

Judicial Council Meeting Minutes

**JUDICIAL COUNCIL
MINUTES
October 23 & 24, 2000
Piute County Courthouse
550 North Main, Junction, Utah
Chief Justice Richard C. Howe, Presiding**

Members Present:

Chief Justice Richard C. Howe
Hon. Lyle Anderson
Hon. Lynn Davis
Hon. L. A. Dever
Hon. Ben Hadfield
Hon. Ronald Hare
Hon. Gerald Jensen
Hon. Scott Johansen
Hon. Debra Moore, esq.
Hon. Clair Poulson
Hon. Andrew Valdez
Hon. Michael J. Wilkins

Staff Present:

Daniel J. Becker
Myron K. March
D. Mark Jones
Matty Branch
Richard H. Schwermer
Tim Shea
Peggy Gentles
Gordon Bissegger
AnNicole J. Faeth

Excused:

Hon. Russell Bench
Hon. Anne M. Stirba

Guests:

Hon. David L. Mower
Hon. K.L. McIff
Hon. Frank G. Noel (for Judge Stirba)
Brent Bowcutt
Jerry Howe, *Office of Legislative Research*

Welcome and Approval of Minutes

The meeting was called to order at 12:55 p.m. by Chief Justice Richard C. Howe. Motions were made to approve three sets of minutes, as follows.

1. Minutes of the August, 2000 Budget Planning Session: A question was raised regarding page eight of the minutes. There was an error in the second line of the section titled "Improving Jury Service". The line should have read that "The legislation would change the wording of the statute to say that a person is rendered incapable of Jury Service without reference to disability." This error will be corrected. With no further discussion a motion was made.

Motion:

A motion was made to approve the minutes of the August Budget Planning session, with the above mentioned correction. The motion was seconded, and carried unanimously.

2. Minutes of the August, 2000 Judicial Council Meeting: With no discussion, a motion made.

Motion:

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

3. Minutes of the September, 2000 Judicial Council Meeting: With no discussion, a motion was made.

Motion:

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

Chief Justice Howe welcomed Judge Valdez, Judge Hadfield, and Judge Jensen as new members to the Council. Staff and guests were also welcomed to the meeting.

Report from the Chairman

Chief Justice Howe reported to the Council that the Fourth District Nominating Committee has submitted five names to the Governor, to fill a judicial vacancy that will be created by the retirement of Judge Ray Harding, Sr. in the district. The Governor should have a decision made by the end of October. Also, on October 27, 2000, the Fifth District Nominating Committee will be meeting to perform interviews for the judicial vacancy that will be created by the retirement of Judge Jackson in that district. After the interviews are conducted, five names will be submitted to the Governor for consideration.

Administration Report

Dan Becker reported on the following items:

- AnNicole Faeth was introduced to the Council as Dan Becker and Myron March's Executive Assistant. Ms. Faeth has replaced Cathie Montes.
- In September, the Council approved a waiver to establish a Justice Court in Holladay, January 1, 2001. Holladay will not be prepared by that date so the date has been rescheduled for July 1, 2001.
- The Building Board met last week and accepted requests for a land purchase in Sandy, and funding of a new courthouse in Cache County. Both actions received favorable consideration from the Building Board. The requests have been forwarded to the Legislature for consideration. The Cache County Courthouse is on the Legislature's list of prioritized building projects. The Courthouse is currently ranked seventh.
- Meetings with Legislators around the State are currently being arranged to discuss matters of mutual interest. The following dates have tentatively been scheduled:

November 20th, First and Second Districts
 November 21st, Third and Fourth Districts
 December 4th, Fifth and Sixth Districts
 December 5th, Seventh District
 November 29th, Eighth District

Judicial Council Subcommittees

Management Committee:

Chief Justice Howe reported the following items to the Council, regarding the Management Committee, on behalf of Judge Stirba who was absent.

