

## Judicial Council Meeting Minutes

### JUDICIAL COUNCIL MINUTES

**Tuesday, September 14, 1999**  
**The Inn At Prospector Square**  
**2200 Sidewinder Drive**  
**Park City, Utah**

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*Chief Justice Richard C. Howe, Presiding*

#### **Members Present:**

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

#### **Staff Present:**

Daniel J. Becker  
 Myron K. March  
 Matty Branch  
 D. Mark Jones  
 Richard Schwermer  
 Tim Shea  
 Jan Thompson  
 Ray Wahl  
 Cathie A. Montes

#### **Guests:**

Mary Boudreau, *Utah Children*  
 Jerry D. Howe,  
*Office of Legislative Research and*  
*General Counsel*

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

Chief Justice Howe welcomed all those in attendance. He noted that this would be the last meeting for four outgoing Council members: Judge Robert Braithwaite (5<sup>th</sup> District); Judge John Sandberg (Justice Court); Judge Michael Burton (3<sup>rd</sup> District); and Judge Anthony Schofield (4<sup>th</sup> District). The minutes of the Council's last meeting and the budget and planning session were reviewed; following this review, a motion was made.

#### **Motion**

A motion was made to approve the minutes of the Council's August business meeting and budget and planning session. The motion was seconded and carried unanimously.

#### **Chairman's Report**

Chief Justice Howe presented his monthly report to the full Council. He noted that he attended the re-dedication of the Davis County Court Complex in Farmington. Prior to the re-dedication ceremony, he reported that he attended the monthly meeting of the Constitutional Revision Commission. He offered remarks to the Revision Commission on judicial retention and selection. Steven Stewart, Fran Wikstrom, and a majority of the Judicial Conduct Commission were in attendance, as were members of the Utah Bar Commission. The three-hour meeting consisted of the Revision Commission hearing remarks made by the aforementioned groups. Both the Conduct Commission and the Bar Commission recommended that no action be taken by the CRC with regard to changes in the retention process. The Revision Commission was without a quorum; therefore, no action was taken. Those members in attendance agreed that no changes should be made. Marty Stephens, Speaker of the House of Representatives, alluded that this issue would likely be discussed during the next Legislative session. Scott Daniels indicated that the Bar Commission would likely maintain its position.

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

Dan Becker reported on the following matters:

- Mary Manley has been appointed as the new Juvenile Judge in the Seventh District.
- Justice I. Daniel Stewart has announced his retirement from the Utah Supreme Court, effective January 17, 2000. In view of this announcement, Mr. Becker indicated that the deadline for applications for the now two vacancies has been extended to September 30th.

- Judge Louis Tervort of the Sixth District has given notice of his intent to retire as of July 1, 2000. His notice was given well in advance, as there is no nominating commission in place in the Sixth District.

- Judge Burton Harris, senior judge in the First District, has asked to be removed from active Senior Judge list.

The final item on which Mr. Becker reported was an item discussed at the Management Committee's last meeting. The issue which was raised stemmed from a discussion held at a Court of Appeals' bench meeting, and concerns an outreach program, to establish and/or develop better dialogue between the Legislature and the local judiciary. The format would be a round table discussion, followed by a reception. The round table would address issues raised by legislators. As issues are discussed, a greater understanding may be developed between legislative members and the judiciary. If this suggestion adopted, the plan could be implemented in October or November. Mr. Becker stated that the Management Committee supported the idea.

Mr. Becker explained that these functions would be coordinated by the presiding judges and court executives in the respective districts. The invitations would include a request for legislators to consider what they feel are issues of particular interest. It is hoped that judges on all levels would attend their local receptions.

Chief Justice Howe also expressed his support of this idea, saying that legislators are interested in activities in their legislative districts. Judge Sandberg said he would like to see justice court judges invited, as some judge have already developed contact with their legislators.

### **Motion**

To authorize the Administrative Office of the Courts staff to proceed with this recommendation as proposed, by making the necessary arrangements and contacting presiding judges. The motion was seconded and carried unanimously.

