

**JUDICIAL COUNCIL**  
**MINUTES**

December 13, 1996

Utah Law and Justice Center  
645 South 200 East, Suite 311  
Salt Lake City, Utah

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*Chief Justice Michael D. Zimmerman, Presiding*

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**Members Present:**

Chief Justice Michael D. Zimmerman  
Hon. Pamela T. Greenwood  
Hon. Joseph Jackson  
Hon. Anne M. Stirba  
Hon. Robert T. Braithwaite  
Hon. Michael K. Burton  
Hon. Anthony Schofield  
Hon. Rodney S. Page  
Hon. Stephen A. Van Dyke  
Hon. Jerald L. Jensen  
James Jenkins, Esq.  
Hon. Kent Nielsen  
Hon. John L. Sandberg  
Hon. Leonard H. Russon

**Staff Present:**

Daniel J. Becker  
Myron K. March  
Richard H. Schwermer  
Timothy Shea  
Holly M. Bullen  
Jan Thompson  
Cheryll May  
Debbie Christiansen  
D. Mark Jones  
Ronald W. Gibson  
Cindy Williamson

**Guests:**

Justice Christine Durham  
Lisa Watts-Baskin, Esq.  
Dale Kimball, Esq.  
Edward McConkie  
Hon. Robin Reese  
Hon. Judith Atherton  
Hon. David Mower  
Hon. Leslie Lewis  
Jeff Hunt  
Paul Murphy  
Kerry Birmingham  
Chip Parkinson

**Welcome/Approval of Minutes:**

Chief Justice Zimmerman welcomed guests, members and staff to the meeting.

The following changes were made to the minutes of November 25, 1996:

Page 6, paragraph four, will read as follows: A motion was made by Judge Burton to accept the proposed seven point plan of the Justice Court Board, direct staff to proceed with the appropriate legislation, roll jurisdiction back to the status prior to July, 1996, implement no significant changes in district court case load, and that the legislation intent language direct the judiciary to conduct a study. Furthermore, the legislation should include the four goals that are contained in the Justice Court Board proposal. The motion was seconded by Judge Nielsen. The motion carried unanimously with the caveat that it is referred to the Liaison Committee for approval of actual drafting.

Page 9, paragraph three, last sentence, will read as follows: The motion carried with one opposing vote and one abstaining vote.

**Motion:**

A motion was made by Judge Page to approve the minutes of November 25, 1996, as amended. The motion was seconded by Judge Greenwood. The motion carried unanimously.

**Report from Chair:**

On December 17, 1996, Chief Justice Zimmerman and Dan Becker are meeting with Senate President Lane Beattie, Bob Linnell, and Tom Hardy to explain the judiciary's budget process.

Judge Stirba addressed the long term effects of budget priorities and suggested that a task force be formed to address judicial caseloads statewide. Chief Justice Zimmerman said this proposal would be proper for consideration by the Policy and Planning Committee.

**Motion:**

A motion was made by Judge Jackson to authorize Chief Justice Zimmerman and Dan Becker to negotiate as necessary to address the needs of the judiciary as a whole. The motion was seconded by Mr. Jenkins. The motion carried unanimously.

**Motion:**

A motion was made by Judge Jackson that the Policy and Planning Committee deliberate about the critical needs of the district courts during next year's planning session. The motion was seconded by Judge Stirba. The motion carried with one opposing vote.

Dan Becker explained that the recent release of the Governor's budget is only the beginning. The Governor's outlook on the budget is more optimistic than earlier this year. It would be premature to address next year's budget right now.

**Judicial Council Sub-Committee Reports:**

**Management Committee Report:**

Chief Justice Zimmerman, Dan Becker and Myron March are going to meet with individuals from Salt Lake City to discuss the moratorium on the creation of additional justice courts.

**Policy and Planning Committee Report:**

Judge Burton indicated the most recent Policy and Planning Committee minutes are reflective of the last meeting.

However, Judge Burton requested direction from the Judicial Council on three matters. First, should the state of court commissioners be studied?

