Utah State Courts

Manual of Procedures
for
Justice Court Nominating Commissions

2025

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

Manual of Procedures

for

Justice Court Nominating Commissions

2025

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(1) List of Utah Judicial Nominating Commissions by Counties

Counties Served	District
Box Elder, Cache, Rich	1
Davis, Morgan, Weber	2
Salt Lake, Summit, Tooele	3
Juab, Millard, Utah, Wasatch	4
Beaver, Iron, Washington	5
Garfield, Kane, Piute, Sanpete, Sevier, Wayne	6
Carbon, Emery, Grand, San Juan	7
Daggett, Duchesne, Uintah	8

Nominating commissions are formed as needed by county to fill judicial vacancies in justice courts. Individuals appointed to these commissions serve a four-year term and may be asked to participate any time a new vacancy occurs within that county during their term. Two additional commission members selected by the local government which has posted the vacancy (see Composition of Utah Judicial Nominating Commissions) are not subject to the four-year term.

(2) Introduction

Utah Judicial Nominating Commissions serve a critical function. The work of a commission marks the beginning of a process that culminates in the appointment of a new member of the judiciary by the local government executive. Service on a judicial nominating commission is a serious undertaking. It requires a willingness to devote the time and energy to nominate the candidates who will most effectively enhance the quality of the bench. It requires the discipline to work in a group and within the confines of a strict timetable. It requires the commitment to proceed through the various steps of the judicial nomination process with care and integrity. While the work of a judicial nominating commission is both concentrated and time consuming, participants will find satisfaction in the knowledge that their work directly improves the quality of Utah's Judiciary.

Throughout their thoughtful and impartial deliberations, the commissioners must hold the public interest foremost in the decision-making process. The quality of Utah's Judiciary rests initially in the nomination of qualified candidates by the commissioners. The commissioners have many applicants from which to choose. Consequently, only extreme diligence by the nominating commission assures that all of the nominees submitted to the local government executive will strengthen Utah’s Judiciary.

This manual was developed to assist Utah's Judicial Nominating Commissions by providing a common background of information and by establishing guidelines both for commission procedures and applicant evaluation. Its goal is to enhance the efficiency of the nominating process by resolving procedural issues and preserving the time of the commissioners for a more thorough investigation and evaluation of applicants. It also

seeks to articulate the qualifications and some of the more important qualities necessary for judicial office, thus providing practical guidelines for applicant evaluation.

(3) Merit Selection of Judges

The office of judge is unique in our society. A judge is a public servant holding an office of high public trust and, as such, should answer to the public. However, the obligation of a judge is to resolve disputes impartially and base decisions solely upon the facts of the case and the law. A judge, therefore, should be insulated from public pressure.

The federal government and the states balance the competing interests of judicial accountability and judicial independence in a variety of ways. A federal judge, for example, is almost completely insulated from public pressure by serving a life term. There are two basic approaches to judicial selection and retention at the state level. Judges of many states face periodic partisan or nonpartisan elections which force them to act as politicians as well as jurists. Other states, including Utah, have decided to choose their judges by merit selection.

Merit selection was developed as an alternative to the federal system and to state systems requiring that judges run in contested elections, both of which have been criticized as unduly politicizing the judiciary and undermining the integrity of the law. Merit selection plans have been in the process of development in many states since 1913 under the auspices of the American Judicature Society, a non-profit, non-partisan organization formed to improve the judicial selection process. Utah initially developed its merit selection system by statute in 1967 to govern gubernatorial appointments and combined it with nonpartisan, contested elections for retention. The revised Judicial Article of the Utah Constitution, effective July 1, 1985, established merit selection as the exclusive method of choosing a state court judge. Legislation passed in 1994 changed the composition of the nominating commissions and the method of selecting commission members. Legislation passed since has resulted in additional changes. However, despite the changes in the commission composition and selection, the overarching goal of the system -- the nomination and appointment of the best qualified candidates on a nonpartisan basis -- remains unchanged. As stated in the Utah Constitution: “Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration.”

There are five steps in the Utah merit selection plan: nomination, appointment, confirmation, certification and retention. The nomination of judges includes several steps preceding the selection of nominees. A commission has 45 days from its first meeting to complete this process. The steps of the nomination process include:

- the application process;
- screening of applicants by commission staff to determine minimum constitutional qualifications for office;
- the organizational meeting, including an opportunity for the public to provide input;
- the review of applicants by the commission based only on the application materials;
- the summary investigation of applicants by staff;
- investigation of the applicants as directed by the commissioners;

- preparation for the interviews;
- personal interviews of the candidates;
- selection of a preliminary list of nominees;
- public dissemination of the names of the proposed nominees and public comment upon their qualification for office;
- further investigation of the proposed nominees as determined by the commissioners;
- final selection of the nominees; and
- submitting the nominees to the local government executive.

The local government executive must appoint one of the nominees within 30 days of receiving the nominations. That appointment must then be ratified by the local legislative body and certified by the Utah Judicial Council.

After certification by the Judicial Council, the new judge assumes the duties of the bench for at least three years before facing the first unopposed retention election. Judicial retention elections are held in even-numbered years as part of the state's general elections. In the unopposed retention election, the electorate is asked whether the judge should be retained in office. Thereafter, the term of office of a judge is six years. At the end of each term of office, the judge faces another unopposed retention election.

