

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING

#### MINUTES

Monday, January 28, 2002

Council Room, Matheson Courthouse Salt Lake City,  
Utah

Chief Justice Richard C. Howe, Presiding

#### **Members Present:**

Chief Justice Richard C. Howe  
Justice Michael J. Wilkins  
Hon. James Z. Davis  
Hon. Lyle Anderson  
Hon. Ben Hadfield  
Hon. Lee Dever  
Hon. Robert Hilder  
Hon. Andrew Valdez  
Hon. Lynn Davis  
Hon. Jerald Jensen  
Hon. Clair Poulson  
Hon. Ronald Hare  
Hon. Scott Johansen  
Debra Moore, esq.

#### **Staff Present:**

Daniel J. Becker  
Myron K. March  
Tim Shea  
D. Mark Jones  
Richard H. Schwermer  
Ray Wahl  
Alicia Davis  
Diane Cowdrey  
Holly Bullen  
Matty Branch  
AnNicole J. Faeth

#### **GUESTS PRESENT:**

John P. Ashton, *Chair, Standing Committee on Judicial Performance Evaluation*  
Hon. Judith Atherton, *Chair, Standing Committee on Children and Family Law*  
Hon. Kimberly Hornak, *Chair, Standing Committee on Judicial Branch Education*  
Justice Christine Durham, *Chair, Public Outreach Subcommittee*

#### **1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Richard C. Howe)**

All members and staff were welcomed to the meeting. The minutes of the Judicial Council's December 17, 2001 meeting were discussed. It was recommended that the following sentence be added on page four, section 5, line 3 of the minutes: "Mr. Chabries reported that he has informed the authors of the pre-sentence investigation reports (mostly independent contractors) that if too many defendants were sentenced to prison the budget shortfall would be made up by laying off independent contractors." A motion was then made.

***Motion:*** Judge Lynn Davis made a motion to approve the minutes as modified. Justice Wilkins seconded the motion. The motion carried unanimously.

#### **2. CHAIRMAN'S REPORT: (Chief Justice Howe)**

Chief Justice Howe reported that he recently attended the Conference of Chief Justices, at which time he had an opportunity to meet with a number of deans of law schools from around the country. Discussions took place between the various chief justices and deans concerning bar admissions, and it was suggested the law schools and bar admissions personnel should work more closely together to determine competency and fitness of law school graduates before they are admitted to the Bar.

#### **3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Daniel J. Becker reported the following items:

- Chief Justice Howe delivered the State of the Judiciary Address, Friday, January 25, 2002 in the legislature. The address was very well received.
- The Commission on Criminal and Juvenile Justice has considered the next cycle for Juvenile Accountability Incentive Block Grant (JAIBG) funding. With respect to the Courts, two items have been funded with JAIBG money for 2003: \$485,000 for the juvenile information system and \$170,000 for the purchase of digital audio equipment.
- It appeared that Sandy City was reconsidering their decision not to sell property to the State which would be used for the new courthouse in Sandy. The Sandy City Council, however, has voted not to sell the property. Our present request to the legislature for a land purchase in Sandy will be withdrawn. The request may be redefined to request design funds in order to expand the existing Sandy Courthouse on existing property.
- A press conference was held January 17, 2002 in which the media was briefed on the status of the courts during the Olympics. It was emphasized that no "special treatment" will be given to defendants during the Olympics.
- The 2002 Annual Report has been released. This year, the report highlighted each district, providing information about unique programs in each district, and information about district size, number of court locations, etc.

#### **4. REPORTS:**

##### **Management Committee: (Hon. Lyle Anderson)**

Judge Anderson reported that most of the issues discussed by the Management Committee are on the Council's agenda to be discussed later in the meeting.

##### **Policy and Planning: (Hon. Scott Johansen)**

Judge Johansen reported that a number of rules and policies which were discussed by Policy and Planning are on the Council's agenda and will be discussed later in the meeting.

##### **Liaison Committee (Justice Michael Wilkins)**

Justice Wilkins reported that the Liaison Committee is generally taking no position on bills unless there is an issue the Committee needs to express an opinion on.

Justice Wilkins and Richard Schwermer mentioned that HB 136 proposes a number of amendments to the membership of the Judicial Conduct Commission. The bill proposes the following changes: the Supreme Court is to provide the information to go in the voter information pamphlet, and that all information should be included in the pamphlet such as findings of fact, conclusions of law and supporting reasons, reprimand, censure and suspension; it is proposed that a member of the Utah Court of Appeals and a senior judge be added to the Commission, and that they be selected by the Chief Justice; the bill also defines the term "investigation" and outlines what a record shall include.

