

**JUDICIAL COUNCIL
AGENDA**

February 19, 1997

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

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 - January 27, 1997)	Chief Justice Zimmerman
Continuing Business:			
3.	9:10 a.m.	Report from Chair	Chief Justice Zimmerman
4.	9:25 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
5.	10:00 a.m.	State Court Administrator's Report	Daniel J. Becker
6.	10:20 a.m.	Introductions of Judge Fratto & Judge Stott	Chief Justice Zimmerman
7.	10:30 a.m.	Break	
8.	10:45 a.m.	Racial and Ethnic Task Force Update (Approval of Membership and Funding) (Tab 3)	Hon. Tyrone Medley Brent Johnson
9.	11:05 a.m.	Legislative Update	D. Mark Jones Richard H. Schwermer
10.	11:45 p.m.	Lunch	

Ongoing Agenda Items:

- 1. New Justice Court Application, Town of Leeds (March)
- 2. Eighth District Update on Drug Court Grant (March)

Information:

News articles
(Tab - 4)

**Consent Calendar:
(Tab - 5)**

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 or raised with the chair of the Council during the scheduled Council meeting.

- 1. Rules to be Published for Comment Peggy Gentles
- 2. Appointment to Uniform Fine/Bail Committee Holly M. Bullen
(District Court Judge - Judge Roger Livingston)
- 3. Appointment of Clerk to Information, Automation, and Holly M. Bullen
Records Standing Committee
(Clerk - Venna Woodring)
- 4. Capital Law Clerks Daniel J. Becker
(Approval of Application for SJI Grant) Peggy Gentles
- 5. Timeline for Judicial Performance Evaluation 1997-1998 Timothy Shea
- 6. Certification of Application for Appointment of Senior Judge Holly M. Bullen
(Hon. Kenneth Rigtrup)

Next Judicial Council Meeting

March 6, 1997
1:00 p.m.
Holiday Inn, St. George

**JUDICIAL COUNCIL
MINUTES**

January 27, 1997

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

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 Page
Hon. Stephen Van Dyke
Hon. Jerald Jensen
James Jenkins, Esq.
Hon. Kent Nielsen
Hon. Leonard H. Russon

Staff Present:

Daniel J. Becker
Myron K. March
Richard H. Schwermer
Timothy Shea
Holly M. Bullen
Jan Thompson
D. Mark Jones
Eric Leeson
Marilyn Branch
Peggy Gentles
Cindy Williamson

Members Excused:

Hon. John L. Sandberg

Guests Present:

James D. Thomas, Vice President, National Center for State Courts
Randy Hill, Legislative Fiscal Analyst's Office
Hon. Ronald E. Nehring
Justice Christine Durham
Hon. Brent West
Sheila McCann, Salt Lake City Tribune
Paul Murphy, Channel 4 TV
Nichea Degering, Channel 4 TV

Review of Meeting Norms:

Chief Justice Zimmerman reviewed meeting norms which include: a) questions and discussion by Council should follow the speakers complete presentation; speakers should be notified to divide their time, 50% remarks and 50% discussion; b) outside speakers should be introduced by Chair, with a brief background to put the item in context, staff to work with outside speakers in preparing orientation material for Chair; c) Council members should make a practice of providing advance notification of absences or late arrivals; d) Administrative Office staff should place phone calls to Council members when they are absent without notification after the meeting begins; and e) the Chair's position on an agenda item should follow, rather than precede Council discussion.

Welcome/Approval of Minutes:

The following changes were made to the minutes of December 13, 1996:

Page five, second full paragraph will read as follows: 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 or appointed initially: Judge Raymond Uno, Judge Regnal Garff and Judge Kenneth Rigtrup. The Council approved the addendum to the consent calendar.

Page seven, second paragraph will read as follows: Judge Judith S. H. Atherton requested the deletion of the mandatory court appearance for certain traffic offenses.

Page six, paragraph five will read as follows: The Chief Justice reported on actions of the Board of Control, which consists of the Utah Attorney General, Chief Justice Zimmerman and Legislative Counsel. Those actions include that 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.

Page eight, third paragraph will read as follows: 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 any additional compensation over base salaries for all judges, rather than get into issues over what each person deserves for their extra administrative work. Further, that many members of the judiciary provide public service without any compensation whatsoever. Nevertheless, he favored this Legislation because it merely continues limited additional compensation for those who were circuit court presiding judges prior to consolidation.

Motion:

A motion was made by Judge Burton to approve the minutes as amended. The motion was seconded by Judge Stirba and carried unanimously.

Introduction and Comments from James Thomas:

Dan Becker introduced James Thomas, Vice President of the National Center for State Courts. Mr. Thomas is employed at the National Center's Denver office and oversees consulting services and technology assistance areas, as well as, various other activities. He has been the National Center's vice-president since 1992. Prior to his appointment as vice-president he was State Court Administrator in Colorado for fifteen years.

Mr. Thomas expressed his appreciation to Chief Justice Zimmerman and Dan Becker for an invitation to the Judicial Council meeting. He also thanked Utah's Judiciary for supporting the National Center.

The National Center for State Courts was implemented twenty-six years ago. Roger Warren, the current President of the National Center, was hired in March of 1996. The center is involved in a strategic planning effort which places emphasis on careful alignment between the center and its constituents. One of the ways the National Center hopes to provide that alignment is through the creation of an advisory counsel within the four major operating divisions. The divisions include: an Applied Research Division in Williamsburg, Virginia; an Education and Information Division; an international division in Williamsburg; and there is also the Court Services Division in Denver.

The National Center is interested in having judges nation wide serve on various committees and Mr. Thomas encouraged a response from interested individuals.

Report from Chair:

Chief Justice Zimmerman presented the "State of the Judiciary Report" to the Legislature on January 20, 1997. Copies of the Chief Justice's address have been provided to judicial officials and other interested parties.

Management Committee Report:

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

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. It was the conclusion of the

committee that the judiciary should be included as proposed.

The Board of Juvenile Court Judges 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. The committee declined to approve the request to establish a senior commissioner position.

In Utah County, the justice courts are 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 assess whether a drug court should be set up. Due to the fact that the drug court program may impact resources, the Management Committee requested that the Judicial Council be kept informed. Dan Becker has written a letter to Judge Andersen asking that he attend the next Judicial Council meeting to brief the Council on this grant.

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. The request was discussed by the Third District Court bench and supported. Dan Becker will respond to the city on behalf of the Council.

Policy and Planning Committee Report:

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

Court Administrator's Report:

The Legislature's Appropriation Subcommittee which addresses the court's budget is having an organizational meeting this afternoon. In keeping with the present schedule the court's budget will be addressed on February 7, 1997.

The only budget action thus far has been discussion by the Republican Caucus which has recently proposed a \$50 million reduction in the base budget which translates into approximately \$1.1 million of affected money for the courts. This information is only tentative and the legislative analyst's recommendations to the subcommittee will not be available until February 7, 1997.

The caucus priorities have also set out certain priorities which they intend to fund. Included on that list is full funding for the Juvenile Justice Task Force which amounts to \$22 million.

The 1997-1998 Appropriation Sub-Committee for the courts has two new chairs, Blake Chard, House Representative, and Michael Waddoups from the Senate. The subcommittee also has other members who are new to the committee.

The only item within the courts which has had consideration from a budgetary standpoint to date is the request for Third District Court judges. That issue was taken up in the Senate Judiciary last Friday and received unanimous favorable support.

Previously, the Governor's proposed budget had set aside approximately \$230,000 for a proposed judge/commissioner. The Governor did not take a position whether he was supporting a judge or a commissioner. As this matter continued to develop, there was concern that this issue that might detract from the Council's budgetary priorities and possibly send mixed messages to the Legislature. There has been a good deal of conversation centered on this issue, and the Council's position prioritizing the district court judge has been consistently maintained.

After considerations with leadership and the sponsor of the District Court Judge(s) Legislation, a position has been taken that the Council's priority of the Third District Judge(s) be the only judicial position advanced for funding out of appropriated funds. That intent language be sought authorizing the establishment of a commissioner position in the Second District and that the position be funded out of existing funds, rather than new money, provided the judgeship for the Third District is funded.

Mr. Becker announced Marilyn Branch's presence today at the Council meeting as Appellant Court Administrator. Geoffrey Butler, Clerk of the Supreme Court, will retire on March 31, 1997. There is currently a restructuring effort within the administrative support structure of Supreme Court and Court of Appeals. Part of the process will involve eliminating the position of the Clerk of the Supreme Court and Court of Appeals. Those positions will then be filled with a lower level Clerk of Court position. This was proposed to the Legislature some years ago, as an efficiency which would be provided with the co-location of the appellate courts in the Scott M. Matheson Courthouse.

