

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MINUTES

**Wednesday, June 30, 1999**  
**Sawtooth Room, Sun Valley Lodge**  
**Sun Valley, Idaho**

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*Chief Justice Richard C. Howe, Presiding*

#### **Members Present:**

Chief Justice Richard C. Howe  
 Hon. Leonard H. Russon  
 Hon. Russell W. Bench  
 Hon. Anthony Schofield  
 Hon. Robert Braithwaite  
 Hon. Michael K. Burton  
 Hon. Michael Glasmann  
 Hon. Ronald Hare  
 Hon. Scott Johansen  
 Hon. Kay A. Lindsay  
 Hon. John L. Sandberg  
 Hon. Anne M. Stirba  
 Hon. Stan Truman  
 Steven Kaufman

#### **Staff Present:**

Daniel J. Becker  
 Myron K. March  
 Holly Bullen  
 Marilyn Branch  
 D. Mark Jones  
 Richard H. Schwermer  
 Tim Shea  
 Ray Wahl  
 Cathie A. Montes

#### **Excused:**

Hon. Leonard H. Russon  
 Hon. Anne M. Stirba

#### **Guests:**

James C. Jenkins, *President, Utah State Bar*  
 Fran Wikstrom, *Chair, Advisory Committee on Rules of Civil Procedure*  
 Mary Boudreau, *Utah Children*  
 Mary Corporon, *Esq., Corporon & Williams*  
 Stewart Ralphs, *Legal Aid Society of Salt Lake*

#### **Welcome/Approval of Minutes**

Chief Justice Howe welcomed those in attendance. There was no discussion on the minutes of the Council's May meeting.

#### **Motion**

A motion was made to approve the minutes of the Council's last meeting. The motion was seconded and carried unanimously.

#### **Report from the Chair**

Chief Justice Howe presented his report to the Council. He began by informing the Council that the nominating process is underway to fill the two juvenile judge positions created as a result of the last legislative session. In the First District, five candidates were recently selected by the Judicial Nominating Committee to be considered for appointment by the Governor. There is a 10-day comment period, after which time the Governor will have 30 days to make the appointment. The nominating committee in the Seventh District will meet in Price on July 13<sup>th</sup> to begin the selection process for the second of the two juvenile judge positions.

Chief Justice Howe announced to the Council the following changes in the judiciary: the impending retirement of Utah Supreme Court Justice Michael D. Zimmerman, effective February 1, 2000; and the resignation of Third District Judge Pat Brian in the fall of this year.

He also indicated that Steven Kaufman's term as Bar representative to the Judicial Council expires as of the date of this meeting, June 30, 1999. On behalf of the Council, Chief Justice Howe thanked Mr. Kaufman for his service on the Council.

The Chief concluded his report by stating that the five-member team attending the conference on Public Trust and Confidence would present to the Council at its breakfast meeting on Friday, July 2<sup>nd</sup>, and that this issue would be discussed in further detail at that time.

### **Court Administrator's Report**

Dan Becker informed the Council of changes in the agenda for the meeting, and reminded the Council of the Friday breakfast meeting scheduled for July 2<sup>nd</sup> beginning at 7:30 a.m. Also attending this meeting will be the incoming and outgoing Bar presidents, James C. Jenkins and Charles Brown, respectively, as well as John Baldwin, Executive Director of the Bar.

He noted that the first Legal Institute for Justice Court Judges was held June 21-25, with an opening reception on June 20<sup>th</sup>. Both Mr. Becker and Rick Schwermer indicated that the institute was successful. The judges appreciated the opportunity to become better acquainted with each other, and felt that the educational opportunity was valuable. Additional, automated education sessions will be conducted in the coming months. The average experience of attendees was between 3 and 5 years on the bench.

Mr. Becker reported to the Council that the State Building Board awarded to the courts AR&I funds (alterations, repairs and improvements) for repairs to various court locations as requested by the Administrative Office of the Courts. The total amount awarded was \$465,000. Improvements will be made as follows:

#### Provo:

- District Court security and access control replacement
- Paving of lot next to District Court
- Juvenile Court heat & air conditioning compressor/paving/new roof

#### Ogden:

- Juvenile Court lobby remodeled
- District Court cameras installed

#### Richfield:

- Security upgraded

These improvements are scheduled to begin the first part of the new fiscal year.

