

Judicial Council Meeting Minutes

**JUDICIAL COUNCIL
MINUTES
Thursday
March 5, 1998**

Holiday Inn
Convention Center
850 South Bluff Street
St. George, Utah 84770

Chief Justice Michael D. Zimmerman, Presiding

Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
Richard H. Schwermer
D. Mark Jones
Holly M. Bullen
Tim Shea
Gordon Bissegger
Cindy Williamson

Guests:

Hon. Michael Lyon, Presiding Judge Second District
Brent Bowcutt, Court Executive, Sixth District
Paul Sheffield, Court Executive, Fourth District
Brian Maffly - Salt Lake City Tribune

Welcome:

Chief Justice Zimmerman welcomed guests, members and staff to the meeting. Chief Justice Zimmerman extended a special welcome to Brian Maffly of the Salt Lake Tribune.

Approval of Minutes:

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

The minutes of February 23, 1998, will be amended to read:

Page four, third full paragraph, will read as follows: 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.

Report from Chair:

Chief Justice Zimmerman indicated that he would join in the discussion about the Legislative Session later.

Management Committee Report:

Chief Justice Zimmerman will be stepping down as Chief Justice and Associate Chief Justice Howe will become Chief Justice as of April 1, 1998. Judge Greenwood will host an open house in Chief Justice Zimmerman's honor on Thursday, March 26, 1998, from

6:30 p.m. - 9:00 p.m. at her home.

Policy and Planning Committee Report:

The Policy and Planning Committee has not met since the last Council meeting.

Capital Facilities Report FY98:

Gordon Bissegger reported that the Legislature approved the court's request for land acquisitions in Provo and in Vernal. The funds for the Provo land purchase will be obtained from a bond and those for Vernal will be obtained from general and redirected funds. There will be additional requests for facility design and construction money during FY99.

The Standing Committee on Facilities and Planning submitted a list of proposed improvements to the Building Board Committee. The four areas affected by the request for improvements are St. George, Provo, Ogden, and Richfield.

On December 18, 1997, the Judicial Council's Standing Committee on Facilities Planning approved paving and roofing projects. The Committee's top priorities include: a) 5th District Court in St. George; b) 4th district Court Provo - Public Elevators; c) Ogden Juvenile Court; and d) 6th District - Richfield.

Legislative Update:

Dan Becker reported on discussions with Governor Leavitt's staff that focused on a \$2.3 million surplus of court fees. After this discussion, the Legislature appropriated \$2 million. Mr. Becker stressed that this is one time money which took approximately five years to generate and should not be appropriated on a regular basis.

The court's O&M budget has been increased by approximately 61%. This amount represents the cumulative effects of a ten-year building plan. The Legislature placed the court's leases and contracts as a budget line item.

The funding request for two judges, one in the Second District Juvenile Court and one in the Third District Court was approved at a cost of \$450,000. The Legal Institute was funded at \$33,900 and data processing and security each received \$25,000. The court's budget increased 11.46% which brings the total to approximately \$91,000,000.

Salaries for judges increased by 3.5% which is an annual salary for district and juvenile court judges of \$93,600; Supreme Court justices receive \$102,950; and judges from the Court of Appeals receive \$98,300. Staff received a salary increase of 3.5% money which translates into a 2.75% merit increase for those employees with a satisfactory performance evaluation rating.

Mr. Becker reported that several senior members of the Legislature are retiring as of next year. Next, Mr. Becker stated that it was his pleasure working with members of the court's legislative team; Gordon Bissegger, Fred Jayne, D. Mark Jones and Richard H. Schwermer.

Richard Schwermer said this was the most efficiently run Legislative session he had ever been involved in. Mark Jones indicated that legislators have a great deal of trust in the judiciary and were very fair in deliberations of the requests made by the judiciary. Mr. Jones stressed that budget focus in the future should be more diverse.

Mr. Schwermer and Mr. Jones reported on the following bills:

HB 11 - Juvenile Court Hearings and Records - increases access to juvenile court records - passed.

HB 35 - Minimum Fine for Possession of Tobacco Products by Underage Persons - passed.

HB 36- Juror Reimbursement - increases juror reimbursement fees from \$17.00 to \$18.50 for the first day and \$49.00 for each day thereafter - passed.

HB 81 - Motions to Vacate Ex Parte Protective Orders - provides a mechanism for an early hearing - passed.

