

JUDICIAL COUNCIL  
MINUTES

\*\*\*\*\*

August 20 & 21  
1997

Council Planning Session

Homestead  
Midway, 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. Anne M. Striba  
Hon. Joseph Jackson  
Hon. Robert Braithwaite  
Hon. Rodney S. Page  
Hon. Stephen Van Dyke  
Hon. Leonard H. Russon  
Hon. Michael K. Burton  
Hon. Anthony W. Schofield  
James C. Jenkins, Esq.  
Hon. John Sandberg  
Hon. Kent Nielsen

**Staff Present:**

Daniel J. Becker  
Myron K. March  
Holly M. Bullen  
D. Mark Jones  
Richard H. Schwermer  
Eric Leeson  
Fred Jayne  
Timothy Shea  
Marilyn Branch  
Jan Thompson  
John McNamara  
Gordon Bissegger  
Mark Tronrud  
Rolen Yoshinaga  
Cindy Williamson

**Members Excused:**

Hon. Jerald Jensen  
Hon. Kent Nielsen (8/20/97)

**Guests Present:**

Pat Ogden, Manager Office of Planning and Budget  
William Dinehart, Legislative Fiscal Analyst  
David Walsh, Director of Programming and Budget  
Hon. Ronald Nehring  
Hon. Regnal Garff  
Hon. Michael Wilkins  
Hon. Hans Q. Chamberlain  
Dale Kimball, Esq.  
Dale Sessions, Esq.

**Welcome:**

Chief Justice Zimmerman welcomed guests, members and staff to the meeting. Next, Chief Justice Zimmerman acknowledged Mr. Pat Ogden, Office of Planning and Budget Manager.

**Overview of Planning Session:**

Dan Becker indicated that the Planning Session would begin with a visual presentation on trends and projections on caseloads. Following the presentation, there will be a discussion on court dockets with a focus on those districts which have requested new judgeships. Afterward, there will be a check and balance on perception versus reality. Finally, a review on fiscal trends, growth and the impact of budget decisions.

Budget presentations will be given by board/committee chairs and by staff. Representatives have been requested to prepare their building block requests incrementally. The purpose of the presentation is to learn more about the particular request, and the consequences if approved or, if not approved. Thereafter, the merits of all requests will be debated and voted on by Council members.

In addition, Dan Becker indicated he has prepared recommendations to the Council taking into account an overall view of the court system and the Governor's budget guidelines of a 2 % increase limitation from last year's budget.

**Executive Branch Remarks - Pat Ogden, Manager of the Office of Planning & Budget:**

Mr. Ogden has been with the Office of Planning and Budget for approximately 13 years. Mr. Ogden extended the apologies of Mr. Bob Gross, Lynn Koga, David Walsh and William

Dinehart for not being in attendance today.

Next, Mr. Ogden stated that the Governor's Office is very appreciative of the Judiciary's efforts in budget planning. The Judiciary brings a credibility to its requests and also to the Governor's recommendations. The Governor has requested that agencies submit budget requests in an amount not to exceed the guideline cap of 2%. This enforces the Governor's suggestion that all budget requests should not exceed unrealistic expectations. However, this year for the first time, there has been additional flexibility built into the guidelines. There are customized guidelines for each entity and areas have been identified which are exempt from the 2% cap. The Governor's Office has also requested that agencies locate funds from within their own budget to match their requests. Agencies have been asked to look at new ways to offset their expenditures by assessing what can be accomplished with their present budget allocations.

**Workload/Demographic Trends:**

Eric Leeson reported on the following items: a) FY97 caseload filings; b) advance caseload measures; c) clearance rates; d) pending caseloads; e) the age of cases at disposition; and f) future projections.

Mr. Leeson indicated that he based his research on population increases and/or decreases. In Utah, the net migration has decreased and has affected case filings within the court system. However, future projections show that criminal filings will increase approximately 11.7% by the year 2000, and that civil case filings will increase by 8.3% which is an overall increase of 9.3%. The average annual growth is expected to be 3.1%.