(4) Composition of Utah Judicial Nominating Commissions

Justice court nominating commissions and their composition are established by statute. A county justice court nominating commission will be created when there is a vacant justice court judge position or when a new position is created. Membership of the county justice court nominating commission must include:

1. One member appointed by the county commission if the county has a commission form of government

   OR

   The county executive if the county has an executive-council form of government

2. One member appointed by the municipalities in the counties as follows:

   -If the county has only one municipality, appointment will be made by the governing body of that municipality; or

   -If the county has more than one municipality, appointment will be made by a municipal selection committee composed of the mayors of each municipality in the county

3. One member appointed by the county bar association

   -If there is no county bar association, the member will be appointed by the regional bar association. If no regional bar association exists, the state bar association will make the appointment

4. Two members appointed by the governing authority of the jurisdiction where the judicial office is located

Reference Table:

Number of appointees	Appointing Authority	Can Appointee be an Elected Official?	Term of Appointment
1	County commission/executive	No	4 years
1	Municipality/Municipal selection committee comprised of mayors of each municipality	No	4 years
1	County Bar Association	No	4 years
2	Governing authority of the jurisdiction where judicial vacancy is locate	No	No term – varies by vacancy

Certain nominating commission members may not be elected officials of the county or municipality. Members of the commission are not eligible to apply for judicial vacancies within the appointing county during their term and may not be closely related to an applicant (see 6c). Commissioners are not paid for their work, but they may receive reimbursement for any necessary expenses incurred in the performance of their duties.

(5) The Application Process

(a) Notice of Vacancy

The notice of vacancy is in the form of a press release. The notice includes the jurisdiction of the court, the minimum requirements for judicial office (see Section 7, Evaluation Criteria), a brief description of the work of the court, a link to the application portal, the application deadline, the names and cities of residence of commission members, when available (if appointments are pending, this will also be indicated), and the method for submitting oral or written testimony at the organizational meeting.

The notice is prepared by the Administrative Office of the Courts. It is then posted to the Public Notice Website, emailed to members of the Utah State Bar, and released to major media outlets that cover the geographic venue of the court.

(b) Applications

Application for judicial vacancies in a justice court must be made online at www.justicecourtvacancies.utah.gov. At this portal, the applicant must complete the application form, upload a resume, waive the right to review the records of the commission and the confidentiality of records, and provide a one-paragraph summary of professional qualifications that will be made available to the public if the applicant is selected to be the new judge.

The waiver of confidentiality pertains to records which are the subject of investigation by the commission.

(i) Adverse References

The application provides space for listing references. However, letters of recommendation are not submitted by the applicant. The judicial nominating commission selects from among the references listed, and the commission or its staff contacts the references.

(ii) Reference Letters

The judicial nominating commission or its staff contacts up to five of the references listed on the application form and requests the references to complete and submit a standard reference letter approved by the Judicial Council. The commission may designate other references to be contacted either by the standard reference letter or by other means.

(iii) Deadline

The deadline for filing applications is established by the published notice. The minimum application period is 30 days, but the notice of vacancy may provide for an extended application period. If there are not at least two applicants for a justice court judge position who have a degree from a law school that makes one eligible to apply for admission to a bar in any state, the justice court nominating commission may re-advertise the position and accept applications from individuals who do not have a law degree. See U.C.A.§78A-7-201.

A notice of receipt is sent to the email address provided by the applicant.

(c) Recruitment

If commissioners wish to solicit individuals to apply for judicial vacancies they may do so directly or request that staff from the Administrative Office of the Courts solicit applications of specific individuals by writing a letter indicating that the individual's name has been referred as a potential judicial applicant and inviting the individual to submit an application. If a third party presents the name of a potential applicant to a commissioner, the same procedure should be followed.

(d) Pre-screening by Staff

After the expiration of the filing deadline, the staff person assigned to a nominating commission reviews the applications to screen out those applicants not meeting the minimum qualifications for office. A list of any applicants identified as not meeting the minimum qualifications and the deficiency is provided to all commissioners. Staff will notify those applicants not successfully passing the pre-screening by email.

(e) Distribution of Application Materials

After the close of the application process, the staff to the commission provides access to each application and resume and a list of all applicants in alphabetical order to the commissioners. Access to all application materials will be revoked at the close of the nomination process in accordance with the section governing records.

(6) Organizational Meeting

(a) Introduction

The date, time, and place of the organizational meeting are published as a part of the notice of the vacancy or in a separate public notice. If possible, commissioners are notified individually of the commission's first meeting before the public notice. The organizational meeting should be held as soon as practicable after the close of the application deadline.

The importance of this initial meeting cannot be overstated. If the commission is not well organized, it likely will face problems later. The least of these problems is the inefficient use of limited time. More serious problems such as breaches of ethics and confidentiality or disputes over voting procedures may develop. The organizational meeting is used to anticipate these problems before they occur.

The commission must accomplish five things during the organizational meeting. During the public portion of the meeting:

1. The commission must discuss issues of ethics and legal obligations (6c).
2. The commission must consider any administrative or procedural questions (6d).
3. The commission must develop a realistic time table in which to accomplish its many tasks (6e).
4. The commission must, upon request, receive oral and written testimony from the public about community needs, the qualifications for the judicial office, and the nominating process, but not about individual applicants (6f).

After the public portion of the meeting, the commission will go into executive session to discuss the qualifications of applicants and make an initial screening of the applicants. This initial screening of applicants by the commission is based upon the information contained in the application materials (6g).