HB 40 - Judicial Conduct Commission Amendments - provides that an alternate judge can attend when the sitting judge member is not available - passed.

HB 106 - Truancy Prevention Appropriation - passed.

HB 103 - Ethic Law Amendments - passed.

HB 136 - Grandparents Visitation Rights - provides that any grandparent has the right to petition the court for visitation - passed.

HB 157- Judicial Nominating Commission Amendments - alters the numbers of names submitted to the Governor - passed.

HB 239 - Child Welfare Amendments - passed.

HB 320 - Truancy Amendments -

HB 376 - Bail Reform - moves the regulation of bail bond surety out of the judiciary - passed.

HB 460 - Justice Court Amendments - passed.

SB 20 - Penalties for Speeding in Construction Zones - passed.

SB 59 - Judicial Nominating Procedure Amendments -

SB 70 - Judgment Lien on Real Property - passed.

SB 103 - Indigent Defense Fund Amendments - passed.

SB 109 - State Law Library Amendments - passed.

SB 122 - New Judicial Positions - creates new judicial positions in the Second and Third Districts - passed.

SB 187 - Utah Council on Victims -

SB 62 - District Court Review of Tax Commission Cases - passed.

Presentation to Chief Justice Zimmerman:

On behalf of the Judicial Council, Dan Becker and Judge Greenwood presented Chief Justice Zimmerman with tokens of the Council's appreciation for his years of service on the Council.

Mr. Becker expressed his appreciation to the Chief Justice for his vision and leadership throughout the years. A number of programs and projects within the Judiciary have been a direct result of Chief Justice Zimmerman's efforts. Chief Justice Zimmerman said that serving on the Judicial Council had been a privilege and the highlight of his service in the judiciary. The Chief Justice indicated that he put a lot of energy into the Judicial Council and that it has given back as much and broadened his understanding of the system.

Court Executive Update:

On behalf of the court executives, Brent Bowcutt provided an update to the Council. Initially, Mr. Bowcutt stated his appreciation and that of others for being able to present to the Judicial Council. Next, Mr. Bowcutt indicated Dan Becker has set a fine example of administration for district administrators to follow.

There is an overall view by the court executives that communication has improved between various groups and that it has benefited everyone. Decentralization promoted by Mr. Becker has also been well received within the districts. Mr. Bowcutt mentioned other positive issues, i.e., the customer service number and the aggressive schedule of CORIS.

Next, Mr. Bowcutt requested that Council members consider re-automation of the juvenile court computer system. He stated that there is a definite need to have the system evaluated and redesigned while preserving the strengths of the current juvenile court system.

The salary survey which is being conducted on an annual basis has proven to be a significant step in helping staff understand how important they are to the system. Mr. Bowcutt expressed his appreciation to Dan Becker, Richard Schwermer and Mark Jones for their efforts before the Legislature.

Mr. Bowcutt requested that the Judicial Council consider relaxing the current standards for secondary employment. Members of the Judicial Council thanked Mr. Bowcutt for his presentation.

Rule 4-608, Trials de Novo of Justice Court Proceedings in Criminal Cases:

Tim Shea stated that Rule 4-608, trials de novo of justice court proceedings in criminal cases establishes uniform procedures governing trials de novo of justice court adjudications. The rule shall apply to district and justice courts in trial de novo proceedings where the notice of appeal is filed with the justice court. The draft amendment was approved by the Policy and Planning Committee to go out for comment but the Board of Justice Court Judges opposed the nature of the changes to the rule.

Motion:

A motion was made by James Jenkins that the Judicial Council approve the rule change for publication. The motion was seconded by Judge Nielsen. The motion carried unanimously.

Other:

Tim Shea indicated that in preparing for the move to the Matheson Courthouse, employees of the Third Judicial District have identified two pallets of court reporter transcripts that are more than nine years old. Mr. Shea requested an emergency rule that would change the record retention schedule so that court reporter transcripts could be destroyed after nine years.

Motion:

A motion was made by Judge Burton that the request for an emergency rule be granted and that court reporter transcripts are allowed to be destroyed after a nine year period. The motion was seconded by Judge Greenwood. The motion failed for lack of a majority vote.

Opposition was raised to the motion because the matter was not on the Council agenda. A question was raised about whether or not the records should be retained until public disclosure is made.

Motion:

A motion was made by Judge Stirba to put the issue of the emergency rule change on the Judicial Council agenda for April. The motion was seconded and carried unanimously.

