

**JUDICIAL COUNCIL
AGENDA**

May 19, 1997

Eighth Judicial District Court
147 East Main Street
Vernal, Utah

<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- action - April 28, 1997)	Chief Justice Zimmerman
<u>Continuing Business:</u>			
3.	9:10 a.m.	Report from Chair	Chief Justice Zimmerman
4.	9:20 a.m.	Court Administrator's Report	Daniel J. Becker
5.	9:35 a.m.	Judicial Council Sub-Committee Reports (Tab 2 - information)	Hon. Pamela T. Greenwood Management Committee Hon. Michael K. Burton Policy and Planning Committee Hon. Rodney Page Liaison Committee
6.	10:00 a.m.	Court Security Task Force Report (Tab 3 - action)	Myron K. March
7.	10:20 a.m.	Implementation of SB 132 Definition of Law Enforcement Official & Judge (Tab 4)	Timothy Shea
8.	10:40 a.m.	Break	

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|-----|------------|---|
| 9. | 11:00 a.m. | Approval of the Appointment of D. Mark Jones
Second District Court Commissioner
(Tab 5) |
| 10. | 11:10 a.m. | Overview of the Eight Judicial Judge Anderson
District Judge Payne
Judge Steele |
| 11. | 11:40 a.m. | Site Visit Schedule John Greene |
| 12. | 11:50 a.m. | Lunch |
| 13. | 1:30 p.m. | Justice Court Board Update Hon. Stan Truman |
| 14. | 1:50 p.m. | Judicial Conduct Commission Update Steven Stewart, Esq. |
| 15. | 2:10 p.m. | Executive Session Chief Justice Zimmerman |
| 16. | 2:20 p.m. | Adjourn |

Information:

(tab 6)

- | | |
|------------------------------|--------------|
| Specialized Courts | Timothy Shea |
| News Articles | |

Consent Calendar:

(tab 7)

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

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|----|--|----------------------------------|
| 1. | Policy and Procedure Manual Updates | Barbara Hanson
Paul Sheffield |
| 2. | Rule making Schedule | Peggy Gentles |
| 3. | Divorce Education Oversight Committee Membership | Holly Bullen |
| | Hon. Michael D. Lyon | Hon. Glenn K. Iwasaki |
| | Hon. Steven L. Hansen | Commissioner Lisa Jones |
| | Paul Sheffield | Sharon Hancey |
| | Helen Christian | John D. Schaeffer |
| | Betty Vos, Ph.D | |

4. Approval of CASA Grant Application Holly M. Bullen
(*Please reference Management Committee Minutes)

Dinner will follow the Judicial Council Meeting

on May 19, 1997

at

Judge A. Lynn Payne's

(An address and directions will be given during the meeting)

Next Judicial Council Meetings:

July 2, 1997 & July 4th, 1997

Sun Valley, Idaho

JUDICIAL COUNCIL MINUTES

April 28, 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. Robert Braithwaite
Hon. Rodney Page
James C. Jenkins, Esq.
Hon. John Sandberg
Hon. Kent Nielsen
Hon. Stephen A. Van Dyke
Hon. Anthony W. Schofield
Hon. Anne M. Stirba
Hon. Leonard H. Russon
Hon. Jerald Jensen

Members Excused:

Hon. Joseph Jackson

Staff Present:

Daniel J. Becker
Myron K. March
Jan Thompson
Richard H. Schwermer
Holly M. Bullen
D. Mark Jones
Timothy Shea
Brent Johnson
Barbara Hanson
Mike Phillips
Cindy Williamson

Guests:

Winslow Johnson
Legislative Fiscal Analyst Dept.
Hon. Kay A. Lindsay
Paul Sheffield
John Day

Welcome and Approval of Minutes:

Chief Justice Zimmerman welcomed members and staff to the meeting.

Motion:

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

Report from Chair:

Efforts by some legislators are still being undertaken to amend the Judicial Nominating Commission Rules. Ongoing discussions regarding this issue, with those legislators and the Governor will take place during the course of this year.

To assist with the ever increasing administrative duties borne by the Chief Justice as chair of the Council, Chief Justice Zimmerman has delegated his duties as chair of the Management Committee to Judge Pamela T. Greenwood. The Chief Justice will continue to serve on the committee.

Court Administrator's Report:

An Alternative Work Arrangement Committee has been named by Dan Becker. The committee has been charged with reviewing alternative work arrangements for employees, i.e., increased use of flex time, non-traditional work weeks, telecommuting and alternative work sites. Larry Gobelman, Third Judicial District Court Executive, has been named the chair of the committee. The committee has been asked to complete their work within six to eight weeks.

Judge Philip K. Palmer has announced his pending retirement which will be effective November 1, 1997.

The Bountiful Courthouse was officially opened on April 23, 1997. The facility has adequate room to accommodate additional growth.

On April 8, 1997, the Murray City Municipal Council passed, approved, and adopted a resolution declaring Murray City's intention to create a municipal justice court has been rescinded.

The Utah State Building Board, based upon an allocation from the Legislature, approves improvement and renovation projects for State Government. This year the courts received \$270,000 for several projects.

Recently, the Human Resources Department analyzed 37 job classifications which were not included in last year's salary survey. The survey results are as follows: a) 18 job classifications require an adjustment to a higher range; b) 16 job classifications are in competitive salary ranges; c) three job classifications are higher than current market ranges. Of 94 employees affected by the survey 69 employees require an adjustment to a higher range and

25 employees are in competitive salary ranges. Out of employees requiring a range adjustment there are 68 that require a 2.75% salary adjustment and one employee that requires a 5.5% salary adjustment.

The implementation costs for FY98 are estimated at \$41,184 for salaries; and \$9,061 for salary-based benefits for a total of \$50,245.

The objective of the salary survey is to bring pay ranges within one pay grade (5.5%) of current market ranges. Implementation includes the commitment that jobs will be surveyed every three years.

Judicial Council Sub-Committee Reports:

Management Committee Report:

The Management Committee approved the following judges to serve as tax court judges: Hon. Pat B. Brian, Hon. Glen R. Dawson, Hon. Lynn W. Davis, Hon. Guy R. Burningham, Hon. Jon Memmott and Hon. L.A. Dever.