(b) Conduct of Meetings

The chair of each nominating commission presides at all meetings and ensures that each commissioner has the opportunity to be a full participant in the commission process. For the purpose of organizing the first meeting, the chair of each nominating commission will be the appointed representative from the Bar. During the nominating commission's first meeting, the commission will select a chair. All commission members will have the opportunity to question applicants and to discuss the qualifications of applicants. In questioning applicants and discussing the qualifications of applicants, the chair will speak last.

(c) Ethical and Legal Obligations

The organizational meeting is the appropriate time and place to address any issues regarding commission ethics that may be of concern. It is far better to anticipate problems and avoid them rather than trying to solve them once they occur. The goal of commissioners should be to avoid not only impropriety itself, but also the appearance of impropriety.

Failure to Follow Law or Procedures. If a commissioner fails or refuses to follow statutes, rules, or this manual regulating the nomination of candidates, the commissioner is disqualified from the commission, and the local government executive will appoint a replacement as provided by statute.

Confidentiality. The names of the nominees are released to the public for the purpose of comment prior to submission to the local government executive, and the application materials and investigation reports for the nominees are forwarded to the local government executive. Otherwise, the policy in Utah is to maintain the confidentiality of all applicants and of all investigation sources. Subject only to the responsibility to report violations of the law and breaches of professional ethics, information provided by the applicant and information gathered as a result of the investigation are not disclosed. However, if an applicant is selected as a nominee, the application package of the nominee and the results of any investigation, including information from investigation sources, are forwarded to the local government executive. The application and investigation results are not otherwise disclosed by the commission.

Relationship to the Applicant. Perhaps one of the most common problems faced by nominating commissions is that some commissioners have a business, professional, or personal relationship to one or more of the applicants. Commissioners are required to disclose to the commission the existence and nature of such relationships, including any adverse relationship. These declarations should be made prior to screening the applicants. If an applicant is a commissioner's spouse or a person within the third degree of relationship to a commissioner (grandparents; parents or parents-in-law; aunts or uncles; children, nieces and nephews and their spouses) that commissioner must disqualify him/herself from the nominating commission process. If a commissioner declares some other type of relationship with an applicant, the other commission members must decide if that relationship constitutes a conflict of interest. If they so decide, the commissioner disclosing the relationship must recuse him/herself from voting on that applicant. If the other commission members decide, by a majority vote, that the relationship does not constitute a conflict of interest, the commissioner disclosing the relationship may vote on that applicant. Only declarations which are determined by the commission to pose a conflict of interest are recorded in the minutes of the meeting.

Solicited Information. Commission members should inquire on their own regarding the qualifications of judicial applicants. Commissioners should seek information from any source likely to provide insight into the qualifications and ability of individual applicants to serve in the judiciary, including but not limited to attorneys, judges, members of the executive and legislative branches of government, business associates, neighbors, and acquaintances. The commission should not solicit information from clients of lawyer applicants, unless the applicant has approved the solicitation. The names of applicants are formally confidential during this phase so inquiries should be discreet. However, it obviously will be necessary to reveal the name of an applicant when inquiring of others about the applicant. Information so gathered will be helpful to the commission in the process of its deliberations.

Unsolicited Information. The commission may receive unsolicited information or statements from third parties supporting or opposing an applicant. These should be received, considered, and, if appropriate, investigated. The response to the writer or caller should be uniform. The commission member or its staff should explain the impartial procedures that all applicants must complete and thank the individual for the information.

Contact with an Applicant. Commissioners should refrain from discussion with an applicant about his/her application. Feedback on interview performance should not be provided by commission or staff members to applicants.

Commissioner Bias. All people have particular philosophies and viewpoints. Commissioners can only realize that these biases exist and make every effort to ensure that they do not cloud the decision making process.

Legal Requirements. Sections of the Utah Constitution and Code applicable to the nomination and election of judges are provided to commission members.

(d) Administrative Issues

The organizational meeting should be used to answer any questions or concerns of the commissioners. A few issues are outlined here.

Reimbursement of Expenses. Commissioners are entitled to be reimbursed for all actual and necessary expenses incurred in the course of their duties as commissioners. Mileage records and expense receipts should be submitted to the staff person assigned to the commission at, or soon after, the final meeting of the commission. Note, however, that if the work of the commission begins in one fiscal year and continues into the next fiscal year, expenses must be reimbursed with funds from the year in which the expenses were incurred. Requests for reimbursement of expenses incurred during one fiscal year must be submitted no later than July 20 of the next fiscal year. The fiscal year ends June 30.

Records. By statute, the Administrative Office of the Courts serves as staff to each of the nominating commissions. All records of the commissions are maintained in that office. The notes of the commissioners are their own and are not filed with the Administrative Office of the Courts.

Summary minutes only, and not verbatim minutes, are maintained of all commission meetings including interview meetings and voting meetings. The minutes include:

a) The date, time, and place of the meeting.
b) A list of the commissioners present and a list of those absent or excused.
c) A list of staff members present.
d) A general description of the nature of the business to be conducted.
e) A general description of the decisions made.
f) Any declarations by commissioners of a relationship, interest, or bias concerning any applicant.
g) A record of the total tally of all votes, but not the vote of individual commissioners.
h) Written statements submitted to the commission regarding issues facing the judiciary.
i) Any other matter desired by the commission to be recorded.

