Service Number.

Monitoring the Court's Web Page shows that the page is currently receiving approximately 100 "hits" per day. These contacts are internal and are primarily from attorneys and members of the public. In the future, the Council will receive quarterly reports regarding the Web Page.

Dan Becker reported that the Executive Appropriation Committee has not reduced the court's base budget. Items included in the list of recommendations include: a) \$33,900 for the Justice Court Legal Institute; b) \$25,000 for security; and c) \$25,000 for computers. Currently, because of an oversight, the court's O&M budget is \$1 million short. However, this \$1 million has been placed on a "hot spot list." Mr. Becker is optimistic that this money will be restored.

The committee has omitted \$300,000 for new law clerks from the list and it is not likely that this money will be restored. However, there is cautious optimism about the request for new judgeships in the Second and Third Districts. The request has passed the Senate and is now in the House Rules Committee, pending prioritization. Further recommendations include money for the Vernal land purchase and Provo land acquisition.

The Scott M. Matheson Court House Dedication is set for March 27, 1998, at 2:30 p.m. The week of March 30, 1998, there will be guided tours for school groups, civic groups, etc. The Legislative Update is also set for the 27th but will end prior to the dedication ceremony.

### **Management Committee Report:**

Judge Pat Brian informed the Management Committee he is taking a 30-day leave of absence to assist with a judicial education program in Mongolia. This matter has been approved by the presiding judge of the Third Judicial District.

During the Management Committee meeting Dan Becker distributed a letter from Roger Cutler, Salt Lake City Attorney, in which Mr. Cutler expressed concerns about the Justice Court Task Force Study. Chief Justice Zimmerman will respond in writing to Mr. Cutler. The issue of passing a possible resolution regarding courts of record other than state courts will be placed upon the Judicial Council agenda in March. A resolution will be drafted and presented to the Council at that time.

The Office of State Debt Collections legislation has been withdrawn by the sponsor, Senator McAllister, for study during the interim. Most of the issues raised about the legislation are not court issues, and the courts are able to implement the changes previously adopted by the Council. Authorizing language will be put in the intent language of the appropriations act to ensure that a revenue stream exists for continuing the court collection offices presently in place. The alternate revenue stream, interest on these payments, will remain pending in the Office of State Debt Collection legislation. The Management Committee agreed that the changes affecting the courts and transfers to the Office of State Debt Collection should proceed.

The Council needs to appoint a judge to the Access to Justice Task Force, and the Management Committee recommended the appointment of Judge Pamela T. Greenwood.

**Motion:**

A motion was made by Judge Stirba that Judge Greenwood be appointed to serve on the Access to Justice Foundation Board of Trustees. The motion was seconded by Judge Van Dyke and carried unanimously.

During the Management Committee meeting Holly Bullen provided an update on the status of the Clerical Weighted Caseload Study. The Clerical Weighted Caseload Study is a Delphi Study that has been administered to clerks for the purpose of providing an objective tool for the allocation of personnel. There was a 93% participation rate by the clerks. Elements of the Study have been presented to the clerks of court and trial court executives several times.

Additional time has been taken to analyze the data and staff is in the process of determining the best way to look at the data in terms of standards. For example, groupings of like situated districts and establishing ranges by which it would be presumed that an office was adequately staffed if it fell within the range, or under or over staffed, if outside the range.

Some of the anticipated uses for the study may include: a) allocation of new positions or temporary resources; b) existing staffing impacts on requests; c) possible redistribution of personnel resources; and d) management of existing staff within districts.

**Policy and Planning Committee Report:**

Judge Braithwaite reported that the Policy and Planning Committee at its last meeting approved the recommendations of the Bar Commission as they relate to regulation of judicial election campaigns. The Bar Commission recommendations included: a) not making any amendments to the term "active opposition"; b) that campaign fund contributions and expenditures be reported to the Judicial Conduct Commission; c) that surplus campaign funds be donated to the Utah Bar Foundation; and d) that the judge's campaign committee be permitted to solicit statements of support for the judge but that only statements by non-lawyers could be published.

The Policy and Planning Committee recommends that the presiding judge of each district decide whether or not a courtroom can be used as a set or a stage for filming something other than court proceedings.

**Regulation of Judicial Retention Election Campaigns by the Code of Judicial Conduct:**

The Policy and Planning Committee, at the direction of the Judicial Council, considered issues related to the regulation of judicial retention election campaigns. The Committee invited input from the Boards of Judges and the Board of Bar Commissioners. The Committee identified the following issues: a) whether there should be limits to the amount of campaign contributions; b) whether there should be a process to refund any surplus campaign funds; c) whether public statements of support by lawyers are appropriate; d) whether a judge's campaign committee would comply with the campaign and financial reporting requirements of state statutes; e) whether the public reporting of contributions as required by statute would permit the judge to learn the identity of contributors; and f) whether lawyers should be permitted to serve on a judge's campaign committee.