The Salt Lake County Bar is sponsoring an art contest. Once the winning artwork is announced, the bar is requesting that the art be displayed in the Scott M. Matheson Courthouse. Management Committee members voiced their support of the program but believe that the courts should not become the owner of such artwork.

Policy and Planning Committee Report:

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

Ethics Advisory Committee Update:

Brent Johnson provided a brief report to the Council on behalf of Hon. Gregory Orme, Ethics Advisory Committee Chair. The Ethics Advisory Committee issued three informal opinions in 1996 which addressed the following questions: a) Should a judge of a justice court designated as full-time in the Judicial council's certification process be prohibited from the practice of law under Canon 4G? b) Does Canon 3E of the Code of Judicial Conduct require disqualification of a trial judge in every case where a court employee or a member of the employee's family is a party? and c) Must a judge enter disqualification in a case in which the attorney representing one of the parties has represented another client in a previous suit against the judge? Similarly, must a judge disqualify him or herself in a case where the attorney representing one of the parties represented another client in presenting a complaint about the judge to the Judicial Conduct Commission? The Committee answered questions one and two in the affirmative and question number three in the negative.

FY97-98 Commissioners' Salaries:

By rule, the Judicial Council reviews and establishes the salary of commissioners each year. The court reviewed what the Legislature appropriated for judges and for staff. Judges received a 1% salary increase and staff received a 2.67% cost of living increase. The Management Committee of the Council recommended that the Judicial Council approve an increase of 2.67% to commissioners' salaries.

Motion:

A motion was made by Judge Stirba that the Judicial Council approve a 2.67% increase in commissioners' salaries. The motion was seconded by Judge Jensen and carried with one opposing vote.

Motion:

A motion was made by Judge Jensen that the Council approve the inclusion of commissioners' salaries with those of employees for the purpose of budget planning by Dan Becker. The motion was seconded by Judge Page and carried unanimously.

Juvenile Board Update:

Hon. Kay A. Lindsay, Chair of the Juvenile Court Board, was present to provide the Judicial Council an update on the Board's activities. Recently, the juvenile court judges had a conference in St. George which provided an opportunity for discussion of funding for implementation of sentencing guidelines.

John McNamara and Mike Phillips have discussed the needs of juvenile offenders throughout the State of Utah with numerous probation officers and have ascertained that there is a need for family intervention, counseling, psychological/interactive classes, monitoring of juvenile offenders' time, and a school component catering to the offender's particular style of learning.

An issue brought to the attention of the Board of Juvenile Court Judges is that of ex-parte communication by judges with probation officers. Judge Lindsay indicated she would like direction on this issue by the Judicial Council. Members of the Council suggested the Board of Juvenile Court Judges request an informal ethics opinion from the Ethics Advisory Committee.

Members of the Council expressed their appreciation to Judge Lindsay for her presentation on behalf of the Board of Juvenile Court Judges.

Justice Court Study: Membership & Charge:

On behalf of Peggy Gentles, staff to the Justice Court Study Committee, Richard Schwermer reported on proposed membership of the Justice Court Study Committee. Mr. Schwermer referred to the names of individuals recommended to the Management Committee at their last meeting. The Management Committee approved the recommendation of proposed members and a suggestion was made that Judge Anthony Schofield chair the committee. Council members discussed the merits of having varying points of view represented on the committee.

Motion:

A motion was made by Judge Page to approve composition of the committee with the addition of a second member of the defense bar and Judge Anthony Schofield serving as chair. The motion was seconded by Judge Jensen and carried unanimously.

The charge of the committee is set by legislation and includes the following issues: a) exclusive jurisdiction; b) promote stability of planning and revenue; c) judicial independence; and d) equitable distribution of revenue.

Video Pilot Program:

Tim Shea reported that the rules of the Judicial Council permit a court to provide an overflow room from which the public can observe trial court proceedings on monitors. The rule effective, April 1, 1997 and approved by the Judicial Council prohibits the signal transmitted to the overflow room from being recorded except as part of a pilot program approved by the Council.

The Policy and Planning Committee approved the following guidelines for the pilot program: a) recording facilities shall be built, equipped, and maintained at no cost to the state; b) the signal to the overflow room shall not be broadcast or transmitted, such as to a broadcast vehicle or broadcast center; c) the overflow room may be used to observe and record proceedings for which a video recording system (or an audio portion of the video system) is used to maintain the record. However, the overflow room may be used to observe but not record proceedings for which a video recording system is not used to maintain the record; and d) to ensure that recordings can be made only as authorized, the signal from the courtroom to the recording devices shall be capable of being blocked without blocking the signal to the monitors.

Motion:

A motion was made by Judge Stirba that the Judicial Council approve the creation of a pilot program consistent with the proposed standards approved by the Policy and Planning

Committee, that the pilot program be within the Third Judicial District, that the program commence as soon as possible after the move into the Scott M. Matheson Courthouse, and that other districts be allowed to seek joinder into the program upon approval by the Council. The motion was seconded by Judge Page and carried unanimously.

Grant Requests:

Holly M. Bullen presented three grant requests to the Judicial Council. One grant request was from the Fourth Judicial District requesting funding to pay the salary of a Victim Coordinator position in that district. The other two requests are from within the Third Judicial District; one is a grant renewal for further development of the "Victim Coordinating Office" and the other request is for funding victim related programs.

Motion:

A motion was made by Judge Jensen to approve the request for the grant proposals with the understanding that by approving the request the Judicial Council is not binding itself to specified programs which may require financial assistance in the future. The motion was seconded by Justice Russon and carried with one opposing vote.

Fourth District Drug Court:

Utah County has applied for and received a drug court planning grant in the amount of \$19,000. Utah County would like to use these funds to allow judges to attend out of state training conferences. A representative from the county has requested that district court judges be involved in the training process. Judges Lindsay (Juvenile Court), Harding, Stott and Howard (District Court) have expressed an interest in attending these training conferences.

Motion:

A motion was made by Judge Anthony Schofield that the Judicial Council authorize Fourth District Court judges' involvement in the drug court study. The motion was seconded by Judge Van Dyke and carried with two opposing votes.

Judge Jensen stressed the importance of a review of the language of the Judicial Council's own rules dealing with specialized courts.

Adjourn:

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

**MANAGEMENT COMMITTEE
MINUTES**

May 13, 1997

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

Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
Timothy Shea
Richard H. Schwermer
Holly M. Bullen
Rolen Yoshinaga
Cindy Williamson

Welcome:

Judge Greenwood welcomed members and staff to the Management Committee meeting.