All records of the commission are maintained by the staff member assigned to the nominating commission by the Administrative Office of the Courts, but are not subject to public disclosure. The records are maintained until the appointee of the local government executive takes the oath of office. The records are then destroyed.

Quorum. Three commissioners must be present to conduct any business. Commissioners may be present through electronic means such as telephone or video conferencing. If a written ballot is required of a commissioner present through electronic

means, the commission may submit the vote by electronic mail or other electronic means. The commission should take steps to secure the confidentiality of debate and votes made by electronic means.

(e) Timetable

The commission should develop a timetable of specific dates for the completion of the various steps in the nomination process. The commission should establish a deadline for each interim step in the process. Including the organizational meeting, commissioners will usually meet formally two to three times.

(f) Public Testimony

The public portion of the organizational meeting is used to receive oral and written testimony about issues of local concern, the general qualifications of judges, and constructive recommendations to the Judiciary. Statements concerning particular applicants or cases are prohibited. It is important at the initial meeting to develop a good sense of the interests of the communities served by a court.

The procedure for submitting written statements or a request for time to deliver an oral statement at the organizational meeting is as follows. Any interested person or organization may submit written statements to the Administrative Office of the Courts. A written statement may be accompanied by a request for time to present the statement orally to the commission. Requests for time to present an oral statement are not preferred unless accompanied by the written statement. The chair of the commission may permit a person to present an oral statement without submitting a written statement. A maximum time limit for oral statements is three minutes. A judge appointed by the Board of Justice Court Judges is invited to speak to the commission to address the importance of justice court judge selection without submitting a written statement.

The chair of the commission retains the discretion to deny a written request for oral testimony only to ensure the orderly conduct and timely completion of the pubic portion of the organizational meeting. If permission to provide oral testimony is granted, the person requesting permission is notified by staff in the Administrative Office of the Courts. All written statements become a part of the record of the commission. The substance of the statement and identification of the author are publicly disclosed at the organizational meeting. The statement may be read verbatim.

(g) Initial Screening by Commission

A screening process may be needed to reduce the number of applicants to a manageable number for purposes of further investigation and selecting candidates for interview. The initial screening should occur at the organizational meeting and is based upon the applicants' application and resume, and other application materials.

The objective of the commission in screening applicants is not to retain all applicants who may conceivably be qualified for further investigation and interviews but to retain enough applicants so as to be reasonably certain that the best qualified applicants are among them, given the information available to the commission at the time, the number of vacancies to be filled, and the overall quality of the applicant pool. The commission members review the application materials available, discuss the qualifications of the applicants, compare the information with the evaluation criteria, and vote to retain or eliminate an applicant. Depending upon the size and relative qualifications of the

applicant pool, the commission may complete the screening at the organizational meeting, or the commission may complete the screening at a subsequent meeting at which the results of the investigation are made available.

During the initial screening, unrestricted voting is acceptable. However, when voting for final nominees, voting is conducted by confidential ballot. Each commissioner is provided a ballot with the names of all applicants to be voted upon in alphabetical order. Next to each applicant's name is a space designated “yes” and a space designated “no.” The commissioner casts an affirmative or a negative vote for each applicant. The votes are tallied by the staff person and chair of the commission. All applicants receiving at least three affirmative votes will be retained for further consideration. If, after voting, the commission determines there are too many applicants remaining given the number of vacancies and the overall quality of the applicant pool, the commission may further discuss the qualifications of applicants and conduct another round of voting. For each applicant retained after the review is concluded, the commission identifies which five references listed by the applicant are to be contacted by staff.

The total vote tally, but not the vote of individual commissioners, is recorded in the minutes of the commission. After the total vote tally is verified and recorded, the voting ballots are destroyed.

Those applicants not selected for investigation and a possible interview will be notified by the commission staff.

(7) Investigation of Screened Applicants; Further Screening

(a) Summary Staff Investigation of Applicants

After screening out those applicants not meeting the minimum requirements, and after initial screening by the commission, the Administrative Office of the Courts conducts a summary investigation of all remaining applicants. The commission may conduct a further investigation, or may direct staff to do so, of any applicant remaining after screening. As a part of the summary investigation, the staff person will:

a) Contact a maximum of five references listed by the applicant and designated by the commission for a recommendation.
b) Contact the disciplinary committee of any state bar of which the applicant is or was a member to determine the existence of any disciplinary action.
c) Contact the judicial disciplinary agency of any jurisdiction where the applicant was a judge to determine the existence of any disciplinary action.
d) Contact the Bureau of Criminal Identification (BCI) to determine whether the applicant has any criminal record.

An applicant's personal physician may be contacted and asked to disclose the particulars of an applicant's medical history only if the sound mental health of an otherwise qualified applicant becomes an issue of concern to the commission. Any inquiry will be limited to information necessary to resolve the particular concern.

Because an applicant may be screened from further consideration based on the results of the investigation, the applicant may have no opportunity to rebut claims made during the investigation. Therefore, it is essential that the investigation be thorough and without errors.

(b) Further Investigation by Staff and Commission

The commission may direct that a more in-depth background investigation be conducted by the staff of the Administrative Office of the Courts on any applicant remaining after screening. In addition to coordinating a background check with law enforcement agencies to determine if the applicant has been or is the subject of a criminal investigation or has any record of past criminal activity, staff conducting the investigation might also:

a) Contact current or former employers, partners, or associates.
b) Contact any listed professional and civic organizations to determine the level of the applicant's activity.
c) Contact any references listed by the applicant.
d) Follow up on any areas of concern raised by any member of the nominating commission or otherwise revealed during the screening process.

