

**JUDICIAL COUNCIL
MINUTES**

January 27, 1997

Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, Utah 84102

Chief Justice Michael D. Zimmerman, Presiding

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 Page
Hon. Stephen Van Dyke
Hon. Jerald Jensen
James Jenkins, Esq.
Hon. Kent Nielsen
Hon. Leonard H. Russon

Staff Present:

Daniel J. Becker
Myron K. March
Richard H. Schwermer
Timothy Shea
Holly M. Bullen
Jan Thompson
D. Mark Jones
Eric Leeson
Marilyn Branch
Peggy Gentles
Cindy Williamson

Members Excused:

Hon. John L. Sandberg

Guests Present:

James D. Thomas, Vice President, National Center for State Courts
Randy Hill, Legislative Fiscal Analyst's Office
Hon. Ronald E. Nehring
Justice Christine Durham
Hon. Brent West
Sheila McCann, Salt Lake City Tribune
Paul Murphy, Channel 4 TV
Nichea Degering, Channel 4 TV

Review of Meeting Norms:

Chief Justice Zimmerman reviewed meeting norms which include: a) questions and discussion by Council should follow the speakers complete presentation; speakers should be notified to divide their time, 50% remarks and 50% discussion; b) outside speakers should be introduced by Chair, with a brief background to put the item in context, staff to work with outside speakers in preparing orientation material for Chair; c) Council members should make a practice of providing advance notification of absences or late arrivals; d) Administrative Office staff should place phone calls to Council members when they are absent without notification after the meeting begins; and e) the Chair's position on an agenda item should follow, rather than precede Council discussion.

Welcome/Approval of Minutes:

The following changes were made to the minutes of December 13, 1996:

Page five, second full paragraph will read as follows: 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 or appointed initially: Judge Raymond Uno, Judge Regnal Garff and Judge Kenneth Rigtrup. The Council approved the addendum to the consent calendar.

Page seven, second paragraph will read as follows: Judge Judith S. H. Atherton requested the deletion of the mandatory court appearance for certain traffic offenses.

Page six, paragraph five will read as follows: The Chief Justice reported on actions of the Board of Control, which consists of the Utah Attorney General, Chief Justice Zimmerman and Legislative Counsel. Those actions include that 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.

Page eight, third paragraph will read as follows: 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 any additional compensation over base salaries for all judges, rather than get into issues over what each person deserves for their extra administrative work. Further, that many members of the judiciary provide public service without any compensation whatsoever. Nevertheless, he favored this Legislation because it merely continues limited additional compensation for those who were circuit court presiding judges prior to consolidation.

Motion:

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

Introduction and Comments from James Thomas:

Dan Becker introduced James Thomas, Vice President of the National Center for State Courts. Mr. Thomas is employed at the National Center's Denver office and oversees consulting services and technology assistance areas, as well as, various other activities. He has been the National Center's vice-president since 1992. Prior to his appointment as vice-president he was State Court Administrator in Colorado for fifteen years.

Mr. Thomas expressed his appreciation to Chief Justice Zimmerman and Dan Becker for an invitation to the Judicial Council meeting. He also thanked Utah's Judiciary for supporting the National Center.

The National Center for State Courts was implemented twenty-six years ago. Roger Warren, the current President of the National Center, was hired in March of 1996. The center is involved in a strategic planning effort which places emphasis on careful alignment between the center and its constituents. One of the ways the National Center hopes to provide that alignment is through the creation of an advisory counsel within the four major operating divisions. The divisions include: an Applied Research Division in Williamsburg, Virginia; an Education and Information Division; an international division in Williamsburg; and there is also the Court Services Division in Denver.

The National Center is interested in having judges nation wide serve on various committees and Mr. Thomas encouraged a response from interested individuals.

Report from Chair:

Chief Justice Zimmerman presented the "State of the Judiciary Report" to the Legislature on January 20, 1997. Copies of the Chief Justice's address have been provided to judicial officials and other interested parties.

