

Judicial Council Meeting Minutes

**JUDICIAL COUNCIL
MINUTES
November 27, 2000
Matheson Courthouse, Council Room
Salt Lake City, Utah
Chief Justice Richard C. Howe, Presiding**

Members Present:

Chief Justice Richard C. Howe
Hon. Lyle Anderson
Hon. Russell Bench
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. Anne M. Stirba
Hon. Andrew Valdez
Hon. Michael J. Wilkins

Staff Present:

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

Guests:

Lane Beattie, *State Olympic Director*
Jeff Hunt, *Parr, Waddoups, Brown, Gee & Loveless*
Michael O'Brien, *Jones, Waldo, Holbrook, & McDonough*
Stephen Hunt, *Salt Lake Tribune*
Ryan Harris, *Jones, Waldo, Holbrook, & McDonough*
Paul Murphy, *KTVX News*
Jenifer Nii, *Deseret News*

Welcome and Approval of Minutes:

Chief Justice Howe welcomed everyone in attendance. The minutes of the Council's October meeting were discussed. It was mentioned that the minutes needed to be changed to reflect that Judge Hare and Debra Moore were in attendance.

Motion:

Judge Stirba made a motion that, in order to maintain consistency, the Council's October minutes should indicate that a motion was made without reference to who made the motion. The motion was seconded and carried unanimously.

A question was raised regarding a motion on page eight of the October minutes. The minutes, as written, indicate that the Council referred a matter to Policy and Planning rather than the Judicial Performance Evaluation Committee. A number of the Council member's recalled the matter actually being referred to Judicial Performance Evaluation, not Policy and Planning.

Motion:

Justice Wilkins made a motion to approve the minutes of the Council's October meeting with the above mentioned corrections. The motion was seconded and carried unanimously.

Report from Chairman:

Chief Justice Howe reported that Judge Homer Wilkinson has announced his retirement, effective January 27, 2001. An announcement of judicial vacancy has been distributed, with a closing date of December 18th, 2000.

Reports:

Policy and Planning:

Judge Scott Johansen reported that the Policy and Planning Committee met with the Association of Criminal Defense Lawyers regarding a requested rule change to have an automatic stay with appeals from the Justice Court to the District Court. Policy and Planning has asked for a report from the Justice Court Administrator on this issue. All other items discussed by Policy and Planning are on the Council's consent calendar.

Management Committee:

Judge Anne Stirba reported that the following items were discussed at the last Management Committee meeting:

- The Governor's office has included almost all budget items requested by the courts for advancement by the Governor to the Legislature.
- In regards to a motion made at the October Council meeting which discussed a surplus of clerks in the Third District, Judge Stirba on behalf of Judge Noel reported that the most recent weighted caseload numbers indicate that there is no surplus at this time in the Third District.
- The committee received an updated report on the Olympics, heard a Jury Improvement Presentation, and discussed Judicial Retirement Medical Insurance Premiums.

Liaison Committee:

The Liaison Committee will be holding meetings on Fridays from noon until two p.m. for the next few months. At the last meeting, the committee reviewed judicial retention election amendments, and discussed adding justice court judges to the retention election bill and the voter information pamphlet. A new juvenile court bill was also addressed in the meeting, regarding the expungement of records.

The Bar Association:

The Bar Association will be mailing the Multi-disciplinary Task Force report soon to all active Bar members with an article included in the next Bar Journal. Also, the Bar Association is in the process of planning a cultural competency training program.

Administrator's Report:

- A meeting has been held with members of the Governor's Budget Office. It appears that the office has addressed all items submitted in the Judiciary's budget request, in one way or another, with exception of the requested interpreter position. The Courts will continue in its pursuit of the interpreter request. The Governor will release the budget recommendations mid-December.
- A meeting was held with Kevin Howard of the State Retirement Board, who reported that there is currently a surplus in both the State Employees' and Judicial retirement funds. It was suggested that the Policy and Planning Committee be asked to review the Master Plan prepared a few years ago and update the recommendations to forward to the Legislature regarding how the judiciary proposes the surplus should be used. A motion was then made.

Motion:

Judge Bench made a motion to refer the issue of a retirement fund surplus to Policy and Planning for review. The motion was seconded and carried unanimously.

- The Judicial Performance Evaluation Presentation will be made to the Boards of District, Juvenile, and Justice Court Judges and the Appellate Board in December. It had been recommended that the presentation be made to all Judges. The presentation will be shared with all judges, either as part of the Legislative Update or Spring Conferences.
- Meetings with Legislators, Judges, and AOC Staff have been held in the First, Second, Third and Fourth Districts. Meetings will be held in the remaining Districts in coming weeks.
- The Online Court Assistance Program (OCAP) was released November 17 through a press conference. The program is already receiving good use.