In addition to any investigation conducted by staff, commission members should inquire on their own regarding the qualifications of judicial applicants. Commissioners should seek information from any source likely to provide insight into the qualifications and ability of individual applicants to serve in the judiciary, including but not limited to attorneys, judges, members of the executive and legislative branches of government, business associates, neighbors, and acquaintances. The commission should not solicit information from clients of applicants, unless the applicant has approved the solicitation. The names of applicants are formally confidential during this phase so inquiries should be discreet. However, it will be necessary to reveal the name of an applicant when inquiring of others about the applicant.

(c) Report of Investigation Results

Prior to the meeting for the further screening of applicants and the selection of candidates for interview or, if no subsequent screening is needed to reduce the applicant pool further prior to the meeting for interviews, each commissioner receives access to the following for each applicant:

a) A copy of the application form and resume.
b) A summary report of information contained in the application and information gathered as a result of the staff investigation. BCI information is summarized orally with the nominating commission. This information may be shared with the commission during the initial meeting and screening of applicants if the size of the applicant pool warrants only one meeting prior to interviews. The summary report is intended only as a tool for the commissioners in organizing the often voluminous information. The report contains neither recommendations nor evaluations concerning the applicant.
c) Copies of reference letters received.

(d) Further Screening and Selection of Interviewees

If there is a second screening of applicants before interviews, the commission screens the applicants based upon the results of investigations. The commission should

conduct the voting for this subsequent screening of applicants in the same manner as the initial screening.

(8) Evaluation Criteria

(a) Constitutional and Statutory Minimum Requirements

U.C.A. Section 78A-7-201 requires that a justice court judge be:

Citizenship. A citizen of the United States,

Age. 25 years old or older,

Residency. A resident of Utah for at least three years immediately preceding appointment and be a qualified voter of the county in which the judge resides, and

Education Requirements. Have a degree from a law school that makes one eligible to apply for admission to the bar in any state.

Restricted Activities. Section 78A-7-206 of the Utah Code establishes further restrictions on the activity of judges.

> (1) A justice court judge may not appear as an attorney in any criminal matter in a federal, state, or justice court or appear as an attorney in any justice court or in any juvenile court case involving conduct which would be criminal if committed by an adult.
>
> (2) A justice court judge may not hold any office or employment including contracting for services in any justice agency of state government or any political subdivision of the state including law enforcement, prosecution, criminal defense, corrections, or court employment.
>
> (3) A justice court judge may not hold any office in any political party or organization engaged in any political activity or serve as an elected official in state government or any political subdivision of the state.
>
> (4) A justice court judge may not own or be employed by any business entity which regularly litigates in small claims court.

(b) Qualities of Judges

The following criteria for evaluating applicants are derived from the American Bar Association's Guidelines for Reviewing Qualifications of Applicants for State Judicial Office, which offer some guidance for determining “fitness for office.” Following the ABA guidelines are some additional considerations.

(i) American Bar Association Guidelines

Introduction

Below is a section of the American Bar Association Guidelines that are applicable to the justice court judge. These guidelines are intended for use by bar association committees and judicial nominating commissions which are evaluating applicants for state and local judicial office. It is assumed that the evaluators desire to recommend to the electorate or to the appointing authority the applicants who are most qualified by virtue of merit.

The guidelines attempt to identify those characteristics of highly qualified judicial applicants. They attempt to establish criteria for the prediction of successful judicial performance. The identified traits are not mutually exclusive and cannot be wholly separated one from another. The outlined areas have been selected as essential for inquiry in considering all applicants for judicial office. With the exception of integrity, which is always indispensable, the degree to which the characteristics should be present in any particular applicant may vary in relation to the responsibility of the office.

These guidelines are not intended to deal with methods or procedures for judicial selection; nor are they intended to provide specific operating rules for the commissions and committees. The guidelines are not intended as a definitive review of the qualifications of sitting judges when being considered for retention or evaluation, since judicial experience will provide important additional criteria which are treated elsewhere.

It is hoped that the use of these guidelines, if made known to the public and the press, will enhance the understanding and respect to which the judiciary is entitled in the community being served. The ultimate responsibility for selecting the judiciary is in the appointing power of any given judicial system. The function of these guidelines is to present minimum criteria for appointment; the more rigorous the criteria the better the quality of the judiciary.

1. Integrity. An applicant should be of undisputed integrity.

The integrity of the judge is, in the final analysis, the keystone of the judicial system; for it is integrity which enables judges to disregard personalities and partisan political influences and enables them to base decisions solely on the facts and the law applicable to those facts. It is, therefore, imperative that a judicial applicant's integrity and character with regard to honesty and truthfulness be above reproach. An individual with the integrity necessary to qualify must be one who is able, among other things, to speak the truth without exaggeration, admit responsibility for mistakes and put aside self-aggrandizement. Other elements demonstrating integrity are intellectual honesty, fairness, impartiality, ability to disregard prejudices, obedience to the law and moral courage.