- Several concept papers have been submitted to the Commission on Criminal and Juvenile Justice (CCJJ), on the topics of the Online Court Assistance program, and both Truancy and Victim Offender mediation. If the papers are approved, grant funding may be applied for in the Spring.
- As already discussed, the Building Board met regarding the purchase of land in Sandy, and the construction of a new courthouse in Cache County.
- The description for Judge Shumate was incorrect in the Voter Information Packet which has been distributed. The section describing disciplinary action was erroneously omitted. A press release notifying interested parties of the correction has been sent out by the Governor's Office. Also, Judge Shumate has contacted the newspapers in his region, informing them of the misprint. Due to other errors that have been identified, the Voter Information Packet will be reprinted.
- The Management Committee was presented a review of the, recently released, Juvenile Court Audit. Ray Wahl and Adam Trupp noted several deficiencies in the Audit, including the notion that the sample cases used

in the Audit are not representative of actual court adoption cases, and the delay in completing adoptions was somewhat exaggerated.

- The agenda for the October Judicial Council Meeting was approved.
- Recommendations for the Standing Committee on Technology were made and added to the Council's consent calendar.

Liaison Committee:

There was no report from the Liaison Committee.

Policy and Planning Committee:

- Judge Scott Johansen reported that the Policy and Planning Committee had met twice since their last report in August. Both the September and October minutes were included in the Council packet. The main item of business is scheduled as an agenda item before the council and will be discussed at that time. There were no questions for Judge Johansen.

The Bar Association:

Debra Moore reported that the Bar Association had met once since the Council's September meeting. Ms. Moore also reported that the Bar will be receiving a report from the Multi-Disciplinary Practice Task Force. The Task Force is evaluating whether or not there need to be modifications to the rules of professional responsibility, and if lawyers should be allowed to practice with other professionals in different fields. The preliminary report has said that there should be modifications to the rules.

Ms. Moore reported that this issue is currently being studied by almost every state in the U.S., with some states recommending changes to the rules of professional conduct. The goal of these changes is to preserve the core values of the profession, and to extend the conflict of interest requirements to other practicing professionals as well. With changes, the rules against advertising and fee splitting would be eliminated.

The changes may allow lawyers to provide services to middle-class and lower income clients. Currently, the ABA has taken the opposite position, and has not adopted changes to the rules. The next step will be a final report which is due in November. Future plans will be discussed at that time.

Council Committee Assignments

Chief Justice Howe reported that the Management Committee and Policy and Planning Committee are not experiencing assignment changes at this time. A motion was made, however, to approve assignment changes to the Liaison Committee.

Motion:

A motion was made to approve assignment changes to the Liaison Committee. The changes are recommended as follows: Hon. L.A. Dever, Chair; Hon. Ben Hadfield to replace Hon. Rodney Page; Hon. Andrew Valdez to replace Hon. Kay Lindsey; Hon. Jerald Jensen to replace Hon. Stan Truman. The motion was seconded and carried unanimously.

Judicial Performance Evaluation and Certification

Judge Johansen reported on this issue to the Council. The Judicial Council asked the Policy and Planning Committee to look into the the issue of Judicial Performance Evaluation and Certification, last spring. Policy and Planning asked the Judicial Performance Standing Committee to review some of the issues that were more administrative in nature, while Policy and Planning continued to oversee the more policy oriented issues.

The Policy and Planning Committee received the final report from the Performance Evaluation Committee in their last meeting. The report included a synopsis by Tim Shea which identifies the issues that have not been acted upon by the Council. Judge Johansen raised a few issues for the Council's review, from the report.

- The first issue involved the fact that Justice Court Judges are evaluated and certified, but their results are not published as other Judges are. The Committee has made a recommendation that Justice Court Judges' results be published in a manner most likely to reach people within the territory of the Judge's jurisdiction. It was mentioned that the evaluation information for Justice Court Judges at one time was included in the Voter Information Packet, but was cut out several years ago as a fiscal measure.

Motion:

A motion was made to publish Justice Court Judges' evaluation and certification results in the manner most likely to reach voters in a given jurisdiction, but to suggest to the Legislature that the information be put in the Voter Information Packet. The motion was not voted on.

It was noted that The Board of Justice Court Judges have expressed an interest in having the information placed, again, in the Voter Information Packet. The motion ought to strongly suggest that County Justice Court Judges be included in the packet.

Amendment:

An amendment was made to the above mentioned motion in which it would be strongly suggested that County Judges be included in the packet.

Motion:

A motion was made to approve the amendment to the motion. The motion was seconded and carried with one opposed.

A vote was made on the above mentioned motion with the additional verbiage from the approved amendment. The motion reads: Justice Court Judges' evaluation and certification results will be published in the manner most likely to reach voters in a given jurisdiction, and it will be strongly recommended to the Legislature that County Justice Court Judges' evaluation and certification results be included in the Voter Information Packet.