**Motion:**

A motion was made by Judge Jensen to refer the issue of the Commissioner Conduct Commission categorization to the Policy and Planning Committee for further study regarding whether or not to consider commissioners as employees or quasi-judicial members. The motion was seconded by Judge Greenwood and carried unanimously.

Second, Judge Burton questioned whether or not there should be five judicial nominees submitted to the Governor from the Fourth and Second Judicial Districts, since a recent rule change allowed the number to increase from three to five nominees in the Third District. Chief Justice Zimmerman indicated that 83% of the Utah State Bar practices in Salt Lake County and that practice percentage justifies the increased number of nominees in Salt Lake County only.

**Motion:**

A motion was made by Judge Van Dyke to refer this matter to the Policy and Planning

Committee for consideration of increasing the nominees to be sent to the Governor from three to five in both the Second and Fourth Districts. The motion was seconded by Judge Burton. The motion failed.

A question was raised regarding the practice of placing proposed rules and rule changes on the consent calendar of the Council. By doing so, individuals are of the opinion that the rules have limited exposure and that there is no opportunity for debate.

**Motion:**

A motion was made by James C. Jenkins to continue placing proposed rules and rules changes on the consent calendar with the caveat that any Council member may pull a rule from the consent calendar to discuss it during the Council meeting without telephoning staff at the Administrative Office of the Courts. The motion included a provision that the Policy and Planning Committee of the Council may place a rule upon the regular Council agenda for discussion if the committee deems it necessary. The motion was seconded by Judge Greenwood. The motion carried with nine in favor and four opposing votes.

**Liaison Committee Report:**

The Liaison Committee has not met recently. However, there are approximately 320 bills to consider for the Legislative Session.

**Judicial Performance Update:**

Dale Kimball, Esq., the chair of the Judicial Performance Evaluation Committee, presented recommended rule changes to the Judicial Council for consideration. The committee recommends that the Judicial Council consider proposed legislation which would report the actual score for each survey question rather than reporting scores in 5% increments. A change of this nature would affect Utah Code Section 20A-7-702.

**Motion:**

A motion was made by Judge Page to place the issue of survey scores and reporting increments on all court level conference agendas for full discussion by the judiciary and that Mr. Dale Kimball or his designee be present during those discussions. Additionally, the matter should be referred to all board levels for discussion and consideration. The motion was seconded by Judge Jackson and carried unanimously.

**State Court Administrator's Report:**

Dan Becker reported on the recently released Governor's budget for FY98. The total budget for the State of Utah has grown by approximately .8%. The court system has grown by

11.5%. Mr. Becker reviewed the general fund for FY98 with specificity. The general fund totals \$77,033,700. This amounts to an increase in the total base of 2.35%. A large portion of the increase is the funding of the Juvenile Justice Task Force recommendations

The Anti-Violence Substance Abuse Council (USA AV) will make a proposal to the Legislature to increase cigarette taxes and develop intent language for proposed allocation of the new money. USA AV has approved targeting "drug courts" to receive approximately \$678,000 if the new tax is approved.

Mr. Becker requested that an addendum be made to the Council's consent calendar today. There are three senior judges who need to be reappointed: Judge Raymond Uno, Judge Regnal Garff and Judge Kenneth Rigtrup. The Council approved the addendum to the consent calendar.

**Follow-up to November 15th Workshop:**

Mr. Becker copied the Council with a copy of workshop proposals and suggestions for follow through. The proposals include the following: a) provide for more broad-based participation on committees; b) reinforce the importance of the role of the presiding judge and the importance of local administration; c) provide all new employees with an orientation on the organization of our court system; d) provide outlets for suggestions and constructive criticism; e) improve awareness of items being addressed by the Council; and improve understanding and appreciation of roles between boards and the Council on an ongoing basis.