Board of District Court Judges Update:

Judge Michael Lyon, Chair of the Board of District Court Judges, was present to report to the Council on behalf of the Board.

The Board of District Court Judges is a 10-member Board that meets once a month to discuss matters affecting the District Court Bench. The make up consists of one judge from the First District, two judges from the Second and Third Districts, three judges from the Third District, two from the Fourth District and two collectively representing Districts Five through Eight. Presently the Board's membership includes: Judge Michael Lyon, Judge Gordon Low, Judge Glen Dawson, Judge Tyrone Medley, Judge Ronald Nehring, Judge Sandra Peuler, Judge Guy Burningham, Judge Steven Hansen, Judge Bryce Bryner, and Judge John Anderson. Judge Lyon indicated that he finds the Board meetings to be very warm and congenial. Next, Judge Lyon acknowledged the assistance of D. Mark Jones, District Court Administrator.

As a Board there have been efforts to be more proactive. Therefore, last Fall the Board met in a two-day workshop to discuss the purpose of the Board and to take a hard look at some objectives and define certain goals for the Board. An additional meeting will be held in June of 1998 to further discuss and define the Board's goals.

Next, Judge Lyon indicated that the weighted caseload study had been the subject of heated debate. There was a sense that the data was very divergent, given the differences between the various districts. However, the Board agreed that there is a place for the study and that it should be utilized to redefine the work of the districts. Judge Lyon suggested that the study continue to be fine tuned and that historical information also be used to determined needs within a district.

He suggested that the juvenile court be reviewed and that the possibility of interfacing the two systems, i.e., district and juvenile court be considered. Judge Lyon said the Board is anxious about the clerical weighted caseload study and that some districts feel a shortage of clerical help.

The Board of District Court Judges is dissatisfied with recent legislation affecting the Judicial Conduct Commission. As a Board, the members believe that the composition of the Commission is unfair. Judge Lyon requested that the Judicial Council be more assertive in requesting additional representation on the Commission.

The Board discussed the issue of family court. The Board is not prepared to make a recommendation at this time. However, the Board requested that it be allowed to work closely with the Council on this issue. Chief Justice Zimmerman explained that the Judicial Council will not even begin discussing this matter until August. Information will then be disseminated to all judges in the hopes of obtaining well-informed opinions from everyone. The Chief Justice stressed that all interested parties are going to have a chance to provide input.

Chief Justice Zimmerman indicated that the Council is pleased that the Board wants to be more proactive.

Justice Court Resolution:

Chief Justice Zimmerman explained that the Justice Court Resolution was before the Council in order for the Council to state a position:

**Utah Judicial Council Statement of Position
Jurisdiction in Courts of Record and not of Record**

The Utah Judicial Council has the responsibility to oversee the operation of all of the courts in the State of Utah; and

The major purpose for which the Legislature approved consolidation of the district and circuit courts into a single, general jurisdiction court of record was to more efficiently and effectively manage and process cases in the courts of record; and

The Legislature directed the creation of a Justice Court Study Committee; and

Among other issues, the Justice Court Study Committee is investigating appropriate jurisdiction for district courts (courts of record) and justice courts (courts not of record); and

Some parties involved in the debate have suggested the creation of new courts of record such as a city court or a justice court of record.

It is the position of the Utah Judicial Council that no new or further trial courts of record should be created. All cases not fitting within the unique jurisdiction of the juvenile court should find a home within either the jurisdiction of district courts (courts of record) or justice courts (courts not of record). The Utah Judicial Council adopts this statement of position so that as the Justice Court Study Committee wrestles with the appropriate jurisdiction for each level of court, all interested parties know its position on this issue.

Motion:

A motion was made by James Jenkins that the Judicial Council adopt the Justice Court Resolution as presented. The motion was seconded by Judge Sandberg and carried unanimously.

Murray City Resolution:

Murray City requested that its notice of intention to create a Justice Court be submitted to the Judicial Council for approval. Representatives requested that the City be allowed to commence operation of the Justice Court on December 31, 1998.

Motion:

A motion was made by Judge Stirba that the Council authorize Dan Becker to draft a letter to Shannon H. Smith, Executive Director of Murray City Corporation, recognizing the City's right to proceed. The motion was seconded by Judge Schofield and carried unanimously.

Executive Session:

A motion was made to move into executive session. The motion was seconded and carried unanimously.

Adjourn:

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