The Governor's Office of Planning and Budget released new guidelines, calling for zero growth. No increases in budgets will be accepted; the goal is to have existing agencies closely examine their growth and needs, and determine what the agencies can do without, as there is not enough money for any new spending. Any new building blocks need a corresponding decrease in existing budgets.

Mr. Becker followed up with the Council on the West Valley City issue. Following the Council's last meeting, West Valley City decided to move forward with their proposal; however, they are no longer pursuing the issue of leasing the court's space. They have chosen instead to use the city council chambers. Paul Morris said the City has talked with Rep. John Valentine, who still supports sponsoring legislation which will address the concerns expressed by the Council, e.g. use of a criminal surcharge. They are attempting to have the process authorized by the Legislature. The administrative court will begin the second week in July.

Another budgetary matter discussed was the tobacco settlement. Mr. Becker reported that Utah's share of this settlement amounts to \$1 billion over the next 26 years. The Governor's office sent out a "Request For Information" (RFI) to various agencies or programs dealing with tobacco and/or drug use. These RFIs asked agencies to submit their requests for allocation of the settlement money. The courts submitted their requests for drug/tobacco courts; however, the request was not firm, as a full presentation had not yet been made to the Council as a whole. This was done only to express an interest in receiving a portion of the settlement, and it could be a way to ensure drug courts receive monies without being appropriated directly to the judiciary by the Legislature. The money would likely be available for allocation by 7/1/00. An initial \$11 million would be set up as a "settlement fund". The Governor supports concept of drug courts; if this can be done without an appropriation, then such a process will likely be successful. Mr. Becker was asked whether the courts need to be prepared for special legislative session. He indicated that if any special session is conducted, it will not be until October or November, well after the Council's planning meeting. However, the courts should be prepared on the issue of specialty courts by the Council's August planning session.

Mr. Becker informed the Council of the following personnel changes:

Patricia McCarty has been hired as the new ADR Director, and she is scheduled to begin on July 18th. She is from Oregon, where she was the director of Mediation Services of Lynn County. She has had

extensive mediation experience.

Rolen Yoshinaga is leaving the Administrative Office of the Courts at the end of this year, to begin his own business. Recruitment to fill his position will begin immediately, with a deadline of mid-August. Mr. Yoshinaga will assist in the hiring process.

### **Subcommittee Reports**

Judge Schofield offered his report to the Council on behalf of the Management Committee. There was discussion on SB116, creation of Sex Offender Council. Judges Behrens and Iwasaki were recommended to serve on this council. The committee felt that either judge is highly capable of serving; however, ethics reservations were expressed by the committee since the Sex Offender Council is an advocacy group, and an ethics advisory opinion is being sought. Both judges are to be notified of concerns -- the matter was placed on the consent calendar for purposes of determining possible referral to Ethics Advisory Committee. Clarification was sought as to the procedure for an opinion. In the past, this has been done by a vote of the Council, with a request forwarded to Brent Johnson.

The Policy and Planning Committee had nothing to add to the minutes of their last meeting, and no new developments since their last report.

Chief Justice Howe indicated that Justice Russon, Chair of the Liaison Committee, had planned to attend the Council meeting; however, he was advised against doing so by his doctor. Therefore, there was no report from the Liaison Committee. They are scheduled to meet at either the end of July or the beginning of August.

Judge Glasmann reported to the Council on the Family Law Workgroup. The first meeting was held on June 4<sup>th</sup>. He indicated that at the outset, there seemed to be a slight resistance to the topic of family court. The first meeting provided a forum for members to discuss concerns regarding the idea or possibility of a structural change. Following that discussion, the focus was shifted and a more constructive approach was taken to the issue of positive changes that could be made. The next meeting is scheduled for July 9<sup>th</sup> at 11:00 a.m., primarily to brainstorm regarding changes on family law for subsequent presentation to the Council.

### **Fine/Bail Schedule**

Mark Jones presented to the Council changes which were made to the Uniform Fine and Bail Schedule.

