

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MEETING MINUTES

Thursday, August 23, 2001 and  
Friday, August 24, 2001

Superior Room, Cliff Lodge  
Snowbird, Utah  
Chief Justice Richard C. Howe, Presiding

#### **Members Present:**

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

#### **Staff Present:**

Daniel J. Becker  
Myron K. March  
Richard H. Schwermer  
D. Mark Jones  
Ray Wahl  
Holly Bullen  
Tim Shea  
Matty Branch  
Fred Jayne  
Ron Oldroyd  
Jerome Battle  
AnNicole J. Faeth

#### **Members Excused:**

Hon. Andrew Valdez

#### **Guests Present:**

Esther Chelsea-McCarty, *Legislative Research*  
Linda Thomson, *Deseret News*  
Jerry Howe, *Legislative Research and General Counsel*  
Hon. James Taylor, *Member, Children and Family Law Standing Committee*

Thursday, August 23, 2001

#### **1. PRESENTATION TO PETER STIRBA IN RECOGNITION OF JUDGE ANNE STIRBA'S SERVICE ON THE JUDICIAL COUNCIL: (Chief Justice Richard C. Howe)**

A presentation was made to Peter Stirba in recognition of Judge Anne Stirba's service on the Judicial Council. A resolution of the Judicial Council was also presented to Mr. Stirba.

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

All members and staff were welcomed to the meeting. The minutes of the Council's July meeting were discussed. A motion was then made.

**Motion:** Judge Davis made a motion to approve the Council's July minutes. The motion was seconded and carried unanimously.

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

Chief Justice Howe reported that the Council received letters from judges in the First, Second, Third and Fourth Districts expressing concerns regarding the judicial performance evaluation program changes. Meetings have been held with those districts to discuss their concerns, and it appears that those concerns have since been somewhat alleviated. Chief Justice Howe expressed his appreciation to the districts for how well the group was received during their visits.

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

Daniel J. Becker reported the following items:

- \$500,000 in additional Byrne Grant funding may be available. Proposals are currently being put together to bring before the Council.
- It appears that Court Improvement Funding which is approved by Congress will continue. Drug court funding is being discussed at a rate of \$2 million more than last year. In regards to mental health courts, Congress has appropriated \$5 million for experimentation.
- The Fifth District Court in conjunction with the County has applied for \$473,100 in federal grant money to support their drug court.
- The National Association for Court Managers (NACM) has awarded the Online Court Assistance Program (OCAP) the 2001 Justice Achievement Award. The award was given through much competition, and OCAP was a topic of much interest and discussion at NACM's Annual Conference which took place in July.
- OCAP was also recognized at the International CTC 7 Conference. OCAP will be expanded soon to address domestic violence and protective order issues.
- The Utah State Court website was recognized by a privately owned company, Justice Served, as one of the ten best court websites in the Country.

## 5. REPORTS:

### **Management Committee: (Hon. Russell Bench)**

Judge Bench reported that the Management Committee discussed many items which appear on the Council's consent calendar. These items include Guardianship of a Minor forms and Juvenile Court forms which appeared previously before the Council. Judge Poulson mentioned that he would like to discuss an item which appears on the consent calendar, Proposed Amendment to Accounting Procedures. Judge Poulson expressed a concern with Interpreters being paid at 75% of their normal rate if a scheduled trial or hearing is cancelled with less than two days notice. A motion was then made.

***Motion:*** Judge Poulson made a motion to approve payment of Interpreters for trials or hearing cancelled with less than two days notice at a rate of 50% rather than 75%. The motion was seconded and carried unanimously.

### **Liaison Committee: (Hon. Lee Dever)**

Judge Dever reported that the Liaison Committee considered three bills. The first bill discussed the Office of the Guardian ad Litem. The Liaison Committee is not advocating the legislation but instead would like the issue of where the Guardian ad Litem is located studied. The second bill discussed the decriminalization of traffic citations handled by administrative judges. The third bill discussed the notion of prohibiting juvenile court judges from appointing a Guardian ad Litem in delinquency matters.

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

Judge Johansen reported that Policy and Planning discussed the issue of legislation that was passed last session that allows an employee to retire and then come back and work in the same position. This issue may appear on the Council's consent calendar in their September meeting. Judge Johansen also reported that the Committee is preparing a survey to be distributed to judges to see if they are interested in pooling insurance against complaints filed with the Judicial Conduct Commission.