A sample of Mr. Leeson's presentations indicates the following:

District Court Case Filings for 96-97, % change:	-5.36%
Juvenile Court Referrals for 96-97, % change:	-2.69%
Justice Court Filings for 96-97, % change:	-5.48 %
State Court <u>total</u> Filings for 96-97, % change:	- 4.96%

**District Court Civil Clearance Rates:**

Third District for 1995:	103%
Third District for 1996:	95%
Third District for 1997:	100%

**State Civil Clearance Rates without Third District:**

State 1995:	101%
State 1996:	97%
State 1997:	89%

The Juvenile Court referrals per judge were reviewed exclusively for the Second and

Seventh Districts. The Second Judicial District shows a slight increase when compared with the Seventh District which is experiencing a decrease in total referrals per judge. By the year 2000, Mr. Leeson is predicting a 2% decrease in Juvenile Court referrals.

**Fiscal Data and Trends:**

Dan Becker reviewed budget increases for the system from 1993 to 1998. The total court budget has grown from \$53,426,000 in FY93 to \$81,006,900 in FY98 (51.6%). During this same five year period, the state budget grew from \$3,966,733,100 to \$5,656,519,350 (42.6%). The percentage of the state budget received by the Judicial Council was 1.35% in FY92 and 1.34% in FY97. However, in FY98, the Judicial Council budget jumped to 1.43% of the state budget.

**Discussion/Consideration of the District Court Board Request:**

Judge Ronald Nehring was present on behalf of the Board of District Court Judges. Judge Nehring indicated that core functions are at the heart of the Board of District Court Judges' request.

Next, Judge Nehring emphasized the longstanding view that the Third Judicial District Court is in need of judicial assistance. Third District Court judges have approximately 1000 more cases than district judges elsewhere in the state. The quality of service to the citizens of Utah will inevitably be compromised if the workload continues to increase per judge. Until a judicial position was created last year, the last new judicial position created within the Third District was in 1984.

The request from the Board of District Court Judges include the following and totals \$834,350.

- 1st priority - Third Judicial District Judge & Law Clerk
- 2nd priority - Six Law Clerks
- 3rd priority - A second judge for the Third Judicial District

State Court Administrator's recommendation: \$535,925.

**Discussion/Consideration of the Request from Education Committee:**

Hon. Regnal Garff, Chair of the Education Committee, was present to make requests on behalf of the Committee. Since Dr. Diane Cowdrey has been Director of the Education Dept. Judge Garff stated that the department has had a more global approach to the education of the judiciary and staff. The professional competence of judges and staff has improved. There is more uniformity and implementation of policies and procedures of the Judicial Council. The department's leadership has improved the administration of justice and enhanced confidence in

the system.

Even though many benefits have been realized, the budget from 1992-1996 remained constant. However, in 1997 the education budget was reduced by several thousand dollars. The reduction was made in spite of increased numbers in judges and staff. Education efforts were only maintained through the momentum of previous programming and the creative ideas of Dan Becker.

The request from the Education Committee includes a building block request of \$84,425 for increased operating funds to provide in-state and out-of-state programs for judges and staff.

State Court Administrator's recommendation - \$33,275.

**Discussion/Consideration of the Law Library Request:**

Marilyn Branch, Appellate Court Administrator, was present and requested that the Judicial Council allocate funds to the law library in the new Scott M. Matheson Courthouse. The relocation of the State Law Library from the Capitol to the more centrally located Matheson Courthouse will result in greatly increased use of the library facility necessitating the addition of two new FTE's to the library staff.

The request is for funding for new staff which totals \$67,200.

State Court Administrator's recommendation - no general fund appropriation.

**Discussion/Consideration of the Base Budget Request:**

Myron K. March, Deputy State Court Administrator, was present and requested that the base budget be increased incrementally to cover costs of such items as: a) general operations; b) the contract increases; and c) motor pool.

The request from Mr. March for the base budget totals \$438,500.

State Court Administrator's recommendation - \$300,000.

**Discussion/Consideration of the Technology Committee Request:**

Hon. Michael Wilkins, Chair of the Technology Committee, along with Rolen Yoshinaga, Director of Data Processing, were present on behalf of the committee.

The 1997 Legislature reduced the Data Processing base capital budget by \$462,100. A total of \$300,000 was restored as a non-lapsing one-time supplemental. The ongoing impact of the base reduction has resulted in many projects either being terminated or suspended. Judge

Wilkins stressed that Council members recognize that programs and services slated for reduction or deletion are those that have been committed to by the judiciary.

The request from the Technology Committee totals - \$400,000.

State Court Administrator's recommendation - \$245,450.

**Discussion/Consideration of the Request from the Board of Justice Court Judges:**

Hon. John Sandberg reported on behalf of Judge Stan Truman and the Justice Court Board. Judge Sandberg requested funding in the amount of \$33,900 for a legal institute for non-law trained judges.