Management Committee Report:

The Management Committee concluded that judges serving in non-judicial capacities is an issue which should be addressed by ecclesiastical leaders.

The Statewide Association of Prosecutors is sponsoring proposed legislation which will address concealed weapons and those qualifications for carrying concealed weapons. If broadened, the legislation will include a provision for judges. It was the conclusion of the

committee that the judiciary should be included as proposed.

The Board of Juvenile Court Judges and Commissioner Richard Birrell have requested that a senior commissioner position be established. The Management Committee discussed issues relating to the authority to appoint, status of employment of commissioners and restrictions by the Utah State Retirement Board. The committee declined to approve the request to establish a senior commissioner position.

In Utah County, the justice courts are attempting to obtain grant funding for drug courts through the county justice system in that area. The Eighth Judicial District is also attempting to obtain grant funding through the local county attorney's office. This is a planning grant which will assess whether a drug court should be set up. Due to the fact that the drug court program may impact resources, the Management Committee requested that the Judicial Council be kept informed. Dan Becker has written a letter to Judge Andersen asking that he attend the next Judicial Council meeting to brief the Council on this grant.

At a recent meeting between officials from Murray City and representatives from the courts, Murray City requested that the courts provide a letter of intent which would provide an assurance that the courts will continue the level of services presently provided through the district court. The request was discussed by the Third District Court bench and supported. Dan Becker will respond to the city on behalf of the Council.

Policy and Planning Committee Report:

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

Court Administrator's Report:

The Legislature's Appropriation Subcommittee which addresses the court's budget is having an organizational meeting this afternoon. In keeping with the present schedule the court's budget will be addressed on February 7, 1997.

The only budget action thus far has been discussion by the Republican Caucus which has recently proposed a \$50 million reduction in the base budget which translates into approximately \$1.1 million of affected money for the courts. This information is only tentative and the legislative analyst's recommendations to the subcommittee will not be available until February 7, 1997.

The caucus priorities have also set out certain priorities which they intend to fund. Included on that list is full funding for the Juvenile Justice Task Force which amounts to \$22 million.

The 1997-1998 Appropriation Sub-Committee for the courts has two new chairs, Blake Chard, House Representative, and Michael Waddoups from the Senate. The subcommittee also has other members who are new to the committee.

The only item within the courts which has had consideration from a budgetary standpoint to date is the request for Third District Court judges. That issue was taken up in the Senate Judiciary last Friday and received unanimous favorable support.

Previously, the Governor's proposed budget had set aside approximately \$230,000 for a proposed judge/commissioner. The Governor did not take a position whether he was supporting a judge or a commissioner. As this matter continued to develop, there was concern that this issue that might detract from the Council's budgetary priorities and possibly send mixed messages to the Legislature. There has been a good deal of conversation centered on this issue, and the Council's position prioritizing the district court judge has been consistently maintained.

After considerations with leadership and the sponsor of the District Court Judge(s) Legislation, a position has been taken that the Council's priority of the Third District Judge(s) be the only judicial position advanced for funding out of appropriated funds. That intent language be sought authorizing the establishment of a commissioner position in the Second District and that the position be funded out of existing funds, rather than new money, provided the judgeship for the Third District is funded.

Mr. Becker announced Marilyn Branch's presence today at the Council meeting as Appellant Court Administrator. Geoffrey Butler, Clerk of the Supreme Court, will retire on March 31, 1997. There is currently a restructuring effort within the administrative support structure of Supreme Court and Court of Appeals. Part of the process will involve eliminating the position of the Clerk of the Supreme Court and Court of Appeals. Those positions will then be filled with a lower level Clerk of Court position. This was proposed to the Legislature some years ago, as an efficiency which would be provided with the co-location of the appellate courts in the Scott M. Matheson Courthouse.

The "Annual Report" is in a slightly different format than in previous years in terms of how information is presented. The Report is in two sections, the traditional presentation and a separate "Statistical Supplement" which has been provided to individuals on a limited basis.