The "Annual Report" is in a slightly different format than in previous years in terms of how information is presented. The Report is in two sections, the traditional presentation and a separate "Statistical Supplement" which has been provided to individuals on a limited basis.

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

Hon. Ronald E. Nehring was present to introduce the recommendations of the Ad Hoc Task Force on Video Recording in the Courtroom. Judge Nehring commended Tim Shea for the artful manner in which he has reconciled rules to make accommodations for contemplated changes.

Since the previous task force report was presented, the task force has learned of the

contemplated presence of the overflow room in the Scott M. Matheson Courthouse. The task force was instructed to create ground rules for a proposed pilot project which would accommodate possible recordings of courtroom proceedings in the overflow room. Under the proposed rule, the authority to make copies of proceedings that are transmitted to the overflow room is vested in both the trial judge and the presiding judge.

Chief Justice Zimmerman questioned whether or not the Judicial Council should develop a uniform policy for the pilot program rather than have different policies for each program. This is not a single issue which is limited to the Scott M. Matheson Courthouse but rather a statewide issue. Standardized policies would hopefully eliminate unnecessary, additional pressure on trial court judges.

For clarification, what is being tested is the authority to tape from the equipment in the overflow room, not the signal to the overflow room. Also, as proposed, this rule would completely eliminate consent by any parties to be video taped.

The proposed rule has been presented to various boards. However, the rule has not been presented in the amended form. The Board of District Court judges has not addressed the pilot program issue. Judge Nehring concluded that the District Court Board is comfortable that video recordings are public record and should be disseminated.

Mr. Shea requested the Judicial Council consider making these rule changes. However, if approved, these rules could not be effective until consideration of the Code of Judicial Conduct by the Supreme Court.

Motion:

A motion was made by Judge Stirba that the Judicial Council approve the Report of the Ad Hoc Task Force on Video Recording in the Courtroom, as presented here today. Specifically, the proposed new rules based upon discussion at the last Council meeting as they pertain to provisions which enable the courts to conduct a pilot program on electronic feed and that the Council do so under the emergency rule making procedures available to the Council based upon concerns expressed by Tim Shea and contained in the report. That the effective date for implementation of these new rules is contingent on the Supreme Court's amendment to the Code of Judicial Conduct and that the pilot program is subject to Council approval. The motion was seconded by Judge Van Dyke. The motion carried unanimously.

Castledale - Primary Site:

The Administrative Office of the Courts received a letter from the Emery County Commission Chairman, advising that the commission wanted to transfer the operation of their district clerk's office, which has heretofore been provided by contractual arrangement to Emery County, and allow the office to become a primary site under the direction of the Administrative

Office of the Courts. The implication of this request is that employees will become state employees rather than county employees and the operation comes under direct supervision by the state court system. No additional funding which will be required for this transfer.

Motion:

A motion was made by Judge Van Dyke to amend the Code of Judicial Administration, nunc pro tunc, to delete Castledale as a primary site. The motion was seconded by Judge Jackson and carried unanimously.

Legislation:

Judge Page, Richard Schwermer and Mark Jones provided a Legislative Update for members of the Council. There has been a total of thirty bills which have been addressed by the Liaison Committee within the last two weeks.

- | | | | |
|---|--------|--|-------------|
| • | SB 74 | Indigent Defense Provision | no position |
| • | HB 162 | Establishes Electronic Meetings | no position |
| • | HB 167 | Amendments to Child Support Provisions to the Law | no position |
| • | HB 178 | Foster Care Review | no position |
| • | HB 10 | Municipal Authorization for Justice Court | opposed |
| • | HB 107 | Counsel for Indigent Defendants | opposed |
| • | | Concealed Firearms Amendment | no position |
| • | HB 48 | Amendments to Capital Sentencing | no position |
| • | SB 33 | Visitation Guidelines for Children under Five Years of Age | no position |
| • | SB 42 | Statewide Curfew for Juveniles | no position |
| • | SB 120 | Divorce Requirements | no position |
| • | SB 121 | Recording of Judgments on Real Property | opposed |
| • | SB 129 | Judicial Misconduct | no position |
| • | HB 65 | Amendment of DUI Laws | no position |
| • | HB 255 | Sanctions for Non-Conformity with Visitation | no position |

Richard Schwermer addressed HB 43, Justice Court Judge for Sandy City. This bill basically allows a municipality with a justice court judge to add a second justice court judge if the case load supports that addition. Judge Jensen expressed specific concerns about HB 43.

Richard Schwermer requested that the Council take a position on the proposed bill "Definition of Law Enforcement Official." This proposed bill creates an exemption from concealed weapons laws for law enforcement officers and judges. This bill is to be carefully scrutinized to ascertain whether or not judges will still have control over who will be allowed weapons in the courtroom.

Judge Greenwood cited an existing rule on point and suggested that this proposed bill and the rule be coordinated .

Motion:

A motion was made by Judge Burton that the Judicial Council support the bill with the provisions that there are no costs associated with the bill. The motion was seconded by Judge Jensen and carried unanimously.

House Bill 10, Municipal Justice Court Judge arises out of the Judicial Council's refusal to certify Taylorsville City to create their own justice court. The city has now decided to carry their own legislation but at a recent meeting the issue was tabled because of a drafting issue.

Motion:

A motion was made by Judge Burton that the Council oppose HB10. The motion was seconded by Jim Jenkins and carried unanimously.

The Liaison Committee referred another bill to the Judicial Council for consideration which deals with providing an alternative to the court for enforcement of visitation orders. The bill would require the Administrative Office of the Courts to connect petitioners with mediators using the existing provider roster. Mr. Schwermer indicated that both he and Diane Hamilton, Alternative Dispute Resolution Director, have been working with the sponsor to make the program less burdensome to the Judiciary. Mr. Schwermer also discussed several proposals to reinstate statewide the pilot program for visitation enforcement tried in the First District several years ago. Judge Low did not think the pilot was successful, and the pilot was not renewed last year.

Motion:

A motion was made by Judge Burton to oppose the proposed bill which provides an alternative to the court for enforcement of visitation orders. The motion was seconded. The motion failed.

Motion:

A motion was made by Judge Stirba to support as the bill as a pilot program within the Third District. The motion was seconded by Judge Greenwood. The motion carried with six in favor and four opposed.

Motion:

A motion was made by Judge Schofield that the Council oppose any implementation of the First District pilot statewide. The motion was seconded by Judge Braithwaite and carried unanimously.

Interim Report from the Ad Hoc Committee on Collections and Warrants:

Judge Brent West, Chair of the Ad Hoc Committee on Collections and Warrants, was present to introduce recommendations from the committee to the Council. The committee was created to study issues surrounding the collection of court-ordered debts and the issuance and execution of warrants. The committee was also instructed to consider the report from the Office of State Debt Collection.

The committee considered the following issues: a) What should be considered a "receivable" from the Court? ; b) Should courts be involved in debt collection, and if so, to what extent? ; and c) What role should the courts' current collections programs play? After consideration of the foregoing questions, the committee's recommendations include: a) Legislation should be proposed to clarify the court's role in collections; b) A debt should be considered past due 60 days past the demand date; c) When a court-ordered debt is 60 days past due, it should be sent to the judge for review; d) When a debt is turned over to the Office of State Debt Collection, it should be entered as a civil judgment; and e) the court's current policy regarding the priority of payments should be retained

After presentation of the recommendations, Judge West requested direction from the Council as to how the committee should proceed. Chief Justice Zimmerman interjected that the first question is authorizing whether the committee can work with the Office of State Debt Collection on the courts relinquishing collection efforts 60 days after the due date. The second question deals with rules which the Judicial Council would have to pass when addressing collection issues. The committee should also address whether the courts should play a role in the area of collections, if so, to what extent?

Motion:

A motion was made by Judge Stirba to accept the interim report with the possibility that it may be referred to the Policy and Planning Committee for preparation of rules and statutory provisions. The motion was seconded by Judge Greenwood and carried unanimously.

Motion:

A motion was made by Judge Stirba to adjourn the meeting. The motion was seconded by Judge Greenwood and carried unanimously.

