

**JUDICIAL COUNCIL
MINUTES**

**Monday
November 24, 1997**

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

Chief Justice Michael D. Zimmerman, Presiding

Members Present:

Chief Justice Michael D. Zimmerman
Hon. Pamela T. Greenwood
Hon. Anthony W. Schofield
Hon. John Sandberg
Hon. Steven Van Dyke
Hon. Kent Nielson
Hon. Michael Glasmann
Hon. Kay A. Lindsay
Hon. Stan Truman
Hon. Anne M. Stirba
Hon. Leonard H. Russon
Hon. Robert Braithwaite
James C. Jenkins, Esq.
Hon. Michael K. Burton

Staff Present:

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

Guests:

Hon. Jerald Jensen
Zakayo Lukaymay
Brian Maffly, Salt Lake City Tribune

Welcome:

Judge Greenwood welcomed guests, members and staff to the meeting.

Approval of Minutes:

A motion was made to approve the minutes of October 27, 1997. The motion was seconded and carried unanimously.

Management Committee Report:

Judge Greenwood reported on the presentation by Kim Allard, the courts' recently hired Web Publisher, on the State Court Home Page. Ms. Allard explained the main difference between the *Internet* and the *Intranet*. The *Internet* is subject to access by everyone and the *Intranet* is subject to use by individuals internal to the court system.

On November 19, 1997, Governor Leavitt signed the first digital signature to be officially recorded in the world.

Policy and Planning Committee Report:

Judge Schofield stated that the Policy and Planning Committee supported the Bail Bond Surety Bill. This bill will change the regulation of bail bond sureties from the Judicial Council to the Utah State Insurance Commission.

The Liaison Committee did not take a position on the proposed substance abuse bill or the proposed amendment to the adoption statute which would broaden the scope of those individuals able to consent to parental relinquishments. Judge Schofield stated that a bill which merits consideration deals with volunteer immunity. This bill would provide that volunteers are not liable for damage or injury to anyone/anything if the volunteer was acting within the scope of their appointment. It is also proposed that the entity appointing the volunteer receive the same benefit.

Policy and Planning Committee Report:

There has been no recent meeting of the Policy and Planning Committee.

Report from Chair:

Chief Justice Zimmerman indicated that Mr. Darwin Hansen has recently been appointed to the bench in the Second Judicial District by Governor Leavitt. Mr. Hansen will be sworn in by Chief Justice Zimmerman on January 2, 1998.

Hon. Alfred Van Wagenen suffered a stroke and has been reported as doing well.

State Court Administrator's Report:

Dan Becker introduced Zakayo Lukamay. Mr. Lukamay is an intern from Tanzania and has been with the Data Processing Dept. of the Administrative Office of the Courts for approximately two months. Mr. Lukamay is a graduate of law school in Tanzania. This internship is being sponsored by the U.S. Court Information Plan and Mr. Lukamay is attempting

to gain a better understanding for court administration in the United States.

As a result of John McNamara's scheduled retirement in February, recruitment has taken place for the Juvenile Court Administrator position. Dan Becker, along with Hon. Hans Q. Chamberlain, Hon. Kay A. Lindsay, Hon. Frederic Oddone, and Barbara Hanson recently interviewed candidates for the position and will submit names of finalists to the Board of Juvenile Court Judges on December 12, 1997.

Interviews for the court executive position in the Second District will be held during the week of November 24-28, 1997. This vacancy is the result of Margaret Satterthwaite's recent retirement.

Mr. Becker reported that there are no new developments since last meeting with Governor Leavitt. However, Governor Leavitt is expected to finalize the state's budget on November 26, 1997.

The Legislative Auditor General will begin to audit the Juvenile Court. This is an operational audit with a financial component.

Mr. Becker distributed copies of two surveys which were recently conducted by Dan Jones and Associates. One survey dealt with the public's perception of the Utah court system and the other survey shows how Utah is dealing with domestic violence. Mr. Becker encouraged members of the Judicial Council to review the surveys. He further stated that the courts have previously received a grant which will allow for additional training of employees in the area of domestic violence.

Justice Court Task Force Update:

Judge Schofield reported on past and present findings of the Justice Court Task Force Committee. Initially, the Task Force recommended that all concurrent jurisdiction be eliminated by creating a case shift of B and C Misdemeanors from the District Courts to Justice Courts. This proposal resulted in concerns being voiced by city representatives about the financial impact of such a decision.

Next, Judge Schofield cited the four major recommendations of the Task Force and they include: a) That all concurrent territorial jurisdiction between district court and justice court should be eliminated; b) Any local government that wants to create a Class I or II justice court should be able to do so upon two years notice. Formation of a Class III or IV court should require one year notice and continued demonstration of the need for the court; c) Municipal justice court judges should be reappointed absent a showing of "good cause" by the appointing authority; and further consideration of appeals/trial de novo and "court not of record."

Following Judge Schofield's remarks, a discussion ensued among members of the

Judicial Council regarding valid reasons for a needs test and to which court level the test should apply. A question was raised about promotion of legislation that would facilitate the change.

Motion:

A motion was made by Judge Stirba that the court creation recommendations of the Justice Court Task Force be supported by the Judicial Council. The motion was seconded by Judge Van Dyke and carried with two opposing votes.

The next issue addressed was that of judicial independence; the appointment and reappointment processes. There is the wide spread view that municipalities sponsoring judges should be able to appoint and reappoint that judge. However, this lends itself to concerns about undue pressure on judges. Suggestions about curing this problem centered on having justice court judges stand for retention elections or possibly that judges be automatically reappointed unless there was a showing of good cause, at which time the judge would be subject to a hearing. The current recommendation of the Justice Court Study Task Force is that a judge would be reappointed unless there is a good cause to deny the appointment.