An applicant's past personal and professional conduct should demonstrate consistent adherence to high ethical standards. If applicable, the evaluator should make inquiries of judges before whom the applicant has appeared, and among other members of the bar, as to whether or not an applicant's representations can be relied upon. An applicant's disciplinary record, if any, should be considered. Hence, an applicant should

waive any privilege of confidentiality, so that the appropriate disciplinary body may make available to the evaluator the record of disciplinary sanctions imposed and the existence of serious pending grievances. The reputation of the applicant for truthfulness and fair dealing in extra-legal contexts should also be considered. Inquiry into an applicant's prejudices that tend to disable or demean others is relevant. However, since no human being is completely free of bias, the important consideration is that of whether or not the applicant can recognize his or her own biases and set them aside.

2. Legal Knowledge and Ability. An applicant should possess a high degree of knowledge of established legal principles and procedures and have a high degree of ability to interpret and apply them to specific factual situations.

Legal knowledge may be defined as familiarity with established legal principles and evidentiary and procedural rules. Legal ability is the intellectual capacity to interpret and apply established legal principles to specific factual situations and to communicate, both orally and in writing, the reasoning leading to the legal conclusion. Legal ability also connotes certain kinds of behavior by the judge, such as the ability to reach concise decisions rapidly once apprised of sufficient facts, the ability to respond to issues in a reasonably unequivocal manner and to quickly grasp the essence of questions presented.

Legal knowledge and ability are not static qualities, but are acquired and enhanced by experience and the continual learning process involved in keeping abreast of changing concepts through education and study. More important is the demonstration of a willingness to learn the new skills and knowledge which will from time to time become essential to a judge's performance and a willingness to improve judicial procedure and administration.

A review of an applicant's academic distinctions and professional colleagues who have had first-hand dealings with the applicant will be helpful in evaluating knowledge and ability.

3. Professional Experience. Professional experience should be long enough to provide a basis for the evaluation of the applicant's demonstrated performance and long enough to ensure that the applicant has had substantial experience that would allow them to successfully analyze legal problems and the judicial process.

The extent and variety of an applicant's experience should be considered in light of the nature of the judicial vacancy that is being filled. A successful applicant will have a broad range of professional and life experiences that will add depth to the judicial office they hold.

4. Judicial Temperament. An applicant should possess a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact and understanding.

Judicial temperament is universally regarded as a valid and important criterion in the evaluation of an applicant. There are several indicia of judicial temperament which, while premised upon subjective judgment, are sufficiently understood by lawyers and non-lawyers alike to afford workable guidelines for the evaluator.

Because the judicial function is essentially one of facilitating conflict resolution, judicial temperament requires an ability to deal with counsel, jurors, witnesses, and parties calmly and courteously, and the willingness to hear and consider the views of all sides. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach a decision; confident, yet not egocentric. Because of the range of topics and issues with which a judge may be required to deal, judicial temperament requires a willingness and ability to assimilate data outside the judge's own experience. It requires, moreover, an even disposition, buttressed by a keen sense of justice which creates an intellectual serenity in the approach to complex decisions, and forbearance under provocation. Judicial temperament also implies a mature sense of proportion; reverence for the law, but appreciation that the role of law is not static and unchanging; and understanding of the judge's important role in the judicial process, yet recognition that the administration of justice and the rights of the parties transcend the judge's personal desires. Judicial temperament requires compassion as the judge deals with matters presented to him or her.

Factors which indicate a lack of judicial temperament are also identifiable and understandable. Judicial temperament thus implies an absence of arrogance, impatience, pomposity, loquacity, irascibility, arbitrariness, and tyranny. The absence of judicial temperament can usually be fairly ascertained.

Wide-ranging interviews should be undertaken to provide insight into the temperament of a judicial applicant.

5. Diligence. An applicant should be diligent and punctual.

Diligence is defined as a constant and earnest effort to accomplish that which has been undertaken, although it is not necessarily the same as industriousness. Diligence implies the elements of constancy, attentiveness, perseverance, and assiduousness, in addition to the possession of good work habits and the ability to set priorities in relation to the importance of the tasks to be accomplished.

Punctuality should be recognized as a complement of diligence. An applicant should be known to meet procedural deadlines in trial work and to keep appointments and commitments. An applicant should be known to respect the time of other lawyers, clients, and judges.

6. Health. A candidate should be in good health.

Good health embraces a condition of being sound in body and mind relative to the extraordinary decision-making power vested in judges. Physical disabilities and diseases which do not prevent a person from fully performing judicial duties will not be a cause for rejection of a candidate. However, any serious condition which would affect the candidate's ability to perform the duties of a judge may be further investigated by the evaluator. The evaluator may require a candidate to provide a physician's written report of a recent thorough medical examination addressing the condition of concern.

Good health includes the absence of erratic or bizarre behavior which would significantly affect the candidate's functioning as a fair and impartial judge. Addiction to alcohol or other drugs is of such an insidious nature that the evaluator should affirmatively determine that a candidate does not presently suffer from any such disability.

The ability to handle stress effectively is a component of good mental health. A candidate should have the ability to refresh himself or herself occasionally with non-work-related activities and recreations. A candidate should have a positive self-worth in order to be able to withstand the psychological pressures inherent in the task of judging.

The evaluator should give consideration to the age of a candidate as it bears upon health and upon the number of years of service that the candidate may be able to perform.

7. Financial Responsibility. An applicant should be financially responsible.

The demonstrated financial responsibility of an applicant is one of the factors to be considered in predicting the applicant's ability to serve properly. Whether there have been any unsatisfied judgments or bankruptcy proceedings against an applicant and whether the applicant has promptly and properly filed all required tax returns are pertinent to financial responsibility. Financial responsibility demonstrates self-discipline and the ability to withstand pressures that might compromise independence and impartiality.