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

Hon. Ronald E. Nehring was present to introduce the recommendations of the Ad Hoc Task Force on Video Recording in the Courtroom. Judge Nehring commended Tim Shea for the artful manner in which he has reconciled rules to make accommodations for contemplated changes.

Since the previous task force report was presented, the task force has learned of the

contemplated presence of the overflow room in the Scott M. Matheson Courthouse. The task force was instructed to create ground rules for a proposed pilot project which would accommodate possible recordings of courtroom proceedings in the overflow room. Under the proposed rule, the authority to make copies of proceedings that are transmitted to the overflow room is vested in both the trial judge and the presiding judge.

Chief Justice Zimmerman questioned whether or not the Judicial Council should develop a uniform policy for the pilot program rather than have different policies for each program. This is not a single issue which is limited to the Scott M. Matheson Courthouse but rather a statewide issue. Standardized policies would hopefully eliminate unnecessary, additional pressure on trial court judges.

For clarification, what is being tested is the authority to tape from the equipment in the overflow room, not the signal to the overflow room. Also, as proposed, this rule would completely eliminate consent by any parties to be video taped.

The proposed rule has been presented to various boards. However, the rule has not been presented in the amended form. The Board of District Court judges has not addressed the pilot program issue. Judge Nehring concluded that the District Court Board is comfortable that video recordings are public record and should be disseminated.

Mr. Shea requested the Judicial Council consider making these rule changes. However, if approved, these rules could not be effective until consideration of the Code of Judicial Conduct by the Supreme Court.

Motion:

A motion was made by Judge Stirba that the Judicial Council approve the Report of the Ad Hoc Task Force on Video Recording in the Courtroom, as presented here today. Specifically, the proposed new rules based upon discussion at the last Council meeting as they pertain to provisions which enable the courts to conduct a pilot program on electronic feed and that the Council do so under the emergency rule making procedures available to the Council based upon concerns expressed by Tim Shea and contained in the report. That the effective date for implementation of these new rules is contingent on the Supreme Court's amendment to the Code of Judicial Conduct and that the pilot program is subject to Council approval. The motion was seconded by Judge Van Dyke. The motion carried unanimously.

Castledale - Primary Site:

The Administrative Office of the Courts received a letter from the Emery County Commission Chairman, advising that the commission wanted to transfer the operation of their district clerk's office, which has heretofore been provided by contractual arrangement to Emery County, and allow the office to become a primary site under the direction of the Administrative

Office of the Courts. The implication of this request is that employees will become state employees rather than county employees and the operation comes under direct supervision by the state court system. No additional funding which will be required for this transfer.

Motion:

A motion was made by Judge Van Dyke to amend the Code of Judicial Administration, nunc pro tunc, to delete Castledale as a primary site. The motion was seconded by Judge Jackson and carried unanimously.

Legislation:

Judge Page, Richard Schwermer and Mark Jones provided a Legislative Update for members of the Council. There has been a total of thirty bills which have been addressed by the Liaison Committee within the last two weeks.

- SB 74 Indigent Defense Provision no position
- HB 162 Establishes Electronic Meetings no position
- HB 167 Amendments to Child Support no position
- Provisions to the Law
- HB 178 Foster Care Review no position
- HB 10 Municipal Authorization opposed
- for Justice Court
- HB 107 Counsel for Indigent opposed
- Defendants
- Concealed Firearms Amendment no position
- HB 48 Amendments to Capital no position
- Sentencing
- SB 33 Visitation Guidelines for no position
- Children under Five Years of Age
- SB 42 Statewide Curfew for Juveniles no position
- SB 120 Divorce Requirements no position
- SB 121 Recording of Judgments on opposed
- Real Property
- SB 129 Judicial Misconduct no position
- HB 65 Amendment of DUI Laws no position
- HB 255 Sanctions for Non-Conformity no position
- with Visitation

Richard Schwermer addressed HB 43, Justice Court Judge for Sandy City. This bill basically allows a municipality with a justice court judge to add a second justice court judge if the case load supports that addition. Judge Jensen expressed specific concerns about HB 43.