**MANAGEMENT COMMITTEE
MINUTES**

February 12, 1997

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

Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
Holly M. Bullen
Richard H. Schwermer
D. Mark Jones
Brent Johnson
Gordon Bissegger
Peggy Gentles
Cindy Williamson

Members Excused:

Hon. Pamela T. Greenwood

Guests:

Hon. Tyrone Medley

Welcome:

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

Judicial Council Agenda:

Suggestions were made and changes implemented in the Judicial Council agenda for February 19, 1997.

Racial and Ethnic Bias Task Force Update:

Judge Tyrone Medley distributed documentation which listed proposed membership of the Racial and Ethnic Bias Task Force. Judge Medley indicated that he spoke with everyone on the list with the exception of two proposed members. Next, he stated he made it clear to everyone that the appointing authority is the Council.

The judge requested direction from the Management Committee regarding final

composition of the task force. Members of the Management Committee discussed the proposed composition of the task force with respect to it being representative of all ethnic groups and geographically diverse. The task force has the potential for being a large group. It was observed that representation of some groups could be accomplished through the subcommittees which will be formed.

The Management Committee requested Judge Medley, along with Administrative Office staff consider additional task force membership with a final recommendation forwarded to Dan Becker.

Court Administrator's Report:

Dan Becker reported on this year's budget process. The appropriation subcommittee is focused on reductions in the base budget rather than expansion. In order to inform committee members of the court's needs, Dan Becker, Rick Schwermer and Mark Jones have been meeting with individual members of the subcommittee. The main thrust of the court's request has been aimed at restoring proposed reductions in education of \$271,550 and \$462,000 in the data processing department. Mr. Becker indicated these items have been added to a list for further consideration by the subcommittee.

The Juvenile Justice Task Force proposals are recommended by the analyst to be funded at \$5 million for probation and state supervision. Fifty probation officers would be funded at the level.

As follow-up to the Weighted Caseload Workshop, Dan Becker contacted judges in the Eighth Judicial District regarding results of the study. A proposal was made that Eighth District Judges reconsider time elements or allow the study to proceed with statewide averages.

Fred Miller, representative from the National Center for State Courts, will be providing assistance to the Administrative Office with remaining work on the Weighted Caseload Study.

Amendment to Supreme Court Rule:

The Management Committee discussed a recent change in a Supreme Court Rule which allows the Council to review past sanctions in determining certification of senior judges.

Motion:

A motion was made by Judge Jackson to approve the application and certification of Judge Rigtrup to senior judge. The motion was seconded by Judge Stirba and carried unanimously.

Provo Land Acquisition:

Judge Ray M. Harding, Sr. recently met with Utah County Legislators to discuss a land purchase in Utah County, west of the Fourth District Courts Building. Judge Harding has requested a letter indicating the Provo land acquisition is third on the Judicial Council's list of facilities priorities.

Motion:

A motion was made by Judge Stirba that a letter be prepared indicating that the Provo land acquisition is third on the budget priority list of the Judicial Council. The motion was seconded by Judge Jackson and carried unanimously.

Judicial Rules Review Committee:

Chief Justice Zimmerman reported on written communication to Sen. Robert Montgomery and Rep. John L. Valentine regarding comments from the Judicial Rules Review Committee on the Judicial Council's proposed rules prior to the rules being adopted.

Bar Conferences:

Dan Becker and John Baldwin, Executive Director of the Utah State Bar, met recently to discuss more formalized arrangements between the bar and the judiciary for participation at the Annual Bar Meeting. Among the suggestions discussed were having time set aside for section chairs to meet with the Judicial Council, a Friday meeting with the Council and the Utah State Bar President, President Elect and the Director of the Bar to discuss various topics.

In addition, Mr. Becker suggested the possibility of the Council's committees meeting on Thursday, during the week of the Annual Bar Meeting.

Clerical Caseload Study:

Holly M. Bullen reported on the progress of the Clerical Caseload Study.

The last clerical caseload study was in 1986. This caseload study will be utilized to provide a more objective basis for assessing needs and allocating staff resources across districts. The study will begin in March of 1997, and use a methodology that will determine the amount of time to perform various tasks. The schedule provides for information to be made available to court executives during their May 1997, budget hearings. The final study should be available to the Judicial Council during the August Budget Planning Meeting.

The Management Committee approved the manner in which this project is proceeding.

Appointment to the Uniform Fine/Bail Committee:

There is a vacancy for one judge position with experience with a misdemeanor docket on the Uniform Fine/Bail Committee. On January 24, 1997, the Board of District Court judges recommended the names of Judge Roger Livingston and Judge Dennis Fuchs.

Motion:

A motion was made by Judge Stirba that Judge Roger Livingston be appointed to serve on the Uniform Fine/Bail Standing Committee and that this matter be placed on the consent calendar of the Council. The motion was seconded by Judge Jackson and carried unanimously.

Appointment of Clerk to Information, Automation, and Records Standing Committee:

One of two clerk positions on the Information, Automation and Records Standing Committee will be vacant in March. The court executives recommended that Venna Woodring be appointed to the position.

Motion:

A motion was made by Judge Stirba that Venna Woodring be appointed to serve on the Information, Automation, and Records Standing Committee. The motion was seconded by Judge Sandberg and carried unanimously.

Capital Law Clerks:

Peggy Gentles requested Management Committee approval of a request for grant funding from the State Justice Institute for a Death Penalty Law Clerk in Utah. The concept is for one law clerk, to be housed at the Administrative Office and then designated to districts on a need basis. The idea behind the proposal is to improve the death penalty process at the trial court level. The law clerk would also assist in case management and others areas depending upon requests from judges. Other suggestions include that the law clerk assist in the preparation of a death penalty bench book and provide educational classes for judges.

Motion:

A motion was made by Judge Stirba that grant funding for a law clerk be sought through the State Justice Institute and that this matter be placed on the consent calendar of the Council. The motion was seconded by Judge Jackson and carried unanimously.

Amendment to Judicial Nominating Commission Rule:

Chief Justice Zimmerman reported on a proposed bill that would change the Judicial

Nominating Commission Rules which would allow for an increase in the number of nominees submitted to the Governor when there is a judicial vacancy. Currently, the rules utilized are in accordance with the American Judicature Society.

Citations & Information:

Brent Johnson informed members of the Management Committee about an effort being undertaken to identify traffic citation cases which are two years and older and should be dismissed.

Motion:

A motion was made by Judge Sandberg that all judges be advised of this issue through the boards and conferences. The motion was seconded by Judge Jackson 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**

February 7, 1997

Members Present

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

Guests

Judge Robin Reese

Staff Present

Peggy Gentles
Tim Shea

I. Rule 3-202, Court Referees. Approval For Comment

Judge Robin Reese presented to the Committee a proposed amendment to Rule 3-202, Court Referees. Judge Reese requested that the proposed amendment to the rule be published for comment. The proposed rule adds a reference to Utah Code Ann. § 77-7-21. Section 77-7-21 allows voluntary bail forfeiture without an appearance for Class B or lower citations with the judge's approval. Judge Reese stated that court referees are used in the third district with the cooperation of the city prosecutor. The need for the clarification in the rule is driven by increasing case load on arraignment calendars in the third district. The Committee discussed the proposal at length. Judge Nielson noted that the Justice Court Board opposes these proposed changes. After discussion James Jenkins moved for approval for public comment with amendments to the rule to remove references to quasi-judicial officers, change "adjudicate" to "resolve with consent of defendant," and change "order" to "recommend." His motion also included a clarification to the rule that the court referee's recommendation becomes the order of the court unless the defendant withdraws a stipulation within ten days. The motion passed.

II. Court Commissioners

Tim Shea recommended that the Committee table any study of the nature of the office of court commissioner. The Committee had previously asked the Council if the Council wanted the Committee to consider whether court commissioners should be employees at will. The Council agreed to the Committee's further study. Mr. Shea discussed the background of the current commissioner system. In his opinion the current system has the correct balance between protecting the discretion of the commissioners and providing appropriate controls by both the court and the Council. He noted that commissioners consistently get high evaluations in the attorney survey process. Because the current system seems to function well, Mr. Shea recommended that the Committee table the issue. Upon motion, the Committee voted to accept

Mr. Shea's recommendation and indefinitely table the issue.

III. Gender and Justice Follow-up: Personnel Policies

Peggy Gentles referred the Committee to materials documenting the current equal opportunity policies in the Policy and Procedures Manual. These policies were provided in response to the gender and justice recommendation number three which stated that the Policy and Procedures Manual should include gender and ethnic diversity as important hiring and promotion criteria. Ms. Gentles noted that the report's recommendation had been forwarded to the HR Policies Committee for its input. The Committee determined to take no further action at this time. However, it asked that Ms. Gentles investigate further whether the Committee should make any recommendations about efforts to expand the pool of potential applicants.