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

Debra Moore reported that the Bar Commission has been discussing the unauthorized practice of law issue which will be discussed in the Council's meeting.

## 6. UNAUTHORIZED PRACTICE OF LAW: (John Baldwin, John Adams)

A handout was distributed to the Council which summarized the Unauthorized Practice of Law Statute. It was mentioned that hearings have been scheduled to take place September 11, 2001. The Bar Commission is preparing a response to be discussed at the hearing and would appreciate the Council's input.

It was reported that during the legislative session Section 78-51-1 was repealed. The Unauthorized Practice of Law Statute, however, was embedded in the section and was inadvertently deleted. In the subsequent special session of the Legislature, there was an effort to reimplement the Statute which failed in the House of Representatives. The notion of the Unauthorized Practice of Law is now being reevaluated and there appears to be an interest in whether there should be a small allowance for the unauthorized practice of law in Utah.

It was noted that this issue was placed before the Council in order to gain feedback as to how the Courts wish to deal with this issue. It was mentioned that other issues need to be evaluated as well, such as multi disciplinary practice and multi jurisdictional practice. It was decided that the Courts will create a letter supporting the re-enactment of the Unauthorized Practice of Law Statute.

**7. FINAL APPROVAL OF RULES: (Tim Shea)****Rule 3-501: Senior Judge Benefits:****Rule 4-408: Approval of Silver Summit District Court Site****Rule 4-408.01: Approval of Silver Summit District Court Site****Rule 3-501: Senior Judge Benefits:**

Tim Shea reported that the Council previously declined to take final action on Rule 3-501 due to an ambiguity in responsibility for the cost of supplemental Medicare insurance and prescription drugs after the retired judge reaches age 65. Several changes were made to the rule based upon comments the Council made in their July meeting. It was noted that a standard phrase was created to define the benefits. The phrase is located on page one of the rule lines 36 and 39 - 42. Revisions were also made on page two lines 2 - 30. The Council suggested that line 18 on page one be amended to read "comparable medical insurance" because Medicare cannot be considered comparable insurance due to the fact that it does not include dental coverage. It was further noted that line 21 on page one may be unnecessary.

**Motion:** Judge Johansen made a motion to approve Rule 3-501 with the change suggested on line 18 and with the removal of line 21. The motion was seconded and carried unanimously.

**Rule 4-408 and 4-408.01:**

Summit County: Tim Shea reported that Rules 4-408 and 4-408.01 were published for comment and none were received.

**Motion:** A motion was made to approve Rules 4-408 and 4-408.01. The motion was seconded and carried unanimously.

**8. FINAL APPROVAL OF RULE 4-202.02: CLASSIFICATION OF JUROR RECORDS: (Tim Shea)**

Tim Shea reported that Rule 4-202.02 would classify information from which jurors could be identified as private before a trial and during a trial. After the trial the names would be released. The judge could delay the release of names for up to five business days in the interest of justice, and the records could be sealed if the judge follows constitutional procedures and standards. Mr. Shea also mentioned that, according to the rule, a juror could not request keeping name private.

**Motion:** Judge Johansen made a motion to adopt the amendments to Rule 4-202.02. The motion was seconded. Judge Davis mentioned that he disfavors this rule. Justice Wilkins pointed out that what is proposed in the rule is constitutional. The rule does not prevent jurors from speaking with the media after a trial, it just prevents the media from contacting jurors immediately after the trial. The motion was carried with one opposed.

**Friday, August 24, 2001**

**1. PROPOSED RULE: COMMUNICATION BETWEEN COURTS IN FAMILY LAW CASES: (Hon. James Taylor)**

Judge James Taylor discussed Rule 901.5: Consolidation of Family Law Cases with the Council.

**Motion:** Judge Johansen made a motion to forward Rule 901.5 to Policy and Planning for their consideration. The motion was seconded and carried unanimously.

Judge Taylor reported that the Judicial Council asked the Standing Committee on Children and Family Law to evaluate the issue of communication between courts in family law cases. The Committee is interested in maintaining the current jurisdiction as well as possible. Judge Taylor also noted that the idea behind the rule is to require notification of litigants if there is another proceeding, and to allow cases to be transferred in order to simplify cases. Judge Taylor further noted that there is currently no way for a judge to call a commissioner or judge in another county who is working on the same case.