Motion:

The motion was seconded and carried with one opposed.

- The second issue that was raised was related to how the evaluation of Justice Court Judges could be improved. With the increasing volume of cases going to the Justice Courts, evaluation will become more important.
- The third issue raised was in regards to the standards used on the Attorney Survey which currently directs attorneys to consider the past two years of the Judge's term when evaluating performance. The Policy and Planning Committee recommends that the survey be edited, asking attorneys to consider their entire experience with the Judge, instead of just the past two years as the instructions currently direct. The survey may state the question as, "As of now, what is your opinion of the Judge". A motion was made to leave the present time period for performance standards how they currently are, but to change the instruction verbiage. The motion was approved separately, in two parts.

Motion:

A motion was made to change the standards as Policy and Planning have recommended. The motion was seconded and carried with one opposed.

Motion:

A motion was made to change the instructional verbiage on the survey. The motion was seconded and carried with one opposed.

- The fourth issue that was raised was related to Self- Improvement and Judicial Certification surveys. The current language used in the Self-Improvement surveys is not clearly distinguished from the language in Judicial Certification surveys. The issue should go back to the Judicial Performance Evaluation Committee, in order to have the two titles clearly distinguished and followed through with any necessary changes in the language. The issue and recommendation was made part of a charge without a motion.

A question was raised inquiring if the personal written comments by attorneys on the surveys are subject to subpoena from the consultant. They are not subject to subpoena, therefore, Policy and Planning recommends no change.

- The fifth issue addressed a question which asked if a single appearance before a Judge is sufficient exposure for an attorney to be eligible to receive a survey. The rural areas and appellate courts are against any changes to this rule, due to the already limited pool of evaluators. No action was sought by the Council on this matter.
- The sixth issue raised by Judge Johansen was related to evaluation of Senior Judges. Senior Judges face a problem of smaller response pools failing to yield meaningful information, and a lack of anonymity. It was suggested by the Performance Evaluation Committee that Senior Judges should be evaluated in the same manner as other Judges. Policy and Planning, however, recommends considering other methods of evaluation

such as peer evaluation, evaluation by other Judges, or by the Presiding Judge over the district. A motion was then made.

Motion:

A motion was made to approve the change in evaluation procedures for Senior Judges in concept by the Council as recommended by Policy and Planning, and to ask the Performance Evaluation Committee to investigate better methods of evaluation. The motion was seconded and carried unanimously.

- The seventh issue Judge Johansen reported was that the survey currently asks for a five point response and then is reported on a two point scale in the Voter Information Packet, favorable or unfavorable. Performance Evaluation recommends that this remain the same. Policy and Planning has endorsed the recommendation of Performance Evaluation to publish the five point response scores on the Courts' webpage and further recommends that the five point response be published in the Voter Information Packet.

Motion:

A motion was made to approve the recommendation of Policy and Planning. The motion was seconded and carried unanimously.

- The eighth issue raised was in regards to the reassessment of the grounds for excluding an attorney from receiving a survey. Judge Johansen cited Rule 3-11 stating that the filing of an affidavit of bias or prejudice, or the request for the recusal of a Judge by an attorney is grounds for exclusion. The Performance Evaluation Committee has asked that those grounds be removed. Furthermore, Judge Johansen asserted that the filing of a complaint with the Judicial Conduct Commission by a lawyer is not grounds for exclusion, while adverse testimony from a judge against a lawyer or a lawyer against a judge can be grounds for exclusion. Due to the importance of this issue, Policy and Planning and Performance Evaluation decided that the issue be forwarded to the Council for consideration. The Performance Evaluation Committee recommends the removal of filing an Affidavit of Bias as an exclusion. No action was taken by the Council on this issue.

Richard Schwermer reported on the most recent Interim Committee meeting to the Council. Issues were discussed that have already been adopted by the Council in concept. There seemed to be general support for the direction the Council is heading. The concerns raised by the Committee involved the Private/Informal reprimand issue. The Committee asked where the reprimand information goes, who is allowed to see it, and the extent to which the information is reported to public. The question, however, appeared to be a rather minor concern to only a few of the legislators. A few legislators were very firm about the Five-Point issue survey results and an suggested that legislation be introduced this year to change the process.