The Council agreed that they prefer the current system in place concerning the voter information pamphlet; they are opposed to including non-public reprimands in the voter information pamphlet; they would like lines 71 and 72 removed from the bill after "detailed summary of the supporting reasons"; the Council stated that an active trial judge needed to remain on the Commission, and that they would support the addition of a second member (either from the Court of Appeals or Juvenile Court) serving on the Commission as well; the Council disliked lines 288-292 on page 10; and they would like lines 297-303 on page 10 removed.

##### **Bar Commission (Debra Moore, esq.)**

Debra Moore reported that in December, the Bar Commission discussed the issue of encouraging judges to attend the Bar conferences as a result of the Council's decision not to meet in Sun Valley during the Annual Bar Conference this year. The Commission voted to reimburse expenses of judges attending the Annual Bar Conference in Sun Valley when they serve on panels. The Commission may decide to make this a permanent change, but at this time, the reimbursement will be for the 2002 conference on an experimental basis only in order to boost attendance. The Commission also voted to waive the conference registration fee for lawyer legislators.

Ms. Moore also reported that in their January meeting, the Bar Commission spent time reviewing the character and fitness process. Appeals have been made to the Bar on decisions of the Character and Fitness Committee. Some decisions were overturned based upon procedural concerns. The Bar has talked about refining the statement of standard of review. Ms. Moore followed up on Chief Justice Howe's comments about Deans and Bar admissions

personnel coordinating. The Deans of Utah law schools will be meeting with the Bar's Character and Fitness Committee to see how they may be of assistance in this process.

The Bar reviewed a request from the "and justice for all" campaign for a contribution for a new facility. The request has been tabled at this time. The Bar also agreed to support legislation for state funding of the delivery of legal services.

The Bar has determined who will receive awards at the Mid-Year Bar Conference in March in St. George. Judge Pamela Greenwood has been selected to receive the Dorathy Merrill Brothers Award, and Professor Bob Flores has been selected to receive the Judge Raymond Uno Award.

#### **5. REPORT: PERFORMANCE EVALUATION COMMITTEE: (John P. Ashton)**

Mr. John Ashton reported that during the comment period for the new rules governing judicial performance evaluation, suggestions were raised for further changes to the rules. The Judicial Performance Evaluation Committee considered several of these issues and formulated responses to the issues raised. These issues were briefly discussed by the Judicial Council. The Council also discussed other items that the Performance Evaluation Committee could study this next year.

#### **6. JUDICIAL COUNCIL RULES FOR FINAL ACTION: (Tim Shea)**

Tim Shea reported that a number of rules were before the Council for final consideration. Most of the rules pertained the internal Council committee structure and they received no comments. The only rule that received significant comments was rule 4-608 regarding trials de novo of justice court proceedings in criminal cases. The rules for final action include: Rule 1-204. Executive committees, Rule 2-102. Council agenda, Rule 2-207 Annual rulemaking and periodic review of the Code, Rule 2-211 Compliance with the Code of Judicial Administration and the Code of Judicial Conduct, Rule 3-105 Judicial Planning, Rule 3-106 Legislative activities, Rule 3-107 Executive branch policy initiatives, Rule 3-114 The role of the judiciary in the community, Rule 3-306 Court interpreters, Rule 3-406 Budget and fiscal management, Rule 3-415 Auditing, Rule 4-201 Record of proceedings, Rule 4-202.02 Records classification, Rule 4-202-03 Records Access, Rule 4-404 Jury selection and service, Rule 4-608 Trials de novo of justice court proceedings in criminal cases, Rule 4-704 Authority of court clerks to extend payment schedule and dismiss citations, Rule 4-906 Guardian ad litem program, Rule 9-102 Caseload report requirements, and justice court standards for recertification.

**Motion:** A motion was made to adopt the rules listed above. The motion was seconded and carried unanimously.

#### **7. LEGISLATIVE UPDATE: (Daniel J. Becker, D. Mark Jones, Richard Schwermer)**

Daniel J. Becker reported that the Governor released his budget recommendations in December. The Governor's budget accepted all of the Judicial Council's reductions, and approved expansion items such as leases and contracts and a jury, witness, interpreter fee supplemental. The legislature has not expressed support of the Governor's plan.

The Executive Appropriations Committee has adopted new FY 2002 budgets based upon recommendations of the subcommittees. The courts will experience \$600,000 less of a reduction in FY 02 than previously planned. These funds will be needed to avoid having to begin a reduction in force prior to July 1, 2002, because the turnover rate is less than had been projected. The legislature decided not to use the rainy day fund, but is using some I-15 savings. Additionally, the legislature did not hold the Department of Public Safety and Education harmless as the Governor's plan did. General fund money was taken out of capital facilities and a decision was made to bond. The analyst should be notifying the courts of his recommended figure for FY 03 shortly. The court's FY 2003 budget will be before the subcommittee January 30<sup>th</sup>.

