

JUDICIAL COUNCIL MINUTES

April 28, 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. Robert Braithwaite
Hon. Rodney Page
James C. Jenkins, Esq.
Hon. John Sandberg
Hon. Kent Nielsen
Hon. Stephen A. Van Dyke
Hon. Anthony W. Schofield
Hon. Anne M. Stirba
Hon. Leonard H. Russon
Hon. Jerald Jensen

Members Excused:

Hon. Joseph Jackson

Staff Present:

Daniel J. Becker
Myron K. March
Jan Thompson
Richard H. Schwermer
Holly M. Bullen
D. Mark Jones
Timothy Shea
Brent Johnson
Barbara Hanson
Mike Phillips
Cindy Williamson

Guests:

Winslow Johnson
Legislative Fiscal Analyst Dept.
Hon. Kay A. Lindsay
Paul Sheffield
John Day

Welcome and Approval of Minutes:

Chief Justice Zimmerman welcomed members and staff to the meeting.

Motion:

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

Report from Chair:

Efforts by some legislators are still being undertaken to amend the Judicial Nominating Commission Rules. Ongoing discussions regarding this issue, with those legislators and the Governor will take place during the course of this year.

To assist with the ever increasing administrative duties borne by the Chief Justice as chair of the Council, Chief Justice Zimmerman has delegated his duties as chair of the Management Committee to Judge Pamela T. Greenwood. The Chief Justice will continue to serve on the committee.

Court Administrator's Report:

An Alternative Work Arrangement Committee has been named by Dan Becker. The committee has been charged with reviewing alternative work arrangements for employees, i.e., increased use of flex time, non-traditional work weeks, telecommuting and alternative work sites. Larry Gobelman, Third Judicial District Court Executive, has been named the chair of the committee. The committee has been asked to complete their work within six to eight weeks.

Judge Philip K. Palmer has announced his pending retirement which will be effective November 1, 1997.

The Bountiful Courthouse was officially opened on April 23, 1997. The facility has adequate room to accommodate additional growth.

On April 8, 1997, the Murray City Municipal Council passed, approved, and adopted a resolution declaring Murray City's intention to create a municipal justice court has been rescinded.

The Utah State Building Board, based upon an allocation from the Legislature, approves improvement and renovation projects for State Government. This year the courts received \$270,000 for several projects.

Recently, the Human Resources Department analyzed 37 job classifications which were not included in last year's salary survey. The survey results are as follows: a) 18 job classifications require an adjustment to a higher range; b) 16 job classifications are in competitive salary ranges; c) three job classifications are higher than current market ranges. Of 94 employees affected by the survey 69 employees require an adjustment to a higher range and

25 employees are in competitive salary ranges. Out of employees requiring a range adjustment there are 68 that require a 2.75% salary adjustment and one employee that requires a 5.5% salary adjustment.

The implementation costs for FY98 are estimated at \$41,184 for salaries; and \$9,061 for salary-based benefits for a total of \$50,245.

The objective of the salary survey is to bring pay ranges within one pay grade (5.5%) of current market ranges. Implementation includes the commitment that jobs will be surveyed every three years.

Judicial Council Sub-Committee Reports:

Management Committee Report:

The Management Committee approved the following judges to serve as tax court judges: Hon. Pat B. Brian, Hon. Glen R. Dawson, Hon. Lynn W. Davis, Hon. Guy R. Burningham, Hon. Jon Memmott and Hon. L.A. Dever.

The Salt Lake County Bar is sponsoring an art contest. Once the winning artwork is announced, the bar is requesting that the art be displayed in the Scott M. Matheson Courthouse. Management Committee members voiced their support of the program but believe that the courts should not become the owner of such artwork.

Policy and Planning Committee Report:

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

Ethics Advisory Committee Update:

Brent Johnson provided a brief report to the Council on behalf of Hon. Gregory Orme, Ethics Advisory Committee Chair. The Ethics Advisory Committee issued three informal opinions in 1996 which addressed the following questions: a) Should a judge of a justice court designated as full-time in the Judicial council's certification process be prohibited from the practice of law under Canon 4G? b) Does Canon 3E of the Code of Judicial Conduct require disqualification of a trial judge in every case where a court employee or a member of the employee's family is a party? and c) Must a judge enter disqualification in a case in which the attorney representing one of the parties has represented another client in a previous suit against the judge? Similarly, must a judge disqualify him or herself in a case where the attorney representing one of the parties represented another client in presenting a complaint about the judge to the Judicial Conduct Commission? The Committee answered questions one and two in the affirmative and question number three in the negative.

FY97-98 Commissioners' Salaries:

By rule, the Judicial Council reviews and establishes the salary of commissioners each year. The court reviewed what the Legislature appropriated for judges and for staff. Judges received a 1% salary increase and staff received a 2.67% cost of living increase. The Management Committee of the Council recommended that the Judicial Council approve an increase of 2.67% to commissioners' salaries.

