

Tab 4

HISTORY OF THE DEFAULT ATTORNEY FEE RULE, ANALYSIS AND PROPOSAL FOR AN UPDATE TO RULE 73(f)

HISTORY OF THE DEFAULT ATTORNEY FEE SCHEDULE

The original default attorney fee schedule was created from the outset with the collection bar in mind. The idea originated in 1991 by the Board of Circuit Court Judges to address several problems caused by the vast number of default judgments filed by collection attorneys. Those issues, presented to the Judicial Council as outlined in the minutes of their meeting on September 10, 1991 were: "1) The volume of cases makes it particularly burdensome for Circuit Court Judges to individually review and approve all of the affidavits in each case; 2) creates lack of uniformity between the judges; 3) creates an impediment toward consolidation, and 4) does not provide a way to challenge an attorney for the attorney fees sought." (See Exhibit A) The proposal, originally outlined in a memo by then Circuit Court Judge Michael Hutchings, went through a few iterations before finally being approved as a part of Rule 4-505 of the Code of Judicial Administration. (See Exhibit B)

The new schedule provided several tiers of fees starting with \$150.00 for principal balances up to \$750.00 and to a fee of \$775.00 ending at principal balances of \$5000.00 (The higher figure is based on my personal recollection—the highest fee may have been \$750.00.)

First Revision to the Attorney Fee Schedule

The schedule worked well for several years, not only for the courts, but also for collection attorneys. The collection bar appreciated the consistent, simplified method of obtaining fee awards. Over time, however, inflationary pressures eroded the value of the schedule for those of us relying on the schedule. Many of us stopped using the schedule in favor of routinely filing fee affidavits. As the schedule lost effectiveness due to reduced utilization, the time came for it to be updated.

As then chair of the collection section, I took it upon myself to approach, first, the Judicial Council via letter, and subsequently the Rules Committee, where I appeared as a guest on March 26, 2003, to explain why the schedule needed to be updated. (See Exhibit C)

The committee considered a variety of ways to revise the schedule, including making no changes whatsoever. One member's thought was that over time inflation would increase the size of awards and move them up the schedule, thus resulting in higher fee awards. Such an approach, however, would do nothing for the vast number of small cases which may never reach the threshold principal at which fees begin to increase; those would be stuck at \$150 (then the fee schedule starting point).

In the end the committee decided to eliminate the first tier of the schedule, thus eliminating the tier awarding \$150 at a principal balance of \$750. The new schedule started with the former second tier: \$250 in fees for cases with a principal balance below \$2000. The new schedule and other changes went into effect on November 1, 2003.

Second Revision to the Attorney Fee Schedule

Over time the cost of obtaining a default judgment surpassed the minimum scheduled attorney fee and there was talk among collection attorneys of disregarding the schedule in favor of filing affidavits with most default judgments. In 2017 I took the initiative to approach the Rules Committee suggesting the same approach as the previous revision, eliminating the \$250 first tier. The Committee invited me and representatives of the consumer bar to submit proposals and appear as guests before the Committee. After hearing arguments for and against a revision, the committee tasked the now Honorable Charles Stormont and me to craft a compromise plan. (See Exhibit D)

An argument had been made in the committee that a schedule providing higher attorney fees for larger balances was unfair. The contention was that although the schedule was intended to cover post-judgment fees in addition to the cost of obtaining a default judgment, it doesn't necessarily take more effort to obtain and collect a larger judgment than it does a smaller one; i.e., situations where a judgment debtor voluntarily pays in full after default judgment. Taking into account the needs of both the court and collection attorneys, while being sensitive to the plight of consumers, Judge Stormont and I proposed a system where there would be a single, unified \$350.00 default attorney fee, plus additional set fees for specific post-judgment collection actions. That compromise was eventually accepted and went into effect on November 7, 2018.

IT IS TIME FOR ANOTHER REVISION TO THE SCHEDULE

Six years after the last adjustment, the time has come once more to revise the fee schedule. The cost of doing business has risen rapidly over the past few years. Those of us who are tied to the schedule do not have the flexibility to keep pace with rising costs compared to those who file attorney fee affidavits. Other than adjusting the Rule 73(f) schedule, our only alternative is to start filing attorney fee affidavits with each default judgment in lieu of using the schedule. The schedule must be updated; the question is quantifying how much the schedule should be increased.

To analyze what a fair fee would be today I looked at a several quantifiable factors. First, how much have attorney fees risen during the period in question? As I am essentially petitioning for an increase in my attorney fee rate, there is a direct correlation. I will also examine some of the major costs incurred by practices such as mine, including clerical and attorney wages, rent and health insurance, as well as general inflation figures. Where possible I compare statistics from year end 2017 (the approximate time I made the previous proposal) to the most recent statistics available.

Attorney Fees

I couldn't find any comprehensive information on average attorney fee rates over time, whether local or national, without paying large fees to subscribe to one of a few national surveys. However, I did find a couple of charts that may be illustrative.

First is the Laffey Matrix, a fee schedule used by some federal courts for determining reasonable hourly rates for attorney practicing in the District of Columbia. I am not using it to compare with absolute hourly rates in Utah, but as an example of how much attorney fees may have risen during the period in question.

The index is broken down based on years of practice, so I calculated the percent increase for my own use case. The Laffey Matrix hourly fee for someone with my experience has risen 22.37% from May of 2018 through the period ending in May 2024. The index is updated annually, but new rates for the coming year have not yet been published as of this writing. Based on the past couple of years we may see an additional 6-8 percent increase, which would bring the total increase to around 30 percent.

A similar schedule that shows attorney fee rates by year is a chart of approved hourly rates for appointed counsel in non-capital cases in federal court. Attorney fees have increased 30.3 percent from March of 2018 to January of 2024.

General Inflation

According to the inflation calculator at the US Bureau of Labor Statistics (BLS) website, the Consumer Price Index rose 26.69 percent from the end of 2017 through March of 2024. According to the Utah Department of Workforce Services there is no Utah specific CPI data, but in my research, I did see news reports and references to Utah having some of the highest inflation rates during the years of 2021-2023.

Wage Inflation

BLS regularly releases a index of employee costs, the Employment Cost Index (ECI), which is broken down into a handful of broad categories. The category closest to the type of employee I have in my practice would be the ECI for national private workers in the Professional and Related category. The ECI for that category has increased 21.65 percent from the end of 2017 through the end of 2023.

BLS also reports average attorney wages in May of each year. From May of 2017 to May of 2023 attorney salaries increased 24.37%.

Trying to narrow down the geographical focus, I was able to find Utah figures for the category of Administrative and Support Services, which I see as reasonably close to the type of clerical and paralegal employees in my practice. The earliest date was the end of the first quarter 2018 and the latest was the end of the third quarter of 2023. During that time average annual wages increased 41.37 percent.

In the Utah category of Professional, Technical and Scientific Services, the most likely category to include attorneys, the average wage increased 30.58 percent during the same period.

My own payroll has increased 36.5% during this same period.

Rent

To estimate the increase in rental rates I turned to local commercial real estate companies that publish annual or quarterly office market analyses. I had trouble finding reports from the end of 2017 and from the beginning of 2024 from the same company using the same methodology. I did find one pair from the same company, but the 2017 version was not as detailed as the current report. My intention was to look for Class C office space in the suburbs, as that is the type of office space most collection attorneys I know occupy, but the best I could do was a direct comparison for suburban lease rates across all classes of building. For the fourth quarter of 2017 (effectively the beginning of 2018) the average asking price for suburban office space was \$22.47 according to Newmark Commercial Real Estate. The average as of the first quarter of 2024 was \$25.60, an increase of 13.9%.

While the increase in rent appears lower than other costs of doing business, looking at starting lease rates by year doesn't necessarily reflect individual experiences. Leases are often for multiple years with annual increases baked in. Rates also fluctuate from year to year despite the general upward trend, so factors such as timing of lease execution can affect individual situations. My own rent has increased 30.53% during the period analyzed.

Health Insurance

I was unable to find specific data for nationwide or local health insurance costs over time. I did find reference to typical increases of 3-4 percent over the past decade, with an anticipated rise of 6-10 percent for 2024. A 3.5 percent increase from the end of 2017 to 2024 would be an increase of 23 percent. A 4 percent increase annual increase with a 10 percent increase the final year would result in an increase of 34.9 percent, which still falls short of my personal experience as my practice's health insurance costs have increased 47% during the same period.

PROPOSED ADJUSTMENT

The previous default schedule revision was made with an eye toward respecting debtor rights and reducing unnecessary fees. As such the structure should be maintained. In my perfect world the specific amounts contained in the schedule would be based on some sort of index and would automatically adjust based on real world conditions. However, it is beyond me to come up with how that system would work (if the committee has any ideas....) Absent such a system I can only make an update proposal based on my experience and on this analysis.

I recall sitting in the rules committee meeting in 2018 after discussion of the compromise Judge Stormont and I had presented. A member of the committee, I don't recall who, asked me if a single \$350.00 fee is adequate to replace the previous sliding schedule. I confidently said yes because based on my analysis at the time I thought it would be sufficient.

In retrospect, the increase from a sliding scale default fee starting at \$250.00 to a flat fee of \$350.00 was probably insufficient to fully cover the 13 years of inflation since the prior adjustment. And with the elimination of the sliding schedule, the "backstop" that had allowed us to go 13 years without an adjustment disappeared.

That considered, I propose that the committee retain the current structure, but increase the amounts to reflect the current economic situation, first by raising the unified default attorney fee from \$350.00 to \$475.00, an increase of 35.7%. That increase would be slightly more than most of the inflation figures I recited above, but it would help make up for what I believe to have been an inadequate starting point for the previous fee.

I propose that the post-judgment fees be raised to \$125.00 and \$35.00. While the original fees of \$75.00 and \$25.00 may have reflected the time required to prepare, serve, and monitor a garnishment, they did not adequately consider the time typically required to locate a new employer or garnishable/executable asset. For that reason, I propose a proportionately larger fee for new writs.

As for the fee upon entry of judgment after contested proceeding, I propose that it be raised to \$1250.00. In my practice we have rarely availed ourselves of this provision because it typically makes more sense to file a fee affidavit. Having never become a regular part of my practice I don't have strong feelings about the fee, but incentivizing use would require a significant increase.

I recognize that this schedule may be new material for some members of the committee, and I would welcome an opportunity to meet in person to discuss this proposal. Judge Stormont has also indicated to me that he is available to share his insights.

EXHIBIT A

JUDICIAL COUNCIL MEETING
September 10, 1991

MEMBERS PRESENT

Hon. Gordon R. Hall
Hon. Michael Zimmerman
Hon. Gregory K. Orme
Hon. J. Philip Eves
Hon. Michael Hutchings
Hon. J. Dennis Frederick
Hon. K. Roger Bean
Hon. Arthur G. Christean
Hon. L. Kent Bachman
Hon. Brent Feltch
Hon. Peggy Acomb
Mr. Dennis V. Haslam
Mr. William C. Vickrey

MEMBERS EXCUSED

Hon. David E. Roth

STAFF PRESENT

Ronald W. Gibson
Colin Winchester
Myron K. March
Melinda Monahan
Lyn Peterson
Louise Blair
Mike Phillips
Scott Hennessy

GUESTS

Justice Vandewalle
Justice Gierke
Greg Wallis
Justice Durham
Joe Novak

WELCOME AND MINUTES

Chief Justice Hall convened the meeting. He welcomed Justice Vandewalle, Justice Gierke and Greg Wallis to the meeting. They are from the State of North Dakota here to observe the Judicial Council and visit with various individuals in the court, bar and other segments of government regarding the Utah Judiciary.

The minutes of the August 28, 1991 meeting were corrected to show Judge Arthur Christean as excused. On page 6, Rule 3-413 change the term "General Council" to "General Counsel". On page 5, Rule 3-304, second line, add the word "to" before the word "improve". With these corrections, the minutes were approved.

Subject: JUDICIAL SUB-COMMITTEE REPORTS

Chief Justice Hall reported that none of the sub-committees of the Council met prior to this meeting.

Subject: JUDICIAL EDUCATION

Discussion: Justice Christine Durham, Chairperson of the Standing Committee on Judicial Branch Education, and Louise Blair, Judicial Education Administrator, appeared before the Council to report on the

Judicial Education Committee. The Judicial Education Committee's annual report was distributed to the Council. The report contains information on the Committee's activities, goals and projects. It contains facts about Utah's Judicial Education program, outlines the Judicial Education budget, and lists the conferences held in FY 1990-91. Ms. Blair answered questions from the Council about the information contained in the report. Since most judges are not aware of that discretionary education funding is available for each judge, there will be a meeting with the presiding judges and trial court executives twice a year to go through the discretionary education budget. Forty-seven percent of the education budget is going to hotels and travel, this could be open to criticism. The Education Committee is aware of this fact, and is finalizing guidelines for out-of-state travel. They will be making recommendations to the Council very soon.

Motion: A motion was made by Judge Frederick to accept the Annual Report of the Standing Committee on Judicial Branch Education and commended the Committee on their accomplishments and future goals. The motion was seconded by Judge Hutchings. The motion carried unanimously.

Subject: H.B. 436 AMENDMENTS

Discussion: Mr. Shea stated that since the Council last reviewed this draft legislation, it has been presented to the clerks of court, and is back before the Council again. Several additions and changes have been made which were presented to the Council in detail in the form of three memos from Mr. Shea. He proceeded through the legislation page by page explaining the amendments to the Council. The following recommendations and motions were made by the Council:

Summary of Amendments to H.B. 436:

Regarding page 2, sub-section 20-1-7.6, add "except as provided in sub-section 3" at the beginning of sub-section 2.

Page 10, line 21, change "October" to "September." Page 11, line 5, change "February 24" to "no later than the last day of February."

Page 12, 78-1-2.4, change the wording to read "Council shall not reduce the number of Circuit Court judgeships in any district below the limits set in....."

Page 12, lines 6 to 8, change the wording as follows: "After bindover bail set or denied prior bindover in any court may be redetermined in the district court. An appeal may be taken from an order of any court denying bail to the Supreme Court which shall review the determination under section 1."

Motion: A motion was made by Justice Zimmerman to refer the probable cause review after bindover question to the Policy and Planning Committee with Mr. Shea writing a memo to explain to the Policy and Planning Committee what the question is. The motion was seconded by Judge Christean. The motion carried unanimously.

Page 17, line 16, change it to say "not to exceed \$2000 including attorney fees but, exclusive of court costs and interests." On page 18, lines 6 and 7, delete the underlined sentence.

Motion: A motion was made by Judge Frederick to accept and approve Mr. Shea's memo including the changes and motions set forth above. The motion was seconded by Justice Zimmerman. The motion carried unanimously.

Issues Regarding Commissioners:

Mr. Shea explained that there are two alternative drafts of this section. One is a modification to the draft approved by the Council in Cedar City, and the other is a more general approach in defining the duties of a commissioner and leaves the majority of that task to the Council. The Council discussed these alternative drafts. The following changes and motions were made:

Motion: A motion was made by Justice Zimmerman to accept alternative two in concept, subject to some changes. The motion was seconded by Judge Eves. The motion carried unanimously.

Mr. Haslam stated that most attorneys on the Bar Commission indicated that they were concerned about going two times to two different people on the same issue. How much more time is going to be spend in court? What's the extent of review by the judge after a commissioner has heard a motion or heard an order? They would like a Commissioner's authority clearly delineated. This is the consensus of most Bar members.