Classification of Court Records of Juror Names and Addresses:

Tim Shea reported that the Committee on Improving Jury Service made recommendations regarding the classification of Court Records of Juror names and Addresses, which were reviewed by the Policy and Planning Committee who then made additional recommendations. Both the Jury Improvement Committee and Policy and Planning agree that juror names, addresses, and telephone numbers should remain classified during the course of a trial, they differ, however, on the idea of releasing juror names after a trial. The Jury Improvement Committee

feels that the names should be able to be released and made public after a trial, while Policy and Planning feels that, as a privacy issue, the names should remain confidential.

Michael O'Brien who was representing the media, expressed to the Council that he believes there to be a Constitutional right of access to this information, demonstrated by rulings in both the U.S. and the Utah Supreme Courts. Mr. Ryan asserted that the rule proposed by Policy and Planning doesn't take into account those Constitutional rights, and while the rule proposed by the Jury Improvement Committee is better, it still doesn't cover everything.

Jeff Hunt, also representing the media, declared that a blanket ban in which juror names were made anonymous in all court trials, would be unwise public policy. Mr. Hunt stated that it would be better to deal with problems that may arise on a case by case basis rather than adopting a blanket rule. The recommendation of the media is to retain the current system where names are available to the public. Juror names may be classified subject to the trial courts' discretion on a case by case basis, where there is a compelling interest and there are no less restrictive alternatives available.

Motion:

Judge Davis made a motion to defer action on this matter until the Council's December meeting. The motion was seconded and carried unanimously.

July 1, 2001 Holladay Justice Court Effective Date:

Motion:

Judge Davis made a motion to approve the July 1, 2001 Holladay Justice Court effective date. The motion was seconded and approved unanimously.

Olympic Overview:

Myron March and Brent Johnson presented this issue to the Judicial Council. Mr. March reported that the Olympic Committee is recommending the creation of Olympic Courts to expedite the processing of misdemeanors during the Olympics. These Olympic Courts would facilitate the resolution of cases while offenders are still in Utah. Mr. March referred to sections of a memorandum included in the Council's packet, which outline the locations of the events and the Olympic Courts, and list recommended Council actions.

Brent Johnson reported that by and large, the courts will be able to avoid scheduling large trials, but will need to remain open for other matters of business. In regards to law enforcement, the Olympic Committee is looking at the possibility of utilizing the resources of other states and federal agencies to address all law enforcement needs related to the Olympics.

The recommended Council actions included in a memorandum in the Council packet are listed as follows:

- Support the Olympic Committee's recommendation to create Olympic Courts, as outlined, throughout the Olympic Theater of Operations.
- Recommend that no jury trials or criminal trials be scheduled, when possible, during the olympic time period.
- Support the local Olympic Court Committees and delegate the sole responsibility of developing a plan and schedule, to handle the projected workload in their areas during the Olympics.

Motion:

Judge Stirba made a motion to pass recommendation number one as written. The motion was seconded and carried with one opposed.

Motion:

Judge Davis made a motion to not adopt recommendation number two. The motion was seconded, but then withdrawn.

Motion:

Justice Wilkins made a substitute motion moving that recommendation number two be written as follows:

- All hearings required by law to be held will be held as required during the Olympics.
- All courts in Utah shall remain open during the Olympics for conduct of the public's business, as required by law.

- Confirm the discretion vested in trial courts to schedule matters pending before those courts with encouragement to avoid jury and criminal trials during the Olympics to the degree possible.
- Require staff to assure that no confusion arises regarding adequate security (perimeter and courtroom) for all courts in Utah during the Olympics, including necessary communication with judges.
- Require staff to assure judges and court administrators are fully informed of those hearings that may or may not be postponed, with appropriate consideration of the time periods before, during and after the Olympics.

The motion was seconded and carried with two opposed.

Motion:

Judge Stirba made a motion to approve recommendation number three, after striking the word "sole" from the sentence. The motion was seconded and carried unanimously.

Judicial Retirement and Medical Insurance Premiums:

Brent Johnson explained that in regards to Judicial Retirement Premiums, the guidelines originally stated that a Judge would receive up to seven years of paid up insurance premiums at retirement if they adhered to certain sick leave usage guidelines. However, as of July 1, 2000, based on action by the 2001 Legislature and the Retirement, all employees, including Judges, are required to pay a portion of the premiums at retirement. The Council agreed that this issue needs to be given further consideration.

The Council will obtain more information regarding the issue and will address it as an action item in December.

Presentation of Amicus Curiae Award:

Lane Beattie, State Olympic Director, briefly joined the Council and was presented the Amicus Curiae award for his excellent work in support of the judiciary.

Motion:

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

Executive Session

Motion:

A motion was made to come out of Executive Session. The motion was seconded and carried unanimously.

An orientation for new council members was then presented.

Motion:

A motion was made to adjourn the meeting. The motion was seconded and approved unanimously.

The meeting adjourned at 2:50 p.m.