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Approved

**JUDICIAL COUNCIL
MINUTES**

Wednesday
July 1, 1998

Sun Valley, Idaho
Sawtooth Room

Chief Justice Richard C. Howe, Presiding

Members Present:

- Chief Justice Richard C. Howe
- Hon. Pamela T. Greenwood
- Hon. Lynn Payne for Hon. Robert Braithwaite
- Hon. Michael Glasmann
- Hon. Anne M. Stirba
- Hon. Anthony W. Schofield
- Hon. Leonard H. Russon
- Hon. Stan Truman
- Hon. Michael K. Burton
- Hon. John Sandberg
- James Jenkins, Esq.
- Hon. Stephen Van Dyke
- Hon. Kay A. Lindsay
- Hon. Kent Nielsen

Staff Present:

- Daniel J. Becker
- Myron K. March
- Raymond H. Wahl
- Timothy Shea
- Richard H. Schwermer
- D. Mark Jones
- Marilyn Branch
- Cindy Williamson

Guests:

- Karin Hobbs
- Hon. Jerald Jensen
- Hon. Hans Q. Chamberlain
- Hon. James Davis
- Steven Stewart, Esq.
- Fran Wikstrom, Esq.

Welcome/Approval of Minutes:

Chief Justice Howe welcomed guests, members and staff to the meeting.

Motion:

A motion was made by Judge Stirba to amend the minutes of May 28, 1998 by deleting the following sentence on page two, paragraph two: The alternate position will not be a voting position. The motion was seconded by Judge Glasmann and carried unanimously.

Motion:

A motion was made by James Jenkins to amend the minutes of May 28, 1998 by substituting the word authorize for the word appropriate on page six, fifth paragraph, sixth sentence. The motion was seconded and carried unanimously.

Motion:

A motion was made by James Jenkins to approve the minutes of May 28, 1998 as amended. The motion was seconded by Judge Greenwood and carried unanimously.

Report from Chairman:

Judges from the Second, Third and Fourth Districts have voiced their concerns to Chief Justice Howe about clerks being overworked and underpaid. The Chief Justice stated that something needs to be done to increase clerks' salaries so that the court system can remain competitive with the private sector. The Chief Justice noted that benefits in the courts are substantial.

State Court Administrator's Report:

Hon. Michael L. Hutchings has announced his retirement effective no later than December 7, 1998. However, the judge indicated that he may actually leave as early as August 1998.

Hon. William Thorne inadvertently did not meet the filing deadline for retention election. Governor Leavitt has expressed his intent to reappoint Judge Thorne to the bench, if his name is submitted by the Nominating Commission.

Recently, Dan Becker and Myron March met with the Governor's new Chief of Staff, Ted Stewart. Mr. Becker reported that Mr. Stewart has an appreciation for the role of the judiciary. During the meeting the issues of clerical staffing and law clerks were discussed.

The Administrative Office of the Courts has recently received two federal Byrne grants. The grants will support a case management/delay reduction project and a juvenile court drug court program.

Hon. Gordon Low of the First Judicial District was recently appointed to the Judicial Conduct Commission.

On June 19, 1998, a memorandum was mailed to presiding judges about speciality courts. The intent of the memorandum is to provide notice that speciality courts are going to be evaluated and there needs to be sufficient information maintained to ensure proper evaluation of the courts' effectiveness, future application and cost.

The Judicial Council will hold its Annual Planning Meeting in Park City on August 26-28, 1998. Budget materials will be mailed to all Council members for review one week prior to the meeting.

Management Committee Report:

Judge Greenwood stated that the minutes accurately reflect the meeting of the Management Committee held on June 11, 1998.

Policy and Planning Committee Report:

Judge Burton indicated that the minutes accurately reflect the meeting of the Policy and Planning Committee held on May 28, 1998.

Liaison Committee Report:

Judge Schofield reported that the Liaison Committee addressed two pieces of legislation. The Committee has recommended support of legislation dealing with ex parte communication involved in interviewing children. The bill should be modified to specifically allow private interviews, with the consent of the parties involved. The Committee voted to oppose legislation on the Eviction for Illegal Activities.

Budget Process:

At the request of members of the Management Committee, Dan Becker reviewed the budget process in advance of the planning session in August. The courts have a \$90 million budget which is administered under the rules and structure provided both by the Legislature and by the State Division of Finance.

