

**JUDICIAL COUNCIL
MEETING MINUTES**

**Friday
August 28, 1998**

Resort Center Lodge and Inn
1415 Lowell Ave.
Park City, Utah

Chief Justice Richard C. Howe, Presiding

Members Present:

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

Members Excused:

Hon. Michael K. Burton

Staff Present:

Daniel J. Becker
Myron K. March
D. Mark Jones
Richard H. Schwermer
Marilyn Branch
Timothy Shea
Dr. Diane Cowdrey
Jan Thompson
Brent Johnson
Cindy Williamson

Guests:

Edward McConkie, Director
Utah Sentencing Commission
Steven Stewart, Director
Judicial Conduct Commission
Hon. Judith Atherton
Joe Costanzo, Deseret News

Welcome - Approval of Minutes:

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

Motion:

A motion was made by Judge Greenwood to approve the minutes of July 1 & 3, 1998. The motion was seconded by Judge Van Dyke and carried unanimously.

Report from the Chairman:

Chief Justice Howe received a letter from Hon. Frank Noel, Presiding Judge for the Third Judicial District, suggesting that the Judicial Council support legislation that would reform Judicial Conduct Commission membership. Judge Noel included three recommendations in his letter to Chief Justice Howe: a) the investigating and prosecutorial responsibilities of the Judicial Conduct Commission should be separated from the adjudication duties of the Commission; b) the American Bar Association Model for Judicial Conduct Committees suggests that membership should consist of a majority of judges; and c) the reconstituted Commission should also include a provision that judges may be provided paid counsel of their choice in proceedings, at a minimum if a judge prevails payment of the judge's attorneys fees should be required of the Commission or the State.

The process for studying the proposal for Family Court will begin on October 27, 1998, from 3:00 p.m. to 5:00 p.m. at the Scott M. Matheson Courthouse. A number of various entities will be invited to hear a panel presentation moderated by Judge Judith Billings.

State Court Administrator's Report:

A list of budget priorities reached by members of the Judicial Council on August 27, 1998 was distributed. The priorities are as follows:

1.	15 District Clerk	619,125
2.	Data Pro. CORIS	318,000
3.	Salary Selectives	235,000
4.	Capital Law Clerk	59,400
5.	7 th Juvenile Judge	230,800
6.	GAL	100,000
7.	Base Budget	<u>107,575</u>
	Total	1,669,900

Dan Becker suggested that next year's budget planning session workbook include a section on a set process for arriving at budget priorities and voting on building blocks. Mr. Becker relayed that Justice Russon suggested that initial discussions be based upon an alphabetical list of requests with no dollar amounts attached.

The Racial and Ethnic Fairness Task Force received a grant of \$33,500 for second year funding. The Task Force is in the process of holding public hearings and judges are encouraged to attend. Some concerns of individuals who have attended the hearings include: a) allegations of profiling by law enforcement; b) failure to use certified interpreters; and c) lack of communication with defense counsel.

Management Committee Report:

Judge Greenwood reported that Kim Allard, the court's Web Publisher, was present during the last meeting and provided an extensive update on the Internet and Intranet. Holly Bullen reviewed a current list of judges serving on various committees. Suggestions were made that the following individuals be contacted and asked if they would like to serve on an internal committee of the Capital Facilities Standing Committee: Hon. Christine Durham, Hon. Parley Baldwin and Hon. Robert Yeates.

After Judge Greenwood's report to the Council about the Management Committee meeting, James Jenkins suggested that a member of the Utah State Bar be asked to participate on the internal committee.

Policy and Planning Committee Report:

On behalf of Judge Burton, Judge Braithwaite said the minutes are reflective of the last meeting of the Policy and Planning Committee.

Liaison Committee Report:

Judge Schofield stated that the Liaison Committee met yesterday to discuss substantive legislation which will be discussed again prior to the next Interim Committee Meeting.

Biannual Jury Inclusiveness Report:

The Biannual Jury Inclusiveness Report compares adult population in a region with a count of jurors to determine if lists are inclusive. The process gathers names in each county from a voter registration list and drivers' license list. The duplicate names are purged and remaining names are merged to form a master jury list for a six month period. Tim Shea stressed the importance and difficulty of purging duplicate names. Once the master jury list is compiled, jurors are then drawn at random. This report was presented for information purposes to apprise the Council of the status of efforts to ensure inclusiveness.