Richard Schwermer requested that the Council take a position on the proposed bill "Definition of Law Enforcement Official." This proposed bill creates an exemption from concealed weapons laws for law enforcement officers and judges. This bill is to be carefully scrutinized to ascertain whether or not judges will still have control over who will be allowed weapons in the courtroom.

Judge Greenwood cited an existing rule on point and suggested that this proposed bill and the rule be coordinated .

Motion:

A motion was made by Judge Burton that the Judicial Council support the bill with the provisions that there are no costs associated with the bill. The motion was seconded by Judge Jensen and carried unanimously.

House Bill 10, Municipal Justice Court Judge arises out of the Judicial Council's refusal to certify Taylorsville City to create their own justice court. The city has now decided to carry their own legislation but at a recent meeting the issue was tabled because of a drafting issue.

Motion:

A motion was made by Judge Burton that the Council oppose HB10. The motion was seconded by Jim Jenkins and carried unanimously.

The Liaison Committee referred another bill to the Judicial Council for consideration which deals with providing an alternative to the court for enforcement of visitation orders. The bill would require the Administrative Office of the Courts to connect petitioners with mediators using the existing provider roster. Mr. Schwermer indicated that both he and Diane Hamilton, Alternative Dispute Resolution Director, have been working with the sponsor to make the program less burdensome to the Judiciary. Mr. Schwermer also discussed several proposals to reinstate statewide the pilot program for visitation enforcement tried in the First District several years ago. Judge Low did not think the pilot was successful, and the pilot was not renewed last year.

Motion:

A motion was made by Judge Burton to oppose the proposed bill which provides an alternative to the court for enforcement of visitation orders. The motion was seconded. The motion failed.

Motion:

A motion was made by Judge Stirba to support as the bill as a pilot program within the Third District. The motion was seconded by Judge Greenwood. The motion carried with six in favor and four opposed.

Motion:

A motion was made by Judge Schofield that the Council oppose any implementation of the First District pilot statewide. The motion was seconded by Judge Braithwaite and carried unanimously.

Interim Report from the Ad Hoc Committee on Collections and Warrants:

Judge Brent West, Chair of the Ad Hoc Committee on Collections and Warrants, was present to introduce recommendations from the committee to the Council. The committee was created to study issues surrounding the collection of court-ordered debts and the issuance and execution of warrants. The committee was also instructed to consider the report from the Office of State Debt Collection.

The committee considered the following issues: a) What should be considered a "receivable" from the Court? ; b) Should courts be involved in debt collection, and if so, to what extent? ; and c) What role should the courts' current collections programs play? After consideration of the foregoing questions, the committee's recommendations include: a) Legislation should be proposed to clarify the court's role in collections; b) A debt should be considered past due 60 days past the demand date; c) When a court-ordered debt is 60 days past due, it should be sent to the judge for review; d) When a debt is turned over to the Office of State Debt Collection, it should be entered as a civil judgment; and e) the court's current policy regarding the priority of payments should be retained

After presentation of the recommendations, Judge West requested direction from the Council as to how the committee should proceed. Chief Justice Zimmerman interjected that the first question is authorizing whether the committee can work with the Office of State Debt Collection on the courts relinquishing collection efforts 60 days after the due date. The second question deals with rules which the Judicial Council would have to pass when addressing collection issues. The committee should also address whether the courts should play a role in the area of collections, if so, to what extent?

Motion:

A motion was made by Judge Stirba to accept the interim report with the possibility that it may be referred to the Policy and Planning Committee for preparation of rules and statutory provisions. The motion was seconded by Judge Greenwood and carried unanimously.

Motion:

A motion was made by Judge Stirba to adjourn the meeting. The motion was seconded by Judge Greenwood and carried unanimously.