The suggestions aimed at moving forward on many of the proposals include: a) preparation of a report on current committee assignments; b) a listing of current judges who have expressed an interest in serving on a committee; c) a letter to all judges who have not expressed an interest in serving on a committee and encouragement of their participation; d) court level administrators meeting personally with new presiding judges; e) a workshop for all presiding judges; f) incorporate into new judge and employee training a specific curriculum; g) invitations to new judges to attend a Judicial Council meeting; h) staff visits by court administrators; i) ensure that local staff meetings are being held on a regular basis; j) E-mail suggestion box; k) begin sending Council agenda and minute to all judges and court executives by E-mail; l) and once each year, following the appointment of new council members, set aside time for an orientation of the new members.

**Motion:**

A motion was made by Judge Jackson to implement the recommendations proposed by Mr. Becker and that implementation of the recommendations be monitored on a quarterly basis by the Council. The motion was seconded by Judge Van Dyke and carried unanimously.

### **Law Library Committee Report:**

The Law Library Committee is an ad-hoc committee of the Judicial Council chaired by Justice Christine M. Durham. Justice Durham presented a Law Libraries Inventory and recommendations to the Council for the disposition of the law library holdings. The recommendations include a total of eleven recommendations of which Justice Durham and the committee were of the opinion that numbers nine, ten and eleven were the most significant.

9. Postpone further consideration of the final disposition of excess sets and duplicative sets of books as provided in recommendation seven until the move into the Scott M. Matheson courthouse is completed and more experience of need and assessment of available space is made.

10. Authorize continuation of this committee for the purpose of completion of the final placement and disposition of the courts' library holdings in the Scott M. Matheson courthouse.

11. Create a broad-based Law Library User Group for the purposes of:
- a. Providing continuing oversight of the courts law libraries.
  - b) Develop proposed annual budget requests.
  - c) Recommend policies regarding check out procedures of books, acquisitions of new books, disposition of unneeded books, personnel, library hours, and long term planning.

The bids for the electronic law library have been disseminated, received and Utah Law and Disk has been chosen as the on-line CD service which will be used in the future. Utah will be the first state in the United States to have all three branches of government involved in a consolidated law library effort. The electronic law library will be promoted as separate legislation and will have a fiscal note of approximately \$90,000. If passed, the money will be given to the Board of Control, to be dispersed to the separate entities.

Justice Durham requested that the Judicial Council approve the recommendations of the Law Library Committee.

### **Motion:**

A motion was made by Judge Burton to approve the recommendations of the Law Library Committee. The motion was seconded by Judge Sandberg. The motion carried unanimously.

### **Approval of the Juvenile Sentencing Matrix:**

Edward McConkie, director of the Utah Sentencing Commission, was present and distributed the most recent copy of the Juvenile Sentencing Matrix. The matrix won the unanimous approval of the Juvenile Court Board this 13th day of December 1996. Mr. McConkie requested that the Council also approve the matrix.

**Motion:**

A motion was made by Judge Stirba to approve the Juvenile Sentencing Matrix. The motion was seconded and carried unanimously.

**Changes in the Uniform Fine & Bail Schedule:**

Judge Judith S.H. Atherton requested the deletion of the mandatory court appearance for minor traffic offenses. Judge Atherton indicated that the judge has minimal discretionary powers and is bound by the Fine and Bail Schedule. The appearance of defendants during these proceedings inundates court calendars.

After discussion it was determined that a Judicial Council rule change may be necessary where there is reference in the rule to "mandatory appearance."

**Motion:**

A motion was made by James Jenkins to refer the issue of deletion of the requirement of mandatory court appearances in some cases to the Policy and Planning Committee. The motion was seconded by Judge Sandberg and carried unanimously.

**Associate Presiding Judge:**

Judge Leslie A. Lewis, Third Judicial District Presiding Judge, requested the Council reconsider legislation which would provide that an associate presiding judge receive an annual stipend of \$1,000.00 in districts with 10 or more judges. Judge Lewis indicated that there are 28 judges in the Third Judicial District and that it is virtually impossible for a presiding judge to handle a full case load and also deal administratively with issues without the assistance of an associate presiding judge.

