

JUDICIAL COUNCIL MEETING
AGENDA

Monday, January 26, 2004
Council Room, Matheson Courthouse
450 South State Street
Salt Lake City, Utah

Chief Justice Christine M. Durham, Presiding

1. 9:30 a.m. Welcome & Approval of Minutes
(Tab 1 - Action) Chief Justice Christine
M. Durham
2. 9:35 a.m. Chair's Report Chief Justice Christine
M. Durham
3. 9:45 a.m. Administrator's Report Daniel J. Becker
4. 9:55 a.m. Reports: Management Committee Chief Justice Christine M. Durham
Policy and Planning Hon. Lee Dever
Liaison Committee Hon. Jerald Jensen
Bar Commission David Bird, esq.
(Tab 2 - Information)
5. 10:10 a.m. Code of Judicial Administration Amendments Tim Shea
(Tab 3 - Action)
6. 10:25 a.m. Utah State Bar Dues Hon. James Davis
(Action)
7. 10:35 a.m. Justice Court Recertification Richard Schwermer
(Tab 4 - Action)
8. 10:55 a.m. *Break*
9. 11:10 a.m. Executive Session
10. 11:55 p.m. Certification of Judges Tim Shea
(Action)
11. 12:00 p.m. *Lunch*

12:30 p.m. Workshop: Program Based Budgeting

Consent Calendar

The consent items in this section are approved without discussion if no objection has been raised with the Admin. Office (578-3806) or with a Council member by the scheduled Council meeting or with the Chair of the Council during the scheduled Council meeting.

1. Certification of Michelle E. Heward and Hugh Jon Rode as Justice Court Judges (Tab 5) Richard Schwermer
2. Resolution Honoring Judge Floyd L. Nielsen (Tab 6)

TAB 1

JUDICIAL COUNCIL MEETING

MINUTES

Monday, December 15, 2003
Council Room, Matheson Courthouse
450 South State Street
Salt Lake City, Utah

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Justice Matthew Durrant
Hon. James Davis
Hon. Jon Memmott
Hon. J. Mark Andrus
Hon. Jerald Jensen
Hon. Robert Hilder
Hon. Lee Dever
Hon. Gary Stott
Hon. Ronald Hare
Hon. Scott Johansen
Hon. K.L. McIff
David Bird, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Richard Schwermer
D. Mark Jones
Ray Wahl
Matty Branch
Tim Shea
Gordon Bissegger
AnNicole Faeth

MEMBERS EXCUSED:

Hon. Clair Poulson

GUESTS PRESENT:

Colin Winchester, *Executive Director, Judicial Conduct Commission*
J. Richard Catten, *West Valley City*
Herb Katz, *Court Administrator, West Valley Justice Court*
Kevin Miller, *GSBS Architects*

1. WELCOME & APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)

All in attendance were welcomed to the meeting. The minutes of the Council's November meeting were discussed. The following motion was then made.

Motion: Judge Dever made a motion to approve the minutes. Judge Hare seconded the motion. The motion carried unanimously.

2. CHAIR'S REPORT: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that she and Daniel Becker recently met with the State Superintendent of Education, Steve Laing, regarding the mandatory civics education curriculum. The possibility of having members of the judiciary participate in civics education in schools was also discussed.

3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Daniel J. Becker reported the following items:

- Governor Walker will include the court's lease and contract increase request, and Juror, Witness, Interpreter fund increase request in her proposed budget. This is in addition to the restoration of State Supervision funds, as well as funding for the appellate mediation program.
- Chief Justice Durham and Mr. Becker will visit the Eighth District, December 16th.
- The Commission on Criminal and Juvenile Justice has approved Byrne funding for the courts which includes funding for jury system enhancements, funding for a statewide training program on drug courts, and funds to assist with justice court technology.
- Judge Michael Burton, of the Third District Court, has announced his retirement effective May 30, 2004.

4. REPORTS:

Management Committee: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that the Management Committee approved an audit schedule for 2004. They also previewed and approved items included on the Council's agenda.

Policy and Planning: (Hon. Lee Dever)

Judge Dever reported that Tim Shea would be making a report later that day regarding long term disability benefits for judges. It was also reported that a number of personnel policies were reviewed by Policy and Planning and placed on the Council's consent calendar.

Liaison Committee: (Hon. Jerald Jensen)

Judge Jensen reported that the Liaison Committee had not met since the Council's last meeting.

Bar Commission: (David Bird, esq.)

David Bird reported that the Bar is moving forward on professionalism awards, which will honor lawyers in each of the Bar's divisions. Mr. Bird also reported that at a recent meeting of the Small Claims Committee the possibility of implementing a \$7,500 cap was reviewed. It was reported

that this was done at the request of members of the Legislature. Mr. Bird then reported that the Bar has entered a contract with Casemaker which will allow Bar members to perform activities similar to those performed with Lexis-Nexis. It was reported that this service would be free to members of the Bar.

5. REPORT: JUDICIAL CONDUCT COMMISSION: (Colin Winchester)

Colin Winchester reported that the final report of the legislative audit of the Judicial Conduct Commission would be released that day. It was reported that over 600 cases were reviewed in the course of the audit, and it is anticipated that their recommendations will indicate that there should be increased consistency in sanctions guidelines. It was also mentioned that Gayle Mckeachie is no longer a member of the JCC, as a result of his appointment as Lt. Governor.

6. WEST VALLEY CITY JUSTICE COURT: (Richard Schwermer, J. Richard Catten, Herb Katz)

Richard Schwermer reported that every four years the Judicial Council recertifies justice courts, and that this year the Council is considering recertification of municipal justice courts. It was reported that the Council's Justice Court Standards Committee recently met and reviewed the West Valley Justice Court's application for recertification. That committee recommended that the justice court not be recertified since they are not open on Fridays, consistent with Utah Code Annotated §78-5-108.

Richard Catten, Assistant City Attorney of West Valley City, reported that West Valley City has been opened four days a week with extended work hours for several years now. It was reported that the West Valley Justice Court has been operating on a four day work week since July of 2002, open to the public from 8:00 a.m. to 6:00 p.m. Additionally, Mr. Catten reported that a city ordinance was passed which states "The Justice Court shall be open to the public and shall conduct judicial business Monday through Thursday from 8:00 a.m. to 6:00 p.m. with the exception of legal holidays." West Valley City Municipal Code §3-2-103(2). Mr. Catten then reviewed statutory requirements related to days and hours of operation with the Council.

After discussion took place, it was suggested that the West Valley Justice Court prepare a written proposal for addressing issues related to being closed on Fridays which had been raised by the Council. One of these issues included how West Valley plans to have certain cases heard on Fridays. The Council further requested Brent Johnson advise the Council on what the statutory requirements relating to this issue and the Council's discretion in such matters.

7. LONG TERM DISABILITY BENEFITS: (Tim Shea)

Tim Shea reported findings of the Policy and Planning Committee regarding long term disability benefits for judges. Mr. Shea reported that the Public Employees' Long Term Disability Act

applies to judges just as it applies to any other public employee. According to the act, a judge (or any other employee) must stop work in order to apply for disability benefits. It was reported that after an application and investigation takes place, the state retirement office determines whether an employee is "totally disabled". The date of disability, however, does not commence until after the last day of actual work. In order to qualify as totally disabled during the elimination period and the first 24 months of benefits, the judge must be completely unable to perform the duties of their occupation.

Mr. Shea reported that the first three months (90 days) after the stop work date is called the "elimination period", and that during this period there are no benefits. It was reported that a judge's salary would be paid during the interim absent an order from the Supreme Court to the contrary. It was mentioned that the cost to the court as an organization is principally monetary in the sense that the courts will continue to pay the judge's salary until the judge resigns, qualifies for LTD benefits or is removed or suspended without pay by the Supreme Court. At the same time other judges would pick up the judge's caseload, or the court would pay for substitute coverage by senior judges or a judge pro tempore. Once the judge is awarded LTD benefits, the money that would have been paid for salary can be used for substitute coverage.

Mr. Shea mentioned that throughout this process a judge risks removal by the Judicial Conduct Commission or the Supreme Court for stopping work. Also, if a judge has been awarded long term disability benefits, and resigns as a result, and they then recover, the judge will lose LTD benefits, but the judge cannot be reinstated as a judge except by gubernatorial appointment.

8. COURT REFEREES: (Tim Shea)

Tim Shea reported that the Second District Court would like to create a contract position with an active attorney to act as a part-time Traffic Court Referee. It was reported that under Rule 3-302, only two types of referees are authorized: A full-time referee, entitled to all the same benefits as other employees or a clerk of the court serving as a part-time referee. It was reported that the Second District would like to have a law-trained individual serving as a Traffic Court Referee, but that a law trained individual would be unlikely to be able to perform these duties on a full-time basis as the rule presently requires. The rule would need to be modified to allow a non-court clerk to serve as a Traffic Court Referee on a part-time basis. It was reported that the Management Committee recommends that the Council approve a proposed rule change on an emergency basis. After discussion took place, the following motion was made.

Motion: Judge Davis made a motion to approve the proposed rule change on an emergency basis. The motion was seconded and carried unanimously.

9. EXECUTIVE SESSION:

Motion: A motion was made to go into executive session to discuss personnel matters. The

motion was seconded and carried unanimously.

Motion: A motion was made to come out of executive session. The motion was seconded and carried unanimously.