Utah Sentencing Commission Update:

Edward McConkie, Director of the Utah Sentencing Commission, updated the Council on recent developments within the Sentencing Commission. Copies of the new Adult Sentencing and Release Guidelines were distributed. Approximately 1000 individuals from various agencies will be trained in the use of the new Guidelines. The Guidelines are not intended to be a substitute for experience or expertise, nor are they intended to change the system. Rather, the Guidelines attempt to communicate a standard in sentencing. The Guidelines will be effective October 15, 1998.

The Sentencing Commission has also developed the Juvenile Court Sentencing Guidelines. The Juvenile Justice Task Force has requested reports based upon the Juvenile Court Sentencing Guidelines. There has been request for federal grant funds to assist in evaluating the impact of the guidelines.

Lastly, Mr. McConkie mentioned that the Sentencing Commission has also directed efforts toward intermediate sanctions. Commission members have worked with members of the Board of District Court Judges and developed alternative sanctions i.e., day reporting, half-way houses, and privatized pre-sentence evaluation reports.

Judicial Conduct Commission Update:

Steven Stewart, Director of the Judicial Conduct Commission, was present and provided the following statistical report:

Total number of open files: 66
Formal complaints: 7
Files under preliminary review: 47
Files under preliminary investigation: 15.

Following the statistical report, Mr. Stewart recited an analysis of several case examples and what the Commission might do with each case in a like situation. Recently, the composition of the Judicial Conduct Commission changed because of a Supreme Court ruling in *In Re: Young*. Commission membership now includes a total of six individuals. The Commission is considering proposed legislation to address Commission membership for consideration by the 1999 Legislature.

Education Standing Committee Update:

Judge Judith Atherton, Chair of the Education Standing Committee, was present along with Dr. Diane Cowdrey, Education Director. Judge Atherton expressed her appreciation to Dr. Cowdrey for the excellent job that both she and her staff are doing in the education division.

Annually, the Education Department is in charge of the Appellate, District and Juvenile Court Conferences, the Annual Judicial Conference, Justice Court Conferences, and Annual Employees' Conference. This past year the department has also been involved in a joint court executive meeting with the State of Idaho, a sexual violence program, and a Winter Institute on Law and Religion.

Future endeavors of the Department will include the Legal Institute training for non-lawyer trained judges. A total of 10-20 judges will participate in this one to two week residential program taught by law professors and other judges. The Education Department would also like to become more involved in technology issues and promote training, conference registration, etc.

by e-mail.

Budget Administration Discussion:

This budget administration discussion is in follow-up to the Council's meeting in Sun Valley about how the Judiciary's budget is created and administered. The discussion focused on the roles and responsibilities of those individuals involved in the budget process.

Mr. Becker distributed the Rule of Judicial Administration that relates to budget and fiscal management, Rule 3-406. Next, Mr. Becker cited Rule 3-301 which addresses the specific fiscal duties of the State Court Administrator and the Administrative Office of the Courts. Rule 3-301 provides that the State Court Administrator prepare, administer and manage the state judicial budget and establish a fiscal management system, including accounting, auditing and procurement procedures. In addition, Rule 1-203 provides that the presiding officer of the Judicial Council supervise the State Court Administrator in all of his/her responsibilities.

Rule 3-406 attempts to identify all individuals that have responsibility in the area of budget and fiscal management i.e., program directors, Judicial Council, State Court Administrator, court executives, and the budget director of the Administrative Office. Mr. Becker said current office procedure is consistent with the rule. However, there are two areas which could be improved upon: Rule 3-406 (C) Responsibility of the Administrative Office. It is the responsibility of the administrative office to: (iii) provide monthly expenditure reports to court executives, program directors, the state court administrator, Boards of Judges and the Council. Mr. Becker stressed that those reports are generated and provided to court executives and program directors, but the reports have not routinely been provided to Boards of Judges and to the Council. Additionally, there is some concern about Rule 3-406 (A) Responsibility of the Council. It is the responsibility of the Council to: (iv) allocate funds to the geographic division of courts in accordance with priorities established by the Council.