IV. Approval of Amendments to Code of Judicial Administration For Comment

Peggy Gentles presented the Committee with proposed amendments to the Code of Judicial Administration to be recommended to the Council for publication for comment. The Committee discussed the rules provided by Ms. Gentles. The Committee requested some technical changes, and substantive changes to Rule 4-106, 4-506, and 4-704. Having made those changes, the Committee recommended that the Council approve the proposals to be published for comment on its consent calendar.

Proposed Amendments
to the
Code of Judicial Administration

These rules are recommended by the Policy & Planning Committee to be published for comment. The Committee recommends that the Judicial Council approve the rules on its consent calendar.

February 13, 1997

1 **CODE OF JUDICIAL ADMINISTRATION**

2
3 **Rule 3-102. Assumption of judicial office.**

4 **Intent:**

5 To provide standards for qualification, training, and furnishings for judicial office.

6 **Applicability:**

7 This rule shall apply to all judges of courts of record.

8 **Statement of the Rule:**

9 (1) Qualification for office.

10 (A) An appointee to judicial office shall qualify for office as provided by law within 60 days of
11 confirmation by the Senate. To qualify for office judicial appointees must take the oath of office, refrain
12 from the practice of law and resign from any elective, non-judicial public office or political party office
13 which they may hold. The oath of office shall be subscribed by the appointee, administered as provided
14 by law and filed with the office of the Lieutenant Governor and the ~~[Administrative Office]~~
15 administrative office. An appointee to judicial office is entitled to assume the duties of judge and be
16 compensated for such duties on the date he or she has qualified for office.

17 (B) A judge elected to office by retention election shall refile, with the Utah State Archivist, an
18 oath of office within 60 days of the first Monday in January next following the date of the election. The
19 oath of office may be administered by any person authorized to administer oaths.

20 (2) Education and training. Within twelve months of qualification for office, each judge is
21 required to complete a program of education and training as provided by this Code and the education
22 policies and procedures adopted pursuant to this Code.

23 (3) Furnishings.

24 (A) The ~~[Administrative Office]~~ administrative office shall establish a schedule for the provision
25 and replacement of appropriate furnishings, equipment and supplies for individual judges. The
26 furnishings shall include at a minimum one desk, one chair, two side chairs, one bookcase, one credenza
27 and one couch and shall be provided in accordance with applicable procurement provisions. The
28 schedule shall consider such factors as the physical stature of successor judges, wear and tear and other
29 damage to furnishings, and the cost and feasibility of repair rather than replacement.

30 (B) Existing deficiencies in office space, furnishings, equipment and supplies shall be reported to
31 the administrative office within 90 days of the effective date of the rule. Subject to the availability of
32 funds, deficiencies will be cured in accordance with the schedule and the applicable procurement
33 provisions.

34 (C) Individual judges shall prepare and maintain an inventory of personal property kept in their
35 chambers. A copy of the inventory shall be kept on file with the ~~[Administrative Office]~~ district trial
36 court executive.

37 (4) Expenses. Any expenses incurred in complying with this rule shall be borne by the state.

38
39 **Rule 3-201. Court commissioners.**

40 **Intent:**

41 To define the role of court commissioner.

42 To establish a term of office for court commissioners.

43 To establish uniform administrative policies governing the qualifications, appointment,

1 of the committee upon the issue.

2 (F) The administrative office of the courts shall advertise for qualified applicants and shall
3 remove from consideration those applicants who do not meet minimum qualifications of age,
4 citizenship, residency, and admission to the practice of law. The administrative office of the courts shall
5 develop uniform guidelines for the application process for court commissioners.

6 (G) The nominating committee shall review the applications of qualified applicants and may
7 investigate the qualifications of applicants to its satisfaction. The committee shall interview selected
8 applicants and select the three best qualified candidates. The committee may indicate its order of
9 preference. The chair of the committee shall present the names, applications, and the results of
10 background investigations of the nominees to the judges of the courts the court commissioner will serve.

11 (H) The judges of the courts the court commissioner will serve shall select one of the nominees
12 by a concurrence of a majority of judges voting. The concurrence of each court [~~level~~] independent of
13 the others is necessary for selection.

14 (I) The presiding judge of the district court of the district the court commissioner will primarily
15 serve shall present the name of the selected candidate to the Council. The selection shall be final upon
16 the concurrence of two-thirds of the members of the Council. The Council shall vote upon the selection
17 within 45 days of the selection or the concurrence of the Council shall be deemed granted.

18 (J) If the Council does not concur in the selection, the judges of the district may select another of
19 the nominees or a new nominating process will be commenced.

20 (K) The appointment shall be effective upon the court commissioner taking and subscribing to
21 the oath of office required by the Utah Constitution and taking any other steps necessary to qualify for
22 office. The court commissioner shall qualify for office within 45 days after the concurrence by the
23 Council.

24 (4) Term of office. The court commissioner shall be appointed for a term of four years. At the
25 conclusion of each term of office, the court commissioner shall be retained for a subsequent term of four
26 years unless the judges of the courts the commissioner serves remove the commissioner in accordance
27 with paragraph (6)(B). The initial term of office of court commissioners holding office on June 30, 1992
28 shall commence July 1, 1992.

29 (5) Performance evaluation. The presiding judge or judges of the districts shall develop a
30 performance plan for the court commissioner and shall prepare an evaluation of the commissioner's
31 performance on an annual basis. A copy of the performance plan and any subsequent evaluation shall be
32 maintained in the official personnel file in the administrative office. Court commissioners shall comply
33 with the program for judicial performance evaluation pursuant to Rules 3-110 and 3-111.

34 (6) Removal and sanctions.

35 (A) If the commissioner's performance is not satisfactory, the presiding judge, with the
36 concurrence of the judges of that jurisdiction, may discipline the commissioner or remove the
37 commissioner from office. If the commissioner disagrees with the presiding judge's decision, the
38 commissioner may request a review of the decision by the Management Committee of the Council.

39 (B) The court commissioner may be removed by the Council:

40 (i) as part of a reduction in force;

41 (ii) for failure to meet the evaluation and certification requirements of Rules 3-110 and 3-111; or

42 (iii) as the result of a formal complaint filed under [~~subparagraphs (7)(B) through (7)(G)] CJA
43 Rule 3-201.02 upon the concurrence of two-thirds of the Council.~~

(C) The court commissioner may be removed without cause by the judges of the courts the

1 ~~[judges]~~ non-judicial officers authorized by the Legislature and other relevant factors. Except as
2 provided in paragraph (6), the salary of a commissioner shall not be reduced during the commissioner's
3 tenure.

4 (B) Court commissioners ~~[hired after October 1, 1988]~~ shall receive annual leave of 20 days per
5 calendar year and the same sick leave benefits as ~~[judges of the courts of record]~~ non-judicial officers.
6 Annual leave not used at the end of the calendar year shall not accrue to the following year. A
7 commissioner hired part way through the year shall receive annual leave on a pro rated basis. Court
8 commissioners shall receive the same retirement benefits as non-judicial officers employed in the
9 judicial branch. ~~[Court commissioners hired before October 1, 1988 may elect to receive the same leave~~
10 ~~benefits as either judicial or non-judicial court employees. This election must be made in writing by July~~
11 ~~1, 1988 and is not revocable.]~~

12 ~~[(9)]~~ (8) Support services.

13 (A) Court commissioners shall be provided with support personnel, equipment, and supplies
14 necessary to carry out the duties of the office as determined by the presiding judge.

15 (B) Court commissioners are responsible for requesting necessary support services from the
16 presiding judge.

17
18 **Rule 3-201.02. Court Commissioner Conduct Committee.**

19 **Intent:**

20 To establish a procedure for the review of complaints filed against court commissioners.

21 **Applicability:**

22 This rule shall apply to all trial courts of record.

23 **Statement of the Rule:**

24 **(1) Court Commissioner Conduct Committee.**

25 (A) The Council shall appoint a committee of three judges and two lawyers to investigate formal
26 complaints against court commissioners. The Council shall designate one member as chair. The judges
27 shall reside in different judicial districts from each other. The lawyers shall reside in different judicial
28 districts from each other.

29 (B) Committee members shall not be Council members. Committee members shall serve three
30 year terms of office. The terms of office shall be staggered so that no more than two expire in one year.