**10. STANDING COMMITTEE ON FACILITIES: WEST JORDAN COURTHOUSE:
(Gordon Bissegger)**

Gordon Bissegger reported that West Jordan City has requested that a few changes be made to the exterior of the West Jordan Courthouse. These changes include round columns rather than square columns, the inclusion of a mansard roof on the building, and a red-toned brick stripe around the building. They feel that these elements would allow the courthouse to have a similar architectural theme of surrounding buildings. It was mentioned that the Standing Committee voted not to include round columns, since square columns fit better with the architectural design, and the committee supports a mansard roof if it fits within the construction budget. The Council then considered a proposal to modify the exterior design to include a red-brick stripe around the courthouse.

Motion: Judge Hilder made a motion to add a mansard roof if funding becomes available, but to deny implementing the City's other suggestions. Judge McIff seconded the motion. No vote was taken on the motion.

Substitute Motion: David Bird made a motion to accept the proposal for a small, single red-brick stripe around the exterior of the courthouse. Judge Memmott seconded the motion. The motion carried with three opposed.

11. ADJOURN:

Motion: A motion was made to adjourn the meeting. The motion was seconded and carried unanimously.

TAB 2

JUDICIAL COUNCIL MANAGEMENT COMMITTEE

MINUTES

**Tuesday, January 13, 2004
Council Room, Matheson Courthouse
450 South State Street
Salt Lake City, Utah**

Chief Justice Christine M. Durham, Presiding

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Hon. James Davis
Hon. Robert Hilder
Hon. Scott Johansen
Hon. Clair Poulson

STAFF PRESENT:

Daniel J. Becker
Richard Schwermer
Tim Shea
Brent Johnson
Tim Shea
AnNicole Faeth

1. WELCOME & APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)

All in attendance were welcomed to the meeting. The minutes of the Management Committee's December meeting were then discussed, and the following motion was made.

Motion: Judge Johansen made a motion to approve the minutes. Judge Davis seconded the motion. The motion carried unanimously.

2. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Daniel J. Becker reported the following items:

- The 2004 Legislative Session will begin January 19th. Chief Justice Durham will deliver the State of the Judiciary Address at 2:00 p.m. that afternoon.
- The acting legislative fiscal analyst for the courts, Kevin Walthers, has recommended a continuation budget for the judiciary.
- Paul Sheffield, Trial Court Executive for the Fourth District Court, will retire effective the end of February.

Chief Justice Durham then reported that a meeting recently took place with the Bar regarding the

possibility of creating a new membership category for judicial officials. This category would reduce the membership dues for judges. As the Management Committee discussed this issue, a concern was expressed regarding the potential of compromising the judiciary's relationship with the Bar. It was suggested that the Management Committee recommend that the Council ask the Supreme Court to take their time in considering this issue and all potential outcomes of the suggested change to the judicial membership category.

Motion: Judge Davis made a motion to add this issue to the Council's January agenda. The motion was seconded and carried unanimously.

3. FOURTH DISTRICT REQUEST - DRUG COURT: (Daniel J. Becker)

Daniel Becker reported that the Fourth District Court has submitted a letter requesting that the Council approve the formation of a drug court in Juab County. It was reported that Juab County officials have indicated that they will absorb all treatment and testing costs associated with running the drug court. This means that there should be no long-term budgetary impact on the Utah State Courts. Mr. Becker reported that the Fourth District has expressed a desire to initiate the court in February, pending Council approval. In discussion by the Management Committee it was mentioned that, while the Fourth District has not asked for additional clerical or judicial resources associated with this request, in the future if a district wishes to form a specialty court they should do so without the expectation or request of additional judicial or clerical resources.

The Management Committee determined that the Fourth District's request would be discussed in Chief Justice Durham's report to the Council.

It was also mentioned that the Fourth District has indicated that, in the near future, they may request the formation of a mental health court in Provo. However, no action is necessary on this request at this time.

4. JUSTICE COURT RECERTIFICATIONS: (Richard Schwermer, Brent Johnson)

Richard Schwermer reported that during the Council's last meeting as a result of issues raised regarding the West Valley Justice Court's four day work week, they requested that Brent Johnson prepare an opinion on the discretion of courts to set their own hours of operation. Brent Johnson reported that he has determined that the legislature and courts have not given the discretion to municipalities to set their own hours of operation. After discussion took place, the Management Committee recommended that the West Valley Justice Court develop a plan to be implemented by February 2, 2004 which will bring them in compliance with a five day work week, Monday through Friday 8:00 am - 5:00 pm, if they wish to be recertified.

Richard Schwermer then reported that the Ivins Justice Court will be considered for recertification by the Council on January 26th. Mr. Schwermer received a letter from Judge James

Judd of the Ivins Justice Court indicating that he doesn't have sufficient clerical support to run court operations because the City Manager is now supervising the court clerk and limiting the judge's access to that clerk. As a result, Judge Judd is recommending that the Judicial Council not certify the justice court. The Management Committee recommended that Mr. Schwermer contact the City of Ivins to obtain a response regarding this issue.

5. CERTIFICATION OF NEW JUSTICE COURT JUDGES: (Richard Schwermer)

Richard Schwermer distributed certification materials for two new justice court judges. It was reported that both judges meet certification requirements. After discussion took place, the following motion was made.

Motion: Judge Davis made a motion to certify Michelle E. Heward and Hugh Jon Rode as justice court judges, and that these certifications be placed on the Council's consent calendar. Judge Hilder seconded the motion. The motion carried unanimously.

6. APPROVAL OF JUDICIAL COUNCIL'S AGENDA: (Daniel J. Becker)

A proposed agenda for the Judicial Council's January 26th meeting was reviewed. After discussion took place, it was determined that the Fourth District drug court request would be discussed in Chief Justice Durham's report and that the Bar dues issue would be added to the agenda. The following motion was then made.

Motion: Judge Davis made a motion to approve the agenda. Judge Hilder seconded the motion. The motion carried unanimously.

7. EXECUTIVE SESSION:

Motion: A motion was made to go into executive session to discuss personnel matters. The motion was seconded and carried unanimously.

Motion: A motion was made to come out of executive session. The motion was seconded and carried unanimously.

8. ADJOURN:

Motion: A motion was made to adjourn the meeting. The motion was seconded and carried unanimously.

DRAFT

MINUTES

POLICY AND PLANNING COMMITTEE

Friday January 9, 2004
Administrative Office of the Courts

PRESENT: Honorable L. A. Dever, Honorable Matthew B. Durrant, David Bird, Esq.

EXCUSED: Honorable Gary D. Stott, Honorable Ronald R. Hare

STAFF: Timothy M. Shea, Kim Allard, Nancy Volmer, Rob Parkes, Carolyn Carpenter

I WELCOME AND REVIEW OF MINUTES

A motion was made by Justice Durrant to approve the minutes of December 5, 2003 as prepared. The motion was seconded by David Bird and passed unanimously.

II COMMENTS TO RULES

Rule 4-202.08. Fees for records, information, and services.

The intent of this rule is to establish uniform fees for requests for records, information, and services. While charging the actual cost has been the rule for several years and may be the better policy, many clerks have routinely charged a flat fee of \$3.00 (which was the former rule) because it's difficult to determine the actual mailing cost and collect it in advance. The recommendation is to enact the rule.

Ideas put forth and/or points made during discussion:

- Charge \$1 or the actual cost, whichever is greater
- Have each court set its own fees not to exceed \$2.
- Revenue from this fee covers the cost of maintenance of any machines used in the process and the costs of operations.
- The actual cost of maintenance of machines needs to be known to make a determination of how much to charge.
- In the past, clerks have often not charged anything.
- Sometimes people send in blank checks when requesting information to be mailed.
- There was only one comment made to this suggested fee when it went out for comment.

David Bird made a motion to approve the rule as proposed. This was seconded and passed with two objections.

Kim Allard stated the court's Xchange system is remote access to district court records. Ms. Allard stated in the old Xchange program, users were billed by the minute. The new one is web-based and works in a browser. The proposal is that users be charged per search rather than per minute. Ms. Allard reported there are currently around 1,000 users on Xchange with about 600 of those being private sector attorneys, etc. The rest are government agencies such as AP&P, the AG's office, etc. Right now the only people on the web-based Xchange are those in

the public sector because there is no charge for them to use it. Once the rule is in place, there will be a way to bill Xchange users and move it to the private sector. Using this methodology should generate about the same amount of money as comes in currently, Ms. Allard said. In the past, a searcher would have to search for information in every court location, but the new system allows for a statewide search.

David Bird moved to adopt the recommended proposal. The motion was seconded and passed unanimously.

Tim Shea stated the last proposal is that CJA 4-802 and 4-803 be repealed because they will be replaced by rules of small claims procedures adopted by the Judicial Council in February.

David Bird moved to pass this proposal. The motion was seconded and passed unanimously.

III PUBLIC OUTREACH COMMITTEE

Proposed standing committee to address outreach needs

Kim Allard, Court Services Director, and Nancy Volmer, Public Information Officer, were invited to today's meeting to talk about the proposal made by the Judicial Council at their August 2003 meeting to create a Standing Committee on Public Outreach. The Council requested the Policy and Planning Committee develop a rule and make recommendations for the committee's name and membership. A memorandum of the proposed standing committee, including background of public outreach committees established in the past, was sent to all committee members by Kim Allard and Nancy Volmer prior to this meeting. Included in the memo was a list of suggested committee membership.

After discussion, Judge Dever made a motion to keep the committee membership as proposed with the addition of two communication representatives. The motion was seconded and passed unanimously.

After discussion there was a consensus that the issue of un-met legal needs does not belong in the outreach committee, but is an issue that needs to be addressed in another way.

