

JUDICIAL COUNCIL MINUTES

February 19, 1997

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

Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
Richard H. Schwermer
Timothy Shea
D. Mark Jones
Brent Johnson
Peggy Gentles
Cindy Williamson

Guests Present:

Sheila McCann, Salt Lake City Tribune
Hon. Dennis Fuchs
Hon. Gary Stott
Hon. Joseph Fratto

Welcome/Approval of Minutes:

The following changes were made to the minutes of January 27, 1997:

Page 2, paragraph 2, second sentence will read: There are two senior judges who need to be reappointed or appointed initially: Judge Raymond Uno, and Judge Regnal Garff.

Page 4, paragraph 3, last sentence will read: The Council supports the idea.

Page 5, paragraph 5 will read: Mr. Becker announced Marilyn Branch's presence today at

the Council meeting as Appellate 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 modifying the position of the Clerk of the Supreme Court and Court of Appeals. This is consistent with the co-location of the courts in the Scott M. Matheson Courthouse.

Pages 5 & 6, **Report of the Ad Hoc Task Force on Video Recording in the Courtroom:** will read as follows:

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 asked to create ground rules for a proposed pilot project which would accommodate possible recordings of courtroom proceedings in the overflow room by the media. This pilot project would go beyond what the task force's rule changes contemplate. 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 a pilot 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.

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

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

Page 7, second paragraph will read as follows:

Motion: A motion was made by Judge Van Dyke to amend the Code of Judicial Administration, to delete Castle Dale as a secondary site. The motion was seconded by Judge Jackson and carried unanimously.

Motion:

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

Policy and Planning Committee Report:

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

The Policy and Planning Committee was charged with developing a process to evaluate justice court issues. However, since that time, a recommendation has been made to form a task force of the Council to consider the same issues. Judge Burton requested guidance from the Council as to whether or not the Policy and Planning Committee should proceed, with a study of these issues or defer to the task force.

Motion:

A motion was made by Judge Burton to suspend any further study by the Policy and Planning Committee in the development of recommendations for the justice courts. The motion was seconded by Judge Jackson and carried unanimously.

Next, Judge Burton addressed the question of whether judges should be allowed more discretion with their \$400.00 yearly allotment of educational funds. Currently, the \$400.00 can be utilized in full for bar conferences or split with \$200.00 being used for publications and \$200.00 for bar conferences. The Policy and Planning Committee recommends maintenance of the status quo.

Motion:

A motion was made by Judge Burton to maintain the current policy for use of the \$400.00. The motion was seconded by Judge Van Dyke. The motion carried unanimously.

State Court Administrator's Report:

Legislation/Budget:

It was reported that the Appropriation subcommittee which considers budgets of the courts, public safety, corrections, and elected officials was given an amount of \$13 million less than the combined base budgets of those agencies. The subcommittee was instructed to concentrate on reduction of base budgets rather than expansion of building blocks.

This budget process eliminated any meaningful forum for discussion of Judicial Council

budget priorities. Therefore, Dan Becker, Mark Jones and Richard Schwermer have met individually with members of the court's subcommittee to discuss the Council's recommendations as well as recommendations by the Governor.

The Legislative Fiscal Analyst included \$1 million in the base budget for Operations & Maintenance (OM), \$2 million for probation officers and \$3 million for juvenile court state supervision program. The only other budget increase was to the Guardian Ad Litem Program of \$100,000 in ongoing and \$96,000 in dedicated credits.

The Legislative Fiscal Analyst recommended and the subcommittee approved reductions to the court's budget in ten separate areas. The analyst's two most significant recommended reductions are \$271,500 from Education and \$426,000 from Data Processing, both of these reductions were added to a list to be considered for restoration if additional funds are made available. The subcommittee approved intent language for non lapsing funds and approved intent language for a justice court study.

The executive appropriation subcommittee will meet again and consider supplemental requests. The court's only supplemental request is that of jury/ witness fees in the amount of \$658,000.

Revised revenue estimates suggest that an estimated \$25 million may be made available, \$11 million of which is one time money. The Appropriation subcommittee's top priority is to pay for jail reimbursements and jail contracting to counties. Another large budget item is restoration of money to the Youth Corrections Alternative Program.