### **Motion**

A motion was made to approve the recommendations to the Uniform Fine and Bail Schedule. The motion was seconded and carried unanimously.

### **Deputy Clerk Allocation**

Dan Becker presented to the Council the proposed allocation of deputy clerks. He outlined the 20 positions and how they were created. Four positions were funded by the Legislature, in that two positions accompany each of the judge positions appropriated by the Legislature; five were funded by the Legislature through fiscal note money; three were funded thru Juvenile Court, non-judicial funds (while the funds are ongoing, decisions regarding that money needs to be made yearly), and seven were created from carry-on funds that are time limited to June 30, 2000.

Mr. Becker continued by explaining the formula developed for the allocation of the clerks. One factor considered is the source of the money. Another factor was requests from individual districts, based on their assessments of their respective locations and needs. The final factor was the clerical weighted caseload. A committee consisting of court clerk staff and administrative staff worked with the Information Technology department to assemble the methodology and compile figures for the survey. Once the need was identified, an "acceptable deviation" was developed. "Acceptable deviation" is the premise that no office is ever fully staffed.

The results of survey were presented to the Management Committee. However, updated results as of June 29<sup>th</sup> were presented to the Council. No significant changes were noted, and a chart which was distributed to the Council was explained. Caseload results by district were also reviewed. After considering all the factors as well as the methodology, the Management Committee accepted the proposed allocation of deputy clerks at its meeting. There was discussion on whether collection-funded clerks are considered as FTEs. They are not counted as such. A total of ten and a half collection clerks were funded through money brought in.

Following further discussion, Mr. Becker stated that the proposed allocation would be effective as of July 1<sup>st</sup>. The procedure will also be discussed with the Boards of Judges.

### **Clerk Classification Study**

Myron March and Holly Bullen presented to the Council on the clerk classification study. This information was presented to the Management Committee at its June 4<sup>th</sup> meeting.

Mr. March began by offering background information on the inception of this study. A committee was formed two years ago to study the following clerk issues: career track, training, recruitment, and professionalism. Following the market survey which was conducted, and phasing out clerk position designations, job classifications were re-examined.

Holly Bullen continued by saying that this effort originated with Clerks of Court, most of whom were concerned with the job, title, description, and a way to enhance the perception in order to attract qualified applicants for clerk positions. A number of items were considered, e.g., pay, career track, and application. She listed the committee members for purposes of outlining the representation of clerks. The summary was distributed to and reviewed by the Council.

The committee's goal was to develop recommendations on ways to attract quality applicants for clerk positions and retain them in the system, to provide effective training to help clerks learn their jobs, and to apply the career track to the new clerk pay plan which was adopted by the Council in August, 1998 and implemented in October of that year. The committee made recommendations in the following areas: recruitment, job requirements, job titles, competency assessment, training, hiring policies, career track advancement, trainee positions, and the transition to the new plan. Ms. Bullen said the most controversial issue was that of job title for clerks. She stated there was both support and opposition by staff in the districts to retain the title of "clerk" for recruitment purposes.

Mr. March reviewed and compared the previous career track pay ladder with those proposed. The committee felt that the proposed career track ladder will be an asset in recruitment and retention of new employees without harming existing employees. Mr. March also explained the following in detail: a corrective action plan which is tied with ways to improve employee performance; a plan for salary increase; and a training (underfill) position plan, where an individual who falls slightly short of the requirements for a given position can be hired as an underfill. Holly Bullen was asked about her recommendation on the issue of title change for the court clerk position. She indicated that, for recruitment purposes, she agreed with the recommendations.

### **Motion**

A motion was made for the Council to direct that the appropriate changes be made to the Personnel Policies and Procedures manual and Education Policies and Procedures, as outlined by the Clerk Classification Committee. That further, the title "court clerk" be retained but enhanced for recruitment purposes. The motion was seconded and carried unanimously.

### **Appointment to Membership Council of Utah State Retirement Board**

Holly Bullen informed the Council that Judge Leslie Brown has resigned his position on the Utah State Retirement Board, thus creating a vacancy to be filled by the Council. Notice of the vacancy was sent to all eligible members, and two applications were received. Upon reviewing the applications, the Management Committee recommended to the Council that Judge Paul Maughan be appointed to fill this vacancy.