### **Subcommittee Reports**

Judge Schofield reported to the Council, for informational purposes, on two items discussed at the last meeting of the Management Committee. The first matter discussed was that of security in the Second District Juvenile Court in Ogden. He explained the problems encountered in that location, adding that the Second District Juvenile Court approached Gordon Bissegger regarding added perimeter security. Mr. Bissegger identified a potential source of funding administered by the Division of Facilities Construction and Maintenance (DFCM). However, this is a one-time funding source. Following discussion of the matter, the Management Committee did not feel this was best approach and determined this option should not be pursued, as it would only be a short-term solution.

Myron March said that thus far, bailiffs can provide security at court locations, but not perimeter security. The Weber County Sheriff was successful in obtaining money from the County Commission for one bailiff position. One possible solution discussed was to seek legislative funding. Alternatively, approval could be given for the one-time money while attempting to obtain more secure funding during the next fiscal year. Mr. March continued by saying that this is an issue with which both the Council and the Security Committee have struggled for the past several years. State statute dictates that the Sheriff has the responsibility of providing and assuming the costs for said security; however, this is only limited to bailiff security. The Ogden and Provo facilities are unique in that these juvenile court locations stand alone and are not co-located as are the other locations. The Management Committee recommended that the court executive coordinate discussions between the Sheriff and the court regarding alternatives other than the use of one-time funding. Following further discussion, Chief Justice Howe suggested that any action on this matter should be deferred pending the outcome of discussions between the Second District court executive and the Weber County Sheriff. He suggested that if no progress has been made by the Council's next meeting, the Council may re-visit this issue.

Judge Schofield continued his report by informing the Council that the Management Committee also discussed the issue of performance evaluations. This was a matter discussed by the Court of Appeals. Judges who are subject to performance evaluations actually receive two evaluations. The first is in conjunction with the retention election, and the second is performed two years prior, and is for the purpose of self-improvement. Media requests for this information have increased, including requests for the self-improvement evaluations. Some judges have expressed concern over these requests, in that self-improvement evaluations are intended for use only by the individual judge. Judge Schofield indicated that the Management Committee took no action on the matter.

There was extensive discussion regarding the evaluations, their purpose, and their release. A suggestion was made to educate judges on the fact that this information is, in fact, confidential. The Chairman suggested that the Boards of Judges may be approached for feedback from their respective groups. Following additional discussion, a motion was made.

### **Motion**

A motion was made to inform the Boards of Judges of this issue, along with background information solely for informational purposes; that further, no action is requested by the Council. The motion was seconded and carried

with one opposed.

Judge Braithwaite reported to the Council on behalf of the Policy and Planning Committee. He said the committee met on Friday, September 10<sup>th</sup>. One item discussed at that meeting was a proposed draft on the rule regarding senior judges. The draft was circulated to the Council for review. The major items Judge Braithwaite reviewed were as follows:

- qualification
- minimum and maximum number of days per year senior judges can serve
- qualifications/requirements to be an active senior judge
- no public sanctions by the Judicial Conduct Commission more serious than a public reprimand
- term of office

Tim Shea asked that the Council's rules regarding approval and/or adoption of this rule be suspended as there is some urgency in this matter. Some content changes were made. A change was suggested concerning page 2, line 6 of the proposed draft regarding the phrase, "public reprimand". Ideas for revision of the language were discussed. Jerry Howe of the Constitutional Revision Commission was in attendance. He indicated that the Commission, after reviewing the draft, noted that there were no oversights regarding senior judges. Mr. Shea explained the difference between a senior judge, and an active senior judge. A senior judge's duties are limited to performing marriages; further, a senior judge must refrain from practicing law to retain senior judge status. Senior judges are invited to the Annual Judicial Conference as a courtesy. With regard to a reprimand, the Council was asked whether the continued discretion not to certify a judge as a senior judge is a good policy, and how much discretion it (the Council) would like to maintain in this process. Myron March indicated that some years ago, the Council's past rule was that if there was a reprimand, senior judges could not become active senior judges. This rule was reviewed and the language was revised to allow for review on a case-by-case basis. Following additional discussion, a motion was made.