Basically, the process has three components: a) preparation process; b) approval process; and c) administration of the budget. The preparation process involves a variety of different individuals beginning with the Administrative Office Fiscal Officer, Fred Jayne. Mr. Jayne provides instructions to court executives, who then review their budgets and meet with presiding judges and others. The court executives and judges consider the needs of their districts, both in terms of what their ongoing needs are and future needs. Thereafter, the court executives prepare

a proposal and then meet with court level administrators and the fiscal officer to discuss each of the budget requests. These requests are collapsed into a presentation that is made by the court level administrator to the appropriate board level. The boards then set priorities in 1% increments which are advanced to the Judicial Council. Prior to the boards' submission of their requests to the Council, they are submitted to Dan Becker. Mr. Becker analyzes not just what the individual boards are requesting but also the system as a whole. Mr. Becker applies the Governor's 2% guideline and then prepares a separate set of recommendations for submission to the Judicial Council. The Council considers all of the requests and sets its priorities.

The approval process begins with the submission of the Council's priorities to the Governor's Office and also to the Legislature. As a separate branch of government the courts would like to have the Governor include all of the court's request in his budget but the courts may also submit the budget requests directly to the Legislature in its entirety.

Administration of the budget is a very important part of the process. One component encompasses the period of time between March 1999 - April 15, 1999. This is the period of time that the court focuses on what the budget is going to be for the fiscal year beginning in July 1999. The budget that has been approved by the Legislature is then reduced to an object level detail which is submitted to the Division of Finance and includes: a) actual 1997 budget; b) authorized 1998 budget; and c) appropriated 1999 budget. There are shortages inherent in the operating budget and the shortages are adjusted by lap salaries and turn over savings. Lap salaries and turn over savings are both used for one time expenditures. However, turnover savings may also be used for salary surveys, career ladder advancement, promotions, and other salary adjustments.

In response to a question asked by a Council member, Mr. Becker indicated budget issues outside the ordinary operating procedure of the court should be brought to the Judicial Council, i.e., these concerning policy decisions. The issue of clerks' salaries was discussed at length by members of the Council.

Public Confidence Goal: Progress and National Agenda:

Last year the Judicial Council developed a goal for itself that public confidence in the judiciary should be strengthened and maintained. When the Council met in Sun Valley in 1997, it established several objectives to meet the desired goal. Ultimately, the Council arrived at three objectives: a) develop a feedback mechanism for judges and staff; b) provide for a customer service orientation on part of judges and staff; and c) minimize delay in matters brought before the court. Mr. Becker was then asked to come back before the Council to convert the objectives into initiatives.

The first initiative Mr. Becker suggested to the Council was to provide the public with an assistance telephone line. The customer service line began in February 1998 and is fully operational. The project did not receive new money but rather was the conversion of an existing

position in the Administrative Office of the Courts for a one year period. The program will be assessed in one year with quarterly reports provided to the Judicial Council.

The second initiative was to assess the services the courts are providing to internal customers. To that end, a survey has been sent to managers within the court system asking what kind of job the Administrative Office of the Courts is doing. The survey provided specific feedback on individual offices. Now department heads have something concrete to work on with their staff in terms of trying to address certain issues where they have fallen short. In addition to individual offices, the survey addressed issues about the office in general, i.e., the Administrative Office of the Courts has made progress with the relationships between the office and court executives over the last couple of years, chief probation officers voiced concern about not being part of the system and the lack of communication, and the difficulty of some understanding the budget process. As a result of the survey, staff at the AOC will address budget concerns and the relationship with chief probation officers. The second step of the survey is for court executives to conduct a similar survey within the districts of internal customers, i.e., judges, clerks, law enforcement, attorneys, etc.

Another focus in the area of customer service will be a management study of clerks' offices. A study will be conducted in both the District and Juvenile Courts in the Third District with the assistance of the National Center for State Courts (NCSC). A technical assistance team will be sent to Utah at no cost to Utah. Staff from the NCSC will review the offices and assess customer service and office organization for both the Third District and Juvenile Court Clerks' Offices. The recommendations from this study will allow the AOC to apply customer service initiatives to offices throughout the state. The study will begin in August 1998.