Kim Allard and Nancy Volmer will ask to be on the Judicial Council's agenda to submit their proposal for adoption.

IV JUDICIAL PERFORMANCE EVALUATION STANDARDS

Prior to this meeting, Mr. Shea distributed to committee members a table summarizing the current judicial performance evaluation standards. The Council had referred to this committee the question of judicial performance evaluation standards, particularly the requirement of attendance at the annual judicial conference and the annual justice court conference.

Mr. Shea said the entire program had been thoroughly reviewed two years ago, but attendance at the judicial conferences has become an issue because it is mandatory, and the

Judicial Council asked the committee to consider whether changing rules or changing procedures might be necessary to address this issue. Tim stated that judicial support for the performance evaluation is very broad but not very deep currently.

Judge Dever stated the chart makes it seem as though 30 hours of education are needed in addition to attending the annual conference, which is not the case.

Mr. Shea stated the current rules allow for an excused absence, but the process of obtaining that is not clear. He recommended that it be left to the Education Committee to make recommendations to the Judicial Council about what the education standards should be. Everyone who attends the conferences speaks highly of them, he noted. Mr. Shea recommended that attendance continue to be required but that a process by which a judge's absence could be excused in advance could be made more explicit. Some automatic grounds for an excused absence could be recognized and included. Once that process has been done, the standard would be considered as met.

Discussion points:

- If the annual conference is going to be mandatory, judges need to be educated to that fact.
- A clear process where an excuse can be obtained needs to be established.
- The annual conference should not be mandatory.
- A judge should be required to meet a specified number of education hours, but that how it is done should not be the issue.
- Something should be done so that the educational requirement does not rise to the level of having to appear in the voter information pamphlet.
- A rule should be made that attending the conference or not is without any sanction attached to it.
- The camaraderie developed among the judges at the conferences is important.
- Attendance at the annual conference could satisfy all educational requirements.
- By law, all the courts are open on the annual conference dates, but a judge or commissioner is needed at each site.

Tim Shea stated he could easily amend the rules to eliminate the mandatory nature of the conferences, but the statute is different matter.

Brent Johnson stated the annual judicial conference is established by rule 78-3-27. It is statutory but not mandatory. For justice court judges, 78-51-27 requires attendance at the annual justice court conference in order to maintain certification; thus, attendance is mandatory. Tim added that justice court judges are invited to the annual judicial conference, but typically don't attend that conference and are not required to do so.

Judge Memmott stated he wanted to throw out for future discussion evaluation of judges by attorneys and how evaluations are conducted. He said there is a number of judges who have had 10 to 15 point drops that can't be explained in the way the survey was done. He opined that if this means a judge's career and the survey is that important then it has to be a valid cross-section of attorneys. David Bird stated educating the lawyers is key on this issue. He said there might be a statement on the survey about the importance of responding.

Tim Shea reminded the committee there is already a committee in place to address this issue - the Performance Evaluation Committee. He noted there is a dedicated group on the committee consisting of a cross-section of judiciaries, lawyers, and public members who donate a lot of their time to it.

David Bird asked why there is a limit on the number of attorneys who are surveyed. Tim Shea responded at some point it is cost. There was a suggestion made that trial attorneys get a survey first and then go to the attorney list at large but we don't have the data to differentiate among these attorneys. He further stated it is only the district judges that bump up against the 180 ceiling number. Nearly all the appellate judges have single appearance attorneys. Juvenile judges, even in urban districts, often don't approach 180 and district judges, even in rural districts, often don't. In those instances, it ends up being a census of nearly the entire bar of the whole county.

David Bird stated the objection is there are not enough surveys returned that are representative. Tim Shea responded that the Judicial Council set a target of 70% returns and that it is routinely met.

Judge Memmott said one problem in an urban area is there is a larger group of attorneys who may have only appeared before a judge once or twice; whereas in a rural area there may be only thirty five attorneys but those attorneys have appeared eight or more times before a particular judge.

Tim Shea noted all these options can be explored. Right now the process is to send the surveys first to those lawyers who have appeared most frequently. Those are determined as entered by the clerks. The computer matches a hearing with an attorney and a judge. The maximum number of surveys that a lawyer receives is ten. That is in deference to the lawyer's time. Mr. Shea further stated he is happy to raise issues with the Performance Evaluation Committee. If a single judge raises an issue, it will be presented, he said. The solutions are not necessarily as simple as they sound at first and may not be preferable to what is already in place.

Judge Dever suggested judges receive the minutes of the Performance Evaluation Committee and be reminded that if they have any questions or concerns they could contact Tim Shea. Tim Shea noted he sends out to every new judge a several page letter with some attachments explaining the program and how it works. It is hoped if there is an issue it would be raised.

V RIF POLICY

Brent Johnson said he had reviewed the reduction in force policy at the request of the Policy and Planning Committee with the goal of suggesting improvements, if any. He had send a memorandum to committee members prior to this meeting about his concerns and his suggestions.

Concerns:

- Flexibility provided in the policy could result in inconsistent applications over time and vulnerability to legal challenges.
- Lack of clarity on who has responsibility for developing a RIF plan.
- Vulnerability of Judicial Council members to legal action if they become too involved in personnel matters.
- Lack of predictability as to how job functions or positions will be grouped for purposes of reduction.

Mr. Johnson stated the policy is very broad and provides guidelines but could provide more specificity. More centralized control allows decisions to be made for all the judiciary, which in some instances will be a benefit, he noted. Mr. Johnson said the way the proposal is written now is that if there is a potential for a RIF, the Judicial Council, in controlling the purse strings, would state how much money would be cut from each area and define a group in those areas that would give specifics of what positions would be eliminated. For example, the Judicial Council could say a specific district is being cut a given percentage and that district would need to put together a plan as to how to accomplish that.

Tim Shea stated in a scenario like that, all employees would be lumped together. Brent Johnson responded the policy calls for a competitive area so a competitive area might be an entire district. First a geographical area is identified and then within that area the group or groups within it would be targeted for reduction. For example, the Sandy district court could be the targeted area and the court clerks the targeted group; or the AOC would be the targeted area and legal counsel the targeted group. Once a competitive group is defined, it is less arbitrary and can be narrowed by going to retention points.

Reduction in Force 270 Policy: The purpose of this policy is to establish a uniform process for reducing the courts' work force due to a lack of funds, workload changes, organizational changes or other conditions. It applies to all court employees. A copy of this policy with Brent Johnson's suggested changes and additions was distributed to the committee.

Judge Dever noted many of the changes appear to be changes to help clarify the policy. The question would be whether to add the suggested Judicial Council involvement section in the policy.

David Bird stated the question of how much the Judicial Council wants to be involved in the RIF policy needs to be presented to them and resolved before the other suggested amendments to 270 are presented. Brent Johnson will ask to be placed on their agenda to discuss this question with them.

The meeting was adjourned to Feb 6, 2004.

JUDICIAL COUNCIL LIAISON COMMITTEE

MINUTES

Friday - January 9, 2004

12:00 noon

Board Room - 2nd Floor

Honorable Jerald Jensen, Presiding

MEMBERS PRESENT:

Hon. Jerald Jensen
Hon. Mark Andrus
Hon. K. L. McIff
Hon. Gary Stott

STAFF PRESENT:

Richard Schwermer
Dan Becker
Mark Jones
Alicia Davis
Sandy Iwasaki

1. WELCOME AND REVIEW OF PROCESS: (Judge Jensen)

Judge Jensen welcomed everyone to the meeting. He briefly summarized the Liaison Committee review process. He advised the committee that traditionally the committee has used three basic options in taking a position for each piece of legislation it reviews: support, oppose, or no position. However, the committee can deviate from these three basic options as needed.

EXTERNAL LEGISLATION

**2. H.B. 25 - GOVERNMENTAL INTERNET INFORMATION PRIVACY ACT:
(Richard Schwermer)**

Mr. Schwermer explained that this legislation regulates the posting of personally identifiable information on the internet. He indicated that lines 103-105 prohibits a court website from displaying personally identifiable information. If it is assumed that personally identifiable information means simply a person's name, then the court website could not display court calendars or appellate opinions. However, lines 61-62 defines "personally identifiable information" as information that identifies a user. Since it appears that this legislation only applies to personally identifiable information of a user, this should not affect the court's ability to display court calendars or appellate opinions.

Committee's Position: No position

3. H.B. 54 - VIDEOTAPE OF MINORS: (Judge Andrus)

Judge Andrus explained that this legislation requires that all interviews of children be videotaped or similarly recorded. He indicated that as the bill is written, it does not specify that the legislation applies only to interviews of children in child welfare cases. The legislation does not specify a remedy if an interview is conducted without videotaping. Mr. Schwermer advised the committee that a meeting is being scheduled with the drafting attorney of the legislation to clarify the intent of the legislation.

Committee's Position: If this legislation applies beyond DCFS interviews, the committee opposes the legislation. If it applies only to DCFS interviews, the committee takes no position on the legislation. If the language is amended, the committee may review the legislation at a future meeting before taking a position.

4. H.B. 197 - LIMIT ON CHILD WELFARE RECOMMENDATIONS AND RULINGS: (Judge Andrus)

This bill limits factors that may be considered when an agency or court recommends or rules on the custody, placement, or other disposition alternative of a minor or the termination of parental rights. Judge Andrus expressed concern with the three factors that the court cannot base its decisions on (lines 44-47). He indicated that the Board of Juvenile Court Judges specifically opposes the fact that it cannot base its decision on the factor that a parent or guardian of the minor lawfully "espouses particular religious beliefs or engages in particular religious practices" because this factor is too vague. The committee discussed the three factors that the court cannot base its decisions on; and after considerable discussion, the committee agreed to the following position.