31 (C) Circumstances which require recusal of a judge shall require recusal of a Committee member
32 from participation in Committee action. If the chair is recused, a majority of the remaining members
33 shall select a chair pro tempore. The chair shall replace a recused member with a judge or lawyer of the
34 same judicial district as the recused member. The composition of the Committee shall remain as
35 provided in paragraph (1)(A).

36 (2) **Informal Complaint.** An informal complaint against a court commissioner may be filed
37 with the presiding judge of the court the court commissioner serves. The presiding judge shall conduct
38 such investigation and take such corrective action as warranted by the complaint.

39 (3) **Formal Complaint.**

40 (A) A formal complaint against a court commissioner shall be in writing and filed with the
41 presiding officer of the Council. The presiding officer shall refer the complaint to the committee and
42 provide a copy of the complaint to the court commissioner and to the presiding judge of the court the
43 commissioner serves.

4 (B) All proceedings and materials related to a formal complaint shall be kept confidential.

1 Utah residents for three years preceding appointment. Court Referees must possess knowledge of laws
2 and regulations, court procedures, and penalties for violations within the authority of the referee to
3 impose. Court Referees must possess evidence of good character.

4 ~~[(3)]~~ (2) Appointment - Oath of office. The Court Executive shall assist the presiding judge or
5 judges of the jurisdiction in the selection of Court Referees. The presiding judge with the approval of the
6 judges of the jurisdiction shall appoint an individual to the office who may be a full time referee or a
7 clerk of the court serving as a part time referee. Court Referees, before entering upon the duties of their
8 office, shall take and subscribe to an oath of office.

9 ~~[(4)]~~ (3) Standards of performance. Court Referees must comply with applicable constitutional and
10 statutory provisions, court rules and procedures, and the provisions of this Code.

11 ~~[(5)]~~ (4) Evaluation. The presiding judge and the court executive shall develop a performance plan
12 for the Court Referee and shall prepare an evaluation of performance annually. A copy of the
13 performance plan and evaluation shall be maintained in the official personnel file in the ~~[Administrative~~
14 ~~Office]~~ administrative office.

15 ~~[(6)]~~ (5) Salaries and benefits.

16 (A) Full-time Court Referees shall be compensated at a level within the standards of the Judicial
17 Council.

18 (B) Full-time Court Referees shall receive the same employment benefits as non-judicial officers
19 employed in the judicial branch.

20 (C) Court clerks serving as part-time referees shall receive no additional compensation for referee
21 services.

22 ~~[(7)]~~ (6) Authority and duties. The respective Boards shall develop uniform rules governing the
23 duties and authority of Court Referees at each court level. The rules shall be submitted to the Council for
24 final approval and shall, at a minimum, provide the following:

25 (A) Court Referees shall be authorized to ~~[adjudicate]~~ resolve with the consent of the defendant only
26 those offenses listed in Section 77-7-21 or in the uniform bail schedule as not requiring a court
27 appearance by the defendant.

28 (B) Court Referees may establish bail, ~~[order]~~ recommend dismissals, refer persons to traffic school
29 or otherwise equitably dispose of citations.

30 (C) Court Referees shall review the offense described on the citation and the circumstances of the
31 offense with the defendant and propose a mutually acceptable disposition. Upon stipulation of the
32 defendant, the Court Referee may ~~[order]~~ recommend disposition in accordance with the agreement.

33 (D) In the event that a stipulation cannot be reached or the defendant so requests, the Court Referee
34 shall refer the matter to the court for trial.

35 (E) ~~[Dispositions]~~ Recommendations by Court Referees shall be the final order of the court unless
36 the defendant withdraws a stipulation within 10 days of its entry. If the defendant withdraws a
37 stipulation in a timely manner, the matter shall be scheduled for trial before the Court.

38 (F) Documentation of Court Referee dispositions shall be maintained; however, such proceedings
39 shall not be a matter of record.

41 **Rule 3-407. Accounting.**

42 **Intent:**

43 To establish uniform procedures for the processing, tracking, and reporting of accounts
44 receivable and trust accounts.

1 and primary locations of the district courts shall submit the report weekly to the administrative office.
2 [~~Secondary locations of the district courts~~] District court contract sites shall submit the report at least
3 monthly, together with a check for the state portion of revenue, to the administrative office. Justice
4 courts shall submit the report monthly, together with a check for the state revenue collected, to the Utah
5 State Treasurer.

6 (C) Monthly Reconciliation of Bank Statement. The administrative office shall reconcile the
7 revenue account upon receipt of the weekly revenue report from the courts and the monthly bank
8 statements.

9 (3) Trust Accounts.

10 (A) Definition. Trust accounts are accounts established by the courts for the benefit of third
11 parties. Examples of funds which are held in trust accounts include restitution, child support, and bail
12 amounts.

13 (B) Accounts Required; Duties of a Fiduciary. District court primary locations and juvenile
14 courts shall maintain a trust account in which to deposit monies held in trust for the benefit of the trustor
15 or some other beneficiary. Under supervision of the court executive, the clerk of the court shall be the
16 custodian of the account and shall have the duties of a trustee as established by law. All other courts of
17 record and not of record may maintain a trust account in accordance with the provisions of this rule.

18 (C) Monthly Reconciliation of Bank Statement. Each court shall reconcile its ledgers upon
19 receipt of the monthly bank statement and submit the reconciliation to the administrative office.

20 (D) Accounting to Trustor. The courts shall establish a method of accounting that will trace the
21 debits and credits attributable to each trustor.

22 (E) Bail Forfeitures; Other Withdrawals. Transfers from trust accounts to a revenue account may
23 be made upon an order of forfeiture of bail or other order of the court. Other withdrawals from trust
24 accounts shall be made upon the order of the court after a finding of entitlement.

25 (F) Interest Bearing.

26 (i) All trust accounts shall be interest bearing. The administrative office shall develop procedures
27 which provide for interest to accrue either to the state or to the litigants in accordance with Utah Code
28 Ann. § 78-27-4(3)(a).

29 (ii) For trust amounts in excess of \$5,000, the court may order or the litigant may request that
30 such funds be deposited in an interest bearing escrow account. The account shall be at an institution
31 designated by the administrative office unless otherwise ordered by the court.

32 (iii) For interest bearing accounts established at the request of the litigant or by court order, an
33 administrative fee, in an amount established by the Council, shall be assessed. The account shall be
34 maintained in the name of the court, and the State tax identification number shall be used. The court
35 shall, in all orders providing for the withdrawal of trust funds, designate the person or entity to whom
36 the earned interest is awarded.

37 (4) Compliance. The administrative office and the courts shall comply with state law and the
38 manual of procedures adopted by the administrative office.

39

40 **Rule 3-411. Grant management.**

41 **Intent:**

42 To establish the policy and procedures for obtaining grant funds.

43 To delineate the responsibility for the administration of grant funds and projects.

To facilitate the coordination of grant funded projects in the courts.

1 shall supervise any judicial or quasi-judicial duties required by the grant.

2 (3) Grant applications by non-judicial branch applicants.

3 (A) Endorsement of a grant application prepared a non-judicial branch applicant may only be
4 made by the Judicial Council.

5 (B) Any grant application by a non-judicial branch applicant which contemplates participation
6 of the courts or expenditures of court resources should be referred to the Judicial Council for review and
7 endorsement. Judicial branch employees shall not participate in the preparation of a grant application by
8 a non-judicial branch applicant without Judicial Council approval.

9
10 **Rule 3-415. Auditing.**

11 **Intent:**

12 To establish an internal fiscal audit program for the judiciary within the [~~Administrative Office~~]
13 administrative office.

14 To examine and evaluate court operations by measuring and evaluating the effectiveness and
15 proper application of programs.

16 **Applicability:**

17 This rule shall apply to all courts of record and the [~~Administrative Office~~] administrative office.

18 **Statement of the Rule:**

19 (1) Schedule of audits.

20 (A) Periodic. Not less than annually, the [~~court auditor~~] audit manager shall prepare a plan of
21 scheduled fiscal and program audits for submission to and approval by the Council Management
22 Committee.

23 (B) Amendment to schedule. Any modification or change to the approved plan of scheduled
24 audits shall require prior approval by the Council Management Committee.

25 (C) Special audits. Requests for special audits not included in the plan shall be submitted in
26 writing to the Council Management Committee and identify the circumstances and need for a special
27 unscheduled audit.

