

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MINUTES

Wednesday, July 4, 2001

Sawtooth Room  
Sun Valley Resort  
Sun Valley, Idaho

Chief Justice Richard C. Howe, Presiding

#### **Members Present:**

Chief Justice Richard C. Howe  
Justice Michael Wilkins  
Hon. Russell Bench  
Hon. Ben Hadfield  
Hon. Jerald Jensen  
Hon. Clair Poulson  
Hon. Ronald Hare  
Hon. Andrew Valdez  
Debra Moore, esq.  
Hon. Lynn Davis  
Hon. Lyle Anderson  
Hon. Scott Johansen

#### **Staff Present:**

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

#### **MEMBERS EXCUSED:**

Hon. Anne M. Stirba  
Hon. Lee Dever

#### **GUESTS PRESENT:**

Hon. Roger Livingston (for Judge Dever)

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

All members and staff were welcomed to the meeting. Judge Roger Livingston, attending on the behalf of Judge Dever was welcomed. Judge Anne M. Stirba was excused. The minutes of Judicial Council's May 29, 2001 meeting were discussed. A motion was then made.

**Motion:** A motion was made to approve the minutes of the Council's May meeting. The motion was seconded and carried unanimously.

#### **2. JULY 4<sup>TH</sup> PRESENTATION ON THE DECLARATION OF INDEPENDENCE: (Hon. Ben Hadfield)**

In recognition of the 4<sup>th</sup> of July Holiday, Judge Hadfield provided a presentation to the Council regarding the Declaration of Independence and the history of its signing.

#### **3. REPORT FROM THE CHAIRMAN: (Chief Justice Richard C. Howe)**

Chief Justice Howe reported that he was invited to attend a youth courts conference. The youth courts deal with offenses which take place in schools such as truancy or fighting. The court consists of peers, and some form of restitution is usually decided upon. The youth courts help teens to acquire an appreciation for the justice system.

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

**Daniel J. Becker reported the following items:**

- The CASA program has received \$100,000 in grant funding from National CASA to support the work volunteers perform with abused or neglected children. The juvenile court has received \$751,000 in additional grant funding through Juvenile Justice Incentive Block Grant (JAIBG) monies.
- The Online Court Assistance Program (OCAP) will receive a National Justice Achievement Award from the National Association for Court Management at their annual conference in July.

- A notice has been received from the City of Richfield indicating that they intend to create a justice court. Currently, these cases are heard in the Sevier County justice court.
- The judiciary interim committee and legislative rules committee took up for comment the court's proposed changes to the judicial performance evaluation program. Additional information concerning the committees' responses and recommendations to the proposed program will be discussed at the end of the Council meeting.

## 5. REPORTS:

### Management Committee:

Judge Bench reported that the Committee received an audit report regarding the Second

District, Bountiful audit, and discussed Judge Mower's presentation to the Council in May regarding plain english forms.

Regarding the use of plain english forms, questions were raised about jury instructions and Tim Shea was asked to raise the issue of plain instructions with the Advisory Committee on Jury Improvement.

### Policy and Planning:

Judge Johansen reported that the Committee discussed many items that are scheduled on the Council's July agenda.

### Liaison Committee:

The Liaison Committee has not met.

### Bar Commission:

Debra Moore reported that the Bar Committee held their retreat in June. The Bar reviewed a report from the Admissions Committee which discussed reorganizing the Committee to allow it to run better and improving the admissions process. The Bar is looking at improving the character and fitness evaluation process in particular. The Bar will also be looking at recommending a change to the bar exam itself, in order to test actual skills. At the Bar's meeting, they underwent a number of sunset reviews. Minor changes were made, but the Bar feels that, overall, their programs are functioning quite well. The Bar has passed a resolution to support the proposed amendments to the Judicial Performance Evaluation program, and letters that affect are being sent to the Council and Board of District Court Judges.

## 6. FINAL ACTION ON RULES PUBLISHED FOR COMMENT: (Tim Shea)

Tim Shea reported that a number of rules were being presented to the Council for final comment. The following rules received no comments during the open comment period:

- Rule 1-205. Standing and ad hoc committees.
- Rule 3-407. Accounting.
- Rule 3-501. Insurance benefits upon retirement.
- Rule 4-301. Trust Accounts.
- Rule 9-105. Justice Court hours.