Committee's Position: The committee opposes the current language on line 45 of the legislation, specifically with the language of "or engages in particular religious practices." The committee would take no position if the language of "or engages in particular religious practices" is deleted.

5. S.B. 12 - TRANSPORTATION OF CHILDREN FOR PARENT-TIME: (Judge Stott)

This bill changes the requirement that the noncustodial parent be required to transport children for parent-time visits and leaves it to the discretion of the court.

Committee's Position: The committee takes no position on this legislation.

6. S.B. 20 - DRIVING UNDER THE INFLUENCE AMENDMENTS: (Judge Jensen)

This bill amends driving under the influence related provisions. It provides that an attorney with felony jurisdiction over the defendant must approve a plea of guilty or no contest to a possible felony DUI charge. It amends the definition of conviction to include a violation by a person that knowingly and intentionally has any amount of a controlled substance in the person's body and operates a vehicle in a negligent manner causing serious bodily injury or death. It provides that a plea which is held in abeyance on or after May 3, 2004 is the equivalent of a conviction for purposes of enhancement of penalties for DUI offenses and for purposes of expungement. It amends and redefines screening and assessment and provides that an assessment shall be ordered if found appropriate in a screening. It also provides that a plea to a DUI charge may not be held in abeyance unless the plea is entered pursuant to an education or treatment incentive program approved by the prosecuting attorney or circumstances justify resolution through a plea in abeyance. The bill provides that a court may not expunge a person's record for a conviction of an automobile homicide or a felony DUI violation, or within ten years for a felony violation by a person that knowingly and intentionally has any amount of a controlled substance in the person's body and operates a vehicle in a negligent manner causing serious bodily injury or death, or for the equivalent of a misdemeanor DUI conviction.

Committee's Position: The committee takes no position on this legislation.

7. S.B. 21 - DRUG OFFENDERS REFORM ACT: (Judge Stott)

This bill implements a screening and assessment process of offenders regarding substance abuse. The results of any screening and assessment of an offender will be required to be provided to the court prior to sentencing. This bill will require a fiscal note.

Committee's Position: The committee takes no position on this legislation.

**8. S.B. 30 - MEDICAL BENEFITS RECOVERY ACT AMENDMENTS:
(Judge McIff)**

This bill provides for third party use and acceptance of electronic claims records. Mr. Schwermer indicated that the drafting attorney is planning to delete lines 214-217 because the proposed language amends the Rules of Evidence. Mr. Schwermer will also discuss lines 209-211 with Mr. Tim Shea to determine whether or not this language proposed impacts the Rules of Evidence. Judge McIff pointed out that lines 65-68 expands the definition of an "estate."

Committee's Position: The committee takes no position on this legislation.

**9. S.B. 81 - CHILD AND FAMILY SERVICES - PLEA IN ABEYANCE:
(Judge Andrus)**

This bill makes a technical change on lines 69-70 that requires a court to enter a finding rather than make a determination.

Committee's Position: The committee takes no position on this legislation.

**10. S.B. 85 - POLITICAL ACTIVITIES OF PUBLIC ENTITIES AMENDMENTS:
(Judge McIff)**

This bill clarifies the definition of "public entity" and "public official". It provides that public officials who violate the act are guilty of a class B misdemeanor.

Committee's Position: The committee takes no position on this legislation.

11. S.B. 90 - MEDICAL NEGLECT - EXCLUSION: (Judge Andrus)

This bill establishes that any child abuse or neglect does not include the medical decision of a competent parent who has no prior history of abuse or neglect. This bill will require a fiscal note. The committee expressed concerns with this bill. However, because it appears to be a policy decision for the legislature, the committee decided to take no position.

Committee's Position: The committee takes no position on this legislation.

12. H.B. 61 - CHILD WELFARE INVESTIGATIONS: (Richard Schwermer)

This bill prohibits a state officer, peace officer, or child welfare worker from entering a home or taking a minor into protective custody unless that person has a warrant, consent of the parent or guardian, or exigent circumstances exist. Mr. Schwermer and Judge Andrus advised the committee that the Board of Juvenile Court Judges expressed opposition with the provision on line 33 that prohibits a state officer, peace officer, or child welfare worker from entering a home because this takes away the judge's confidence in the implementation of the orders made by the court and affects the judge's ability to do their job. It is anticipated that this will result in more court hearings and removal from the home more often. This will require a fiscal note.

Committee's Position: Based on the recommendation of the Board of Juvenile Court Judges, the committee opposes the legislation.

13. H.B. 198 - CHILD WELFARE COURT REPORTS: (Richard Schwermer)

This bill requires a party to a child welfare hearing to share its report with the parent of the child at least five days prior to the proceeding and creates an exception for certain drug court hearings. Mr. Schwermer indicated that this proposal amends the Rules of Juvenile Procedure without going through the formal rule-making process.

Committee's Position: The committee opposes this legislation because it amends the Rules of Juvenile Procedure without going through the rule-making process.

INTERNAL LEGISLATION:

**14. CHILD PROTECTIVE ORDER AMENDMENTS (January 9th Draft):
(Richard Schwermer)**

Mr. Schwermer advised the committee that lines 45-51 limit when a child protective order case can be transferred to the district court from the juvenile court. Line 110 defines "abuse" to mean physical abuse and sexual abuse. Lines 116-119 narrow the scope so that a petition for a protective order on behalf of a child can be filed when the child is being abused or is in imminent danger of being abused. After some discussion, the committee agreed that the language on lines 48-50 should be amended to read: "(ii) the district court has a petition pending or an order related to custody or visitation entered under Title 30 Chapter 3, Divorce, Title 30 Chapter 6, Cohabitant Abuse or Title 78, Chapter 45a, Uniform Act on Paternity, in which the petitioner and the respondent are parties; and....."

There being no further business to discuss, the meeting adjourned at 2:00 p.m.

TAB 3



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Judicial Council
From: Tim Shea
Date: January 12, 2004
Re: Comments to draft amendments

The Policy and Planning Committee recommends final approval of the attached amendments. If adopted, the changes will be effective April 1.

Rule 4-202.08.

It's proposed that the charge to cover mailing costs be changed back to a flat fee of \$3.00.

Comments.

Attorney George McCune recommends we retain the actual cost as our charge for mailing records.

While this rule was out for comment, it was proposed that we change our method of billing for the Xchange service. Xchange (the service by which the public can search for, view and copy case data on-line) has been changed to a web browser-based service. As such, the amount of time spent using the service is irrelevant and, indeed, not recorded. It's proposed that we move from a time-based billing system to a search-based billing system. Most users do not exceed the searches available under the flat fee, which remains unchanged, and so would see no change in their total monthly charge.

Recommendation.

Mailing costs. While charging the actual cost has been the rule since 1995 and may be the better policy, it's difficult to determine the actual cost and collect it in advance. Policy and Planning asked for the amount of money collected to cover mailing costs, but that information cannot be determined.

Xchange. Since time on the system is no longer a useable method of billing, change to a per-search charge.

Rule 4-801.

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.

It's proposed that the reference to Rule 4-803 be deleted because Rule 4-803 is proposed for repeal. No comments received.

Rule 4-802.

It's proposed that the Council repeal Rule 4-802, governing setting aside a small claims dismissal or default judgment. At the same time the Supreme Court will adopt amendments to Rule 10 of the Rules of Small Claims Procedure, governing the same topics. No comments received.

Rule 4-803.

It's proposed that the Council repeal Rule 4-803, governing appeal of a small claims judgment. At the same time the Supreme Court will adopt amendments to Rule 12 of the Rules of Small Claims Procedure, governing the same topic.

Comments.

From: "Alexander Dushku" <adushku@kmclaw.com>

Date: 9/25/03 9:49AM

Your last email indicated that "CJA 4-803. Trials de novo in small claims cases" is slated for elimination. I believe this is a mistake. While it is appropriate that small claims courts be courts of "rough justice," getting it more or less right most of the time, it is also imperative that there be meaningful checks on the process. Small claims cases proceed with only the loosest of evidentiary standards, cross-examination is often not possible, judges have limited time and often limited experience, and there is typically little opportunity to present and argue legal principles. The ability to appeal a decision and have a regular judge review the matter de novo can be imperative to ensuring proper application of the law to the facts.

I presume the de novo standard will be replaced by some sort of abuse of discretion standard. (The right to appeal shouldn't be eliminated entirely, of course.) The tendency with such a standard is just to rubber stamp the decision below as long as there is at least some evidence. A more substantive standard is needed to allow the district court to correct errors of law or to render a proper and just decision on the facts when the small claims court has erred.

Recommendation.

Repeal Rule 4-803. Rule 12 of the Rules of Small Claims Procedure replaces Rule 4-803.

Encl. Rules proposed for final action
Letter w/ (excerpts of) attachments from George McCune

1 Rule 4-202.08. Fees for records, information, and services.

2 Intent:

3 To establish uniform fees for requests for records, information, and services.

4 Applicability:

5 This rule applies to all courts of record and not of record and to the Administrative Office of
6 the Courts.

7 Statement of the Rule:

8 (1) Fees payable. Fees are payable to the court or office that provides the record, information,
9 or service at the time the record, information, or service is provided. The initial and monthly
10 subscription fee for public on-line services is due in advance. The connect-time fee is due upon
11 receipt of an invoice. If a public on-line services account is more than 60 days overdue, the
12 subscription may be terminated. If a subscription is terminated for nonpayment, the subscription
13 will be reinstated only upon payment of past due amounts and a reconnect fee equal to the
14 subscription fee.

