

**JUDICIAL COUNCIL
AGENDA**

January 27, 1997

Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, Utah 84102
Council Room

Chief Justice Michael D. Zimmerman, Presiding

<u>Item:</u>	<u>Time:</u>	<u>Subject:</u>	<u>Presenter:</u>
1.	8:30 a.m.	Continental Breakfast	
2.	9:00 a.m.	Welcome/Approval of Minutes (Tab 1 - December 13, 1996)	Chief Justice Zimmerman
3.	9:10 a.m.	Introduction & Comments from James Thomas <i>Vice President, National Center for State Courts</i>	Daniel J. Becker
Continuing Business:			
4.	9:25 a.m.	Report from the Chair	Chief Justice Zimmerman
5.	9:45 a.m.	Judicial Council Sub-Committee Reports (Tab 2)	Chief Justice Zimmerman Management Committee Hon. Michael K. Burton Policy and Planning Committee Hon. Rodney Page Liaison Committee
6.	10:10 a.m.	State Court Administrator's Report	Daniel J. Becker
7.	10:30 a.m.	Break	
8.	10:45 a.m.	Report of the Ad Hoc Task Force on Video Recording in the Courtroom (Tab 3) (action)	Hon. Ronald E. Nehring Timothy Shea

- 9. 11:15 a.m. Castledale - Primary Site Daniel J. Becker
(Tab 4 - action)
- 10. (Lunch) 11:30 p.m. Legislation Richard H. Schwermer
(Budget - Capital Facilities D. Mark Jones
Judicial Council Legislation &
External Legislation)
(Tab 5)
- 11. 1:00 p.m. Interim Report from Ad Hoc Committee Hon. W. Brent West
On Collections & Warrants
(Tab 6 - action)
- 12. 1:30 p.m. Executive Session Chief Justice Zimmerman

Adjourn

Information:

- 13. News articles
(Tab 7)

**Consent Calendar:
(tab 8)**

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

- 1. Approval of Amendments to Personnel Policy and Procedures Barbara Hanson
- 2. Ad Hoc Committee on Commissioner Conduct Holly M. Bullen
Re-appointment of Frederick Green
- 3. Grant in First District Juvenile Court Holly M. Bullen
- 4. Appointments to Standing Committee on Justice Richard H. Schwermer
Court Standards: Judge Pat McRae & Craig R. Madsen
- 5. Judicial Law Clerk Human Resources Policies Update Barbara Hanson
- 6. Court Interpreter Advisory Panel/Approval of Composition Holly M. Bullen
of the Advisory Panel

Ongoing Agenda Items:

1. New Justice Court Application, Town of Leeds (March)

Next Judicial Council Meeting:

February 19, 1997

Administrative Office

Meeting Norms

- Questions and discussion by Council should follow the speakers complete presentation; speakers should be notified to divide their time, 50% remarks and 50 % discussion.
- Outside speakers should be introduced by Chair, with a brief background to put item in context. Staff to work with outside speakers in preparing orientation material for Chair.
- Council Members should make a practice of providing advance notification of absences or late arrivals. Administrative office staff should place phone calls to Council Members when they are absent without notification after meeting begins.
- Chair's position on agenda item should follow, rather than precede Council discussion.

JUDICIAL COUNCIL
MINUTES

December 13, 1996

Utah Law and Justice Center
645 South 200 East, Suite 311
Salt Lake City, Utah

Chief Justice Michael D. Zimmerman, Presiding

Members Present:

Chief Justice Michael D. Zimmerman
Hon. Pamela T. Greenwood
Hon. Joseph Jackson
Hon. Anne M. Stirba
Hon. Robert T. Braithwaite
Hon. Michael K. Burton
Hon. Anthony Schofield
Hon. Rodney S. Page
Hon. Stephen A. Van Dyke
Hon. Jerald L. Jensen
James Jenkins, Esq.
Hon. Kent Nielsen
Hon. John L. Sandberg
Hon. Leonard H. Russon

Staff Present:

Daniel J. Becker
Myron K. March
Richard H. Schwermer
Timothy Shea
Holly M. Bullen
Jan Thompson
Cheryll May
Debbie Christiansen
D. Mark Jones
Ronald W. Gibson
Cindy Williamson

Guests:

Justice Christine Durham
Lisa Watts-Baskin, Esq.
Dale Kimball, Esq.
Edward McConkie
Hon. Robin Reese
Hon. Judith Atherton
Hon. David Mower
Hon. Leslie Lewis
Jeff Hunt
Paul Murphy
Kerry Birmingham
Chip Parkinson

Welcome/Approval of Minutes:

Chief Justice Zimmerman welcomed guests, members and staff to the meeting.

The following changes were made to the minutes of November 25, 1996:

Page 6, paragraph four, will read as follows: A motion was made by Judge Burton to accept the proposed seven point plan of the Justice Court Board, direct staff to proceed with the appropriate legislation, roll jurisdiction back to the status prior to July, 1996, implement no significant changes in district court case load, and that the legislation intent language direct the judiciary to conduct a study. Furthermore, the legislation should include the four goals that are contained in the Justice Court Board proposal. The motion was seconded by Judge Nielsen. The motion carried unanimously with the caveat that it is referred to the Liaison Committee for approval of actual drafting.

Page 9, paragraph three, last sentence, will read as follows: The motion carried with one opposing vote and one abstaining vote.

Motion:

A motion was made by Judge Page to approve the minutes of November 25, 1996, as amended. The motion was seconded by Judge Greenwood. The motion carried unanimously.

Report from Chair:

On December 17, 1996, Chief Justice Zimmerman and Dan Becker are meeting with Senate President Lane Beattie, Bob Linnell, and Tom Hardy to explain the judiciary's budget process.

Judge Stirba addressed the long term effects of budget priorities and suggested that a task force be formed to address judicial caseloads statewide. Chief Justice Zimmerman said this proposal would be proper for consideration by the Policy and Planning Committee.

Motion:

A motion was made by Judge Jackson to authorize Chief Justice Zimmerman and Dan Becker to negotiate as necessary to address the needs of the judiciary as a whole. The motion was seconded by Mr. Jenkins. The motion carried unanimously.

Motion:

A motion was made by Judge Jackson that the Policy and Planning Committee deliberate about the critical needs of the district courts during next year's planning session. The motion was seconded by Judge Stirba. The motion carried with one opposing vote.

Dan Becker explained that the recent release of the Governor's budget is only the beginning. The Governor's outlook on the budget is more optimistic than earlier this year. It would be premature to address next year's budget right now.

Judicial Council Sub-Committee Reports:

Management Committee Report:

Chief Justice Zimmerman, Dan Becker and Myron March are going to meet with individuals from Salt Lake City to discuss the moratorium on the creation of additional justice courts.

Policy and Planning Committee Report:

Judge Burton indicated the most recent Policy and Planning Committee minutes are reflective of the last meeting.

However, Judge Burton requested direction from the Judicial Council on three matters. First, should the state of court commissioners be studied?

Motion:

A motion was made by Judge Jensen to refer the issue of the Commissioner Conduct Commission categorization to the Policy and Planning Committee for further study regarding whether or not to consider commissioners as employees or quasi-judicial members. The motion was seconded by Judge Greenwood and carried unanimously.

Second, Judge Burton questioned whether or not there should be five judicial nominees submitted to the Governor from the Fourth and Second Judicial Districts, since a recent rule change allowed the number to increase from three to five nominees in the Third District. Chief Justice Zimmerman indicated that 83% of the Utah State Bar practices in Salt Lake County and that practice percentage justifies the increased number of nominees in Salt Lake County only.

Motion:

A motion was made by Judge Van Dyke to refer this matter to the Policy and Planning

Committee for consideration of increasing the nominees to be sent to the Governor from three to five in both the Second and Fourth Districts. The motion was seconded by Judge Burton. The motion failed.

A question was raised regarding the practice of placing proposed rules and rule changes on the consent calendar of the Council. By doing so, individuals are of the opinion that the rules have limited exposure and that there is no opportunity for debate.

Motion:

A motion was made by James C. Jenkins to continue placing proposed rules and rules changes on the consent calendar with the caveat that any Council member may pull a rule from the consent calendar to discuss it during the Council meeting without telephoning staff at the Administrative Office of the Courts. The motion included a provision that the Policy and Planning Committee of the Council may place a rule upon the regular Council agenda for discussion if the committee deems it necessary. The motion was seconded by Judge Greenwood. The motion carried with nine in favor and four opposing votes.

Liaison Committee Report:

The Liaison Committee has not met recently. However, there are approximately 320 bills to consider for the Legislative Session.

Judicial Performance Update:

Dale Kimball, Esq., the chair of the Judicial Performance Evaluation Committee, presented recommended rule changes to the Judicial Council for consideration. The committee recommends that the Judicial Council consider proposed legislation which would report the actual score for each survey question rather than reporting scores in 5% increments. A change of this nature would affect Utah Code Section 20A-7-702.

Motion:

A motion was made by Judge Page to place the issue of survey scores and reporting increments on all court level conference agendas for full discussion by the judiciary and that Mr. Dale Kimball or his designee be present during those discussions. Additionally, the matter should be referred to all board levels for discussion and consideration. The motion was seconded by Judge Jackson and carried unanimously.

State Court Administrator's Report:

Dan Becker reported on the recently released Governor's budget for FY98. The total budget for the State of Utah has grown by approximately .8%. The court system has grown by

11.5%. Mr. Becker reviewed the general fund for FY98 with specificity. The general fund totals \$77,033,700. This amounts to an increase in the total base of 2.35%. A large portion of the increase is the funding of the Juvenile Justice Task Force recommendations

The Anti-Violence Substance Abuse Council (USA AV) will make a proposal to the Legislature to increase cigarette taxes and develop intent language for proposed allocation of the new money. USA AV has approved targeting "drug courts" to receive approximately \$678,000 if the new tax is approved.

Mr. Becker requested that an addendum be made to the Council's consent calendar today. There are three senior judges who need to be reappointed: Judge Raymond Uno, Judge Regnal Garff and Judge Kenneth Rigtrup. The Council approved the addendum to the consent calendar.

Follow-up to November 15th Workshop:

Mr. Becker copied the Council with a copy of workshop proposals and suggestions for follow through. The proposals include the following: a) provide for more broad-based participation on committees; b) reinforce the importance of the role of the presiding judge and the importance of local administration; c) provide all new employees with an orientation on the organization of our court system; d) provide outlets for suggestions and constructive criticism; e) improve awareness of items being addressed by the Council; and improve understanding and appreciation of roles between boards and the Council on an ongoing basis.

The suggestions aimed at moving forward on many of the proposals include: a) preparation of a report on current committee assignments; b) a listing of current judges who have expressed an interest in serving on a committee; c) a letter to all judges who have not expressed an interest in serving on a committee and encouragement of their participation; d) court level administrators meeting personally with new presiding judges; e) a workshop for all presiding judges; f) incorporate into new judge and employee training a specific curriculum; g) invitations to new judges to attend a Judicial Council meeting; h) staff visits by court administrators; i) ensure that local staff meetings are being held on a regular basis; j) E-mail suggestion box; k) begin sending Council agenda and minute to all judges and court executives by E-mail; l) and once each year, following the appointment of new council members, set aside time for an orientation of the new members.

Motion:

A motion was made by Judge Jackson to implement the recommendations proposed by Mr. Becker and that implementation of the recommendations be monitored on a quarterly basis by the Council. The motion was seconded by Judge Van Dyke and carried unanimously.

Law Library Committee Report:

The Law Library Committee is an ad-hoc committee of the Judicial Council chaired by Justice Christine M. Durham. Justice Durham presented a Law Libraries Inventory and recommendations to the Council for the disposition of the law library holdings. The recommendations include a total of eleven recommendations of which Justice Durham and the committee were of the opinion that numbers nine, ten and eleven were the most significant.

9. Postpone further consideration of the final disposition of excess sets and duplicative sets of books as provided in recommendation seven until the move into the Scott M. Matheson courthouse is completed and more experience of need and assessment of available space is made.

10. Authorize continuation of this committee for the purpose of completion of the final placement and disposition of the courts' library holdings in the Scott M. Matheson courthouse.

11. Create a broad-based Law Library User Group for the purposes of:
- a. Providing continuing oversight of the courts law libraries.
 - b) Develop proposed annual budget requests.
 - c) Recommend policies regarding check out procedures of books, acquisitions of new books, disposition of unneeded books, personnel, library hours, and long term planning.

The bids for the electronic law library have been disseminated, received and Utah Law and Disk has been chosen as the on-line CD service which will be used in the future. Utah will be the first state in the United States to have all three branches of government involved in a consolidated law library effort. The electronic law library will be promoted as separate legislation and will have a fiscal note of approximately \$90,000. If passed, the money will be given to the Board of Control, to be dispersed to the separate entities.

Justice Durham requested that the Judicial Council approve the recommendations of the Law Library Committee.

Motion:

A motion was made by Judge Burton to approve the recommendations of the Law Library Committee. The motion was seconded by Judge Sandberg. The motion carried unanimously.

Approval of the Juvenile Sentencing Matrix:

Edward McConkie, director of the Utah Sentencing Commission, was present and distributed the most recent copy of the Juvenile Sentencing Matrix. The matrix won the unanimous approval of the Juvenile Court Board this 13th day of December 1996. Mr. McConkie requested that the Council also approve the matrix.

Motion:

A motion was made by Judge Stirba to approve the Juvenile Sentencing Matrix. The motion was seconded and carried unanimously.

Changes in the Uniform Fine & Bail Schedule:

Judge Judith S.H. Atherton requested the deletion of the mandatory court appearance for minor traffic offenses. Judge Atherton indicated that the judge has minimal discretionary powers and is bound by the Fine and Bail Schedule. The appearance of defendants during these proceedings inundates court calendars.

After discussion it was determined that a Judicial Council rule change may be necessary where there is reference in the rule to "mandatory appearance."

Motion:

A motion was made by James Jenkins to refer the issue of deletion of the requirement of mandatory court appearances in some cases to the Policy and Planning Committee. The motion was seconded by Judge Sandberg and carried unanimously.

Associate Presiding Judge:

Judge Leslie A. Lewis, Third Judicial District Presiding Judge, requested the Council reconsider legislation which would provide that an associate presiding judge receive an annual stipend of \$1,000.00 in districts with 10 or more judges. Judge Lewis indicated that there are 28 judges in the Third Judicial District and that it is virtually impossible for a presiding judge to handle a full case load and also deal administratively with issues without the assistance of an associate presiding judge.

Next, the judge indicated the issue is that of fairness and compensation which there is a historical entitlement to.

In addition to the statements made by Judge Lewis, Judge Robin Reese, Associate Presiding Judge in the Third District, stated that the Third District does require additional assistance. The responsibilities within the district need to be shared, that it would be unbearable for one judge to handle.

Motion:

A motion was made by Judge Burton to suspend implementation of the Frederick Rule. The motion was seconded by Judge Stirba. The motion failed with five in favor and six opposed.

Judge Lewis and Judge Reese were excused from the table while the Council continued to discuss the merits of the request.

Motion:

A motion was made by Judge Van Dyke to support the request of Judges Lewis and Reese and that appropriate legislation be drafted to allow for the \$1,000 stipend for some associate presiding judges. The motion was seconded by Judge Stirba and carried with two opposing votes.

Chief Justice Zimmerman commented that \$1,000 did not adequately compensate presiding judges or the Chief Justice for their work and that it might be better to do away with it altogether. Further, that many members of the judiciary provide public service with compensation whatsoever. Nevertheless, he favored this Legislation because it merely continues limited compensation for those who were circuit court presiding judge prior to consolidation.

Justice Russon specifically stated that his vote in favor of the motion was based on statements by Chief Justice Zimmerman. Judges Greenwood and Sandberg and other members of the Judicial Council agreed and voted based on the merits of the request.

Judge Nielsen and Judge Jensen voted in opposition to the motion. Their opposing votes were based upon the issue of compensation for some administrative duties but not all.

Report of the Ad Hoc Task Force on Video Recording in the Courtroom/Final Report:

Justice Christine Durham, Judge David Mower, Timothy Shea and Jeff Hunt presented the final report of the Ad Hoc Task Force on Video Recording to the Council for their approval.

Justice Durham indicated that Mr. Jeff Hunt represents various media entities and the Society of Professional Journalists. She said that Mr. Hunt has been very helpful on the committee and thanked him for his efforts.

Mr. Hunt specifically requested that the Council consider the issue of a proposed rule which would prohibit the copying of tapes in the video overflow room in the Scott M. Matheson courthouse. Mr. Hunt went on to say that allowing the tapes to be copied by the media would reduce time spent by court personnel and would also reduce distractions in the courtroom itself.

Judge Mower and Tim Shea focused their discussion on specific language contained in the proposed rule change. Recently judges have voiced concern regarding judicial discretion on what will be copied by the media.

Paul Murphy and Kerry Birmingham addressed the Council and voiced their frustrations and concerns with what they view to be a limitation of access to the courts by the judiciary.

A suggestion was made that the rule be changed to permit a pilot program which would enhance access to the courts.

Motion:

A motion was made by James Jenkins that the Council schedule additional time in the future to discuss this issue in more detail and that consideration be given to the idea of a pilot program by means of proposed legislation. The motion was seconded by Judge Page. The motion carried unanimously.

“Frederick Rule”:

Tim Shea indicated that a question has been raised regarding the appropriateness of the “Frederick Rule” which prohibits Council voting while presenters are present at the Council table. After discussion, there was a suggestion that all procedures be made clear not only to the Council but to presenters as well, to clarify that presenters may remain in the room during voting, but must merely leave the Council table after their presentation, prior to voting.

Motion:

A motion was made by Judge Sandberg that meeting procedures are made clear to everyone by means of clarifying documentation. The motion was seconded by Judge Stirba and carried unanimously.

Other:

Ronald W. Gibson’s Retirement:

Chief Justice Zimmerman presented Ronald W. Gibson with a token of the Judicial Council’s appreciation for more than thirty devoted years of service to the judiciary. A formal open house to honor Mr. Gibson will be held on January 8, 1996, from 4:30 p.m. - 6:30 p.m. at the Supreme Court. Mr. Gibson indicated that it was an honor to be able to serve the judiciary and he appreciated the recognition of his colleagues.

Adjourn:

There being no further business, Chief Justice Zimmerman adjourned the meeting.

**MANAGEMENT COMMITTEE
MINUTES**

January 8, 1997

Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, Utah 84102

Council Room

Members Present:

Chief Justice Michael D. Zimmerman
Hon. Pamela T. Greenwood
Hon. Joseph Jackson
Hon. John Sandberg
Hon. Anne M. Stirba

Staff Present:

Daniel J. Becker
Myron K. March
D. Mark Jones
Brent Johnson
Tim Shea
Fred Jayne
Barbara Hanson
Heather Mackenzie-Campbell
Paul Sheffield
Richard Schwermer
Cindy Williamson

Welcome:

Chief Justice Zimmerman welcomed members and staff to the meeting.

Judicial Council Agenda/January 27, 1997:

The Judicial Council agenda for January 27, 1997, was discussed, changes suggested and implemented.

Report from Task Force on Racial and Ethnic Fairness:

Brent Johnson reported that task force membership composition has not been finalized.

Next, Mr. Johnson stated that no additional funding has been obtained. There is a pending request for funding before the Eckles Foundation. The largest share of the budget will be directed

toward hiring a part time director. Judge Jackson proposed itemization of contributions.

Court Administrator's Report:

Nelda Hollingsworth, First District Court Executive, has announced she will retire on February 1, 1997. Recruitment efforts for a new court executive in the First District are being undertaken by D. Mark Jones.

Dan Becker reported on an informational meeting with Roger Cutler, Salt Lake City attorney. Mr. Cutler was apprised of Council developments relating to justice courts and legislation being sponsored by the Council. Mr. Cutler was appreciative of the information and indicated he would inform interested parties.

On Saturday, January 11, 1997, David Nuffer and Toby Brown, are hosting a meeting on electronic law project efforts. Dan Becker will attend this meeting on behalf of the court system.

Castledale - Primary Site:

Effective January 1, 1997, administration of the District Court Clerk's Office in the Seventh Judicial District was transferred to the State Court Administrator's Office. Prior to this time, the clerk's office has been a contract site. Mr. Becker recommended that the Judicial Council approve the transfer of administrative duties.

Judges Serving in Non-Judicial Capacities:

After discussion, the Management Committee concluded that judges serving in non-judicial capacities is an issue which should be addressed by ecclesiastical leaders.

Concealed Weapons Legislation:

The Statewide Association of Prosecutors is sponsoring proposed legislation which will address concealed weapons and those qualifications for carrying concealed weapons. If broadened, the legislation will include a provision for judges. Richard Schwermer requested direction from the Management Committee as to whether or not the judiciary should be included in the original draft of the legislation. It was the conclusion of the committee that the judiciary should be included in the original draft.

Interim report from Ad Hoc Committee on Collections and Warrants:

Judge Brent West will present an interim report during the next Judicial Council meeting regarding recommendations from the Ad Hoc Committee on Collections and Warrants. The committee's recommendations include: a) clarifying legislation about the District and Juvenile Courts' ability to pursue collections; b) past due debts; c) debts being turned over to the Office of

State Debt Collection and entered as civil judgments; and d) the court's current policy regarding the priority of payments.

Grant in the First District Juvenile Court:

On behalf of Holly M. Bullen, Fred Jayne reported that the First District Juvenile Court applied for grant funding from the Bureau of Reclamation. The Bureau of Reclamation approved the grant in the amount of \$16,000. However, the district did not receive Judicial Council approval prior to the request for funding. Mr. Jayne recommended that the Council approve the grant request.

Motion:

A motion was made by Judge Stirba to approve the request for grant funding. The motion was seconded by Judge Greenwood and carried unanimously.

Motion:

A motion was made by Judge Greenwood to place the First District Juvenile Court's request for grant funding on the consent calendar of the Council. The motion was seconded by Judge Stirba and carried unanimously.

Ad Hoc Committee on Commissioner Conduct Reappointment of Frederick Green:

Motion:

A motion was made by Judge Stirba to place the Reappointment of Frederick Green on the consent calendar of the Judicial Council. The motion was seconded by Judge Greenwood and carried unanimously.

Appointment to Standing Committee on Justice Court Standards:

Motion:

A motion was made by Judge Greenwood to place the Appointments to the Standing Committee on Justice Court Standards on the consent calendar of the Council. The motion was seconded by Judge Stirba and carried unanimously.

Senior Commissioners Proposal:

Staff from the Third District Juvenile Court and Commissioner Richard Birrell have requested that a senior commissioner position be established. The Management Committee discussed issues relating to the authority to appoint, status of employment of commissioners and

restrictions by the Utah State Retirement Board.

Motion:

A motion was made by Judge Greenwood that the request not be approved and that no senior commissioner position be established. The motion was seconded by Judge Sandberg and carried unanimously.

The Management Committee will reconsider alternate requests in the future.

Drug Court Grant Funds:

The Fourth Judicial District is attempting to obtain grant funding for drug courts through the county justice system in that area.

The Eighth Judicial District is also attempting to obtain grant funding through the local county attorney's office. This is a planning grant which will study drug courts. Due to the fact that grant funding may require judicial resources, the Management Committee requested that the Judicial Council be kept informed.

Motion:

A motion was made by Judge Stirba that failure to obtain Judicial Council approval of requests for grant funding would preclude judicial resources. The presiding judge is to be informed that Judicial Council approval is conditional and that approval is based on whether or not there would be judicial resources required. The motion was seconded by Judge Greenwood and carried unanimously.