Motion: A motion was made by Judge Eves regarding page 29, line 16, to have the section read: "Enter temporary restraining orders and preliminary injunctions in domestic cases." Add another section reading: "Enter temporary orders and temporary restraining orders in juvenile, probate and civil matters under \$20,000." The motion was discussed at length.

Amended Motion: Judge Eves amended his motion to read: "Enter temporary orders, temporary restraining orders and preliminary injunctions." This would allow the Council and presiding judge to make rules governing this procedure. The motion was seconded by Judge Hutchings. The motion carried with one opposed.

Motion: A motion was made by Justice Zimmerman to have staff set up a representative group of judges and bar members to draft implementation rules for the Commissioners. The motion was seconded by Judge Christean. The motion carried unanimously.

On page 28, line 15, after the word "pleas" delete the words "of guilty or no contest."

Motion: A motion was made by Judge Hutchings to leave the language on page 29, lines 24 and 25, and change section (i) to read: "make final orders except as otherwise provided by law or by rule of the Judicial Council." The motion was seconded by Judge Orme. The motion carried unanimously.

On page 30, sub-paragraphs (d) and (e), move lines, 7 through 12 from (d) to (e) because it applies only to recommendations. Lines 5 through 7 should read: "A final order or judgment entered by a Commissioner authorized as final is not subject to review by the trial judge." Line 13 should say: "Any other order entered....."

On page 29, line 14, delete the words, "under rules of the Supreme Court."

Motion: A motion was made by Judge Eves to adopt, as amended, the alternative II Commissioner statute as now constituted. The motion was seconded by Justice Zimmerman. The motion carried with one opposed to the issue of the injunction.

Issues Regarding Fees:

Mr. Shea prepared a memorandum regarding the issue of fees. He explained the memorandum and his recommendations to the Council. He suggested changing from a three tier to a two tier fee schedule and leave the small claims division fee at \$15. The Council discussed the fee schedule and set the following conditions:

Motion: A motion was made by Judge Bean to adopt the concept presented by Mr. Shea so long as we are not losing revenue. Also, that Mr. Shea solicit suggestions and recommendations from the Bar and Legislators regarding fees. The motion was seconded by Judge Hutchings. The motion carried unanimously.

Subject: CASE PROCESSING TIME STANDARDS

Discussion: (Appellate Courts) Ms. Mary Noonan reported that, in accordance with the Judicial Council's request, the National Center for State Courts conducted a time standards study in Utah in January, 1990 and submitted its report in March of that year. Copies of the final report were distributed to members of each Board of Judges in August, 1990, and they were asked to make recommendations regarding their court level. The objectives of this study were to develop effective case processing goals for the judiciary; to monitor progress in delay reduction, and to serve as an objective standard for performance evaluation. The Council discussed these standards for all levels of court in an attempt to establish a maximum acceptable standard for performance evaluation for each court level.

Motion: A motion was made by Judge Felch that performance would be deemed satisfactory for the Supreme Court and Court of Appeals so long as a judge had an average under 120 days or below and no more than six cases in the two years immediately preceding certification beyond 180 days. All cases must be completed within 30 days. A 30 day extension may be granted upon good cause shown. The motion was seconded by Judge Hutchings. This will be effective January 1, 1992, and will be used for the 1994 certification. Ms. Noonan will write the protocol on how this will be applied.

Subject: JUSTICE COURT BOARD - ASSOCIATION OF COUNTIES

Discussion: The Council requested that representatives of the Justice

Court Board discuss with the Council the Justice Court's role as a locally funded court in the Judicial Branch of Government and their relationship with the Association of Counties. Judge Yardley, Chairman of the Board of Justice Court Judges, Judge John Sandberg, Judge Kent Neilson, and Judge Jerry Jensen appeared before the Council to discuss their role. Judge Yardley spoke for the Board of Justice Court Judges stating that the various offices in each county have a section with the Association. The Association wanted the Justice Court Judges to be a part of the Association a few years ago. In August, the Association invited the Justice Court Board to a meeting the Association held in Provo to discuss the position of the Justice Court Judges. The Justice Court Board met with the Association executives. Judge Yardley feels that progress was made with the Association that benefits the Judiciary. He explained that the Association is concerned about the changes being made in the Judiciary at the present time. Because of the independence of the Judiciary, Judge Yardley stated that they agreed only to have a dialogue with them and not align themselves in any other way. He felt this was very positive because a good rapport with them is necessary. He expressed the Justice Court Board's desire to be team players with the rest of the Judiciary. Chief Justice Hall explained that if there was an active group within the Judiciary soliciting the assistance of someone else to oppose the position of the Judicial Council it would not be tolerated. The communication from the Council goes through the Boards and the Boards should represent to the Council what their position is. Chief Justice Hall stated that once a position is taken by the Council, everyone ought to pull together in the action to be taken. He further stated that the Judiciary is a separate, independent branch of government and we do not align ourselves with any part of the executive branch or the legislative branch and if the Justice Court system, for example, were to align itself with the Association of Counties the courts would be joining an executive branch of government. To have their support and goodwill is one thing, but to be a part of the Association deprives the Justice Courts of the independence of the Judiciary.

Judge Jensen commented that it would behoove the Council, when they take a legislative position, to be sure that everybody is on board and is clear in terms of what's going on. That was some of the concern that prompted some of the negative response to last year's legislative agenda. As a group, the Justice Court judges felt their interests weren't necessarily being best served. To preclude that, is to set up communication between the cities, counties and Justice Courts. Chief Justice Hall stated that the means of doing this is through the boards and what is represented to the Council through that board is what we understand the position of the Justice Courts to be. Then once the position is taken by the Council, everyone ought to pull together. It's the only way the Council function.

Judge Neilson commented that when H.B. 436 came out, that bill was all new to him. He stated that the Justice Court didn't have an opportunity to be involved in drafting the bill. When he read the three bills, they reeked of death of the Justice Court. They didn't like the bill. Now, the Justice Court has to deal with an amendment to the bill. Every year the

Justice Court judges become more paranoid over their positions. They are looking to the Association of Counties and the League of Cities and Towns as some type of defense to protect themselves. The Council members responded that they felt the bill strengthened the Justice Courts. It did not weaken them. The Council pointed out that the Circuit Courts felt that they were being weakened and the Justice Courts were being strengthened. Chief Justice Hall stated that, from the standpoint of the Judiciary, we are a separate, independent branch of government and we do not align ourselves with any part of the Executive or Legislative Branches of government.

Judge Sandberg stated that the Justice Courts have 130 Justice Court Judges many of which felt that there was a great deal of benefit from the bill, the concern they have now is where are the Justice Courts going in the future. He further stated that their primary allegiance is with the Judiciary but, they should have a liaison with the Association and League and still remain separate and work within the Judicial system.

Judge Yardley assured the Council that both the Justice Court Board and the Justice Court Association would work with and support the decisions of the Judicial Council and the Judiciary as a whole.

Subject: AWARD OF ATTORNEYS FEES IN DEFAULT

Discussion: Judge W. Brent West appeared before the Council on behalf of the Circuit Court Board. He discussed with the Council the difficulty and problems the Circuit Court is having with the rule governing attorneys fees in civil default judgment cases. He stated that the present rule does not work in these cases. The problems are: 1) The volume of cases makes it particularly burdensome for Circuit Court Judges to individually review and approve all of the affidavits in each case; 2) creates lack of uniformity between the judges; 3) creates an impediment toward consolidation, and 4) does not provide a way to challenge an attorney for the attorneys fees being sought.

Motion: A motion was made by Judge Bean to accept the rule as modified to establish more uniform awards; to limit it to default in the applicability section; to make clear that no affidavit will be required in a default case so long as the amount requested is in accordance with schedule; to initiate the applicability of the complaint to set forth the specific figure requested, and refer to the fact that the affidavit is in accordance with the rule. The motion was seconded by Judge Hutchings. The motion carried unanimously.

Subject: TIME STANDARDS (continued)

Discussion: (District Courts) Mr. Leeson summarized the District Board's recommended time standards for judicial evaluation and certification approved December, 1990. The Council discussed the beginning and ending court events for measurement purposes. Judge Frederick expressed that he would like the court events for measurement purposes to begin at notice of certification of readiness for trial. Mr. Leeson explained that it is not possible, with the current information system, to track cases from certification of readiness for trial. Mr. Leeson was requested to

prepare a memo to data processing to ensure that, as they reprogram the system, they include the ability to track cases from the notice of certification of readiness for trial. The Council members were concerned about the lengthy implementation delays for evaluation and certification purposes.

Motion: A motion was made by Justice Zimmerman to approve the recommendations deleting the five and seven year periods and make it effective January 1, 1992, and send the information on the District Court Time Standards reports back to the District Court Board for comment and explain to them what the Council is doing. Also, point out to them that these recommended standards are not ideals but minimums. The Council will adopt this in final form in December. The motion was seconded by Judge Bachman. The motion carried with one opposed objecting to the tracking time.

Discussion: (Juvenile Court) Mr. Phillips summarized the recommended time standards for certification and evaluation approved by the Juvenile Court Board August, 1991.

Motion: A motion was made by Judge Orme to approve these recommended time standards for the certification and evaluation approved by the Juvenile Court Board. The motion was withdrawn.

Judge Christean expressed a concern about having the juvenile court, with the volume they have, conduct felony trials within a 60 day period. It is unrealistic.

Motion: A motion was made by Justice Zimmerman to send the recommendations back to the Juvenile Court Board for them to restructure their time standards recommendations and return them to the Council to act on at their December meeting. The motion was seconded by Judge Bachman. The motion carried unanimous.

Discussion: (Circuit Court) Mr. Leeson summarized the Circuit Board recommended time standards for judicial evaluation and certification approved May, 1991. The Circuit Board recommends that some type of auditing procedure be done on caseload to ensure the quality. The Council requested that the ideal and minimum and six months statements in their recommendations be deleted and change the word "continuance" to the word "settlement."

Motion: A motion was made by Judge Bean to return the recommendations to the Circuit Court Board for them to restructure their time standards recommendations including the changes set forth in the above discussion and return them to the Council to act on at their December meeting. The motion was seconded by Justice Zimmerman. The motion carried unanimously.

Mr. Leeson will prepare a memo and written protocol for each level of court summarizing what action the Council took, and meet with the Justice Court Board.

Mr. Leeson summarized the recommendations of the National Center for State Courts and AOC.

Subject: PERFORMANCE EVALUATION COMMITTEE ANNUAL REPORT

Discussion: Mr. Novak reported to the Council that the Performance Evaluation Committee is required under Rule 3-110 to submit an annual report to the Judicial Council. A copy of their report was included in the Council packet. He reviewed the report and brought to the Council's attention that five members of the Committee will complete their terms September, 1991. He stated that his term is one that expires in September but, he would be willing to serve another term. The Judges of the Appellate Court have recommended that Judge Greenwood replace Judge Billings; Judge Johnson and Dr. Susan are willing to serve another term if the Council so desires; Scott Parker would not like to serve another term. The names of Monsignor Hedderman, and Harriet Marcus were submitted to the Council for consideration to replace Mr. Parker. They both have expressed a willingness to serve. Mr. Phillips reported on the impact of the exclusion of attorneys on the survey. Twenty-six judges submitted one or more names of attorneys for exclusion. Most judges had only one attorney exclusion. As a result, only 36 attorneys were excluded which leaves over 2,000 attorneys to be surveyed. This will only minimally affect the survey. Mr. Novak continued to summarize the Committee report. He pointed out their accomplishments over the past year and their goals for the coming year.

Motion: A motion was made by Judge Christean to accept the Performance Evaluation Committee's Annual Report. The motion was seconded by Judge Bachman. The motion carried unanimously.

Subject: AUDIT REPORT

Discussion: Mr. Hennessy reported that, since his last meeting with the Judicial Council, they have completed three full audits and are about to complete another. He stated that the courts are coming more in compliance with the policy and procedures all the time. They are now studying whether or not there should be a greater contribution to the judicial retirement fund. They are also checking to see if the State Treasurer is making the transfer of funds to judicial retirement fund properly.

Motion: A motion was made by Justice Zimmerman to accept the audit report. The motion was seconded by Judge Acomb. The motion carried unanimously.

Motion: A second motion was made by Judge Orme to commend Mr. Hennessy and his staff for their excellent and timely work and accept the audit report. The motion was seconded by Judge Bean. The motion carried unanimously.

Subject: ANNUAL PLAN

Discussion: Mr. Vickrey reported that the only changes in the Annual Plan were to add a supplemental budget request for security at the District Court level and a supplemental in the Juvenile court for the guardian ad litem program contracts which exceed the appropriated budget. These changes are contained in the notebook distributed to the Council.

Motion: A motion was made by Judge Eves to approve the annual plan as was adopted at the planning meeting with the amendments stated above. The motion was seconded by Judge Feltch. The motion carried unanimously.

Subject: JUDICIAL EVALUATION SURVEY

Discussion: Judge Orme observed that the question on sentencing is included in the survey when the Council specifically instructed that that question be deleted because it is a meaningless question.

Motion: A motion was made by Judge Orme that the Council instruct that the answers to the sentencing question not be tabulated nor considered and that it be deleted in the future. The motion was seconded by Judge Acomb. The motion carried unanimously.

Subject: JUSTICE COURT CERTIFICATION RESPONSIBILITIES

Discussion: Mr. Winchester and Mr. Schwermer reported that they have researched the issue of whether or not the Council may refuse to certify a justice court judge who does not comply with the statutory eligibility requirements. It is their opinion that the Council's only authorized action is to certify as to whether or not the individual has successfully completed the orientation program, not whether he complies with the residency requirements. Mr. Winchester suggested the Council send a letter to the appointing authority explaining that the Council is limited by statute to certify as to the successful completion of the orientation program, not whether he complies with the residency requirements set forth in the statute.

Motion: A motion was made by Justice Zimmerman that the Council send a letter as described in the last sentence of the first full paragraph on page 2 of the memorandum written by Mr. Winchester, dated September 5, 1991. The motion was seconded by Judge Frederick. The motion carried with one opposed.

Motion: A motion was made by Justice Zimmerman to amend the rule to indicate what Mr. Gibson says is the substance of the Legislature's intent in passing 78-5-137, and that the Council amend Rule 9-106, leaving staff to draft it, so that it indicates what the Council does is certify that somebody has taken the course and has passed it satisfactorily. The motion was seconded by Judge Feltch. The motion carried with one opposed.

Subject: PERFORMANCE EVALUATION COMMITTEE MEMBERSHIP

Discussion: Chief Justice Hall stated that the Performance Evaluation Committee has made recommendations for reappointment or replacement of the members whose terms on the Committee have been completed.

Motion: A motion was made by Judge Christean to reappoint Joe Novak, Judge S. Mark Johnson, and Dr. Susan Olson. The motion was seconded by Judge Frederick. The motion carried unanimously.

Motion: A motion was made by Judge Christean to extend an invitation to Ms. Harriet Marcus to replace Scott Parker. The motion was seconded by Judge Acomb. The motion carried unanimously.

Motion: A motion was made by Judge Eves to appoint Judge Pamela Greenwood to replace Judge Billings on the Committee. The motion was seconded by Judge Frederick. The motion carried unanimously.