Judicial Council Agenda - May 19 - 20, 1997:

The Judicial Council agenda for May 19-20, 1997, was reviewed, suggestions noted and changes implemented.

Security Task Force Report:

Hon. Frederic M. Oddone was present as Chairperson of the Ad Hoc Committee on Court Security. Judge Oddone presented findings and recommendations of the committee to Management Committee members.

The committee conducted a state wide survey of judges and sheriffs to determine the measure of security services in the court system. The committee reviewed alternatives to providing security to the courts and determined that while the present system should remain, there is room for improvement. This is especially true in terms of a) providing bailiffs to judges of the circuit court who were merged with the district court and b) providing security services to

juvenile courts. The committee also examined issues regarding the selection, management, and training of bailiffs, as well as suggested variations on the nature of the services provided.

Recommendations of the committee are as follows: a) retain the current basic service providers; b) address funding issues; c) clarify selection process and minimum qualifications; d) clarify and increase training requirements; e) clarify duties and supervision responsibilities; and f) clarify responsibility for perimeter security.

Court Administrator's Report:

A request for funding for a capital law clerk has been submitted to the State Justice Institute and approved. The law clerk will be made available to judges handling capital cases.

Commissioner Maurice Richards has announced his intent to retire as of May 31, 1997. The Second Judicial District is initiating a process for selection of the commissioner. Thereafter, the name of the individual will be submitted to the Judicial Council for approval at its July meeting.

Rolen Yoshinaga apprised Management Committee members of a statewide problem dealing with computer viruses. Mr. Yoshinaga stressed the importance of all employees adhering to Personnel Policies and Procedures which prohibits the installation of private programs and/or screen savers.

Dan Becker suggested a memorandum to all employees as a reminder of the policy with an amnesty period for those employees in violation of policy. Thereafter, corrective action would be taken against an employee for violation of the policy.

Senator Hatch is hosting a national Crime Summit in Utah. The Crime Summit is scheduled for June 30, 1997.

On May 9, 1997, Judge Joseph Jackson received an award from Utah Children.

Grant Request:

On behalf of the Utah Court Appointed Special Advocate (CASA) Program, Holly M. Bullen, requested that Management Committee members consider a request for a state expansion grant from the National Court Appointed Special Advocate. The grant could be as much as \$80,000 over a two year period and does not require any matching funds.

Motion:

A motion was made by Judge Jackson that this matter be placed on the consent calendar of the Judicial Council as a recommendation by the Management Committee with the provision

that this approval does not commit the Judicial Council to any future funding for the continuation of the program. The motion also included that any employees hired as a result of this grant funding should be hired in a time limited capacity. The motion was seconded by Chief Justice Zimmerman and carried unanimously.

Specialized Courts:

As a result of observations that there is a recreation of specialized courts, Tim Shea was requested to research this issue. Mr. Shea reported that the concept of targeting a specific segment of the caseload with specialized calendars, procedures and programs within a court of general jurisdiction is fully compatible with the judiciary's historic position favoring a unified trial court of general jurisdiction.

This matter is to be placed on the Judicial Council agenda as an informational item.

Divorce Education Oversight Committee:

Rule 4-907, Mandatory Divorce Education, specifies that the Judicial Council shall appoint a committee to oversee and monitor the divorce education program. The oversight committee met several times during the Spring of 1994 to work out the mechanics of the program and to review the proposal submitted under the initial Request for Proposals (RFP). The committee has not had an occasion to meet again since that time.

The three-year duration of the contracts with the service providers will expire as of June 30, 1997. The committee needs to reconvene the oversight committee to review the proposals for the new contract period.

The oversight committee is not a standing committee of the Council as specified under Rule 1-205. Also, it does not appear to be an "ad hoc" committee of the Council under Rule 1-205. Staff recommends that the provisions of Rule 1-205, including the announcement of committee vacancies, not apply to this group. Staff further recommends that three members on the committee be replaced every three years.

Judge Stirba suggested that rather than appoint an entirely new committee, there might be some benefits to have the duties of this committee be part of the Education Standing Committee.

Motion:

A motion was made by Chief Justice Michael Zimmerman that Management Committee accept the committee's recommendation. The motion was seconded by Judge Sandberg and carried unanimously.

Approval of Second District Court Commissioner:

On behalf of D. Mark Jones, Myron March requested that Management Committee members approve the appointment of David Dillon as Second District Court Commissioner.

Motion:

A motion was made that the Management Committee recommend that this matter be placed upon the Judicial Council agenda and that the Council approve the appointment of David Dillon as Second District Court Commissioner. The motion was seconded and carried unanimously.

Other business:

Judge Stirba requested an update on a previous request, wherein she had suggested a statewide forum for an ongoing legislative educational process. It was noted that Richard Schwermer and Mark Jones are beginning to take legislators on site visits to courtrooms and are refining this process. Mr. Schwermer and Mr. Jones will report back to the Management Committee on their progress at its next meeting.

Executive Session - Adjournment:

Members of Management Committee went into executive session after which, Judge Greenwood adjourned the meeting.

Summary Minutes
Policy and Planning Committee of the Judicial Council

May 9, 1997

Members Participating

Judge Robert T. Braithwaite
Judge Michael K. Burton, Chair

Staff Participating

Peggy Gentles
Barbara Hanson
Tim Shea
Paul Sheffield

Members Excused

James C. Jenkins
Judge Kent Nielson
Judge Stephen A. Van Dyke

Meeting conducted by telephone conference

1. **Amendments to Human Resources Policies.** Barbara Hanson and Paul Sheffield presented amendments to the Human Resources Policies. Ms. Hanson stated that the reciprocity policy needed to be changed due to changes in the reciprocity agreement with the executive branch. The proposed amendments recognize that the insurance and leave accruals continue as they had at the previous employer. However, comp time will not be transferrable to the other branch of government. Ms. Hanson and Mr. Sheffield responded to questions on the other policies. The Committee recommended that the Council approve the changes, with amendments requested by the Committee, on the Council's consent calendar.

2. **Rule Making Schedule.** Peggy Gentles presented a proposed rulemaking schedule for amendments effective April 1998. The Committee recommended approval by the Council on its consent calendar.