Letter of Intent - Murray City:

At a recent meeting between officials from Murray City and representatives from the courts, Murray City requested that the courts provide a letter of intent which would provide an assurance that the courts will continue the level of services presently provided through the district court. This request is to be discussed by the Third District Court bench. If approved, a letter of intent will be written to Murray City outlining the court's commitment.

Motion:

A motion was made by Judge Jackson to approve the proposal to maintain the level of services by the district court in Murray City, if approved by the Third District Court bench. The motion was seconded by Judge Stirba and carried unanimously.

Transition Plan for Court Reporters:

Paul Sheffield, Chair of the Transition Committee for Court Reporters, reported on recent activities of the committee and their recommendations to the Judicial Council which include: a) acquisition of a computer-based equipment for court reporters to begin immediately; b) that an RFP be prepared immediately for distribution to software vendors; c) reimbursement for the fair market value of equipment or software that can be utilized in the new system; d) implementation of recommendations from the Automation and Records Committee; e) delegation of and production of court transcripts; f) inclusion of court reporters within certain districts; g) recommendation of the Technology Committee guidelines; h) implementation of the new court reporter system by January 1, 1998; i) annual leave; j) sick leave; k) training; and l) assumption of the court reporters' annual fee.

Motion:

A motion was made by Judge Stirba that the Management Committee accept and approve the report and recommendation of the Court Reporter Transition Committee and that the implementation date for legislation be changed to January 1, 1998. The motion was seconded by Judge Jackson and carried unanimously.

Judicial Law Clerk:

Barbara Hanson requested Management Committee approval of the preamble within the Judicial Law Clerk Human Resources Policies. The paragraph would read: This policy statement is intended to provide Judicial Law Clerks with general guidance regarding court policies. It may be modified at any time without prior notice. No policy, benefit, or procedure described herein implies, or should be construed to imply, that this policy statement constitutes an employment contract.

Motion:

A motion was made by Judge Greenwood that the wording of the section in the Judicial Law Clerk Human Resources Policies be approved. The motion was seconded by Judge Jackson and carried unanimously.

Court Interpreter Advisory Panel:

On behalf of Holly Bullen, Myron March indicated that the Court Interpreter Advisory panel is a panel appointed by the Judicial Council. This matter is before the Management Committee for approval of the positions and the actual number of members on the committee.

Motion:

A motion was made by Judge Jackson to approve the recommendation for the composition of the Court Interpreter Advisory Panel. The motion was seconded by Judge Greenwood and carried unanimously.

1996 Audit Report Update and 1997 Proposed Audit Schedule:

Heather Mackenzie-Campbell reported on the activities of the audit department during 1996 and requested that the Management Committee approve the proposed audit schedule for 1997. Ms. Mackenzie-Campbell distributed documentation provided by the State Auditor regarding the ten most common findings of the auditor statewide.

Dan Becker reported that the courts have had a continuing problem with the separation of duties. This is a matter Mr. Becker has addressed extensively with staff. New policies will be developed and addressed is a fiscal management class which is offered to supervisors.

On behalf of the Justice Court Board, Richard Schwermer requested that the Audit Dept. give consideration to providing assistance to justice courts.

Motion:

A motion was made by Judge Jackson to approve the proposed 1997 audit schedule. The motion was seconded by Judge Greenwood and carried unanimously.

Adjourn:

There being no further business, Chief Justice Zimmerman adjourned the meeting.

SUMMARY MINUTES
POLICY AND PLANNING COMMITTEE OF THE JUDICIAL COUNCIL

January 3, 1997

Members Present

Judge Robert T. Braithwaite
Judge Michael K. Burton, Chair
James C. Jenkins
Judge Kent Nielson
Judge Stephen A. Van Dyke

Staff Present

Peggy Gentles
Barbara Hanson
Tim Shea

1. **Personnel Policies.** Barbara Hanson presented proposed changes to the Law Clerk Policy statement. Ms. Hanson stated that with one exception the appellate court judges had expressed satisfaction with the revisions. One appellate court judge objected to language that stated the Judicial Council could change the benefits as outlined in the statement. The Committee, after consideration, recommended approval of the policy statement without amendment on the Council's Consent Calendar. Ms. Hanson presented a number of changes to the Personnel Policy and Procedure Manual. The Committee recommended approval of the proposed changes by the Council on its Consent Calendar.

2. **Policy and Planning Assignments.** Tim Shea presented a list of pending issues that have been assigned to the Committee. The Committee considered the list and prioritized the issues for consideration in the coming year.

3. **Implementation of Gender and Justice Recommendations.** The Committee considered the twelve recommendations made by the Gender Fairness Committee. For each recommendation, the Committee made initial determinations concerning implementation of the recommendations. Staff was directed to follow-up.



Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

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

MEMORANDUM

To: Utah Judicial Council
From: Timothy M. Shea *Shea*
Date: January 16, 1997
Re: Video Access Rules

INTRODUCTION

The use of video technology to record hearings in the district court has spawned work products by two committees moving forward on three separate time lines. The Court Technology Committee recommended legislation that alters the nature of the office of court reporter and permits regulation of that office by the Judicial Council, Judicial Council rules that regulate the office of court reporter and govern the technology for creating a verbatim record of hearings and Supreme Court rules governing the preparation of transcripts for appeals in cases with hearings recorded on video. The legislation is sponsored by Sen. Craig Peterson. The Supreme Court rules with some further changes recommended by the Advisory Committee on Rules of Appellate Procedure will be submitted to the Court for final action.

The recommendations of the Video Recordings in the Courtroom Task Force affect neither the legislation nor the Supreme Court appellate rules. The task force recommends Council rules that recognize video tapes as public records and that integrate into the rules of judicial administration the current Supreme Court prohibition on cameras in the courtroom. The effective date for the legislation and for the Council and Supreme Court rules regulating court reporters has been delayed to January 1, 1998. The rule changes recommended by the task force regulating access to video tapes and the guidelines for use of video record keeping should be made effective as soon as practicable.

The final changes recommended by the Video Recordings in the Courtroom Task Force to the Code of Judicial Conduct and the rules of the Judicial Council are attached. The report of the task force, submitted to the Council on October 28, is not attached. The changes

recommended by the task force to Rule 4-201 and Rule 4-202.02 require the further amendment of changes proposed by the Court Technology Committee. The text proposed by the Court Technology Committee is shown in typical legislative style with new text underlined and deletion of existing text struck through. The recommended further changes of the task force show proposed new text with a double underline and show proposed deletion of new text recommended by the Court Technology Committee as underlined and struck through. Paragraph renumbering is automatic without regard to distinguishing Court Technology Committee changes from task force changes. The changes recommended by the task force to Canon 3(B)(12) and (13), Rule 4-202.10, and Rule 4-401 do not affect the recommendations of the Court Technology Committee and are shown in typical legislative style.

VIDEO TAPES AS A PUBLIC RECORD

Under Rule 4-202.10, the video tapes created as part of the Court Technology Committee pilot program were treated as confidential records. They were released only to the parties and the parties were prohibited from further distribution of the tapes. The conclusion of the task force is that the video tapes produced as part of the process of maintaining the record of a hearing are, in all but a few exceptions, public records. Thus, the task force recommends the repeal of 4-202.10. This is shown on page 6, line 20 through page 7, line 14 of the attachment.

The task force also recommends the further amendment of 4-202.02 to identify those hearings in which the record of the hearing is a controlled record not available to the public. This is shown on page 6, lines 1 - 2 and page 6, lines 8 - 14. Under this further change, the record of hearings not traditionally open to the public, such as juvenile court hearings and involuntary commitment hearings, will never be available to the public. If the judge closes a hearing that is traditionally open to the public, the caselaw and this new amendment require the judge to determine when the record of the hearing can be released. Under Utah caselaw, closure of a hearing traditionally open to the public does not automatically close the record of the hearing. If the records are closed, either temporarily or permanently, they are classified more properly as "controlled" than as "private." The former classification leaves release of the record to the limited discretion of the court; the latter classification leaves release of the record to the sole discretion of the subject of the record.

PROTECTING PRIVACY INTERESTS

Testimony to the task force universally was to the effect that a video record of testimony is a greater invasion of the privacy of a witness than is an audio record or a transcript. Given that the video tapes are, generally speaking, public records, the task force recommended that, in addition to the guidelines developed by the Court Technology Committee, protection of privacy interests should be a basis for selecting a recording medium other than video. This is shown on page 3, lines 10 - 13. Procedurally, this can be accomplished in two ways. If the judge has advance notice and if the number of witnesses to be afforded this protection is

sufficient, the judge could elect to use a court reporter for the entire hearing (subject to availability of a court reporter). If the number of witnesses to be protected is small or if the issue is not presented to the judge in advance, the judge can adjust the video recording system in a variety of ways to record the audio testimony of a witness without the video image.

The Board of District Court Judges is concerned about any additional work required of the judge as the gatekeeper of this procedure and about sensational testimony of which there is no advance notice. The Board of District Court Judges has voted to recommend that the Standing Committee on Information, Automation and Records study the implications of designing the video system to eliminate the camera on the witness.

ACCESS TO VIDEO TAPES

In the end, the task force makes no recommendations for streamlined access by the media to video tapes. Access is then governed by GRAMA statutes and rules, which require copies of a tape be made or denied as soon as reasonably possible but no later than 5 days after a request by the media. §63-2-204(3)(a); CJA 4-202.04(2)(A).

In its report to the Council, the task force recommended that the Council consider adding a sixth VCR to the existing stack of five decks to produce a duplicate original tape that could then be shared by reporters. This recommendation was made to accommodate the clerks, who have the task of copying the video tapes upon request. Media representatives observed that the quality degradation of copies and the time required for making copies made the sixth deck unsuitable for their needs. The task force never recommended a rule to reflect the additional recorder, so no further rule change is presented here. The task force has not revisited this issue, but, if a sixth VCR does not meet the needs of the media and the clerical burden is therefore not reduced, the recommendation may no longer be viable.

The Scott M. Matheson Courthouse is being designed with an overflow room to permit video monitoring of some select courtrooms. Of the 27 district court courtrooms, two -- the high security courtroom and the large courtroom, both on the fourth floor -- will be wired to the overflow room. The task force was not advised of this until after its October report, and a strict interpretation of the draft rules recommended in that report would have precluded this practice. To enable video monitoring from an overflow room, the task force recommends the change on page 10, line 22 - 23. Concern over immediate media access to multiple copies of tapes prompted the prohibition on taping the proceedings from the overflow room. Page 10, lines 23 - 24. The permission to establish a pilot program to enable taping, as proposed by the Judicial Council at its last meeting, is on page 10, lines 24 - 25.

The Supreme Court and Court of Appeals courtrooms also will be wired to the overflow room. The two appellate courts will use audio as the record of oral argument and permit media cameras in the courtroom to transmit to the overflow room. The full extent of the appellate plan did not become clear until after the last meeting of the task force. The arrangements

anticipated for broadcast of oral argument before the Supreme Court and Court of Appeals makes the text drafted by the task force problematic. Staff recommends the further amendment of 4-401 on page 10, lines 27 - 28, which is double underlined, to permit the anticipated appellate court practice.

During the process of obtaining comments to the task force recommendations, court clerks observed that judges with a court reporter sometimes use the video system to make a single tape of a hearing to review at a later date without having to ask the court reporter for a transcript. The recommendations of the Court Technology Committee anticipate that there would be only one record keeping medium in operation at any given time. The practice of video taping a hearing to relieve the court reporter of the burden of preparing a transcript is sound. However, there is a perceived need to protect the tape from public access in the event there is a difference between the taped recording and the transcript of the hearing. The video tape serves as the detailed personal notes of the hearing by the judge and so should qualify as an exception to the definition of a "record" under GRAMA. This is provided on page 4, lines 5 - 8. If there is a difference between the judge's video tape and the transcript on appeal, the trial judge will be making a decision based on one record, and the appellate court will review that decision based on a different record.

CODE OF JUDICIAL CONDUCT

The task force recommends that the rules governing video and still photography be part of the rules of court administration by the Judicial Council rather than rules of judicial conduct by the Supreme Court. The task force recommends the deletion of Canon 3(B)(12) and Canon 3(B)(13). This is shown on page 1, lines 6 - 19.

The task force charge expressly removed from its consideration the issue of media video cameras in the courtroom and, by extension, live broadcasts using the signal from the courts' cameras. The task force therefore recommends substantial amendments to Rule 4-401, which already governs still photography and other media issues, to incorporate the provisions of Canon 3(B)(12) and Canon 3(B)(13). Although Rule 4-401 is substantially redrafted, the amendments recommended by the task force are intended to continue the existing law prohibiting media cameras in the courtroom and, with one exception, continue the existing regulation of still photography.

The discretion of the judge to regulate the media in areas immediately adjacent to the courtroom is existing law. The task force accomplishes this by means of the definition of "courtroom" on page 8, lines 1 - 2. The existing provision is in Canon 3(B)(12), page 1, lines 6 - 7, and in Canon 3(B)(13), page 1, line 14.

The continued prohibition of media video cameras in the trial courtroom is on page 10, lines 21 - 22. Although never recognized in the Canons, the Supreme Court has entered orders

permitting media video taping of oral argument in the Supreme Court and the Court of Appeals. This is recognized on page 10, lines 26 - 27.

Existing Rule 4-401 permits the media to pay for courtroom lighting modifications with the approval of the presiding judge. To facilitate pilot programs to enable the media to produce multiple copies in the overflow room, the lighting provision is expanded to include equipment generally. This is shown on page 11, lines 20 - 23.

STILL PHOTOGRAPHY

The balance of Rule 4-401 governs media in the courtroom generally and still photography more particularly. The discretion of the judge and most of the procedures are the same as under the current 4-401. The only change is intended to recognize some parity between regulation of still photography and access to video tapes. Under the current 4-401, the media must obtain the consent of the party or witness as well as the permission of the trial court judge before taking photographs in the courtroom. If the video tape of a proceeding is available without the consent of the party or witness, it appears logical to remove the consent requirement from still photography as well. Therefore, the consent provisions found on page 8, line 21 through page 9, line 9 are deleted and not redrafted in the proposed 4-401. The prior permission of the judge is still required under the provision on page 11 lines 5 - 6. In place of consent by the individuals to be photographed, the judge would use considerations similar to those in deciding not to video tape testimony in deciding how to regulate still photography. These are found on page 11, lines 11 - 15.

OTHER AMENDMENTS TO RULE 4-201

The task force recommends that the judge not have to rely upon a request of a party to use a court reporter to record a hearing or a portion of a hearing, but rather that the judge have the discretion to initiate that decision. This is shown on page 2, lines 27 - 28.

As part of the regular comment process, the observation was made that the "Applicability" section of the rule applied to all of the courts of record but the "Statement of the Rule" referred only to the district court. This is cured by the changes found on page 2, lines 29 - 30 and on page 3, lines 5 - 9, which are intended to reflect existing practice.

The Chief Justice suggested that the presiding judge need not get involved in the process of assigning court reporters to hearings. This change is shown on page 2, line 22.

The deleted text of page 2, lines 10 - 13 is redrafted on page 3, lines 1 - 4 to better fit the reorganization of the rule.

The Advisory Committee on Rules of Appellate Procedure recommends the further changes on Page 4, line 13 and page 4, lines 20 - 27.

Draft Rules

Amendments are shown in "legislative" style with insertions underlined and deletions struck through. Rules 4-201 and 4-202.02 are in the process of amendment based upon recommendations of the Court Technology Committee. The draft as recommended by the Court Technology Committee is shown in the typical legislative style. The further insertions of the task force are shown with a double underline; the deletion of new language recommended by the Court Technology Committee is shown as underlined and struck through.

1 **Canon 3(B)12 & (13). A judge shall perform the duties of the office**
2 **impartially and diligently.**

3 ...

4 B. Adjudicative Responsibilities.

5 ...

6 ~~[(12) A judge should prohibit broadcasting, televising, or recording in the courtroom and~~
7 ~~areas immediately adjacent thereto during sessions of court or recesses between sessions,~~
8 ~~except that a judge may authorize:~~

9 ~~(a) the use of electronic or photographic means for the presentation of evidence, for the~~
10 ~~perpetuation of a record, or for other purposes of judicial administration; or~~

11 ~~(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or~~
12 ~~naturalization proceedings.]~~

13 ~~[(13) A judge should prohibit taking photographs (including motion picture and videotape)~~
14 ~~in the courtroom and areas immediately adjacent thereto during sessions of court or recesses~~
15 ~~between sessions, except that still photographs of the judge and other court personnel, counsel,~~
16 ~~spectators, parties and witnesses are permissible, subject to restrictions specified by the court~~
17 ~~and subject, in the case of parties and witnesses, to their advance consent in writing, provided~~
18 ~~that the court shall specifically forbid the taking of any photographs where it finds a substantial~~
19 ~~likelihood that such activity would jeopardize a fair hearing or trial in the matter at issue.]~~

20 **Rule 4-201. Record of proceedings.**

21 **Intent:**

22 To establish the means of maintaining the official record of court proceedings in all courts
23 of record.

24 To establish the manner of selection and operation of electronic devices.

1 To establish the procedure for requesting a transcript for a purpose other than for an
2 appeal.

3 **Applicability:**

4 This rule shall apply to the courts of record.

5 **Statement of the Rule:**

6 (1) Guidelines for court reporting methods. The official verbatim record of court
7 proceedings [in the District Courts] shall be maintained in accordance with the following
8 guidelines:

9 (A) Except as provided in this rule, a video recording system shall [be used in] maintain
10 the official verbatim record of all District Court proceedings [except in limited circumstances
11 in which the Judicial Council has previously determined that the volume of cases in a
12 courtroom is not sufficient to justify the cost of installation of a video recording system, except
13 as provided in this rule].

14 (B) An official court reporter or approved substitute court reporter shall maintain the
15 official verbatim record of District Court proceedings using real time reporting methods in
16 computer integrated courtrooms (CIC) in the following proceedings:

17 (i) all evidentiary hearings and trial proceedings and all phases of sentencing in capital
18 felonies;

19 (ii) all evidentiary hearings after arraignment and trial proceedings in first degree felonies;
20 and

21 (iii) at the judge's discretion, subject to availability of a court reporter and CIC equipment,
22 [and with the concurrence of the presiding judge.]

23 (a) in cases in which the judge finds that an appeal of the case is likely, regardless of the
24 outcome in the trial court;

25 (b) in cases in which the judge determines there is a substantial likelihood the a video
26 recording would jeopardize the right to a fair trial or hearing; or

27 (c) in any other proceeding or portion of a proceeding [at the request of any party], upon a
28 showing of good cause[, and with the concurrence of the trial judge].

29 (C) An audio recording system shall maintain the official verbatim record of all
30 proceedings in the Supreme Court and Court of Appeals.

1 (D) An audio recording system shall maintain the official verbatim record in proceedings
2 of the district court in which the Judicial Council has previously determined that the volume of
3 cases in a courtroom is not sufficient to justify the cost of installation of a video recording
4 system.

5 (E) An audio recording system shall maintain the official verbatim record of all
6 proceedings in the juvenile court, except a juvenile court judge may use, subject to
7 availability, an official court reporter or a video recording system:

8 (i) if an appeal of the case is likely regardless of the outcome in the trial court, or

9 (ii) in any other proceeding or portion of a proceeding, upon a showing of good cause.

10 (F) When the judge determines that the privacy interests of the victim of a crime, a party
11 in a civil case or a witness outweigh the interest of the public in access to a video record of the
12 person, the judge may record the proceeding or portion of the proceeding by use of a court
13 reporter or an audio recording system.

14 (G) Reporters shall be assigned to cover courtroom proceedings as set forth above. In the
15 event of a conflict in the request for an official court reporter, the trial court executive or
16 managing reporter shall confer with the presiding judge, who shall resolve the conflict.

17 (H) [Notwithstanding the provisions of subsections (A), (B), and (C) of this rule, a] A
18 recording technology other than the presumed technology may be used if the presumed
19 technology is not available. The use of a technology other than the presumed technology shall
20 not form the basis of an issue on appeal.

21 (I) The Administrative Office shall periodically study the state of the art of electronic
22 recording technology and technology employed in computer integrated courtrooms and make
23 recommendations to the Judicial Council of systems to be approved.

24 **(2) Operating and maintaining the electronic recording system.**

25 (A) The clerk of the court or designee shall operate the electronic recording system in the
26 courtroom so as to record the proceedings before the court accurately. The operator shall be
27 trained in the operation of the system. A separate log of each recorded proceeding shall be
28 maintained on a form approved by the Administrative Office.

29 (B) When an electronic recording system is used to [reecord] maintain the official verbatim
30 record of court proceedings, at least two original recordings shall be made. One original

1 recording and log shall be filed with the clerk of the court as part of the official court record.
2 A second original recording shall be kept in a secure, off-site storage area. The clerk of the
3 court shall keep the original recording at the courthouse in accordance with the record
4 retention schedule.

5 (C) If a proceeding is recorded by a court reporter, an electronic recording of the
6 proceeding shall not be made, except that a judge may direct a single original of an electronic
7 recording be made as part of the judge's notes for personal use in the deliberative process
8 under Section 63-2-103(18)(b)(ix).

9 **(3) The official court record.**

10 (A) In proceedings in which a video or audio recording system is used, the court's original
11 video or audio tape and accompanying log shall be the official court record. In proceedings in
12 which an official court reporter is used, the reporter's shorthand notes shall be the official
13 court record. The Utah Rules of Appellate Procedure govern the record on appeal.

14 (B) The official court record shall be filed with the clerk of the court.

15 (C) The clerk of the court shall be the custodian of the official court record and may
16 release the official court record only to a judge, the clerk of the appellate court, the trial court
17 executive, or the official court transcriber. The clerk shall enter in the docket the name of the
18 recipient and when the official court record was released and returned. Obtaining a copy of the
19 official court record shall be governed by rules regulating access to court records.

20 **(4) Requests for transcripts.**

21 (A) A request for transcript for an appeal is governed by Utah R.App.P. 11 and Utah
22 R.App.P. 12.

23 (B) A request for transcript for any purpose other than for an appeal shall be accompanied
24 by the fee established by Section 78-56-4 and filed with the court executive. A request for an
25 expedited transcript shall be accompanied by the fee established by Section 78-56-4 and filed
26 with the court executive. The court executive shall assign the preparation of the transcript in
27 the same manner as Utah R.App.P. 12.

28 **Rule 4-202.02. Records classification.**

29 **Intent:**

1 To classify records created or maintained by the judicial branch.

2 **Applicability:**

3 This rule applies to all courts of record and not of record and to the Administrative Office
4 of the Courts.

5 **Statement of the Rule:**

6

7 (2) Public judicial records. The following judicial records are public, except to the extent
8 they are classified otherwise or contain information classified otherwise by this or other
9 Council rule, or by conflicting state or federal statute, regulation or rule:

10 (A) casefiles;

11 (B) a copy of the official court record or official minutes of an open court hearing and any
12 transcript of them; and

13 [~~(B)~~] (C) exhibits which have been offered, identified, marked and admitted in any
14 proceeding in accordance with Rule 4-206.

15 [~~(C)~~](D) Notwithstanding Rule 4-202.02(9) and Rule 4-202.03(9), if a petition, indictment,
16 or information is filed charging a person 16 years of age or older with a felony or an offense
17 that would be a felony if committed by an adult, the petition, indictment or information, the
18 adjudication order, the disposition order, and the delinquency history summary of the juvenile
19 are public records in accordance with § 78-3a-206. The delinquency history summary shall
20 contain:

21 (i) the name of the juvenile;

22 (ii) a listing in chronological order of the infractions, misdemeanors, and felonies for
23 which the juvenile was adjudged to be within the jurisdiction of the juvenile court; and

24 (iii) the disposition of the court in each of those offenses.