Subject: COMMISSION ON JUSTICE IN THE TWENTY-FIRST CENTURY

Discussion: Because the Council was behind schedule, Chief Justice Hall requested that Ms. May come to the October meeting to report on the Commission's activities. Ms. May did report on the results of the town meetings. She was pleased that so many people attended these meetings. She stated that one of the best parts of the meetings was the refreshment session at the end because there was a lot of face to face interaction between local judges, members of the Commission, and members of the local community. Ms. May stated that the Commission decided not to have an implementation committee because several of their recommendations are already in progress. Their next step will be to disseminate information about their recommendations and establish a judicial speakers bureau.

Subject: JUDICIAL NOMINATING COMMISSION PROCEDURES

Discussion: The revised Nominating Commission questionnaire and procedures were distributed to the council. Chief Justice Hall asked the Council members if they had any major concerns with the proposed questionnaire and procedures.

Motion: A motion was made by Judge Frederick to approved the revised Nominating Commission questionnaire and procedures. The motion was seconded by Justice Zimmerman.

The motion was amended by Judge Orme to put the phrase "please do not contact judges or Counsel" back in the procedures throughout but, also provide an opportunity for the applicant to include some recollection, refreshing type factors throughout the procedures. Both Judge Frederick and Justice Zimmerman accepted the amendments to the motion. The motion carried unanimously.

Subject: OTHER BUSINESS

Discussion: Chief Justice Hall reported that Judge John Sandberg has been recommended to replace Judge Christine Rogers on the Judicial Council Education Standing Committee.

Motion: A motion was made by Judge Frederick to replace Judge Christine Rogers with Judge John Sandberg on the Judicial Council Education Standing Committee. The motion was seconded by Judge Acomb. The motion carried unanimously.

Discussion: Chief Justice Hall announced that five states (North and South Dakota, Montana, Idaho and Wyoming) now have an annual conference and have extended an invitation to Utah to join them. The Council discussed the invitation and decided to decline.

Discussion: Judge Orme stated that Justice Durham, in her presentation to the Council, extended an invitation to the Judicial Council to rethink the Education Committee's relationship with the Council and suggested that they ought to have something akin to independent rulemaking authority and the Council ought to consider that further.

Motion: A motion was made by Judge Orme that the adoption of rules is the Council's authority but, as with other committees, the Council would be receptive to the recommendations of the Education Committee for any changes in the Education Rule. The motion was seconded by Judge Frederick. The motion carried unanimously.

The Judicial Council went into Executive Session.

Chief Justice Hall adjourned the meeting.

EXHIBIT B

M E M O R A N D U M

TO: All Members of the Board of Circuit Court Judges

FROM: Judge Michael L. Hutchings

DATE: August 21, 1991

RE: A Proposed Rule for Granting Attorneys Fees in Civil Default Judgment Cases
(This matter is the first matter on the agenda for the Board Meeting Friday, August 23, 1991)

Presently, Rule 4-505(1) of the Code of Judicial Administration requires that an affidavit in support of an award of attorneys fees "must be filed with the court and set forth specifically the legal basis for the award, the nature of the work performed by the attorney, the number of hours spent to prosecute the claim to judgment or the time spent in pursuing the matter for which attorneys fees are claimed, and affirm the reasonableness of the fees for comparable legal services."

Rule 4-505 has been interpreted by our former General Counsel, Carlie Christensen, to require that the judges themselves review all affidavits for attorneys fees in default judgment cases and determine the amount of reasonable attorneys fees to be awarded. The rule does state that "affidavits in support of an award of attorneys fees must be filed with the court ..." (emphasis added).

Also, Rule 55B of the Rules of Civil Procedure has been interpreted by Carlie to require that the judge individually review each attorneys fee affidavit. It states:

"Judgment by default may be entered as follows: 1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, and the defendant has been personally served otherwise than by publication or by personal service outside of this state, the clerk upon request of the plaintiff shall enter judgment for the amount due and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.
(emphasis added)

2) By the court. In all other cases, the party entitled to a judgment by default shall apply to the court therefore. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper."

I attach with this memorandum a letter dated January 30, 1991 from our Circuit Court Administrator, Melinda Monahan. In that letter Melinda stated that she had conferred with our prior General Counsel, Carlie Christensen, for a legal opinion regarding attorneys fees. Carlie opined that "a court clerk may not sign a default judgment where it includes attorneys fees." Carlie reasoned that under Rule 55(b)(1) of the Utah Rules of Civil Procedure that the language "sum certain" applies only to damages and interest and does not apply to attorneys fees.

Carlie also opined that under Rule 4-505 of the Code of Judicial Administration the attorneys fees must be set by a judge.

PROBLEMS

There are various problems which are surfacing at the circuit court because of these two rules and their interpretation. I will discuss some of my observations of these problems.

PROBLEM 1: THE VOLUME OF CASES MAKES IT PARTICULARLY BURDENSOME FOR CIRCUIT COURT JUDGES TO INDIVIDUALLY REVIEW AND APPROVE ALL OF THE AFFIDAVITS IN EACH CASE.

A number of judges in the state are experiencing significant problems in having to review applications for attorneys fees in default judgment cases. The sheer volume of these cases makes it inordinantly difficult for judges to spend the amount of time necessary to read all of the affidavits and make a decision on the amount of attorneys fees to be granted.

The most egregious example that I know of is taking place in the Sandy Department of the Third Circuit Court. There is only one judge in that department where approximately 15,000 civil cases are filed annually. Judge Livingston, who is the current judge assigned to the Sandy Department, informs me that approximately 75% of all of the civil cases filed in that

department are default judgment cases where attorneys fees are requested. He has estimated that reviewing these affidavits for attorneys fees takes at least 8 hours per week. He also informs me that he has the clerks provide some initial screening and assistance to him before he even takes a look at the files. A great number of the cases filed in the Sandy Department are bad check and bad debt cases filed by collection agencies. By taking the numbers Judge Livingston has provided, I calculate that he is signing 11,250 default judgment cases involving attorneys fees every year. That computes to 937 cases per month or over 216 cases per week. Judge Livingston informs me that he is signing two or three boxes full of civil files every week in the Sandy Department.

Another example is the Murray Department in the Third Circuit Court. I contacted Judge Michael Burton. After conferring with his clerks, he provided the following information. Approximately 15,000 cases are filed in the Murray Department every year. Approximately 75% of those total number of cases are default judgment cases, or 11,250. They estimate that approximately 75% of that number, or 8438 cases are default judgment cases where attorneys fees are granted. Presently there are two circuit judges serving in that department. That would mean that each judge would have to personally look at 4218 cases per year, or 352 per month, or 81 cases per week.

Another example is the Salt Lake Department. I contacted our court clerk, Suzanne Hatfield, to determine the total number of cases filed in the Salt Lake Department last year and to also determine the percentage of cases which receive default judgment with attorneys fees. She conducted a study and accordingly determined that 35% of all civil cases filed in the Salt Lake Department went to default judgment with attorneys fees. In 1990 there were 14,643 civil cases filed. There are eight judges that are assigned responsibility to handle those cases. Thirty-five percent of the cases equals the sum of 5062 cases which went to default judgment and awarded attorneys fees last year. That amounts to 632 cases per judge per year, or 53 per month, or 12 per week where attorneys fees are awarded.

PROBLEM 2: LACK OF UNIFORMITY BETWEEN THE JUDGES.

It is common knowledge that some judges appear to be more liberal in the granting of attorneys fees in civil default judgment cases than other judges. This causes collection agencies, particularly, to shop judges and file cases in those jurisdictions where judges grant attorneys fees more liberally. This causes situations that are unfair to litigants

as well as unfair to the judges involved. This also makes it particularly difficult to make equitable assignments of judges in various locations in circuits that have more than one judge.

PROBLEM 3: AN IMPEDIMENT TOWARD CONSOLIDATION.

I seriously doubt that the district judges of the state will want to review all of these affidavits for attorneys fees considering the volume of civil cases that are filed in the circuit court. This may be an impediment to a quicker consolidation of the district and circuit courts. On the other hand, if a rule were promulgated setting up an attorneys fee schedule in civil default cases, a potential problem area could be averted regarding consolidation of the courts.

PROBLEM 4: HOW TO CHALLENGE AN ATTORNEY FOR THE ATTORNEYS FEES BEING SOUGHT.

An interesting dilemma arises wherein a judge challenges the amount of money that an attorney is asking for in a civil default judgment case. On what basis does the judge deny the request for attorneys fees? If an affidavit is filed according to the rule, how can the judge deny the amount requested by the attorney unless an actual hearing is held by the judge? And, frankly, how many judges want to hold those type of hearings? The only evidence before the court is the evidence presented by the attorney in the affidavit. I know very few judges that hold hearings on the amount of attorneys fees in civil default judgment cases. Furthermore, are we really providing any guidance to the collection attorneys and others who file these claims and seek the awards of attorneys fees when they may get a much larger fee in one jurisdiction and yet in another jurisdiction get a smaller fee?

RESEARCH OF OTHER STATES

This summer my law clerk and myself have been attempting to determine whether other states have published attorneys fees schedules that apply when a default judgment is obtained. Surprisingly, we found a number of jurisdictions which have published attorneys fees schedules. I will summarize those jurisdictions and have attached copies to this memorandum of the schedule of attorneys fees from those particular jurisdictions.

CALIFORNIA

1. Federal District Court for the Central District of California.

The Federal District Court for the Central District of California located in Los Angeles has a local Rule 14.12.3 which sets up a schedule of attorneys fees when a claim is made upon a promissory note, contract or applicable statute providing for the recovery of a reasonable attorneys fee. That rule allows an attorney claiming a fee in excess of the schedule to file a written request to have an attorneys fee fixed by the court.

2. Municipal Court for Los Angeles County

The Municipal Court for Los Angeles County sent me a schedule of attorneys fees to apply in civil default judgment cases. I have attached a copy of that attorneys fee schedule to this memorandum.

3. Superior Court for Los Angeles County

Rule 402 of the local rules of the superior court sets up a schedule for a reasonable attorneys fee where there is a default judgment. Interestingly, the rule differentiates between a default judgment case and a contested case. I have enclosed a copy of that rule for your review.

4. Municipal Court for San Francisco County

An attorneys fees schedule effective August 1, 1987 is being followed in the Municipal Court for San Francisco County. I have enclosed a copy of that attorneys fees schedule for your review.

5. Municipal Court for San Diego County

I have also enclosed a copy of a attorneys fee schedule for judgments by default that is followed in the Municipal Court for San Diego County. This schedule is effective as of August 1, 1990.

6. Superior Court for San Diego County

The local rules of the San Diego County Superior Court allow for attorneys fees in mortgage foreclosure actions and on promissory notes or contracts where attorneys fees are provided. The rule is Rule 6.1.

7. Municipal Court for Sacramento County

Rule 6.06 sets up a schedule for attorneys fees in default judgment cases and also where attorneys fees are sought in contested actions on notes or contracts. The new rule became effective on July 1, 1990 and was originally adopted July 1, 1985. I have enclosed a copy of that rule for your review.

8. Other California Rules

My law clerk has only researched the major above named jurisdictions within the state of California. I am confident that many of the other municipal and superior courts of California have attorneys fees rules. We did not have time to contact all of the courts and, therefore, chose only those courts in the major metropolitan areas of the state of California. We did not find one jurisdiction in the state of California which we contacted that did not have a schedule of attorneys fees in default judgment cases.

OREGON

We contacted a senior administrative clerk for the Multnomah County Court Administrators Office in Portland, Oregon regarding attorneys fees. The district court, which is the court of limited jurisdiction, allows an attorney to claim up to \$500 without the necessity of filing an affidavit. The letter states that the clerk has determined that about \$500 is average for attorneys' time in a district court case.

In the circuit court, which is the court of general jurisdiction, the policy is that attorneys can claim from \$500 up to a quarter of the amount prayed for in the complaint, and receive it from the court.

ALASKA

The state of Alaska has promulgated Rule 82 of its civil rules which allows for attorneys fees to be given to prevailing parties. This rule also encompasses the award of attorneys fees in default judgment cases. I have attached a copy of the fee schedule with this memorandum. A large body of case law exists deciding issues of this attorneys fees schedule. The attorneys fees schedule has been upheld by the courts and is good law in Alaska.

WASHINGTON

We have found a rule and schedule allowing for attorneys fees in default judgment cases in King County, Washington. As you know, King County includes the city of Seattle. I have enclosed a copy of that schedule with this memorandum.

HAWAII

Rule 10 in the Hawaii Rules Annotated allows for attorneys fees to be set in default judgment cases. I have enclosed a copy of the rules of circuit courts. This rule was formally known as Rule 11 of the Rules of the Circuit Court for the first circuit which was adopted in 1960. It is now known as Rule 10.

DISTRICT OF COLUMBIA

The courts in the District of Columbia follow Rule 19 which limits the amount of attorneys fees to be no more than 15% of the plaintiff's recovery. No lower limit is set for recovery of attorneys fees but an upper limit of 15% is set. This rule is regularly followed.

A PROPOSAL TO RESOLVE THESE PROBLEMS

A simple and valid solution to the above problems would be implementation of an attorneys fees schedule in default judgment cases. Such a schedule would free up a judge's time and energy by allowing a clerk to enter judgment without a judges inordinant scrutiny or oversight. Implementation of this schedule will also allow for judgments to be rendered in a quicker fashion by the clerks. Attorneys should be pleased with this development rather than have the file sit on the judges desk before the judge can get around to looking at the file and entering judgment. Attorneys have complained that some judges take too long in granting judgment.

Another advantage for an attorneys fees schedule is that it would provide certainty and notice regarding what can be expected when attorneys fees are sought in a default judgment case. Yet, I would suggest that the schedule not be strictly mandatory but allow a provision for attorneys who want to depart from the schedule to make application to the court and provide an affidavit establishing that the hours spent justify some departure from the attorneys fees award that is given or allowed by the attorneys fees schedule.

My law clerk and myself have researched these jurisdictions where the attorneys fees schedules are utilized and have not found one schedule to be ruled invalid or unconstitutional by a court. My clerk has talked to the clerks in these various courts and has found that the only objection to such a rule was either an objection that the schedule of fees reflect more adequate compensation for the attorneys or that the clerk in a rare instance may have miscalculated the attorneys fees themselves.

I suggest that our Board ask the Judicial Council to promulgate a new rule in the Code of Judicial Administration to allow for an attorneys fees schedule to be applied in default judgment cases at the circuit court level. This is where truly the civil litigation volume and corresponding problems are occurring.

Another reason for the attorneys fees schedule is that if the schedule is set out in a clear and concise way then the amount of attorneys fees awarded would be tied directly to the amount of money that is claimed in the lawsuit. This, I believe, would constitute a "sum certain" which is allowable by Rule 55(b)(1) of the Utah Rules of Civil Procedure. In essence, the attorneys fees schedule would contain "sum[s] certain or...a sum which can by computation be made certain".

I have attached to this memorandum a copy of the proposed rule which I have drafted which I invite you to review. I have also included in that proposed rule the attorneys fees schedule that is a part of the rule. This schedule is in essence the schedule utilized in the municipal court for San Diego county. I believe that is a very good rule because it sets out the principal dollar amounts and the corresponding fees which are allowed and does not even require that a clerk obtain a calculator and work out percentages as is required by many of the other rules of the various courts. I believe that this schedule can easily be utilized in the court, and I also believe that the corresponding dollar amounts are fair.

