

**JUDICIAL COUNCIL
MINUTES**

**Tuesday
September 8, 1998**

**Homestead
Midway, Utah**

Members Present:

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

Staff Present:

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

Guests Present:

Hon. Gregory Orme
Hon. F. Kirk Heaton
Bruce Thomas

Welcome:

Chief Justice Howe welcomed guests, members and staff to the meeting. The Chief Justice expressed his appreciation to the Council for their efforts during the budget planning session.

Judicial Council Sub-Committee Reports:

Management Committee Report:

Judge Greenwood said that the Management Committee met last week to discuss the

Council agenda and several other issues.

Policy and Planning Committee Report:

Judge Burton indicated that the Policy and Planning Committee has not met since he reported to the Council last.

Liaison Committee Report:

Judge Schofield reported that the Liaison Committee has not met since he last reported to the Council.

Fine Collection Program:

Tim Shea proposed draft legislation that amends two areas of Subsection 77-18-1(10) as requested by the Judicial Council:

- Permitting, but not requiring, the court to continue the defendant on bench probation after the close of supervised probation
- Striking the reference to imposing the suspended sentence for failure to pay the fine after the close of supervised probation.

Next, Mr. Shea addressed the following items, inclusion of Juvenile Court in the fine collection program and calculation of interest in criminal judgments in the Justice Court. Mr. Shea recommended endorsement of the proposed legislation.

Motion:

A motion was made by Judge Nielsen that the word "transfer" in line 19 be changed to "confer." The motion failed for lack of a second.

Motion:

A motion was made by Judge Schofield that the Judicial Council approve the proposed legislation. The motion was seconded by Judge Lindsay and carried.

Executive Session:

A motion was made by Judge Greenwood to go into executive session. The motion was seconded by Judge Stirba and carried unanimously.

The Council concluded the executive session and resumed the business agenda.

Motion:

A motion was made by Judge Nielsen to rescind the retention certification of Judge Kirk Heaton based upon his failure to satisfy all the requirements of certification. The motion was seconded by Judge Greenwood. The motion carried with seven in favor and six opposed.

Motion:

A motion was made by Judge Glasmann that notice of the Council's action be given to the county authority that employed Judge Heaton and that be the extent of the notification. The motion was seconded by Judge Sandberg.

Motion:

A motion was made by Judge Stirba that a letter be written to the County Commission recognizing that Judge Heaton has provided valuable service. However, the Council acted to rescind retention certification of Judge Heaton because the judge did not take timely action on specific cases that he had indicated to the Council that he would. The motion was seconded by Judge Sandberg.

Restatement of Previous Motion:

A motion was made by Judge Glasmann to notify the County Commission of the Council's action. Additionally, that an explanation be provided that the judge has given valuable service and that the action was based upon the technical reason that the judge did not make certain decisions in a timely manner. Further modification of the motion included that Judge Heaton made representations he would rectify the situation by a certain date and failed to do so. The motion was seconded by Judge Stirba.

Motion Withdrawn:

Judge Glasmann withdrew his original motion. Judge Sandberg withdrew his second to the motion.

Motion:

A motion was made by Judge Greenwood that the Judicial Council mail a letter to Judge Heaton's employing entity notifying them that the Council rescinded its retention certification for Judge Heaton on the basis that he initially failed to comply with the timely resolution of cases criteria. Furthermore, that the judge then failed to comply with his representations to the Council

that he would rule on certain pending cases in a timely manner. The motion was seconded by Judge Stirba. The motion carried with seven in favor and six opposed.

Motion:

A motion was made by James Jenkins that notification to the County Commission reflect that the vote was seven to six. The motion was seconded by Judge Van Dyke. The motion carried.

Motion:

A motion was made by Judge Greenwood that the Justice Court Administrator along with Judge Heaton, develop a method of calendaring cases that would avoid similar problems in the future and provide for oversight by the Judicial Council in the future, and that a suggestion be made to the judge that he discuss this matter with other judges in the system. The motion was seconded by Judge Glasmann. The motion carried.

Ethics Advisory Committee Report:

Judge Gregory Orme, Chair of the Ethics Advisory Committee, was present to provide the committee's annual report to the Council. Judge Orme indicated that the most important thing about the Advisory Committee is that the volume of the work has increased substantially. In review of the records, Judge Orme found that the Committee issued the following number of opinions:

- 1992 - issued 3 informal opinions
- 1991 - issued 1 informal opinion
- 1994 --issued 6 informal opinions
- 1995 - issued 4 informal opinions
- 1996 - issued 3 informal opinions
- 1997 - issued 9 informal opinions
- 1998 - issued 14 informal opinions.

Judge Orme stated that it would not have been possible for the Committee to issue this many opinions but for the excellent service that Brent Johnson has provided.

Next, Judge Orme provided a summary of Opinion 98-14. The Committee addressed the question of judges automatically recusing themselves when a court employee in their district or a family member of a court employee is a litigant. In Opinion 98-14 the Committee refined their ruling, stating that the recusal is automatic only when an employee is a litigant. In other instances the judge is to make full disclosure and make inquires if the parties. In Opinion 98-8 the Committee revisited the question of marriages performed by judges, compensation and the use of public facilities to perform marriages. Judges have a duty to perform marriages, although

it is not a core judicial function. A judge may collect a fee for performing a marriage if the marriage occurs during non-working hours and is not at the court facility.

Judge Orme brought to the Council's attention the Code of Judicial Conduct and Ethics which he said provides judges an excellent resource in answering approximately 90% of all questions referred to the Ethics Advisory Committee. Judge Orme suggested that a copy be provided to each judge for his/her chambers.

Approval of Third District Juvenile Court Commissioner:

Bruce Thomas, Third District Juvenile Court Executive, requested that the Judicial Council consider approving the appointment of a replacement commissioner for the Third District Juvenile Court upon Commissioner Richard Birrell's retirement. The judges of the Third District Juvenile Court met this morning and asked that Mr. Thomas submit the following three names to the Council for consideration: William Roger Russell, Debra Creek-Mendez and Cheryl Luke. The Board of Juvenile Court Judges recommended the appointment of William Roger Russell.

Motion:

A motion was made by Judge Lindsay that the Judicial Council approve the appointment of William Roger Russell as Third District Juvenile Court Commissioner. The motion was seconded by Judge Greenwood and carried unanimously.

Recognition of Outgoing Council Members:

Chief Justice Howe and the Council recognized and thanked outgoing Council members, Judge Pamela T. Greenwood, Judge Steven Van Dyke and Judge Kent Nielsen for their years of dedicated service on the Judicial Council.

Adjourned:

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