State Court Administrator's recommendation: no general fund appropriation

**Discussion/Consideration of the Request from the Security Committee:**

Myron K. March reported on behalf of the Security Task Force Committee. Mr. March indicated that the final report of the task force has been presented to the Judicial Council. The report recommended that the current system be maintained with additional bailiff services, that some improvement for perimeter security be provided, and that funding for juvenile court security be absorbed.

In reviewing recommendations of the task force and considering current budget needs that are not being meant, additional funds are required. Mr. March requested that the Council allocate additional funding for security in the amount of \$725,000.

State Court Administrator's recommendation: \$303,000 (included in exemption proposal)

**Discussion/Consideration of the Request from the Court Reporter Technology Committee:**

S.B. 155, Court Reporter Amendments, were passed by the 1997 Legislature. Although, the bill becomes effective January 1, 1998, and establishes a general fund restricted account to fund court reporter technology, no appropriation was made. In order for the Court Reporter Technology Legislation and concomitant rules to be fully implemented, it is necessary to receive an appropriation of \$150,000 from the General Fund Restricted Account.

**Discussion/Consideration for Grand Jury Prosecution:**

Pursuant to statute, the Grand Jury meets three times a year in various areas of the state. In order to abide by statute, a request for \$6,000 was made to ensure that the Grand Jury continues to meet in various areas of the state. The \$6,000 covers the cost of travel.

**Discussion/Consideration of Request for Funds for Court Services Specialist:**

The Court Services Program was established a year ago. Holly M. Bullen, Assistant Court Administrator, administers the program which consists of four individuals. This service has provided an invaluable aid to the court system and Ms. Bullen requested funding in the amount of \$46,200 for an additional FTE.

State Court Administrator's recommendation: office reorganization

**Discussion/Consideration of a Request for Judicial Salary Adjustments:**

The Citizen Committee on Judicial Compensation was established by the Utah Judicial Council in 1985 to assist the Council with its responsibility for consultation with the Executive and Judicial Compensation Commission regarding salary levels for the Utah State Judiciary. The committee met recently and recommends that judicial salaries be increased by 2.4%.

State Court Administrator's recommendation: n/a

**Discussion/Consideration of a Request for Extended Senior Judge Retirement Benefits:**

In November of 1995, the Board of Senior Judges requested that the Policy and Planning Committee consider improving the health and life insurance benefits of retired judges. During 1996, the Policy and Planning Committee discussed the issue on several occasions and decided that additional review was needed before a recommendation or findings could be made to the Judicial Council. The Policy and Planning Committee authorized an actuarial study that would establish a definitive cost impact for benefit improvements. The recommendation of the actuarial study is to extend benefits for a period of three years to judges who currently benefit under Rule 3-501. The cost is estimated at \$88,200.

Dan Becker indicated that he has no recommendation on this issue because the Judicial Council has not dealt with the policy issue. The matter will be addressed tomorrow in its entirety.

**Discussion/Consideration of the Request from the Board of Juvenile Court Judges:**

Hon. Hans Q. Chamberlain and John McNamara were present to make budgetary requests on behalf of the Board of Juvenile Court Judges. The Board of Juvenile Court Judges requested two judges; one in the Second Judicial District and one in the Seventh Judicial District. In addition, the Board requested funding for a juvenile drug court. The total request of the Board is \$531,100.

State Court Administrator's recommendation: \$216,050

**Discussion/Consideration of the Request from the Facilities Committee:**

Hon. Hans Q. Chamberlain and Gordon Bissegger presented an overview of facilities statewide and also presented the budget requests of the Facilities Committee which totaled \$6,548,900. The objective of the request is to obtain funding for additional lease expense, O&M increases and building security.

**Guardian ad Litem Department:**

Dale Sessions was present on behalf of Kristin Brewer and the Guardian ad litem program. Mr. Sessions indicated that resources are very limited and rural areas have even fewer resources. Ms. Brewer, Guardian ad Litem Director, is committed to finding alternative sources of funding. However, at times that is extraordinarily difficult.

Mr. Sessions requested \$330,000 for the Guardian ad Litem Department. The focus of the budget request for FY99 is the rural areas.