25

26 (4) Private judicial records. The following judicial records are private:

27 (A) sealed divorce records;

28 (B) driver's license histories;

29 (C) records involving the commitment of a person under Utah Code, Title 62A, Chapter

30 12[; and

1 ~~(D) the verbatim record or official minutes of court sessions closed to the public and any~~
2 ~~transcript of them].~~

3

4 (6) Controlled judicial records. The following judicial records are controlled:

5 (A) records which contain medical, psychiatric, or psychological data about an individual;

6 (B) custodial evaluations or home studies;

7 (C) presentence reports;

8 (D) the official court record or official minutes of court sessions closed to the public and
9 any transcript of them:

10 (i) permanently if the hearing is not traditionally open to the public and public access does
11 not play a significant positive role in the process; or

12 (ii) if the hearing is traditionally open to the public, until the judge determines it is possible
13 to release the record to the public without prejudice to the interests that justified the closure of
14 the hearing;

15 ~~(D)~~ (E) any record which the judicial branch reasonably believes would be detrimental to
16 the subject's mental health or to the safety of an individual if released;

17 ~~(E)~~ (F) any record which the judicial branch reasonably believes would constitute a
18 violation of normal professional practice or medical ethics if released.

19

20 ~~[RULE 4-202.10. DISSEMINATION OF VIDEOTAPES.]~~

21 ~~[Intent:~~

22 ~~To limit the dissemination of videotapes created in video courtroom pilot projects and~~
23 ~~video arraignment pilot projects.~~

24 ~~Applicability:~~

25 ~~This rule applies to those courts involved in video courtroom pilot projects and video~~
26 ~~arraignment pilot projects.~~

27 ~~Statement of the Rule:~~

1 ~~(1) Videotapes created by the courts in video courtroom pilot projects and video~~
2 ~~arraignment pilot projects are the copyrighted property of the courts, and shall only be~~
3 ~~disseminated as provided in this rule.~~

4 ~~(2) The court may disseminate copies of videotapes to counsel and parties, upon request~~
5 ~~and payment of the appropriate fee. All copies shall be made on videotapes supplied by the~~
6 ~~courts. Videotapes disseminated pursuant to this rule may not be disseminated further without~~
7 ~~court order.~~

8 ~~(3) Any person may request and obtain a written transcript of a videotaped proceeding by~~
9 ~~ordering the transcript from a certified court transcriber.~~

10 ~~(4) When video and non video records are made of a proceeding, the non video record~~
11 ~~shall be the official record of the proceeding, and no copy of the videotape shall be~~
12 ~~disseminated.~~

13 ~~(5) For the purpose of this rule, all courtrooms equipped with video recording equipment~~
14 ~~for the preservation of the proceedings conducted therein are video courtroom pilot sites.]~~

15 **RULE 4-401. MEDIA IN THE COURTROOM.**

16 **Intent:**

17 To establish uniform standards and procedures for conduct and the use of [still]
18 photographic equipment [by the news media] in the courts of the state.

19 To permit access to the courtroom by the news media while preserving the participants'
20 rights to privacy and a fair trial.

21 **Applicability:**

22 This rule [shall govern the procedure for the use of still photographic equipment in all
23 courts of record and not of record, except as otherwise provided by law] applies to the courts
24 of record and not of record.

25 This rule governs photography and conduct during sessions of court and recesses between
26 sessions.

27 This rule shall not diminish the authority, conferred by statute, rule or common law, of the
28 judge to control the conduct of proceedings in the courtroom.

1 As used in this rule, the term "courtroom" includes the courtroom and areas immediately
2 adjacent to the courtroom.

3 **Statement of the Rule:**

4 ~~(1) Authority.~~

5 ~~(A) The authority of a court conferred by statute, rule or common law to control the~~
6 ~~conduct of proceedings before it shall not be diminished.~~

7 ~~(B) The same rules of law applicable to inclusion or exclusion of the press or public at~~
8 ~~particular proceedings or during the testimony of particular witnesses shall apply to still~~
9 ~~photographers.~~

10 ~~(C) This authority may be withdrawn, terminated or modified by order of the Utah~~
11 ~~Supreme Court after proper notice and hearing.~~

12 ~~(D) Still photographic equipment may be permitted in the courtroom at the discretion of the~~
13 ~~judge presiding over the proceedings.~~

14 ~~(E) The court reserves the right to deny the use of still photographic equipment in a~~
15 ~~judicial proceeding when the denial is necessitated by a substantial likelihood that such~~
16 ~~coverage would jeopardize a fair hearing or trial in the matter at issue.~~

17 ~~(F) A judge may supplement, waive or modify these rules in order to accommodate~~
18 ~~extraordinary or unusual circumstances in a particular event or proceeding; however, any such~~
19 ~~modification shall not be inconsistent with this Code, Canons 3A(7) and (8) of the Code of~~
20 ~~Judicial Conduct or state or federal law.~~

21 ~~(2) Consent.~~

22 ~~(A) In all proceedings written consent from the witnesses and parties shall be obtained by~~
23 ~~the news media and filed with the court not less than 24 hours prior to the event to be covered~~
24 ~~absent good cause shown.~~

25 ~~(B) Any party or witness may request photographic coverage of him or her to cease or~~
26 ~~withdraw consent by notifying the judge, in which event the judge shall require the~~
27 ~~photographic coverage to cease.~~

28 ~~(C) No party or witness shall give consent to be photographed for any consideration, of~~
29 ~~any kind or character, either directly or indirectly.~~

1 ~~(D) Consent by an individual party or witness, once given, refused, or withdrawn, shall~~
2 ~~apply equally to all news media; that is, consent may not be given as to one medium and~~
3 ~~refused or withdrawn as to another.~~

4 ~~(E) Consent to cover a proceeding shall be granted pursuant to these rules without partiality~~
5 ~~or preference to any person or media outlet.~~

6 ~~(F) Any person found to be in violation of these rules is subject to exclusion from further~~
7 ~~still photographic coverage of court proceedings and the privileges contained herein revoked.~~

8 ~~(G) The written consent of the parent or legal guardian of minor parties or witnesses shall~~
9 ~~be obtained in instances where minors appear in court proceedings.~~

10 ~~(3) Equipment.~~

11 ~~(A) No artificial or camera lights shall be permitted. With the concurrence of the presiding~~
12 ~~judge, modifications and additions may be made in light sources existing in the courtroom~~
13 ~~provided such modifications or additions are installed and maintained without public expense.~~

14 ~~(B) Still photographers shall not be allowed to place equipment in or remove equipment~~
15 ~~from the courtroom except prior to commencement or after adjournment of proceedings each~~
16 ~~day or during recess.~~

17 ~~(C) Still photographers may not use a motor driven film advance or flash or strobe~~
18 ~~equipment.~~

19 ~~(D) Court proceedings shall never be interrupted by a reporter experiencing technical~~
20 ~~problems. Equipment adjustments or repairs shall await court recess.~~

21 ~~(E) It shall be the affirmative duty of media personnel to demonstrate satisfactorily to the~~
22 ~~judge presiding over the proceedings, adequately in advance of any proceeding, that the~~
23 ~~equipment sought to be utilized meets the sound and light criteria of the court. A failure to~~
24 ~~obtain advance judicial approval for equipment may preclude its use in any proceeding.~~

25 ~~(F) News media personnel and equipment shall be positioned in such location in the~~
26 ~~courtroom as designated by the judge presiding over the proceedings allowing reasonable~~
27 ~~location to permit coverage and shall not move about once positioned during the pendency of~~
28 ~~proceedings in order to avoid calling attention to the personnel or equipment.~~

29 ~~(4) Procedures.~~

1 ~~(A) Reporters shall not conduct interviews with tape recorders or cameras in the courtroom~~
2 ~~at any time. No interviews in the courtroom of jurors, witnesses, lawyers or parties shall be~~
3 ~~permitted during the course of proceedings or until the jury returns its verdict or until the court~~
4 ~~announces judgment and the proceedings concluded.~~

5 ~~(B) The photographing or recording of individual jurors during the course of the~~
6 ~~proceedings, in a manner which discloses or may disclose their identities, is prohibited in all~~
7 ~~instances. The media shall take special precaution not to photograph or record actions or words~~
8 ~~of jurors which would allow identification of an individual juror during the course of the trial~~
9 ~~and until the jury returns its verdict.~~

10 ~~(C) Reporters and announcers shall not make comments in the courtroom during the court~~
11 ~~proceedings or comment to or within the hearing of the jury or any member thereof at any~~
12 ~~time.~~

13 ~~(D) Media representatives should present a neat appearance in keeping with the dignity of~~
14 ~~the proceedings. A photographer should not assume positions which are inappropriate,~~
15 ~~undignified or which interfere with the proceedings.~~

16 ~~(E) It is the responsibility of each photographer present at the opening of each session of~~
17 ~~court to achieve an understanding with all other photographers present as to who will~~
18 ~~participate at any given time, or, in the alternative, how they will pool their photographic~~
19 ~~coverage. This understanding must be reached outside the courtroom and before the court~~
20 ~~session, and without imposing upon the judge or court personnel.]~~

21 (1)(a) Filming, video recording, and audio recording in a trial courtroom are prohibited
22 except to preserve the record of proceedings. The trial court's video signal of proceedings may
23 be transmitted to an overflow room. No recording of the video may be made in the overflow
24 room, except as part of a pilot program approved by the presiding judge of the court and with
25 the agreement of the judge presiding at the hearing.

26 (b) Filming, video recording, and audio recording in an appellate courtroom are permitted
27 to preserve the record of proceedings and as permitted by procedures of those courts. A video
28 signal of proceedings may be transmitted to an overflow room where it may be copied.

1 (2) Still photography, filming and audio and video recording in the courtroom for
2 ceremonial or court approved public information programs are permitted when arranged
3 through the presiding judge of the court.

4 (3) No one may photograph a juror or prospective juror before the person is dismissed.

5 (4) Still photography in a courtroom is prohibited, but it may be permitted in the discretion
6 of the judge presiding at the hearing. A request to photograph in a courtroom shall be filed
7 with the judge presiding at the hearing at least 24 hours prior to the hearing. A judge may
8 permit photography with less than 24 hours notice upon a showing of good cause. In
9 determining whether to permit still photography and, if so, how to regulate it, the judge
10 presiding at the hearing should consider whether:

11 (A) photography can be accommodated without distracting the participants;

12 (B) there is a substantial likelihood photography would jeopardize the right to a fair hearing
13 or trial; or

14 (C) the privacy interests of the victim of a crime, a party in a civil case or a witness
15 outweigh the interest of the public in access to a photograph of the person.

16 (4) Conduct in the courtroom.

17 (A) The judge presiding at the hearing may position reporters and equipment in the
18 courtroom to permit reasonable news coverage. The judge may require reporters to share a
19 single photographer.

20 (B) Photographers shall not use flash or strobe lights. Media representatives shall use
21 normally available courtroom equipment unless the presiding judge and the judge presiding at
22 the hearing approve modifications, which shall be installed and maintained without public
23 expense.

24 (C) Proceedings in the courtroom shall not be disrupted. Members of the public in the
25 courtroom shall:

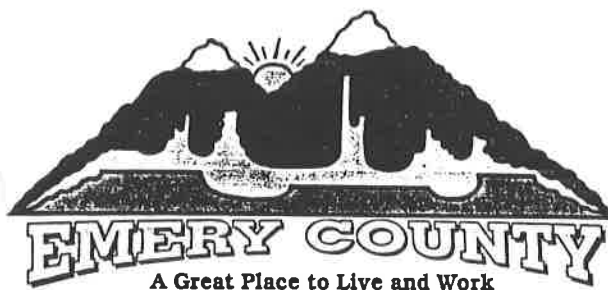
26 (i) avoid calling attention to themselves;

27 (ii) not place equipment in or remove equipment from the courtroom while court is in
28 session;

29 (iii) not make comments in the courtroom during the court proceedings;

- 1 (iv) not comment to or within the hearing of the jury or any member thereof at any time
2 before the jury is dismissed;
- 3 (v) present a neat appearance in keeping with the dignity of the proceedings;
- 4 (vi) not conduct interviews in the courtroom until the hearing is concluded and the court is
5 recessed;
- 6 (vii) not, if the hearing is a trial, conduct interviews in the courtroom until the trial is
7 concluded;
- 8 (viii) not use a camera or tape recorder to conduct interviews in the courtroom; and
- 9 (ix) comply with the orders and directives of the court.
- 10 (5) The court may remove anyone violating these rules from the courtroom and revoke the
11 privileges contained in this rule.

DEC 31 1996



Board of Commissioners

Randy G. Johnson, Commissioner
Kent R. Petersen, Commissioner
Bevan K. Wilson, Commissioner

December 19, 1996

Chief Justice Zimmerman, Chairman
Judicial Council
230 South 500 East, Suite 300
Salt Lake City, Utah 84102

Re: **Administration of the Castle Dale Seventh District Court Clerk's Office**

Dear Chief Justice:

In the regularly-scheduled meeting on December 18, 1996, the Emery County Commission passed, by unanimous vote, a motion to transfer the operation of the District Court Clerk's Office to the State Court Administrator's Office effective January 1, 1997. Therefore, the Commission requests that Rule 4-408.01(2) of the Code of Judicial Administration be amended to delete Castle Dale as a contract court site. A Memorandum of Understanding was also approved to govern a smooth transition of the offices.

If you need further information, please contact the Emery County Attorney, David Blackwell (381-2543), or the Court Executive of the Seventh Judicial District, Tim Simmons (637-7753).

Sincerely,

Randy G. Johnson, Chairman
Emery County Commission

RGJ/DAB/tm

cc: Daniel Becker, State Court Administrator
David Blackwell, Emery County Attorney
Tim Simmons, Court Executive

01-03-97 DRAFT

1997FL-0440/004

DEFINITION OF LAW ENFORCEMENT OFFICIAL

1997 GENERAL SESSION

STATE OF UTAH

AN ACT RELATING TO PUBLIC SAFETY; DEFINING LAW ENFORCEMENT OFFICIAL AND JUDGE FOR PURPOSES OF EXEMPTION FROM WEAPONS LAWS; PROVIDING TRAINING, CERTIFICATION REQUIREMENTS; AUTHORIZING CERTAIN ENTITIES TO ESTABLISH RULES FOR REQUALIFICATION FOR PERSONS UNDER THEIR JURISDICTION; PROVIDING FOR REVOCATION; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-10-523, as last amended by Chapter 80, Laws of Utah 1995

ENACTS:

53-5-710, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 53-5-710 is enacted to read:

53-5-710. Law enforcement officials and judges -- Training requirements

Qualification -- Revocation.

(1) For purposes of this section and Section 76-10-523:

(a) "Law enforcement official of this state" means:

(i) a member of the Board of Pardons and Paroles;

(ii) a district attorney, deputy district attorney, county attorney or deputy county attorney of a county not in a prosecution district;

(iii) the attorney general;

(iv) an assistant attorney general designated as a criminal prosecutor; or

(v) a city attorney or a deputy city attorney designated as a criminal prosecutor.

(b) "Judge" means a judge or justice of a court of record or court not of record, but does not include a judge pro tem or senior judge.

(2) To qualify for the exemptions enumerated in Section 76-10-523, a law enforcement official or judge shall complete the following training requirements:

(a) meet the requirements of Sections 53-5-704, 53-5-706, and 53-5-707;

Post-It™ brand fax transmittal memo 7671 6 of page 6	
To	Paul Boyden
From	Tara Dowling
Co.	SWAP
Phone #	538-1032
Fax #	531-4177

1997FL-0440/004

01-03-97 DRAFT

1 (b) successfully complete a firearms proficiency course with a passing score on the same
 2 course of fire required by Peace Officer Standards and Training for qualification as a peace officer.

3 (c) successfully complete an additional course of training as established by the
 4 commissioner of public safety.

5 (3) Annual requalification requirements for law enforcement officials and judges shall be
 6 established by the:

7 (a) Board of Pardons and Paroles by rule for its members;

8 (b) Judicial Council by rule for judges; and

9 (c) the district attorney, county attorney in a county not in a prosecution district, the
 10 attorney general, or city attorney by policy for prosecutors under their jurisdiction.

11 (4) The division may:

12 (a) Issue a certificate of qualification to a judge or law enforcement official who has
 13 completed the requirements of Subsection (1), which certificate of qualification is valid until
 14 revoked;

15 (b) revoke the qualification of a judge or law enforcement official who:

16 (i) fails to meet the annual requalification criteria established pursuant to Subsection (3);

17 or

18 (ii) as provided in Section 52-5-709;

19 (c) certify instructors for the training requirements of this section.

20 Section 2. Section 76-10-523 is amended to read:

21 **76-10-523. Persons exempt from weapons laws.**

22 (1) This part and Title 53, Chapter 5, Part 7, Concealed Weapon Act, do not apply to any
 23 of the following:

24 (a) a United States marshal while engaged in the performance of his official duties;

25 (b) a federal official required to carry a firearm while engaged in the performance of his
 26 official duties;

27 (c) a [~~law enforcement official~~] peace officer of this or any other jurisdiction while
 28 engaged in the performance of his official duties;

29 (d) a law enforcement official as defined and qualified under Section 53-5-710;

30 (e) a judge as defined and qualified in Section 53-5-710;

31 ~~(f)~~ (f) a common carrier while engaged in the regular and ordinary transport of firearms

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- 1 as merchandise;
- 2 ~~(e)~~ (g) a nonresident traveling in or through the state, provided that any firearm is:
- 3 (i) unloaded; and
- 4 (ii) securely encased as defined in Section 76-10-501.
- 5 (2) The provisions of Subsections 76-10-504(1)(a), (1)(b), and Section 76-10-505 do not
- 6 apply to any person to whom a permit to carry a concealed firearm has been issued pursuant to
- 7 Section 53-5-704.

EXTENSION OF CHILD VISITATION PILOT PROGRAM

1997 GENERAL SESSION

STATE OF UTAH

Sponsor: Millie M. Peterson

AN ACT RELATING TO HUSBAND AND WIFE; EXTENDING THE EXPEDITED VISITATION ENFORCEMENT PILOT PROGRAM; CLARIFYING THE OPERATION OF THE PROGRAM; AND REDUCING THE PURPOSES FOR WHICH THE CHILDREN'S LEGAL DEFENSE ACCOUNT MAY BE USED.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

30-3-38, as enacted by Chapter 255, Laws of Utah 1996

63-63a-8, as last amended by Chapters 1 and 255, Laws of Utah 1996

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **30-3-38** is amended to read:

30-3-38. Pilot Program for Expedited Visitation Enforcement.

(1) There is established an Expedited Visitation Enforcement Pilot Program in the third judicial district to be administered by the Administrative Office of the Courts from July 1, 1996, to July 1, [1997] 2000.

~~[(2) This pilot program is to resolve visitation problems on an expedited basis by enabling a parent who alleges that his court-ordered visitation rights have been violated to file a request for enforcement of the order, have a conference scheduled with the other parent and a private mediator to address visitation issues within 15 days of filing the request, and have the private mediator assess the situation, facilitate an agreement on visitation between the parties, and make an appropriate recommendation to the court on a timely basis. Within 15 days, an agreement on visitation shall become a temporary order under the signature of the court.]~~

(2) As used in this section:

(a) "Mediator" means a person who:

(i) is qualified to mediate visitation disputes under criteria established by the Administrative Office of the Courts; and
(ii) agrees to follow billing guidelines established by the Administrative Office of the Courts and this section.

(b) "Services to facilitate visitation" or "services" means services designed to assist families in resolving visitation problems through:

(i) counseling;

(ii) supervised visitation;

(iii) neutral drop-off and pick-up;

(iv) educational classes; and

(v) other related activities.

(3) (a) Under this pilot program, if a parent files a motion in the third district court alleging that court-ordered visitation rights are being violated, the clerk of the court, after assigning the case to a judge, shall refer the case to the administrator of this pilot program for assignment to a mediator.

(b) Upon receipt of a case, the mediator shall:

(i) meet with the parents to address visitation issues within 15 days of the motion being filed;

(ii) assess the situation;

(iii) facilitate an agreement on visitation between the parents; and

(iv) determine whether a referral to a service provider under Subsection (3)(c) is warranted.

(c) While a case is in mediation, a mediator may refer the parents to a service provider designated by the Department of Human Services for services to facilitate visitation if:

(i) the services may be of significant benefit to the parents; or

(ii) (A) a mediated agreement between the parents is unlikely; and

(B) the services may facilitate an agreement.

(d) At anytime during mediation, a mediator shall terminate mediation and transfer the case to the administrator of the pilot program for referral to the judge to whom the case was assigned under Subsection (2) if:

(i) a written agreement between the parents is reached; or

(ii) the parents are unable to reach an agreement through mediation; and

(A) the parents have received services to facilitate visitation;

(B) both parents object to receiving services to facilitate visitation; or

(C) the parents are unlikely to benefit from receiving services to facilitate visitation.

(e) Upon receiving a case from the administrator of the pilot program, a judge may:

(i) review the agreement of the parents and, if acceptable, sign it as an order;

(ii) order the parents to receive services to facilitate visitation;

(iii) proceed with the case; or

(iv) take other appropriate action.

(4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child who is the subject of a visitation order against the other parent or a member of the other parent's household to a mediator or service provider, the mediator or service provider shall immediately report that information to:

(i) the judge assigned to the case who may immediately issue orders and take other appropriate action to resolve the allegation and protect the child; and

(ii) the Division of Family Services within the Department of Human Services in the manner

required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements.

(b) If an allegation under Subsection (4)(a) is made against a parent with visitation rights or a member of that parent's household, visitation by that parent shall be supervised until:

- (i) the allegation has been resolved; or
- (ii) a court orders otherwise.

(c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to mediate visitation problems and a service provider may continue to provide services to facilitate visitation unless otherwise ordered by a court.

(5) (a) The Department of Human Services may contract with one more entities in accordance with Title 63, Chapter 56, Utah Procurement Code, to provide:

- (i) services to facilitate visitation;
- (ii) case management services; and
- (iii) administrative services.

(b) An entity who contracts with the Department of Human Services under Subsection (5)(a) shall:

- (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and
- (ii) agree to follow billing guidelines established by the Department of Human Services and this section.

(6) (a) Except as provided in Subsection (6)(b), the cost of mediation and the cost of services to facilitate visitation shall be:

- (i) reduced to a sum certain;
- (ii) divided equally between the parents; and
- (iii) charged against each parent taking into account the ability of that parent to pay under billing guidelines adopted in accordance with this section.

(b) (i) A judge may order a parent to pay an amount in excess of that provided for in Subsection (6)(a) if the parent:

- (A) failed to participate in good faith in mediation or services to facilitate visitation; or
- (B) made an unfounded assertion or claim of physical or sexual abuse of a child.

(c) (i) The cost of mediation and services to facilitate visitation may be charged to parents at periodic intervals.

(ii) Mediation and services to facilitate visitation may only be terminated on the ground of nonpayment if both parents are delinquent.

[~~(3)~~ (7) (a) The Judicial Council [~~shall~~] may make rules to implement and administer the provisions of this pilot program related to mediation.

[~~(4) The parties to a proceeding initiated in the third district court to enforce the terms of a visitation order shall participate in this pilot program, unless one of the parties:]~~

~~[(a) makes an allegation of child sexual abuse implicating the other party, in which case, the mediator shall refer the matter to the court and report the allegation to the Division of Family Services consistent with Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements; or]~~

~~[(b) is unwilling to participate in the program, in which case, the matter shall be referred to the court.]~~

(b) The Department of Human Services may make rules to implement and administer the provisions of this pilot program related to services to facilitate visitation.