3. **Affidavit of Indigency.** Peggy Gentles informed the Committee that she had received a call from a judge on the affidavit of indigency. The concern the judge expressed was that the form required the defendant's signature to be notarized, as required by statute. The judge had the defendant fill out the affidavit in court. However, none of the available clerks was a notary. The Committee stated that the form should comply with the statute and a change in legislation should be sought.

4. **Meeting Protocol.** The Committee expressed satisfaction at conducting this meeting, with a short agenda, by telephone conference. In the future, Judge Burton and Judge Braithwaite will be contacted to determine whether the meeting should be conducted at the Administrative Office or by telephone conference. This determination will be made based upon the weight and complexity of the issues on that month's agenda.



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: Timothy M. Shea *Shea*
Date: May 8, 1997
Re: SB 132 Definition of Law Enforcement Official and Judge

The effect of SB 132 is to add judges and "law enforcement officials," that is, members of Board of Pardons and state, county, district, and municipal criminal prosecutors, to a list of persons exempt from certain criminal weapons laws and from the provisions regarding a concealed weapons permit. In order to qualify for the exemption, the judge or law enforcement official must meet the requirements for a concealed weapons permit and successfully complete a course of training developed by the commissioner of public safety.

The statutes are silent on the balance of the security issues raised during the debate on SB 132. These issues remain, as always, within the sound discretion of the Judicial Council. The Council's vehicle for resolving these issues is amendment of CJA 3-414, Court Security. The discussions surrounding SB 132 contemplated using that bill as a basis for regulating firearms in the courthouse. During those discussions it was proposed that judges who qualify for the exemptions under SB 132 would be permitted to carry a firearm in the courthouse. Beyond this original tenet, there are several policy issues requiring resolution before drafting a rule change.

(1) Each courthouse is supposed to have a local security plan, which, by rule, is permitted to override the standards of the rule regarding who may be armed in the courthouse. In addition, an individual judge or commissioner has the authority to override the local security plan and the Council's rule for application in his or her courtroom. If the Council develops statewide policies regarding who may be armed in the courthouse and in secure areas of a courthouse, then the Council should consider removing local discretion to deviate from those standards.

(2) Under the current Council rule, bailiffs, transportation officers, peace officers, and federal officers may be armed in the courtroom if permitted by the local security plan. Because

the rule is silent regarding "correctional officers," "special function officers" and "reserve officers," these officials may not be armed in the courthouse unless they also qualify in one of the other categories, such as a transportation officer. Differentiation among the various categories by the bailiff at the courthouse door is problematic. The Council may want to consider an "all or nothing" policy.

(3) Currently, judges and active senior judges may carry in a courthouse a firearm for which they have a regular concealed weapons permit. Court commissioners may not. At issue is whether to continue to allow judges and active senior judges with a regular weapons permit to carry a firearm now that the special weapons permit is available, and, if so, whether to add court commissioners to this category. If regular permit holders are permitted to carry a firearm, there would be no distinction between them and a judge with a special permit and little incentive to obtain the special permit.

(4) Rule 3-414 needs to be amended if special permit holders are to be allowed to carry a firearm in a courthouse. At issue is how far to extend permission to carry a firearm. In SB 132, Section 76-10-523 was amended to add judges and law enforcement officials to an existing list of persons exempt from certain weapons laws. Of the persons listed, only judges and law enforcement officials need to obtain the special training and the special weapons permit to qualify for the exemptions. Some of the others listed as being exempt from the weapons laws are required to obtain considerable training as part of their regular employment, but that requirement exists independent of the statute. Some of those listed qualify for the exemption with little or no training. The full list of persons now exempt from the concealed weapons permit laws and select other criminal weapons laws are:

- (a) a United States marshal;
- (b) a federal official required to carry a firearm;
- (c) a peace officer of this or any other jurisdiction;
- (d) a law enforcement official as defined and qualified under Section 53-5-710;
[Member of Board of Pardons, state, county, district, and municipal criminal prosecutors]
- (e) a judge as defined and qualified in Section 53-5-710;
- (f) a common carrier while engaged in the regular and ordinary transport of firearms as merchandise;
- (g) a nonresident traveling in or through the state, provided that any firearm is:
 - (i) unloaded; and
 - (ii) securely encased as defined in Section 76-10-501.

The Council needs to resolve which, if any, of these persons should be permitted to carry a weapon in a courthouse. Some factors that may be relevant to the issues:

- ◇ permitting prosecutors to be armed at a jury trial may present issues for appeal;

- ◇ distinguishing between these persons in their official capacity and in a private capacity, such as a party to litigation, is problematic; and
- ◇ the Council cannot directly control the adequacy of training of anyone other than judges.

(5) The annual requalification requirements for judges under SB 132 are left to the Council. An option is to require for requalification the standard firearms course required for a regular concealed weapons permit and/or the special course developed by the commissioner of public safety for initial qualification.

(6) The rule should expressly provide whether the state or the individual will assume the cost of training, weapons, ammunition and other expenses.

(7) Currently the rule is silent on the ability of court employees to carry a personal protection device other than a firearm. The Council may want to take this opportunity to resolve that omission.

encl. SB 132

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;

(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.

(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; and

(b) successfully complete an additional course of training as established by the commissioner of public safety designed to assist them while carrying out their official law enforcement and judicial duties as agents for the state or its political subdivisions.

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

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

(b) Judicial Council by rule for judges; and

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

(4) The division may:

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

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

(i) who fails to meet the annual requalification criteria established pursuant to Subsection

(3); or

(ii) as provided in Section 53-5-709; and

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

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

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

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

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

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

official duties;

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

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

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

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

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

(i) unloaded; and

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

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



UTAH STATE COURTS

230 South 500 East, Suite 300
Salt Lake City, Utah 84102
(801) 578-3800

Application for Employment

Name: DAVID S. DILLON Social Security Number: 296-54-6486
Address: 1375 WEST FAIRWAY CIRCLE Home Phone: (801) 451-6841
City, State, Zip: FARMINGTON, UTAH 84025 Business Phone: (801) 774-6520
Other names used: - NONE -

IMPORTANT

Read the following instructions carefully before filling out your application.

All requested information must be furnished. The information that you give will be used to determine your qualifications for employment. It is important that you answer all questions on your application fully and accurately, including your original signature. Failure to do so will result in the rejection of your application for consideration.