State Court Administrator's recommendation: \$108,100

**Discussion/Consideration of Supplemental Requests:**

Fred Jayne requested funding for supplemental requests for document imaging up-grade and CD Rom writer in the amount of \$25,000 (which is general fund restricted). Next, Mr. Jayne requested \$350,000 to supplement the Juror/Witness/Interpreter Program; \$234,000 for lease contracts; and \$75,000 for court reporter technology.

Mr. Jayne stressed that these requests for supplemental funding do not compete with other requests for funding.

**Adjourn:**

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



August 21, 1997

**Welcome:**

Judge Greenwood welcomed guests, members and staff to the meeting

**Analysis, Discussion, and Prioritization:**

Dan Becker presented his recommendations to members of the Judicial Council, and also encouraged members to take into account the Governor's Guidelines. In addition, Mr. Becker focused on perspectives which were not discussed yesterday. These items were not identified by any board or committee chair.

The first request of Mr. Becker is for a reserve fund for clerks' offices in the amount of \$100,000. This fund would be used to pay for temporary assistance for clerks' offices when the need arises. Holly M. Bullen would be the administrator of the fund and be authorized to allow use of these monies.

The second proposal is for funding of an automation re-engineering effort within the Juvenile Court. The present Juvenile Court system has served the system for years. However, it is now at a point where serious considerations ought to be given to its usefulness. The system is very difficult and expensive to maintain. Mr. Becker suggested that grant funding be applied for to initiate this effort and that savings be utilized to maintain the new system.

**Motion:**

A motion was made by Judge Jackson that the Judicial Council authorize staff in the Administrative Office to proceed with an application for grant funding, and to also establish a process to evaluate and make a recommendation to the Council for the establishment of an information system for the Juvenile Court. The motion was seconded by Mr. Jenkins and carried unanimously.

Next, Mr. Becker addressed the issue of delay reduction and case management. There are two ways in which to deal with issues in the court system, i.e., one is to seek additional resources and the other is to review how the system does business. Mr. Becker would like to provide a focus on case management over the next several years. A proposal was made to hire an expert in the area of case management to assist with setting up the program. This position would be temporary and obtained through grant funding.

**Motion:**

A motion was made by Judge Stirba to seek grant funding consistent with Mr. Becker's proposal to hire an expert in case management for a period of two years. The motion included

that the expert would work with judges, court executives and clerks to accomplish the goal of successful case management. The motion was seconded by Judge Greenwood and carried unanimously.

Lastly, Mr. Becker proposed a Community Dispute Settlement Center Pilot Program. Mr. Becker suggested that minor neighborhood disputes may lend themselves to mediation within the community. This program would involve a grant and seek participation of those in the neighborhoods. It is envisioned that this type of program would be more successful in larger communities.

**Motion:**

A motion was made by James Jenkins to refer the proposal of a Community Dispute Settlement Center to the Alternative Dispute & Resolution Committee for review and recommendations to the Policy and Planning Committee for recommendations back to the Judicial Council. The motion was seconded by Judge Page and carried with one opposing vote.

**Council Discussion on Proposals and Prioritization:**

Members of the Judicial Council proceeded to engage in a lengthy discussion about the merits of the requests from staff, board and committee chairs.

**Discussion/Consideration of Request for Capital Projects:**

Hon. Hans Q. Chamberlain and Gordon Bissegger recommended that the Council consider setting the following priorities with respect to capital projects: a) Vernal programming; b) Fourth Judicial District land purchase; and c) Summit County Courthouse Project.

Vernal is a number one priority as far as programming is concerned. Many available sites have been reviewed and the most preferable site is three miles east of Vernal. The total square footage of the Vernal facility is estimated at 36,000 square feet. The current lease between the state and county is \$48,000. In the future, the \$48,000 could be applied toward the O&M costs. This project has the full support of local legislators.

The recommendation from the committee studying the Fourth Judicial District land purchase is to purchase the land and use it for surface parking rather than tiered parking.

Mr. Bissegger explained that the proposed site for the new courthouse in Summit County would be next to the county jail which is not within the city limits of the county seat. The Facilities Committee has recommended that this issue be the subject of further study.

**Motion:**

A motion was made by Judge Schofield that the Council refer further study of facility location in Summit County to the Facilities Committee. The motion was seconded by Mr. Jenkins. The motion carried unanimously.

**Motion:**

A motion was made by Judge Jackson to approve all capital facilities projects i.e., Provo land acquisition, the study on the Summit County facility and the Vernal planning process. The motion was seconded by Judge Van Dyke and carried unanimously.