**2. FINAL APPROVAL OF JUDICIAL PERFORMANCE EVALUATION RULES: (Tim Shea)**

Tim Shea reported that Rules 2-106 and 3-111 have gone out for comment and are before the Council for final consideration. Mr. Shea noted that a change was made on page 39 of the rule lines 24 - 30. The change was made as a result of meetings which were held with judges in the First, Second, Third, and Fourth Districts. Mr. Shea also noted that the Judicial Performance Evaluation Committee and the Judicial Rules Review Committee both recommend that the general retention question be kept, but phrased differently.

**Motion:** Judge Johansen made a motion to delete lines 29 and 30 and everything in the parentheses on page 39. The motion was withdrawn.

**Motion:** Judge Johansen made a motion to delete the words beginning on line 28 and ending on line 29 with a semicolon, and to add the word "material" after the word "showing" on line 29 of page 39. The motion was

seconded and carried unanimously.

**Motion:** Justice Wilkins made a motion to correct the language in lines 23 and 24 on page 39 to read "...presumed Council will not certify a judge be retained". The motion was seconded and carried unanimously.

**Motion:** Justice Wilkins made a motion to reinsert the general retention question to state that the "Overall performance of this judge is: excellent/more than adequate/adequate/less than adequate/inadequate". The motion was seconded and carried unanimously.

**Motion:** Justice Wilkins made a motion to adopt the remainder of the changes as presented. The motion was seconded and carried unanimously.

Jerry Howe expressed appreciation to the Council for their efforts in improving the Judicial Performance Evaluation program, and mentioned the importance of this issue to the late Senator Pete Suazo.

**Motion:** Judge Davis made a motion to amend the top of page 40 to read "formal or informal sanctions by the Supreme Court of sufficient gravity or number or both to demonstrate lack of substantial compliance with the Code of Judicial Conduct". The motion was seconded and carried unanimously.

### **3. REVIEW OF 2002 MEETING DATES: (Daniel J. Becker)**

The Council reviewed a list of 2002 meeting dates. A motion was then made.

**Motion:** Judge Dever made a motion to hold the Council's February meeting on February 25, 2002 in Provo unless the Council decides to change their mind and hold it elsewhere, and to approve all other meeting dates as listed. The motion was seconded and carried unanimously.

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

Tim Shea reported that the Court's rules concerning records classification are approximately ten years old. Mr. Shea mentioned that the Courts are beginning to rely more on electronic record, but the policy related to those types of records was developed six years ago. Policy and Planning is recommending that an ad hoc committee be formed to review what information should be public and what should be private. The committee would consist of several judges, a member of the Bar (co-chair), and include representation by the media, law professors and others.

Daniel Becker mentioned that the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have a national effort underway to develop a model for records classification for states to consider.

**Motion:** Justice Wilkins made a motion to approve the formation of an ad hoc committee to evaluate records classification. The motion was seconded and carried unanimously.

### **5. REPORT: JUSTICE COURT TECHNOLOGY STEERING COMMITTEE: (Richard Schwermer, Jerome Battle)**

Richard Schwermer reported that a committee had been formed to review technology issues in the justice courts. A grant was obtained which provided for employment of a contractor who will document the present reporting process, identify weaknesses, and work with a broadly representative Committee to identify technology solutions. The Justice Court Technology Steering Committee consisted of justice court representatives, and representatives from the Department of Public Safety, the Association of Prosecutors, the League of Cities and Towns, the Commission on Criminal and Juvenile justice, and the Administrative Office of the Courts. The Committee evaluated processes as they exist now, and they identified a number of primary concerns. They then identified four major areas of recommendations: electronic data entry by agency issuing citation, electronic data transfer from justice courts to other agencies, electronic viewing of information by justice courts, and follow up quarterly meetings of the Steering Committee.

An IT Committee was formed to evaluate concerns which had been identified related to getting reliable information from justice courts to other agencies and vice versa. It was recommended by the Committee that a condition be added to the present certification standard for justice courts which would require them to have internet access in order to file information with the Bureau of Criminal Investigation or the Drivers' License Division. The next phase which was recommended by the Committee would relate to the improving the quality of information transmitted from law enforcement to justice courts.

Mr. Schwermer mentioned that a rule change would be required in order to amend the certification standard for justice courts. The Council expressed their support in the formation of a rule, to be considered by Policy and Planning.

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