The third initiative is to stress the importance of the timely resolution of disputes. The AOC has received a grant to implement a special project which will address case management and delay reduction. D. Mark Jones, District Court Administrator, will be the project manager.

The fourth initiative is to conduct a public opinion poll to assess public trust and confidence generally. Chief Justice Howe and Dan Becker discussed this initiative in the context of a national effort that is underway. The NCSC has requested that each state name a task force to address this issue. No task force has been named in Utah because both the Chief Justice and Mr. Becker thought it best to delay naming a task force until after the National Conference of Chief Justices and State Court Administrators meet in August to discuss this initiative.

Update on Juvenile State Supervision and the Juvenile Justice Task Force Agenda:

Ray Wahl, Juvenile Court Administrator, reported on the State Supervision Program which is a component of the Juvenile Sentencing Guidelines. As part of the program, the Juvenile Court received funding to hire approximately 60 new probation officers statewide. The purpose of the Guidelines is: a) to embrace the concept of proportionality; b) to ensure early

intervention; and c) to create an additional sentencing category.

Mr. Wahl distributed a handout which compares compliance or implementation of the Guidelines in the first quarter July 1, 1997 to September 30, 1997 to the third quarter which is January 1, 1998 to March 31, 1998. In the first quarter there were very few state supervision programs and this resulted in a small number of referrals to the State Supervision Program. There has been speculation that the aggravating/mitigating circumstances of the Guidelines have something to do with whether a judge uses a particular sentencing category. In addition, there is speculation that the probation officer's recommendation has a great deal to do with implementation of the Guidelines. However, neither of those issues have been collected on the data base yet. As of July 13, there have been changes in the data base to where those items will be collected and then the impact of aggravating and mitigating circumstances can be determined.

Overall, the Juvenile Court has embraced the balanced approach to supervising delinquent children which includes an accountability aspect of dealing with delinquents, service delivery and victim awareness impact. State supervision is a good example of how the balanced approach has been implemented in the Juvenile Court system. Mr. Wahl explained specifically how the Fifth District Juvenile Court has implemented the Guidelines.

Next, Mr. Wahl reported on the Juvenile Justice Task Force Agenda. The Task Force has been re authorized for a third year by the Legislature. The Task Force will be examining what has been produced as a result of those funds. The Task Force's agenda will include; a) truancy; b) youth courts and c) legislative changes that need to take place as a result of the decision of the Dept. of Human Services to streamline procedures.

Recording Criminal Fines as Civil Judgments:

Tim Shea reviewed a debt collection bill that the Council approved last year which has been amended as it relates to converting fines to civil judgments. The legislation is bifurcated and affects the courts and the Office of State Debt Collection, and is currently under review by an interim committee of the Legislature.

The legislation affects both criminal and civil judgments, each having unique ramifications. A Legislative committee has been working with the State Office of Debt Collection (OSDC) to put in place a method of transferring accounts receivable to the OSDC for collection. The committee has observed that if the legislation passes, there will no longer be a distinction between criminal and civil judgments. Judgments that come about as a result of the criminal process would continue to have additional features but all of them would have aspects of a civil judgment.

Members of the Council expressed concern about certain issues, i.e., if transferred, how does a judge forgive part of a fine and how do you release or satisfy a judgment? Judge Greenwood suggested that the matter be referred to the Liaison Committee because of the

complicated nature of the legislation.

Motion:

A motion was made by Judge Greenwood to refer the issue of recording a criminal fine as a civil judgment to the Liaison Committee for a detailed review of the concepts. The motion was seconded by Judge Van Dyke. The motion carried unanimously.

Justice Court Board - Update:

Hon. Jerald Jensen was present to provide the Justice Court Board update to the Council. He presented issues that the Justice Court Board has dealt with in the past, and will address in the future. Judge Jensen stressed the importance of understanding the varied nature of the Justice Court.

Judge Jensen provided a brief overview of Justice Court Demographics conducted approximately two years ago which included the following: a) 51% of Justice Courts handle less than 100 cases per month; b) 9% of Justice Courts handle more than 500 cases per month; c) 47% of Justice Court judges have been on the bench less than five years; d) 67% of Justice Court judges spend 20 hours or less per week on work loads; e) 33% of Justice Courts do not have a bailiff in the court at all times; f) 67% of Justice Court judges have an annual salary of \$15,000 or less; and g) 42% of Justice Court judges have an annual salary of \$7,000 or less.