### **Motion**

A motion was made to approve the Management Committee's recommendation, thus appointing third District Judge Paul Maughan to the Membership Council of the Utah State Retirement Board. The motion was seconded and carried unanimously.

### **Proposal for Public Service Guidelines**

Tim Simmons, Sixth District Court Executive, presented to the Council a proposal for public service guidelines. Dan Becker began by explaining that this project began in part as a result of action taken by the Judicial Council two years ago. At that time, the Council set a goal to enhance public confidence in the court system. Subsequent to the action taken by the Council, Mr. Becker approached Tim Simmons regarding chairing this project and he agreed to do so.

Mr. Simmons explained his approach to the project: he contacted other states to inquire how they addressed this issue and received information from those states. Some states have prepared videos on customer service. Upon receipt of the information, a committee was formed with staff from other districts, including both district and juvenile courts and members of the AOC staff. This committee held several meetings and discussed ways to better serve the public, as a means to accomplishing the Council's desired goal. The objective established is to give districts tools to evaluate and improve the level of public service offered by individual courts. The focus is to establish and sustain an emphasis on maximizing service to the court's constituents.

The proposed guidelines were distributed to and reviewed with the Council. Mr. Simmons stressed that these are only recommendations, nothing is firm and that the recommendations are subject to any changes as deemed by

the Council. The guidelines allow for tailoring by individual districts. The committee recommended implementation as of September, following a presentation at the Employees' Annual Conference.

Mr. Simmons detailed a checklist contained within the proposed guidelines, which addressed virtually all aspects of court locations. Key items listed were:

**FACILITIES:** Parking, signs, special needs accommodations (including compliance with ADA requirements); public areas and conference rooms (and their adequacy to accommodate large groups of people on busy court days).

**SECURITY:** Security plans; security staff (whether both are updated, amended and staff trained per rule; are staff aware of daily schedule, etc.)

**COURT OPERATION:** Business hours; front counter areas, hearings and appointment schedules; jurors and witnesses; telephones (are calls to general court numbers appropriately answered by staff, voice mail, call-back turnaround time, etc.); caseload management; workflow; processing complaints; pro se litigants; linguistics; victims (addressing their comfort and security; information regarding specific cases made available to victims; and efforts (where authorized) made to provide victim mediation as part of court services.

**EDUCATION:** Adequate education of both staff and judges regarding public service as it relates to improving public trust and confidence in the courts; career training for clerk staff regarding legal advice vs. assisting the public; ongoing efforts to provide ethics training.

**EVALUATION:** Self-evaluation by court staff and judges (by use of proposed guidelines); "external" evaluation by the public; inquiry of Bar and allied agencies.

**MEDIA RELATIONS:** Establish courts' procedural information, readily available to the media; district media liaison/representative to work closely with Communications Director.

**HUMAN RESOURCES:** Performance plans with sections to evaluate all staff performance; emphasis of customer service skills in new employee recruitment.

Following the checklist are samples of employee and public surveys, and a sample "Code of Public Service". The latter document serves as a guideline to employees on governing their conduct, both toward the public and co-workers. The points mentioned in this document are taken from performance evaluations in the Seventh District. Suggestions for additions to certain areas were made, and Mr. Simmons noted that these suggestions would be incorporated into the proposed guidelines.

Mr. Simmons continued by saying that the committee recommended adoption of the "Code" of public service by every district. Tim met with Management Committee to recommend the proposed guidelines, and same were also presented to and endorsed by the Trial Court Executives. The Board of Juvenile Judges, after suggesting a few changes, endorsed the guidelines, and a presentation will be made to the Board of District Judges. Mr. Simmons stated that the committee would likely hold one more meeting to incorporate the suggested changes and formulate a final set of guidelines. The term "constituents" was preferred over "customers." Another suggestion made was to either more clearly define "internal customers", or change the term to "court personnel" or "court staff".

Dan Becker pointed out that the committee is not recommending the Council's formal adoption of all or part of these proposed guidelines in the same way the Council would adopt a rule change. It is hoped that the Council will endorse the approach, as the proposal compliments issues related to public trust and confidence. He added that the most important issue -- as it relates to confidence -- resulting from a vote at the Public Trust and Confidence conference was that of racial and ethnic fairness in the legal system. Judge Lindsay stated that she felt the issue of public service is an important concept which needs to be addressed.

