

**MINUTES OF THE
JUDICIAL RULES REVIEW COMMITTEE**

Thursday, October 28, 1999 - 2:00 p.m. - Room 414 State Capitol

Members Present:

Sen. Robert F. Montgomery, Senate Chair
Rep. Greg J. Curtis, House Chair
Sen. L. Steven Poulton
Rep. Perry L. Buckner
Rep. David L. Gladwell

Members Absent:

Sen. Scott N. Howell

Members Excused:

Staff Present:

Mr. Jerry D. Howe,
Research Analyst
Ms. Susan Creager Allred,
Associate General Counsel
Ms. Glenda S. Whitney,
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order - Rep. Curtis called the meeting to order at 2:10 p.m.

2. Report on Supreme Court Advisory Committees and Discussion of Proposed Modifications - Mr. Jerry D. Howe, Research Analyst, and Ms. Susan Creager Allred, Associate General Counsel, directed the committee to the mailing packet and addressed proposed rules and recent developments from each Supreme Court Advisory Committee.

Ms. Peggy Gentles, Mr. Timothy M. Shea, and Mr. Richard Schwermer, Administrative Office of the Courts, responded to comments and concerns of the committee on the rules.

- *Rules of Criminal Procedure*
 - **Rule 29, Disability and disqualification of a judge or change of venue** - Ms. Allred referred to the new language regarding disqualification of a judge. She expressed concern with a situation of a party filing an affidavit of prejudice and where it provides that a party may not file more than one motion in an action. Mr. Shea explained that the new language is a redraft of a provision in civil rules and is a common provision in rules of other states.
- *Rules of Appellate Procedure*
 - **Rule 28A, Appellate Mediation Office** - Rep. Curtis recognized that this rule is in response to recent legislation yet he expressed the opinion that the appellate mediation process is a major policy shift from the traditional appellate process, perhaps, he explained, even emphasizing expediency at the expense of due process.

The committee expressed concern that:

- the rule applies a mandatory process in an arbitrary manner;
- counsel may, in attempting to comply with the rule's requirement to "obtain as much authority as feasible to settle the case," violate his professional obligation to represent the interest of his client; and
- the rule vests substantial legal authority, at the appellate level, in a non-judicial officer.

MOTION: Rep. Curtis moved for staff to draft a letter requesting that the Office of the Court Administrator provide information regarding the operation of the appellate mediation office, including: the public interests served by an appellate mediation office; the number of cases assigned to mediation and how the cases are selected; the final disposition of the cases; the budget for the office; and procedural operations of the office, including time lines for cases in mediation and confidentiality requirements. The motion passed unanimously.

- *Rules of Juvenile Procedure*
 - **Rule 27A, Questioning of Minors by Police Officers** - Sen. Montgomery expressed concern that juveniles at the age of 14 may not be sufficiently mature to knowingly waive rights under *Miranda*.

MOTION: Sen. Montgomery moved for staff to draft a letter to the Supreme Court Advisory Committee to review Rule 27A on juvenile procedure questioning whether this rule would be more substantive than procedural, and whether the issue of age should be addressed statutorily. The motion passed unanimously.

- *Code of Judicial Administration*
 - **Rule 3-305, Official court transcribers** - Chair Curtis referred to lines 4-5 of the rule, focusing on the rescission of an official court transcriber's certification. He questioned the procedural process on certification. Mr. Shea indicated that the certification is issued by the Administration of the Courts.
 - **Rule 3-306, Court Interpreters** - Rep. Gladwell expressed concern with Subsection (11) line 17, noting that certain violations by an interpreter of the Code of Professional Responsibility could merit suspension to protect the judicial process.

MOTION: Rep. Gladwell moved for staff to draft a letter to the Judicial Council recommending that a provision under Subsection (11) be included that would allow for interim suspension of an interpreter pending informal resolution or a hearing regarding the complaint. The motion passed unanimously.

- **Rule 3-415, Auditing** - Rep. Curtis expressed concern on Subsection (6) follow-up review, and asked what was the basis for the change. Ms. Gentles responded that the change was requested by the internal audit department in the Court Administrators Office.
- **Rule 4-202.03, Record access** - Sen. Montgomery referred to Subsection (I)(13) sharing records, and questioned what records this rule would apply. Mr. Shea indicated that the most common records would be juvenile court documents.
- **Rule 4-202.08, Fees for Records, Information, and Services** - Sen. Poulton expressed concern with Subsection (C) line 41, fees established by rule be waived for a governmental entity if the fee is minimal.

MOTION: Sen. Poulton moved to request staff to draft a letter to the Judicial Counsel suggesting that the waiver of minimal fees for governmental entities be reconsidered, so that all patrons of the courts, both in the public and private sectors, are treated equally. The motion passed with Sen. Montgomery and Rep. Gladwell voting in opposition.

- **Rule 4-510, Alternative Dispute Resolution** - Chair Curtis and Sen. Montgomery expressed concern with the alternative dispute resolution exemptions in the rule.

MOTION: Sen. Montgomery moved to request staff to draft a letter to the Administration of the Courts requesting that the court reconsider the deletion of the exemption on cases of a value of less than \$20,000, or in the alternative, consider other language to clarify that the exemptions from ADR include those cases whose value exceeds the \$5,000 limit or small claims court, but are still relatively small in nature. The motion passed unanimously.

- ***Rules of Professional Conduct*** - The committee did not discuss the Rules of Professional Conduct.
- ***Request from Political Subdivision Interim Committee*** - Rep. Gladwell referred to 1st Sub. S.B. 27, Citizen Participation in Government Act, a bill sponsored by Senator Mont Evans during the 1999 General Session. He indicated that the chairs of the Political Subdivisions Interim Committee have asked the Judicial Rules Review Committee to review the bill. Rep. Gladwell explained that concerns were expressed about the possibility of the bill conflicting or creating ambiguity with or unnecessarily duplicating current provisions of applicable judicial rules, in particular Rule 11 of the Utah Rules of Civil Procedure. Rep. Gladwell referred the committee to a letter in the mailing packet from Mr. Francis M. Wikstrom, Parsons Behle & Latimer, responding to concerns and making recommendation to the legislation.

MOTION: Rep. Gladwell moved that the Judicial Rules Review Committee endorse and adopt the position and recommendations in Mr. Wikstrom's letter dated September 29, 1999. The motion passed unanimously.

3. Adjourn -

MOTION: Sen. Poulton moved to adjourn the meeting at 3:50 p.m. The motion passed unanimously.