PROPOSED RULE 4-505.1
 AWARDS OF ATTORNEYS FEES IN DEFAULT JUDGMENTS
 IN CIRCUIT COURT

Intent:

To establish uniform awards of attorneys fees in circuit court; to reduce the time each judge must spend reviewing attorneys' affidavits in high volume courts and cases; to reduce the time it takes to issue default judgments involving attorneys fees; to provide notice to attorneys and litigants regarding the amount of attorneys fees normally awarded in civil cases.

Applicability:

This rule shall govern the award of attorneys fees in circuit court.

Statement of the Rule:

- (1) When a promissory note, contract or statute provides for the recovery of a reasonable attorneys fee, that fee shall be computed according to the following schedule:

<u>Principal Amount</u>		<u>Fees Allowed</u>
Under	\$ 401.00	\$ 100.00
401.01	501.00	125.00
501.01	701.00	150.00
701.01	901.00	175.00
901.01	1,001.00	200.00
1,001.01	1,501.00	250.00
1,501.01	2,001.00	325.00
2,001.01	2,501.00	400.00
2,501.01	3,001.00	465.00
3,001.01	3,501.00	550.00
3,501.01	4,001.00	625.00
4,001.01	4,501.00	700.00
4,501.01	5,001.00	775.00
5,001.01	6,001.00	850.00
6,001.01	7,001.00	925.00
7,001.01	15,001.00	1,000.00
15,001.01	20,000.00	1,250.00

- (2) This attorneys fees schedule shall be applied to the principal amount of judgment exclusive of costs sought by a claimant.
- (3) The attorneys fees set according to this schedule shall be deemed reasonable in all default judgment cases in circuit court.
- (4) Any party may, before entry of the default judgment and a corresponding award of attorneys fee, make application for the court to depart from the attorneys fees schedule in this section. Such application may be made pursuant to Rule 4-505 of the Code of Judicial Administration.
- (5) The court shall have authority to depart from this schedule contained in this section on its own motion.
- (6) Attorneys and law firms proceeding pro se shall not be entitled to an award of attorneys fees according to this section.
- (7) An original or a copy of the contract, promissory note or other document allowing for an award of attorneys fees shall be made part of the file before entry of attorneys fees is granted.
- (8) In the case of attorneys fees being granted pursuant to a statute, the statute must be cited in the complaint or an affidavit presented to the court and made a part of the court file.

A COMPARISON OF
ATTORNEYS FEES SCHEDULES

<u>JURISDICTION</u>	<u>PRINCIPAL AMOUNT SOUGHT IN COMPLAINT AND CORRESPONDING ATTORNEYS FEES AWARDED</u>						
	<u>100</u>	<u>500</u>	<u>1000</u>	<u>2500</u>	<u>5000</u>	<u>7500</u>	<u>10,000</u>
LA Municipal	30	90	160	310	560	810	1,055
LA Superior	75	75	150	250	390	540	690
LA Federal District	250	250	300	450	700	950	1,200
San Diego Municipal	100	150	250	475	850	1000	1,000
San Diego Superior	100	100	100	250	500	750	1,000
Sacramento Municipal	150	150	250	600	1100	1425	1,900
San Francisco Municipal	50	180	325	560	850	1100	1,350
Hawaii	25	100	250	525	750	813	875
Alaska	10	50	100	250	500	750	1,000
King County, Washington	50	150	175	250	500	700	900

Administrative Office of the Courts

Chief Justice Gordon R. Hall
Chairman, Utah Judicial Council

January 30, 1991

William C. Vickrey
State Court Administrator

Ronald W. Gibson
Deputy State Court Administrator

Hon. Floyd Gowans, Presiding Judge
Third Circuit Court
451 South 200 East
Salt Lake City, Utah 84111

RE: Request for Opinion from Third Circuit Court Judges

Dear Judge Gowans:

At the request of the Third Circuit Court Judges, I asked Carlie Christensen for a legal opinion regarding attorney fees on default judgments and submitted to her the proposed policy which Judge Livingston discussed at the last judges' meeting on January 10, 1991. She provided the following opinion:

- a. A court clerk may not sign a default judgment where it includes attorney fees.
- b. Under Rule 55(b)(1), Utah Rules of Civil Procedure, "sum certain" applies to damages and interest.
- c. Under the provisions of Rule 4-505, Code of Judicial Administration, the proposed policy may not be implemented.

As you and I discussed on the phone this morning, the problem of Circuit Judges being required to review every case involving attorneys fees is a difficult issue. In a court site like Sandy, where there may be more than 10,000 of these per year, it could create a serious backlog because of the time involved. As I mentioned, the Judicial Council has reiterated on a number of occasions its position against using attorney fee schedules. You suggested that, as an alternative, Rule 55(b) might be amended to allow the clerk more flexibility in signing default judgments. I will discuss this idea with Carlie Christensen and place it on the agenda of the Board of Circuit Court Judges for their consideration.

Sincerely,



H. Melinda Monahan
Circuit Court Administrator

cc: Carlie Christensen, General Counsel

2308/33

RULE 6.06 ATTORNEY FEES IN CIVIL ACTION OR PROCEEDINGS

(A) In actions on promissory notes and contracts providing for the payment of attorney fees, whenever a prevailing party is entitled to the recovery of a reasonable attorney's fee, except as provided in Local Rule 6.06(D) and subject to Local Rules 3.12(H), 6.07 and 6.08, the following schedule may be considered by the Court, under normal circumstances and subject to its discretion, when awarding attorney fees:

(1) Default action on note or contract.

Exclusive of costs,

- (a) Twenty-five percent (25%) of the first two thousand dollars (\$2,000) with minimum fee of one hundred fifty dollars (\$150).
- (b) Twenty percent (20%) of the next four thousand dollars (\$4,000).
- (c) Fifteen percent (15%) of the next four thousand dollars (\$4,000).
- (d) Ten percent (10%) of the amount over ten thousand dollars (\$10,000).

(2) Contested action on note or contract.

The same amount as computed under subdivision (1), increased by such reasonable compensation computed on an hourly or per-day basis for any additional research, general preparation, trial or other services as may be allowed by the court.
(Effective July 1, 1990)

(B) Where a defendant is the prevailing party, the fee will be fixed by reasonable compensation computed on an hourly or per-day basis for research, general preparation, trial or other services rendered.

(C) Where a prevailing party is entitled to the recovery of a reasonable attorney's fee in an otherwise appropriate clerk's judgment, the Clerk shall include an attorney fee computed pursuant to the schedule set forth in Paragraph (A)(1) above. (Effective July 1, 1990)

(D) In any case where a party claims fees in excess of those allowed by this rule, application for attorney fees shall be made to the Court, supported by declarations setting forth the factual basis for the claimed attorney fees. The fee will thereupon be fixed by the Court.
(Effective July 1, 1986)

(Adopted, effective July 1, 1985;
as amended, effective July 1, 1986;
as amended, effective August 1, 1987;
as amended, effective July 1, 1990.)

deficiencies, and in such other cases as it deems appropriate, the Court may withhold entry of judgment to permit the parties to submit, either separately or jointly by stipulation, the computation of the amount of money to be awarded in accordance with the Court's determination of the issues.

14.10.8 *Entry of Judgment—Separate Computation.* If the parties do not stipulate to a computation as provided in Local Rule 14.10.6, either of the parties may file and serve a computation claimed to be in accordance with the determination of the issues by the Court.

14.10.9 *Entry of Judgment—Separate Computation—Opposition.* Within five (5) court days of service of the computation, the opposing party may file and serve objections accompanied by an alternate computation. If no objection is filed within five (5) court days, the judgment, decree or order will be entered in accordance with the computation already submitted.

14.10.10 *Entry of Judgment—Separate Computation—Hearing.* If it finds the ends of justice so require, the Court may place the matter on calendar for the next succeeding Motion Day providing at least five (5) court days notice to the parties.

After hearing, the Court will determine the correct amount on which judgment will be entered. The hearing will be limited to a determination of the correct amount to be entered in the judgment and shall not constitute an opportunity for rehearing or reconsideration of the determination of the issues previously made by the Court.

14.10.11 *Entry of Judgment—Stipulation.* A stipulation by the parties to the amount to be entered pursuant to the determination of the issues by the Court will not be deemed to be a waiver of any rights of the parties to appeal or otherwise attack the determination of such issues by the Court.

14.11 *Judgment, Order, Decree—United States a Party—Duty of Clerk.* When a judgment, order or decree is entered by the Court directing any officer of the United States to perform any act, unless such officer is present in Court when the order is made, the Clerk shall forthwith transmit a copy of the judgment, order or decree to the officer ordered to perform the act.

14.12 *Default Judgments.* When application is made to the Court for a default judgment, the application shall include the following:

(a) when and against what party the default was entered;

(b) whether the defaulting party is an infant or incompetent person, and if so, whether that person

(c) that the Soldiers' and Sailors' Civil Relief Act of 1940 does not apply; and

(d) that notice has been served on the defaulting party, if required by F.R.Civ.P. 55(b)(2).

14.12.1 *Default Judgment—Unliquidated Damages.* If the amount claimed in a judgment by default is unliquidated, the applicant may submit evidence of the amount of damages by declarations. Notice must be given to the defaulting party of the amount requested. The party against whom judgment is sought may submit declarations in opposition.

14.12.2 *Default Judgment—Other Proceedings.* Other proceedings necessary or appropriate to the entry of a judgment by default will be taken as provided in F.R.Civ.P. 55(b)(2).

14.12.3 *Default Judgment—Schedule of Attorney's Fees.* When a promissory note, contract or applicable statute provides for the recovery of a reasonable attorney's fee, that fee shall be calculated according to the following schedule:

Amount of Judgment	Attorney's Fees Awards
\$0.01 - \$1,000	30% with a minimum of \$250.00
\$1,000.01 - \$10,000	\$300 plus 10% of the amount over \$1,000
\$10,000.01 - \$50,000	\$1200 plus 6% of the amount over \$10,000
\$50,000.01 - \$100,000	\$3600 plus 4% of the amount over \$50,000
over \$100,000	\$5600 plus 2% of the amount over \$100,000

This schedule shall be applied to the amount of the judgment exclusive of costs. An attorney claiming a fee in excess of this schedule may file a written request at the time of entry of the default to have the attorney's fee fixed by the Court. The Court shall hear the request and render judgment for such fee as the Court may deem reasonable.

14.13 *Signature Line for Signature of Judge.* At least two lines of the text of any order or judgment shall appear on the page that has the date and the line provided for the signature of the judge. Rule 14.13 adopted, eff. Oct. 1, 1987. As amended, eff. Aug. 22, 1988.

RULE 15. NEW TRIALS

15.1 *New Trials—Grounds.* The grounds for a motion for a new trial pursuant to F.R.Civ.P. 59(a) include, but are not necessarily limited to, the following:

(a) Irregularity in the proceedings of the Court, jury or adverse party;

FEDERAL DISTRICT COURT -
CENTRAL DIST. CALIF (L.A.)

Section 4. Judgment Payable in Installments. Every judgment providing for periodic payments to a party or attorney shall state the amount payable to each individual, the date of commencement, the frequency and duration of payment.

Section 5. Court Trustee. The Auditor-Controller of the County of Los Angeles is hereby designated as the officer of the county to whom support payments shall be made when the court orders such payments to be made through a court trustee.

Section 6. Birth Date of Minor. Every judgment providing for payment of child support shall state the name and birthdate of any minor for whom payment for support is ordered.

Section 7. Execution by Clerk of Documents. If judgment awards real or personal property and the necessary documents for the transfer are not at that time executed, the execution of such necessary documents by the proper party shall be ordered. In such case, the Clerk of the Court, or his Chief Deputy Clerk, or the Clerk of the court's designee, and no other deputy clerk, shall have the authority to execute such necessary documents in the event of the failure of the obligated party to do so within a specified period of time.

402 ATTORNEY'S FEES

Section 1. Note or Contract Provision. When a promissory note or contract provides for the recovery of (or a statute authorizes the clerk to enter) a reasonable attorney fee, the following schedule shall (unless otherwise determined by the court) be applied to the amount of the new judgment exclusive of costs:

Default case:

\$0.01 to \$1,000, 15 percent with a minimum of \$75.00;

\$1,000.01 to \$10,000, \$150 plus 6 percent of the excess over \$1,000;

\$10,000.01 to \$50,000, \$690 plus 3 percent of the excess over \$10,000;

\$50,000.01 to \$100,000, \$1890 plus 2 percent of the excess over \$50,000;

Over \$100,000, \$2,890 plus 1 percent of the excess over \$100,000.

Contested case (unless otherwise determined by the court):

\$0.01 to \$1,000, 15 percent with a minimum of \$100;

\$1,000.01 to \$10,000, \$150 plus 8 percent of the excess over \$1,000;

\$10,000.01 to \$50,000, \$870 plus 6 percent of the excess over \$10,000;

50,000.01 to \$100,000, \$3,270 plus 4 percent of the excess over \$50,000;

Over \$100,000, \$5,270 plus 2 percent of the excess over \$100,000.

Section 2. Mortgage or Trust Deed. When a mortgage or trust deed is foreclosed which provides for the recovery of a reasonable attorney fee, the applicable fee in section 1 shall be increased by 10 percent.

Section 3. Foreclosure of Assessment or bond lien. When the lien of a street or other assessment or of a bond issued for the cost of a public improvement is foreclosed, the fee shall be computed as provided in Section 1 of this rule, except that the minimum shall be \$75.00 where only one assessment or bond is being foreclosed in the action, and \$20.00 additional for the second and each additional assessment or bond.

Section 4. Itemization as to Extraordinary Services. Any application for a fee in addition to a foregoing schedule because of extraordinary services shall be accompanied by an itemized statement of the services rendered or to be rendered.

Section 5. Services Benefiting a Minor. No attorney's fee for services rendered on behalf of a minor shall be allowed in any action or a contract therefor approved except upon application in open court after notice to his/her guardian and to each of his/her parents and if the minor is over 14 years of age, to the minor also. The notice shall state the character and extent of the services of the attorney, any expenses incurred therewith and that objection may be made at the time and place of application.

403 APPLICATION FOR RECONSIDERATION OF, TO VACATE, OR TO ENTER NUNC PRO TUNC ORDERS

Every application for the entry nunc pro tunc or the vacation of an order or judgment after the hearing of the matter, any motion for the reconsideration of an order as to a demurrer, motion or discovery shall be presented to the judge who made the order and if his is not available, to the judge in the master calendar

FIN 6 COUNTY DISTRICT COURT RULE LCRLJ 54

(C) The following attorneys fee schedule, where authorized and instead of those statutory fees set by RCW 12.20.060, shall be deemed reasonable in all default cases unless the parties present evidence of circumstances that convince the court that a larger or smaller fee should be awarded. provided however, the court shall have authority to vary from this schedule on its own motion:

SCHEDULE FOR ATTORNEY FEES IN DEFAULT CASES

(Other than Statutory Attorney Fees)

\$ 0 - \$ 100	\$ 50
100.01 - 500	75
500.01 - 1,000	150
1,000.01 - 1,500	175
1,500.01 - 2,000	200
2,000.01 - 2,500	225
2,500.01 - 3,000	250
3,000.01 - 4,000	300
4,000.01 - 5,000	400
5,000.01 - 6,000	500
6,000.01 - 7,000	600
7,000.01 - 8,000	700
8,000.01 - 9,000	800
9,000.01 - 10,000	900

This schedule shall be maintained utilizing the same incremental amounts as jurisdictional limits are increased.