Position for which you are applying: COURT COMMISSIONER

Check the districts in which you are willing to accept employment (You will not be considered for any districts NOT checked)

- | | |
|---|--|
| <input type="checkbox"/> All Locations | |
| <input type="checkbox"/> Court Administration, | |
| Appellate and Supreme Courts | (Salt Lake City) |
| <input type="checkbox"/> First District | (Box Elder, Cashe, Rich Counties) |
| <input checked="" type="checkbox"/> Second District | (Davis, Weber, Morgan Counties) |
| <input type="checkbox"/> Third District | (Salt Lake, Summit, Tooele Counties) |
| <input type="checkbox"/> Fourth District | (Juab, Millard, Utah, Wasatch Counties) |
| <input type="checkbox"/> Fifth District | (Beaver, Iron, Washington Counties) |
| <input type="checkbox"/> Sixth District | (Garfield, Kane, Piute, Sanpete, Sevier, Wayne Counties) |
| <input type="checkbox"/> Seventh District | (Carbon, Emery, Grand, San Juan Counties) |
| <input type="checkbox"/> Eighth District | (Dagget, Duchesne, Uintah Counties) |

97 APR 14 P2:11

Are you at least 18 years of age? ☒ yes ☐ no

Can you provide documentation verifying your right to work in the United States? ☒ yes ☐ no

Are you related to anyone who works for the Utah State Courts? ☒ yes ☐ no

Provides name(s) and relationships: SHERENE T. DILLON, WIFE, UTAH STATE
GUARDIAN AD LITEM

Do you have a valid Driver's License? ☐ no ☒ yes DL# 148606435 State: UTAH

Have you ever been convicted (as an adult) of a misdemeanor or felony that has not been expunged from your record?

☒ no ☐ yes Please explain: _____

Have you graduated from high school? ☒ yes ☐ no

If not a high school graduate, specify GED or other certificate: - NOT APPLICABLE -

List languages you speak, read and write other than English: NONE

Position title: ATTORNEY	Dates of Employment (months & year): from 7/89 to 3/94	Supervisor: KIM RILLING Hours per week: 40+ Salary: \$58,000
Employer (company) name and address: RILLING AND ASSOCIATES 3 EAST BROADWAY, SUITE 213 SALT LAKE CITY, UTAH 84111	Your duties: PART-TIME GENERAL PRACTICE SPECIALIZING IN FAMILY, CRIMINAL AND JUVENILE LAW. PART-TIME PRACTICE REPRESENTING DELINQUENT MINORS AND PARENTS WHO WERE THE SUBJECT OF ABUSE, NEGLECT OR DEPENDENCY PROCEEDINGS	

Reason for leaving:

IN JUVENILE COURT. REPRESENTED PERSONS WHO WERE SUBJECT TO CIVIL COMMITMENT PROCEEDINGS.

REFERENCES

Please list the names, addresses, and telephone numbers of three (3) individuals who are not related to you, but either supervised you or are associated with you professionally.

Full Name	Business or Home Address	Occupation/Title & Relationship	Telephone Number
MR. TERRY L. LATHIART, Esq.	380 N. 200 W., #103 BOUNTIFUL UT 84010	ATTORNEY UTAH	295-2391
MR. STEVEN M. KAUFMAN, Esq.	205 20th ST. #34 OGDEN UT 84401	ATTORNEY - BAR PRES.	394-5526
MR. D MICHAEL NIELSEN, Esq.	505 S. MAIN ST. BOUNTIFUL UT 84010	ATTORNEY - BAR PRES.	292-1818

VETERAN'S PREFERENCE

If you are claiming veteran's preference, with the exception of disabled veterans, you must submit a photocopy of your discharge showing the dates of service. If you are a veteran claiming disability, you must also submit a letter of verification dated within the last 90 days.

Do you claim Veteran's Preference?

☐ yes ☒ no

If yes, "X" one of the following:

- ☐ 1. As a war veteran
- ☐ 2. As an unmarried surviving spouse of a veteran

Do you claim Disabled Veteran's Preference?

☐ yes ☒ no

If yes, "X" one of the following:

- ☐ 1. As a disabled veteran
- ☐ 2. As a spouse of a disabled veteran not gainfully employed due to military related disability.
- ☐ 3. As an unmarried surviving spouse of a disabled veteran.

CERTIFICATION AND RELEASE STATEMENT

Be careful that you have answered all questions on your application correctly and considered all statements fully so that your eligibility can be decided on all the facts. Sign your name below in ink.

The information I have given on or attached to this application is true and correct to the best of my knowledge. Having made application for employment with the Utah State Court system, I hereby authorize the courts to conduct a thorough background check including but not limited to references, employment record, convictions and criminal record. I understand that such background checks will only be made upon final selection for hire, and that all information will be kept confidential and released only to authorized individuals. I also understand that any falsification of data on my part will result in disqualification from further consideration (prior to hire) or dismissal (if already hired); and that certain offenses may bar me from further consideration or result in termination. I hereby release the courts from any civil or criminal liability arising from my background check.


Signature of Applicant:

11 April 1997
Date:

DAVID S. DILLON

1375 West Fairway Circle
Farmington, Utah 84025
(801) 451-6841

Married to Sherene Terry
Five children
Birth date: July 7, 1953

WORK EXPERIENCE:

State of Utah Office of the Guardian *Ad Litem*: July 1, 1994 to August, 1995 and July 1, 1996 to present. Representing best interests of juvenile clients in Juvenile and District courts in various proceedings including abuse, neglect and dependency petitions, contested custody matters and criminal matters.

Judge *Pro Tempore*, Second District Court: August 1995 to June 30, 1996. Sat as trial court judge in domestic relations matters and criminal central arraignments. Heard law and motion matters, handled default matters, made rulings on Rule 4-501 matters, heard evidentiary hearings and handled contested custody divorce matters. Handled felony and misdemeanor initial appearances and preliminary hearings. Presided over civil commitment hearings.

Private Practice: April 1, 1994 to July 1, 1994. Domestic relations, child custody, felony and misdemeanor criminal defense practice in District, Circuit, Juvenile and Justice courts.