There were also a number of rules that did receive comments.

Rule 4-501. Motions. A comment was made by Catherine Conklin who raised a concern with the requirement that the responding party restate verbatim the facts alleged by the moving party. Ms. Conklin expressed that this requirement is a "waste of time". Policy and Planning took the comment under consideration and concluded that restating the facts is limited to motions for summary judgements and to facts with which the party takes exception. This requirement takes a minimum of time.

Another comment was made in relation to Rule 4-501. The comment was made by J. Thomas Bowen who suggested that a party responding to a motion for summary judgement should have 30 days in which to respond rather than 10. Policy and Planning recommends no further change. A party can request an extension of time.

Rule 4-404. Jury selection and service. Comments were made by staff which suggested that certain technical corrections be made. Further changes are suggested on page 11, lines 21, 25, and 26 and on page 12, lines 28 and 29 to conform with statutory changes made by HB 252. Policy and Planning has approved the further amendments.

The following rule was published for comment. The courts have received several comments opposed to restricting access to jurors' names and addresses. A few comments in support. The Council has asked that the Committee on Improving Jury Service consider the comments, which it will do on July 20, 2001.

Rule 4-202.02. Records classification.

After the presentation by Mr. Shea was complete, the Council made a few comments. It was mentioned that on page eight, line two, Rule 3-501 discusses dental coverage under medicare. Medicare, however, doesn't offer dental coverage. Also, lines 22 through 25 were pointed out as conflicting with one another. Judge Anderson clarified that line 22 may refer to coverage in the first seven years after retirement. Line 25 may refer to coverage after seven years. Tim Shea will further investigate these issues and bring Rule 3-501 back to the Council in August.

**Motion:** Judge Bench made a motion to adopt the proposed changes in all rules listed above, with the exclusion of Rules 4-202 and 3-501 which will be considered by the Council in August. Judge Anderson seconded the motion. The motion carried unanimously.

**Motion:** Judge Davis made a motion to refer Rule 4-202 back to policy and planning for consideration of the time issue raised in the J. Thomas Bowen comment, although Policy and Planning had already considered the issue. Debra Moore seconded the motion. The motion was defeated.

## **7. RULES GOVERNING RECORDS USED IN CERTIFICATION OF JUDGES: (Tim Shea)**

Tim Shea discussed a memorandum concerning restricted records for certification of judges. Mr. Shea mentioned that the records the Council will consider would potentially fall into four categories:

- 1) Published in the voter information pamphlet. The content of the voter information pamphlet is governed by statute;
- 2) Public. Public records must be made available upon request. Any steps to publish the information are within the discretion of the Council;
- 3) Private. Can be released by the subject of the record - in this case the judge - but not by the Council;
- 4) Protected. Cannot be released by the subject of the record or the Council. CJA 4-202.03(7). Technically cannot be provided to the judge being evaluated, but this restriction is overcome by the requirement in proposed Rule 3-111.04 that records considered by the Council be shared with the Judge.

The proposed rule is recommended by the Policy and Planning Committee. If the rule were to be approved by the Council it would be approved through emergency procedures.

**Motion:** Judge Johansen made a motion to approve the proposed rule. Judge Anderson seconded the motion. The motion carried unanimously.

## **8. RECOMMENDATIONS OF FINE INCREASES FOR THE UNIFORM FINE/BAIL STANDING COMMITTEE: (D. Mark Jones)**

Mark Jones presented proposed changes to the Fine and Bail Schedule for speeding to the Council. Mr. Jones reported that the fine amounts for speeding have not been changed in well over ten years. The current schedule was outlined and changes were recommended as indicated below.