15 (2) Use of fees. Fees received are credited to the court or office providing the record,
16 information, or service in the account from which expenditures were made. Fees for public on-
17 line services are credited to the Administrative Office of the Courts to improve data quality
18 control, information services, and information technology.

19 (3) Copies. Copies are made of court records only. The term "copies" includes the original
20 production. Fees for copies are based on the number of record sources to be copied and are as
21 follows:

22 (3)(A) paper except as provided in (H): \$.25 per sheet;

23 (3)(B) microfiche: \$1.00 per card;

24 (3)(C) audio tape: \$10.00 per tape;

25 (3)(D) video tape: \$15.00 per tape;

26 (3)(E) floppy disk or compact disk other than of court hearings: \$10.00 per disk;

27 (3)(F) electronic copy of court reporter stenographic text: \$25.00 for each one-half day of
28 testimony or part thereof;

29 (3)(G) electronic copy of audio record or video record of court proceeding: \$10.00 for each
30 one-half day of testimony or part thereof; and

1 (3)(H) pre-printed forms and associated information: an amount for each packet established
2 by the state court administrator.

3 (4) Mailing. The fee for mailing is the actual cost. The fee for mailing shall include necessary
4 ~~transmittal between courts or offices for which a public or private carrier is used~~ \$3.00.

5 (5) Personnel time. There is no fee for personnel time to copy the record of a court
6 proceeding. There is no fee for the first 15 minutes of personnel time. The fee for time beyond
7 the first 15 minutes is charged in 15 minute increments for any part thereof. The fee for
8 personnel time is charged at the following rates for the least expensive group capable of
9 providing the record, information, or service:

10 (5)(A) clerical assistant: \$15.00 per hour;

11 (5)(B) technician: \$22.00 per hour;

12 (5)(C) senior clerical: \$21.00 per hour

13 (5)(D) programmer/analyst: \$32.00 per hour;

14 (5)(E) manager: \$37.00 per hour; and

15 (5)(F) consultant: actual cost as billed by the consultant.

16 (6) Public on-line services. The fee for public on-line services shall be as follows:

17 (6)(A) a set-up fee of \$25.00;

18 (6)(B) a subscription fee of \$30.00 per month for any portion of a calendar month; and

19 ~~(6)(C) \$.10 per minute of connect time greater than 120 minutes during a billing cycle~~ \$.20
20 for each search over 200 during a billing cycle. A search is counted each time the search button
21 is clicked.

22 (7) No interference. Records, information, and services shall be provided at a time and in a
23 manner that does not interfere with the regular business of the courts. The Administrative Office
24 of the Courts may disconnect a user of public on-line services whose use interferes with
25 computer performance or access by other users. The Administrative Office of the Courts may
26 establish reasonable time limits per access call to promote access by a variety of users.

27 (8) Waiver of fees.

28 (8)(A) Fees established by this rule shall be waived for:

29 (8)(A)(i) any government entity required by law to obtain court records; or

30 (8)(A)(ii) any person who is the subject of the record and who is impecunious.

1 (8)(B) Fees established by this rule may be waived for a student engaged in research for an
2 academic purpose.

3 (8)(C) Fees established by this rule may be waived for a governmental entity if the fee is
4 minimal.

5 **Rule 4-801. Transfer of small claims cases.**

6 Intent:

7 To establish a procedure for the transfer of small claims cases to the appropriate justice court.

8 Applicability:

9 This rule shall apply to the courts of record and not of record.

10 Statement of the Rule:

11 (1) Small claims actions filed in a court of record may be assigned to a judge pro tempore, if
12 one has been appointed under Rule 11-202 to adjudicate small claims actions. If no judge pro
13 tempore has been appointed to adjudicate small claims actions, the case may be transferred to a
14 justice court with jurisdiction under Utah Code Section 78-5-104.

15 (2) At the time of the transfer, the court shall also transfer the filing fee, less the portion
16 dedicated to the judges' retirement trust fund.

17 (3) If there is no justice court with territorial jurisdiction of the small claims action and no
18 judge pro tempore, a district judge of the court shall hear and determine the action. ~~The appeal~~
19 ~~shall be as provided in Rule 4-803.~~

20
21 Repeal: CJA 4-802 and CJA 4-803.

22

MCCUNE, MCCUNE & SUZUKI
ATTORNEYS AT LAW

JAMES P. McCUNE
1909-1988

GEORGE M. McCUNE
(UTAH BAR)

SALT LAKE
FAX (801) 964-0551

5248 CARPELL AVE.
P.O. BOX 18044
SALT LAKE CITY, UTAH 84118-8044
TELEPHONE (801) 964-2826

THIS LETTER ORIGINATES FROM
SALT LAKE
YOKOHAMA

SHIGERU SUZUKI
(YOKOHAMA BAR)

JAPAN OFFICE
MIDORI BUILDING
2-30 OTA-MACHI
NAKA-KU, YOKOHAMA
JAPAN T 231
TEL (045) 882-1732

FACSIMILE TRANSMISSION FROM FAX NO. 801-964-0551

Monday, December 29, 2003 3:05 P.M. MST

Mr. Tim Shea
Senior Staff Attorney
ADMINISTRATIVE OFFICE OF THE COURTS OF UTAH
PO Box 140241
Salt Lake City, U 84114-0241
801-578-3808
tims@email.utcourts.gov
TO FAX NO. 801-578-3843

Re: Comment on Proposed Amendments to Several Utah Court Rules

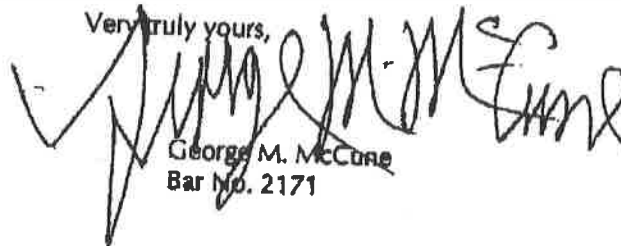
Dear Jim:

Here's my comment on the proposed rule changes.

Pages where I have suggested changes and what I consider improvements in the interest of justice and equity are FAXed herewith. Pages which I have not touched are not sent to you.

Best wishes for the New Year.

Very truly yours,



George M. McCune
Bar No. 2171

Attachments

1 **CODE OF JUDICIAL ADMINISTRATION**

2 **Rule 4-202.08. Fees for records, information, and services.**

3 **Intent:**

4 **To establish uniform fees for requests for records, information, and services.**

5 **Applicability:**

6 **This rule applies to all courts of record and not of record and to the Administrative Office of**
7 **the Courts.**

8 **Statement of the Rule:**

9 (1) **Fees payable.** Fees are payable to the court or office that provides the record, information,
10 or service at the time the record, information, or service is provided. The initial and monthly
11 subscription fee for public on-line services is due in advance. The connect-time fee is due upon
12 receipt of an invoice. If a public on-line services account is more than 60 days overdue, the
13 subscription may be terminated. If a subscription is terminated for nonpayment, the subscription
14 will be reinstated only upon payment of past due amounts and a reconnect fee equal to the
15 subscription fee.

16 (2) **Use of fees.** Fees received are credited to the court or office providing the record,
17 information, or service in the account from which expenditures were made. Fees for public on-
18 line services are credited to the Administrative Office of the Courts to improve data quality
19 control, information services, and information technology.

20 (3) **Copies.** Copies are made of court records only. The term "copies" includes the original
21 production. Fees for copies are based on the number of record sources to be copied and are as
22 follows:

✓ 23 (3)(A) paper except as provided in (H): ~~\$0.25~~ per sheet;

✓ 24 (3)(B) microfiche: ~~\$1.00 per card;~~

✓ 25 (3)(C) audio tape: ~~\$10.00 per tape;~~

✓ 26 (3)(D) video tape: ~~\$15.00 per tape;~~

✓ 27 (3)(E) floppy disk or compact disk other than of court hearings: ~~\$10.00 per disk;~~

✓ 28 (3)(F) electronic copy of court reporter stenographic text: ~~\$25.00 for each one-half day of~~

29 testimony or part thereof;

10¢
25¢
\$2.00
\$5.00

\$1.00 floppy
\$2.50 CD

\$5.00

1 (3)(G) electronic copy of audio record or video record of court proceeding: \$10.00 for each
2 one-half day of testimony or part thereof; and

3 (3)(H) pre-printed forms and associated information: an amount for each packet established
4 by the state court administrator.

5 (4) Mailing. The fee for mailing is the actual cost. The fee for mailing shall include necessary
6 transmittal between courts or offices for which a public or private carrier is used ~~\$3.00~~ actual cost

7 (5) Personnel time. There is no fee for personnel time to copy the record of a court
8 proceeding. There is no fee for the first 15 minutes of personnel time. The fee for time beyond
9 the first 15 minutes is charged in 15 minute increments for any part thereof. The fee for
10 personnel time is charged at the following rates for the least expensive group capable of
11 providing the record, information, or service:

12	(5)(A) clerical assistant: \$16.00 per hour	Wage rate	hour
13	(5)(B) technician: \$22.00 per hour		
14	(5)(C) senior clerical: \$21.00 per hour		
15	(5)(D) programmer/analyst: \$32.00 per hour		
16	(5)(E) manager: \$27.00 per hour		

17 (5)(F) consultant: actual cost as billed by the consultant.