### **Motion**

A motion was made to forward the draft to the Supreme Court, with the amendments as discussed, allowing the Council discretion not to certify senior judges in instances of public reprimand within two years of retirement; mandatory on all other disciplines more serious than public reprimand and permissive. The motion was seconded and carried with one abstention.

### **Motion**

A motion was made to approve the rule, as amended, and advance same to the Supreme Court. The motion was seconded and carried with one abstention.

Tim Shea was asked to re-draft the new rule with the amended language. Following this, a motion was made.

### **Motion**

A motion was made to approve the rule as amended. The motion was seconded and carried unanimously.

The Liaison Committee had no new report since the last Council meeting.

Judge Glasmann reported to the Council on the Family Law Workgroup. He said that work is progressing with regard to finalization of the program to be held on September 24<sup>th</sup>. He reviewed with the Council a proposed outline of discussion topics. Council members were reminded of the location of the workshop and that it would last the entire day. Tim Shea presented an overview on the amount of time proposed for discussion of each of the topics. He continued by saying that, following the discussion of the small groups, reports would be given from the discussion groups and discussion results would be synthesized. Following the overview, Council members selected the groups in which they would participate.

### **Nominating Commissions**

Tim Shea presented a report to the Council regarding nominating commissions. He began by saying that by rule, nominating commissions submit five names to the Governor. The proposed amendment would direct nominating commissions to submit at least five, but not more than seven names for appellate positions; and at least three, but

not more than five names for trial court positions. Mr. Shea outlined all changes, and indicated that these amendments eliminate the need for tie provisions, and that as a result, the rule conforms with the statute.

### **Motion**

A motion was made to approve the amended rule. The motion was seconded and carried unanimously. Approval is made on an emergency basis, under Rule 2-205, and does not require approval by the Utah Supreme Court.

### **National Council of Juvenile/Family Court Judges' Conference: July, 2000 at Snowbird**

Ray Wahl informed the Council that the National Council of Juvenile/Family Court Judges will hold its annual conference in July of 2000 at Snowbird. Mr. Wahl indicated that the conference will feature items issues directly relating to family law, as well as broader judicial issues, which would likely be of interest to the Council. The Council noted the conference dates, which are:

**July 16-19, 2000.**

### **Proposed Calendar Dates for Judicial Council and Management Committee**

Dan Becker reviewed the proposed dates with the Council, and mentioned issues for the Council's discussion with respect to some of the dates listed. The first issue concerned site visits which the Council holds during the course of the year. Mr. Becker suggested consideration of

1) locations not yet visited by the Council, or 2) locations where there are issues of interest to the Council. Among these locations were: Tooele, where the issue of either a new court site or remodeling of the existing site could be a future consideration; and Junction, which is the sight of a new courthouse built by Piute County. It has been in operation for two years; however, the Council has not yet conducted a site visit. Beaver County has a similar facility which the Council has not toured.

Chief Justice Howe suggested that the Council conduct site visits in Tooele and Junction. Lodging arrangements will likely be made in Panguitch. There being no further discussion on this matter, the locations of the Council's site visits were firmed.

The second issue for the Council's discussion was the issue of the annual convention of the Utah State Bar. The Bar will hold its 2000 annual convention in San Diego instead of

Sun Valley, Idaho. In the past, the Council has elected not to hold its July meeting in conjunction with the annual Bar convention in any location other than Sun Valley. The Management Committee has made the same recommendation for the year 2000, and has extended this recommendation to the Boards of Judges. However, judges are encouraged to attend the Bar convention individually, if they so choose.

As an alternative, Judge Johansen suggested that the Council re-schedule its July 25<sup>th</sup> meeting to coincide with the conference to be held by the National Council of Juvenile/Family Court Judges. Following some discussion of possible scheduling conflicts, a motion was made.

### **Motion**

A motion was made to approve July 19<sup>th</sup> as the date for the Council's July meeting, subject to the possibility of change as the date approaches. The motion was seconded and carried with one opposed.