8. Public Service. Consideration should be given to an applicant's previous public service activities.

The rich diversity of backgrounds of judges is one of the strengths of the American Judiciary, experience which provides an awareness of, and a sensitivity to, people and their problems may be just as helpful in the decision-making process as a knowledge of the law. There is, then, no one career path to the judiciary. A broad, non- legal academic background, supported by varied and extensive non-academic achievements are important parts of an applicant's qualifications. Examples of such non-legal experience are involvement in community affairs and participation in political activities, including election to public office. The most desirable applicant will have had broad life experiences.

There should be no issue-oriented litmus test for selection of an applicant. No applicant should be precluded from consideration because of his or her opinions or activities in regard to controversial public issues. No applicant should be excluded from consideration because of race, creed, sex or marital status.

While interviews of applicants may touch on a wide range of subjects in order to test an applicant's breadth of interests and thoughtfulness, applicants should not be required to indicate how they would decide particular issues that may arise on litigated cases. However, an applicant's judicial philosophy and ideas concerning the role of the judicial system in our scheme of government are relevant subjects of inquiry.

(ii) Other Considerations for Qualification

In addition to the ABA guidelines, the commissioners may wish to consider the following in analyzing the qualifications of an applicant for judicial office:

Impartiality. A judge must be able to determine the law (and oftentimes the facts) of a dispute objectively and impartially. Applicants should be challenged on their ability to make the transition from advocate to arbiter, on their ability to hear and consider all sides of an issue, and on their ability to put aside prejudice and bias.

Industry. Applicants must demonstrate a willingness to dedicate themselves to diligent, efficient, and thorough work. Work habits differ; work techniques vary; but rising court caseloads demand industry of judges. This means the ability to manage time efficiently, to persevere against obstacles, to prepare thoroughly and punctually, and to resolve issues concisely and decisively.

Age. A justice court judge must be at least 25 years old. In addition, justice court judges may only serve until they turn 75 years old. Otherwise, there are no restrictions on the age of nominees to judicial office. Applicants should not be judged by their age alone. But they may be judged by the qualifications that may wax or wane with age: maturity, stability, legal skills, health, and vitality.

The Unique Role of Justice Court Judges. Justice court judges are in contact with the public more than any other judge. Justice courts are established by counties and municipalities and have the authority to hear class B and C misdemeanors, violations of ordinances, small claims, and infractions committed within their territorial jurisdiction. Justice court judges serve the citizens of the city or county who appoint them and are often the first or only interaction many citizens will have with the court.

Diversity on the Bench. When deciding among applicants whose qualifications appear in all other respects to be equal, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench for which the appointment is being made. The idea is to promote a judiciary of sufficient diversity that it can most effectively serve the needs of the community.

(9) The Interview

(a) Scheduling Interviews

After the candidates are selected for interview, the commission develops an interview schedule and should prepare questions for the interviews. This may be done at the same meeting in which the candidates for interview are selected or at an intervening meeting before the interviews begin.

Depending on the number of candidates, interviews could be completed in one day or on successive days. The number of intervening days between interviews should be kept to a minimum. It may be necessary for the commission to conduct some interviews in the evening. The interviews should be scheduled to include about ten minutes between interviews to review the qualifications of the candidate, if desired. Interviews should last about 20 to 30 minutes per candidate. This means that at least one-half hour per candidate should be scheduled.

Each interview is conducted in a similar fashion. The chair briefly introduces the candidate to the commissioners. The candidate is given several minutes to make an opening statement, if desired, which should include a statement of reasons for seeking the office. The commissioners then conduct the questioning. At the end of the questioning the candidate is given several minutes to make a closing statement.

Candidates are selected for time slots by the staff on a random basis. This avoids any accusation that a particular candidate was given a favored time slot.

Once set, the interview schedule is firmly fixed. Changes in the interview schedule lead only to scheduling difficulties and confusion. Rarely will any interview schedule satisfy all of the candidates, so the initial random schedule should not be changed except in extreme circumstances. The Administrative Office of the Courts is responsible for notifying the candidates of the date, time, location, and format of the interview.

(b) Preparation for Interviews

Interviews are more productive if the commissioners are well-prepared. Prepare the questions beforehand. Some questions are asked of all candidates for all judgeships. Some questions might be asked only for a particular candidate or vacancy. The investigation of candidates likely will lead to questions designed for a particular candidate.

Determine the order of questions beforehand. Every commissioner should have the opportunity to ask questions. Generally, the questioning should rotate through commissioners. The chair should ask questions last.

Determining the questions and their order does not mean that the commissioners are prohibited from following up an answer with a more particularized question. The format of the interviews should be flexible enough to pursue an unanticipated line of questioning. Preparing the questions and their order beforehand helps in returning the interview to its original course.

(c) Suggested Questions

Candidates must be treated fairly, but commissioners are encouraged to conduct aggressive questioning of the potential judges. Judges must frequently face the stress of decisions affecting the lives and property of other people. The commissioners have the responsibility to assess the ability of the candidate to resolve close questions under stress.

Phrasing of the questions is important. The commissioners may closely question the candidates concerning social issues, but the questions should be phrased to avoid opinion shopping or reducing the interview to a political interrogation. The questions should be phrased to elicit an applicant's knowledge and understanding of important issues.