Current Schedule:  
Speeding Violation

MPH Over Speed Limit	Bail Amount*
1-10 mph	\$40
11-15 mph	\$50
16-20 mph	\$60
21-25 mph	\$80
26-30 mph	\$100
36-40 mph	\$120
41+ mph	\$405**

\* surcharge included in bail amount where applicable

\*\* mandatory court appearance

Recommended Fine and Bail Schedule:  
Speeding

MPH Over Speed Limit	Bail Amount*
1-10 mph	\$50
11-15 mph	\$75
16-20 mph	\$125
21-25 mph	\$150
26-30 mph	\$300
31+ mph	\$400 + \$10 per mile over**

\* all bail amounts include surcharge where applicable

\*\* \$400 for 31 miles over the speed limit and \$10 for each additional mile

The Fine and Bail Standing Committee also recommended the following changes:

A \$2,000 bail amount is recommended for the offense of "Ultimate Fighting" which is a Class A Misdemeanor (13-33-402) and for "Unlawful Conduct in Sports" (13-33-505) also a Class A Misdemeanor.

A \$100 bail amount is recommended by the Committee for violation of "Passenger Limitations for Young Drivers" (41-8-3) Class C Misdemeanor.

A \$2,000 bail amount is recommended for violation of the Uniform Agents Act (15-9-114). All are a Class A Misdemeanor.

A \$100 bail amount is recommended for unlawful use of a laser pointer at a moving motor vehicle or occupants. (76-10-2401) Infraction.

A \$500 bail amount for unlawful use of a laser pointer at a law enforcement officer. (76-10-2401) Class C Misdemeanor.

A recommendation from the Committee is that the surcharge is backed out of the \$20 assessment for a traffic delinquent notice and backed out of a \$50 assessment for a warrant for the original offense.

Mark Jones reported that the Uniform Fine and Bail Standing Committee voted unanimously to approve the proposed changes. It was noted by the Council that in regards to "faulty equipment", the issue should be evaluated to reach uniformity in processing procedures throughout the state.

**Motion:** Judge Poulson made a motion to approve the recommended fine/bail changes as listed above, and that the issue of faulty equipment should be evaluated by the Committee for uniformity. The motion was seconded and carried unanimously.

## 9. BUDGET REDUCTION RESPONSE: (Daniel J. Becker, Myron K. March)

Daniel Becker reported that at the last Council meeting, information was provided to the Council concerning a 4% budget reduction response that was to be submitted to the Governor. Mr. Becker provided updated information to the Council concerning budget reductions. A copy of the response submitted to Lynne Ward, State Finance Director, was distributed to the Council. It now appears that the state will only need to reduce budgets by 2½%. A revised budget reduction response was presented to the Council as follows:

One Time Reduction (\$949,100)	Original	Revised
Original Estimate of carry forward	400,000	400,000
Additional funds recovered by freeze of purchases and personnel in FY 2001		
Technology Equipment	75,000	75,000
Audio Recording Upgrade	124,100	124,100
Court Executive Equipment	125,000	125,000
Employee Vacancy Freeze	225,000	225,000
Total One time		949,100
On going Funds to be Withheld (\$914,30)		
New programs withheld in FY2002		
Deputy Clerk Fiscal Note Funding	194,600	194,600
Child Welfare Mediation	170,000	
Drug Court Positions	128,700	128,700

Law Clerk	65,000	
Guardian ad Litem	270,000	
Total	828, 300	323,300
Base Budget spending to be withheld		
Reduction in-state and out of state travel	56,000	56,000
Reduce ARI funds in Lease Budget	302,000	215,000
Reduce State Supervision funds by 5%	150,000	150,000
Reduce Juror and Witness Fees	100,000	
Reduce all Current Expense Budgets	150,000	150,000
IT Fiscal Note Funding	20,000	20,000
Total	778,000	591,000
		914,300
Total On going		
.Reduction in Personal Services	2,069,400	(None)
(Approx 60 positions)		

Mr. Becker also presented the following information to the Council:

	Approved	Revised
Education Programs	44,000	44,000
Employee Incentive Awards	185,000	150,000
Local Program Incentives	65,000	0
Second Language Stipend	50,000	35,000
IT Equipment Replacement	100,000	100,000
Digital Recording Equipment	100,000	150,000
Increased Operating Costs	111,000	111,000
IT Contractual Personnel	75,000	75,000
Diversity Training	28,000	28,000
Court Executive Equipment	100,000	50,000
Employee Assistance Program	30,000	0
Provo-Ogden Perimeter Security	160,000	0
Reestablish Reserve		305,000

The Courts have also received the Governor's guidelines for preparing 2003 budget requests. The guidelines indicate that no new growth, and no new programs should be submitted. Mandates will be considered, but will be covered through reductions in an agency's base budget. Furthermore, the Legislature has authorized the Governor to withhold \$50 million in new capital facility projects. The Courts have sent a letter to Lynne Ward requesting that they do not consider the new Cache County Courthouse as part of their list of projects to be withheld.