Mr. Simmons concluded by suggesting that incorporating the proposed guidelines with the perspective of those served by the courts would be mutually beneficial to court employees and the public.

### **Motion**

A motion was made to adopt the proposed public service guidelines to be used by districts as a tool to address public service concerns. The motion was seconded and carried.

### **Comments from Bar President**

James Jenkins attended the Council's meeting to offer brief comments on the family law issue. He stated that the Bar Commission had not formally addressed this issue since 1994, when the task force presented its report. He noted that the current issue of the Utah Bar Journal presents an accurate chronology of developments since that time. He proceeded to comment on the Council's recent resolution, saying that the Bar Commission approved the 1994 proposal by the task force, and that no further study has been conducted on the issue. Based upon discussions he has had with various attorneys, he was of the view that there is a genuine interest and concern in

maintaining a strong judiciary, resulting in better service to the public. He continued by suggesting that, should the Council opt to administer changes, that the judiciary and the Bar as a group, try to focus on the needs of families and on coordination of services. Of foremost concern is serving the public. He said that if the Council so desires, Bar Commission is willing to more closely examine the issues and offer resources and assistance toward facilitation of any changes.

### **Family Law Presentations**

Mary Corporon presented to the Council on behalf of Kellie Williams. She is a member of the Executive Committee of the Family Law Section of the Bar. Members of the family law section, when asked, support the formation of a "family court." However, she also stated that there is a vocal minority opposition within the section and the executive committee. This opposition is not necessarily to the concept of family court; rather, these members would prefer clarification and definition of a "family court".

She presented to the Council a list of concerns compiled by the executive committee regarding the court system as it relates to the needs of families in the area of family law. These concerns are as follows:

- A need for uniformity on how objections are handled from commissioners to judges. If a family court were created, consisting of judges focused on family, commissioners may not be needed in the system. However, this would be contingent upon the make-up of the family court.
- Communications between Juvenile and District courts on a family's case (one court-one family).
- Corrections needed which address the problem of handling confidential information.
- The perceived need for pretrial before court, 30 or more days prior to trial setting. The reasons for this are twofold: 1) most of the expense for trial preparation occurs within the last 30 days; 2) clients are more inclined to settle if they have not spent a substantial amount of money.
- A request to routinely set pretrial and scheduling conference by phone in cases where travel is involved.
- A request that guardians ad litem be more involved with cases, and that this should be the standard, rather than the exception to the rule, in custody/visitation and child support cases.
- (Judge Glasmann indicated that this was discussed by the family law workgroup which he chairs.)
- Eliminate the need for service of process of documents in order to have temporary hearing after the initial service of process.
- Eliminate mandatory hearings on impecunious filings.
- Uniformity of retroactivity in awards of child support or alimony on modification.
- Need to "fast-track" custody trials; the executive committee felt that when there is a genuine disputed custody which requires a determination, such a case should be second in priority only to cases involving an incarcerated criminal defendant awaiting trial. (Judge Glasmann indicated that the family law workgroup has discussed the idea of bifurcation discussed.)
- Regarding cases proceeding by way of proffer and/or affidavit with no opportunity for cross-examination, there is a concern that system abuse could take place regarding proffer, evidence submitted, etc.
- That courts be more willing to impose contempt sanctions against those who do not adhere to court orders issued in domestic cases.
- There is a concern regarding new discovery rules and the way in which family law might be impacted by pretrial and discovery rules which may be adopted.

Ms. Corporon was requested to prepare for the Council a list of the aforementioned concerns, as this list would be helpful to review. Judge Schofield asked if the family law section would might view court-annexed custody evaluators as an aid in moving the evaluation process forward. She opined that this might be contingent upon the quality of the person in such a position. Both Ms. Corporon and Kellie Williams were invited to address family law workgroup.