Next, the judge indicated the issue is that of fairness and compensation which there is a historical entitlement to.

In addition to the statements made by Judge Lewis, Judge Robin Reese, Associate Presiding Judge in the Third District, stated that the Third District does require additional assistance. The responsibilities within the district need to be shared, that it would be unbearable for one judge to handle.

**Motion:**

A motion was made by Judge Burton to suspend implementation of the Frederick Rule. The motion was seconded by Judge Stirba. The motion failed with five in favor and six opposed.

Judge Lewis and Judge Reese were excused from the table while the Council continued to discuss the merits of the request.

**Motion:**

A motion was made by Judge Van Dyke to support the request of Judges Lewis and Reese and that appropriate legislation be drafted to allow for the \$1,000 stipend for some associate presiding judges. The motion was seconded by Judge Stirba and carried with two opposing votes.

Chief Justice Zimmerman commented that \$1,000 did not adequately compensate presiding judges or the Chief Justice for their work and that it might be better to do away with it altogether. Further, that many members of the judiciary provide public service with compensation whatsoever. Nevertheless, he favored this Legislation because it merely continues limited compensation for those who were circuit court presiding judge prior to consolidation.

Justice Russon specifically stated that his vote in favor of the motion was based on statements by Chief Justice Zimmerman. Judges Greenwood and Sandberg and other members of the Judicial Council agreed and voted based on the merits of the request.

Judge Nielsen and Judge Jensen voted in opposition to the motion. Their opposing votes were based upon the issue of compensation for some administrative duties but not all.

**Report of the Ad Hoc Task Force on Video Recording in the Courtroom/Final Report:**

Justice Christine Durham, Judge David Mower, Timothy Shea and Jeff Hunt presented the final report of the Ad Hoc Task Force on Video Recording to the Council for their approval.

Justice Durham indicated that Mr. Jeff Hunt represents various media entities and the Society of Professional Journalists. She said that Mr. Hunt has been very helpful on the committee and thanked him for his efforts.

Mr. Hunt specifically requested that the Council consider the issue of a proposed rule which would prohibit the copying of tapes in the video overflow room in the Scott M. Matheson courthouse. Mr. Hunt went on to say that allowing the tapes to be copied by the media would reduce time spent by court personnel and would also reduce distractions in the courtroom itself.

Judge Mower and Tim Shea focused their discussion on specific language contained in the proposed rule change. Recently judges have voiced concern regarding judicial discretion on what will be copied by the media.

Paul Murphy and Kerry Birmingham addressed the Council and voiced their frustrations and concerns with what they view to be a limitation of access to the courts by the judiciary.



A suggestion was made that the rule be changed to permit a pilot program which would enhance access to the courts.

**Motion:**

A motion was made by James Jenkins that the Council schedule additional time in the future to discuss this issue in more detail and that consideration be given to the idea of a pilot program by means of proposed legislation. The motion was seconded by Judge Page. The motion carried unanimously.

**“Frederick Rule”:**

Tim Shea indicated that a question has been raised regarding the appropriateness of the “Frederick Rule” which prohibits Council voting while presenters are present at the Council table. After discussion, there was a suggestion that all procedures be made clear not only to the Council but to presenters as well, to clarify that presenters may remain in the room during voting, but must merely leave the Council table after their presentation, prior to voting.

**Motion:**

A motion was made by Judge Sandberg that meeting procedures are made clear to everyone by means of clarifying documentation. The motion was seconded by Judge Stirba and carried unanimously.

**Other:**

**Ronald W. Gibson’s Retirement:**

Chief Justice Zimmerman presented Ronald W. Gibson with a token of the Judicial Council’s appreciation for more than thirty devoted years of service to the judiciary. A formal open house to honor Mr. Gibson will be held on January 8, 1996, from 4:30 p.m. - 6:30 p.m. at the Supreme Court. Mr. Gibson indicated that it was an honor to be able to serve the judiciary and he appreciated the recognition of his colleagues.

**Adjourn:**

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