Next, Judge Jensen indicated that everyone involved with the Justice Court Study Committee has been pleased with the overall results of the Committee. Judge Jensen expressed his appreciation to Judge Schofield and others for their hard work. Basically, HB 460 addressed more rigid standards for establishing and/or dissolving a justice court. Elimination of statutory language regarding the sunset date and the bill also make it more difficult for a mayor in a municipality to dismiss a sitting judge without first showing just cause. Judge Jensen stressed the need to further address and hopefully eliminate concurrent jurisdiction.

The other issues of primary importance to the Justice Court are education and training, which he was appreciative of the additional resources being provided, traffic schools, court referees and teen courts, which he believes the Council should monitor for possible problems. Judge Jensen encouraged members of the Council to focus attention on the inconsistent application of rules in the Justice Court.

Juvenile Court Board - Update:

Judge Hans Q. Chamberlain, Chair of the Juvenile Court Board, was present on behalf of the Board and summarized the Board's most recent accomplishments and pending issues. The Juvenile Court has implemented legislative mandates through judges and probation officers. The Juvenile Court was given a substantial amount of money to implement new sentencing

guidelines. Juvenile Court probation staff and the Board of Juvenile Court Judges have spent considerable time on guideline implementation from a systemic basis, as well as, through judges and individual districts to see whether or not the sentencing guidelines are being followed.

State supervision within the Fifth Judicial District is working well. Judge Chamberlain expressed concern about allowing youth to advance to a certain level before they are placed on state supervision. However, youth placed on state supervision in the Fifth District enjoy a very high rate of success. There is an intent to measure the guidelines with respect to implementation and long term effects. As a result of the sentencing guidelines, the Juvenile Court received sixty new probation officers. Judge Chamberlain expressed his appreciation to the Human Resource Dept. and the Education Dept. in training the new probation officers.

The Juvenile Court is in the process of trying to update the Juvenile Justice Information System. Judge Chamberlain recognized Hon. Mark Andrus, Ron Oldroyd, Rolen Yoshinaga, and Eric Leeson for their efforts on this project. A presentation will be made to the Judicial Council once the committee makes their recommendations formal.

Juvenile Court mediation requires parents to meet with other parties in an attempt to resolve problems before they get to the adjudication level. Thus far, there have been 120 mediation referrals with an 85% success rate. The court is also involved in the offender mediation program which has had 134 referrals with a 96% success rate.

The Legislature funded another judge for the second district. It is Judge Chamberlain's understanding that the Second District Juvenile Court has committed to provide a day per week in the First District in order to assist Judge Burbank, who has the highest caseload in the system. In addition, Judge Johansen in the Seventh District has a very high caseload and judges are providing him assistance when they are able to.

Next, Judge Chamberlain indicated that the issue of family court is a high priority with the juvenile court. The Board is planning a two-day meeting in September to discuss the matter in detail.

Judge Chamberlain stated that his term as chair of the Board expires in September and that Judge Jeril Wilson will be named as the next chair.

Juvenile Drug Court Grant:

During the June meeting of the Judicial Council, the Council considered a request to submit an additional grant which would be used to enhance the existing Drug Court Program in the Third District Juvenile Court. The Council elected not to approve the submission of the enhancement grant. Today, Dan Becker requested that this matter be brought before the Council for further discussion.

Motion:

Based upon the memorandum submitted by Dan Becker, Judge Stirba made a motion to accept the request for a Juvenile Drug Court grant. The motion was seconded by Judge Glasmann and carried with eight in favor and three opposed.

Update - Court of Appeals:

Judge James Davis reported that when the Supreme Court and the Court of Appeals moved into the Scott M. Matheson Courthouse the clerks' offices were combined. The court has also come on-line with a new appellate court information system.

The most significant recent focus of the court has been the Appellate Mediation Office. The program has proven to be very successful and its success is largely attributable to Judge Michael Wilkins and Karin Hobbs. The program is funded by the court with the exception of the parties' attorneys fees. The cases are chosen at random in an effort to validate statistics. One of the best things about the mediation program is that there are no remands and also the settlement of related issues in the trial courts. The public relations aspect of the program has also been a benefit.