~~[(5)] (8) (a)~~ The Administrative Office of the Courts shall adopt ~~[a program]~~ outcome measures to evaluate the effectiveness of the mediation component of this pilot program. Progress reports shall be provided to the Judiciary Interim Committee ~~[in]~~ by August [1996] 1998 and as requested thereafter by the committee. At least once during this pilot program, the Administrative Office of the Courts shall present to the committee the results of a survey that measures the effectiveness of the program in terms of increased compliance with visitation orders and the responses of interested persons.

(b) The Department of Human Services shall adopt outcome measures to evaluate the effectiveness of the services component of this pilot program. Progress reports shall be provided to the Judiciary Interim Committee by August 1998 and as requested thereafter by the committee.

(c) The Administrative Office of the Courts and the Department of Human Services may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections 8(a) and (b).

~~[(6)] (9) (a)~~ The Department of Human Services shall apply for federal funds designated for visitation, if such funds are available. ~~[The department shall contract any federal funds received under this application to the Administrative Office of the Courts for the administration of this pilot program.]~~

(b) This pilot program shall be funded through funds received under Subsection (a), the Children's Legal Defense Account as established in Section 63-63a-8, or other available funding. Without funding, the pilot program may not proceed.

Section 2. Section ~~63-63a-8~~ is amended to read:

63-63a-8. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) The Legislature shall appropriate money from the account for the administrative and

related costs of the following programs:

(a) implementing the Mandatory Educational Course on Children's Needs for Divorcing Parents relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, and the Mediation Pilot Program - Child Custody or Visitation as provided in Sections 30-3-15.3, 30-3-18, and 30-3-19 through 30-3-31;

(b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2, 78-3a-912, 78-3a-318, 78-11-6, and 78-7-9; the training of guardian ad litem and volunteers as provided in Section 78-3a-912; and termination of parental rights as provided in Sections 78-3a-516, 78-3a-518, 78-3a-903, and Title 78, Chapter 3f. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section 78-3a-912; and

~~[(e) requiring community service for violation of visitation orders or failure to pay child support as provided in Section 78-32-12.1;]~~

~~[(d) enforcing and administering the pilot program as provided in Section 78-32-12.3 establishing the sanctions for substantial noncompliance with visitation orders as provided in Section 78-32-12.2; and]~~

~~[(e)]~~ (c) implementing and administering the Child Visitation Pilot Program as provided in Section 30-3-38.

(4) The following withheld fees shall be allocated only to the Children's Legal Defense Account and used only for the purposes provided in Subsections (3)(a) through (c):

(a) the additional \$10 fee withheld on every marriage license issued in the state of Utah as provided in Section 17-5-214; and

(b) a fee of \$2 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the monies described in Subsection (4) from the General Fund to the Children's Legal Defense Account.

(6) Any funds in excess of \$200,000 remaining in the restricted account as of June 30 of any fiscal year shall lapse into the General Fund.

Legislative Review Note

as of 12-31-96 11:57 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.


Office of Legislative Research and General Counsel

Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

MEMORANDUM

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

 TO: Utah Judicial Council
Management Committee

FROM: Holly M. Bullen
Assistant State Court Administrator

DATE: January 3, 1997

RE: Interim Report from Ad Hoc Committee on
Collections/Warrants

As you'll recall, an ad hoc committee was created by the Judicial Council several months ago to study issues surrounding the collection of court-ordered debts and the issuance and execution of warrants. The Council initially designated seven membership slots on the committee, and the following members were appointed pursuant to the provisions of Rule 1-205, CJA:

Judge W. Brent West, Chair, Second District Court
Judge Joseph Anderson, Third District Juvenile Court
Judge Pat McRae, Vernal Justice Court
Brent Bowcutt, Sixth District/Juvenile Court Executive
George Berkley, Clerk, Second District Court
Nancy DeJong, Lead Clerk, Collections Dept.
Third District Juvenile Court
Marla Burdick, Justice Court Clerk, Sevier County
Staff: Holly M. Bullen and Eric Leeson

At approximately the same time, the State Office of Debt Collection began a study to address the collection of accounts receivable from all state entities, including courts. Accordingly, it was determined that the Council's Committee should postpone meeting until results were received from the other study.

January 3, 1997

Page Two

A preliminary report was issued by the Office of State Debt Collection in early November. Its primary recommendations affecting the courts were as follows:

All District Court accounts receivable should be turned over to the Office of State Debt Collections 60 days from the "demand date." The collections programs currently in place in the District Court should be discontinued. The Juvenile Court was exempted from this requirement due to the assessment of the Office of State Debt Collection that they were doing a good job of collecting debts.

The Ad Hoc Committee met twice: once on November 18 and once on December 16, 1996. The main focus of its discussion was the draft report from the Office of State Debt Collection. Because of this focus, it was determined that other individuals with expertise in the District Court collections process, in addition to the regular Committee members, needed to be brought in to assist the Committee. Accordingly, the following individuals were consulted for input; most attended one or both of the Committee's meetings:

Fred Jayne, Finance Manager
Judge Robin Reese, Associate Presiding Judge, Third District
Judy Wilkins, Court Services Program Supervisor
Scott Hennessy, Support Services Coordinator, Third District
Maggie Cooke, Collections Program Manager, Third District
Pat Williams, Support Services Coordinator, Fourth District
Ray Wahl, Department of Corrections
Gary Ogilvie, Department of Corrections
Dave Worthington, Department of Corrections
Peter Holtz, Department of Corrections

Also, at the December meeting, Gwen Anderson and Roger Andrus from the Office of State Debt Collection attended and participated in the meeting.

The Committee examined the following issues:

What should be considered a "receivable" from the court? There is a need to define what is a "receivable" and what is not, and to correct a common misconception about the total amount of money due and owing the courts. In the past, some have cited the courts' accounts receivable as totals from the statewide warrants system, which include bail set in felony cases, as well as failures to appear. These numbers should NOT be considered as accounts receivable.

Should courts be involved in debt collection, and if so, to what extent? The judges and most others on the committee were of the opinion that, while the defendant was on probation, the court should maintain a degree of control over that defendant and monitor his/her compliance with the terms of probation. This would include probation to AP&P. In most parts of the state AP&P collects only victim restitution and does not pursue collection of fines owed the State. There was also a great deal of concern that if the debt were turned over to an outside agency for collection while the defendant was still on probation, there might be significant problems associated with record-keeping and other communication between the court and the agency regarding collection. Other questions arose regarding the court's ability to issue a warrant or take other action regarding the defendant once the debt had been turned over to the Office of State Debt collection. There was considerable discussion and support for the idea of not turning over the debt until probation is concluded and for converting debts to civil judgments at the time they are turned over.

What role should the courts' current collections programs play? Pursuant to legislation and a program involving State Finance started in 1992, a number of courts in Utah have collections programs which are funded by the moneys they bring in. It has been difficult to determine precisely their effectiveness because the computer system in the District Court does not accurately measure or "age" accounts receivable. However, most judges in those courts with collections programs perceive a marked increase in collections now as compared with the time before the programs were implemented, and are supportive of maintaining those programs. The programs were initially considered pilot programs but were deemed to improve collections significantly and have since been adopted as permanent programs. Then, legislation past in 1995 gave control for collections to the Office of State Debt Collection. The courts have continued to operate their collections programs pursuant to dedicated credits appropriated to them each year by the Legislature. However, the authority for the courts (both District and Juvenile) to continue to collect a percentage of revenue collected is unclear.

The Ad Hoc Committee made the following recommendations:

- Legislation should be proposed to clarify the District and Juvenile Courts' ability to pursue collections before turning the case over to the Office of State Debt Collection, and to allow the courts to retain sufficient funds for operation costs (comparable to the legislation passed in 1992 and then changed in 1995). The percentage they should be allowed to retain should be established

January 3, 1997

Page Four

by rule of judicial administration. Any excess funds collected should go back to the entity entitled to them. The Office of State Debt Collection should be asked to include this provision as part of their legislation package in 1997.

- A debt should be considered past due 60 days past the demand date. The demand date is the date the defendant fails to make payment(s) as ordered by the court. If the debt is ordered as a term of probation without a monthly payment schedule, it is past due at the end of probation if not fully paid at that time. If the debt is ordered as a term of probation and a monthly payment schedule is specified by the court, it is past due 60 days after failure to make any monthly payment.
- When a court-ordered debt is 60 days past due, based upon the definition stated in the paragraph above, it should be sent to the judge for review. The judge can then decide whether to send it the Office of State Debt Collection, or whether to pursue other remedies such as issuance of a warrant.
- When a debt is turned over to the Office of State Debt Collection, it should be entered as a civil judgment and no longer carried on the court's accounts receivable as a criminal judgment.
- The court's current policy regarding the priority of payments should be retained, e.g.:

Pay first: Restitution to an individual victim. The State Office of Debt Collection has not committed to collecting victim restitution. However, the Ad Hoc Committee recommended that victim restitution should be turned over to them along with other court-ordered debts.

Pay next: Surcharge (which includes the Victim Reparations Fund, among other agencies)

Pay next: Fines/Fees

The above policy is currently set forth in the Courts Accounting Manual. The Committee recommends that the Council consider adopting the policy as a rule of judicial administration.

* * * * *

January 3, 1997
Page Five

The Ad Hoc Committee submits this interim report for review by the Judicial Council at its January 27, 1997 meeting. Judge West, Committee Chairman, will be present at the meeting to discuss the report with the Council. Thank you for your assistance.

c: Ad Hoc Committee on Collections and Warrants

collect\96-97study pp22-26

EMPLOYMENT CATEGORIES

PURPOSE

The purpose of this policy is to define the categories of employment in the courts.

SCOPE

This policy outlines the mechanisms for appointing individuals to positions such as career service, time-limited, career exchange, reassignments, transfers, internships and volunteers. It also specifies the conditions associated with these appointments.

This policy applies to all employees and applicants for employment.

CROSS REFERENCES

Recruitment and Selection, Policy 210

Leave, Policy 400

Relocation, Policy 250

Code of Personal Conduct, Policy 500

POLICY AND PROCEDURE

1. Career Service.

1.1 A career service employee is one whose selection, advancement, and discipline is conducted consistent with the courts' philosophy of human resources management. However, management shall not discriminate against a career service exempt employee in personnel actions as prescribed by section 5, code of personal conduct.

1.1.1 An exempt employee may obtain career service status by successfully competing for placement on a competitive register or occupying a position which is moved from exempt to career service status by decision of the director.

2. Career Service Exempt.

2.1 A career service exempt employee is one who serves at the will and pleasure of management. However, management shall not discriminate against career service exempt employee in personnel actions as prescribed by Section 5, Code of Personal Conduct.

3. Career Service Employee in Exempt Position.

- 3.1 Management may use the competitive selection process to appoint a career service employee to an exempt position. Such an employee relinquishes career service status while in the exempt position.
- 3.2 A career service employee serving in an exempt position, who is not retained in the exempt position, shall be placed on a statewide reappointment register for a 12 month period from the date of separation. The register shall be maintained by the director.
- 3.2.1 Management shall reappoint the employee to any career service position for which the employee qualifies in a pay grade comparable to the employee's last career service position. Alternatively, management may appoint the employee to a lesser career service position for which the employee is qualified, pending the opening of a position at the original level.
- 3.3 Management shall not reappoint the employee to a career service position if the discharge from the exempt position was for cause.

4. Trainee Appointment.

- 4.1 A trainee appointment may be approved, provided that the possibility of such an appointment has been announced. The appointment shall be subject to the following criteria:
- the trainee shall meet the minimum qualifications for the position within a period of 18 months. Any exceptions shall be approved by the director prior to the appointment; and
- the trainee shall be selected through a competitive application process, subject to the approval of the court level administrator, in consultation with the director.
- 4.2 Trainee pay shall be two grades lower than the pay for the target class. The salary amount paid shall be approved by the court level administrator, in consultation with the director.
- 4.3 Trainee service shall not be applied toward satisfying the probationary requirement. Upon successfully completing the objectives of the trainee appointment, management shall give the employee probationary status and an appointment to the target class with salary established at the entry level of the appropriate pay grade.

- 4.4 If a career service employee is unable to complete the objectives of the trainee appointment, management shall return the trainee to a position similar in grade and position from which the employee was appointed.
5. Probation.
 - 5.1 The probation period is part of the selection process. Management evaluates an employee's suitability for career service employment during this period based upon demonstrated competence and conduct.
 - 5.1.1 Management shall give an employee a reasonable opportunity to demonstrate competence and satisfactory conduct. Management shall provide a reasonable amount of guidance regarding expectations. Management may dismiss an employee at any point during the probationary period for failure to demonstrate progress in correcting deficiencies in performance or behavior.
 - 5.1.2 The standard period for successful advancement from probation to career service status is one year. Deviation from the standard period shall be approved by the court executive, in consultation with the court level administrator and the director, prior to the expiration of the probation period. The period may not be shortened or extended by more than six months.
 - 5.2 An employee is eligible to receive a probation increase at the conclusion of the probation period. Such an increase is contingent upon the legislature funding merit increases for employees for the same fiscal year.
 - 5.3 If a probation employee is promoted to a different class series, the probation period shall run anew.
 - 5.4 Management may not discharge a probationary employee without first preparing and providing to the employee a written statement outlining the reasons for discharge.
6. Trial Period.
 - 6.1 Upon promotion to a position of significantly different duties and responsibilities, a career service employee shall serve a trial period of one year. If the employee fails to pass the trial period, the employee may be reassigned to a similar position at the same grade and step as was formerly held. The employee is not eligible for a pay increase at the end of the trial period.
 - 6.2 An employee currently serving a trial period may not make a lateral transfer to another district without the approval of both court executives.

7. Contingent.

- 7.1 The court executive, in consultation with the court level administrator and the director, may create a non-permanent position funded by contingent funding such as grants, self-funding, or similar sources. If the contingent position is created in the administrative office, the director, in consultation with the state court administrator, shall authorize the position.
- 7.2 Appointment to a contingent position must be made with a competitive selection process and may include benefits.
- 7.3 The director shall develop a memorandum of understanding outlining the conditions of employment and expected duration of the contingent position. Management and the employee shall sign the memorandum of understanding when the employee is hired.

8. Temporary.

- 8.1 The court executive, in consultation with the court level administrator, may create a temporary position when temporary, emergency or other special needs justify such action. If the temporary position is created in the administrative office, the director, in consultation with the state court administrator, shall authorize the position. A temporary employee serves at the will of management.
- 8.2 Appointment to a non-career service position for a period of nine months or less in a 12 month period shall be made on a temporary basis. Management may appoint an individual to a temporary position without a competitive examination; however, appointment from temporary to career service or contingent status shall not be made unless the individual successfully completes a competitive selection process for the original temporary position.
- 8.3 Appointment to fill a vacancy created by an employee on approved leave without pay shall be made on a temporary basis.
- 8.4 A temporary employee shall be compensated on an hourly basis, without benefits.

9. Part-Time Employment.

- 9.1 The court executive, in consultation with the court level administrator, may establish or dissolve part-time positions within the approved FTE allocation.
- 9.2 Management and the employee shall sign a memorandum of understanding outlining

the terms of the part-time employment including salary, benefits and job description.

10. Career Mobility Assignment.

- 10.1 The court executive, in consultation with the court level administrator and director, may authorize a temporary promotion or assignment when emergency or other special needs justify such action. If the temporary promotion or assignment involves an employee of the administrative office, the director, in consultation with the state court administrator, shall authorize the promotion or assignment.
- 10.2 Appointment to the temporary position may be based on the competitive selection process.
- 10.3 Management shall not permanently appoint the employee to the position without first opening the position to the competitive selection process.
- 10.4 The director shall develop a memorandum of understanding outlining the conditions of employment, including the duration, salary of the position, and whether the exchange may become permanent. Management and the employee shall sign the memorandum of understanding when the employee is placed in the temporary position.
- 10.5 If the employee returns to the employee's previous position or to another like position, the employee shall receive the same salary, plus any salary advancements that the employee would have attained for satisfactory performance in the previous position had the employee not participated in the career mobility.
- 10.6 If the career mobility assignment does not become permanent, management shall return the employee to the employee's previous position or another like position.

11. Career Exchange Program.

- 11.1 Exempt and career service employees may participate in career exchange programs designed to develop resources and enhance the career growth of employees. An employee may request to participate in a career exchange.
 - 11.1.1 A participating employee shall retain all rights of the employee's previous position.
 - 11.1.2 A participating employee shall be treated as other reduction-in-force employees if the position the employee left is affected by a reduction in force.

- 11.2 A career exchange participant who may be from outside state government, must meet the minimum qualifications of the career exchange position.
 - 11.3 Subject to 11.1.2 above, if the employee returns to the employee's previous position or to another like position, the employee shall receive the same salary prior to the career exchange, plus any salary advancements that the employee would have attained for satisfactory performance in the previous position had the employee not participated in the career exchange.
 - 11.4 Management and the employee shall sign a memorandum of understanding defining the nature and terms of the career exchange, including whether the exchange may become permanent.
12. Transfer.
- All interdistrict openings shall be posted.
- 12.1 Voluntary Transfer.
 - 12.1.1 Management shall conduct an internal recruitment prior to initiating an interdistrict transfer.
 - 12.1.2 Before initiating a transfer, management shall verify with the director the employee's eligibility for transfer, including minimum qualifications, salary eligibility, benefit status and career status.
 - 12.1.3 Management may initiate a transfer only at the beginning of a pay period, as defined by the state payroll system.
 - 12.1.4 In accepting a transferred executive branch employee, the courts shall accept all accrued benefits supported by official records.
 - 12.2 Involuntary Transfer.
 - 12.2.2 Management may involuntarily transfer an employee if the transfer is required to meet the needs of the organization.
 - 12.2.3 Management may offset an employee's moving expenses if the employee is required to relocate to an office outside the employee's judicial district. Moving expenses may also be offset in other appropriate circumstances, as determined jointly by the state court administrator and the director.

13. Reassignment.

13.1 Management may reassign employees from one position to another based on need.

13.2 A reassignment may be initiated by management for administrative reasons or may be requested by an employee, provided the position remains within the class specification.

14. Rehire.

14.1 Management may rehire a former career service employee, without going through a competitive selection process, if the employee is rehired within 12 months of the employee's termination date.

14.1.1 A former employee who has been terminated for cause is not eligible for rehire under this section.

14.1.2 An employee who is rehired under this section may be required to serve a trial period.

14.2 An employee is eligible to be rehired without going through a competitive selection process only in a former or substantially equivalent position and comparable or lower salary to that formerly held.

15. Volunteer.

15.1 Management may establish a program for the use of volunteers.

15.2 The director shall develop guidelines for the use of volunteers.

15.3 Volunteer service credit will be recognized for determining minimum qualifications for a career service position.

15.4 Prior to accepting volunteer services, the court executive and the volunteer shall sign a memorandum of understanding defining the nature and terms of the volunteer services.

15.5 A volunteer is considered an employee of the courts for the purposes of:

15.5.1 Worker's compensation benefits for any injuries sustained by the volunteer while performing assigned service; or

- 15.5.2 Operating state vehicles or equipment when the volunteer is properly licensed for that operation; or
 - 15.5.3 Indemnification offered salaried employees.
16. Internship/Student Practicum.
- 16.1 Management may authorize a student internship/practicum program. Management may pay the intern a stipend.
17. Telecommuting.
- 17.1 Telecommuting is an alternative working arrangement that may be considered by management for expanding work site possibilities and allowing work to be accomplished in a more productive or efficient manner.
 - 17.2 The director, in consultation with the State Court Administrator, shall identify criteria which would make a position potentially suitable for telecommuting.
 - 17.2.1 Management may request in writing that the director evaluate a specific position for telecommuting suitability. Such a request shall include justification for making the change.
 - 17.3 Management may enter into a telecommuting agreement with an employee only with prior approval of the court level administrator, in consultation with the director.
 - 17.4 Management and the employee shall sign a memorandum of understanding specifying the terms of the telecommuting agreement. Such a memorandum shall include, but not be limited to, duties, working hours and conditions, use and care of state-owned equipment and supplies, confidentiality of information, and means of assessing employee performance.
 - 17.5 An employee who is on corrective or disciplinary action may not telecommute.
 - 17.6 A telecommuting agreement may be terminated at will by management.

COMPENSATION

PURPOSE

The purpose of this policy is to establish a compensation program which provides salaries and benefits that are adequate to attract and retain the best qualified employees and to provide equitable treatment of employees. Base compensation shall relate to the complexity, skill level, judgment, responsibility, experience, and education required to perform a job. Additional compensation shall relate to performance, based upon objective criteria established in each employees' performance plan.

SCOPE

This policy sets forth guidelines for establishment of a pay plan and provides salary adjustment procedures.

This policy applies to all court employees, except those paid on an approved plan separate from the General Classified Pay Plan (e.g. law clerks and central staff attorneys).

CROSS REFERENCES

Utah Code Ann. § 67-19-15.6
Classification, Policy 330

POLICY AND PROCEDURE

1. Pay Plan Development and Allocation.
 - 1.1 The director shall conduct a study of salary levels of comparable positions in the public and private sector and shall make adjustment recommendations to the state court administrator at least every three years. Implementation of adjustments is subject to the availability of funds.
 - 1.2 The director shall assign each position class to a pay range based upon the class' relationship to other classes as defined in the classification plan and by market data.
2. Appointment.
 - 2.1 A job offer shall not be made without the approval of the court executive. For a position in the Administrative Offices, a job offer shall not be made without the approval of the State Court Administrator.

- 2.2 Pay for newly hired employees shall normally be set at the minimum of the pay range assigned to a job class. However, management, with the concurrence of the director, may approve hires up to the midpoint, as warranted by exceptional job qualifications or by a shortage of qualified applicants, subject to the availability of funds. If an increase is being considered because of exceptional job qualifications, the additional step increases, if approved, shall be given at the time of hire. The exceptional qualifications should be directly related to the job for which the applicant is applying.
 - 2.3 Management shall not hire above the midpoint, of a pay range except in unusual circumstances, and with prior approval from the court-level administrator or the state court administrator, and the director.
 - 2.4 Employees sharing a single position may be assigned to different salaries and different pay ranges corresponding to the same class series based upon fair employment practices.
3. Merit Increase.
 - 3.1 Management shall adopt eligibility guidelines for merit and probation increases ~~guidelines~~ effective July 1 of each fiscal year subject to funding approved by the Legislature.
 - 3.2 Permanent full-time and part-time employees are eligible to receive a merit increase.
 - 3.3 Temporary, seasonal, or probationary employees, employees at or above the pay range maximum, and employees whose performance is rated less than successful shall not be eligible to receive a merit increase.
 - 3.4 A part-time employee is eligible to receive a merit increase in the same amount of elapsed calendar time on the job as a full-time employee.
 - 3.5 Management shall complete an employee's performance evaluation within three months preceding the effective date of a merit increase.
 - 3.6 A merit increase shall not exceed the range maximum assigned to a job class.
 4. Career Ladder.
 - 4.1 Subject to the availability of funds, management shall give a career ladder advancement when an employee completes the requirements outlined in the job specifications and career ladder program, has received a performance evaluation

rating of successful or above on the most recent performance evaluation, and is subject to no current disciplinary action.