(D) Attorneys and law firms proceeding pro se shall not be entitled to an award of attorneys fees.

(ii) If an appeal has been taken, the final judgment or decree upon remand has been entered or the mandate has issued affirming the judgment or decree.

This subparagraph (2) shall not apply to an attorney who files and serves a notice of continued representation.

(e) **Stipulations.** Stipulations between parties or their attorneys will be recognized only when made in open court, or when made in writing and filed with the clerk.

(f) **Time for Argument.** Unless otherwise specially ordered no longer than one quarter hour shall be allowed each party for argument upon any motion, or on any hearing other than a final hearing on the merits. The time for opening statements and arguments at the trial of an action shall be determined in accordance with Civil Rule 46(h).

(g) **Disbarment and Discipline.** Whenever it appears to the court that any member of the bar has been disbarred or suspended from practice or convicted of a felony, he shall not be permitted to practice before the court until he is thereafter reinstated according to existing statutes and rules.

Adopted by SCO 5 October 9, 1959; amended by SCO 98 effective September 16, 1968; by SCO 258 effective November 15, 1976; by SCO 355 effective April 1, 1979; by SCO 390 effective November 7, 1979; by SCO 604 effective September 14, 1984; by SCO 612 effective January 1, 1985; by SCO 696 effective September 15, 1986; and by SCO 876 effective July 15, 1988)

Annotations

*Final court did not abuse discretion but acted appropriately and with high regard to propriety and to the public image of the legal profession in granting motion of counsel for his voluntary disbarment where a conflict of interest was not yet actually indicated but it could not be determined that such a conflict might not develop by testimony to be offered during the trial. *Gregoire v. National Bank of Alaska*, Op. No. 336, 413 P2d 27 (Alaska 1966).*

*Where a client states by affidavit that he has discharged his attorney by means of letter, it is not error to allow that attorney to withdraw even though the attorney does not serve the client with notice of hearing on a motion to be allowed to withdraw. *Moran v. Green Logging and Salvage, Inc.*, Op. No. 1056, 523 P2d 1237 (Alaska 1974).*

*Where there is no dispute as to the material terms of a settlement the provisions of paragraph (e) of this rule are met if both parties submit either in a writing filed with the clerk or orally in open court that a settlement had been reached. *Interior Credit Bureau, Inc. v. Manning*, Op. No. 1366, 559 P2d 104 (Alaska 1977).*

Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party.

(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein:

ATTORNEY'S FEES IN AVERAGE CASES

	Judgment and, if awarded, Prejudgment Interest	Contested	Without Trial	Non-Contested
First \$ 25,000		20%	18%	10%
Next \$ 75,000		10%	8%	3%
Next \$400,000		10%	6%	2%
Over \$500,000		10%	2%	1%

Should no recovery be had, attorney's fees may be fixed by the court in its discretion in a reasonable amount.

(2) In actions where the money judgment is not an accurate criterion for determining the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered. An application for attorney's fees in a default case exceeding \$50,000 must specify actual fees.

(3) The allowance of attorney's fees by the court in conformance with the foregoing schedule is not to be construed as fixing the fees between attorney and client.

(4) Attorney's fees upon entry of judgment by default shall be determined by the clerk. In all other matters the court shall determine attorney's fees. Awards not pursuant to the schedule set forth in subparagraph (1) of this Rule shall be made only upon motion.

(b) Allowance in Mental Cases. In proceedings under the Mental Health Act, the attorney appointed to represent the patient shall be allowed and paid a fee of \$25.00, unless the judge, in his discretion, orders otherwise. A lay advisor appointed in such proceedings shall be allowed and paid a fee of \$10.00, unless the judge, in his discretion, orders otherwise.

(Adopted by SCO 5 October 9, 1959; amended by SCO 497 effective January 18, 1982; by SCO 712 effective September 15, 1986; by SCO 921 effective January 15, 1989; and by SCO 1006 effective January 15, 1990)

MULTNOMAH COUNTY COURT ADMINISTRATOR'S OFFICE

Executive Services Division

1021 S.W. Fourth Avenue, Room 236

Portland, Oregon 97204

(503) 248-3232

Judge Michael Hutchings
Utah 3rd Circuit Court
4th floor
451 South, 200 East
Salt Lake City, Utah 84111

July 16, 1991

Dear Judge:

In response to a telephone enquiry from your clerk, Mr. Bagley, here is a brief description of the attorney fees policy we have pursued here in Multnomah County for several years.

In District Court, which is the state court of limited jurisdiction, an attorney can claim \$500 without the necessity of filing an affidavit. We have determined that about \$500 is average for attorney time in a District Court case.

In the Circuit Court, which is the state court of general jurisdiction, the policy has been that attorneys can claim from \$500 up to a quarter of the prayer. In the Circuit Court, an affidavit must be filed, and it must conform to the format prescribed in our state Uniform Trial Court Rules.

I include a copy of the affidavit and of our 1991 Attorney's Reference Manual.

Thank you for your time.

Berkeley Crookham *B*,
Senior Administrative Clerk
Presiding Court

SECTION SIX: MISCELLANEOUS PROVISIONS

6.1 Attorney's Fees - Schedules

When counsel fees are allowed in mortgage foreclosures, the minimum fees shall be \$100; otherwise, the following schedule shall be deemed reasonable:

Amount Involved	DEFAULT		Total
		or	
First \$10,000	10%		\$1,000
Next \$10,000	3%	\$300	\$1,300
Next \$30,000	2%	\$600	\$1,900
Next \$50,000	1%	\$500	\$2,400
Over \$100,000	1/2%		

On promissory notes or contracts where attorney's fees are provided, the above schedule shall also prevail.

CONTESTED

Reasonable attorney's fees in contested actions should be determined by the court in its discretion.

Contracts less than \$1,000 rate fixed in contract; not to exceed the above schedule. No fee shall be allowed in excess of the amount agreed by the plaintiff to be paid to plaintiff's attorney. In all cases arising under the Uniform Veterans Guardianship Act, attorney's fees shall not be allowed in excess of the amounts previously approved by the Federal Administration. Commissioner's fee on foreclosure of trust deed, \$25 or one percent of trust deed.
(Renumbered Eff. 1-1-90; Amended Eff. 7-1-91.)

6.2 Daily Transcripts of Proceedings - Request by Counsel

Timely Request and Deposit -

Request by counsel in a civil action for a daily transcript of proceedings can only be granted if it shall be made in sufficient time as determined by the court to prevent the disruption of the regular assignment of court reporters. Such request may be made through the Superior Court.

The requesting counsel shall deposit with the clerk of the court each day a sum equal to the daily cost of the salary and benefits for Superior Court reporters in this county under existing law, to compensate for the assignment of the additional reporter to the daily. A current computation of such cost shall be maintained in the Office of the Executive Officer of the Superior Court.

(Adopted 5-13-87; Renumbered Eff. 1-1-90.)

6.3 Depositions - Taking at Court

Approval of Presiding Judge -

No depositions shall be noticed for taking before the court, or in any room or quarters under the control of the court, without the express approval in writing of the presiding judge. (Adopted 5-13-87; Renumbered Eff. 1-1-90.)

6.4 Presentation of Orders, Statements of Decision, Judgments and Briefs

(a) Filing with Judge's Clerk -

Proposed statements of decision and objections thereto under Section 634 of the Code of Civil Procedure, and proposed orders and judgments, shall bear the date and department in which the matter was heard and shall be presented directly to the clerk of the department having heard the matter.

All memoranda of authorities or briefs which are prepared for the trial judge, except where required by statute to support a motion, shall bear the date and department in which the matter was heard and shall be presented directly to the clerk of the department having heard the matter.

(b) Serving of Orders for Deposit of Funds -

An order that funds be deposited by the clerk of the Superior Court in an interest bearing account shall become effective when a copy of such order is personally served upon the clerk or the chief deputy.
(Renumbered Eff. 1-1-90.)

6.5 Form of Papers Presented for Filing

In addition to the information required by California Rule of Court 201(c)(1) commencing with line 1, to the left of the center of the first page of all papers filed with the court, counsel shall provide their state bar number and use their street address rather than post office box.
(Adopted Eff. 1-1-90; Amended Eff. 1-1-91; 7-1-91.)

6.6 Dismissal for Failure to Prosecute

All cases not brought to trial within five years of the date on which the original complaint was filed shall be automatically dismissed regardless of whether an at issue memorandum has been filed unless there is a waiver, to a date certain, of the five-year statute.
(Adopted 11-18-87; Renumbered Eff. 1-1-90.)

6.7 Proofs of Service

In addition to the requirements of Code of Civil Procedure sections 417.10, 1011 and 1013, all proofs of service filed with the court shall specify the name of the party so served, the nature and status of the party's involvement in the case, i.e. plaintiff, defendant, cross-complainant, etc.; and the name, address and phone number of the party's counsel of record, if

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SCHEDULE OF ATTORNEY'S FEES

From	\$	0.01	to	\$	100.00	=	\$	15.00
		100.01	to		200.00	=	\$	30.00
		200.01	to		300.00	=	\$	45.00
		300.01	to		400.00	=	\$	60.00
		400.01	to		500.00	=	\$	75.00
		500.01	to		600.00	=	\$	90.00
		600.01	to		700.00	=	\$	105.00
		700.01	to		800.00	=	\$	120.00
		800.01	to		900.00	=	\$	135.00
		900.01	to		1,000.00	=	\$	150.00
		1,000.01	to		1,100.00	=	\$	160.00
		1,100.01	to		1,200.00	=	\$	170.00
		1,200.01	to		1,300.00	=	\$	180.00
		1,300.01	to		1,400.00	=	\$	190.00
		1,400.01	to		1,500.00	=	\$	200.00
		1,500.01	to		1,600.00	=	\$	210.00
		1,600.01	to		1,700.00	=	\$	220.00
		1,700.01	to		1,800.00	=	\$	230.00
		1,800.01	to		1,900.00	=	\$	240.00
		1,900.01	to		2,000.00	=	\$	250.00
		2,000.01	to		2,100.00	=	\$	260.00
		2,100.01	to		2,200.00	=	\$	270.00
		2,200.01	to		2,300.00	=	\$	280.00
		2,300.01	to		2,400.00	=	\$	290.00
		2,400.01	to		2,500.00	=	\$	300.00
		2,500.01	to		2,600.00	=	\$	310.00
		2,600.01	to		2,700.00	=	\$	320.00
		2,700.01	to		2,800.00	=	\$	330.00
		2,800.01	to		2,900.00	=	\$	340.00
		2,900.01	to		3,000.00	=	\$	350.00
		3,000.01	to		3,100.00	=	\$	360.00
		3,100.01	to		3,200.00	=	\$	370.00
		3,200.01	to		3,300.00	=	\$	380.00
		3,300.01	to		3,400.00	=	\$	390.00
		3,400.01	to		3,500.00	=	\$	400.00
		3,500.01	to		3,600.00	=	\$	410.00
		3,600.01	to		3,700.00	=	\$	420.00
		3,700.01	to		3,800.00	=	\$	430.00
		3,800.01	to		3,900.00	=	\$	440.00
		3,900.01	to		4,000.00	=	\$	450.00
		4,000.01	to		4,100.00	=	\$	460.00
		4,100.01	to		4,200.00	=	\$	470.00
		4,200.01	to		4,300.00	=	\$	480.00
		4,300.01	to		4,400.00	=	\$	490.00
		4,400.01	to		4,500.00	=	\$	500.00
		4,500.01	to		4,600.00	=	\$	510.00
		4,600.01	to		4,700.00	=	\$	520.00
		4,700.01	to		4,800.00	=	\$	530.00
		4,800.01	to		4,900.00	=	\$	540.00
		4,900.01	to		5,000.00	=	\$	550.00
		5,000.01	to		5,100.00	=	\$	560.00
		5,100.01	to		5,200.00	=	\$	570.00
		5,200.01	to		5,300.00	=	\$	580.00
		5,300.01	to		5,400.00	=	\$	590.00
		5,400.01	to		5,500.00	=	\$	600.00
		5,500.01	to		5,600.00	=	\$	610.00

SCHEDULE OF ATTORNEY'S FEES

From	\$ 5,600.01	to	\$ 5,700.00	=	\$ 620.00
	5,700.01	to	5,800.00	=	\$ 630.00
	5,800.01	to	5,900.00	=	\$ 640.00
	5,900.01	to	6,000.00	=	\$ 650.00
	6,000.01	to	6,100.00	=	\$ 660.00
	6,100.01	to	6,200.00	=	\$ 670.00
	6,200.01	to	6,300.00	=	\$ 680.00
	6,300.01	to	6,400.00	=	\$ 690.00
	6,400.01	to	6,500.00	=	\$ 700.00
	6,500.01	to	6,600.00	=	\$ 710.00
	6,600.01	to	6,700.00	=	\$ 720.00
	6,700.01	to	6,800.00	=	\$ 730.00
	6,800.01	to	6,900.00	=	\$ 740.00
	6,900.01	to	7,000.00	=	\$ 750.00
	7,000.01	to	7,100.00	=	\$ 760.00
	7,100.01	to	7,200.00	=	\$ 770.00
	7,200.01	to	7,300.00	=	\$ 780.00
	7,300.01	to	7,400.00	=	\$ 790.00
	7,400.01	to	7,500.00	=	\$ 800.00
	7,500.01	to	7,600.00	=	\$ 810.00
	7,600.01	to	7,700.00	=	\$ 820.00
	7,700.01	to	7,800.00	=	\$ 830.00
	7,800.01	to	7,900.00	=	\$ 840.00
	7,900.01	to	8,000.00	=	\$ 850.00
	8,000.01	to	8,100.00	=	\$ 860.00
	8,100.01	to	8,200.00	=	\$ 870.00
	8,200.01	to	8,300.00	=	\$ 880.00
	8,300.01	to	8,400.00	=	\$ 890.00
	8,400.01	to	8,500.00	=	\$ 900.00
	8,500.01	to	8,600.00	=	\$ 910.00
	8,600.01	to	8,700.00	=	\$ 920.00
	8,700.01	to	8,800.00	=	\$ 930.00
	8,800.01	to	8,900.00	=	\$ 940.00
	8,900.01	to	9,000.00	=	\$ 950.00
	9,000.01	to	9,100.00	=	\$ 960.00
	9,100.01	to	9,200.00	=	\$ 970.00
	9,200.01	to	9,300.00	=	\$ 980.00
	9,300.01	to	9,400.00	=	\$ 990.00
	9,400.01	to	9,500.00	=	\$1,000.00
	9,500.01	to	9,600.00	=	\$1,010.00
	9,600.01	to	9,700.00	=	\$1,020.00
	9,700.01	to	9,800.00	=	\$1,030.00
	9,800.01	to	9,900.00	=	\$1,040.00
	9,900.01	to	10,000.00	=	\$1,050.00
	10,000.01	to	10,100.00	=	\$1,055.00
	10,100.01	to	10,200.00	=	\$1,060.00
	10,200.01	to	10,300.00	=	\$1,065.00
	10,300.01	to	10,400.00	=	\$1,070.00
	10,400.01	to	10,500.00	=	\$1,075.00
	10,500.01	to	10,600.00	=	\$1,080.00
	10,600.01	to	10,700.00	=	\$1,085.00
	10,700.01	to	10,800.00	=	\$1,090.00
	10,800.01	to	10,900.00	=	\$1,095.00
	10,900.01	to	11,000.00	=	\$1,100.00
	11,000.01	to	11,100.00	=	\$1,105.00

