

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, June 20, 2001 – 10:00 a.m. – Room 403 State Capitol

Members Present:

Sen. David L. Gladwell, Senate Chair
Rep. Glenn L. Way, House Chair
Sen. D. Edgar Allen
Sen. Millie M. Peterson
Sen. Terry R. Spencer
Sen. Michael G. Waddoups
Rep. Patrice M. Arent
Rep. Chad E. Bennion
Rep. Ron Bigelow
Rep. Katherine M. Bryson
Rep. Gary F. Cox
Rep. Scott Daniels
Rep. James A. Ferrin
Rep. Ben C. Ferry
Rep. Neal B. Hendrickson
Rep. Mike Thompson

Members Absent:

Rep. Greg J. Curtis
Rep. A. Lamont Tyler
Rep. David Ure

Staff Present:

Mr. Jerry D. Howe,
Research Analyst
Ms. Esther D. Chelsea-McCarty,
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 and Committee Business

Chair Gladwell called the meeting to order at 10:15 a.m.

MOTION: Rep. Cox moved to approve the minutes of the May 23, 2001 meeting. The motion passed unanimously, with Rep. Arent absent for the vote.

2. Review H.B. 305, Judgement Lien Amendments

Rep. Hatch, Sponsor, H.B. 305, distributed "Third Substitute H.B. 305, Judgment Lien Amendments" which passed during the 2001 General Session. He explained that the Senate had some questions regarding the bill, which is why the legislation was given a delayed effective date of July 1, 2002. Rep. Hatch said that the bill requires that a judgment must be recorded in the County Recorder's Office before it can become a lien. At issue is that judgments become liens when they are entered by the court, but there is no simple and effective way for the court records to be searched. As a consequence, records must be searched at multiple locations for anyone to be assured that a lien does not exist on a particular property. This bill, he said, attempts to fix the problem by requiring that a judgment must be filed with the County Recorder before it becomes a lien. Under this solution, he explained, all liens are recorded in one central location and the public knows exactly where that information can be found.

Mr. Darrell Back, Attorney, presented an overview of "Judgment Lien Amendments" and answered questions. He noted that the problem explained by Rep. Hatch is especially true along the Wasatch Front because court computers are not indexed and there are multiple locations of District Courts. The public are not well served, he said, by a system that makes it so difficult to discover liens on property.

Mr. Scott Sabey, Attorney, acknowledged that the public is not well served by a system that makes discovering a lien more difficult than it needs to be. He explained, however, that the solution does not require a change to the long standing principle that a judgment becomes a lien when it is entered by the court. What is needed he said, is the underlying problems of data entry, storage, and retrieval in the court computer system need to be solved. It would serve the interests of the public to craft a solution with the court computer rather than delay the effectiveness of a judgement until it is recorded with the County Clerk, he said.

Mr. Richard Schwermer, Administrative Office of the Courts, said there are two primary problems with the bill. The first, he said, is the common name problem; and the second is searching liens from multiple court locations. Technology will allow us to place all the information in one searchable location and the court is doing that with a program called "Exchange." We are working to improve that system by creating a new platform that will provide a simple, straightforward, searchable database, he said. This has become a high priority for the courts, and the new system should be operational within 60 to 90 days.

Sen. Spencer said that there appears to be no justification for H.B. 305 if the Court Administrator can fix the system the right way.

MOTION: Rep. Daniels moved to hold this issue for further discussion in 90 days. The motion passed unanimously, with Rep. Bennion, Rep. Bigelow, Rep. Ferrin, and Rep. Ferry absent for the vote.

3. Discussion of Special Session Legislation

Sen. Valentine referred to draft legislation "Uniform Probate Code - Power of Attorney Amendments," that was distributed by staff. He explained that the bill provides that a person holding a power of attorney for a disabled principal can be held accountable by the principal's heirs. Sen. Valentine asked for the committee's recommendation on the bill and noted that it will be on the supplemental call for the Special Session.

MOTION: Sen. Peterson moved to support draft legislation "Uniform Probate Code - Power of Attorney Amendments," and passed it out with a favorable recommendation. The bill passed unanimously, with Rep. Bennion, Rep. Bigelow, and Rep. Thompson absent for the vote.

Sen. Spencer referred to draft legislation S.B. 1002, "Unauthorized Practice of Law Prohibited." He explained that this provision was unintentionally deleted from the Utah Code when the legislature repealed statutes regulating the practice of law. The language of this bill is identical to the language of the previous sections which were unintentionally deleted, he said. Mr. John T. Nielsen, representing the State Bar spoke in support of the bill.

MOTION: Sen. Allen moved to pass S.B. 1002, "Unauthorized Practice of Law Prohibited," out favorably. The motion passed, with Rep. Thompson voting in opposition to the motion and Rep. Ferrin absent for the vote.

4. Discuss Proposed Amendments to the Code of Judicial Administration Regarding the Judicial Council's Role in Certification for Judicial Retention Elections

Mr. Jerry D. Howe, Research Analyst, distributed a handout "Proposed Amendments to the Code of Judicial Administration," and explained that the Judicial Council had worked diligently to amend these rules to comply with legislation that required the review formal and informal reprimands during the certification process. He explained that the former chairs of this committee, under the direction of the entire committee, had drafted a letter to the Judicial Council requesting this review. The proposed rules the result of that process.

Mr. Schwermer indicated that these proposed rules represent a major shift in the philosophy of the Judicial Council with respect to its role in the certification process. He noted that the comment period ends July 9 and requested that the committee make any recommendations as it considers appropriate.

Rep. Bryson voiced concern regarding public reprimands and the certification process with particular emphasis on the self declaration standard. She said that it seems strange to allow a judge to self certify that he or she is mentally competent.

Chair Gladwell noted that the committee has not had the opportunity to review these, so this item will likely be discussed by the committee at its July meeting. Although the comment period will have expired by that time, it is better that the committee thoughtfully review its input, he said.

Sen. Spencer requested that Mr. Schwermer explain the oversight role of the Supreme Court regarding State Bar rules at a future meeting.

5. Adjourn -

MOTION: Sen. Spencer moved to adjourn the meeting at 11:47 a.m. The motion passed unanimously, with Rep. Arent absent for the vote.

