

**JUDICIAL COUNCIL
AGENDA**

July 2, 1997
Sawtooth Room
Sun Valley, Idaho

Chief Justice Michael D. Zimmerman, Presiding

<u>Item:</u>	<u>Time:</u>	<u>Subject:</u>	<u>Presenter:</u>
1.	8:30 a.m.	Continental Breakfast	
2.	9:00 a.m.	Welcome/Approval of Minutes (Tab 1 - May 19, 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 Hon. Rodney Page Liaison Committee
6.	9:50 a.m.	Report from the Ad Hoc Committee on Collections & Warrants (Tab 3 - Action)	Hon. W. Brent West
7.	10:20 a.m.	Court of Appeals Board Report	Hon. James Z. Davis
8.	10:40 a.m.	Implementation of SB 132; Rule 3-414 Approval of Rule for Comment (Tab 4 - Approval of Rule for Comment)	Timothy Shea
9.	11:40 a.m.	Justice Court Study Committee Progress Report (Tab 5)	Hon. Anthony W. Schofield Hon. Jerald Jensen Richard J. Schwermer

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| 10. | 12:00 p.m. | Lunch |
| 11. | 1:00 p.m. | Presentation by Bar Sections
Family Law Section Commissioner Lisa Jones
(Information) |
| 12. | 1:15 p.m. | Report on District Board Workshop Hon. Lynn W. Davis |
| 13. | 1:30 p.m. | Case Under Advisement Standard Marilyn Branch
Rule 3-111(c)(I) - Emergency Rule Change
(Action) (Tab 6) |
| 14. | 1:35 p.m. | Release of Salary Information Chief Justice Zimmerman
From Director of Finance |
| 15. | 1:45 p.m. | Informing Legislators Richard H. Schwermer
D. Mark Jones |
| 16. | 2:00 p.m. | Appointment of Scott M. Hadley D. Mark Jones
Second District Court Commissioner
(Tab 8)(Action) |
| 17. | 2:05 p.m. | Weighted Caseload Session
(Action) |
| 18. | 3:15 p.m. | Break |
| 19. | 3:30 p.m. | Presentation by Bar Section Cont.
Litigation Section David Jordon, Esq. |
| 20. | 3:45 p.m. | Weighted Caseload Session Continued |
| 21. | 4:45 p.m. | Adjourn |

Information:

(Tab 10)

News Articles

Consent Calendar:

(Tab 11)

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

1. Approval of Senior Judge Status Richard H. Schwermer
Hon. Lee Osborne, Justice Court Judge
2. Grant Contract with South Salt Lake Holly M. Bullen
3. Recertification of Judge Cornaby as Active Senior Judge Holly M. Bullen
4. New Justice Court Judge Certification Richard H. Schwermer
Russell Brown Bulkley
David Charles Marx
Linda Murdock
5. Change to Judicial Application Form Tim Shea

August Agenda Items:

1. Court Security Task Force Report

**MANAGEMENT COMMITTEE
MINUTES**

June 18, 1997

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

Hon. Pamela T. Greenwood, Presiding

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
Marilyn Branch
Timothy Shea
D. Mark Jones
Brent Johnson
Jan Thompson
Rolen Yoshinaga
Cindy Williamson

Welcome:

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

Judicial Council Agenda - July 2 - 4, 1997:

The Judicial Council agenda for July 2 & 4, 1997, was reviewed, suggestions noted and changes implemented.

State Court Administrator's Report:

As follow up to the Judicial Council's and Boards' meeting in November, Dan Becker distributed a resource document prepared by Holly Bullen for the Management Committee to utilize when it considers committee appointments in the future. The document will also be provided to the Appellate, District and Juvenile Court Boards for use when appointments are made.

A summary of the resource document indicates that 73% of all Utah's judges are serving

on at least one committee. A total of 41% are participating on more than one committee. There is also a list of individuals who have requested assignment to committees but have not been appointed. Input, updated information and suggestions should be directed to Holly Bullen.