1
SCHEDULE OF ATTORNEY'S FEES

Page 3

From	\$11,100.01 to	\$11,200.00	=	\$1,110.00
	11,200.01 to	11,300.00	=	1,115.00
	11,300.01 to	11,400.00	=	1,120.00
	11,400.01 to	11,500.00	=	1,125.00
	11,500.01 to	11,600.00	=	1,130.00
	11,600.01 to	11,700.00	=	1,135.00
	11,700.01 to	11,800.00	=	1,140.00
	11,800.01 to	11,900.00	=	1,145.00
	11,900.01 to	12,000.00	=	1,150.00
	12,000.01 to	12,100.00	=	1,155.00
	12,100.01 to	12,200.00	=	1,160.00
	12,200.01 to	12,300.00	=	1,165.00
	12,300.01 to	12,400.00	=	1,170.00
	12,400.01 to	12,500.00	=	1,175.00
	12,500.01 to	12,600.00	=	1,180.00
	12,600.01 to	12,700.00	=	1,185.00
	12,700.01 to	12,800.00	=	1,190.00
	12,800.01 to	12,900.00	=	1,195.00
	12,900.01 to	13,000.00	=	1,200.00
	13,000.01 to	13,100.00	=	1,205.00
	13,100.01 to	13,200.00	=	1,210.00
	13,200.01 to	13,300.00	=	1,215.00
	13,300.01 to	13,400.00	=	1,220.00
	13,400.01 to	13,500.00	=	1,225.00
	13,500.01 to	13,600.00	=	1,230.00
	13,600.01 to	13,700.00	=	1,235.00
	13,700.01 to	13,800.00	=	1,240.00
	13,800.01 to	13,900.00	=	1,245.00
	13,900.01 to	14,000.00	=	1,250.00
	14,000.01 to	14,100.00	=	1,255.00
	14,100.01 to	14,200.00	=	1,260.00
	14,200.01 to	14,300.00	=	1,265.00
	14,300.01 to	14,400.00	=	1,270.00
	14,400.01 to	14,500.00	=	1,275.00
	14,500.01 to	14,600.00	=	1,280.00
	14,600.01 to	14,700.00	=	1,285.00
	14,700.01 to	14,800.00	=	1,290.00
	14,800.01 to	14,900.00	=	1,295.00
	14,900.01 to	15,000.00	=	1,300.00
	15,000.01 to	15,100.00	=	1,305.00
	15,100.01 to	15,200.00	=	1,310.00
	15,200.01 to	15,300.00	=	1,315.00
	15,300.01 to	15,400.00	=	1,320.00
	15,400.01 to	15,500.00	=	1,325.00
	15,500.01 to	15,600.00	=	1,330.00
	15,600.01 to	15,700.00	=	1,335.00
	15,700.01 to	15,800.00	=	1,340.00
	15,800.01 to	15,900.00	=	1,345.00
	15,900.01 to	16,000.00	=	1,350.00
	16,000.01 to	16,100.00	=	1,355.00
	16,100.01 to	16,200.00	=	1,360.00
	16,200.01 to	16,300.00	=	1,365.00
	16,300.01 to	16,400.00	=	1,370.00
	16,400.01 to	16,500.00	=	1,375.00

SCHEDULE OF ANTICIPATED TAXES

From	To	Amount
\$16,500.01	\$16,600.00	\$1,380.00
16,600.01	16,700.00	1,385.00
16,700.01	16,800.00	1,390.00
16,800.01	16,900.00	1,395.00
16,900.01	17,000.00	1,400.00
17,000.01	17,100.00	1,405.00
17,100.01	17,200.00	1,410.00
17,200.01	17,300.00	1,415.00
17,300.01	17,400.00	1,420.00
17,400.01	17,500.00	1,425.00
17,500.01	17,600.00	1,430.00
17,600.01	17,700.00	1,435.00
17,700.01	17,800.00	1,440.00
17,800.01	17,900.00	1,445.00
17,900.01	18,000.00	1,450.00
18,000.01	18,100.00	1,455.00
18,100.01	18,200.00	1,460.00
18,200.01	18,300.00	1,465.00
18,300.01	18,400.00	1,470.00
18,400.01	18,500.00	1,475.00
18,500.01	18,600.00	1,480.00
18,600.01	18,700.00	1,485.00
18,700.01	18,800.00	1,490.00
18,800.01	18,900.00	1,495.00
18,900.01	19,000.00	1,500.00
19,000.01	19,100.00	1,505.00
19,100.01	19,200.00	1,510.00
19,200.01	19,300.00	1,515.00
19,300.01	19,400.00	1,520.00
19,400.01	19,500.00	1,525.00
19,500.01	19,600.00	1,530.00
19,600.01	19,700.00	1,535.00
19,700.01	19,800.00	1,540.00
19,800.01	19,900.00	1,545.00
19,900.01	20,000.00	1,550.00
20,000.01	20,100.00	1,555.00
20,100.01	20,200.00	1,560.00
20,200.01	20,300.00	1,565.00
20,300.01	20,400.00	1,570.00
20,400.01	20,500.00	1,575.00
20,500.01	20,600.00	1,580.00
20,600.01	20,700.00	1,585.00
20,700.01	20,800.00	1,590.00
20,800.01	20,900.00	1,595.00
20,900.01	21,000.00	1,600.00
21,000.01	21,100.00	1,605.00
21,100.01	21,200.00	1,610.00
21,200.01	21,300.00	1,615.00
21,300.01	21,400.00	1,620.00
21,400.01	21,500.00	1,625.00
21,500.01	21,600.00	1,630.00
21,600.01	21,700.00	1,635.00
21,700.01	21,800.00	1,640.00
21,800.01	21,900.00	1,645.00
21,900.01	22,000.00	1,650.00

SCHEDULE OF ATTORNEY'S FEES

Page 5

From	\$22,000.01	to	\$22,100.00	=	\$1,655.00
	22,100.01	to	22,200.00	=	1,660.00
	22,200.01	to	22,300.00	=	1,665.00
	22,300.01	to	22,400.00	=	1,670.00
	22,400.01	to	22,500.00	=	1,675.00
	22,500.01	to	22,600.00	=	1,680.00
	22,600.01	to	22,700.00	=	1,685.00
	22,700.01	to	22,800.00	=	1,690.00
	22,800.01	to	22,900.00	=	1,795.00
	22,900.01	to	23,000.00	=	1,700.00
	23,000.01	to	23,100.00	=	1,705.00
	23,100.01	to	23,200.00	=	1,710.00
	23,200.01	to	23,300.00	=	1,715.00
	23,300.01	to	23,400.00	=	1,720.00
	23,400.01	to	23,500.00	=	1,725.00
	23,500.01	to	23,600.00	=	1,730.00
	23,600.01	to	23,700.00	=	1,735.00
	23,700.01	to	23,800.00	=	1,740.00
	23,800.01	to	23,900.00	=	1,745.00
	23,900.01	to	24,000.00	=	1,750.00
	24,000.01	to	24,100.00	=	1,755.00
	24,100.01	to	24,200.00	=	1,760.00
	24,200.01	to	24,300.00	=	1,765.00
	24,300.01	to	24,400.00	=	1,770.00
	24,400.01	to	24,500.00	=	1,775.00
	24,500.01	to	24,600.00	=	1,780.00
	24,600.01	to	24,700.00	=	1,785.00
	24,700.01	to	24,800.00	=	1,790.00
	24,800.01	to	24,900.00	=	1,795.00
	24,900.01	to	25,000.00	=	1,800.00

recommended fee in a default case and in each case where judgment is rendered pursuant to Section 437c of the Code of Civil Procedure may be fixed pursuant to the following schedule.

Where the principal sued for is:		Atty's Fee	Where the principal sued for is:		Atty's Fee	
Under \$	10	to \$ 50	10	From \$11,251	to \$11,500	1,475
From	51	to 75	15	11,501	to 11,750	1,500
	76	to 100	30	11,751	to 12,000	1,525
	101	to 150	50	12,001	to 12,250	1,550
	151	to 200	70	12,251	to 12,500	1,575
	201	to 300	95	12,501	to 12,750	1,600
	301	to 400	120	12,751	to 13,000	1,625
	401	to 500	150	13,001	to 13,250	1,650
	501	to 600	180	13,251	to 13,500	1,675
	601	to 700	210	13,501	to 13,750	1,700
	701	to 800	240	13,751	to 14,000	1,725
	801	to 900	270	14,001	to 14,250	1,750
	901	to 1,000	300	14,251	to 14,500	1,775
	1,001	to 1,100	325	14,501	to 14,750	1,800
	1,101	to 1,200	350	14,751	to 15,000	1,825
	1,201	to 1,300	375	15,001	to 15,250	1,850
	1,301	to 1,500	400	15,251	to 15,500	1,875
	1,501	to 1,750	425	15,501	to 15,750	1,900
	1,751	to 2,000	450	15,751	to 16,000	1,925
	2,001	to 2,250	485	16,001	to 16,250	1,950
	2,251	to 2,500	520	16,251	to 16,500	1,975
	2,501	to 2,750	560	16,501	to 16,750	2,000
	2,751	to 3,000	600	16,751	to 17,000	2,025
	3,001	to 3,250	630	17,001	to 17,250	2,050
	3,251	to 3,500	660	17,251	to 17,500	2,075
	3,501	to 3,750	690	17,501	to 17,750	2,100
	3,751	to 4,000	720	17,751	to 18,000	2,125
	4,001	to 4,250	750	18,001	to 18,250	2,150
	4,251	to 4,500	775	18,251	to 18,500	2,175
	4,501	to 4,750	800	18,501	to 18,750	2,200
	4,751	to 5,000	825	18,751	to 19,000	2,225
	5,001	to 5,250	850	19,001	to 19,250	2,250
	5,251	to 5,500	875	19,251	to 19,500	2,275
	5,501	to 5,750	900	19,501	to 19,750	2,300
	5,751	to 6,000	925	19,751	to 20,000	2,325
	6,001	to 6,250	950	20,001	to 20,250	2,350
	6,251	to 6,500	975	20,251	to 20,500	2,375
	6,501	to 6,750	1,000	20,501	to 20,750	2,400
	6,751	to 7,000	1,025	20,751	to 21,000	2,425
	7,001	to 7,250	1,050	21,001	to 21,250	2,450
	7,251	to 7,500	1,075	21,251	to 21,500	2,475
	7,501	to 7,750	1,100	21,501	to 21,750	2,500
	7,751	to 8,000	1,125	21,751	to 22,000	2,525
	8,001	to 8,250	1,150	22,001	to 22,250	2,550
	8,251	to 8,500	1,175	22,251	to 22,500	2,575
	8,501	to 8,750	1,200	22,501	to 22,750	2,600
	8,751	to 9,000	1,225	22,751	to 23,000	2,625
	9,001	to 9,250	1,250	23,001	to 23,250	2,650
	9,251	to 9,500	1,275	23,251	to 23,500	2,675
	9,501	to 9,750	1,300	23,501	to 23,750	2,700
	9,751	to 10,000	1,325	23,751	to 24,000	2,725
	10,001	to 10,250	1,350	24,001	to 24,250	2,750
	10,251	to 10,500	1,375	24,251	to 24,500	2,775
	10,501	to 10,750	1,400	24,501	to 24,750	2,800
	10,751	to 11,000	1,425	24,751	to 25,000	2,825
	11,001	to 11,250	1,450			

In any case where the attorney claims that he or she is entitled to a fee in excess of any of the above amounts, the attorney may, notwithstanding this rule, apply to the court therefor and present proof to support the claim, and the fee shall thereupon be fixed in accord with the proof.

Effective August 1, 1987

PROCEDURE 2009 as adopted in 1981

MUNICIPAL COURT - SAN FRANCISCO

MUNICIPAL COURT, SAN DIEGO JUDICIAL DISTRICT

Fees of Attorneys in Judgments by Default

(This schedule does not apply to contested actions.)

Attorney fees will only be allowed where defendant's signed, original note calling for "reasonable attorney's fees" (not "costs of collection") is filed with the judgment. Defendant's signature on note must be exactly as shown on original complaint or amendment.

Fees may only be allowed according to the approved fee schedule shown below.

<u>Principal Amount</u>		<u>Fees Allowed</u>
Under	\$ 401.00	\$ 100.00
401.01	501.00	125.00
501.01	701.00	150.00
701.01	901.00	175.00
901.01	1,001.00	200.00
1,001.01	1,501.00	250.00
1,501.01	2,001.00	325.00
2,001.01	2,501.00	400.00
2,501.01	3,001.00	475.00
3,001.01	3,501.00	550.00
3,501.01	4,001.00	625.00
4,001.01	4,501.00	700.00
4,501.01	5,001.00	775.00
5,001.01	6,001.00	850.00
6,001.01	7,001.00	925.00
7,001.01	15,001.00	1,000.00
15,001.01	25,000.00	1,250.00

Whenever the obligation sued upon provides for the recovery of a reasonable attorney's fee, the fee in each default case shall be fixed pursuant to the above schedule.

Whenever an allowance of the attorney's fee is damages and not costs, and the amount provided in the above schedule will, when added to other sums provided for in the judgment excluding court costs and interest, result in a judgment in excess of the jurisdiction of the court, the attorney's fee to be allowed shall be reduced to such an amount as will, when added to the other sums provided for in the judgment, equal the maximum jurisdiction of this court.

In any case where the attorney claims that he is entitled to a fee in excess of any of the above amounts, he may, notwithstanding this rule, apply to this court therefor and present proof to support his claim, and the fee shall thereupon be fixed in accord with the proof.

(Effective August 1, 1990)

EXHIBIT C

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, March 26, 2003
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Janet H. Smith, Francis J. Carney, R. Scott Waterfall, Terrie T. McIntosh, Glenn C. Hanni, W. Cullen Battle, Leslie W. Slaugh, Thomas R. Lee, Todd M. Shaughnessy, Virginia S. Smith, James T. Blanch

STAFF: Tim Shea, Judith Wolferts

EXCUSED: David W. Scofield, Thomas R. Karrenberg, Honorable Anthony B. Quinn, Honorable Anthony W. Schofield, Honorable Lyle R. Anderson, Paula Carr, Debora Threedy

GUESTS: Matty Branch, Mark Olsen, Richard Deloney

I. WELCOME AND APPROVAL OF MINUTES.

Francis M. Wikstrom called the meeting to order at 4:00 p.m. Tim Shea stated that due to the press of matters at today's meeting, Doug Mortensen has agreed to delay his appearance before the Committee until the next meeting. Mr. Mortensen had been invited to attend today's meeting to discuss his proposal for a rule on reassignment of a case after remand.