Motion:

A motion was made by Judge Stirba that the issue of judicial independence is very important and the Judicial Council affirm the Justice Court Study Task Force's recommendation. However, there needs to a reappointment criteria administered by an independent body, with a review or a combination of a review among the municipalities and possibly the Board of Justice Court Judges. The motion was seconded by Judge Lindsay. There was no vote taken on this motion.

Motion:

A motion was made by Judge Stirba that this matter be reviewed by the Board of Justice Court Judges. The motion was seconded by Justice Russon. The motion carried with one opposing vote.

Judge Schofield reiterated the need for development of good cause standards. The Task Force further recommended that the appeal process remain status quo. Members of the Task Force felt that it was outside their charge to change this process.

Motion:

A motion was made by Judge Stirba that the appeal process, as it stands now, remain status quo. The motion was seconded by Judge Burton. The motion carried with one opposing vote.

The most difficult issue which the Task Force has addressed has been that of jurisdiction. The issue of criminal jurisdiction was addressed. However, civil jurisdiction was not addressed. The recommendation is to delete concurrent jurisdiction and at the present make no further changes to the jurisdictional issue. The changes to jurisdiction would require legislative action. By codifying jurisdiction, it would allow every case a venue but no case could be heard in two venues. This proposal would also eliminate county jurisdiction in some cases. Members of the Council voiced their support in eliminating concurrent jurisdiction.

Motion:

A motion was made by Judge Stirba that the sense of the Judicial Council is that the Council favor no concurrent jurisdiction and that it favor the bright line approach as a long term goal with recognition of the problems it would require the municipalities to deal with. Furthermore, that there be some consideration of a formal approach to accomplish the long term objective. The motion was seconded by Judge Braithwaite. There was no vote taken on this motion.

Amended Motion:

An amended motion was made by Judge Stirba that the Justice Court Task Force take another look at this issue and determine if they could incorporate into the recommendations a process by which the issue could be addressed, and that there be a mechanism to accomplish the goals to have all B & C Misdemeanors heard with the jurisdiction of the justice courts and not within the district courts. The motion was seconded by Judge Burton. There was no vote taken on this motion.

Restated Motion:

A motion was made by Judge Stirba that the consensus of the Judicial Council is that the Council does not favor concurrent jurisdiction and that ultimately the objective should be that all B & C Misdemeanors be heard within the exclusive jurisdiction of the justice court. But that in recognition of various problems, that the Task Force develop recommendations which would provide for a process for working out those problems in the long term objective. Furthermore, that the Task Force make whatever recommendations are necessary to ensure that for the time being the jurisdiction remain status quo and that there be recommendations about how a bright line distinction can be drawn in the future.

As an addendum, Judge Burton stated that in the opinion of the Council the Task Force should still work toward maintaining the status quo with the long term objective to remove all B & C Misdemeanors from the district court.

Amended Motion:

Judge Stirba amended her previous motion to reflect that the Judicial Council's performance would be to eliminate concurrent jurisdiction, and that there be a recommendation for some mechanism to maintain the workload as it appears achievable but that as an aspiration that a bright line test be developed as a goal to be worked toward in time. The motion was seconded by Judge Burton. The motion carried with four opposing votes.

Web Publishing - State Court Home Page:

Kim Allard, the court's newly hired Web Publisher, was introduced by Eric Leeson. Previously, Ms. Allard worked for the *Discovery Channel*, as Senior Production Manager for their Web Page.

Ms. Allard gave a presentation on the new State Court Home Page. She explained that she had been charged to structure a home page that would be an effective tool for communication. Ms. Allard showed the content of what will be offered on the home page which includes: a) the Annual Report; b) a media guide to the courts; c) how to sections, i.e., how to file a divorce, how to file a small claims actions; and d) introductions to judges serving the courts.

Ms. Allard also explained the differences between the *Intranet vs. Internet*, which is the audience and information content. The *Intranet* is available to all internal users and the *Internet* is available to everyone. The address for accessing the home page is <http://courtlink.utcourts.gov>

Rule 78-56-108- Transcripts and Copy Fees:

Rule 78-56-108 will be effective January 1, 1998. The committee addressing these areas of change has recognized an additional issue which is the cost that can be charged for expedited transcripts. Mr. Tim Shea recited the fees associated with different production times.

Motion:

A motion was made by Judge Stirba that the Judicial Council approve the Court Reporter Committee's recommendation for fees. The motion was seconded by Judge Glasmann and carried unanimously.

Fourth District Drug Court:

On behalf of Judge Ray M. Harding, Sr., Paul Sheffield, Fourth District Court Executive, was present and requested that the Judicial Council approve the proposal for a Drug Court in Judge Harding's court.

Mr. Sheffield explained that Judge Harding proposed the following: a) that drug court cases would be limited to those matters only before Judge Harding; b) that the drug court philosophy would only pertain to those first time offenders with non-violent backgrounds; and c)

that the program only encompass approximately 20 offenders at any given time. The program is scheduled to begin in January 1998, and is estimated to last a period of one year, providing that the Council approves.

Following Mr. Sheffield's presentation members of the Judicial Council debated questions about the program's length, prospects for funding, administration, and collection of data. A suggestion was made that Judge Harding be invited to a Council meeting to explain how the program, once implemented and evaluated is progressing.

Motion:

A motion was made by Judge Stirba that the Judicial Council request that Dan Becker develop standards by which the Council can evaluate drug courts and other similar initiatives. The motion was seconded by Judge Greenwood. The motion carried unanimously.

Executive Session/Adjourn:

A motion was made to move into executive session. There being no further business, Chief Justice Zimmerman adjourned the meeting.