Rilling & Associates: July 1, 1989 to March 31, 1994. Court appointed counsel in Third Judicial District Juvenile Court. Handled felony and misdemeanor delinquency cases, child custody disputes, neglect and dependency matters and parental termination cases. Provided representation to patients undergoing civil commitment proceedings. Part-time private practice concentrating in domestic relations cases and felony and misdemeanor criminal defense matters. Practice focused in Second, Third and Fourth Judicial Districts in Juvenile, District, Circuit and Justice courts. Experience in jury and bench trials.

Maddox & Snuffer: July 1, 1987 to June 30, 1989. Practice concentrating in domestic relations, felony and misdemeanor criminal defense. Practice focused in Second, Third and Fourth judicial Districts in Juvenile, District, Circuit and Justice Courts. Experience in jury and bench trials.

Salt Lake County Attorney: April, 1986 to July, 1987. Misdemeanor criminal prosecution practice in Circuit and Justice courts of the Third Judicial District.

Pre-Legal Experience: Law clerk, insurance agent, construction and sales.

BAR INFORMATION:

Admitted to Utah State Bar, spring 1986. Member of Family Law Section of Utah State Bar. Part-time member of Executive Committee of the Family Law Section. Admitted to practice in Utah State and United States District Courts.

EDUCATION:

Juris Doctor from Brigham Young University, 1986. B.S. Education from Ohio University, 1975.

INTERESTS:

Golf, camping, hiking, fishing, basketball and baseball. Reading and writing (novel in progress). Church and community service. Have experience in coaching team sports, teaching children's classes and volunteering and directing Special Olympics programs.

ADDITIONAL REFERENCES FOR DAVID S. DILLON

Mr. Martin W. Custen, Esq.
MARQUARDT, HASENYAGER & CUSTEN
2408 Van Buren Avenue
Ogden, Utah 84401
Telephone: 621-3662

Mr. Ronald K. Nichols, Esq.
FARR, KAUFFMAN, SULLIVAN, GORMAN, JENSEN, MEDSKER, NICHOLS & PERKINS
205 26th Street, Suite 34
Ogden, Utah 84401
Telephone: 394-5526

Mr. J.D. Poorman, Esq.
Morgan County Attorney
3856 Washington Blvd.
Ogden, Utah 84403
Telephone: 621-4101

Mr. Douglas B. Thomas, Esq.
GRIDLEY, WARD, HAVAS & SHAW
849 West Hill Field Road
Layton, Utah 84041
Telephone: 546-1100

BACKGROUND CHECK RESULTS
REQUIRED FOR ALL REQUESTED APPOINTMENTS OF JUDGES PRO TEMPORE

Name of Applicant: David S. Dillon

Date of Background Check: 5/13/97

Utah State Bar

☒ No Disciplinary Actions

☐ Disciplinary Action(s)
Summary of Results:

Utah Bureau of
Criminal Identification

☒ No Record Found

☐ Record Found
Summary of Results:

"Exchange" (internal court
system for civil judgments)

☒ No Record Found

☐ Record Found
Summary of Results:

BACKGROUND CHECK PERFORMED BY:

Shirley Smith
Signature

Title

Second District Court

Chambers of
Judge Michael D. Lyon

May 13, 1997

Honorable Michael D. Zimmerman
Chief Justice, Utah Supreme Court
332 State Capitol
Salt Lake City, Utah 84114

Re: Appointment of David S. Dillon, Commissioner for the Second District Court

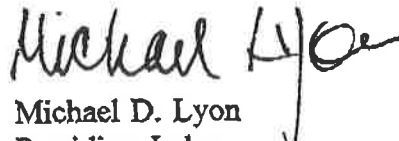
Dear Chief Justice Zimmerman:

The judges of the Second District Court have selected David S. Dillon to be court commissioner for the Second District Court. He was one of the three best qualified candidates chosen by a nominating committee created under authority of rule 3-201, Code of Judicial Administration. As presiding judge, I am now forwarding his name, along with a copy of his application and resume, for review in the Management Committee of the Judicial Council and requesting that your committee recommend to the Judicial Council on May 19, 1997, his appointment as court commissioner.

Further, we are asking that his appointment be effective June 2, 1997, so that we can use him as a commissioner in Ogden to sit for Commissioner Maurice Richards, who precipitously announced his retirement, effective May 31, 1997. Since there is funding for Commissioner Richards' salary and benefits, there is no additional cost for Mr. Dillon's service in advance of July 1, 1997, when he assumes his regular position in Farmington under funding approved for that position by the Administrative Office of the Courts.

Thank you.

Sincerely,


Michael D. Lyon
Presiding Judge

cc: Mr. Daniel J. Becker
Judge Michael G. Allphin



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: Timothy M. Shea *Shea*
Date: May 13, 1997
Re: Specialized Courts

Dan asked me to follow up on comments at the Council meeting regarding specialized courts.

It has been observed that we are "recreating the circuit court" and that the establishment of the "tax court" and "drug courts" is contrary to the efforts of the judiciary over the years to consolidate the courts. Although not immediately apparent, especially to people not familiar with the judiciary, the concept of targeting a specific segment of the caseload with specialized calendars, procedures and programs within a court of general jurisdiction is fully compatible with the judiciary's historic position favoring a unified trial court of general jurisdiction.

The progress of the last two decades has been to remove the sometimes arbitrary jurisdictional restrictions on the authority of judges and courts. Those jurisdictional restrictions having been removed, specialization within a court of general jurisdiction is often sound. Those jurisdictional restrictions having been removed, specialization can remain stable or shift as funding, public interest and case loads shift. The grounds for specialization are varied: a highly technical area of the law, the need for timely disposition, basic queuing principles and political pressure. Most segments of the case load do not require specialization, but some do, and decisions regarding special dockets can be made on the merits rather than on the continued functionality of a court of special jurisdiction. Arguments against courts with special and limited jurisdiction are not arguments against identifying cases for special procedures or programs within a court of general jurisdiction.

Sometimes the nomenclature for specialized dockets is sloppy. Small claims court, drug court, and tax court are convenient short hand phrases for use in conversation. Overuse of

those terms may lead people to conceptualize as a separate court the collection of cases for which we have developed special procedures or programs. This result is hard to avoid because incorporating the technical distinctions in the vernacular makes the descriptions and debate extremely laborious. The key distinction, which must not be lost in the rhetoric, between special dockets and specialized courts, is that the former have considerable flexibility; the latter, once created, are very difficult to change.