**Motion:** Judge Bench made a motion to approve the proposed budget reduction response. Debra Moore seconded the motion. The motion carried unanimously.

#### **10. REPORT: ADVISORY COMMITTEE ON INTERPRETER SERVICES: (Hon. Lynn Davis, Holly Bullen)**

Holly Bullen reported to the Council on behalf of the Advisory Committee on Interpreter Services. The Committee has the responsibility of developing policies concerning court interpreters, consulting with the Administrative Office of the Courts regarding the establishment of programs to certify court interpreters, and reviewing/responding to allegations of violation of the Code of Professional Conduct, including decertification or other disciplinary measures.

The Committee is comprised of a district court judge, a juvenile court judge, a justice court judge, a court executive, a clerk of court, juvenile probation staff, an interpreter coordinator, two court interpreters, an expert in linguistics, and an attorney.

The Committee deals with topics such as translations, interpreter pay/travel, interpreter discipline, enhancement of requirements for non-certified "approved" interpreters, education for judges, education for the Bar, interpreter certification workshops, continuing education for certified interpreters, training for non-certified interpreters,

training for interpreter coordinators, written exam on Code of Professional Responsibility, and the oversee interpreter information on the Courts' website.

Current priorities were mentioned, which included an interpreter program manager, rates of pay for court interpreters, and interpreter compensation for canceled trials. Ms. Bullen also mentioned a number of future projects planned by the Committee including certification for languages other than Spanish, creation of full-time staff interpreter positions, telephonic interpreting, education for judges, the Bar, and court employees, and interpreter needs during the Olympics.

#### **11. REPORT: APPELLATE BOARD: (Chief Justice Richard C. Howe, Matty Branch)**

Matty Branch reported the following items to the Council on behalf of the Appellate Board.

- An effort has been made in the past year to conduct appellate training throughout the state.
- The Appellate Courts are in the test stages of utilizing an electronic filing system.
- The most recent Appellate Board meeting took place in May. An area of concern was raised in the meeting regarding a lack of proper or quality representation for indigent defendants.

Judge Bench asked the Council to read an article entitled "A Shadow Over Justice", and that this item be added to the Council's agenda at one of the next few meetings.

#### **12. DRUG COURT UPDATE: (Richard Schwermer)**

Richard Schwermer provided an update to the Council regarding the current status of drug courts. A handout was distributed which outlined drug courts throughout the state and requested revenue for FY 2002.

Mr. Schwermer mentioned that upcoming issues related to drug courts include ethical issues, standardization of drug courts, quality control, and education.

#### **13. RISK ASSESSMENT: A RECOMMENDATION OF THE LEGISLATIVE AUDIT ON JUVENILE JUSTICE: (Ray Wahl)**

Ray Wahl reported that a legislative audit which was conducted several years ago, recommended that the Juvenile Courts implement an assessment process/case management tool. Mr. Wahl presented such a system to the Council.

Mr. Wahl discussed why the courts conduct risk assessments in the juvenile justice system, systems of operation, the Functional Family Probation/Resource Services (FFPRS), and implementation and training issues. Risk assessments are conducted to help the system focus on early intervention, and identifying risks of youth entering the juvenile justice system. By reducing risk factors and increasing protective factors, recidivism rates are reduced. This system has been used by other states, reliability and validity of tool has been tested. The system results in a correctional supervision plan.

There are two tools used with this system, 1) a pre-screen assessment, and 2) a full assessment. The pre-screen assessment captures information from the present intake process, but also adds questions to obtain more complete information resulting in a score. The pre-screening process takes approximately twenty minutes. The full assessment consists of ten domains covering many areas of a juvenile's life including criminal history, living arrangements, employment, etc. The full assessment results in a comprehensive body of information that can be used to develop a supervision plan. The system motivates youth and families to change, and to link youth and families with services that will encourage and facilitate change. The system has been around since 1968 and has been shown to be one of the best researched models in the Juvenile Justice System.