28 (D) Limited audits. In the event of a reported theft, burglary or other alleged criminal act or
29 suspected loss of monies or property at a court location, or if a change occurs in the personnel
30 responsible for fiduciary duties, the [~~State Court Administrator~~] state court administrator may authorize
31 a limited audit. [~~If a limited audit is conducted pursuant to such authorization, the auditor shall prepare a~~
32 ~~report for the Administrative Office or the Council Management Committee.~~]

33 (2) Authority. The [~~court auditor~~] audit manager shall be independent of the activities audited.
34 The [~~auditor~~] audit manager shall have access to all records, documents, personnel and physical
35 properties determined relevant to the performance of an audit. The [~~auditor~~] audit manager shall have the
36 full cooperation and assistance of court personnel in the performance of an audit. The [~~auditor~~] audit
37 manager shall follow generally accepted accounting and performance audit principles for conducting
38 internal audits.

39 (3) Fiscal audits. Fiscal audits [~~shall include, but not be limited to, a determination of~~] may
40 consist of one or more of the following objectives:

41 (A) [~~The accuracy and reliability of financial statements and reports~~] to verify the accuracy and
42 reliability of financial records;

43 (B) [~~Adequacy and effectiveness of financial controls~~] to assess compliance with management
44 policies, plans, procedures, and regulations;

1 **Rule 4-104. Request for trial setting.**

2 **Intent:**

3 To establish a procedure for the assignment of trial dates.

4 To provide firm and timely trial dates in civil cases.

5 **Applicability:**

6 This rule shall apply to the District Courts.

7 **Statement of the Rule:**

8 (1) When a civil case is at issue, any party not in default as provided in the Utah Rules of Civil
9 Procedure may file a written certification of readiness for trial.

10 (2) Upon oral or written stipulation or order of the court, a trial date may be obtained at any time
11 and shall be set as soon as possible subject to the scheduling limitations of the calendar. Notice of the
12 trial date shall be mailed by the clerk of the court to all counsel of record or parties who are not
13 represented by counsel, advising them of the trial date. A copy of the notice shall be placed in the case
14 file.

15 (3) Special trial settings are available only in matters of extraordinary urgency and only by
16 application to the judge who has been assigned the case for trial or, absent assignment, the presiding
17 judge after notice to all parties and upon a showing of good cause.

18 (4) Any certificate of readiness for trial which is served upon the opposing party and filed with
19 the clerk of the court in cases in which discovery is not complete prior to filing the certificate or in
20 which discovery is not complete prior to pretrial conference may be stricken and the trial date, if
21 assigned, may be vacated.

22 (5) Violation of the certification of readiness for trial requirements may be considered to be the
23 subject of a sanction under Rule of Civil Procedure 11.

24
25 **Rule 4-106. [~~Conference calls~~] Electronic Conferencing.**

26 **Intent:**

27 To authorize the use of [~~conference calls~~] electronic conferencing in lieu of personal appearances
28 [~~by counsel~~] in appropriate cases.

29 **Applicability:**

30 This rule shall apply to all courts of record and not of record.

31 **Statement of the Rule:**

32 [~~Judges of courts of record and not of record are authorized to use conference calls in lieu of~~
33 ~~personal appearance by counsel in appropriate cases.~~]

34 (1) In the judge's discretion, any hearing may be conducted using telephone or video
35 conferencing.

36 (2) Any proceeding in which a person appears by telephone or video conferencing shall proceed
37 as required in any other hearing including keeping a verbatim record.

38
39 **Rule 4-107. Consolidation of cases.**

40 **Intent:**

41 To provide a procedure for hearing motions to consolidate cases and for the consolidation of
42 cases.

43 **Applicability:**

1 is based.

2 ~~[(8)]~~ (7) No orders, judgments, or decrees based upon stipulation shall be signed or entered
3 unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed
4 with the clerk or the stipulation was made on the record.

5 ~~[(9)]~~ (8) In all cases where judgment is rendered upon a written obligation to pay money and a
6 judgment has previously been rendered upon the same written obligation, the plaintiff or plaintiff's
7 counsel shall attach to the new complaint a copy of all previous judgments based upon the same written
8 obligation.

9 ~~[(10)]~~ (9) Nothing in this rule shall be construed to limit the power of any court, upon a proper
10 showing, to enforce a settlement agreement or any other agreement which has not been reduced to
11 writing.

12

13 **Rule 4-506. Withdrawal of counsel in civil cases.**

14 **Intent:**

15 To establish a uniform procedure and criteria for withdrawal of counsel in civil cases.

16 **Applicability:**

17 This rule shall apply to all counsel in civil proceedings in trial courts of record except guardians
18 ad litem and court-appointed counsel.

19 **Statement of the Rule:**

20 (1) Withdrawal requiring court approval. Consistent with the Rules of Professional Conduct, an
21 attorney may withdraw as counsel of record ~~[without the approval of the court except]~~ only upon
22 approval of the court when ~~[(a)]~~ a motion has been filed and ~~[is pending before the court or (b)]~~ the court
23 has not issued an order on the motion or after a certificate of readiness for trial has been filed. Under
24 these circumstances, an attorney may not withdraw except upon motion and order of the court.

25 (2) Withdrawal not requiring court approval. ~~[When]~~ If an attorney withdraws under
26 circumstances where court approval is not required, the notice of withdrawal shall include a statement by
27 the attorney that ~~[there are no motions pending and that]~~ no motion has been filed on which the court has
28 not issued an order and that no certificate of readiness for trial has been filed.

29 ~~[(2) When]~~ (3) If an attorney withdraws as counsel of record, the withdrawing attorney must
30 serve written notice of the withdrawal ~~[must be served]~~ upon the client of the withdrawing attorney and
31 upon all other parties not in default. ~~[and a]~~ A certificate of service must be filed with the court. If a trial
32 date has been set, the notice of withdrawal ~~[served upon the client]~~ shall include a notification of the trial
33 date.

34 ~~[(3) When an attorney dies or is removed or suspended or withdraws from the case or ceases to~~
35 ~~act as an attorney, opposing counsel must notify, in writing, the unrepresented client of his/her~~
36 ~~responsibility to retain another attorney or appear in person before opposing counsel can initiate further~~
37 ~~proceedings against the client. A copy of the written notice shall be filed with the court and no further~~
38 ~~proceedings shall be held in the matter until 20 days have elapsed from the date of filing.]~~

39 (4) If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or is
40 removed from the case by the court, opposing counsel shall serve a Notice to Appear or Appoint
41 Counsel on the unrepresented client. The Notice to Appear or Appoint Counsel must inform the
42 unrepresented client of the responsibility to appear in court or appoint counsel. A copy of the Notice to
43 Appear or Appoint must be filed with the court. No further proceedings shall be held in the case until 20
44 days have elapsed from filing of the Notice to Appear or Appoint Counsel unless the client of the

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: Judicial Council
Management Committee

FROM: Holly M. Bullen

DATE: February 7, 1997

RE: Appointment of District Judge to
Uniform Fine/Bail Standing Committee

Amended Rule 1-205 specifies the membership on the Uniform Fine/Bail Committee as "one district court judge who has experience with a felony docket, three district court judges who have experience with a misdemeanor docket, one juvenile court judge and three justice court judges." We currently have a vacancy for one of the positions with experience with a misdemeanor docket.

Accordingly, this vacancy was announced, with that explanation, to all District Court Judges. The announcement was sent on November 20, 1996 with a deadline for response of December 2, 1996. No responses were received.

On December 5, the Management Committee directed that the Board of District Judges recommend two names for this vacancy, and the Council would select from the two names submitted. On January 24, the Board recommended the names of Judge Roger Livingston and Judge Dennis Fuchs. I sent them each a notification that they had been nominated to serve in this position. Judge Fuchs responded by telephone that he already served on several committees and would prefer not to be assigned to the Uniform Fine/Bail Committee.

Therefore, I am submitting to you the name of Judge Roger Livingston for your consideration. If you are in agreement with this recommendation, I will place the matter on the consent calendar of the Judicial Council meeting scheduled February 19, 1997.

Thank you for your consideration of this appointment.

c: D. Mark Jones

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

DATE: February 7, 1997

RE: Appointment of Clerk to Information, Automation,
and Records Standing Committee

One of the two Clerk positions on the Information, Automation and Records Standing Committee will be vacant in March. Pursuant to Rule 1-205, CJA, we announced the vacancy to all clerks and asked for those interested to submit a list of their present and past committee assignments. Five clerks expressed an interest in serving on this committee::

Venna Woodring, Second District
Tauna Hammer, Fifth District
Cynthia Saville-Steele, Fifth District
Susan Scott, Fifth District Juvenile Court
Clarinda Barclay, Sixth District Juvenile Court

We submitted the names of these clerks to the Court Executives at their meeting today. The group discussed the present and past committee assignments of each, their experience and background, as well as considerations regarding geographical locations and court levels already represented on the committee.