18 (6) Public on-line services. The fee for public on-line services shall be as follows:

19 (6)(A) a set-up fee of \$25.00;

20 (6)(B) a subscription fee of ~~\$20.00 per month for any portion of a calendar month~~, and

21 ~~(6)(C)~~ \$.10 per minute of connect-time greater than 120 minutes during a billing cycle.

22 (7) No interference. Records, information, and services shall be provided at a time and in a
23 manner that does not interfere with the regular business of the courts. The Administrative Office
24 of the Courts may disconnect a user of public on-line services whose use interferes with
25 computer performance or access by other users. The Administrative Office of the Courts may
26 establish reasonable time limits per access call to promote access by a variety of users.

27 (8) Waiver of fees.

28 (8)(A) Fees established by this rule shall be waived for:

29 (8)(A)(i) any government entity required by law to obtain court records; or

30 (8)(A)(ii) any person who is the subject of the record and who is impecunious.

(8)(A)(iii) any person accused of any offense prosecuted under any criminal statutes, rules, or ordinances of this state up to time of final judgment (which includes up to 4 completion of any appeals, state or federal). Record of the normal value of services shall be kept in the event reimbursement is proper after final judgment.

ment



1 (8)(B) Fees established by this rule may be waived for ^{anyone} ~~a student~~ engaged in research for an
2 academic purpose.



3 (8)(C) Fees established by this rule may be waived for a governmental entity if the fee is
4 ~~minimal~~ **less than \$20.00 in one instance.**

5 **Rule 4-801. Transfer of small claims cases.**

6 Intent:

7 To establish a procedure for the transfer of small claims cases to the appropriate justice court.

8 Applicability:

9 This rule shall apply to the courts of record and not of record.

10 Statement of the Rule:

11 (1) Small claims actions filed in a court of record may be assigned to a judge pro tempore, if
12 one has been appointed under Rule 11-202 to adjudicate small claims actions. If no judge pro
13 tempore has been appointed to adjudicate small claims actions, the case may be transferred to a
14 justice court with jurisdiction under Utah Code Section 78-5-104.

15 (2) At the time of the transfer, the court shall also transfer the filing fee, less the portion
16 dedicated to the judges' retirement trust fund.

17 (3) If there is no justice court with territorial jurisdiction of the small claims action and no
18 judge pro tempore, a district judge of the court shall hear and determine the action. ~~The appeal~~
19 ~~shall be as provided in Rule 4-803.~~

20 **Rule 11-101. Supreme Court's rulemaking process.**

21 Intent:

22 To establish a procedure for the adoption, modification and repeal of rules of procedure and
23 evidence, and rules governing the practice of law.

24 Applicability:



25 This rule shall apply to the ^(including the Utah Judicial Council) Judiciary, the Utah State Bar, the Supreme Court's Advisory
26 Rule Committees, the Supreme Court's Board of Continuing Legal Education, the Supreme
27 Court's Ethics and Discipline Committee, and all other individuals and agencies entities
28 participating in the rulemaking process.

29 Statement of the Rule:

30 (1) ~~Creation and composition of Advisory Committees.~~

TAB 4

MEMORANDUM

TO: Judicial Council

FROM: Richard Schwermer, Assistant State Court Administrator

DATE: January 12, 2004

RE: 2004 CERTIFICATION OF MUNICIPAL JUSTICE COURTS

The Standards Committee met on November 14, 2003, to review the applications for recertification of municipal justice courts. Based on those applications and follow-up information, the committee recommends certification of the following justice courts with no waivers or conditions:

Alpine, Big Water, Blanding, Bluffdale, Centerville, Clarkston, Clearfield, Clinton, Delta, Draper, Enterprise, Ephraim, Farr West, Fillmore, Fountain Green, Fruit Heights, Genola, Goshen, Grantsville, Gunnison, Harrisville, Heber, Helper, Highland, Hildale, Holladay, Huntsville, Hurricane, Hyde Park, Hyrum, Kanab, Levan, Lindon, Logan, Manti, Mantua, Mapleton, Midvale, Morgan, Moroni, Mount Pleasant, Murray, Nephi, Newton, North Logan, North Ogden, North Salt Lake, Orderville, Payson, Perry, Plain City, Pleasant Grove, Pleasant View, Providence, Richmond, Riverdale, Riverton, Salt Lake, Santa Clara, Santaquin, Smithfield, Springville, Stockton, Sunset, Syracuse, Taylorsville, Washington, Wellington, Wellsville, Wendover, West Jordan and Woods Cross.

The Standards Committee recommends that the Judicial Council certify the following justice courts with a one-year extension of compliance with the requirement of a six-inch riser:

Alta, Escalante, Fairview, Spring City and Washington Terrace.

The Standards Committee recommends to the Judicial Council certification of the following courts with waivers or other conditions as outlined below:

Aurora: The committee recommends a waiver of the requirement for separate tables for plaintiff and defendants. Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

East Carbon: The committee recommends an extension of six months until July 1, 2004, to submit a security plan.

Garland: The committee recommends certification with one-year extensions for compliance with the requirement of a six-inch riser and the requirement of separate tables for defendants and plaintiffs.

Ivins: *To be discussed.*

Lehi: *To be discussed.*

Lewiston: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Monticello: The committee recommends certification with a one-year extension of compliance with the requirement of a six-inch riser. Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Naples: The committee recommends certification with a one-year extension of compliance with the requirement of a six-inch riser. Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Nibley: The committee recommends a waiver of the requirement for separate tables for plaintiff and defendants. Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Panguitch: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Parowan: The committee recommends certification with a waiver of the requirement for separate tables for plaintiff and defendants.

Roy: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Salina: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Sandy: Recommendation for certification with extensions for compliance until July 1, 2005, for the requirements of the jury deliberation room, victim/witness room and other facility configuration issues.

South Jordan: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

South Ogden: Recommendation for certification is contingent upon office space being provided for the judge.

South Salt Lake: Recommendation for certification with a waiver of the courtroom configuration relative to security.

South Weber: Recommendation for certification is contingent upon acquisition of appropriate legal reference materials. The committee recommends a waiver as to the frequency of court being held.

Tremonton: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Uintah: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

Vernal: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

West Bountiful: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

West Valley: *To be discussed.*

Willard: Recommendation for certification is contingent upon the court's ability to report dispositions electronically.

September 23, 2003

TO: Bob Butler
FROM: Judy Gubler *Judy*
SUBJECT: Employee Approvals/Accountability

I want to clarify the process for accountability for Cheri Steele.

Cheri was placed under your direct supervision. She is accountable to you for hours worked, performance standards, vacations, training, etc.

While Cheri works with Jim Judd in his role as Justice Court Judge, he is not her direct supervisor. Jim is not an employee as such, and Cheri's performance and accountability, for now, is to you. If the Justice Court needs Cheri's time, that should be arranged through you – at least in general terms. In general, the budget reflects a 50/50 split of her time between Public Works and Justice Court.

Specifically, if Cheri is going to attend training for the Court Clerk's position that should be reviewed and approved by you. Attached is the only documentation I could find on the training that Cheri is currently attending – two requests for payments signed by Cheri as "Department Head". You are the department head and should sign as such. In addition, please be sure that training details, dates, etc. are attached.

I saw on the morning of 9/22/03 the attached memo which is unsigned, requesting the Marilyn handle any court related matters. This request, if noted earlier, may have led to a discussion with you regarding this untimely request. As you know, Marilyn is deeply involved in the audit this week and that places a priority on her time. While each department is required to support other departments, the timing of this request for additional time from Marilyn was unfortunate.

I also noted on the most recent time card for Cheri (attached) that her work hours are not what you indicated in your memo that they should be: 8 A.M. to 5 P.M. with lunch between 12 noon and 1 P.M. While she may have to run errands at times, those should be noted and approved by you on her time card. When Cheri's hours are not as you have directed, please approve on her time card with an explanation. While some variation are certainly acceptable, when Cheri is not in her office on a fairly predictable basis additional phone calls, questions, and time is required by other staff.

Please make sure that Cheri understands and complies with the requirements of her job, including those contained in this memo.

Thank you for your attention to this matter.

Cc: Jim Judd ✓

*Jim - Please let me know if you have any questions on this.
Thanks, Judy*

October 21, 2003

To: Bob Butler

From: Judy Gubler



RE: Follow-up to 10/16/03 meeting with Cheri Steele

On October 16, 2003 in the afternoon I asked to speak with you and Cheri in my office. I asked Cheri about Jim Judd's allegations that Cheri is in a "hostile work environment", was told to find another job, and is targeted to be driven out of her job. Cheri responded by becoming very angry and yelled that I am trying to force her out. Cheri stated, among other things, that she feels that I have "favorites", that everyone is unhappy, and that she does not trust me.

While I invited honest feedback from Cheri, I did not invite or incite the yelling and aggressive behavior. As you know, Cheri, at one point, screamed that she was going to see an attorney and left my office. She later returned and continued yelling for some time. Eventually I was able to calm her and hopefully she heard at least some of the following:

1. There are some deficiencies in her work, primarily writing, typing, and basic clerical skills and she is too often involved in personal discussions
2. There is no intent to remove Cheri from employment with Ivins City – there has been no disciplinary documentation or conversation
3. Accountability is expected – she is responsible to you, her supervisor, for her time, her training, her behavior, and all aspects of her performance, but that does not mean that I want to terminate her employment

Cheri was so angry that I don't believe she understood what I was saying and I hope you will repeat and continue to clarify my position. Basically, you are her supervisor, and I expect you to hold her accountable.