Mr. Schwermer also reported that the issue of excluding attorneys from the Judicial Evaluation Survey is still a concern to some legislators. Mr. Schwermer expressed to the Committee that no one is trying to exclude negative comments, but instead trying to distinguish performance related issues from personal disagreements. The Committee agreed with the principle, as long as it can be shown that an attorney was excluded for legitimate reasons.

Motion:

A motion was made to delay any action on this matter by the Council, and to refer this matter to Judicial Performance Evaluation to consider survey size and to deal with the recommendations regarding personal vs. institutional bias. The motion was seconded and carried unanimously.

Citations and the Authority of Judges

Richard Schwermer reported on this issue to the Council. This issue was raised by a Judge who was concerned with the disparate treatment people who are cited for traffic citations receive, across the State. Some districts are following the process correctly, in a very formal manner. While others are using very informal means of resolving citations. In some cases, the Court never receives the citation. This creates a significant problem which reflects poorly on the Courts and Judges. This problem, however, involves many agencies including Prosecutors, and Law Enforcement. The Decriminalization Task Force is also looking at this problem, and legislation is being advanced this session to change all Class C Misdemeanors to infractions.

The Council felt that a memo which Brent Johnson prepared listing six potential options for Judges dealing with this issue, could be edited and sent to Judges as a reminder and guide. Furthermore, the edited memo could be sent to other agencies, as well, including Law Enforcement, Prosecutors, and Public Defenders. The information would be disseminated to all District and Juvenile Court Judges through the Presiding Judge in each district.

Motion:

A motion was made directing Brent Johnson's memo to be redrafted and sent to the Presiding Judges with wording which says that Prosecutors, Public Defenders, and Justice Court Judges be contacted with information regarding the intention of the memo. The motion was seconded and carried unanimously.

New Appointment of Justice Court Judge

Richard Schwermer presented this issue to the Council. A motion was made.

Motion:

A motion was made to approve the appointment of the new Justice Court Judge, Richard V. Bagley. The motion was seconded and carried unanimously.

Facilities Master Plan

Gordon Bissegger reported on this issue to the Council. Mr. Bissegger informed the Council that it has become necessary to update of the existing Master Plan which was originally approved in 1987. GSPS Architects, who worked with the Courts on the original plan, have acted as a consultant in the updating the plan. The Facilities Standing Committee approved the document which is now being submitted to the Council.

The Master Plan is divided into three sections: 1. Operational facility planning guidelines; 2. Design guidelines; and 3. Space standards.

Section One outlines the goals of an effective judicial system, and describes certain building requirements. For instance, court buildings should be constructed in the Central Business District of a community, but the rules may remain open to other settings as appropriate. There also may be co-locations, such as the District and Juvenile Courts, and offices for programs or court-annexed initiatives such as Guardian ad Litem, Mediation, or Domestic Violence.

Section Two sets the design guidelines, which include issues such as water pipes not being built in computer rooms, having only one public entrance (when possible), and no public parking under the building (as a general rule).

The Council asked for a few changes to be made to the wording on page eleven of the report, as follows. Use the phrase "audio and video" to the court reporting verbiage, and clarify if the wiring will be hard-wiring or non-wiring. Also, instead of the term "translation services", use "translation/interpreter services".

Justice Wilkins made the comment that the bench area of the courtroom should be enclosed, and moved that the Facilities Master Plan Committee consider the request.

Motion:

A motion was made to have the Facilities Master Plan Committee consider the above referenced request. The motion was seconded and carried unanimously.

The following corrections and requests were also submitted by the Council. Pages seventeen and eighteen of the report should use the term "audio and/or video equipment". Page sixteen, item number six should say "juvenile and district courts". Page nineteen should specify the special circumstances in which the Juvenile Court would use a jury box, and state that the use of the box would be the exception not the rule in the Juvenile Court. A jury box should have at least of eight seats in back row, be elevated, and meet ADA guidelines. The report may want to use the statement, "The preferred alignment of the jury boxes would seat eight on the back". It was recommended that the last sentence on page twenty-one be stricken, which Mr. Bissegger agreed to do. A question was raised in regards to a section on page twenty-five, which refers to court libraries. It was asked if courts actually need and utilize a courthouse library. A motion was then made.