Commissioners also should not hesitate to inquire about a candidate’s qualifications for a position on the bench, including the applicant's health.

Each commission is responsible for developing its own set of questions suitable to the particular court and candidate. A few examples of possible questions follow.

Candidate's Skills, Experience, and Personal Traits

- How would you deal with an attorney who is:
  - unprepared?
  - argumentative?
  - late?
- What would be your most important contribution to the court?
- What do you anticipate will be your frustrations on the bench?
- What aspects of the judicial profession do you anticipate will be boring?
- What are your most important interests outside of your present work?
- Will you have to forgo any of these interests to keep up with the court's caseload?

Candidate's General Judicial Philosophy

- Why do you want to be a judge?
- What characteristics and qualities do you think are important for a judge to possess?
- Do you have a particular philosophy of law?
- What is your view of the role of the Judiciary in society?
- To what extent should a judge consider political, social, and economic consequences in decisions?

Candidate's View of the Court System

- What do you see as the strengths and weaknesses of Utah's criminal justice system?

(10) Selection of Nominees

(a) Order of Debate and Voting

After the interviews are completed, the commissioners should devote sufficient time to discuss the qualifications of the candidates. This deliberation may help the commission to form a consensus and facilitate the selection of nominees. Every commissioner should have the opportunity to participate in the debate. Generally, the debate should rotate through commissioners. The chair should participate in the debate last. The commission may conduct its debate, or further debate, before every round of voting.

Voting for the selection of nominees must be conducted by confidential ballot, but otherwise is the same as voting during the screening process. Any candidate receiving a majority of votes of voting commissioners present is selected as a nominee. The commission should thoroughly debate the qualifications of candidates prior to voting. The commission can reconsider its action on any candidate upon a majority vote to do so.

The nominating commission must submit at least 3 names to the appointing authority. See U.C.A.§78A-7-202(2)(f). If, after full deliberation, the commission is unable to agree upon the number of nominees permitted or required, the commission should further debate the qualifications of the candidates and conduct additional rounds of voting until commissioners agree upon the permitted or required number of nominees.

A nominating commission may not decline to nominate a candidate merely because that commission or another declined to nominate the candidate to a previous vacancy or because that commission or another nominated the candidate to a previous vacancy and the local hiring executive selected someone else.

The total vote tally, but not the vote of individual commissioners, is recorded in the minutes. After the vote tallies are verified and recorded, the ballots are destroyed.

(b) Public Comment Regarding Nominees; Removal of Nominee

Candidates are notified individually of their nomination. Candidates interviewed but not selected as nominees are notified of that fact in writing from the staff of the commission. The names of the nominees are made public by the commission. The public release of the names of the nominees includes a statement that persons having comments to make regarding the nominees should provide a written statement addressed to the commission through the Administrative Office of the Courts. Statements must be received by the Administrative Office of the Courts within 10 days of the public release of names. A copy of the public release is sent to the local government executive.

The commission may meet to review any public comments no sooner than ten days after the public release of the names of the nominees. The commission will provide a nominee with a copy of any written negative comment received and will provide a nominee the opportunity to respond in writing. The commission may conduct further interviews of any nominee. The commission may request further investigation of any nominee.

After consideration of any comments and the response of the nominee, the commission may remove a candidate from the list of nominees upon the vote of four members of the commission. The commission will select another nominee from among interviewed candidates in the manner described in paragraph 10(a) of this section for voting upon nominees. The nomination process is not final until the commission submits the nominees to the city/county executive.

(c) Submitting Nominees

Nominees are submitted to the local government executive by letter from the nominating commission. A copy of the letter is sent to each commission member. The letter should encourage the local government executive to conduct further review of the nominees and to encourage public comments which could provide valuable insight to ensure that the best nominee is appointed. The application package, including investigation reports, reference letters, and public comments, of each nominee is forwarded to the local government executive.

Nominees are listed in alphabetical order without any indication of rank or preference and without any indication of the vote of the commission. Because the authority of the nominating commission ends with the nomination of candidates, it is important that there be no effort to influence or persuade the local government executive in the appointment. Minority reports and expressions of personal feelings regarding nominees are inappropriate. The appointment authority belongs to the local government, not to the commission. The local government executive has the means to conduct an independent investigation of the nominees and will select the nominee best qualified for the position. While commission members should not contact the local government executive, they should feel free to respond to inquiries initiated by the local government executive's office regarding the nominees.

If a nominee withdraws before the local government executive has made an appointment, the commission may, at the request of the local government executive, nominate a replacement. Unless time permits, the Commission does not need to publish the nominee's name for public comment.

(d) Nominee Selection and Certification

The appointment of a new judge is a three step process:

- Selection
- Confirmation
- Certification

After the local government executive has made a selection, the local legislative body is required to confirm the appointment. Once confirmed, a press release is issued naming the judicial appointee. This public notice provides the name of the appointee in addition to a brief summary of the appointee's education and work history.

The appointee is then required to successfully complete the Justice Court New Judge Orientation program provided by the Administrative Office of the Courts. Upon completion of the orientation process, the Justice Court Administrator makes a recommendation to the Utah Judicial Council respecting certification. Certification is based on successful completion of all parts of the orientation and on achieving a passing score on the exam administered in connection with the orientation. The Council issues final certification of the appointment.