- 4.2 Pay increases for career ladder advancements shall be limited to two steps. However, if the new salary is below the minimum for the new range, it shall be increased to the new minimum.
5. Selective Salary Adjustment.
 - 5.1 Management may recommend a selective salary adjustment for a career service exempt employee.
 - 5.2 Management may recommend a selective salary adjustment for a career service employee in order to mitigate an inequity caused by a merit increase freeze or other similar circumstance. For career service employees, equal consideration shall be given for selective salary adjustments based upon consistently applied criteria.
 - 5.3 Management shall submit a written rationale supporting the recommendation to the director and the court level administrator.
 - 5.4 A selective adjustment is subject to the availability of funds, guidelines established by the director, and approval of the court level administrator.
 6. Administrative Salary Adjustment
 - 6.1 Management may recommend an administrative salary adjustment for employees in extraordinary situations that fit no other category.
 - 6.2 An employee below the midpoint of the employee's salary range may receive a maximum of four steps. An employee at or above the midpoint of the salary range may receive a maximum of two steps.
 - 6.2.1 Administrative salary adjustments cannot exceed the maximum of the employee's salary range.
 - 6.3 Management shall submit a written rationale supporting the recommendation to the director and the state court administrator. The state court administrator shall have final approval on all administrative salary adjustments.
 - 6.4 An administrative salary adjustment is subject to the availability of funds.

7. Longevity Increase.

- 7.1 Management may grant a longevity increase not to exceed 3.5% to a career service employee who has been paid at or above the range maximum for at least one year, provided the employee has received a successful or outstanding performance rating and has been employed by the courts for at least eight years.
- 7.2 In determining longevity increase eligibility, management shall credit a former city or county court employee assimilated into the state courts or an employee transferring to the courts from an employer having reciprocity with the courts for years of service with the former employer.
- 7.3 An employee whose salary exceeds the range maximum is eligible to receive a longevity adjustment no more frequently than every five years after the initial longevity adjustment. Any subsequent longevity increase shall not exceed 3.5%.
- 7.4 An employee is eligible to receive a maximum of eight successive 3.5% adjustments beyond the range maximum (longevity scale maximum).
- 7.5 A former city and county employee who is assimilated into the state courts or an employee transferring to the courts from an employer having reciprocity with the courts, whose salary exceeds the longevity scale maximum, is ineligible to receive a pay increase until the longevity scale is adjusted as a result of cost-of-living or market studies to incorporate the salary rate.

8. Cost-of-Living Adjustments.

- 8.1 When the legislature grants a cost-of-living adjustment (COLA) which exceeds an across-the-board pay plan adjustment, the COLA shall not exceed the new range maximum or the new longevity scale maximum for an employee in longevity status.

9. Promotion.

- 9.1 At the discretion of management, a minimum of two steps and a maximum of four steps salary increase shall be granted to an employee receiving a promotion. If the new salary is below the minimum of the new range, it shall be increased to the new minimum.
- 9.2 Management, with the concurrence of the director, may approve an increase up to step 8 of the new range when a promotion results from a competitive recruitment to a new class series. Such an adjustment shall be based on exceptional qualifications and subject to the availability of funds.

10. Order of Salary Calculation.

10.1 Multiple categories of pay increases awarded simultaneously shall be calculated in the following order:

- (1) cost of living adjustment;
- (2) merit;
- (3) career track;
- (4) selective adjustment;
- (5) promotion;
- (6) longevity.

11. Reassignment.

11.1 An employee who is reassigned shall be paid the same salary received prior to the reassignment.

12. Reclassification.

12.1 If the director reclassifies a position to a higher class, the director shall adjust the incumbent's salary to at least the minimum of the new range and may give up to a four step salary increase, based upon increased responsibility.

12.2 A reclassification increase is subject to the availability of funds.

12.3 If the director reclassifies a position to a lower class, the incumbent's salary shall remain the same. If the incumbent's salary exceeds the maximum of the new range or, provided the individual meets longevity status criteria, the longevity scale maximum, the incumbent is ineligible to receive a salary increase until the salary range or longevity scale increases to incorporate the incumbent's pay rate. An employee is ineligible to receive cost of living increase until the salary range increases.

12.3.1 If the reclassified employee is promoted or upgraded in the future, management shall take the employee's salary history into consideration before providing a salary increase.

13. Demotion.

13.1 If an employee is demoted, either voluntarily or involuntarily, management may treat the employee's salary according to 12.3 above or reduce the salary.

13.1.1 If an employee is demoted and the salary is not reduced, a future

promotion or upgrade shall not be accompanied by an increase unless management considers the employee's demotion and salary history.

14. Benefits.

14.1 Furloughed employee.

14.1.1 A furloughed employee shall continue to receive state contributions to retirement and the courts shall pay the full cost of premiums for health, dental, disability and life insurance benefits through the effective period of the furlough.

14.2 Suspended Employee.

14.2.1 An employee suspended for disciplinary reasons shall continue to receive state contributions to retirement, health, dental, disability and life insurance programs. However, the employee shall pay the employee portion of insurance premiums to continue coverage through the period of suspension.

14.3 Part-time Employee.

14.3.1 With the exception of converted sick leave, an employee working at least 50% of full time per pay period shall be eligible for benefits in proportion to the number of hours worked.

14.3.2 An employee hired or transferred to a position of less than 50% of full time per pay period on or after August 1, 1988, shall not be eligible for benefits except as provided in 13.3.4.

14.3.3 An employee hired or transferred to a position qualified as a job share position of less than 50% of full time per pay period before August 1, 1988 shall be eligible for benefits in proportion to the hours worked.

14.3.4 Retirement benefits shall accrue to employees working less than 50% of full time at the period beginning of the employee's seventh month of employment with the courts.

LEAVE

PURPOSE

Leave benefits, including sick leave, annual leave, and family and medical leave, are provided to court employees. Court employees should consistently and conscientiously account for their use of leave time. This policy should be construed and applied to further that objective.

SCOPE

This policy provides guidelines governing the accumulation and use of leave benefits.

This policy applies to all court employees, except judicial law clerks and court reporters.

CROSS REFERENCES

Fair Labor Standards Act, Code of Federal Regulations §541

Utah Code Ann. §39-3-2

Utah Code Ann. §67-19-14

Policy 310, Compensation

Policy 200, Reciprocity Agreement

Policy 420, Holidays

Policy 610, Discipline

Policy 320, Incentive Awards

Appendix A, Overtime Exempt Positions

Family and Medical Leave Act, Code of Federal Regulations, Title 29, Part 825.

Utah Administrative Code, §R477-8-7

Appendix C, Leave Accrual

POLICY AND PROCEDURE

1. Conditions of Leave.

- 1.1 No employee may be allowed annual or sick leave with pay for any period of time beyond or in advance of time already accrued.
- 1.2 Management shall not change the status of an employee from full-time to part-time for the purpose of extending benefits.
- 1.3 No paid leave shall accrue or be granted to a temporary employee. An employee hired or transferred to a position of less than 50% of full time per pay period on or after August 1, 1988 shall not accrue leave.

- 1.4 An employee working at least 50% of full-time per pay period shall accrue annual and sick leave in proportion to the time worked, and be compensated for funeral and paid military leave in proportion to the time worked.
 - 1.5 An employee on furlough or in any paid leave status shall continue to accrue annual and sick leave at the regular rate.
 - 1.6 Uncompensated annual, sick, and converted sick leave balances earned by an employee working for any employer having reciprocity with the courts shall be transferred with the employee when she/he is employed by the courts. Years of service spent with such an employer will be credited in determining the employee's leave accrual rate. The same policy shall apply to city and county employees assimilated by the courts.
2. Annual Leave.
- 2.1 A permanent, full-time employee shall accrue annual leave with pay at the rates indicated below.
 - 2.1.1 Service through the completion of five years - four hours each pay period.
 - 2.1.2 Service from the beginning of the sixth year through the completion of ten years - five hours each pay period.
 - 2.1.3 Service from the beginning of the eleventh or more years - six hours each pay period.
 - 2.2 A permanent employee working at least 50% of full-time per pay period shall accrue annual leave with pay according to the table in Appendix C.
 - 2.3 An employee rehired within one year of separation from Utah State employment may have the former annual leave accrual rate reinstated. An employee rehired after one year of separation shall begin accruing annual leave at the entry rate.
 - 2.4 The annual leave accrual rate for a career service exempt employee may be negotiated at the time of hire by the hiring authority but shall not exceed six hours per pay period.
 - 2.5 A career service exempt employee shall report an absence in excess of four hours.
 - 2.5.1 A career service employee shall report all leave taken.

- 2.6 An employee who is exempt from overtime shall not be subject to pay deductions for an absence of four hours or less. If an overtime exempt employee is absent for a continuous period of more than four hours, and the employee does not have sufficient accrued leave to cover the absence, then the absence shall be accounted as leave without pay.
 - 2.7 An employee may use accrued annual leave after completing at least two full pay periods of employment.
 - 2.8 Annual leave granted shall be consistent with the effective operation of the organization as determined by management.
 - 2.9 Management must provide opportunities for each employee to use annual leave each year to the extent of the employee's annual rate of accrual.
 - 2.10 On January 1 of each year, an employee shall forfeit any unused, accrued annual leave time in excess of 320 hours. For a part-time employee, maximum annual leave accumulation shall be proportional to the percent of full-time hours worked, i.e., 50%, 160 hours; 75%, 240 hours.
 - 2.11 An employee shall be compensated in cash for unused annual leave upon termination. A terminating employee shall not receive leave on leave, or holiday pay beyond the time of accrued annual leave.
3. Sick Leave.
- 3.1 A permanent, full-time employee shall accrue sick leave at the rate of four hours each pay period. Sick leave shall accrue without limit.
 - 3.2 A permanent employee working at least 50% of full-time per pay period shall accrue sick leave according to the table in Appendix C.
 - 3.3 An employee may use accrued sick leave after having completed at least one full pay period of employment.
 - 3.4 Sick leave is a contingent benefit subject to bona fide need. Sick leave shall be granted to an employee who is absent from duty for preventive medical or dental care or because of illness, temporary disability or injury. Sick leave shall be granted for time absent from work as a result of a short term disability for the length of time certified by a medical doctor as being necessary for the employee to recover. Any time taken beyond that certified by the doctor shall be taken as annual leave or leave without pay.

- 3.5 A career service exempt employee shall report an absence in excess of four hours.
 - 3.6 An employee who is exempt from overtime shall not be subject to pay deductions for absences of less than four hours. If an overtime exempt employee is absent for a continuous period of more than four hours, and the employee does not have sufficient accrued leave to cover the absence, then the absence shall be accounted as leave without pay.
 - 3.6.1 A career service employee shall report all leave taken.
 - 3.7 Sick leave shall be granted for dental or medical care or for absence from duty because of illness, injury or temporary disability of a spouse (including medical conditions related to pregnancy and child birth), children, parent, or other persons who live in the home of the employee or are dependent on the employee for a majority of their financial support. Sick leave of up to six weeks shall also be granted for the adoption of a child. Management may grant exceptions only with the prior approval of the director.
 - 3.8 Each employee absent because of illness or injury shall arrange for a telephone report to the supervisor at the beginning of the scheduled work day.
 - 3.9 Management may require the employee to submit a medical certificate or proof of placement in the home for an adoption to support a sick leave request.
 - 3.10 In conjunction with the provisions in section 400.5, Family and Medical Leave, an employee who is absent for illness beyond the employee's sick leave shall be carried on the payroll on annual leave until all annual leave has been used. The employee may then use donated sick leave, if any, and leave without pay for a combined period not to exceed 12 months.
 - 3.11 Management shall not grant sick leave to any terminating employee who becomes sick after the last day worked.
 - 3.12 An employee separating from the courts shall not be compensated in cash for unused sick leave, unless the employee is retiring. A retiring employee shall be paid 25% of unused accumulated sick leave at the pre-retirement rate of pay.
 - 3.13 An employee rehired within one year of separation from Utah State employment may have the former sick leave balance reinstated.
4. Sick Leave Incentive Program.

- 4.1 After an employee has accrued 144 hours of unused sick leave, the employee is eligible in the next calendar year to participate in the sick leave incentive program.
 - 4.2 During a calendar year in which the employee is eligible, any hours of unused sick leave accrued in excess of 64 may be carried as "converted sick leave." This formula shall not be pro-rated for part-time employees.
 - 4.3 The employee may elect at any date to use the converted sick leave as annual leave, sick leave or to provide paid-up health insurance at the time of retirement. Paid-up health insurance shall be provided by the Courts on the basis of one month's premium for each eight hours of accumulated converted sick leave. At age 65, any remaining hours may be applied on the same basis toward premiums for medicare supplement coverage.
 - 4.4 A maximum of 320 hours of converted sick leave may be accrued. Thereafter, excess hours may remain as regular sick leave or may be converted to annual leave. If converted to annual leave, the time will be combined with all annual leave in determining the 320 hours of maximum annual leave allowed at the end of each year.
 - 4.5 An employee shall declare the number of hours of sick leave transferred to converted sick leave in the previous calendar year by January 31 of each year.
 - 4.6 An employee terminating before retirement shall be compensated in cash for unused converted sick leave.
 - 4.7 The surviving spouse and dependent children of a deceased employee shall be eligible to receive paid-up health insurance in lieu of cash for accumulated converted sick leave. Health insurance coverage shall be the same as that carried by the deceased employee prior to death.
5. Family and Medical Leave.
- 5.1 In conformance with the federal Family and Medical Leave Act, management shall authorize up to 12 weeks of leave in a 12 month period to a qualifying employee for: birth or adoption of a child or to receive a foster child; a serious health condition of the employee; or care of a spouse, dependent child or parent with a serious health condition.
 - 5.2 To qualify for leave under these provisions, an employee must have been employed by the state a minimum of 12 months and must have been employed a minimum of 1,250 hours during the most recent 12 months of employment.

- 5.3 Leave taken for the birth of a child or the placement of a child for adoption or foster care shall be completed no later than 12 months after the birth or the initial placement. Such leave may not be taken intermittently unless specifically approved by management.
- 5.4 An employee requesting leave for a serious health condition shall submit a medical certificate verifying the need for such leave.
- 5.4.1 Leave for a serious health condition may be taken intermittently if medically necessary, however, management may temporarily transfer an employee to another position to better accommodate the taking of recurring leave.
- 5.4.2 If the leave is taken due to the serious health condition of the employee, the employee shall submit a medical release prior to returning to work.
- 5.5 All eligible accumulated compensatory time, sick, annual, converted sick and donated leave shall be used by the employee prior to going on leave without pay under these provisions and shall be counted within the 12 weeks. Upon notification by the employee that these provisions are to be utilized, management shall notify the employee that all leave taken from that point forward shall be counted within the 12 weeks allowed.
- 5.6 During leave without pay under these provisions, medical insurance benefits shall be continued by the courts provided the employee continues to pay the employee's share of the premium, if any.
- 5.6.1 If after returning to work, an employee fails to remain employed with the state for at least 30 days following leave without pay under these provisions, the employee shall reimburse the courts for any medical insurance premiums paid while on leave.
- 5.6.2 If the employee accrues and is paid for leave that accrued while on leave under these provisions and fails to remain employed with the state for at least 30 days following that leave, the employee shall reimburse the courts for that accrued leave.
- 5.6.3 Management may grant exceptions only with the prior approval of the director.
- 5.7 When a need for leave is foreseeable, such as for childbirth, adoption, elective surgery, etc., an employee shall request such leave 30 days in advance.

- 5.8 For an unforeseen serious medical condition, the employee shall submit a medical certificate verifying the need for leave within two weeks from the start of the leave.
 - 5.9 Other requests for leave shall be submitted as soon as practical under the circumstances.
 - 5.10 Upon return from taking leave under these provisions, management shall return the employee to the employee's original or an equivalent position.
6. Funeral Leave.
- 6.1 Management shall grant an employee up to three days of funeral leave with pay to attend the funeral of the employee's spouse, child, step-child, daughter- or son-in-law, parent, step-parent, grandchild, mother- or father-in-law, brother- or sister-in-law, grandparent, spouse's grandparent, brother and sister. Such leave shall not be charged against accrued sick or annual leave.
7. Military Leave.
- 7.1 An employee on official military orders is entitled to military leave, without loss of pay or loss of vacation leave, not to exceed 15 regularly scheduled working days per calendar year.
 - 7.2 If a holiday occurs during an employee's military leave, the day will be counted as military leave and the employee will be entitled to take another day off in lieu of the holiday.
 - 7.3 No salary may be claimed for non-work days that occur during military leave.
 - 7.4 Management shall grant additional military leave based upon official military orders. Such leave shall be accounted as leave without pay or as annual leave.
8. Court Leave.
- 8.1 An employee shall be entitled to leave of absence with full pay for the period of required absence when, in obedience to a subpoena or direction by proper authority, the employee appears as a witness in a court of law or before an administrative adjudicatory board, or is called to serve on a jury.
 - 8.2 An employee who is absent to testify as a private individual shall take annual leave or leave without pay.

8.3 An employee who receives witness or juror fees for service while on court leave shall deposit the fees with the Courts' Division of Finance.

9. Years of Court Service Leave.

9.1 In recognition that long term employees provide stability and valuable service, an employee who has worked in the courts for a significant period of time and who has received at least a successful performance rating for the previous two years is eligible for years of court service leave.

9.2 An employee is eligible for years of service leave, in addition to annual leave, once every five years according to the schedule outlined below.

9.2.1 Completion of ten and 15 years of continuous court service respectively--24 hours.

9.2.2 Completion of 20, 25 and 30 years of continuous court service respectively--40 hours.

9.3 Leave granted to a part-time employee shall be proportional to the percent of a full-time schedule worked, i.e., 50% permits 12 hours for completion of ten and 15 years of continuous service respectively.

9.4 Years of service leave is not cumulative and must be used during the calendar year in which it is granted.

9.5 Management shall document years of service leave in the employee's file and on the employee's leave record under the category of "other".

9.6 Upon termination, an employee shall not be compensated for unused years of service leave.

10. Leave Without Pay.

10.1 Upon approval of written application submitted to management, an employee may be granted continuous leave of absence without pay for any reason of benefit to the employee and the Courts for a period not to exceed 12 months.

10.2 In conjunction with the provisions in section 400.5, Family and Medical Leave, an employee may be granted leave without pay for a period not to exceed a total of 12 months, for illness or temporary disability, including medical conditions related to pregnancy and child birth, provided that the necessity for absence from duty is

attested by a certification from a registered medical practitioner. Similarly, an employee may be granted leave without pay in order to care for a spouse, child, parent or other dependent suffering from an illness or temporary disability. Management may grant exceptions only with the prior approval of the director.

- 10.3 Management shall consider the following factors in determining whether to grant an employee leave without pay:

A negative impact resulting in the inability of other employees to absorb the increased workload;

Whether the position is one which is critical to the operation of the courts, and for which temporary replacement is impractical;

Willingness to fill the position on a temporary basis and time and cost of training a replacement;

Whether the employee's performance has been rated less than successful; and

The length and frequency of prior leaves without pay.

- 10.4 Leave without pay which is granted for the purpose of enriching or developing employee skills is the most valid reason for approving the request.
- 10.5 Leave without pay shall not ordinarily be granted within the first year of service. Longevity, however, will not automatically qualify an employee for leave without pay.
- 10.6 Subject to provisions of section 400.5, Family and Medical Leave, management shall not grant leave without pay unless management expects that the employee will return to work following such leave.
- 10.7 Subject to provisions of section 400.5, Family and Medical Leave, management shall not grant leave without pay with paid leave in order to allow continuation of benefits paid by the state or to extend paid leave over a longer period of time.
- 10.8 As warranted by unusual circumstances, and subject to management approval, an employee may be allowed to take up to ten days of leave without pay, even where annual and sick leave balances continue to exist.
- 10.9 An employee may take up to ten consecutive working days of leave without pay per year without affecting eligibility dates for salary adjustments or for changes in the

leave accrual rate. Any time taken beyond this limit shall result in an adjustment to such eligibility dates reflecting the amount of time away from the job.

- 10.10 Subject to provisions of section 400.5, Family and Medical Leave, insurance benefits will be discontinued under leave without pay status unless the employee pays the full premium personally. However, if an employee is in a leave without pay status because of a work related injury or illness, the Courts will pay the full cost of insurance premiums on behalf of the employee, if worker's compensation is the only source of income to the employee.
- 10.11 An employee who returns to active service on or before the expiration of leave, is entitled to a position in the same class, pay rate, seniority status, and accrued sick leave as the employee held at commencement of leave.
- 10.12 An employee shall be granted military leave without pay for the period of active service plus travel time. Upon termination of the military duty, the employee must be restored to the previous position or a position similar in seniority, status and pay, providing application is made within 40 days of termination of the military duty. The employee must submit evidence of military service to be eligible for reinstatement.

11. Administrative Leave.

- 11.1 For the benefit of the organization, management may grant an employee administrative leave without deducting the time from other accumulated leave accounts.
- 11.2 Management may permit an employee to be absent on administrative leave for a period not to exceed ten consecutive working days. Written approval of the court level administrator is required for administrative leave in excess of ten consecutive working days.
- 11.3 Management shall document the administrative leave on the employee's leave record. The employee's salary and benefits shall not be reduced during the period of leave.
- 11.4 Administrative leave shall be used during the absence of an employee for conferences, seminars, training, and other education purposes. Administrative leave shall be used only when the absence for education purposes is approved by management and the absence occurs during the employee's work hours.
- 11.5 Management may impose administrative leave pending the investigation of employee misconduct.

- 11.5.1 Administrative leave or transfer under this paragraph is not a disciplinary measure.
 - 11.5.2 The period of administrative leave shall not be longer than is reasonably necessary to complete the investigation into the alleged misconduct.
 - 11.5.3 Management may impose administrative leave if the conduct of the employee, in the sole discretion of management, endangers the peace and safety of others, or poses a threat to the public interest.
- 11.6 Management may grant administrative leave not to exceed three working days as part of an employee incentive program, in accordance with policy 320.

DISCIPLINE

PURPOSE

It is the policy of the courts that management will inform its employees about what is expected at work, what constitutes employee misconduct, what management and the employee may do to correct any misconduct, and what the employee's rights are if disciplined. This information is provided in an effort to help employees succeed on the job.

SCOPE

The policy identifies grounds for discipline. It establishes procedures for investigating and implementing discipline, discusses the responsibilities of both supervisors and subordinates in the discipline process, and identifies the limits of supervisor authority.

This policy applies to all career service employees.

CROSS REFERENCES

Leave, Policy 400:11

Grievance and Appeal, Policy 620

Alcohol and Drug Free Workplace, Policy 520

POLICY AND PROCEDURE

1. Grounds for discipline
 - 1.1 Grounds for discipline shall include but not be limited to the following:
 - violation of the laws of the State of Utah or the United States, other than minor traffic offenses;
 - violation of the code of personal conduct;
 - violation of the rules of procedure or the Code of Judicial Administration;
 - conduct which endangers the peace and safety of others or poses a threat to the public interest;
 - unjustified interference with the work of other court employees;
 - misconduct;
 - malfeasance;
 - misfeasance;
 - nonfeasance;
 - incompetence;

- negligence;
- insubordination;
- failure to maintain skills;
- inadequate performance of duties;
- unauthorized absence;
- falsification or unauthorized alteration of records;
- violation of court policies;
- falsification of employment application;
- discrimination in hiring, assignment, or promotion;
- sexual harassment;
- derisive or demeaning behavior;
- violation of the Personnel Policies & Procedures;
- use of alcohol or drugs other than medication prescribed by a physician that affect job performance.

2. Type of discipline

- 2.1 Discipline may include but not is not limited to: oral reprimand; written reprimand; suspension without pay for up to thirty days; transfer; reassignment; demotion; dismissal.
- 2.2 Any employee on suspension shall be responsible for the continuation of the employee's benefits.