The Board of District Court Judges and the Court of Appeals believe the existing Canon 5 is sufficient; that amendments will over-regulate this area; and that a judge should be free to campaign as needed when there is opposition. The Bar Commission recommended amendments to the Code, which the Committee recommends to the Council. Because the Code of Judicial Conduct is established by the Supreme Court, any decision by the Council should be in the form of a recommendation to the Supreme Court.

The Bar Commission's recommendation for amendment was received at the end of the process so the boards of judges have not seen this change. The boards of judges have raised questions other than those identified by staff.

**Motion:**

A motion was made by Judge Braithwaite that this matter be sent out for informal comment to the all affected entities with the comments being forwarded to the Supreme Court. The motion was seconded by Judge Burton.

**Amended Motion:**

A motion was made by Judge Stirba to amend Judge Braithwaite's motion to have the comments returned to the Judicial Council rather than the Supreme Court. The motion was seconded by Justice Russon. The motion carried unanimously.

The Council voted on Judge Braithwaite's motion as amended. The motion carried unanimously.

**Executive Session - Motion:**

A motion was made for the Judicial Council to go into executive session. The motion was seconded and carried unanimously. Following the executive session a motion was made to go back on record.

### **Motion - Certification of Justice Court Judges:**

A motion was made by Judge Van Dyke to approve certification all justice court judges. The motion was seconded by Judge Sandberg. The motion carried with Justice Russon abstaining and Judge Truman abstaining from voting as to himself.

### **Education Committee Update:**

Judge Judith Atherton, Chair of the Education Committee, was present to provide members of the Judicial Council with an update from the Education Committee. Judge Atherton identified the following members of the Committee: Judge Dennis Fuchs, Judge David Mower, Paula Carr, Judge James Davis, Judge Kim Adamson, Judge Kimberly Hornak, Christine Jeppson, Paul Cleverly, Commissioner Michael Evans, Kim Allard, Myron K. March, Barbara Hanson, Larry Gobelman, and Professor Richard Aaron. Judge Atherton indicated that contact should be made with these individual representatives if there is input to be provided to the Committee.

The Education Department of the Administrative Office of the Courts sponsors an Annual Conference that covers all courts of record and there are also court level conferences for the Appellate Courts, General Trial Court, Juvenile Court, and also the Justice Court. In addition, there are two to three workshops that cover Justice Court issues, an Annual Clerks' Conference, a rural Court Clerks' Conference, two Justice Court Clerk Conferences and a Conference for Juvenile Court Probation Officers.

Judge Atherton indicated that the Education Committee has a strong commitment toward technology. Kim Allard, Web Publisher, is now a member of the Committee and has developed *Internet* and *Intranet* access for the courts. The Education Committee has a Sub-Committee on Technology with Judge David Mower as Chair. The Committee is now providing conference registration through E-mail, access to Lexis-Nexis, Utah Law and Disk, and is going to commit to providing constant access to data processing individuals at all conferences to answer questions. Judge Atherton expressed her desire to convert conference materials onto the computer.

Next, Judge Atherton is concerned about the increase in judges and staff for whom curriculum needs to be developed and a budget that has not been increased. A number of possibilities for an increased education budget were discussed.

Members of the Council thanked Judge Atherton for her presentation.

### **Legislative Update:**

Richard Schwermer and Mark Jones had previously distributed a list of bills that are currently being tracked.

HB 460 - Justice Court Amendments - This bill allows for three changes, i.e., an increase in judicial independence for municipal judges by inserting the good cause requirement; clarifying the creation of court issue; and repealing the sunset date on the current jurisdictional provisions.

HB 157 - Judicial Nominating Commission Amendments - This bill has been amended several times. One of the changes clarifies that the Chief Justice is not counted in determining the quorum. The other amendment provides that the quorum be five members instead of four.

SB 122 - New Judicial Positions - This is a bill which Senate President Beattie is sponsoring. This is the only bill that the judiciary is supporting which has a fiscal note attached. These new judicial positions have been requested for the Second and Third Judicial Districts.

HB 376 - Bail Reform - This bill transfers the responsibility for bail bond licensing away from the judiciary.

HB 183- Quick Court Amendments - The amendment would allow the word "electronic" in the bill.

HB 239 - Child Welfare Amendments - This bill has been amended numerous times and one of the item at issue is the definition of the word "abuse."

Richard Schwermer and Mark Jones also referenced the following: a) HB 11 - Juvenile Court Hearings and Records; b) HB 320 - Truancy Amendments; c) HB 437 - Salary Adjustments for State Employees; and d) SB 62 - District Court Review of Tax Commission Cases.

### **Other:**

Chief Justice Zimmerman expressed his appreciation for all those Judicial Council members who were able to attend the State of the Judiciary Address on Monday, January 19, 1998.

### **Adjourn:**

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