Motion:

A motion was made by Judge Stirba that the Judicial Council approve a 2.67% increase in commissioners' salaries. The motion was seconded by Judge Jensen and carried with one opposing vote.

Motion:

A motion was made by Judge Jensen that the Council approve the inclusion of commissioners' salaries with those of employees for the purpose of budget planning by Dan Becker. The motion was seconded by Judge Page and carried unanimously.

Juvenile Board Update:

Hon. Kay A. Lindsay, Chair of the Juvenile Court Board, was present to provide the Judicial Council an update on the Board's activities. Recently, the juvenile court judges had a conference in St. George which provided an opportunity for discussion of funding for implementation of sentencing guidelines.

John McNamara and Mike Phillips have discussed the needs of juvenile offenders throughout the State of Utah with numerous probation officers and have ascertained that there is a need for family intervention, counseling, psychological/interactive classes, monitoring of juvenile offenders' time, and a school component catering to the offender's particular style of learning.

An issue brought to the attention of the Board of Juvenile Court Judges is that of ex-parte communication by judges with probation officers. Judge Lindsay indicated she would like direction on this issue by the Judicial Council. Members of the Council suggested the Board of Juvenile Court Judges request an informal ethics opinion from the Ethics Advisory Committee.

Members of the Council expressed their appreciation to Judge Lindsay for her presentation on behalf of the Board of Juvenile Court Judges.

Justice Court Study: Membership & Charge:

On behalf of Peggy Gentles, staff to the Justice Court Study Committee, Richard Schwermer reported on proposed membership of the Justice Court Study Committee. Mr. Schwermer referred to the names of individuals recommended to the Management Committee at their last meeting. The Management Committee approved the recommendation of proposed members and a suggestion was made that Judge Anthony Schofield chair the committee. Council members discussed the merits of having varying points of view represented on the committee.

Motion:

A motion was made by Judge Page to approve composition of the committee with the addition of a second member of the defense bar and Judge Anthony Schofield serving as chair. The motion was seconded by Judge Jensen and carried unanimously.

The charge of the committee is set by legislation and includes the following issues: a) exclusive jurisdiction; b) promote stability of planning and revenue; c) judicial independence; and d) equitable distribution of revenue.

Video Pilot Program:

Tim Shea reported that the rules of the Judicial Council permit a court to provide an overflow room from which the public can observe trial court proceedings on monitors. The rule effective, April 1, 1997 and approved by the Judicial Council prohibits the signal transmitted to the overflow room from being recorded except as part of a pilot program approved by the Council.

The Policy and Planning Committee approved the following guidelines for the pilot program: a) recording facilities shall be built, equipped, and maintained at no cost to the state; b) the signal to the overflow room shall not be broadcast or transmitted, such as to a broadcast vehicle or broadcast center; c) the overflow room may be used to observe and record proceedings for which a video recording system (or an audio portion of the video system) is used to maintain the record. However, the overflow room may be used to observe but not record proceedings for which a video recording system is not used to maintain the record; and d) to ensure that recordings can be made only as authorized, the signal from the courtroom to the recording devices shall be capable of being blocked without blocking the signal to the monitors.

Motion:

A motion was made by Judge Stirba that the Judicial Council approve the creation of a pilot program consistent with the proposed standards approved by the Policy and Planning

Committee, that the pilot program be within the Third Judicial District, that the program commence as soon as possible after the move into the Scott M. Matheson Courthouse, and that other districts be allowed to seek joinder into the program upon approval by the Council. The motion was seconded by Judge Page and carried unanimously.

Grant Requests:

Holly M. Bullen presented three grant requests to the Judicial Council. One grant request was from the Fourth Judicial District requesting funding to pay the salary of a Victim Coordinator position in that district. The other two requests are from within the Third Judicial District; one is a grant renewal for further development of the "Victim Coordinating Office" and the other request is for funding victim related programs.

Motion:

A motion was made by Judge Jensen to approve the request for the grant proposals with the understanding that by approving the request the Judicial Council is not binding itself to specified programs which may require financial assistance in the future. The motion was seconded by Justice Russon and carried with one opposing vote.

Fourth District Drug Court:

Utah County has applied for and received a drug court planning grant in the amount of \$19,000. Utah County would like to use these funds to allow judges to attend out of state training conferences. A representative from the county has requested that district court judges be involved in the training process. Judges Lindsay (Juvenile Court), Harding, Stott and Howard (District Court) have expressed an interest in attending these training conferences.

Motion:

A motion was made by Judge Anthony Schofield that the Judicial Council authorize Fourth District Court judges' involvement in the drug court study. The motion was seconded by Judge Van Dyke and carried with two opposing votes.

Judge Jensen stressed the importance of a review of the language of the Judicial Council's own rules dealing with specialized courts.

Adjourn:

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