3. Investigation

- 3.1 ~~During an~~ If an investigation is necessary to determine the facts upon which discipline may be imposed, management may place an employee on administrative leave or transfer the employee.
- 3.2 ~~Management shall conduct an investigation into the alleged conduct which forms the grounds for discipline.~~ Discipline shall not be imposed until management makes a determination of the facts showing that grounds for discipline exist. The An investigation shall include an opportunity for the employee to respond to the allegations.

4. Procedure for discipline

- 4.1 Management shall conduct discipline in a consistent manner. Each employee shall be afforded prior access to court rules, policies, and procedures. The employee shall receive timely notice of noncompliance, and shall have the opportunity to respond to allegations and to the determination.

- 4.2 In determining the type and severity of discipline, management may consider aggravating and mitigating circumstances such as: the repeated nature of violations; prior discipline; the severity of the violation; the employee's work record; the effect on court operations; the potential of the violation to harm persons or property.
 - 4.3 For discipline other than an oral reprimand, management shall notify the employee, in writing, of the findings of the investigation. Except as provided in section 5, if the proposed discipline is demotion or dismissal, management shall notify the employee at least five working days prior to the imposition of the discipline.

The written statement shall include:
 - 4.3.1 the grounds for discipline, including a description of the specific conduct or omission for which the employee is being disciplined;
 - 4.3.2 any prior discipline;
 - 4.3.3 the discipline to be imposed;
 - 4.3.4 the effective date and duration of the discipline; and
 - 4.3.5 the corrective action necessary for the employee to avoid further discipline.
 - 4.4 Management may note an oral reprimand on the performance evaluation form and/or on the supervisor's personal notes at the time of the reprimand.
 - 4.5 A career service employee has the right to appeal the discipline through the grievance process.
 - 4.6 Only management may demote or dismiss a career service employee. Prior to demotion or dismissal the employee shall have the opportunity to review the discipline with management at the third level of review.
 - 4.7 The employee's written response, if any, and other related documents shall be placed in the personnel file.
5. Management may suspend the investigation and disciplinary procedures prescribed by this policy, and may impose immediate discipline if an employee possesses knowledge which poses a security risk or the employee's conduct, which constitutes grounds for discipline, is flagrant or egregious or poses a safety or security risk.

CODE OF PERSONAL CONDUCT

PURPOSE

Public employment in the court system is a public trust justified by the confidence that the citizenry reposes in the integrity of officers and employees of the judicial branch. Judicial employees should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct in order to preserve the integrity and independence of the judiciary. This policy should be construed and applied to further that objective.

SCOPE

This policy establishes standards of conduct expected of court employees. It addresses the general performance of duties, abuse of position, confidentiality, conflict of interest, outside interests and secondary employment. It specifically prohibits discrimination or harassment in the workplace and establishes the position of ombudsperson to assist management in resolving complaints.

This policy applies to all court employees.

CROSS REFERENCES:

Utah Code Ann. §67-16-1 et. seq.
42 United States Code §2000 (e)(1982)
Code of Judicial Administration §4-202.02, Records Dissemination and §3-201, Professional
Conduct of Court Commissioners
Code of Judicial Conduct
Grievance and Appeal, Policy 620
Discipline, Policy 610
Fairness in Recruiting and Hiring, Policy 130
Utah Administrative Rules §R-37-1-8-(6)(a)

POLICY AND PROCEDURE

1. General.
 - 1.1 Employees shall comply with the provisions of UCA 67-16-1 et. seq., the Utah Public Officers' and Employees' Ethics Act.
 - 1.2 Employees whose conduct is governed by more than one set of ethical regulations shall conform their conduct to the more stringent standard.

2. Management.
 - 2.1 Management shall make reasonable efforts to ensure that employees subject to their direction and control observe the ethical standards set out in these policies.
 - 2.2 Management shall diligently discharge administrative responsibilities, maintain professional competence in judicial administration and assist other employees in the performance of their duties.
 - 2.3 Management shall take action regarding any unethical conduct of which they may become aware, initiating appropriate disciplinary measures against an employee for any such conduct and reporting to appropriate authorities evidence of any unethical conduct by judges or lawyers.
 - 2.4 Managers may belong to an employee organization but shall not be eligible to be a representative or officer of an employee organization that assists employees in filing grievances or civil actions.
3. Performance of duties.
 - 3.1 Employees are expected to apply themselves to their assigned duties during the full schedule for which they are being compensated.
 - 3.2 No employee shall conceal, alter, falsify, destroy, mutilate, or fail to make required entries on any court records. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.
 - 3.3 No employee shall discriminate or manifest by words or actions, bias or prejudice against any person in the conduct of service.
 - 3.4 An employee shall not recommend attorneys, therapists, counseling agencies or other professionals but shall refer such inquiries to the licensing agency or professional organization that governs that profession. When an employee is required as part of the employee's job to refer an individual to a therapist or counseling agency, the employee shall follow the guidelines established by the district and not inconsistent with section 8 below, Conflict of Interest.
 - 3.5 No employee shall provide legal advice, unless it is part of an official duty.
 - 3.6 An employee shall respond to appropriate inquiries and provide information regarding court procedures.

- 3.7 No employee shall refuse to enforce or otherwise carry out any properly issued rule or order of the court, nor shall a court employee exceed that authority.
 - 3.8 No employee shall be required to perform any duty not related to the official business of the court.
 - 3.9 Managers shall provide information and instruction to employees regarding the security policy and procedures for their work location.
4. Abuse of position.
- 4.1 An employee shall use the public resources, property, and funds under the employee's control, and any influence, power, authority or information derived therefrom, judiciously and solely in accordance with established procedures.
 - 4.2 An employee shall not use or attempt to use a court position to secure privileges or exemptions.
 - 4.3 An employee shall not discriminate by dispensing special favors to anyone, whether or not for remuneration.
 - 4.4 An employee shall not assist any person securing a contract with the court system in a manner not available to any other interested person.
 - 4.5 An employee shall not be influenced in the performance of the employee's duties by kinship, rank, or position.
 - 4.6 An employee shall not request or accept a fee or compensation beyond that received by the employee in an official capacity for advice, information, or assistance that is otherwise available from the courts.
 - 4.7 An employee shall not solicit, accept or agree to accept any gifts, loans, gratuities, discounts, favors, hospitality, or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties. This subsection does not apply to the following:
 - 4.7.1 An award presented in recognition of public services;
 - 4.7.2 Any bonafide loan made in the ordinary course of business by any institution authorized by the laws of this state or any other state to make such loans;

- 4.7.3 Political campaign contributions if used in a political campaign of the recipient public officer or public employee;
- 4.7.4 An occasional non-pecuniary gift having a value not in excess of \$50.
- 4.8 An employee shall not receive outside compensation for performance of court duties except in cases of:
 - 4.8.1 An award of meritorious public contribution publicly awarded;
 - 4.8.2 The receipt of honoraria or expenses paid for papers, transcripts, talks, demonstrations, or appearances made by an employee during work hours with the approval of management; or on the employee's own time for which the employee is not compensated by the courts and which is not prohibited by these rules;
 - 4.8.3 The receipt of usual social amenities, ceremonial gifts, or insubstantial advertising gifts.
- 5. Dishonest or Fraudulent Acts.
 - 5.1 All persons employed by the courts are responsible for the prevention and detection of dishonest and fraudulent acts. An employee shall notify management of any and all such acts.
 - 5.1.1 Management shall establish preventive measures which shall include, but are not limited to, ongoing internal reviews and employee training on detecting and reporting dishonest and fraudulent acts.
 - 5.1.2 An employee shall immediately report all suspicions of dishonest and fraudulent acts to the court executive, who in turn shall immediately report the matter to the internal audit department. If the employee is employed in the Administrative Office of the Courts, the employee shall report all suspicions of dishonest and fraudulent acts to the deputy court administrator or the state court administrator. If an employee feels uncomfortable reporting to the court executive, the internal audit department may be contacted directly. The internal audit department shall then immediately notify the state court administrator.
 - 5.1.3 If requested, the internal audit department shall accept confidential information regarding dishonest and fraudulent acts. To the extent possible, anonymity and confidentiality for a reporting employee shall be maintained.

- 5.1.4 An employee having knowledge of dishonest or fraudulent acts who fails to report it shall be subject to disciplinary action.
- 5.2 No employee shall engage in reprisals against an employee who reports suspicions of dishonest or fraudulent activities. An employee making such reprisals shall be subject to disciplinary action in accordance with policy 610, Discipline.
- 5.3 Management shall direct all inquiries from a suspect, a suspect's representative or attorney to the state court administrator or internal audit department.
- 5.4 After the matter has been referred to the internal audit department, management should make no attempt to conduct independent investigations, interviews or interrogations. The internal audit department shall be responsible to investigate all possible dishonest or fraudulent acts pertaining to the Utah State Courts.
 - 5.4.1 Prior to conducting an investigation, the internal audit department shall advise the state court administrator and the court executive. If the court executive is the person under investigation, the state court administrator shall be advised. If the state court administrator is the person under investigation, the presiding officer of the Judicial Council shall be advised.
 - 5.4.2 Subsequent internal investigations may be performed at the direction of the state court administrator without notice to the court executive .
 - 5.4.3 While investigating, the internal audit department shall have the authority to:
 - 5.4.3.1 Gain full access to court premises;
 - 5.4.3.1.1 Examine, copy and/or secure all files, desks, cabinets and other storage facilities not designated for use by a specific individual and located on court premises without the prior knowledge or consent of any individual who may use or have custody of any such items;
 - 5.4.3.1.2 Examine, copy and/or secure all files, desks, cabinets and other storage facilities designated for use by a specific individual if there is a reasonable suspicion that the individual has either committed or assisted in the commission of a dishonest or fraudulent act.

- 5.4.3.2 Become the custodian of all original files and individual documents involved in the investigation;
 - 5.4.3.3 Restrict access to any of the above referenced items as necessary; and
 - 5.4.3.4 Interview any employee believed to be able to provide information about the matter being investigated.
- 5.5 If evidence of a dishonest or fraudulent act exists or if the court executive determines that leaving the suspect employee in place during an investigation may cause a disruptive work environment or security risk, the suspect may be placed on administrative leave with or without pay.
- 5.6 Any person employed by the courts determined to have participated in dishonest or fraudulent acts shall be subject to disciplinary action pursuant to policy 610, Discipline.
- 5.7 In all cases of suspected criminal conduct relating to dishonest or fraudulent acts, the state court administrator shall notify local law enforcement. The determination to pursue prosecution and/or restitution shall be made by management in conjunction with prosecutors.
- 5.8 A suspect employee may be terminated prior to the conclusion of a criminal investigation if circumstances warrant.
- 5.9 Upon an individual's plea of guilty or no contest or a guilty verdict in a court of law of criminal charges relating to dishonest or fraudulent acts arising from employment, employment of the individual shall be terminated.
- 5.10 Any negotiations concerning plea bargains, diversions or restitution shall be conducted with input from the state court administrator and AOC legal counsel.
- 5.11 If criminal charges are dismissed or the employee is found not guilty, management shall make a determination on the status of the employee in accordance with these policies and procedures.
- 5.12 Results of investigations by the internal audit department shall be disclosed or discussed with only the following:
- 5.12.1 The state court administrator and the employee's court executive;

- 5.12.2 The employee's representative or legal counsel;
- 5.13.3 Those persons who have a legitimate need to know in order to perform their duties and responsibilities; and
- 5.13.4 Authorized representatives of appropriate law enforcement and prosecuting agencies.

6. Discrimination/Harassment Prohibited.

6.1 It is the goal of the judiciary to create a positive work environment where employees are treated with respect and where they can work free of discrimination or harassment. To that end, the courts shall not fail or refuse to hire or to discharge any individual or otherwise to discriminate against or harass any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, age, disability, or national origin.

6.1.1 Discrimination on the basis of sex includes sexual harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

6.2 General Administrative Policy.

6.2.1 No employee shall engage in conduct constituting discrimination/harassment. Management shall discipline any employee who, after investigation, is determined to have engaged in such conduct.

6.2.2 Managers who knew or should have known of incidents of discrimination/harassment and failed to take appropriate action in accordance with this policy shall be disciplined.

6.2.3 Management shall discipline an employee who takes reprisals against another employee for filing a complaint alleging discrimination/harassment or for appearing as a witness for any party in a discrimination/harassment complaint. Management shall discipline an

- employee who submits a claim which is determined to be fraudulent or in bad faith.
- 6.2.4 Conduct occurring off duty or off court premises may constitute discrimination/harassment.
- 6.2.5 Any judge, commissioner or employee who has reason to believe that an employee is the victim of discrimination/harassment should encourage the victim to seek resolution of the matter, in accordance with the procedures established in this policy. In the alternative, the employee may inform management or the ombudsperson of the existence of a possible complaint.
- 6.3 Ombudspersons.
- 6.3.1 The state-wide ombudsposition is created as a resource for management and employees. An ombudsperson is an alternative for employees who would otherwise feel uncomfortable discussing alleged incidents of discrimination/harassment with management. The role of an ombudsperson is to facilitate communication and thereby assist management in the resolution of complaints.
- 6.3.2 The director, in consultation with the state court administrator, shall appoint one or more ombudspersons.
- 6.3.3 The duties of an ombudsperson shall be added to the ombudsperson's performance plan and shall include developing curricula and ensuring that all employees receive training on the subject of discrimination/harassment.
- 6.3.4 The director, in consultation with the director of judicial education and general counsel, shall develop a program for the initial and continuing education of an ombudsperson.
- 6.4 Resolution of a Complaint Against a Court Employee.
- 6.4.1 An employee who is complaining of discrimination/harassment should inform the alleged offender that the behavior is unwelcome. Alternatively, the employee should discuss the matter with management or the ombudsperson.
- 6.4.2 On request, the ombudsperson shall provide assistance by advising the employee about how to address the issue with the alleged offender or helping the employee bring the issue to management.

- 6.4.2.1 Except as provided in subsection 6.4.2.2 below, the ombudsperson shall inform the court executive of the incident, within five days of learning of the incident. If the court executive is the alleged offender then the ombudsperson, within five days of learning of the incident, shall inform the court level administrator. If the complainant is employed by the Administrative Office of the Courts, the ombudsperson shall inform the deputy court administrator or the state court administrator, unless either is the alleged offender in which event the ombudsperson shall inform the Presiding Officer of the Judicial Council.
- 6.4.2.2 If, after discussion with an ombudsperson, the employee concludes that discrimination/harassment did not occur, the ombudsperson shall not report the incident to management.
- 6.4.3 On request, management shall provide assistance by advising the employee about how to address the issue with the alleged offender or by discussing the issue with the alleged offender.
- 6.4.4 An employee may submit a written complaint to management or an ombudsperson if:
- 6.4.4.1 Initial efforts to resolve the matter are unsuccessful; or
- 6.4.4.2 The complaint is a second complaint against the individual after the individual has been informed that the behavior is unwelcome, whether or not submitted by the same complainant; or
- 6.4.4.3 If management, in consultation with the ombudsperson, concludes that the conduct is egregious.
- 6.4.5 Upon receipt, the written complaint shall be referred immediately to the court executive. If the court executive is the alleged offender or otherwise concludes that he or she is unable to determine the matter impartially, the complaint shall be referred to the court level administrator. If the complainant is employed by the Administrative Office of the Courts, the complaint shall be referred to the deputy court administrator or the state court administrator, unless either is the alleged offender in which event the complaint shall be referred to the Presiding Officer of the Judicial Council.

complaint shall investigate the complaint.

- 6.4.5.2 The alleged offender shall be provided a copy of the written complaint.
- 6.4.6 The investigator shall determine whether the conduct complained of occurred and, in consultation with general counsel, whether the conduct constitutes discrimination/harassment. Within 20 days of receiving the complaint, the investigator shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The investigator shall provide a copy of the report to the parties and to the director.
- 6.4.7 The investigator may be excused from the investigation and determination if the investigator is the immediate supervisor of either party; is a personal friend or member of the immediate family of either party; is so closely involved in the matter that the impartiality of the investigation or determination may be questioned; or determines that the time required for the investigation and determination is greater than the investigator can provide.
- 6.4.7.1 If the investigator is excused, the investigator shall refer the matter within three days to the director for appointment of an alternate investigator, and shall notify the parties of the referral.
- 6.4.7.2 The alternate shall determine whether the conduct complained of occurred and, in consultation with general counsel, whether the conduct constitutes discrimination/harassment. Within 20 days of the referral, the alternate shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The alternate may include in the report a recommendation regarding discipline. The alternate shall file the report with the director and the individual who referred the complaint and shall provide a copy to the parties.
- 6.4.8 At the conclusion of the investigation and determination, management shall impose discipline in accordance with the policies and procedures regarding discipline.
- 6.4.9 Either party may submit a grievance regarding the findings of the report by submitting the grievance to the third level of review, as defined in Section 7, Personnel Policies and Procedures. Only the person disciplined may submit a grievance regarding such discipline.

- 6.5 Investigation.
 - 6.5.1 The investigation shall include an interview of the parties, any individuals identified by the parties, and other individuals, at the discretion of the investigator. If a recommendation regarding discipline is made, the official or body shall consider discipline imposed in other cases involving similar circumstances.
- 6.6 Process for Submitting a Complaint of Discrimination/Harassment Against a Person not Employed by the Courts.
 - 6.6.1 The process for submitting a complaint against a person who is not an employee of the courts is the same as the process for submitting a complaint against an employee.
 - 6.6.2 Management shall use all reasonable means to resolve the complaint, including referring the complaint to the employer of the alleged offender or to the regulatory agency to which the alleged offender is subject.
- 6.7 Resolution of a Complaint Against a Judge or Commissioner.
 - 6.7.1 An employee who is complaining of discrimination/harassment should inform the alleged offender that the behavior is unwelcome or submit a complaint to the Presiding Officer of the Judicial Council or to the ombudsperson.
 - 6.7.2 On request, the ombudsperson shall assist the employee by advising the employee about how to address the issue with the alleged offender or helping the employee bring the issue to the Presiding Officer of the Judicial Council.
 - 6.7.2.1 Except as provided in subsection 6.7.2.2 below, the ombudsperson shall inform the Presiding Officer of the Judicial Council of the incident, within five days of learning of the incident.
 - 6.7.2.2 If, after discussion with the ombudsperson, the employee concludes that discrimination/harassment did not occur, the ombudsperson shall not report the incident to the Presiding Officer of the Judicial Council.
 - 6.7.3 On request, the Presiding Officer of the Judicial Council shall provide assistance by advising the employee about how to address the issue with

the disciplined employee's personnel file. If the director is the subject of a written complaint, then the record shall be kept by the state court administrator.

7. Confidentiality.

- 7.1 An employee shall not disclose to any unauthorized person any information acquired in the course of employment other than public data as defined in the Code of Judicial Administration.
- 7.2 An employee shall abstain from public comment about proceedings pending or impending in any court without prior approval of the court or the trial court executive.
- 7.3 An employee shall not initiate or repeat ex-parte communications with a litigant, witness, or attorney to the trier of fact, attorney, witness or litigant that might affect the outcome of the case.

8. Conflict of interest.

- 8.1 An employee shall exercise reasonable diligence to become aware of personal conflicts of interest, disclose such conflicts to management, and take appropriate steps to eliminate conflicts when they arise.
- 8.2 When an employee perceives any potential conflict of interest or has a question about the laws, statutes, and policies the employee shall discuss them with management.
- 8.3 No employee shall have personal investments in any business entity which will create a substantial conflict between the employee's private interest and public duties. The employee shall disclose any such conflicts to management. Management and the employee shall take appropriate steps to eliminate the conflict.
- 8.4 An employee shall not enter into any contract with the courts for services, supplies, equipment, leases, or realty apart from the employment contract relating to the employee's position.
- 8.5 When an employee is required by the responsibilities of the position to take an action or make a decision which could be interpreted as a conflict of interest, the employee shall declare the potential conflict to management and may be excused by management from so acting.

9. Outside Activities.

9.1 Court employees shall not use state-owned property in support of outside interests and activities when such use would compromise the integrity of the court or interfere with the employee's court duties. Specifically, an employee who is involved in an outside activity such as a civic organization, church organization, committee unrelated to court business, public office, or service club, shall:

9.1.1 Pursue the outside activity on the employee's own time;

9.1.2 Pursue the outside activity away from court offices;

9.1.3 Discourage any phone, mail or visitor contact related to the outside interest at court offices;

9.1.4 Arrange for annual leave or compensatory time off in advance to pursue the outside interest during business hours; and

9.1.5 Except as provided in section 10, not use data processing equipment or court supplies for the outside interest.

10. Personal use of state-owned equipment.

10.1 Computer equipment

10.1.1 Personal use of court computer systems is permitted only when all of the following criteria are met:

10.1.1.1 The use offers an opportunity for the employee to increase the employee's job-related knowledge and skills;

10.1.1.2 The employee is not compensated for the work performed, unless the employee has received the prior written approval of the court level administrator.

10.1.1.3 The employee pays for the cost of consumables and other attendant expenses (diskettes, paper, computer online and access charges, etc.);

10.1.1.4 The employee uses the computer system after hours, on the employee's personal time;

- 10.1.1.5 The employee does not use the computer system for permanent storage of data;
- 10.1.1.6 The use does not conflict with the employee's court responsibilities or normal court business; and
- 10.1.1.7 The use has been approved by the employee's immediate supervisor.
- 10.1.2 Software developed on state-owned computer equipment is the property of the state.
- 10.1.3 An employee may not install software on the hard drive unless the software is legally licensed and previous permission has been obtained from the employee's supervisor and the courts' data processing department.
- 10.1.4 Computer equipment is the property of the state courts, and an employee shall have no expectation that files stored are private or secure. Information stored on court computer equipment may be subject to inspection.
- 10.1.5 An employee shall have no expectation that information sent on electronic correspondence (E-Mail) is private or secure.
- 10.2 Other equipment
 - 10.2.1 Personal use of state owned equipment such as facsimile machines, copiers, typewriters, telephones, etc. shall be approved by management and shall be subject to payment for consumables and other attendant expenses.

11. Secondary Employment.

- 11.1 Employment with the court system shall be the primary employment of full-time employees.
- 11.2 An employee may engage in secondary employment if the employment does not constitute a conflict of interest and conforms to the following provisions:
 - 11.2.1 The secondary employment shall not interfere with the employee's ability to perform job duties with full capacity;

- 11.2.2 The secondary employment shall not be performed during the same hours that the employee is scheduled to work; and
 - 11.2.3 Except as otherwise provided by rule of the Judicial Council, the secondary employment shall not be with a lawyer, law firm, law enforcement agency, any other agency in the criminal justice system, constable, collection agency, clients referred from the court or under the supervision of the court, an organization or entity receiving referral of clients from the court or clients under the supervision of the court, or any organization or entity that is a regular party in court.
 - 11.3 Prior to accepting secondary employment, an employee shall report the employment offer to management. The report shall be in writing and shall contain:
 - 11.3.1 The name of the employer;
 - 11.3.2 The working hours;
 - 11.3.3 A description of duties and obligations;
 - 11.3.4 Any possible conflicts of interest; and
 - 11.3.5 The anticipated duration of the employment.
 - 11.4 Within five working days of receipt of the report by the court executive, the director, in consultation with the court level administrator, shall determine if the employment is consistent with these policies.
12. Political activity.
- 12.1 An employee may participate in political activity that does not jeopardize the confidence of the public or of government officials in the impartiality of the judicial branch of government.
 - 12.1.1 An employee shall not participate in political activity which conflicts with or otherwise affects the mission and activities of the Judiciary.
 - 12.1.2 An employee shall not engage in political activity during work hours, unless on approved leave.
 - 12.1.3 An employee shall not use state-owned equipment, supplies or resources, and other attendant expenses (diskettes, paper, computer online and access charges, etc.) when engaged in political activity.