Decreases in other agencies will affect the courts indirectly. The Utah Dept. of Correction's budget is expected to be reduced significantly which will result in the elimination of funding for their diagnostic center and the preparation of presentence investigation reports on Class B Misdemeanors.

In the court's capital facilities area, there is an allotted amount of \$40,000 for study of a new court site in Vernal and approval of intent language for the purchase of a parking lot in Cedar City.

Weighted Caseload:

Dan Becker has requested that judges in the Eighth Judicial District reconsider responses to the Weighted Caseload Study or allow statewide averages to apply to the Eighth District. Due to the unique nature of the Third Judicial District, their Weighted Caseload Study also needs to be readdressed with the possibility of expanding the survey in that district. The Administrative Office is to receive technical assistance from the National Center for State Courts in this area.

Annual Bar Meeting:

In July the Judicial Council will be meeting with members of the Utah State Bar in Sun Valley, Idaho. Recently, Dan Becker met with John Baldwin, Executive Director of the Utah State Bar, to discuss ways in which Council activities could be more fully integrated into activities of the bar. Suggestions include: a) publishing the Council agenda in the Bar's formal agenda; b) invitations to bar members to attend the Judicial Council meeting; and c) meeting time with section chairs of the Bar. Mr. Baldwin was receptive to these suggestions. Further suggestions for Judicial Council activities include following up on the Council planning session and meetings of the Council's subcommittees.

Project for 1997:

Mr. Becker reviewed with the Council a list of projects which have already been committed to for 1997, they include: the Racial and Ethnic Fairness Study, Jury Improvement Project, Justice Court Study, Implementation of the Juvenile Sentencing Matrix, Debt Collections Study, Judicial Performance Evaluation, Jury Survey, Weighted Caseload Study, Presiding Judges' Workshop and the move into the Scott M. Matheson Courthouse.

Personnel:

Dan Becker recently met with the Board of Juvenile Court Judges and informed them that he, Judge Lindsay and John McNamara have been discussing Mr. McNamara's retirement plans. Mr. McNamara is anticipating retirement within the next year. This retirement will coincide with considerable expansion in the Juvenile Court programs and this is a top-level management position which will have to be carefully considered upon Mr. McNamara's retirement. There will be a workshop to which presiding judges, clerks and other interested individuals will be invited to discuss what qualities should be sought when considering a new juvenile court administrator. Judge Lindsay as the chair, Judge Chamberlain as the chair-elect, and Dan Becker will serve as a screening committee applicants.

Report from the Chair:

Recently, Chief Justice Zimmerman appeared before the Senate Judiciary Committee to discuss a proposed bill which will revise the current Nominating Commission procedures. If the bill passes, it would provide that a larger number of nominees in all districts are sent to the Governor.

Introductions of Judge Fratto and Judge Stott:

Chief Justice Zimmerman welcomed and introduced Judges Fratto and Stott to members of the Judicial Council.

Judge Fratto is the newest judge in the Third Judicial District and Judge Stott is the newest judge in the Fourth Judicial District.

Chief Justice Zimmerman explained that the Judicial Council is the governing body of the Judiciary in Utah which consists of representatives from various court levels. The Council functions as an administrative body whose duties include budget considerations and development of judicial policy.

Racial and Ethnic Task Force Update:

Brent Johnson reported that the State Justice Institute (SJI) has agreed to commit a total of \$52,000 in matching funds to the Racial and Ethnic Task Force Study. Currently, the task force is in need of an additional \$4,500 to gain full funding from the institute. It was suggested that the task force make additional applications to the Michael's Foundation and the Utah State Bar Foundation.

Next, Mr. Johnson indicated that the Management Committee had previously approved the proposed membership composition of the task force with one exception. One of the positions will be replaced with a representative from a justice court. In addition to those individuals listed, there will be a representative from the Native American, Pacific Islander, Asian-American and Hispanic communities. There will also be a representative from the Division of Youth Corrections and from Brigham Young University, J. Reuben Clark College of Law .