The judiciary has been very careful in describing these "courts" in its official pronouncements, such as in statutes, rules, and publications. The Judicial Council this year sought and obtained passage of HB 323, which removes the designation of "small claims court." Under the amended statutes, small claims actions are an identified type of case with special procedures. Courts are not required to calendar small claims cases in any particular manner but probably will continue to do so because it is efficient. In promulgating Rule 6-103, the Council was careful not to refer to a "tax court," but rather to the appointment of judges who have special interest and training in "cases involving taxation." The report on the family court expressly uses the term "family department of the district court."

Whether judges should specialize or hear and consider a broad spectrum of case types is a question on which reasonable people may disagree. The Council has generally favored diverse case assignments, but, with this result as the premise, there are different methods of achieving the goal. Providing judges the opportunity or requirement to hear a variety of cases does not preclude special dockets. Whether that docket is a specialized criminal division or an even more specialized drug court, it is possible for a judge simultaneously to be assigned cases outside the division or to rotate through the divisions. Neither does the idea of divisions preclude the use of individual calendaring. General judicial experience, special dockets, and individual calendaring are separate concepts that can be combined, or not, as need and experience dictate.

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, 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 retaliates 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 if that behavior makes the workplace offensive, hostile or intimidating or unreasonably interferes with an individual's work performance.

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 ombudspersons ~~is~~ are 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, conduct investigations, and recommend solutions and thereby assist management in the resolution of complaints.

6.3.2 The director, in consultation with the state court administrator, shall appoint ~~one~~ two or more ombudspersons. Two of the ombudspersons will be human resource representatives.

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.
 - ~~6.4.5.1 Subject to paragraph 6.47. below the manager who receives the complaint shall investigate the complaint.~~
 - 6.4.5.1 Once a complaint has been submitted to a supervisor, the supervisor shall take appropriate measures to eliminate any immediate threat or offensive or hostile environment.
 - ~~6.4.5.2 The alleged offender shall be provided a copy of the written complaint.~~
 - 6.4.5.2 The manager who receives the complaint may participate in the investigative process conducted by the Human Resource investigative team if necessary.
- ~~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.~~
- 6.4.6 Upon receipt of a written complaint, the court executive or deputy court administrator shall notify the director who, in consultation with the state court administrator, shall appoint an investigative team.

- 6.4.6.1 The investigative team may consist of the ombudspersons, representatives of management and others as deemed appropriate.
- 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.~~
- 6.4.7 The investigative team 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 investigative team shall prepare a written report of the nature of the investigation and the findings and conclusions of the investigation. The investigative team shall provide a copy of the report to the director.
- 6.4.8 At the conclusion of the investigation and determination, management shall impose discipline in accordance with the policies and procedures regarding discipline, and monitor the involved parties following the investigation and action taken.
- 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 alleged offender or by discussing the issue with the alleged offender.

- 6.7.4 Upon receiving information about a complaint, the Presiding Officer of the Judicial Council shall facilitate communication between the parties and resolve the complaint.
- 6.7.5 An employee may submit a written complaint to management or the ombudsperson if:
 - 6.7.5.1 Initial efforts to resolve the matter are unsuccessful; or
 - 6.7.5.2 The complaint is a second complaint against the same individual after the individual had been informed that the behavior was unwelcome, whether or not submitted by the same complainant; or
 - 6.7.5.3 If the court executive, in consultation with the ombudsperson, concludes that the conduct complained of is egregious.
- 6.7.6 Upon receipt, the court executive shall refer the written complaint to the Presiding Officer of the Judicial Council.
 - 6.7.6.1 Upon referral, the Presiding Officer shall immediately provide the alleged offender and the court level administrator with a copy of the written complaint.
- 6.7.7 The Presiding Officer shall resolve the complaint in accordance with the Code of Judicial Administration.
- 6.8 Records.
 - 6.8.1 All complaints, notices, correspondence, reports, and other documents regarding a written complaint shall be maintained by the director separate from any personnel file. The information is a private administrative record as defined by the Code of Judicial Administration.
 - 6.8.2 The director shall keep in a secure file all records of complaints determined to be without merit.
 - 6.8.3 The director shall place records regarding discipline imposed as a result of a complaint of discrimination/harassment or violation of this policy in 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.

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 Pursue the outside activity on the employee's own time;
- 9.2 Pursue the outside activity away from court offices;
- 9.3 Discourage any phone, mail or visitor contact related to the outside interest at court offices;
- 9.4 Arrange for annual leave or compensatory time off in advance to pursue the outside interest during business hours; and
- 9.5 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.

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 An employee shall not participate in political activity which conflicts with or otherwise affects the mission and activities of the Judiciary.

- 12.2 An employee shall not engage in political activity during work hours, unless on approved leave.

- 12.3 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.

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

- 12.5 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 the employee's own vehicle on court business.

LONG TERM DISABILITY

PURPOSE

Long term disability insurance is a benefit administered by the Utah State Retirement Board in order to provide income security to public employees in the event of a disabling injury or illness. This policy accommodates employees who are eligible to make a claim on this benefit.

SCOPE

This policy applies to all court employees.

CROSS REFERENCES

Utah Code Ann., Title 49, Chapter 9

POLICY AND PROCEDURE

- 1.1 Long term disability (LTD) benefits begin after a three month waiting period for an employees determined to be eligible under Retirement Board guidelines.
- 1.2 An employees who ~~are~~ is determined eligible for LTD benefits shall be granted up to one year of medical leave as warranted by the medical condition. This period of time shall commence on the last day worked due to the disability and shall include any sick, annual, or converted sick leave used during this time.
- 1.3 Sick leave and converted sick leave shall be used during the medical leave period, where available, until LTD benefits begin. Annual leave may be used, at the employee's option, after exhausting sick and converted sick leave balances.
- 1.4 ~~Following a two month waiting period for an employee determined to be eligible for LTD benefits, health insurance premiums shall be waived for up to twenty-two months or until the employee is eligible for medicare or medicaid benefits, whichever occurs first. An employee determined eligible for Long Term Disability benefits will be eligible for health insurance coverage beginning two months after the last day worked. The health insurance benefit will continue for up to twenty-two months or until the employee is eligible for medicare/medicaid, whichever comes first.~~
- 1.5 If an employee is able to return to normal duties within one year of the last day worked, management shall restore the employee to a position similar to the previous position held which has a comparable salary range.