### **Specialty Courts**

Rick Schwermer presented this matter for further discussion by the Council, as a follow-up to those discussions held at the Council's August meeting. He indicated that there between

10 - 14 specialty courts in Utah, either in existence or pending formation. Some of the issues for the Council's consideration are: what, if anything, should be done regarding existing specialty courts; and 2) the potential growth of these courts.

Mr. Schwermer outlined the pros and cons which were discussed. The positive aspects were: their success thus far; positive public relations; cost efficiency; collaboration between the judicial branch and local governments; the accountability of defendants; and public trust and confidence, in that these courts focus on outcome rather than process. He listed the cons as follows: neutrality, in that judges assume a role different from their traditional role in becoming part of a "therapeutic team", which could lead to an erosion of the "rule of law"; the possibility of compromising the judicial branch as a separate branch of government; judicial conduct, in that ex parte communications could become an issue; insufficient administration; accountability for outcomes; and resource costs.

Mr. Schwermer continued his presentation by listing several categories of potential positions the Council could adopt. First, asserting a leadership position and lending support where appropriate. Second, rejecting the

judiciary's role in these efforts; however, he pointed out that such a position would not be consistent with the mission of the judiciary. Third, responding individually, and participating on a case-by-case basis, where appropriate and where resources are available. He was asked to what extent the Legislature could create specialty courts despite what the judiciary feels is appropriate. He indicated that the constitution allows the Legislature to create entire classes of courts. There may be an initiative undertaken in the future to provide funding for expansion of drug courts. The task force on crime prevention has expressed much interest in drug courts, since they are seen as a possible solution to addressing the problem of drug abuse. A detailed discussion ensued, and Tim Shea suggested that the judiciary might consider ways to incorporate therapeutic justice into the traditional concept of the court system.

Some of the Council members feel that there is a place in the judiciary for specialty courts, such as the drug courts and domestic violence courts. Support was given for pleas in abeyance to be the dividing point in order to preserve the rule of law. Dan Becker sought clarification regarding expenses related to specialty courts. Judge Burton is supportive of funding for expenses related to traditional types of support services; however, expenses related to supervision should be more closely reviewed. The following motion was made:

### **Motion**

A motion was made to support drug, tobacco, and domestic violence courts, inclusive of the plea in abeyance factor, and that support is also given for expenses related to support personnel for these courts. That further, other specialty courts -- and judges for those courts -- will be considered on an individual basis. This motion is made with the understanding that such a position can be justified only when contrasting issues, such as judicial conduct, avoiding the appearance of impartiality, and ex parte communications, are closely examined and addressed. The motion was seconded and carried unanimously.

### **Other Business**

Rick Schwermer presented to the Council, for informational purposes, that an invitation has been extended to the Administrative Office of the Courts to tour a mental health court. When this issue was presented to the Management Committee, that committee's recommendation was to participate in an investigational phase of this type of specialty court, by sending a member of the AOC staff and one judge to visit this court. This is in keeping with the Council's motion to review additional specialty courts on an individual basis, and would also answer questions which some Council members may have with respect to mental health courts.

A motion was made following this presentation.

### **Motion**

A motion was made for a representative of the Administrative Office of the Courts and a District Court judge, to be selected by the Board of District Court Judges, should tour the mental health court facility. The motion was seconded and carried unanimously.

### **Motion**

A motion was made for the Council to convene an Executive Session. The motion was seconded, carried unanimously, and the Council proceeded accordingly.

### **Motion**

Pursuant to the Council's Executive Session, the following motion was made: That a letter should be sent to the City of Garland, with a copy of same to Judge DeVerl Payne, informing the City that the Council had voted not to certify Judge Payne because he had not provided information required by the Council. That further, the Council has since learned of Judge Payne's desire to retire. In view of this, the Council acknowledges and wishes to express its appreciation to Judge Payne for over 30 years of service to the Utah judiciary. The motion was seconded and carried unanimously.

### **Motion**

A motion was made to re-certify Judge Dee Alldredge for reappointment. The motion was seconded, with six members supporting, and six opposed. Scott Daniels abstained. Chief Justice Howe voted to re-certify Judge Alldredge for reappointment.

There being no further business, the meeting was adjourned.