The Court Executives recommended that Venna Woodring be appointed to the position. If you are in agreement with this recommendation, I will place this matter on the consent calendar of the Judicial Council meeting scheduled February 19, 1997.

Thank you for your consideration of this appointment.

c: Gordon Bissegger
Rolen Yoshinaga
Eric Leeson

MEMORANDUM

To: Judicial Council
From: Peggy Gentles
Subject: Death Penalty Law Clerks
Date: February 12, 1997

Dan Becker has asked me to do some research on capital law clerk programs in other states. He has inquired into the possibility of pursuing a grant to fund a similar program in Utah. SJI may be willing to waive the concept paper deadline (Nov. 1996) for its FY97 grant cycle. If the Council wishes to pursue a SJI grant, a concept paper and request for waiver of the deadline requirement should be submitted to SJI by March 14. Management Committee has recommended approval of submission of a concept paper.

For the Council's consideration, I have enclosed the following:

- ▶ Memorandum to Dan Becker reviewing programs in other states;
- ▶ Draft outline of possible concept paper for a Utah SJI grant request; and
- ▶ Copy of the newsletter that the Arizona program produces.

Arizona's program has requested a continuation grant from SJI. As part of the request, Arizona has stated that it will run a training program for other interested states. The program managers expect the training to be this fall.

OUTLINE OF SJI CONCEPT PAPER
(DRAFT FEBRUARY 12, 1997)

- I. Why is this project needed and how will it benefit state courts?
 - A. Need for project
 - 1. Caseload
 - a. Original case filings
 - (1) FY96: 11 cases filed statewide charging a capital offense
 - (a) 2 jury trials
 - (b) 2 cases still pending
 - (c) 1 other case had a plea agreement after many death penalty-related motions filed
 - b. Post-conviction proceedings
 - (1) Reported state appellate opinions 1991-current
 - (a) 12 opinions; 2 reversals (16%)
 - 2. Complexity of capital cases
 - 3. Relative rarity of capital cases: judges do not preside over capital cases with a frequency that allows them to keep current in this dynamic area of the law
 - B. Benefits of project
 - 1. Ensure accuracy and fairness in all stages of capital proceedings
 - 2. Advise judges on legal & procedural steps to conduct error free cases
 - 3. Reduce remands and reversals from appellate courts
 - 4. Reduce findings of constitutional error in federal habeas review
- II. What will be done if the grant is awarded?
 - A. Job description

1. Assist judges with capital cases
 - a. Provide research to support decisions
 - b. Constant review of applicable state and federal cases to ensure that judges have access to the most recent opinions
 - c. Case management information
2. Assist all judges
 - a. Prepare bench book for use in capital cases
 - b. Disseminate information on recent cases to entire bench (e.g., newsletter)
 - c. Some research may have relevance beyond capital cases (e.g., evidentiary issues, sample juror questionnaires)
 - d. Case management: tracking cases while in state system and cases on federal habeas review will allow the system to be better prepared for the appearance or reappearance on the courts' dockets

B. Program management

1. One clerk hired for program
2. Clerk housed within AOC and supervised by program manager
3. Because time commitment is unclear, clerk may work on projects unrelated to grant.
 - a. Ensure adequate accounting for time
 - b. Ensure that work on capital law clerk related items always has priority
4. Judges contact clerk directly with requests for assistance
 - a. Increase response time
 - b. Increase clerk's contact with the judges

c. Program manager resolves any disputes about the use of the clerk's time

III. How will the effects and quality of the project be determined?

IV. How will others find out about the project and be able to use the results?

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: Dan Becker
From: Peggy Gentles *PG*
Subject: Death Penalty Law Clerks
Date: December 23, 1996

As requested, I have investigated Arizona's death penalty law clerk program. Arizona state courts have received a grant from the State Justice Institute (SJI-95-251) for a program to furnish law clerks to trial judges engaged in capital trials. The program is designed to increase the fairness and efficiency of the processing capital cases; reduce the number of cases which the Arizona Supreme Court reverses; and reduce findings of constitutional error by federal courts.

Structure of Arizona's Program¹

Arizona has hired three law clerks² under this program. They are based in the trial courts of the two most populous counties but serve as resources for all state trial judges. The clerks are assigned to the presiding judge in the county. However, the program manager (one in each of the two counties) manages the clerks' assignments. The clerks are available for researching issues, consulting with the judges, and training/education. Thus far, the program managers do not report any conflicts among judges for the law clerk resource.

Paula Nailon, the program manager in Pima County, stated that the program is running almost exactly as envisioned in the grant application and is strongly supported by the judges. The clerks serve as resources to both judges with capital cases pending and the entire bench. They produce a newsletter on recent state and federal decisions as-needed. The program has facilitated

¹ This information comes from Arizona's Grant Application to SJI. The grant period began in January 1996 and will run until June 1997. No evaluative reports have been prepared yet.

² This number was arrived at by looking at the number of cases and potential funding levels.

amount was unclear. The application contemplates the following other expenses associated with the program:

\$7,500	equipment
\$4,000	supplies
\$2,500	telephone
\$2,000	postage
\$1,500	printing
\$17,500	TOTAL

California's Program

California also received a SJI grant (SJI-95-250) for a death penalty law clerk program. The California program has three clerks and lasts one year. One clerk was assigned to the Administrative Office of the Courts to work on projects for rural counties with capital cases. Each of the other two clerks was assigned to a Superior Court. The courts applied to the AOC for the clerks.⁴ These clerks work for judges on a project basis. Each clerk was paid \$40,000.

According to Jim Brighton at the California AOC, the rural courts have not used the clerk as much as expected. Although he has no definitive evaluation,⁵ his impression is that the number of capital cases in the rural courts was greatly overestimated. This part of the program expired after ten months.

Mr. Brighton identified a significant problem in objective evaluation of such a program in the short term. The cases take so long to disposition that any evaluation of reversible errors is currently impossible. In addition, the flow of cases was uneven. Little happened in most cases during the summer. Therefore, the clerks did not work on as many projects as they would have if the cases continued at a constant pace. He reported that the allocation of the law clerk resource in each superior court appeared to have gone smoothly. The subjective opinions of the judges and staff with whom the clerks have worked has been very positive. Communication between state and federal courts has not been as extensive as expected.

In Mr. Brighton's opinion, the most valuable part of the program will be a Bench Guide.

⁴ San Bernardino and Contra Costa Superior Courts were chosen in part because of the volume of capital cases and the relative inexperience of the judges with such cases. In San Bernardino Superior Court, seven of twenty-eight judges had heard a capital case. In Contra Costa Superior Court, the figures was two of seventeen. San Bernardino County had sixteen pending capital cases; Contra Costa County had nine pending capital cases.

⁵ California will submit its report to SJI by March 31, 1997.



Arizona Superior Court in Pima County
Education and Training Department

FAX MEMORANDUM

8 PAGES PLUS THIS COVER

DATE : February 5, 1997

TO : Peggy Gentles

FROM: Paula Nailon, J.D.

RE : Capital Litigation Report

COVER MEMO: Attached please find the above-mentioned report.

Lynn Thummel, Ph.D. - Training Coordinator (520)740-3831
110 West Congress, 9th Floor

Mark O. Sorensen - Administrative Training Specialist (520)740-3833
Tucson, Arizona 85701

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 *TMS*
Date: February 11, 1997
Re: Timeline for Judicial Performance Evaluation 1997 - 1998

Under Rule 3-111, the Judicial Council must approve a schedule of events for performance evaluation and certification, which is then distributed to all judges and court commissioners. A proposed schedule for the judges and commissioners of the courts of record and a separate proposed schedule for county justice court judges are attached. Municipal justice court judges are not affected this time.