While Cheri's behavior was insubordinate and totally unprofessional and unacceptable for any employee of any organization, and, in fact, cause for termination, I recommend that you counsel Cheri regarding the seriousness of her behavior, place this memo and your memo to her in her file, but not take further disciplinary action at this time. I expect an acknowledgement from her that her actions are unacceptable, that she understands that she must be accountable to you, that she must deal with you on her job performance (not other staff or the public) and, further, I expect an apology for her out-of-control behavior directed at me. In addition, Cheri must understand her continued involvement of other staff, contract staff, Councilmembers, and members of the public in her performance issues is not only counterproductive to improving her performance, but are again insubordination and are cause for termination. You are her supervisor and she is accountable to you for her performance. She has no other supervisor. Her performance issues should be between you and her only.

Cheri has difficulty performing some of the basic clerical functions required of her job. I have seen numerous examples of very poor typing and writing skills. You and I have often discussed her lack of clerical abilities and the need for improvement. I discussed the need to improve clerical skills with her during an evaluation on 1/4/02. You discussed the need to improve clerical skills with her during an evaluation on 12/5/02. In order to assess Cheri's clerical abilities and encourage progress and improvement, the following tests could be given:

Typing test
Microsoft Word 2000 test
Data Entry test

These tests can be taken at the Workforce Services Building on 2nd North and 4th East in St. George in the Job Connection room. No appointment is required. The purpose of these tests is to assess, with Cheri, Cheri's abilities, determine where she needs help, and establish a program that will bring these skills to an acceptable level. There are many opportunities for Cheri to gain the necessary skills. Opportunities have been offered to Cheri before, but not well received. I hope this opportunity will be better received.

I am hopeful that you can help Cheri understand accountability, professional conduct, and guide her appropriately and facilitate her growth. It was clear that Cheri was not as aware as she should be of her lack of abilities and I hope you will communicate clearly your expectations and needs. You can no longer do most of your own clerical work, as it will adversely affect your performance.

I hope this helps resolve this difficult issue. Thank you for all you do.

DURHAM
JONES &
PINEGAR

FORMERLY SNOW NUFFER

JEFFREY N. STARKEY
jstarkey@djplaw.com

November 14, 2003

Honorable James D. Judd
Justice of the Peace, Ivins City
Ivins City Justice Court
55 North Main Street
Ivins, Utah 84738

RE: Clarification of Supervision of Justice Court Clerical Personnel

Dear Judge Judd:

I have been asked by the Ivins City Council to respond to an issue raised in your memorandum to the City Council dated October 10, 2003 ("Memo").

Your Memo was a response to a memorandum from the City Manager, Judy Gubler, to the Public Works Director, Bob Butler, concerning supervision and accountability of Cheri Steele ("Cheri"). Cheri is currently filling the positions as Justice Court Clerk and Public Works secretary for Ivins City. Although the City Manager believed that the Public Works Director was clearly aware of his specific and overall personnel supervisory role and responsibility over Cheri, because of the duo positions and issues that had been raised, she felt clarifying supervision was necessary.

Despite what may have been your sincere understanding that the Justice Court Judge acted as the direct supervisor of the Court Clerk, under Utah law and Ivins City personnel policy, the Justice Court Judge is not responsible for selection, supervision or discipline of court clerical personnel.

Utah Code Annotated Section 78-5-110(2) (2003), **Compensation and Expenses—[Justice Court] Clerical Personnel**, reads as follows:

(2) The selection, supervision, and discipline of court clerical personnel shall be in accordance with local government personnel policies.

November 14, 2003

In fact, the comments to this subsection indicate that prior to May 5, 2003, language was included which could have made local personnel policies for court clerical personnel subject to the concurrence of the justice court judge. Even such concurrence is no longer included in the statute. (See attached copy of U.C.A. Section 78-5-110, with notes.)

The current Ivins City personnel policy pertaining to this issue is well described in the City Manager's memo to the Public Works Director. (After all, that was the intent of the memo. To clarify any misunderstanding about the policy.) As the Public Works Supervisor, Bob Butler is Cheri's direct supervisor. He is responsible for supervision and the initial point of any discipline pertaining to Cheri as an Ivins City employee. The City has assigned Cheri to act as the Court Clerk, but her supervisor remains Bob Butler.

Currently Bob Butler is, and at all times referred to in the City Manager's memo was, Cheri's Department Head and supervisor. As such, all personnel matters relating to Cheri must be initiated through Bob Butler.¹

I hope this letter resolves any lingering questions pertaining to supervision, discipline, selection and assignment responsibilities for Cheri Steele. I know that the City Manager--who has the ultimate responsibility and authority to appoint, suspend or remove City employees--has offered, and remains willing, to discuss any issues that may remain regarding this matter with you and/or the Public Works Director.

Very truly yours,

DURHAM JONES & PINEGAR



Jeffrey N. Starkey

Attachment

Cc: Judy Gubler, City Manager
Bob Butler, Public Works Director

¹ Ivins City has a clearly defined process available to employees by State law and the Ivins personnel manual, if the affected employee contests an action taken by a supervisor.

TOWN OF IVINS
Job Description

TITLE:	Justice Court Judge	GRADE: 15
DEPARTMENT:	Administration	
DIVISION:	Justice Court	REVISED: 4/1997

GENERAL PURPOSE

Serves as the Town's Justice Judge in handling various criminal and traffic matters and other legal situations and complaints that arise within the jurisdiction of the Town of Ivins.

SUPERVISION RECEIVED

Works under the broad policy guidance and direction of the Mayor and Town Council within the legal framework established by state statute and local ordinances.

SUPERVISION EXERCISED

Provides general supervision to Court Clerk(s).

ESSENTIAL FUNCTIONS

Attends and participates in judicial programs to maintain thorough knowledge of the law, and serves as a general resource to the community on judicial activities and actions; performs other administrative duties related to management of the town court.

Recommends fiscal budget related to the court, collects details and analyzes pricing information related to office equipment, supplies, and personnel; coordinates delivery of judicial program with town administration.

Supervises court clerks to insure that the court operates within statutory law and administrative guidelines; recommends and implements office policies and standard operating procedures.

Conducts public arraignment sessions, trials, pre-trials, and other specific hearings (suppression, contempt, bail, etc.) as they relate to specific cases; review specific cases prior to hearings on those cases.

Issues warrants, summons, subpoenas, commitments and all other compulsory processes to insure compliance with court orders.

Serves as committing magistrate for the purpose of setting bail on all criminal cases within proper jurisdiction; presides over and adjudicates all cases involving violations of ordinances, all class B and C misdemeanors and all civil cases involving \$1,000 or less.

Handles arraignment proceedings within 72 hours for individuals who cannot make bail.

Completes annual required in-service training for justice court judges.

Performs related duties as required.

MINIMUM QUALIFICATIONS

1. Education and Experience:
 - A. Graduation from high school or equivalent; AND
 - B. Sufficient knowledge to demonstrate a working knowledge of the legal environment associated with the office of Town Judge; OR
 - C. An equivalent combination of education and experience.
2. Knowledge, Skills, and Abilities:

Working knowledge of local Ordinances, laws and legal objectives; working knowledge of practices and procedures associated with administration of the office of Town Judge; working knowledge of general office management principles.

Ability to interpret the law and apply penalties in an impartial manner, ability to communicate effectively, verbally and in writing, ability to develop effective working relationships with coworkers, elected officials, subordinates, enforcement personnel, and the public.

3. Special Qualifications:

Residency within the Town of Ivins.

Certification through the State of Utah Court Administrator's Office.

Must be bondable.

4. Work Environment:

Position is performed in a typical office setting with appropriate climate controls. Tasks require a variety of physical activities, not generally involving muscular strain, such as walking, standing, stooping, sitting, reaching, talking, hearing and seeing. Common eye, hand, and finger dexterity exist. Mental application utilizes memory for details, verbal instructions, emotional stability and discriminate thinking. Stress inherent to the job is due to demand for quality and accuracy.

TOWN OF IVINS

Job Description

TITLE:	Court Clerk	GRADE: 13
DEPARTMENT:	Administration	
DIVISION:	Administration	REVISED: 4/1997

GENERAL PURPOSE

Performs a variety of working level, complex clerical duties designed to expedite the functions, actions, judgments, processes, and procedures associated with the office of the Town Justice Court.
Performs complex clerical duties related to receiving payments and processing building permits and related fees.
Acts as a notary public.

SUPERVISION RECEIVED

Works under the close supervision of the Town Justice Judge. Works under the general supervision of the Administrative Services Director.

SUPERVISION EXERCISED

May provide close to general supervision to assigned clerical support personnel.

ESSENTIAL FUNCTIONS

Performs clerical tasks; receives, logs and files incoming citations and complaints; maintains cross reference recovery system; obtains defendant histories; opens mail, sorts and processes; determines fines based on fine schedule or bail if plea is not guilty; attaches appearance by mail to citation; keeps track of payments made through the mail.

Receives telephone calls and refers to appropriate person; answers questions about trial or hearing schedules, and assists public in resolving questions regarding various civil processes and papers; provides information about court procedures and schedules; sets appointments.

Issues arrest and bench warrants; type warrant information, order to show cause, failure to appear and refers to Judge for signature; sends copy to Police Department or enforcement agency; notifies county or other jurisdiction if someone is arrested; computer enters case information.

Maintains fiscal records of the court as needed and required by law; writes receipts for moneys mailed or paid in person; posts payments decisions and other information in computerized ledger-, maintains account of checks returned.