The minutes of the February 26, 2003 meeting were reviewed. Tim Shea asked whether anyone recalled the details of the discussion referenced in Section III. It was agreed that the official set of minutes will exclude Section III, and that the issue presented in that Section will be discussed at this meeting. Glenn C. Hanni moved that the minutes be approved with this change. The motion was seconded and the February 26, 2003 minutes were approved as amended.

II. NOTICE TO DEFENDANT OF SIGNATURE REQUIREMENT.

Mr. Shea referred the Committee to pages 45-46 of the Agenda, and stated that a court clerk in the Third District informed him that default judgments are being entered against defendants who have filed an unsigned answer. The clerk suggested amending URCP 4(c) to require that the summons include a notice to the defendant that the answer must be signed. If this amendment is made, it would also require making conforming amendments to Civil Forms 2 and 3. Mr. Shea stated that he believes the more important issue is that clerks should not be accepting unsigned answers, and he asked for comments.

Francis Carney pointed out URCP 11 requires that pleadings be signed or they will be stricken if the party does not make the change after being notified. James Blanch noted that, in conjunction with this, URCP 10(d) requires the court clerk to review all papers filed. Both Mr. Shea and Mr. Carney stated that it appears that the URCP already requires that notice be given of the signing requirement before a default can be taken, and Mr. Wikstrom noted that it appears that what is needed is education, not amendment. Leslie Slauch pointed out that many judges consider anything that is filed by a defendant as an answer, and that he believes Rule 4 should remain as it presently is. Todd Shaughnessy stated that despite all of this, he favors amending Rule 4 because some attorneys move to quash an unsigned answer.

After additional discussion, the consensus was that pursuant to Rules 10 and 11, clerks should not be entering a default unless they have first notified the defendant of the signing requirement, and that there is no need to amend Rule 4.

III. PROPOSED RULE 74—ATTORNEYS FEES

Mr. Wikstrom introduced Mark Olsen. As the representative for the Collections Section of the Utah State Bar, Mr. Olsen has asked to address the Committee about proposed Rule 74, with emphasis on the attorneys' fees schedule and various language in the Rule. Prior this meeting, Mr. Olsen provided the Committee with letters from several collection attorneys who have expressed displeasure with the proposed Rule. Referring to these letters and noting that the Collections Section has numerous concerns about Rule 74, Mr. Olsen presented several suggestions/requests.

Mr. Olsen first suggested that the dollar amount of the fees in the schedule be increased. The present schedule has been in effect more than ten years. Mr. Olsen noted that other attorneys can raise fees with the market, but collections attorneys cannot unless they depart from the schedule and, for many smaller attorneys, the amount permitted in the schedule is insufficient to cover their costs. Moreover, some judges refuse to allow any departure from the schedule, and even use the schedule as the guideline to determine a reasonable fee if a petition is filed. Mr. Olsen commented that he personally would be put out of business if he were to only follow the present schedule, and that collections attorneys are pleading for this change because only attorneys with a high business volume can survive using the schedule. Another concern is that some collections attorneys believe that they are being singled out for doing "routine" work. An example of this is garnishment, which actually includes a great deal of work, including tracking down debtors, verifying employment, and taking the employer to court if it refuses to start the garnishment. Mr. Olsen named some larger employers that must always be taken to court before they will comply with a garnishment.

This said, Mr. Olsen stated that collections attorneys are willing to live with the schedule if the dollar amounts in the lower categories are increased **and** if the Rule makes absolutely clear that collections attorneys may either use the schedule **or** petition for their fees. He expressed his concern that: (1) the "routine collection" language appears to limit judges to using the schedule,

- (2) the language permits judges to define a “reasonable” fee by reference to the schedule, and/or
- (3) the language makes it appear that the fees amount in the schedule also includes post-judgment work.

Mr. Slaugh commented that the reason an increase in fee amount has been rejected in the past is because of inflation. He stated that he is not opposed to increasing the bottom and top rungs of the fees, but he is opposed to indexing the schedule to inflation.

Cullen Battle questioned whether it is proper to have a schedule that would allow an attorney to collect \$250 in fees on a \$150 debt. Mr. Slaugh pointed out that courts allow this now, and Mr. Olsen stated that if courts do not allow it, small creditors have no recourse but to write off the debt.

Mr. Wikstrom commented that it might be appropriate to notify small debtors prior to a collection action that they may have to pay more in attorneys’ fees than the debt is worth. Mr. Olsen responded to this comment by describing how the collection process actually works. Preliminarily, he noted that one of his clients has told him it never sends anything for collection if the debtor has done anything at all to pay even a token amount, and that a debtor has already been notified several times before the matter is even sent for collection. After the failure of the debtor to make any attempt at payment, Mr. Olsen sends a routine collection letter giving the debtor 30 days to pay. The letter includes notice that there is a \$50 fee at this point. Janet Smith asked Mr. Olsen whether he includes in the letter the amount that the debtor could potentially owe in collection fees. Mr. Olsen said that he does not because this would not be in compliance with the Fair Debt Collection Act.

Janet Smith then asked Mr. Olsen whether the language in the present Advisory Committee Note for Rule 74 is strong enough to assure that judges do not use the schedule as the standard for reasonableness. Mr. Olsen stated that he would not be opposed to even stronger language. Mr. Shaughnessy asked whether there has ever been a study of how much time is typically required to collect a debt. Mr. Olsen stated he did not know of such a study, but agreed with Mr. Wikstrom’s comment that it can take as much time to collect \$100 as \$1000.

Mr. Shaughnessy also asked whether Mr. Olsen would proceed under the schedule more frequently if the fee amounts were increased, and Mr. Olsen stated that he would. Mr. Olsen stated that this increase would be particularly useful in one particular Utah judicial district that refuses to allow collections attorneys to depart from the schedule. Mr. Battle asked whether Mr. Olsen had any sense of how many attorneys use the schedule as opposed to filing a separate petition. In response, Mr. Olsen stated that many attorneys have left the practice because they did not realize that they were allowed to depart from the schedule. He also stated that when he began to depart from the schedule, he had to educate many judges to the fact that the schedule is optional. Mr. Olsen also stated that the only real rationale for the schedule is that it covers **routine** collections.

Mr. Slauch then stated that there is a reason that the Committee selected the word “extraordinary”¹ as used in Rule 74, and asked whether substituting the word “considerable” would have its own set of problems. Mr. Olsen stated that the Collections Section prefers the word “considerable” since it comports with an attorneys’ fees case involving collections that was recently decided by the Utah Supreme Court. *See N.A.R., Inc. v. Walker*, 37 P.3d 1068, 434 Utah Ad. Rep. 20 (Utah 2001). Mr. Wikstrom then suggested changing language to make the schedule a baseline, and allowing augmentation. Mr. Olsen stated that the Collections Section has discussed the option of having a schedule for post-judgment fees, but decided to drop it because it was unclear how this could be dealt with, *e.g.*, by motion, or another way. He also observed that collections attorneys are required to go to court more frequently lately since defendants are more often requesting hearings on garnishments.

Mr. Slauch asked whether there is a problem with less ethical attorneys who file a suit so they can obtain attorneys fees under the schedule, even though the debtor is willing to pay. Mr. Olsen stated that there may be some attorneys who do this, but that most collections attorneys are too busy and harried to bother with it. Mr. Slauch also commented that he can see a problem if the schedule is just barely enough to cover the work, since it means that more and more collections attorneys will avoid using the schedule, which means more work for the court. Mr. Carney agreed, noting that the schedule will soon become irrelevant if it is not changed.

Mr. Wikstrom again expressed concern about debtors paying more in attorneys fees than the amount of the original debt. Mr. Slauch pointed out that debtors have already had notice and could have paid the debt when the fee was minimal. Mr. Olsen also noted that attorneys risk a FDCA lawsuit when they ask up-front for more than is authorized. He stated that the FDCA is already an effective curb on the practice of asking for more than authorized, since compliance with the FDCA is a serious matter because the attorneys’ fees in such lawsuits can be huge.

Thomas R. Lee expressed his opinion that changing the attorneys’ fees amounts is a legislative matter, and that he does not believe the Committee has authority to do this.

Janet Smith moved to approve the dollar amount changes in the Rule 74 schedule that have been proposed by Mr. Olsen. The motion was seconded, and approved with only Mr. Lee voting in opposition.

The Committee next discussed various language changes in Rule 74 to comport with Mr. Olsen’s concerns, including the terms “considerable” and “non-routine.” Mr. Olsen pointed out that the before the present Rule, the language “considerable additional work” was used, which is

¹“The schedule of attorneys fees includes fees for routine collection procedures. Attorneys fees awarded under the schedule may be augmented only for *extraordinary* efforts incurred in collecting or defending a judgment and only after further order of the court.” Proposed Utah R.Civ.P. 74(c) (emphasis added).

consistent with the Utah Supreme Court's ruling in *N.A.R., Inc. v. Walker* (discussing CJA Rule 4-505).

A motion was made to change "collection" to "pre-judgment," to change "extraordinary" to "considerable additional efforts," and to strike both "incurred" and "expended." The motion was seconded, and passed by a majority vote.

The next issue addressed was whether the language of Rule 74 makes it sufficiently clear that judges are not to use the schedule as the standard for determining reasonableness of fees. It was noted that the Committee's intent in making a change is to make sure that judges do not use the schedule as an opportunity to limit attorneys fees to those in the schedule. Mr. Battle and Mr. Carney made suggestions as to how the language could be changed to be more clear. After discussion, Mr. Wikstrom suggested that the language read that the "schedule does not limit the amount of a reasonable fee if an affidavit is submitted." The Committee agreed to this change.

The footnote to Rule 74 was also discussed, with several members commenting on the "augmentation" language. Mr. Shaughnessy asked how a judgment can be augmented, and Mr. Olsen stated that there is no real procedure for doing so in the Rule. Mr. Lee and Mr. Wikstrom pointed out that the original intent of the footnote was to make sure that judges knew augmentation would require extraordinary effort if an attorney chose to use the schedule. A discussion ensued on how attorneys could request augmentation. Mr. Olsen noted that the old CJA rule affirmatively stated that augmentation could be requested, and that he was concerned that judges would note the deletion in the present rule and decide that this means that augmentation is no longer allowed. It was agreed that language concerning augmentation should be added as subpart (b)(5) of proposed Rule 74.

Janet Smith moved to substitute "the amount of attorneys' fees" for "attorneys fees" in subpart (b)(4). The motion was seconded by Mr. Blanch and approved unanimously.

IV. RECODIFICATION OF CODE OF JUDICIAL ADMINISTRATION INTO RULES OF CIVIL PROCEDURE.

Mr. Wikstrom invited discussion and comments on all new and revised rules.

Rule 107: Mr. Shea and Mr. Lee had agreed at the last meeting to work on Rule 107. Mr. Shea stated that the revised Rule now dovetails more with the statute, and that his and Mr. Lee's intent with the revision is to point out that the overall model in this rule is a showing of good cause. The Committee discussed the revisions. Janet Smith asked the meaning of the term "social information," and Mr. Shea stated that it is a phrase taken from the statute. Mr. Slaugh asked whether lines 8-10 on page 32 of the Agenda can be read as mandating notice to the birth parent any time that the petitioner seeks information. Mr. Shea and Mr. Lee agreed that a change should be made in the language referenced by Mr. Slaugh, and Mr. Shea suggested that the first "if" clause be deleted and replaced with "if the court determines notice is necessary."

Rule 5: Mr. Lee pointed out what he believes to be a punctuation error on line 26. It was agreed that Mr. Shea would have the last word on this.

Rule 7: With regard to Rule 7(e) (Agenda, p. 18), Mr. Battle questioned whether the rule is sufficiently clear regarding hearings on injunctions. Mr. Wikstrom noted that there is an entire Rule dealing with preliminary injunctions, so this is sufficient. At Mr. Slaugh's suggestion, it was agreed to change the language of subpart (e) (line 14, page 18) from "in which it is requested" to "containing the request."

Rule 74: Mr. Battle suggested striking the first sentence of subpart (a). Mr. Wikstrom opposed this change. The Committee agreed to retain language stating that attorneys fees must be authorized by contract or law.

Rule 100: Mr. Shea stated that the Committee has recommended that this rule remain in the CJA, but that other committees are moving in a different direction. He stated that other committees are doing this because they believe the URCP are more high profile and more readily available. In light of this, Mr. Shea recommended that this Committee also include this rule in the URCP. In discussing whether to place Rule 100 in the URCP, the Committee discussed the distinction between juvenile and district courts, and made suggestions for language changes. Mr. Battle moved that the rule be placed in the URCP if satisfactory language can be worked out. Virginia Smith seconded the motion, which passed by a majority vote. Mr. Slaugh was asked to assist Mr. Shea in working out the language of Rule 100.

Rule 101: Mr. Wikstrom asked the meaning of the term "presiding district judge" in Rule 101 (Agenda, page 28, line 11). This use of this term was questioned, with Mr. Wikstrom pointing out that family law lawyers have never responded to requests for their input on this rule. Mr. Shea was asked to check whether the term "presiding district judge" is appropriate in this context.

Rule 102: It was agreed that the word "under" will be substituted for "designated" in subpart (a) of Rule 102 (Agenda, page 28, line 21).

Rule 104: Mr. Wikstrom stated that he is troubled by the repetitious language of Rule 104 (Agenda, page 29). Mr. Shea responded that the repetition is due to the fact that this rule is in the nature of a roadmap as it relates to other rules and statutes. Mr. Battle asked whether this means that Rule 104 must be changed any time there is a change in the statutes and rules on which it relies, and Mr. Shea said yes. Mr. Wikstrom and Mr. Shea then commented that the Committee does not have to adopt this rule because it is not independent law, and that the same thing could be accomplished with instructions on the website. Virginia Smith suggested that the rule be retained, but that work be done on it. Mr. Wikstrom responded to this suggestion by asking who will be responsible for monitoring Rule 104 to ensure that it is consistent with the statutes and rules on which it relies.

After discussion, Mr. Battle moved that Rule 104 **not** be included in the URCP. The motion was seconded by Mr. Waterfall and Mr. Carney, and was approved. After this vote, however, Terrie McIntosh moved to include Rule 104 in the URCP, but only up through the term “final judgment” in subpart (a) (Agenda, page 29, line 28). Virginia Smith seconded the motion, and it was approved.

Publication: Mr. Battle moved to approve all rules for publication as adopted and amended. The motion was seconded, and approved unanimously.

V. SMALL CLAIMS RULES.

Mr. Shea stated that an issue has arisen of whether a counterclaim that exceeds the jurisdictional dollar amount of a small claims action means that the entire lawsuit is moved to district court, or whether the counterclaim can be moved to district court with the original lawsuit remaining in small claims court. He stated that district judges prefer bifurcating, but justice court judges prefer moving the entire action to district court.

The Committee discussed numerous problems that can arise when the two actions are proceeding in different courts, including problems with inconsistencies in rulings, res judicata issues, and the fact of mandatory counterclaims. Mr. Battle raised the issue of whether Rule 13 could be amended to avoid the mandatory counterclaim issue, and Mr. Shaughnessy pointed out that this would still leave problems such as res judicata and collateral estoppel.

After listening to the discussion, Mr. Shea stated that the concerns expressed have convinced him that in cases where a counterclaim exceeds the statutory amount, the entire action should be moved to district court.

VI. ADJOURNMENT

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, April 23, 2003, at the Administrative Office of the Courts.