There are 39 state court judges whose terms expire January 4, 1999, and there are 40 county court judges whose terms expire February 5, 1999. These judges stand for reelection on November 10, 1998. There are no court commissioners whose terms expire this cycle.

encl. 2

copy: Utah Judicial Council

Schedule of Events
1997 - 1998 Judicial Performance Evaluation and Certification
Judges and Commissioners of Courts of Record

Date	Event
March 3, 1997	Notify judges and commissioners of events and deadlines. Confirmation by judges of who is scheduled for retention election. Inquiry regarding anticipated retirements. CJA 3-111(5)(B)(ii).
March 3, 1997	Release RFP for survey of attorneys and jurors.
May 1, 1997	Award contract for survey of attorneys and jurors.
May 16, 1997	Provide judges, commissioners and clerks with data gathering instructions.
July 18, 1997	Clerks submit names of attorneys appearing between July 1, 1995 and June 30, 1997. Judges and commissioners identify attorneys to be omitted from survey.
September 1997	Conduct survey of attorneys. Continuing survey of jurors.
November 1997	Solicit from judges and commissioners whose terms are expiring a self certification report of: <ul style="list-style-type: none"> ◊ Compliance with cases under advisement standard for appellate courts and trial courts. 3-111(3)(C). ◊ Compliance with education standard. 3-111(3)(D). ◊ Substantial compliance with Code of Judicial Administration and Code of Judicial Conduct. 3-111(3)(E). ◊ Mental and physical fitness. 3-111(3)(F)
December 1, 1997	Polling agency reports individual survey scores and regional scores to judges and commissioners. Notice to judges and commissioners whose terms are expiring to provide written comments to Council by January 19, 1998. CJA 3-111(5)(E)(ii).
December 21, 1997	Polling agency reports to Council in 5% increments the individual survey scores of the judges and commissioners whose terms expire. CJA 3-111(5)(E)(v). Polling agency reports regional scores to the Council. CJA 3-111(5)(E)(i).
January 2, 1998	Notify Lt. Governor of judges due for retention election in November. §20A-1-301.
January 26, 1998	Council meeting to determine certification. CJA 3-111(4)(A).
February 5, 1998	Confidential notice of certification decision. CJA 3-111(4)(C) and (D).
February 16, 1998	Deadline for judge or commissioner to contest decision not to certify. CJA 3-111(4)(D).
February 17, 1998	Request to the Judicial Conduct Commission for data regarding sanctions against judges whose terms are expiring. §20A-7-702; §78-7-30(3); CJA 3-111(4)(d)(ii); JCC Rule 9.
March 2, 1998	Send declaration of candidacy form with instructions to judges whose terms are expiring.
March 5, 1998	Executive hearing to permit judge or commissioner to contest decision not to certify. CJA 3-111(4)(D).
March 9, 1998	Deadline to notify judge or commissioner of final Council certification decision. CJA 3-111(4)(D)(iv). Notice of dismissal of commissioner who is not certified. CJA 3-111(4)(H).
March 7 to 17, 1998	Judges file declaration of candidacy and \$50 filing fee with the county clerk or with the Lt. Governor. §20A-12-201(2)(a); §20A-9-202(1)(b).
April 1998	Solicit from judges whose terms expire the information required by law to be published in the voter information pamphlet and not already on file. §20A-7-702(2).
June 1, 1998	Notify presiding judge of certification decision regarding judges and commissioners of that court. CJA 3-111(4)(G).
July 1998	Provide to the Lt. Governor information required by law to be published in the voter information pamphlet. §20A-7-702(2); §78-3-21(4)(e).
November 10, 1998	General Election
First Monday in January 1999	Judges of courts of record assume office. §78-2-1(2); 78-2a-2(1); 78-3-3; 78-3a-107. 60 days to file oath of office with Division of State Archives, §52-1-2, with a copy to the AOC. CJA 3-102(1).

**Schedule of Events
1997 - 1998 Judicial Performance
Evaluation and Certification
Judges of County Justice Courts**


November 1997	Solicit from all judges a self certification report of: <ul style="list-style-type: none"> ◊ Compliance with cases under advisement standard. 3-111(3)(C). ◊ Compliance with education standard. 3-111(3)(D). ◊ Substantial compliance with Code of Judicial Administration and Code of Judicial Conduct. 3-111(3)(E). ◊ Mental and physical fitness. 3-111(3)(F)
January 2, 1998	Notify Lt. Governor of judges due for retention election in November. §20A-1-301.
January 26, 1998	Council meeting to determine certification. CJA 3-111(4)(A).
February 5, 1998	Confidential notice of certification decision. CJA 3-111(4)(C) and (D).
February 16, 1998	Deadline for judge to contest decision not to certify. CJA 3-111(4)(D).
February 17, 1998	Request to the Judicial Conduct Commission for data on the sanction of judges. §20A-7-702; §78-7-30(3); CJA 3-111(4)(d)(ii); JCC Rule 9.
March 2, 1998	Send declaration of candidacy form with instructions to judges.
March 5, 1998	Executive hearing to permit judge to contest decision not to certify. CJA 3-111(4)(D).
March 9, 1998	Deadline to notify judge of final Council certification decision. CJA 3-111(4)(D)(iv).
March 7 to 17, 1998	Judges file declaration of candidacy and \$25 filing fee with the county clerk. §20A-12-201(2)(b); §20A-9-202(1)(a).
November 10, 1998	General Election
First Monday in February, 1999	County justice court judges assume office. §78-5-132(1). File oath of office with the county clerk. §52-1-3.

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: Judicial Council
FROM: Holly M. Bullen
DATE: February 13, 1997
RE: Certification of Active Senior Judge

Retired Judge Kenneth Rigtrup submitted an application for active senior judge status. The application was considered by the Council's Management Committee on February 12, 1997, in light of Supreme Court Rule 11-201, as amended January 31, 1997.

The application received approval from the Management Committee and they directed that the matter be placed on the February 19, 1997 Judicial Council consent calendar.

A copy of the application for certification and the amended rule is enclosed.

Enclosure

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re Proposed Amendment to
Rule 11-201 Code of Judicial
Administration


No. 960404

ORDER

Pursuant to the Supreme Court's emergency rule making procedures Rule 11-101(3)(E), amendments to Rule 11-201. Senior Justice Court Judges, Paragraph A, Code of Judicial Administration is adopted and promulgated effective immediately.

Date

1/31/97


Michael D. Zimmerman
Chief Justice
For The Court

Rule 11-201. Senior judges.

Intent:

To establish the qualifications, authority, term and appointment process for senior justices and senior judges and active senior judges.

Applicability:

This rule shall apply to judges of courts of record.

Statement of the Rule:

(1) **Senior judges.**

(A) **Qualifications.** Justices or judges who have served on any court of record are eligible for designation as senior judges if:

(i) They have voluntarily retired from judicial office and are receiving retirement compensation under the Judicial Retirement Act;

(ii) They elect to take senior judge status; and

(iii) They are not actively practicing law.

(B) **Designation.** Justices or judges who meet the above qualifications shall be known and referred to as "Senior Justice" or "Senior Judge" as shall be appropriate.

(C) **Authority to solemnize marriages.** Senior judges are authorized to solemnize marriages.

(D) **Continuing education.** Senior judges may participate in education programs which are made available including attendance at the Judicial Conference.

(E) **Standards of conduct.** Senior judges shall be subject to the applicable provisions of the Code of Judicial Conduct, this Code and the Rules of the Supreme Court.

(F) **Support services.** The administrative office is authorized to provide stationery and postage for the use of senior judges for official business.

(2) **Active senior judges.**

(A) **Certification and appointment.** The Council may certify as active senior judges those senior justices and judges who desire to serve, who apply for such certification, and who comply with the qualifications provided in this rule. When determining whether to certify, the Council shall consider any sanctions that have been imposed on the applicant for violations of the Code of Judicial Conduct. Upon certification by the Council, the Chief Justice may appoint such judges as active senior judges.

(B) **Qualifications.** Active senior judges shall:

(i) be physically and mentally able to perform the duties of judicial office;

(ii) neither be engaged in the practice of law nor have been engaged in the practice of law between the date of retirement and the application to be certified as an active senior judge;

(iii) maintain familiarity with current statutes, case law, court rules and court procedures;

(iv) meet the education standards required by this

Code;

(v) attend the annual judicial conference;

(vi) comply with the applicable provisions of the Code of Judicial Conduct;

~~(vii) not have been subject to any sanction for a violation of the Code of Judicial Conduct;~~

~~(viii)~~ (vii) either be willing to accept, or adjudicate, at least two cases during each calendar year of their term; and

~~(ix)~~ (viii) subscribe to an oath of office upon the first certification and appointment.

(C) **Term.** Active senior judges may be certified and appointed for a term not to exceed three years, unless determined otherwise by the Supreme Court. At the conclusion of any term, an active senior judge may apply for an additional term.

(D) **Assignment of cases.**

(i) The Chief Justice may assign active senior judges to any appropriate case or matter, or for a specified period of time, with the consent of the active senior judge.

(ii) During each assignment, the active senior judge shall have all the powers of office of a justice or judge of the court of assignment.