#### **8. PROPOSED REDUCTION IN FORCE POLICY: (Daniel J. Becker)**

Myron March reported that the Management Committee and Policy and Planning Committee already reviewed the following personnel policies: 270.01 Reduction in Force, 230.01 Employment Categories, and 210.01 Recruitment and Selection. After reviewing the policies, a motion was made.

**Motion:** A motion was made to adopt the aforementioned policies. The motion was seconded and carried with one opposed.

#### **9. REPORT: STANDING COMMITTEE ON CHILDREN AND FAMILY LAW: (Hon. Judith Atherton)**

Judge Atherton, chair of the Standing Committee on Children and Family Law, reported to the Council on behalf of the Committee. The Committee was formed a little less than two years ago, at which time there were six specific

mandates for the Committee to look at. Judge Atherton reported that the ADR Mediation Subcommittee and the Custody Evaluation Subcommittee have been working together to review domestic case handling. Mediation is a requirement in domestic cases, but is often not met because it is possible for people to watch a video tape and opt out. The Committee believes that early intervention which incorporates mediation as soon as possible should be the goal.

Judge Atherton also reported that in regards to protective orders, there has been a lot of disagreement between the district and juvenile court regarding how to cases should be addressed. The Committee recommends that protective orders on behalf of children be eliminated and that existing available procedures in juvenile court be applied. At the end of the abuse/neglect process a protective order could be entered into. Children will receive the same protections, but through the abuse/neglect process in the juvenile court.

#### **10. REPORT: EDUCATION STANDING COMMITTEE: (Hon. Kimberly Hornak, Justice Christine Durham, Diane Cowdrey)**

Judge Hornak, chair of the Education Standing Committee, provided an update to the Council. Judge Hornak reported that in FY 2000-2001 166 classes were held for 2,620 participants, 61 different courses were offered, 19 conferences were held for 1,653 participants, 49 out-of-state programs were attended and 69 local programs were provided all with a \$357,400 program budget. Judge Hornak reported that Judicial Branch Education provides a strong foundation for the judiciary by focusing on increasing the competence of all judges and staff. In addition to providing classes and conference, however, Judicial Branch Education provides innovative programs such as cultural competency training, pro tem judge training, a senior clerk academy, a faculty development program, and public outreach programs.

Justice Durham reported on the efforts of the Public Outreach Sub-committee. Staff from Public Information, Alternative Dispute Resolution, the Juvenile Court, Trial Court Executives, members of Bar, and a senior judge serve on the sub-committee. The sub-committee has been working for more than a year. An overview of outreach efforts in Utah was distributed and discussed. It was noted that several initiatives and ideas concerning public outreach have been identified and these types of things are being institutionalized in the operation of the courts.

#### **11. APPOINTMENT OF NEW JUSTICE COURT JUDGE: (Richard Schwermer)**

The Judicial Council reviewed an application by Sarah Watson to become a new justice court judge in Spring City.

**Motion:** A motion was made to approve the aforementioned appointment. The motion was seconded.

A question was raised about a reference on the application to being a "law professor at Snow College".

A vote was made, however, and the motion carried unanimously.

#### **12. EXECUTIVE SESSION:**

**Motion:** A motion was made to go in to executive session to discuss personnel matters. The motion was seconded and carried unanimously.

**Motion:** A motion was made to come out of executive session. The motion was seconded and carried unanimously.

**Motion:** Judge Hadield made a motion to certify the judges being considered for retention. Judge Valdez seconded the motion. The motion carried with one opposed. Justice Wilkins opposed the motion due to his opposition of certifying Judge Cox and Judge Young. If the motion had been a separate motion, he would have voted to certify the remaining judges. Judges Ben Hadfield, Scott Johansen, Ronald Hare, Clair Poulson, Lyle Anderson, Lynn Davis, Andrew Valdez, and Jerald Jensen abstained from voting on themselves.

#### **13. OTHER BUSINESS:**

Justice Wilkins proposed that the rule amendment on the consent calendar to Rule 4-505.01 be postponed for a month until it is clarified. Discussion then ensued concerning the rule in which clarification was offered. A motion was then made.

**Motion:** A motion was made to leave the word "judgement" in the rule and strike the word "damages" in Rule 4-505.01. The motion was seconded and carried with one opposed.

The rule was adopted as amended.

#### **14. ADJOURN:**

**Motion:** A motion was made to adjourn the meeting. The motion was seconded and carried unanimously.