**Proposed Legislation for the 1998 Legislative Session:**

Tim Shea presented a summary of proposed Legislation.

77-27-13 - Board of Pardons and Parole - Duties of the judiciary, the Department of Corrections, and law enforcement - Removal of material from files.

**Motion:**

A motion was made by Judge Jackson to adopt the changes to 77-27-13 as proposed by Mr. Shea. The motion was seconded and carried unanimously.

12-1-8 - Designating and limiting activities as to assignments.

**Motion:**

A motion was made by Judge Greenwood that the legislation be approved as amended. The motion was seconded by Judge Jackson and carried unanimously.

20A-7-702 - Voter information pamphlet - Form - Contents - Distribution. This rule repeals the provision in the rule that survey scores are published in 5% increments and provides for reporting in actual increments.

**Motion:**

A motion was made by Judge Schofield that the Council accept this legislation and publish actual scores. The motion was seconded by Judge Jackson and carried with 9 in favor and 3 opposed.

Mr. Shea reported that another recommendation from the Performance Evaluation Committee was to eliminate the private sanctions section.

**Motion:**

A motion was made by Judge Greenwood that legislation eliminating private sanctions section be endorsed. The motion was seconded by Mr. Jenkins and carried unanimously.

21-1-5 (2)(ii)- Civil fees of the courts of record - Courts complex design.

After June 30, 1998, the administrator of the courts shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture paid.

**Motion:**

A motion was made by Mr. Jenkins that the Judicial Council permit the change in the rule to allow a \$7 transfer rather than \$2 transfer to the Division of Finance. The motion was seconded by Judge Stirba and carried unanimously.

77-31-1.1. Procedure for determination of indigency -- Standards.

This legislation permits the use of new forms for verification of indigency which could be verified by a notary or other person authorized by law to administer an oath.

**Motion:**

A motion was made by Mr. Jenkins to accept the procedure for determination of indigency legislation. The motion was seconded by Judge Greenwood and carried unanimously.

78-3-29. Presiding judge - Election - Term - Compensation - Powers Duties.

This legislation eliminates wording that indicates that the presiding judge of a district shall act in that capacity for a term of not fewer than two years.

**Motion:**

A motion was made by Judge Van Dyke to accept the changes in 78-3-29. The motion was seconded and carried unanimously.

78-3a-115. Hearings - Public excluded, exceptions - Victims admitted - Minor's cases heard separately from adult cases - Minor or parents or custodian heard separately - Continuance of hearing - Consolidation of proceedings involving more than one minor.

Legislation in this section adds misdemeanor language as provided in Section 77-38-5.

**Motion:**

A motion was made by Mr. Jenkins to accept the additional reference to misdemeanors in this section. The motion was seconded by Judge Jackson and carried unanimously.

78-3a-313. Periodic review hearings -- Foster care citizen review boards.

The following language has been added to this rule: The report by a board, if determined to be an ex parte communication with a judge, shall be deemed a communication authorized by law.

**Motion:**

A motion was made by Judge Jackson to accept the changes to this section. The motion was seconded by Judge Greenwood and carried unanimously.

63A-8-201. Office of State Debt Collection created - Duties.

This rule allows for the collection and transfer of court created fines and debts to be collected by the Office of State Debt Collection.

**Motion:**

A motion was made by Mr. Jenkins to approve the amendments in this section. The motion was seconded by Judge Stirba and carried with one opposing vote.

**Motion:**

A general motion was made by Judge Stirba that the Judicial Council approval non-substantive legislative changes. The motion was seconded by Justice Russon and carried unanimously.

**Prioritization Vote:**

The Judicial Council, by individual vote, prioritized the requests from the various boards and committees.

The final prioritization by the Judicial Council is as follows:

1.	3rd District Court Judge	239,050
2.	Law Clerks (	296,875
3.	Computer Network	245,450
4.	Base Budget (all levels)	300,000
4.	2nd District Court Judge	216,050
6.	Legal Institute (Justice Courts)	33,900
7.	Operating funds (Education)	33,275
8.	GAL Operations	55,000
9.	Clerical Reserve (all levels)	100,000
10.	Computer Network	<u>19,200</u>
	<b>TOTAL</b>	<b>1,538,800</b>

**Motion:**

A motion was made by Judge Braithwaite to adopt the budget prioritizations of the Council. The motion was seconded by Judge Van Dyke. The motion carried unanimously.

**Adjourn:**

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