Motion:

A motion was made by Judge Burton that the Judicial Council approve the general membership of the Racial and Ethnic Bias Task Force, that individual names from the newly added areas be brought before the Management Committee for approval. The motion was seconded by Judge Van Dyke and carried unanimously.

There was a discussion regarding the staff selection process and the employment of an executive director.

Motion:

A motion was made by Judge Burton that the Council authorize Brent Johnson, John T. Nielsen, Judge Tyrone Medley and Dan Becker to hire an executive director for the Racial and Ethnic Bias Task Force. The motion was seconded by Judge Stirba and carried unanimously.

Legislative Update:

Judge Page, Richard Schwermer and D. Mark Jones provided a Legislative Update for members of the Council. There have been thirty bills addressed by the Liaison Committee since the last meeting. Positions taken on bills include, in part, the following:

- HB91 - Co-habitant abuse bill amendment - opposed
- HB92 - Domestic Violence in Front of a Child - makes it a crime to commit domestic violence in front of a child - no position
- HB293 - Wrongful Lien Amendment - no position

- HB288 - Provides that by stipulation and approval of the court that a defendant charged with a crime may be sentenced to a lesser offense - opposed
- SB64 - Amends child support and gives a broader authority to social services -
- SB121- Requires reporting of Judgments on real property -
- SB197 - Judicial Nominating Commission Bill - opposed

Richard Schwermer addressed SB74, Indigent Defense Provisions, with specificity which promoted discussion among the members of the Council.

Motion:

A motion was made by Judge Stirba that the Council approve the following manner in which to address SB74, Indigent Defense Provision, continue to monitor the fiscal note which may or may not dispose of the bill, and attempt to delete misdemeanor provisions if the bill progresses. The motion was seconded and carried unanimously.

The following bills were also discussed:

- HB 10 - Municipal Authorization for Justice Court
- HB 42 - Juvenile Court Hearings and Records
- HB 43 - County and Municipality Judgeships
- HB 60 - Post Conviction Remedies - Death Penalty
- HB 65 - Driving Under the Influence Amendments
- HB 79- Child Custody and Visitation Amendments
- HB 229 - Domestic Relations Cases - Name Designation
- HB 323 - Court Amendments
- HB 324 - Justice Court Amendments
- HB 326 - Bail Bond Surety Licensing
- SB 89 - Juvenile Judge - Short Term Commitment of Youth
- SB 90 - Juvenile Court Powers
- SB 116 - Extension of Child Visitation Pilot Program
- SB 120 - Amendments to Divorce Requirements

- SB 121 - Recording Judgments of Real Property
- SB 129 - Privileged Information in Civil Actions
- SB 132 - Definition of Law Enforcement Official and Judge
- SB 152 Crime Victims' Rights Amendments
- SB 155 - Court Reporter Amendments
- SB 213 - Court Collections

Appreciation was extended to Judge Page, Richard Schwermer and D. Mark Jones for their extraordinary efforts during the Legislative Session.

Drug Court Update:

Judge Dennis Fuchs reported on the progress of the Third Judicial District Drug Court. The Court was established on June 15, 1996, and has handled 123 individual cases. There are three phases. An individual must pass through one phase successfully before beginning another. Currently, there are 43 persons in phase one, thirty-seven in phase two and nine in phase three. Out of the original one hundred and twenty-three individuals there are twenty-one outstanding bench warrants and thirteen others who have not yet entered their plea.

The Drug Court utilizes a very informal setting with representatives from the District Attorney's Office, Pretrial Services and the Salt Lake Legal Defender's Office present. Prior to every hearing the judge is provided with a current offender status which includes: an up to date urinalysis, record of class attendance, and program status. The program operates primarily on providing sanctions for rule violations, positive feedback for success and is centered on the fact that people are required to take responsibility for their own lives.

The first graduation from the program is anticipated in July or August, 1997. Judge Fuchs indicated that he has received positive feedback from various agencies.

An invitation was extended to members of the Council to visit Drug Court proceedings.

Judge Fuchs was thanked for his presentation to the Judicial Council.

Motion:

A motion was made by Judge Burton to adjourn the meeting. The motion was seconded by Judge Van Dyke. The motion carried unanimously.