- 1.6 In cases where a permanent partial disability prohibits an employee from fully performing job requirements, management's obligation to restore the employee to a similar position shall be waived. Management shall make reasonable efforts to place the employee in a position which is suited to the employee's capabilities.

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, 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.

REDUCTION IN FORCE

PURPOSE

The purpose of this policy is to establish a uniform process for reducing the courts' work force due to a lack of funds, workload changes, organizational changes or other conditions.

SCOPE

This policy applies to all court employees.

CROSS REFERENCES

Grievance, Policy 620

POLICY AND PROCEDURE

1. A reduction in force shall be the last option taken for cost savings. When a reduction in force becomes necessary, before any career service employee is notified of the possibility of displacement, management shall develop a work force adjustment plan. Such plan shall include:
 - (1) a specification of the category of work to be eliminated considering interchangeability of skills, size of organization, number of positions to be reduced, and similar factors;
 - (2) a list of affected employees with retention points for each employee; and
 - (3) the steps to be taken to facilitate the placement of career service employees prior to the implementation of the plan through normal attrition, transfer, reassignment, or voluntary relocation.
2. The director shall review and recommend approval of the work force adjustment plan to the state court administrator before formal notice of termination is given to any employee.
3. The order of separation shall be:
 - (1) temporary employees;
 - (2) probationary employees;
 - (3) time-limited employees with career service status; and

- (4) career service employees in the order of their retention score.
- (5) In case of a tie, the least proficient employee shall be released, with seniority being the second tie breaker.
- 4. Management shall calculate retention points for all employees within a category of work as follows:
 - 4.1 A value of one point shall be awarded for each year of continuous full time state court career service. Additional days of service shall be prorated. Service for employees assimilated from other government agencies shall be determined by date hired by the agency for which they worked at the time of the assimilation. Previous court career service employment interrupted for more than one year shall be credited on a half time basis. Exempt position time subsequent to attainment of career service tenure with no break in service will also be counted for purposes of seniority. For part-time work, length of service shall be determined in proportion to hours worked.
 - 4.2 An employee rehired within a 12 month period following a reduction in force shall be considered in a leave without pay status during the time of separation.
 - 4.3 Time spent in a leave without pay status shall not be considered an interruption in service, nor shall it be counted for purposes of seniority. Active military duty not to exceed 4 years shall be counted for purposes of seniority.
 - 4.4 All employees within a category of work shall also be assigned a job proficiency score. The job proficiency score shall be the average of all the scores of performance evaluations received within the last three years. Three points shall be awarded for overall successful evaluations. No points shall be awarded for improvement needed performance.
 - 4.5 The numeric values of each employee's job proficiency score and that employee's actual length of service score shall be added together to produce the retention score.
- 5. Management shall give an employee separated due to a reduction in force a minimum of two weeks written notification of separation and an opportunity for administrative review.
- 6. Court career service employees separated as a result of a reduction in force shall be placed on the court's reappointment register and shall be eligible for reinstatement in a position for which they qualify for a period of one year following date of separation.
 - 6.1 During a statewide mandated freeze on hiring, eligibility for the reappointment register shall be extended for the entire period of the freeze.

7. Under circumstances similar to those requiring a reduction in force, management may furlough an employee for a period not to exceed 20 working days.

7.1 During the period of the furlough, the employee shall:

- (1) continue to accrue annual and sick leave;
- (2) continue to receive full benefits; and
- (3) have a guarantee to return to the employee's position.

PERFORMANCE PLAN AND EVALUATION

PURPOSE

The purpose of the performance plan and evaluation program is to provide management and employees a tool to ensure quality of work, set organizational goals, determine training needs, make appraisals for promotions, transfer or reassign employees for better use of skills and abilities, and to identify incompetent employees.

SCOPE

This policy applies to all court employees.

CROSS REFERENCES

Rule 4-202.02, Code of Judicial Administration
Discipline, Policy 610

POLICY AND PROCEDURE

1. Performance Plan Form.
 - 1.1 The director shall develop a performance plan form and a rating system for use in an evaluation.
 - 1.2 A performance plan for each employee shall be written by management stating expected standards, duties, behaviors, and objectives.
 - 1.2.1 The expected standards, duties, behaviors, and objectives contained in the performance plan shall state performance criteria which are specific, attainable, measurable, understandable, and consistent with the job description.
 - 1.2.2 The comments of management contained in the performance plan shall be specific to the job requirements and behaviors necessary for effective performance.
 - 1.2.3 The objectives contained in the performance plan shall state time frames within which objectives are to be achieved and what assistance management will provide.
 - 1.3 Management shall notify the employee of any changes on the performance plan

before the changes are effective.

- 1.4 The completed performance plan is a private administrative record as defined in the Code of Judicial Administration.
- 1.5 Management shall provide the employee with a copy of the completed plan.
2. The Performance Evaluation.
 - 2.1 Performance evaluation is an on-going process requiring the supervisor and employee to meet at least annually and discuss achievements, review performance, and identify goals. The process shall culminate in the written performance plan, which is effective July 1 of each year.
 - 2.2 During the evaluation meeting, management shall advise the employee of the following:
 - 2.2.1 Performance in relation to the expectations in the performance plan;
 - 2.2.2 The performance rating;
 - 2.2.3 The time frames within which action is to be taken to improve performance;
 - 2.2.4 The role management shall play in providing assistance to improve performance; and
 - 2.2.5 The training or education required to improve performance.
 - 2.3 The employee may prepare comments to accompany the performance evaluation.
 - 2.3.1 The employee shall sign the evaluation agreeing or disagreeing with the appraisal.
 - 2.4 The performance evaluation shall not be changed after the employee signs it.
 - 2.5 The supervisor two levels above the employee shall review the completed performance evaluation. At that time, the employee may raise questions and concerns previously raised with the evaluator.
3. Corrective Action.

- 3.1 Management shall take corrective action to improve performance when an employee's performance does not meet the expected standards.
- 3.2 Management shall document the corrective action plan and conduct a performance evaluation of the employee at least quarterly.
 - 3.2.1 ~~Management shall discipline the employee if the employee does not achieve successful performance.~~ Unsuccessful performance will result in disciplinary action being imposed.
- 4. Training.
 - 4.1 The director, in consultation with the director of judicial education, shall develop a program for the education of managers in the development and administration of performance plans and evaluations.

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 employees 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.