Motion:

A Motion was made to request that Facilities Standing Committee Reevaluate the requirement of future courthouses building libraries. The motion was seconded. Debra Moore mentioned that other agencies and law offices rely on the courts' libraries, and Judge Mower indicated that some lawyers in the region use the library in Junction. However, with no further action, the motion was carried unanimously.

The discussion continued with the following requests and corrections. It was mentioned that screens built in courtrooms should be built in a manner which makes them convenient for a jury, judge, and witnesses to all view the information simultaneously. In regards to Justice Court requirements, it was asked if justice courts can be built in state courthouses. Richard Schwermer recommended that the class of the justice court be taken into consideration in this issue. It was also recommended that footnote two on page twenty-seven be deleted.

Two motions were made in regards to child care in court buildings.

Motion:

A motion was made which would change the language, in 10.5 of section two of the report, to say "shall". The motion was seconded and carried with two objections.

Motion:

A motion was made to pass 10.6 of section two of the report as written. The motion was seconded and carried unanimously.

The Supreme Court and Court of Appeals standards listed on page thirty-four of the report need to be revisited.

Motion:

A motion was made to postpone discussion of Section Three of the report until the November Council meeting. The motion was seconded and carried unanimously.

Update on the Sixth District

Due to time constraints Judge Mciff, Judge Mower, Brent Bowcutt, and Valeen Brown, Clerk of Court for the Piute County Courthouse, were unable to give a full report of the Sixth District and provide historical data of the town of Junction. The Council did, however, receive a tour of the new Junction Courthouse, as well as the old courthouse. Judge Mower requested that he be scheduled on the Council's November agenda to discuss information he had planned on discussing that day.

Monday's meeting adjourned at approximately 4:00 p.m.

TUESDAY, OCTOBER 24, 2000

The meeting reconvened at 9:00 a.m., called to order by Chief Justice Richard C. Howe. Chief Justice Howe informed the Council that the morning would be devoted to the discussion of the potential impact that the formation of new courts may have on future workload planning for the Judiciary. Judge Noel was also welcomed to the meeting.

Dan Becker made a presentation to the Council as a follow up to a presentation which was made to the Council in July. That information has now been shared with Judges, Trial Court Executives, and Clerks of Court.

Richard Schwermer began by leading a discussion of policy issues and the impact of the formation of the Justice Courts. Mr. Schwermer cited a page from the "Justice in the Twenty-First Century Final Report", which defines the role of Justice Courts, their organization, and their funding. Options were reviewed with the Council regarding policy issues raised by the formation of more Justice Courts.

Motion:

In order to help everyone quantify the workload impact of any type of loss of caseload, we should use the weighted caseload and apply it to what is left in order to make determination of what we reasonably believe is an accurate number of judicial and clerical resources that will be needed.

Amendment:

Preface the above statement by saying that the Council realizes that it is early to be looking at this. Any significant changes are still two years away. The motion was seconded and carried with one opposed.

Mr. Schwermer asked the Council if they want to be involved in deciding how resources are reallocated, and if so, how do they want them reallocated? The Council may not want to make that decision right now, as they want to retain flexibility. The Legislature should be aware that the Council has removed their request for a Third District Juvenile Court Judge and Commissioner off the Building Block list, in order to use potential losses as result of Justice Court formation.

Motion:

Justice Wilkins moved that with respect to future reallocation judicial positions, the Council should wait to see what actual impact there turns out to be before we make any further recommendations, but that staff represent on our behalf that our first priority would be to allocate existing judges to existing needs in the system. The motion was seconded and carried with one opposed.

Motion:

Justice Wilkins moved to reallocate four future clerical vacancies from the Third District to the other locations that fall below the clerical weighted caseload standard. The motion was seconded and carried unanimously.

Motion:

Justice Wilkins moved that as to future funding priorities, the Council first look to reallocating existing vacancies, then appropriate reductions in staffing levels may be required, and any savings that may accrue from those reductions should be applied to other unmet system needs. The motion was seconded and carried unanimously.

It was recommended that the Council go back to the various Boards of the Judiciary and discuss what some of those unmet system needs may be in four or five years. A motion was then made.

Motion:

A motion was made to have Council representatives speak with the Boards to get their input. The motion was seconded and carried unanimously.

The meeting adjourned 12:11 p.m.