Stewart Ralphs of the Legal Aid Society of Salt Lake then made a brief presentation to the Council. He addressed one of the concerns which Ms. Corporon listed, which dealt with the mandatory hearings in impecunious filings in family law matters. These hearings result in more time taken, and are seen as a perfunctory function. His recommendation, on behalf of the Legal Aid Society and Utah Legal Services, was that these hearings either be

held at the court's discretion or solely on the pleadings. Some districts are not holding mandatory hearings on impecunious filings.

Mr. Ralphs also expressed the need for uniformity at pretrials, either with commissioners or judges. He made a request that courts listen to the positions of each party, allow time for counsel to present their respective positions, give input to the parties and counsel, and ask whether the matter can be settled without a trial. In addition, Mr. Ralphs indicated that these agencies would like family law cases to be heard by family law-trained judges. There was some agreement with Mr. Ralphs' recommendation for a mechanism to foster settlement discussions. Both Mr. Ralphs and Ms. Corporon were asked if they felt that in-house mediators would be an effective means toward settlement. They stated that this has met with a fair amount of success in districts where it is currently being used.

### **Emergency Change to Rule 403**

Fran Wikstrom began his presentation to the Council with a brief explanation of the Judicial Conduct Commission's screening process. He continued by saying this process is followed in all courts except juvenile court. In cases involving complaints against a juvenile judge, a formal investigation is opened, a notification letter to the judge is sent, and a subpoena must be requested in order to access files and review records. Over half of the complaints are dismissed before ever reaching the formal investigation level. He then requested that the Council consider approving an emergency change to Rule 403 which would allow for files to be accessed and reviewed without a subpoena. Tim Shea stated that Steven Stewart has requested an additional amendment to paragraph 13(a), wherein the term "preliminary inquiry" would be added to "investigation" and "preliminary investigation".

The Policy and Planning Committee reviewed and recommended approving the rule, as well as recommending the emergency adoption of same. There will be a public comment period; however, this period will be delayed several months due to the recent closing of the rule-making cycle. The public comment period will follow the rule's effective date. Mr. Shea noted that since records are being made available for review, the judges will not have had an opportunity to comment on the rule change while it is in effect.

### **Motion**

A motion was made to adopt the proposed amendment to Rule 403 with added term "preliminary inquiry", and that said amendment should be effective immediately. The motion was seconded and carried unanimously. The Board of Juvenile Judges was notified of this change, with no responses or comment from the Board.

Mr. Wikstrom presented to the Council his final report as a member of the Judicial Conduct Commission. During the first six months of the year, the Commission functioned with only six commissioners, which is the statutory minimum for a quorum. A total of 125 complaints were filed with the Commission, and 145 matters were resolved, thus eliminating any backlog.

He announced the incoming chair, who will be David Nuffer; Judge Gordon Low will serve as vice-chair.

Mr. Wikstrom was thanked for his service to the Commission.

### **Motion**

A motion was made to go into Executive Session. The motion was seconded and carried unanimously.

A motion was made pursuant to the Council's Executive Session.

### **Motion**

Motion to certify two commissioners for continued employment by the courts. The motion was seconded and carried unanimously.

### **Motion**

A motion was made to certify as fit for retention all the municipal justice court judges, with the exception of Dee Aldridge and DeVerl Payne, and that those two be addressed separately.

A second motion was made to certify those municipal judges listed, with the exception of those who are not eligible due to age. The motion was seconded and carried with two abstentions, those of Judge Ronald Hare and Judge John Sandberg.

The Council directed the AOC staff to request Judge Dee Aldredge to submit a written explanation of the Judicial Conduct Commission reprimand to the Council's Management Committee. A written response is requested from Judge DeVerl Payne, and AOC staff is requested to report back to the Management Committee on this matter.

With regard to senior judges, information which is also available to the public may be provided to the Constitutional Revision Commission. The information generated from surveys conducted outside the retention election process is not public information, as this is only intended for the use of judges' self-improvement. The inquiry from the Constitutional Revision Commission has resulted in the Council reviewing the use and regulation of

senior judges. Proposals for improving the process will be communicated to the Council and the Commission in the near future.

**Motion**

A motion was made to adjourn. The motion was seconded, carried unanimously, and the meeting was thereby adjourned until the Council's meeting on Friday morning, July 2<sup>nd</sup>.