12.1.4 An employee shall not discriminate in favor of or against any person or applicant for employment based on political activities.

12.1.5 An employee shall not use the employee's title or position while engaging in political activity.

13. Driver Safety.

13.1 Court employees are subject to the rules and regulations established by the State Motor Pool and the Division of Risk Management regarding the safe operation of state vehicles.

13.2 Any employee convicted of driving under the influence, reckless driving or an at-fault accident shall complete an approved driver safety program before operating a state vehicle or operating ~~their~~ the employee's own vehicle on court business.

GRIEVANCE AND APPEAL

PURPOSE

The purpose of this policy is to establish a procedure for resolving employee complaints on specific work related issues. Early resolution of complaints is advantageous to both employees and management. Therefore, complaints shall be resolved at the lowest possible level of management, but if need be, by an intermediate supervisor or the Career Service Review Board.

SCOPE

This policy establishes standing, grounds, procedures, deadlines, rights and responsibilities for filing a grievance. It also creates a Career Service Review Board to hear and decide grievances.

This policy applies to all career service employees.

CROSS REFERENCES

Rule 45, Utah Rules Civil Procedure

Classification, Policy 330

Rule 4-202.02, Code of Judicial Administration

Rule 3-402, Code of Judicial Administration

Refer to definition section for first, second and third level of review.

POLICY AND PROCEDURE

1. Standing.
 - 1.1 Only a career service employee may submit a grievance.
 - 1.2 When several employees allege the same grievance, they may submit a joint grievance. Each employee shall sign any written statement of the grievance or appeal of a decision. If a decision at some level of review resolves the grievance for some but not all of the employees, an employee remaining dissatisfied may seek review of the decision at the next higher level.
2. Grounds for Grievance.
 - 2.1 An employee may file a grievance based upon an act, occurrence, omission, or condition of employment.
 - 2.2 An employee may grieve a promotion, dismissal, demotion, suspension, written

reprimand, salary adjustment, violation of personnel rules, administration of benefits, reduction in force, and other disciplinary action to all levels of the grievance procedure, pursuant to Section 5 through 9 below.

2.3 An employee may grieve all other matters only to the third level of review.

2.4 An employee may not submit a grievance concerning the content of a performance evaluation, but only the administration thereof.

3. Employee Rights.

3.1 For the purpose of submitting a grievance, an employee may:

3.1.1 be represented at any level of the grievance procedure;

3.1.2 request a reasonable amount of time during work hours to confer with a representative, prepare the grievance, and attend hearings;

3.1.3 call employees or others as witnesses at a grievance hearing; and

3.1.4 petition a court of record to issue a subpoena on the employee's behalf to compel attendance at a hearing.

3.2 No manager or other employee may intimidate, coerce or retaliate against any employee for use of or participation in grievance procedures.

4. Time Limits.

4.1 An employee shall, pursuant to subsection 5.1.1 below, submit a grievance within 90 days after the event giving rise to the grievance or within 90 days after the employee knows, or, with the exercise of reasonable diligence should have known, of the event giving rise to the grievance.

4.1.1 Absent a showing of excusable neglect, as defined by the Career Service Review Board, failure to meet these time requirements shall be grounds for dismissing the grievance.

4.2 If a grievant fails to appeal a decision on a grievance to the next level of review within the time permitted, or fails to appear at a hearing or conference set pursuant to sections 5, 6 or 7 below, all right of further review shall be waived, and the grievance shall be deemed disposed on the basis of the last decision.

- 4.3 The grievant and the reviewer may agree to waive a grievance step or waive or extend the time for taking a grievance step. The parties shall submit the agreement to the director, who shall place the agreement in the grievance file. If the parties are unable to reach agreement, a party may submit an extension request to the director.
 - 4.3.1 A single extension of time shall not exceed 30 days. The parties or director may not extend a grievance step by more than a total of 90 days.
 - 4.3.2 The waiver/extension agreement must be written and signed by the parties.
 - 4.3.3 The director shall place a copy of the notice granting or denying an extension in the grievance file.
 - 4.4 If management fails to act within the time limits established in this policy, the employee may proceed to the next step.
5. Procedure for Submitting Grievance.
- 5.1 An employee shall first discuss the issue with the employee's supervisor. The supervisor shall have five working days to respond verbally.
 - 5.1.1 If the employee is dissatisfied with the verbal decision, the employee shall, within 5 working days, submit the grievance to the supervisor in writing, stating the problem, the harm, and the requested relief.
 - 5.1.2 The supervisor shall, within 5 working days, respond in writing, stating the decision and the reasons. The supervisor shall provide a copy to the first level of review.
 - 5.1.3 If the matter being grieved was the direct result of a decision made by a person in the line of authority above the supervisor, the supervisor shall refer the matter to the person who made the decision and intervening steps shall be waived.
 - 5.1.3.1 If the decision being grieved was made by the State Court Administrator, the grievance shall be submitted to the director and shall proceed according to section 5.6 below.
 - 5.2 If the grievant is dissatisfied with the supervisor's decision, the grievant shall, within 15 days of receiving the decision, submit the grievance, the supervisor's response, and a written request for review to the first level of review and shall

provide a copy to the director. The first level of review shall have ten working days to issue a written decision, including the reasons for the decision, and shall provide a copy to the grievant, the second level of review, and the director.

- 5.3 If the grievant is dissatisfied with the first level of review's decision, the grievant shall, within 15 days of receiving the decision, submit the grievance, all prior management responses, and a written request for review to the second level of review and shall provide a copy to the director. The second level of review shall have ten working days to issue a written decision, including the reasons for the decision, and shall provide a copy to the grievant, the third level of review, and the director.
- 5.4 If the grievant is dissatisfied with the second level of review's decision, the grievant shall, within 15 days of receiving the decision, submit the grievance, all prior management responses, and a written request for review to the third level of review and shall provide a copy to the director. The third level of review shall have ten working days to issue a written decision, including the reasons for the decision, and shall provide a copy to the grievant and the director.
- 5.5 If the grievant is dissatisfied with the third level of review's decision, the grievant shall, within 15 days of receiving the decision, submit the grievance, all prior management responses, and a written request for review to the director.
- 5.6 Upon submission of the grievance to the director, the director shall make an initial determination of jurisdiction of the Career Service Review Board (board), pursuant to Section 8 below. If the director denies the grievance for lack of jurisdiction, the director shall issue a written decision denying jurisdiction within ten days and provide a copy to the parties and to the board.
 - 5.6.1 Either party may request a review of the director's determination of jurisdiction by the board. The request shall be filed within five working days with the director.
 - 5.6.2 The board shall have ten working days to issue a written decision and notify the parties.
 - 5.6.3 If the director or the board determines that the board has jurisdiction, the director shall set a date for a settlement conference within 30 days of determination of jurisdiction.

6. Settlement Conference.

- 6.1 The board shall hold a settlement conference unless specifically waived in writing by the grievant and management.
- 6.2 The director, the parties, the third level of review, and at least one board member shall be present at the settlement conference. Subject to the approval of the board member, other interested parties may be invited to attend.
- 6.3 At least 5 days prior to the settlement conference, the parties shall submit to the director in writing:
 - 6.3.1 the admitted and disputed allegations;
 - 6.3.2 the issues;
 - 6.3.3 the harm suffered;
 - 6.3.4 the relief requested; and
 - 6.3.5 the witnesses, exhibits, and other evidence to be offered at the hearing, if any.
- 6.4 Management at the third level of review shall represent the interest of management at the settlement conference.
- 6.5 If the matter is resolved at the settlement conference, the director shall prepare a settlement agreement for the parties' signatures.
- 6.6 If the matter is not resolved at the settlement conference, the director shall contact the board to set a hearing date within 30 days of the settlement conference.

7. Hearing.

- 7.1 The board shall conduct the hearing to obtain full disclosure of relevant facts and to provide all parties a reasonable opportunity to present their position.
 - 7.1.1 The hearing shall be electronically recorded.
 - 7.1.2 Management has the burden of proof in all grievances resulting from dismissals, demotions, suspensions, written reprimands, reductions in force, and other disciplinary actions. The grievant has the burden of proof

in all other grievances.

7.1.2.1 Management at the third level of review shall represent the interest of management at the hearing.

7.1.3 The board shall permit all parties the opportunity to present evidence and rebuttal evidence, conduct cross-examination, argue and respond to arguments.

7.1.4 The board shall determine the order of presentation of the evidence.

7.1.5 The board may ask questions of witnesses.

7.1.6 Testimony shall be given under oath or affirmation.

7.1.7 The board shall issue a written decision within 30 days after the hearing is adjourned.

7.1.7.1 The decision shall include the board's findings and conclusions, and any relief granted.

7.1.8 If the board does not issue its decision within 30 days after the hearing, the courts shall not be liable for any claimed back salary or benefits between the time the decision is due and the time the decision is issued.

7.1.9 An employee called to appear as a witness at a grievance hearing shall be permitted to attend if the party calling the employee notifies the employee and the employee's supervisor at least two days prior to the hearing.

8. Career Service Review Board.

8.1 Administration.

8.1.1 The Presiding Officer of the Judicial Council shall appoint a five member Career Service Review Board and shall name one member to serve as Chair of the board. The Judicial Council shall confirm the appointments.

8.1.1.1 Board members shall be knowledgeable of employee relations and merit principles in public employment, and at least one member shall be a member of the Utah State Bar.

8.1.1.2 Board members may not hold or be a candidate for paid elective

public office or be an officer or committee member of a political party or an employee association.

- 8.1.2 Board members may not be employed by the courts.
 - 8.1.3 A Board member's term of office shall be three years. Terms shall begin on July 1 and shall be staggered so the term of no more than two members expires each year. If a member does not complete a term of office, the Presiding Officer of the Judicial Council shall appoint a replacement for the unexpired portion of that term.
 - 8.1.4 The Presiding Officer of the Judicial Council may remove a board member for cause.
 - 8.1.5 Board members shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.
 - 8.1.6 The director shall serve as staff to the board. Papers required or permitted to be filed with the board shall be filed with the director. The director shall maintain the record of a grievance, including the recording of the hearing. The director shall provide a copy of all orders and decisions of the Board to the parties.
- 8.2 Authority.
- 8.2.1 With the exception of settlement conferences, at least three members of the board must be present for the board to conduct business. Action by a majority of the members of the board present is an action of the board. Any member of the board may be present by means of a telephone conference call.
 - 8.2.2 The board shall serve as the final administrative body to review grievance appeals. The board has jurisdiction over appeals from a management decision regarding a: promotion, dismissal, demotion, suspension, written reprimand, salary adjustment, violation of personnel rules, administration of benefits, and reduction in force.
 - 8.2.3 Board members may administer the oath or affirmation to a witness.
 - 8.2.4 The board may petition a court of record to issue a subpoena on the board's behalf.

- 8.2.5 The board shall not award costs or attorney fees.
- 8.2.6 The board may make rules governing the conduct of its proceedings.
- 8.2.7 Proceedings before the board are closed meetings and shall be held in Salt Lake County unless otherwise ordered by the board.

9. Records.

- 9.1 The Administrative Office of the Courts shall bear the cost of recording a hearing. The cost of a transcript of the hearing shall be paid by the party requesting the transcript. A copy of the tape shall be made available to the grievant upon request at no cost.
- 9.2 The supervisor who receives the first written statement of the grievance shall establish a file for the grievance. The file so established shall contain the initial written complaint and the decision on the complaint. The file shall also contain the employee's requests for review and the decision of each level of review. The file may contain any document germane to the issues of the grievance. The reviewer shall request the file from the prior level of review.
- 9.3 The record shall include the file required by 9.2 above, the recording of the hearing, and any evidence submitted at the hearing.
- 9.4 The record shall be ~~private data~~ a private administrative record under Rule 4-202.02, Code of Judicial Administration. The Board may declare the record or part of it to be confidential or order the record or part of it to be sealed.
- 9.5 Management shall maintain the grievance file separate from the employee's personnel file. Management shall maintain the grievance file for a period of at least three years beyond the separation of all grieving employees.
- 9.6 If management rescinds or modifies disciplinary action against an employee as a result of the grievance process, management shall remove the record of the disciplinary action from the employee's personnel file.

DEFINITIONS

Administrative Leave: Leave provided at the discretion of management to which the employee has no entitlement and which is not charged against the employee's accumulated leave accounts.

Annual Leave: Leave accumulated pursuant to an employee's compensation package and to which the employee is entitled use, subject to management's approval.

Application: Written documents used to apply for a position with the courts.

Appointing Authority: The manager authorized to make appointments in a district, court, or office.

Board: Unless otherwise stated, the Career Service Review Board for the Courts.

Career Ladder: Functional groupings of similar types of class series by ascending levels of difficulty.

Career Service Employee: An employee that was hired to a career service position through a public competitive merit selection process and has successfully completed probation.

Career Service Exempt: See definition contained in Policy 230, Employment Categories.

Career Service Position: A position in which selection and advancement are governed by comparative merit principles and for which an employee may redress grievances through the grievance process.

Category of Work: Positions, job classes, work units, or functions which the state court administrator designates for elimination through a reduction-in-force.

Class: A group of positions sufficiently similar that the same title, pay range, and test standards may be applied to each position in the group.

Class Series: A grouping of classes on the basis of ascending levels of skill, responsibility or difficulty which represent normal lines of advancement.

Class Specification: A description of the duties, responsibilities, skills and the required minimum education, experience, and other qualifications defining a class.

Court Executive: Any Trial Court Executive or Clerk of Court for Supreme Court or Court of Appeals.

Day/Time Period: A calendar day unless otherwise specified. In computing any period of time prescribed by these policies, the day of the act or event from which the designated period of time

begins to run shall not be included. The last day of the period shall be included, unless the last day of the period is a Saturday, Sunday, or legal holiday, in which event the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday. When a period of time allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. When a person is required or permitted to do an act within a prescribed period of time after service of or receipt of a paper and the paper is served by mail, three days shall be added to the prescribed period.

DHRM: Utah State Department of Human Resource Management for the executive and legislative branches of government.

Director: Unless otherwise stated, the Director of the ~~Division~~ Department of Human Resources Management for the Judicial Branch.

Dishonest or Fraudulent Acts: Acts which include, but are not limited to: theft; misappropriation of funds, securities, supplies or any other assets; unauthorized alteration of court documents; unauthorized use of court equipment; unauthorized modification or release of computer equipment or software.

Employ: To hire, supervise, appoint, vote for, or recommend for appointment or promotion.

Equal Employment Opportunity: The practice of fair employment based upon individual merit without regard to race, color, sex, age, religion, handicap, ancestry, national origin, or any other non-job related factors.

Ex-parte: Communication with a party to an action without notice to the other party or parties.

Examination: A written and/or oral exercise designed to test an applicant's qualifications or knowledge for hiring or promotion.

First Level of Review: The clerk of court for employees of the Supreme Court, Court of Appeals, District Court or Circuit Court; the clerk of court or chief probation officer for employees of the Juvenile Court; the supervisor for employees of the Administrative Office of the Courts.

Full-Time Employee: An employee who works 40 hours per week.

FLSA: The federal Fair Labor Standards Act.

Furlough: A temporary leave of absence from duty without pay, imposed by management.

Grievance: A complaint made by a career service employee pursuant to policy 620, Grievance and Appeal.

Human Resource Management: Those activities related to recruitment, selection, and employment with the courts.

Intern: An individual working for the courts to fulfill an educational program on-the-job requirement.

Job Share: A working arrangement in which employees share the duties and responsibilities of one full-time position.

Malfeasance. Intentional wrongdoing; deliberate violation of law or standard; or intentional mismanagement of responsibilities.

Misfeasance: Performance of a lawful action in an illegal or improper manner.

Management: Individuals with responsibility for supervision.

Medication: Legal prescription and non-prescription drugs.

Nonfeasance: Failure to do what one has the responsibility to do.

Ombudsperson: See definition contained in Policy 500, Code of Personal Conduct.

Political Activity: Running for or holding political or elective public office; making or influencing governmental policy unrelated to the performance of official court duties; or active support of a partisan or special interest public policy agenda.

Probation: The period of time during which an employee's performance is observed and evaluated by management, to determine if career status should be granted.

Promotion: Advancement to a class, exclusive of any classification review, involving substantially greater complexity, responsibility, judgment, and skill and having a higher entry salary.

Reappointment Register: A list of former career service employees of ~~either the courts or executive branch~~ who were dismissed within the last 12 months as a result of a reduction in force or, after having accepted an exempt position, were dismissed for reasons other than cause.

Reassignment: Lateral movement to a position involving similar complexity, responsibility, judgment, and skill requirements as the position formerly held.

Reclassification: Reassignment of a job class to another class based upon internal comparison and/or market data.

Red Circle: Suspension of salary advancement for an employee who is paid a salary that exceeds the maximum of the salary range assigned to the class.

Reduction in Force: Abolishment of positions which result in the termination of staff required by inadequate funds, change in workload or lack of work.

Relative: Father, mother, husband, wife, son, daughter, stepparent, stepchild or sibling, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild, grandparent.

Second Level of Review: The court executive for employees of the District, Circuit, or Juvenile Court; the deputy state court administrator for employees of the Supreme Court or Court of Appeals; an assistant state court administrator for employees of the Administrative Office of the Courts.

Serious Health Condition: A condition which requires either inpatient care or continuing treatment by a health care provider as defined in Title 29, Part 825 of the Code of Federal Regulations.

Substantial Evidence. Evidence that a reasonable person would rely upon as adequate to support a conclusion.

Suspension: Disciplinary action taken by management to temporarily relieve an employee of duties and place the employee on leave without pay.

Telecommuting: A cooperative agreement between an employee and the State involving work that an employee performs on a routine basis, independent of others, and can be accomplished by the employee outside the office environment.

Third Level of Review: The court level administrator for employees of the District, Circuit, or Juvenile Court; the state court administrator for employees of the Supreme Court, Court of Appeals, or the Administrative Office of the Courts.

Work Week: The standard work week shall begin at 12:00 a.m. on Saturday and end at 11:59 p.m. on the following Friday.

Volunteer: A person who donates service to the courts without pay or other compensation.

**COURTS POSITIONS BY OVERTIME CATEGORY
APPENDIX A, PERSONNEL POLICIES AND PROCEDURES**

NON-EXEMPT

All positions not listed below.

EXEMPT FROM OVERTIME PAY

Administrative Assistant
ADR Program Director
Appellate Clerk of the Court
Appellate Court Administrator
Assistant Clerk of Court I, II
~~Assistant Data Processing Director~~ Assistant Manager, Information Technology
~~Associate General Counsel~~
~~Auditing Director~~ Internal Audit Manager
Budget & Accounting Officer IV
~~Probation Chief~~ Probation Officer I, II
Central Staff Attorney
~~Circuit Court Administrator~~
Clerk of the Court I, II, III
Court Executive
Court Program Coordinator II, III
Court Reporter / Managing Court Reporter
~~Data Processing Director~~ Manager, Information Technology
Deputy Juvenile Court Administrator
Deputy State Court Administrator
Director of Administrative Services
~~Director of Public Information~~ Officer
~~Director of Research & Court Technology~~ Manager, Information Services
District Court Administrator
~~Finance Director~~ Financial Manager
GAL Program Director
General Counsel
Human Resources Director
~~Judicial Education Director~~ Officer
Judicial Support Coordinator
~~Justice Court Administrator~~ Assistant Court Administrator
Juvenile Court Administrator
Law Clerk
~~Senior Legal Counsel~~ Staff Attorney
Staff Attorney
State Court Administrator
Media Relations Officer

CAREER SERVICE EXEMPT POSITIONS
APPENDIX B, PERSONNEL POLICIES AND PROCEDURES

The following is a list of career service exempt positions, based upon our policies, past practice, and consistent with Sec. 67-19-15 of the Utah Code.

Administrative Assistant
~~Appellate Clerk of the Court~~
Appellate Court Administrator
Appellate Law Clerk
~~Appellate~~ Central Staff Attorney
Assistant Court Administrator
~~Auditing Manager~~ Internal Audit Manager
Court Executive
~~Court Level Administrator~~
Court Reporter/Managing Court Reporter
Deputy State Court Administrator
Deputy Juvenile Court Administrator
Director of Administrative Services
District Court Administrator
Juvenile Court Administrator
~~Manager, Director of Information Services~~
~~Manager, Director of Information Technology~~
Media Relations Officer
~~Finance Director~~ Financial Manager
GAL Program Director
General Counsel
Human Resources Director
Judicial Education Officer
Judicial Support Coordinator
Public Information Officer
~~Senior Legal Counsel~~ Staff Attorney
Staff Attorney
State Court Administrator

APPENDIX C

Leave Accrual Table


Regular Hours Worked Per Pay Period	4 Hours	5 Hours	6 Hours	Sick Leave Accrual
40	2	3	3	2
48	2	3	4	2
56	3	4	4	3
60	3	4	4	3
64	3	4	5	3
72	4	5	5	4

Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

MEMORANDUM

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

 TO: Judicial Council Management Committee
FROM: Holly M. Bullen
Assistant State Court Administrator
DATE: December 30, 1996
RE: AD HOC COMMITTEE ON COMMISSIONER CONDUCT

Frederick Green, attorney, has completed one term on the Commissioner Conduct Committee. Mr. Green has indicated he would like to serve a second term if so appointed.

Rule 1-205, C.J.A., provides that *standing* committee members are eligible to serve two consecutive terms if so appointed by the Council. The rule is silent as to terms and reappointments of ad hoc committees. However, some ad hoc committees, including this one, have followed the general three-year term and reappointment provisions that pertain to standing committees.

Since I will be out of town for the January 8 Management Committee meeting, I have asked Rick Schwermer, who staffs the committee, if he would present this matter for me.

If the Management Committee recommends reappointment of Mr. Green, I will place this matter on the consent calendar of the Judicial Council meeting scheduled on January 27, 1997.

Thank you for your consideration.


Enclosures
c: Richard Schwermer

Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

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

MEMORANDUM

 TO: Utah Judicial Council, Management Committee
FROM: Holly M. Bullen
Assistant State Court Administrator
DATE: December 30, 1996
RE: First District Juvenile Court - Grant

Rule 3-411, CJA, specifies that requests for grant funding need to be approved by the Judicial Council. Where submission deadlines exist which do not allow enough time for the full review/approval process to occur, the rule allows for the reviews and approval to come *after* submission of the grant request.

It has come to our attention that a grant from the Federal Bureau of Reclamation has been awarded to First District Juvenile Court. Our office just learned of this grant in the last week. Attached is a summary of the grant, which I asked Fred Jayne to prepare after he had spoken with First District. Because I will be out of town on January 8, I also asked Fred if he would present this matter to the Management Committee for me.

Thank you for your consideration.

Attachment

c: Fred Jayne

First District Juvenile Court
Cooperative Agreement No. 6-FC-40-20000
Cooperative Agreement for Conducting Water Audits at Public Facilities

The First District Juvenile court applied for funds from the Bureau of Reclamation in June, 1996 to conduct Certified Landscape Irrigation Audits for all the public schools in the three county area of the First District Juvenile Court. The landscape irrigation audits will produce detailed information about actual irrigation system performance in the field (as opposed to theoretical performance). The information will then be used to prepare detailed irrigation schedules for each station throughout the year.

The request was for \$16,000 with a \$4,000 match requirement. The primary use of the \$16,000 is to fund the portion of a Special Services Officer's salary who will supervise juveniles who do the work as part of either community service or to work off restitution. The match is provided from Substance Abuse Prevention Account (SAPA) funds which currently fund the Officer's position.