EXHIBIT D

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

Meeting Minutes – November 15, 2017

PRESENT: Chair Jonathan Hafen, Judge Andrew Stone, Judge James Blanch, Judge Kent Holmberg, Judge Laura Scott, Judge Clay Stucki, James Hunnicutt, Rod Andreason, Lauren DiFrancesco, Susan Vogel, Barbara Townsend, Michael Petrogeorge, Leslie Slaugh, Justin Toth, Paul Stancil, Lincoln Davies, Dawn Hautamaki

EXCUSED: Trystan Smith, Timothy Pack, Amber Mettler, Judge Kate Toomey, Heather Sneddon

STAFF: Nancy Sylvester

GUESTS: Clayson Quigley, Mark Olson, Charles Stormont, Brian Rothschild

(1) WELCOME, APPROVAL OF MINUTES

Chair Jonathan Hafen welcomed the committee and asked for a motion on the minutes. Rod Andreason moved to approve the minutes; James Hunnicutt seconded. The motion passed unanimously.

(2) COMMENTS TO RULE 5

Clayson Quigley introduced a brief summary of the changes to the e-filing system regarding the court submitting its papers to the electronic filing service providers. Nancy Sylvester provided a brief summary of the comments and proposed change in response to the comments. The committee discussed the pros and cons of moving forward with eliminating the requirement for the court to prepare certificates of service when all parties are served electronically via the electronic filing service providers.

Judge Clay Stucki moved to approve Ms. Sylvester's proposed change to Rule 5, which provided that the court would prepare certificates of service when at least one party is self-represented. Judge Stone seconded the motion. The motion passed unanimously.

The committee also discussed a proposed change to Rule 5(d) addressing concerns regarding the timing between signing the certificate of service and actual service. The committee opted to table this issue pending review of a possible similar change to the Federal Rules of Civil Procedure.

Susan Vogel then raised an issue the Self-Help Center had been seeing with respect to paragraph (b)(5)(B). She said they often heard from people that they did not know that an order had even been signed by the court because they were not served with it. It raised the question of what constitutes a paper or order prepared by the court: 1) an order that is signed by the court; 2) an order that has been modified and then signed by the court; or 3) an order that only the court had prepared and

signed. The committee was split in its responses which appeared to support the Self-Help Center's point. The committee determined that it should take this issue up in the New Year.

(3) RULE 73. ATTORNEY FEES.

Mark Olson presented a history of the origin of the Rule 73 schedule, which was to address a problem of judges receiving a significant number of attorney fee affidavits in debt collection cases, along with his proposal to modify the fee schedule to increase the fees.

Charles Stormont and Brian Rothschild presented their proposal and the reasoning for their proposed changes which reflect the view of the defense side of debt collection actions.

The committee asked a number of questions of the presenting guests and considered the multitude of concerns at issue in the competing proposals. The committee reached a consensus that some change to the fee schedule was appropriate, but opted to discuss the issue further at the next meeting. The committee invited the guests to work together to create a joint proposal and submit any additional comments to Ms. Sylvester for the committee's further consideration.

(4) SELECTION OF MEMBERS FOR JOINT SUBCOMMITTEE ON RULE 24

Ms. Sylvester asked for volunteers to be on a joint subcommittee with members of the Supreme Court Advisory Committee on the Utah Rules of Criminal Procedure to address proposed changes to Rule 24. Michael Petrogeorge and Leslie Slaugh volunteered.

(5) ADJOURNMENT

The remaining matters were deferred, and the committee adjourned at 6:00 pm. The next meeting will be held on January 24, 2018 at 4:00 pm at the Administrative Office of the Courts, Level 3.

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

Meeting Minutes February 28, 2018

PRESENT: Chair Jonathan Hafen, Katy Strand, Paul Stancil, Leslie Slaugh, Susan Vogel, Barbara Townsend, Judge Clay Stucki, Judge Kate Toomey, Rod Andreason, Judge James Blanch, Judge Andrew Stone, Michael Petrogeorge, Timothy Pack, Judge Laura Scott, Judge Kent Holmberg, Judge Amber Mettler

EXCUSED: James Hunnicutt, Lauren DiFrancesco, Justin Toth, Lincoln Davies, Dawn Hautamaki, Trystan Smith

GUESTS: Cathy Dupont, Mark Olson, Charles Stormont, Commissioner Michelle Blomquist

STAFF: Nancy Sylvester

(1) Welcome, Approval of minutes.

Rod Andreason moved to approve the minutes with changes which were sent into Nancy Sylvester. Judge Kate Toomey seconded. The motion passed unanimously.

(2) RULE 73. ATTORNEY FEES.

Nancy Sylvester reminded the committee that they had discussed Rule 73 two meetings ago. The committee requested Mark Olson and Charles Stormont to meet and come to an agreement on what the rule language should look like. Mr. Olson and Mr. Stormont discussed where the fees were incurred and what was reasonable. They recognized that the overwhelming majority of cases filed are debt collections, and the majority of those result in defaults. They had built in a default rule for contested versus uncontested cases, with the option to object to the default for reasonableness. They believed this is a reasonable approach. Mr. Stormont stated that both plaintiffs and the defense bar support this proposal. Judge James Blanch said he supported the proposal because it is tied to the amount of effort, rather than the amount in controversy. He asked Mr. Olson if the defense bar will use this process rather than creating affidavits. Mr. Olson said he believed the collection bar will change their behavior to reflect the fee schedule.

Judge Laura Scott asked how many collection cases involve stipulated payment plans which are then not paid, resulting in a double attorney's fees? Mr. Olson said that if such payment plans are in place they will have to agree to reasonable attorney's fees. Judge Blanch said that would be outside the scope of this rule since people would be contracting for attorney's fees. Michael Petrogeorge echoed the same, saying that would be a settlement contract and outside the scope of the rule.

Mr. Petrogeorge also said under the new procedure, the complaint could not include the amount of the attorney's fees since the lawyers will not know if it is contested at filing. Timothy Pack

proposed no longer requiring the amount of fees in the complaint. Leslie Slauch proposed that parties should claim that there will be attorney's fees under the rule, but not provide the specific amount.

Susan Vogel was concerned that responding to a complaint, even to say I admit I owe the debt, would create the \$750 fee. Mr. Olson and Mr. Stormont responded that if there is an unopposed motion for judgment on the pleadings it would trigger the lower fees. Ms. Vogel expressed concerns that the summons says an answer is required, even though it is not. She also expressed her belief that a judge should review the basis for the fees. Judge Blanch said clerks will likely be approving the award of fees since there is such a high volume. Judge Andrew Stone said if they have questions about whether the case is contested or not, clerks will ask the judge to weigh in. Mr. Stormont said the ability to object indicates that the court can and will review these.

Mr. Petrogeorge thought the rule needed a clarifying amendment with respect to appearances and motions for summary judgment. Judge Stone said appearances should be clarified to reflect if there is evidence or argument at a hearing. Judge Scott said as amended by the committee, the rule continued to read that additional fees were permitted if the defendant were to appear at any hearing. Judge Blanch questioned whether the rule should distinguish evidence at a hearing versus written evidence.

The committee made clarifying edits to the committee note.

Judge Toomey moved to approve the rule in the form below:

Rule 73. Attorney fees.

(a) Time in which to claim. Attorney fees must be claimed by filing a motion for attorney fees no later than 14 days after the judgment is entered, except as provided in part (f) of this Rule, or in accordance with Utah Code Section 75-3-718, and no objection to the fee has been made.

(b) Content of motion. The motion must:

(b)(1) specify the judgment and the statute, rule, contract, or other basis entitling the party to the award;

(b)(2) disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;

(b)(3) specify factors showing the reasonableness of the fees, if applicable;

(b)(4) specify the amount of attorney fees claimed and any amount previously awarded; and

(b)(5) disclose if the attorney fees are for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

(c) Supporting affidavit. The motion must be supported by an affidavit or declaration that reasonably describes the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work, and establishes that the claimed fee is reasonable.

(d) Liability for fees. The court may decide issues of liability for fees before receiving submissions on the value of services. If the court has established liability for fees, the party claiming them may file an affidavit and a proposed order. The court will enter an order for the claimed amount unless another party objects within 7 days after the affidavit and proposed order are filed.

(e) Fees claimed in complaint. If a party claims attorney fees under paragraph (f), the complaint must state the basis for attorney fees, cite the law or attach a copy of the contract authorizing the award, and state that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

(f) Fees. Attorney fees awarded under this Rule may be augmented upon submission of a motion and supporting affidavit meeting the requirements of paragraphs (b) and (c) of this Rule within a reasonable time after the fees were incurred, except as provided in parts (f)(1), (f)(2) and (f)(3) of this Rule, and only where the augmented fees sought exceed those already awarded.

(f)(1) Fees upon entry of uncontested judgment. When a party seeks a judgment, the responding party does not contest entry of judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has complied with part (e) of this Rule, the request for judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to \$350.00 for such attorney fees without a supporting affidavit.

(f)(2) Fees upon entry of judgment after contested proceeding. When a party seeks a judgment, the responding party contests the judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has established its right to attorney fees, the request for judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to \$750 for such attorney fees without a supporting affidavit.

(f)(3) Post Judgment Collections. When a party has established its entitlement to attorney fees under any paragraph of this Rule, and subsequently:

(f)(3)(A) applies for any writ pursuant to Rules 64, 64A, 64B, 64C, 64D, or 64E; or

(f)(3)(B) files a motion pursuant to Rules 64(c)(2) or 58C or pursuant to Utah Code § 35A-4-314, a party may request as part of its application for the writ or motion that its judgment be augmented according the following schedule, and the clerk or the court shall allow such augmented attorney fees request without a supporting affidavit if it approves the writ or motion:

Action	Attorney Fees Allowed
Application for any writ under Rule 64, including 1 st application for a writ under Rule 64D	75.00
Any subsequent application for a writ under Rule 64D to the same garnishee	25.00
Any motion filed with the court under Rule 64(c)(2), Utah Code Ann 35A-4-314, or Rule 58C	75.00
Any subsequent motion under Rule 64(c)(2), Utah Code Ann 35A-4-314, or Rule 58C filed within 6 months of the previous motion	25.00

(f)(4) Fees in excess of the schedule. If a party seeks attorney fees in excess of the amounts set forth in parts (f)(1), (f)(2), or (f)(3) of this Rule, the party shall comply with parts (a) through (c) of this Rule.

(f)(5) Objections. Nothing in this paragraph shall be deemed to eliminate any right a party may have to object to any claimed attorney fees.

Advisory Committee Notes.

To be added to the Advisory Committee Notes:

2018 Advisory Committee Notes

An overwhelming number of cases filed in the courts, especially debt collection cases, result in the entry of an uncontested judgment. The work required in most cases to obtain an uncontested judgment does not typically depend on the amount at issue. As such, the prior schedule of fees based on the amount of damages has been eliminated, and instead replaced by a single fee upon entry of an uncontested judgment that is intended to approximate the work required in the typical case. A second amount is provided where the case is contested and fees are allowed, again in an effort to estimate the typical cost of litigating such cases. Where additional work is required to collect on the judgment, the revised rule provides a default amount for writs and certain motions, and eliminates the “considerable additional efforts” limitation of the prior Rule. It also recognizes that defendants often change jobs, and thus provides for such default amounts to vary depending on whether a new garnishee is required to collect on the outstanding amount of the judgment.

Thus, the amended Rule attempts to match the scheduled amounts to the work required of attorneys, rather than tying the scheduled amounts solely to the damages claimed. But the Rule remains flexible so that when attorney fees exceed the scheduled amounts, a party remains free to file an affidavit requesting appropriate fees in accordance with the rule.

Judge Blanch seconded Judge Toomey's motion. The motion passed unanimously. Chairman Hafen and Nancy Sylvester will present the rule to the Supreme Court and recommend that it be circulated for comment.

(3) RULE 109. AUTOMATIC TEMPORARY DOMESTIC ORDERS. NEW.

Commissioner Blomquist proposed new Rule 109 on behalf of the Judicial Council's Standing Committee on Children and Family Law. The Board of District Court Judges had approved the language of this rule. The purpose of the rule is to impose a standard temporary order on parties to domestic actions, the idea of which is to avoid parties litigating the items in the order prior to final adjudication, thereby saving them time and money. Colorado has a similar rule and automatic order.

Judge Toomey questioned whether the language was redundant or clear enough. Paul Stencil was concerned about over inclusiveness. He said that prohibiting the transfer of property may be over-kill when looking at only custody issues. He suggested clarifying language for paragraph (a)(1). Mr. Pack wanted to know if this should apply at all in non-divorce cases. Judge Toomey suggested clarifying language for paragraph (a)(6) about that section applying only when there is a minor child. With respect to paragraph (a)(1), Judge Stone asked if there will be a difficulty enforcing the requirement of not annoying or bothering. He said there may be trivial complaints. Commissioner Blomquist believed that even if that was difficult to enforce, it may help behavior. Ms. Vogel and Mr. Andreason were concerned with the definition of travel being too broad. Judge Toomey proposed using mileage; Judge Stone proposed using overnights. Mr. Hafen proposed mirroring Utah Code section 30-3-36 and Ms. Sylvester proposed referring to the statute in the rule but then noted that the statute does not actually speak to miles.

Judge Stucki said that the rule is trying to get to unusual or non-customary or non-routine travel. Judge Blanch pointed out that the parties can customize this on short notice, so it won't be set in stone. Mr. Slaugh proposed both non-routine and overnight. With respect to paragraph (a)(10), Mr. Slaugh asked if the third party should be required to be an adult. He also expressed concerns about the obligation to remove the child. Commissioner Blomquist said this is really about a parent who has the other third parties around; the parent who is there has the duty. Mr. Petrogeorge proposed that the wording include "while exercising parent time." Ms. Vogel proposed "when the child is under their care" because there may not be parent time at the time this order is entered.

Mr. Slaugh was also concerned that the requirement for a hearing does not make sense for the entire time that this will be in force. Once the answer is filed perhaps it should be the normal motion period or 21 days after the answer is filed.

Judge Stone said that (a)(6) should address the situation when there is another protective order in place that could conflict with this automatic order. Mr. Andreason proposed adding the language, "Any separate order governing the parties or their minor children will control over conflicting provisions of this domestic injunction."

Mr. Slauch pointed out that that the “until” in paragraph (d) was redundant: “(d) The domestic injunction remains in effect until the final decree is entered, the petition is dismissed, the parties agree otherwise in a writing signed by all parties, or *until* further order of the court.”

Mr. Andreason asked how the petitioner will know about this injunction. Commissioner Blomquist proposed that it would be given to them when they file their petition. Mr. Slauch asked whether the order had to be served. He said he would like it to be effective immediately upon filing of the petition. Ms. Vogel proposed including the injunction in the divorce petition so the person signing it would be agreeing to the injunction and it would be served on the other party with the petition. Mr. Slauch proposed requiring all divorce petitions to include that the petitioner will be bound and that the summons would provide this notice. Judge Toomey said she thought this had overlap with other rules. Judge Scott suggested looking at Rule 26.3 as a guidepost.

The committee deferred discussion of the rule until the next month. Commissioner Blomquist would look at the committee’s suggestions and come back with a new draft.

(5) ADJOURNMENT

The meeting adjourned at 6 p.m. The next meeting is scheduled for March 28, 2018 at 4 p.m.