Mr. Becker proposed changes in the application of the rule as it presently reads. The changes would include that: a) the Chief Justice and Mr. Becker review in detail all the elements of the annual budget with the Management Committee following the conclusion of a Legislative session and then make a report to the Judicial Council; b) once the budget has been established, transfers or adjustments from one program to another would be discussed in advance between the State Court Administrator and the Council chair. If the transfer involved a material change in a program, the change would be reviewed by the Management Committee and c) that the application of turnover savings to non personnel expenses, would be reviewed with the Management Committee when projections allowed for a distribution plan.

Following discussion of these procedures, Chief Justice Howe indicated that he sensed it was the consensus of the Judicial Council that large budgetary expenditures, such as transfers in facility funding, should be approved by the Management Committee.

Motion:

A motion was made by Judge Stirba that Mr. Becker's proposals be approved and that any substantial additions or reductions to or from any specific capital facilities budget in connection with construction of a courthouse be brought before the Management Committee. Judge Stirba's motion included that any transfer of funds from one budget to another budget within the judiciary be discussed in advance with the Council Chairman and any proposal for material program changes be brought to the Management Committee. The motion was seconded by Judge Greenwood. The motion carried unanimously.

Motion:

A motion was made by Judge Glasmann that Mr. Bissegger and a representative of DFCM be present during an upcoming meeting of the Judicial Council to provide a review of how the capital facility budget works, using the Ogden Courthouse as an example. The motion was seconded by Judge Stirba. The motion carried unanimously.

Approval of Amendment to Council Rules:

Tim Shea indicated that amendments to Judicial Council Rules are published for comment twice a year. The Policy and Planning Committee referred two rules to the Council for debate, the balance of the rules reviewed by the Policy and Planning Committee appeared on the Consent Calendar of the Council.

The first of the two rules is Rule 2-205. Expedited [~~Emergency~~] rulemaking procedure. The usual practice is to have the effective date of the changes coincide with publication of Utah Court Rules Annotated or the supplement following the comment period. However, if the Council adopts a rule under its emergency rulemaking, the Council establishes an effective date prior to the comment period. The emergency rule is published for comment with the next set of proposed changes and is in effect during the comment period. Mr. Shea stated that not many of the rules are actually emergencies but there is a need for the change to be in effect earlier than three to four months after the process starts. The rationale for the change is simply to describe the process as an expedited process, rather than emergency.

Motion:

A motion was made by Judge Braithwaite that the rule be adopted with the word "emergency" in the title of the rule, in place of the proposed term "expedited". The motion was seconded by James Jenkins and carried unanimously.

The second rule is Rule 4-608. Trials de novo of justice court proceedings in criminal cases. This rule would eliminate probable cause in the appeal from the justice court trial to the district court trial de novo. The rationale behind the change is that there is a not a review of the

record for error but rather a brand new trial and it is as though the trial basically never occurred. Several justice court judges are opposed to the the change. The Policy and Planning Committee reviewed the comments from the justice court judges and the Committee decided to propose a change to the rule.

Motion:

A motion was made by Judge Stirba that the Council deny approval of the amendment and refer the matter back to the Policy and Planning Committee for further consideration. The motion was seconded by Judge Sandberg. The motion carried unanimously.

Motion:

A motion was made by James Jenkins that the Judicial Council approve Rule 2-205, as amended. The motion was seconded by Judge Glasmann. The motion carried unanimously.

Consent Calendar - Uniform Fine and Bail Schedule:

Judge Nielsen suggested several changes to the proposed Uniform Fine and Bail Schedule.

Motion:

A motion was made by Judge Schofield to approve everything on the Consent Calendar with the exception of the Uniform Fine and Bail Schedule and that that matter be placed upon the next Council agenda with certain modifications. The motion was seconded by Judge Stirba and carried unanimously.

Executive Session:

A motion was made by Judge Van Dýke to move into executive session. The motion was seconded by Judge Glasmann and carried unanimously.

Adjourned:

There being no further business, Chief Justice Howe adjourned the meeting.