Karin Hobbs explained the mediation process, the gross settlement rate of 44%, and the general benefits of Appellate Court Mediation which include the following:

- Provides a public service to the judicial system - explains decisional process in trial courts and educates regarding the appellate court's role
- Provides opportunity for mutually satisfactory outcomes
- Improves the public image of the judicial system
- Faster, cheaper - more creative
- Results in comprehensive/customized agreements
- Preserves relationships/allows healing
- Creates workable resolutions
- Produces agreements with a high rate of compliance
- Provides neutral forum to work through differences
- May repair relationships between attorneys

Judicial Conduct Commission - Informal Resolution of Complaint, Rule Amendment:

Steven Stewart, Executive Director, and Fran Wikstrom, Chair of the Judicial Conduct Commission, were present to speak on behalf of the Commission. Mr. Stewart indicated that both he and Mr. Wikstrom would explain the current rules of the Judicial Conduct Commission, the amendment and what it does and then speak to the policy considerations behind the rule.

Rule 9 of the Judicial Conduct Commission's Rules provides for two forms of informal resolution of complaints; the first is a dismissal with an admonition and the second is a private reprimand. Lately, whenever a private reprimand has been issued, the judge has been asked to consent that information concerning it, not the details, be disclosed to the complainant. This also holds true on dismissals with admonitions. However, the Commission encountered a problem with a dismissal with an admonition in that the judge does not receive a copy of the complaint. The Commission felt that it was unfair to issue a dismissal with an admonition unless the judge had a chance to be informed and possibly respond. Recently, there have been no dismissals with admonitions issued.

After reviewing this matter, the Commission asked Mr. Stewart to do a survey of other states and prepare an informal resolution of the complaint procedure which has resulted in the proposed amendment to Rule 9. All language relating to private reprimands and dismissals with admonitions have been eliminated. The new proposal reads as follows: "At any time after the institution of a preliminary investigation, the Commission may informally: (1) Reprimand a judge for conduct that is unacceptable; (2) Admonish the judge that the judge's conduct appears improper; (3) Direct professional counseling and assistance for a judge, including a medical examination, and monitor the judge's subsequent behavior; (4) Impose conditions of a judge's conduct or instruct a judge to make specific changes in particular matters of conduct; and (5) Resolve a complaint by any other appropriate means consistent with these rules."

A key element of the amendment is contained in the last sentence of the proposed rule: "If a judge accepts informal discipline, the Commission shall notify the complainant(s) of that fact, unless the Commission finds that notification is not in the interest of justice, and may, in its sole discretion, notify the complainants concerning the nature of the discipline." Mr. Stewart indicated that informal discipline requires acceptance of the judge which results in two alternatives; informal discipline and formal discipline. After discussion, the Council recommended that resolution of a complaint be substituted for the word discipline in the first sentence and that the word resolution be substituted for the word discipline in the last sentence.

Justice Russon stressed that the Commission's authority is derived from Article 8, Section 13 of the Utah Constitution which says that the Legislature by statute shall set forth or establish the procedures of the Commission. The Legislature has given the Commission the authority to make rules in Section 78-7-30.

The task force issued a report in which they addressed the Commission's communication with complainants. The task force concluded that persons who file judicial conduct complaints are entitled to certain information about the status and final disposition of the complaints, information which would not be regarded as breach of the confidential hearings provision of Article 8, Section 13 of the Utah Constitution. Current practice by the Commission has been to interpret Section 13 very restrictively, such that a complainant is given little or no information about any action taken with respect to the complaint unless it reached the Supreme Court. The task force recommended that if the Commission issued a private reprimand or a dismissal with an

admonition, that the complainant should be given notification of the fact but not the details. In dealing with this issue, it created some problems because the phrase private reprimand seems to indicate that it will remain private. Thus, the difficulty arises when there is a private reprimand issued with notification to the complainant. With this explanation, members of the Judicial Council offered a variety of suggestions to Mr. Stewart and Mr. Wikstrom for their consideration.

Executive Session-Adjourn:

A motion was made for Council members to move into executive session, after which Chief Justice Howe adjourned the meeting.