Reviews citation abstracts; monitors payment records of defendants to assure conformity to judgments and payment schedules; prepares pleadings for failure to appear, utilizes legal processes such as late letters, late notices, summons, bench warrants, warrants of arrest, orders to show cause, and information; accepts money for bail forfeitures, fines; issues receipts.

Maintains calendar of events such as trials, arraignments, sentencing, hearings, and motions; notifies or subpoenas involved parties in a timely manner; informs judge of docket status and schedule; prepares notices of trial and pre-trial; obtains potential juror list and processes according to court procedures.

Maintains record of court proceedings; receives and docket notices of appeal; types judgments, abstracts of judgment, supplemental motions, orders to show cause, garnishments and executions.

Receives and processes requests for small claims proceedings; prepares affidavits and orders; explains procedures, sets hearings, collects fees and initiates docketing; compiles reports showing all court activity for the FBI, State Bureau of Criminal Identification, State Court Administrator, State Driver License Division, and the Town of Ivins to facilitate case load analysis.

Maintains liaison and communications with agencies associated with the criminal justice system such as police department warrants divisions, bail bondsmen, prosecuting attorney's office, private councilors and public defenders, adult probation, town courts, and town offices.

Provides clerical support to the building department; receives and processes building permit requests and applications; receives payments and issues receipts; creates files; responds to questions related to impact fees, water connections and related fees; monitors availability of water connections; prepares various reports. Performs general office functions and daily processes in assisting the public; answers telephones, takes messages, receives and receipts payments for fees and services; receives and distributes mail; performs general secretarial duties such as typing minutes, letters, memos and other correspondence; types various reports, memoranda, forms, abstracts and documents for the court; provides backup to town Treasurer. May cross train with Town Recorder to assist in related duties. Performs related duties as required.

MINIMUM QUALIFICATIONS

1. Education and Experience:
 - A. Graduation from high school, plus two (2) years of specialized training provided through government workshops, seminars and approved academic curriculum. AND
 - B. Three (3) years of progressively responsible experience directly related to above duties. OR
 - C. An equivalent combination of education or experience.
2. Knowledge, Skills, and Abilities:

Working knowledge of complex and technical filing system related to the court; filing procedures related to a variety of legal documents; civil and criminal processes; legal terminology, trial procedures and court system processes; general office management procedures; modern clerical techniques and procedures; telephone operations and receptionist functions; basic accounting and bookkeeping; office methods and equipment; complex filing systems and computerized applications for records filing.

Skill in operating a variety of office machines.

Ability to perform complex clerical work requiring the use of independent judgment; keep accurate records; communicate effectively verbally and in writing; work in a environment requiring considerable accuracy, organization and timely preparation of materials; interpret and follow oral and written instructions; accurately record the text of a trial and work under stress; maintain an effective working relationships with the public, fellow workers and public officials.

Typing skill and keyboard skills required.

Ability to follow complex instructions; work under stressful working conditions created by strict time frames; learn legal and court document formats; learn criminal and civil law as it applies to court processes; manage angry individuals and unpleasant situations; communicate effectively, verbally and in writing; develop effective working relationships with co-workers, appointed officials, professionals, and the public.
3. Special Qualifications:

Must be bondable. Must qualify to be a Notary Public; must be eligible to receive security clearance for access to State computer (BCI, DLD, NCIC, MVRG, INLETS). Must successfully complete annual court training provided through the office of the State Courts.
4. Work Environment: Position is performed in a typical office setting with appropriate climate controls. Tasks require a variety of physical activities, not generally involving muscular strain, such as walking, standing, stooping, sitting, reaching, talking, hearing and seeing. Common eye, hand, and finger dexterity exists. Mental application utilizes memory for details, verbal instructions, emotional stability and discriminating thinking.



Pioneers Past and Present

153 North 100 East • P.O. Box 255 • Lehi, Utah 84043 - 1895
768-7100 • Fax: 768-7101

December 9, 2003

Richard H. Schwermer
Assistant State Court Administrator
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Dear Mr. Schwermer,

The Mayor forwarded your letter of December 3 to me for response. We feel that we comply substantially with all material requirements for recertification of our Justice Court. Judge Pearce has worked between 2 and 3 days per week for the past four years. As she has requested from time to time we have increased both her part-time, full-time and temporary staff budgets without hesitation. It is not expected that over the next several years the level of activity at the court would increase substantially and we request that you review the requirement for a full time Judge against the actual experiences we are having in the Court. As you know, several months ago significant changes were made in the way traffic citations were being handled by the court. These changes have resulted in a reduction in the waiting time for cases to be heard by the court and this trend is expected to continue according to our full time court administrator, Garry Sampson. Feel free to contact him directly regarding this matter if you wish.

I am certain that you are aware of our unflagging commitment to maintain a court system of unimpeachable integrity. We have added staff when it was appropriate to do so and will do so in the future. We ask only that you consider our request based on our actual experience. A full-time Justice is not warranted and will add needless cost to our already burdened city budget. Thank you for your consideration.

Sincerely,

Edward M. Collins
City Administrator

TAB 5

TAB 6

Utah Judicial Council Resolution

Re: The Honorable Floyd LaMar Nielsen

Whereas, the passing of the Honorable Floyd Nielsen, Justice Court Judge, occurred on January 6, 2004, and

Whereas, Judge Nielsen served with distinction as a Justice Court Judge for 21 years in Duchesne County, and

Whereas, Judge Nielsen worked to enhance relationships between the judiciary and the community of Roosevelt through outreach activities with local schools, and

Whereas, Judge Nielsen was a well respected, distinguished adjudicator, and

Whereas, Judge Nielsen contributed to the community of Roosevelt through his dedicated service as a farmer for most of his life,

Now Therefore, be it resolved that the Utah Judicial Council, on behalf of the entire Utah Judiciary, individually and collectively, adopts this resolution as an expression of tribute and appreciation of Judge Floyd Nielsen. Our sympathy and condolences are offered to his wife Susan, and other members of the family.

Dated this 26th Day of January, 2004

Christine M. Durham
Chief Justice, Utah Supreme Court
Chair, Utah Judicial Council

**SUMMARY OF POSITIONS
TAKEN BY THE LIAISON COMMITTEE
(As of January 23, 2004)**

H.B. 54 - VIDEOTAPE OF MINORS: (Judge Andrus)

Committee's Position: If this legislation applies beyond DCFS interviews, the committee opposes the legislation. If it applies only to DCFS interviews, the committee takes no position on the legislation. If the language is amended, the committee may review the legislation at a future meeting before taking a position.

Status: Amended as we requested, doesn't apply to us.

**H.B. 197 - LIMIT ON CHILD WELFARE RECOMMENDATIONS AND RULINGS:
(Judge Andrus)**

Committee's Position: The committee opposes the current language on line 45 of the legislation, specifically with the language of "or engages in particular religious practices." The committee would take no position if the language of "or engages in particular religious practices" is deleted.

Status: Amended as we requested.

H.B. 61 - CHILD WELFARE INVESTIGATIONS: (Richard Schwermer)

Committee's Position: Based on the recommendation of the Board of Juvenile Court Judges, the committee opposes the legislation.

Status: Hasn't come out of Rules. Spoke with sponsor.

H.B. 198 - CHILD WELFARE COURT REPORTS: (Richard Schwermer)

Committee's Position: The committee opposes this legislation because it amends the Rules of Juvenile Procedure without going through the rule-making process.

Status: Substitute bill to be introduced, but it still contains procedure.

January 22, 2004

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council
c/o Richard Schwermer, Assistant Court Administrator
Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Salt Lake City, Utah 84114-0241

RE: Recertification of West Valley City Justice Court

Dear Justice Durham:

As you are aware, recertification of the West Valley City Justice Court is currently pending before the Judicial Council. Last week, West Valley City received a copy of the December 23, 2003 opinion of Brent Johnson, General Counsel to the Administrative Office of the Courts. In that opinion, Mr. Johnson found the West Valley Justice Court's four-day operating schedule to be out of compliance with the applicable requirements.

It is the intent of West Valley City to bring our Justice Court into compliance with all applicable rules and regulations. However, under the circumstances the City believes that recertification of the Court and a temporary waiver of the Friday-opening requirement is reasonable. This request is made for primarily two reasons. First, the City operates on a July 1 – June 30 fiscal year. In our current City budget, money has been allocated to operate the Justice Court on a four-day work schedule. Converting to a five day per week schedule will negatively impact the Court's budget, through both increased personnel costs and outside costs such as bailiff services. Money for those increased costs is not currently budgeted. A waiver from the Friday-opening rule until the start of the City's next fiscal year on July 1, 2004 would allow the City to adequately budget for such costs.

The second reason for requesting a waiver is the short notice that the City has received regarding this change. Up until the receipt of Mr. Johnson's opinion last week,

the City was operating under the good faith belief that it was fully in compliance with all requirements. If the City is not granted a waiver, it will be required to restructure its entire operation within essentially a two-week period. Obviously this would create a hardship for our Justice Court employees who would have to change their school, daycare, or other arrangements on very short notice.

Based the foregoing, West Valley City respectfully requests the Judicial Council grant the City a waiver to continue to operate its four-day work schedule until July 1, 2004. During the waiver period, the City would be happy to work with Judicial Council and the Administrative Office of the Courts to address any specific concerns related to the Friday closure, such as having judges on call to address bail issues.

Please feel free to call me if you require any additional information or would like to discuss this proposal in greater detail.

Sincerely,

Wayne T. Pyle
City Manager

cc: Dennis J. Nordfelt, Mayor
Richard Catten, Deputy City Attorney
Herb Katz, Justice Court Administrator

ec: Richard Schwermer, Assistant Court Administrator