A pilot study of the system began in March of 2001, involving 30 staff from Youth Corrections and Juvenile Court. Training will begin in October of 2001. \$321,000 in Juvenile Accountability Incentive Block Grant (JAIBG) money has been received to implement the program. Some training of judges will take place at the Annual Judicial Conference in the Juvenile Bench meeting in September.

#### **14. ALLOCATION OF CLERICAL POSITIONS: (Daniel J. Becker)**

Daniel Becker provided data to the Council concerning results of the most recent Clerical Weighted Caseload study. The study evaluates the state of the court's staffing district by district. The results show that the Third District is over staffed by 2.5 positions, and the Fourth District is under staffed by 1.6 position. All other districts are staffed within an acceptable deviation.

Positions will be allocated from fiscal note funding, drug court funding, and the reduction of two positions in the Third District as follows:

Positions Available:

3 Deputy Clerks	Fiscal Note Funding
4 Deputy Clerks/Probation Officers	Drug Court Funding*

2 Deputy Clerks	Reduction from 3rd District
<b><u>9 Total</u></b>	
<b>District:</b>	<b>Position Increase/Decrease:</b>
1st District Court	½ Deputy Clerk*
2nd District Court	½ Deputy Clerk* 1 Deputy Clerk
2nd Juvenile Court	½ Deputy Clerk* 1 Deputy Clerk
3rd District Court	(-2) Deputy Clerks
3rd Juvenile Court	1 Probation Officer* 1 Deputy Clerk
4th District Court	2 Deputy Clerks
4th Juvenile Court	½ Probation Officer*
5th District Court	½ Deputy Clerk*
7th District Court	½ Deputy Clerk*
<b><u>Total</u></b>	<b><u>9 FTE's</u></b>

\*All of these positions will be frozen based upon the budget reduction plan adopted by the Council, except for the two positions that are being transferred from the Third District to the Fourth District and the Probation Officer position in the Third District Juvenile Court.

#### **15. PROPOSED RECORDS CLASSIFICATION COMMITTEE: (Tim Shea)**

It was decided that this item will be discussed by the Council in August.

#### **16. INSURANCE FOR DEFENDING COMPLAINTS WITH CONDUCT COMMISSION: (Tim Shea)**

The Council asked Policy and Planning to consider the feasibility of a statute authorizing a judge who successfully defends a complaint filed with the Judicial Conduct Commission to be reimbursed for attorney fees. Policy and Planning has investigated the possibility of purchasing insurance to pay attorney fees. The cost for a policy for Utah judges would be determined by an actuarial study of the number of judges covered, the volume of complaints and sanctions by the Conduct Commission, the process of the Conduct Commission and other factors. Group costs are usually lower than individual costs. The insurance would be effective if a case proceeded formally.

It was recommended that insurance be made available to justice court judges as well.

Tim Shea and Policy and Planning will continue to explore the costs of an insurance program and possibilities for paying for a program.

#### **17. OTHER BUSINESS:**

It was reported that letters have been received from three districts concerning the proposed Judicial Performance Evaluation Rule. Two of the districts have asked that the proposed section which provides for presumptive rather than mandatory certification be removed. One other district has asked that additional time be taken to study the proposed change.

The judiciary interim committee and the legislative rules committee have had considerable discussion regarding the issue of judicial performance evaluation. The legislature is expected to comment formally as follows:

- 1) The general retention question should not be eliminated,
- 2) In section 3-111.02, language should read "shall" rather than "may",
- 3) The juror general question should not be eliminated,
- 4) The lawyer sample should be weighted to only the last two years,
- 5) Question the survey scoring which provides the top 3 as favorable,
- 6) Minimum survey scoring ok: 70% may be too low,
- 7) 75% of questions standard too inflexible,
- 8) Exclusion of lawyers is a bad concept,
- 9) Excluded lawyers should be notified of their exclusion,
- 10) The standard for cases under advisement shouldn't be relaxed,
- 11) The description of formal sanctions should be used.

The committees also raised questions such as, what locations were the lawyers that were excluded last time?, what were the grounds?, where is the standard that judges should stick to the law and not legislate?

The Judicial Council will discuss this issue further during their August meeting.