The position is currently staffed full time, but funded half-time. The First District has determined that this agreement will enable the position to continue while alternatives are explored to find permanent funding. The Cooperative Agreement has already been approved by the Bureau of Reclamation.

Administrative Office of the Courts

MEMORANDUM

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

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

 TO: Utah Judicial Council Management Committee
FROM: Holly M. Bullen
Assistant State Court Administrator
DATE: January 3, 1997
RE: Vacancies on Judicial Council's
Standing Committee on Justice Court Standards

Two positions just became vacant (as of January 1, 1997) on the Council's Standing Committee on Justice Court Standards: one position for a rural municipal judge and one position for a Bar member from Utah, Davis, Weber or Salt Lake Counties.

Pursuant to Rule 1-205, an announcement of the vacancy was sent to municipal Justice Court judges. Two judges applied and submitted a listing of their present and past committee assignments as required by the Rule. On January 3, the applications were reviewed by the Board of Justice Court Judges, and the Board recommended that Judge Pat McRae of the Vernal City Justice Court be appointed by the Council to fill the position.

Rick Schwermer contacted Craig Madsen, Deputy Utah County Attorney, whose first term just expired, to see if he desired to serve a second two-year term. Mr. Madsen stated he would like another term if so appointed by the Judicial Council.

Accordingly, I submit these two names for your consideration. If the Management Committee approves them, I will see that the appointments are placed on the consent calendar for the Council's January 27 meeting. Because I will not be in town on January 8 for Management Committee meeting, Rick Schwermer has agreed to present this matter to the Committee.

Thanks very much for your consideration.

Enclosures

c: Richard Schwermer

JUDICIAL LAW CLERK HUMAN RESOURCES POLICIES

Updated 11/96

This policy statement is intended to provide Judicial Law Clerks with general guidance regarding court policies. It may be modified at any time without prior notice. No policy, benefit, or procedure described herein implies, or should be construed to imply, that this policy statement constitutes an employment contract.

EMPLOYMENT CATEGORY: Judicial Law Clerks are FLSA exempt as well as career service exempt (i.e., serve at will) and are traditionally employed for a one to two year period of time.

BENEFITS:

- **Retirement** - law clerks are eligible to participate in the Utah State Employees Non-contributory Retirement Plan.
- **Defined Contribution** - eligible to participate in the Defined Contribution (401(k) and 457) programs offered through state retirement.
- **Insurance** - eligible to participate in the various insurance programs offered by the State of Utah including, but not limited to: medical, dental, life, dependent life, and disability insurance.
- **Flexible Benefits** - law clerks are eligible to participate in the Flexible Benefits program which is designed to allow the use of "before-tax" dollars to pay for specific, out-of-pocket health care and dependent care expenses.

COMPENSATION:

	Hourly Rate	Approx. Annual Rate
• Level I (entry level J.D.)	\$ <u>17.39</u>	\$ <u>36,171</u>
• Level II (6 mos. satisfactory performance <u>in full-time law related employment following graduation from law school, or admission to the bar</u>)	\$ <u>18.36</u>	\$ <u>38,189</u>
• Level III (1 yr. satisfactory performance <u>in full-time law related employment following graduation from law school</u>)	\$ <u>19.39</u>	\$ <u>40,331</u>

Promotions to Levels II and III are not automatic but require the recommendation of the supervising judge. The experience requirement is satisfied by law related employment within the court system, other state employment or private practice.

BAR DUES:

- Eligible for payment of Utah Bar license dues and fees for inactive bar membership only OR for payment of inactive membership dues in the Bar of another state not to exceed the fee for inactive status in Utah.
- Payment of bar dues is made on August 31 of each year. Payment is prorated for clerks who are aware on the date of payment that they will only be employed for a portion of the dues year. (Employment for any portion of a calendar month counts as employment for the entire month). Clerks are responsible for paying the remaining portion directly to the Bar.
- The Courts will reimburse dues to clerks who are hired after the payment date and who will be employed for at least six months. Similarly, clerks who leave the employ of the Courts within the first six months of the dues year are responsible for reimbursing the Courts for a prorated portion of the prepaid dues.

LEAVE:

- **Leave Accounting** - Law Clerks work at least 40 hours per week. If a Law Clerk does not participate in the state leave accounting system, he/she will be responsible for keeping an individual leave record. Upon termination, the supervising judge will sign and forward the cumulative leave record to the Clerk of Court who will submit it to the Human Resources Department. **Sick and annual leave accrues at the rate of 4 hours per pay period and is not compensable upon termination.**
- **Annual Leave** - Law Clerks are entitled to thirteen (13) days of paid annual leave per calendar year which will accrue on January 1 of each year. Clerks hired after January 1 will receive annual leave on a prorated basis.
- **Sick Leave** - Judicial Law Clerks are entitled to 13 days of paid sick leave per calendar year. The leave will accrue January 1 of each year. Law clerks hired after January 1 will receive sick leave on a prorated basis. Unused sick leave will be carried over into the next year. Sick leave accounting will be accomplished in the same manner as annual leave accounting.
- **Funeral Leave** - Leave with pay may be granted to a law clerk to attend the funeral of an immediate family member. Such leave is not charged against accrued sick or annual leave. The time granted will be governed by individual circumstance and will normally be one working day. In no case will emergency leave exceed three working days. Immediate family for this purpose is defined as: spouse, child, step-child, daughter- or son-in law, sibling, parent, step parent, grandparent, spouse's grandparent, mother- or father-in-law, and brother- or sister-in-law.

- Family and Medical Leave - In conformance with the Family and Medical Leave Act of 1993, Judicial Law Clerks are entitled to up to 12 weeks of unpaid leave in a 12 month period to cover: birth or adoption of a child or to receive a foster child, a serious health condition of the employee, or care of a spouse, dependent child or parent with a serious health condition.
- To qualify, a law clerk must have been employed by the Judiciary for a minimum of 12 months and must have worked a minimum of 1,250 hours during the most recent 12 months of employment. Health insurance benefits will remain in effect during a Family and Medical Leave with the following provisions:
 - The employee must continue to pay his/her portion of the premiums
 - The employee must return to work for a minimum of 30 days following the leave.

Full details of Family and Medical Leave are contained in the Personnel Policies and Procedures Manual - 400.05.5.

- **Holidays - Judicial Law Clerks are eligible for the following paid legal holidays:**
 - New Years Day
 - Martin Luther King Day
 - President's Day
 - Memorial Day
 - Independence Day
 - Pioneer Day
 - Labor Day
 - Columbus Day
 - Veteran's Day
 - Thanksgiving Day
 - Christmas Day

SELECTION, HIRE, AND RETENTION

Selection, hire, and retention of judicial law clerks is at the sole discretion of the supervising judge. The supervising judge will provide judicial law clerks with a copy of the policies and procedures governing the law clerk position on the date of hire. Law clerks are to sign and date an acknowledgment that they have read and received a copy of the policies. The acknowledgment is to be submitted to the Clerk of Court.

Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

MEMORANDUM

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

HNB
TO: Judicial Council Management Committee
FROM: Holly Bullen, Assistant State Court Administrator
DATE: December 31, 1996
RE: Court Interpreter Advisory Panel

The new Rule 3-306, CJA, specifies that a Court Interpreter Advisory Panel shall be appointed by the Judicial Council. The Panel shall be comprised of judges, court administrators, lawyers, court interpreters and experts in the field of linguistics. The function of the panel is as follows:

- To develop policies concerning court interpreters
- To consult with the administrative office regarding the establishment of programs to certify court interpreters, and
- To review and respond to allegations of violation of the Code of Professional Conduct, including decertification or other disciplinary measures.

My suggestions for the composition of the Advisory Panel are:

One District Judge
One Juvenile Judge
One Justice Court Judge
One Court Executive
One Clerk of Court

One Court Interpreter Coordinator

(Each district has at least one interpreter coordinator who assigns interpreters, assists in qualifying interpreters, and serves as a liaison with the AOC on interpreter issues.)

One Certified Court Interpreter
One Expert in the Field of Linguistics
One Attorney

(I would recommend a prosecutor or defense attorney with extensive experience in criminal court involving non-English speaking defendants and witnesses)

TOTAL: Nine Members

Suggested Staff: Holly Bullen and Kris Prince

Management Committee
December 31, 1996
Page Two

If the above suggested Advisory Panel composition appears to be appropriate, and the Management Committee so directs, I will announce the vacancies on the Advisory Panel to eligible individuals and submit the names of interested parties to the Council for selection, pursuant to Rule 1-205, CJA. Or, if it appears that full Council approval of the Advisory Panel composition is necessary, please place this memorandum on the January 27 consent calendar of the Council.

Because I will be out of town on the date of the January Management Committee, Myron March has agreed to present this matter for me.

Thanks very much for your assistance.

c: Dan Becker
Myron March
Kris Prince

DEFINITION OF LAW ENFORCEMENT

OFFICIAL AND JUDGE

1997 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO PUBLIC SAFETY; DEFINING LAW ENFORCEMENT OFFICIAL AND JUDGE FOR PURPOSES OF EXEMPTION FROM WEAPONS LAWS; PROVIDING TRAINING AND CERTIFICATION REQUIREMENTS; AUTHORIZING CERTAIN ENTITIES TO ESTABLISH RULES FOR REQUALIFICATION FOR PERSONS UNDER THEIR JURISDICTION; PROVIDING FOR REVOCATION; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-10-523, as last amended by Chapter 80, Laws of Utah 1995

ENACTS:

53-5-710, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53-5-710** is enacted to read:

53-5-710. Law enforcement officials and judges -- Training requirements --

Qualification -- Revocation

(1) For purposes of this section and Section 76-10-523:

(a) "Judge" means a judge or justice of a court of record or court not of record, but does not include a judge pro tem or senior judge.

(b) "Law enforcement official of this state" means:

(i) a member of the Board of Pardons and Paroles;

(ii) a district attorney, deputy district attorney, county attorney or deputy county attorney of a county not in a prosecution district;



1 (c) a [~~law enforcement official~~] peace officer of this or any other jurisdiction while
2 engaged in the performance of his official duties;

3 (d) a law enforcement official as defined and qualified under Section 53-5-710;

4 (e) a judge as defined and qualified in Section 53-5-710;

5 [~~(d)~~] (f) a common carrier while engaged in the regular and ordinary transport of firearms
6 as merchandise; or

7 [(e)] (g) a nonresident traveling in or through the state, provided that any firearm is:

8 (i) unloaded; and

9 (ii) securely encased as defined in Section 76-10-501.

10 (2) The provisions of Subsections 76-10-504(1)(a), (1)(b), and Section 76-10-505 do not
11 apply to any person to whom a permit to carry a concealed firearm has been issued pursuant to
12 Section 53-5-704.

Legislative Review Note
as of 1-10-97 4:17 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

1 **MUNICIPAL AUTHORIZATION FOR JUSTICE COURT**

2 1997 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Orville D. Carnahan**

5 AN ACT RELATING TO CITIES AND TOWNS; MODIFYING THE STANDARDS FOR THE
6 CREATION AND RECERTIFICATION OF JUSTICE COURTS; AND MAKING
7 TECHNICAL CORRECTIONS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **10-3-923**, as last amended by Chapter 198, Laws of Utah 1996

11 **78-5-139**, as enacted by Chapter 157, Laws of Utah 1989

12 *Be it enacted by the Legislature of the state of Utah:*

13 Section 1. Section **10-3-923** is amended to read:

14 **10-3-923. Authority of municipality to create justice court.**

15 (1) A municipality may create a justice court under Title 78, Chapter 5.

16 (2) Except under the provisions of Section 78-5-139, a justice court established under this
17 section shall not be eliminated prior to December 31, 1992, without the approval of the
18 Legislature.

19 (3) The governing body of the municipality shall petition the Legislature to adopt a joint
20 resolution to approve the dissolution of the justice court.

21 (4) (a) Notwithstanding any other provision of law, the following municipalities may elect
22 to assume local responsibility for those matters within the exclusive jurisdiction of the justice
23 courts: American Fork, Bountiful, Brigham City, [Logan, Ogden, Roy,] Cedar City, Clearfield,
24 [Layton, Bountiful, Kaysville, Salt Lake City, Murray, Sandy, West Valley City, Tooele, Park
25 City, Orem, Provo, Spanish Fork, American Fork,] Elk Ridge, [Salem, Cedar City, St. George,
26 Richfield, Price,] Kaysville, Layton, Logan, Moab, Murray, Ogden, Orem, Park City, Price, Provo,
27 Richfield, [Vernal, and] Roosevelt, Roy, Salem, Salt Lake City, Sandy, Spanish Fork, St. George.



1 courts.

2 (1) The Judicial Council [~~has the responsibility for promulgating~~];

3 (a) shall:

4 (i) promulgate and [~~publishing~~] publish minimum requirements both for the creation of
5 new courts and for the certification of existing courts [~~— The Judicial Council shall~~];

6 (ii) in developing minimum requirements for creation of a new court, consider factors of
7 population, case filings, public convenience, availability of law enforcement agencies and court
8 support services, proximity to other courts, and special circumstances [~~which~~] that establish a need
9 for the court [~~in developing the minimum requirements for creation of a new court~~];

10 (iii) review requests for waiver of the minimum requirements; and

11 (iv) recertify each existing justice court at the end of each four-year term if the court
12 continues to meet:

13 (A) the minimum requirements for the establishment of a new court, for a court established
14 under Subsection (2)(b)(i); or

15 (B) the requirements of Subsection (2)(b)(ii), for a court established under that subsection;

16 and

17 (b) may:

18 (i) authorize the creation of a court by waiving compliance with minimum requirements
19 or allowing an extension of time to meet the minimum requirements; and

20 (ii) upon request for a review from an existing court that does not meet the minimum
21 requirements, authorize recertification of the court by waiving compliance with minimum
22 requirements or allowing an extension of time to meet those requirements.

23 (2) [~~Any municipality or~~] (a) A county [~~which~~] that meets the minimum requirements
24 established by the Judicial Council may create a justice court. [~~The council shall also review~~
25 ~~requests for waiver of the minimum requirements and may authorize the creation of a court by~~
26 ~~waiving compliance with minimum requirements or by allowing for an extension of time to meet~~
27 ~~the minimum requirements.~~]

28 [~~(3) Existing justice courts shall be recertified at the end of each four-year term if they~~
29 ~~continue to meet the minimum requirements for the establishment of a new court. Any existing~~
30 ~~court which does not meet the minimum requirements may request a review from the council,~~
31 ~~which may authorize the recertification of the court by waiving compliance with minimum~~

1997 HOUSE LEGISLATION

HB0003	State Buildings Preventive Maintenance	Adair
HB0009	Ethics Act	Tanner
HB0010	Municipal Authorization for Justice Court	Carnahan
HB0012	Boards and Commissions Amendments	Bradshaw
HB0013	Child Support Reduction Extended Visitation	Dayton
HB0020	Citation Procedure	Hendrickson
HB0021	Controlled Substances Amendments	Hendrickson
HB0022	Unlawful Activity Amendments	Barth
HB0027	Cigarettes - Tax Increase and Regulation	Tanner
HB0030	Concealed firearms Amendments	Barth
HB0034	Assault Amendments	Knudson
HB0038	Asset Forfeiture in Controlled Substances Violations	Arrington
HB0039	Higher Education Parking Enforcement	Tyler
HB0040	Renewal of Drivers Licenses Kiosks	Arent
HB0041	Restrictions on Weapons in Airports	Arrington
HB0042	Juvenile Court Hearings and Records	Arent
HB0043	County and Municipality Judgeships	Harper
HB0044	Concurrent and Consecutive Sentencing Limitations	Hendrickson
HB0045	Traffic Checkpoint Amendments	Stephens
HB0047	Restrictions on Weapons in Taverns and Clubs	Arrington
HB0048	Amendments to Capital Sentencing	Ure
HB0049	Prosecutor Assistance in Investigations	Curtis
HB0050	Child Restraint Requirements and Penalties	King
HB0051	Tolling a Criminal Sentence	Curtis
HB0052	Prohibition of Contraband in a Correctional Facility	Koehn
HB0054	Dangerous Weapon Penalty Enhancement	Cox
HB0055	Alcohol and Drug Testing Fee	Bush
HB0057	Penalty for Theft of Animal	Buttars
HB0058	Resentencing Amendments	Gladwell
HB0059	Impounding Uninsured Vehicles	Buttars
HB0060	Post Conviction Remedies - Death Penalty	Stephens
HB0065	Driving Under the Influence Amendments	Stephens
HB0069	Serious Habitual Youth Offender Program	Chard
HB0075	Amendments to Statute of Limitations	Buckner
HB0078	Witness Immunity Amendments	Gladwell
HB0079	Child custody and Visitation Amendments	Holladay
HB0080	Real Property - Presumption of Title	Swallow
HB0085	Limitations on Purchase or Possession of Firearm	Koehn
HB0087	Computer Crimes Amendments	Holladay
HB0147	Lights on Vehicles	Buckner
HB0149	Manufacturing or Possession of Instrument for Theft or Burglary Amendments	Davis
HB0151	Penalty for Speeding in Construction Zones	Dillree
HB0152	Access to Medical Records	Haymond

HB0156	Counsel for Indigent Defendants in Juvenile Court	Hatch
HB0159	Child Support Alternative Dispute Resolution and Order Modification Task Force	Harward
HB0162	Electronic Meetings	Goodfellow
HB0164	Children and Youth at Risk Amendments	Evans
HB0165	Child Support Guidelines Amendments	Harward
HB0167	Child Support - Social Security Credit	Harward
HB0168	Lobbyist Reporting Issues	Ure
HB0170	Domestic Abuse Insurance Practices	Allen
HB0172	Children and Youth Task Force Reauthorization	Evans
HB0173	Retirement Office Amendments	Short
HB0176	Pollution Lien for Cost Recovery	Dillree
HB0177	Post Certification of Youth Corrections Workers	Chard
HB0178	Foster Care Citizen Review Board Amendments	Stephens
HBO180	Sunset Reauthorizations	Brown
HBO181	Reduction and summarization of Annual Reports	Olsen
HBO186	Native American Performance of Marriages	Anderson
HB0188	Malpractice Against Health Care Providers Amendments	Valentine
HB0198	Amendments to Homestead Exemptions	Valentine
HB0215	Custody Disputes Involving a Parent with a Disability	Tanner
HB0226	Driver License Reinstatement	Adair
HB0227	Property Survey - Statute of Limitations	Adair
HB0229	Domestic Relations Cases - Name Designation	Valentine
HB0233	Blood Alcohol Content for Drivers	Saunders
HB0235	Personal Information in Motor Vehicle Records	Carlson
HB0238	Interest Rate Maximum on Contracts	Saunders
HB0241	Salary Increases for Government Officials	Styler
HB0249	Yielding to Certain Vehicles	Davis
HB0250	Cigarette Tax - Rate Increase	Valentine
HB0253	Assaulting A Peace Officer	Buckner
HB0255	Sanctions for Noncompliance with Visitation Orders	Barth
HB0256	Age of Victim of Statutory Rape	Nelson
HBO257	Public Assistance Welfare Fraud	Murray
HBO262	Statute of Limitations Amendments	Barth
HBO263	Evidence - Access to Patient records	Curtis
HBO264	Aggravated Assault by a Prisoner Amendments	Barth
HBO271	Divorce Education Program Technical Correction	Haymond
HBO274	Foster Parent Director	Stephens
HBO276	Controlled substances Containers Amendments	Arent
HBO281	Recovery for Damages from Drug Dealer	Barth
HBO282	Work Programs for Prisoners Amendments	Fox
HBO284	Medical Benefits Recovery Act Amendments	Curtis
HBO285	Doctor-related Communications	Killpack
HBO286	Perjury Reform	Curtis
HBO288	Pleas to Lesser Offense	Barth

HBO293	Magistrate Authority	Hayward
HBO297	Penalty for Poaching Cougars	Davis
HBO298	Uniform Securities Act Amendments	Curtis
HBO299	Criminal Nonsupport Amendments	Carlson
HBO300	Expanded Conservatorship and Guardianship Services for Elderly	Bradshaw
HBO303	Incentives for Adoption and Guardianship	Haymond
HBO304	Auto Forfeiture of those Soliciting Prostitutes	Barth
HBO307	Child Welfare Reform Act Amendments	Haymond
HBO309	1997 Revenue Bond Authorization	Adair
HBO310	Penalty for Joyriding	Chard
HBO311	Human Resource Management Amendments	Allen
HBO320	Action for Loss of Consortium	Fox
HBO323	Court Amendments	Fox
HBO324	Justice Court Amendments	Fox
HBO329	Harmful Material to a Minor	Buckner
HBO336	Bail Bond Surety Licensing	Curtis
HBO337	Firearm Permits for Related Law Enforcement Personnel	Cox
HBO342	Gang Prevention and Intervention	Short
HBO343	Offender Expenses Amendments	Buckner
HBO348	Sex Offender Notification Amendments	Allen
HBO349	District and County Attorney Amendments	Short
HBO363	Municipal and County Law Amendments	Brown
HBO364	Organization Administration and Allocation of Government Powers	Walsh
HBO367	State Agency's Contracts for Computer Support	Garn
HBO370	Recording Federal Tax Liens	Siddoway
HBO374	Marital Property Rights Amendments	Bradshaw
HBO376	Trespassing in Abandoned Mines	Gowans
HBO377	Requirements for Body Piercing	Baca
HBO379	Professional License - Public Display	Cox
HBO382	Personnel Management Act Amendments	Garn
HBO384	Facilitation of Adoption Act	Killpack
HBO393	Display of License Plates for Trucks and Trailers	Adair
HBO395	General Government Amendments	Barth
HBO406	Marriage Law Amendments	Davis
HBO408	New Municipality Funding Amendments	Zolman
HBO410	General Government Amendment	Jones
HJR019	Master Study Resolution	Fox

1997 SENATE LEGISLATION

SB0004	Capital Homicide Amendments	Buhler
SB0009	Parolees and Probationers Education Requirements	Poulton
SB0017	Covering Certain Load Materials	Hull
SB0019	Prioritization of Child Support Collections	Muhlestein
SB0023	Driver License Amendments	Steele
SB0025	Sentencing Guidelines	Hillyard
SB0027	Dangerous Weapons - Restrictions	Steiner
SB0028	District Court Judge Increase	Hillyard
SB0031	Cellular Phone Fraud	Howell
SB0038	Dangerous Weapons at Child-centered Schools and Facilities	Waddoups
SB0039	Private Property Owners' Right to Prohibit Dangerous Weapons	Waddoups
SB0042	Juvenile Curfew	Jones
SB0043	Prohibition of Ultimate Fighting	Poulton
SB0074	Indigent Defense Provisions	Blackham
SB0080	Child Support Advisory Committee Membership	Taylor
SB0083	Judge Noncontributory Retirement System	Peterson
SB0089	Juvenile Judges - Short Term Commitment of Youth	Tanner
SB0090	Juvenile Court Powers	Tanner
SB0094	Information Technology Amendments	Steele
SB0095	Amendment to Procurement Requirements for	

SB0095	Amendment to Procurement Requirements for Construction Projects	Buhler
SB0111	Handgun Purchase Requirements	Waddoups
SB0112	Dramshop Liability Amendments	Buhler
SB0116	Extension of Child Visitation Pilot Program	Peterson
SB0120	Amendments to Divorce Requirements	Taylor
SB0121	Recording Judgments on Real Property	Mansell
SB0127	Constitutional Revision Commission Amendments	Dmitrich
SB0129	Privileged Information in Civil Actions	Suazo
SB0132	Definition of Law Enforcement Official and Judge	Hillyard
SB0133	Appeals Settlement Program	Peterson
SB0134	Juvenile Court Recodification - Phase 2	Hillyard