Judge Lynn W. Davis, Chair of the District Board, will make a presentation to the Judicial Council in July regarding the District Board Workshop recently held. Dan Becker and Mark Jones attended the workshop and stated it was productive, positive and very complimentary to the workshop held in November 1996.

An Olympic Summit Meeting is being held in Salt Lake City June 18-20, 1997. This summit will focus on issues surrounding the 2002 Olympics. Representatives from Atlanta, Georgia, will be present to discuss preparation measures that were undertaken in that area.

"Selected to Serve-Jury Service in Utah" is a jury video created by staff at the Administrative Office. This video is shown to prospective jurors prior to jury trials. The video recently won an international award The International Silver Cindy Award, presented by the International Association of Audio-Visual Communicators.

Report from Ad Hoc Committee on Collections/Warrants:

The Ad Hoc Committee on Collections/Warrants is a committee created by the Judicial Council. The committee was charged with addressing the issue of debt collection for the courts. Since that time, the Office of State Debt Collections was created and the two entities have been working together to address issues surrounding debt collection. Judge Brent West will make a report to the Judicial Council on the committee's recommendations during the Council meeting in July.

Grant Request:

The Juvenile Court Board approved a grant request and affirmed a willingness, albeit conditional, to participate with the South Salt Lake Police Department in a Reduction of Truancy Project. The caveat ensures that there are no expectations that monies be provided beyond funding of the grant. The Juvenile Court Board recommended that this grant request be approved by the Judicial Council.

Motion:

A motion was made by Judge Jackson that the grant request be recommended to the Council with the understanding that there is no expectation that monies continue beyond funding of the grant and that this matter be placed on the consent calendar of the Council. The motion was seconded by Judge Sandberg and carried unanimously.

Recertification of Judge Cornaby to Active Senior Judge Status:

On behalf of Holly Bullen, Dan Becker requested that Hon. Douglas L. Cornaby be recertified to the status of an active senior judge.

Motion:

A motion was made by Judge Stirba to recertify Hon. Douglas L. Cornaby to active senior judge status and that this matter be placed on the consent calendar of the Council. The motion was seconded by Judge Sandberg and carried unanimously.

Case Under Advisement Standard - Rule 3-111(C)(I):

Marilyn Branch, Appellate Court Administrator, indicated that Rule 3-111(C)(I) of the Code of Judicial Administration provides that justices of the Supreme Court demonstrate satisfactory performance by circulating not more than six principal opinions more than 180 days after submission.

Justices have relied upon a 6 month rather than 180 day standard. If a 180 day standard rather than a 6 month standard is applied, rulings may be classified as late-circulating under Rule 3-111. A strict application of the 180 day standard could cause recertification problems for some of the justices.

Motion:

A motion was made by Judge Stirba that the proposal for the 6 month standard be referred to the Judicial Council for consideration and approval. The motion was seconded by Chief Justice Zimmerman and carried unanimously.

A suggestion was made that efforts be pursued which would examine the reporting standard of cases under advisement for district court judges and that this matter be referred to the Board of District Court judges.

Motion:

A motion was made by Judge Stirba that this matter be referred to the Board of District Judges. Furthermore, that the Board examine a possible need to amend the statute dealing with case under advisement standards. The motion was seconded by Judge Jackson and carried unanimously.

Weighted Caseload - Preview of Report to the Judicial Council:

Tim Shea reported on the progress of the Weighted Caseload Study. Mr. Shea proposed

that the focus of the study be shifted to a more strategic level of what the Weighted Caseload Study is able to accomplish. Suggested features of the study may result in improved methods to evaluate judicial resources, i.e., clearance rates, continuances, time to trial, actual trial time, and equitable distribution of caseload.

The Judicial Council will be presented with a briefing paper in July. The briefing paper will focus on a number of different strategies. Once a tentative decision is made by the Council the matter will be referred to the Board of District Court Judges for its review.

Change to Judicial Application Form:

The Third Judicial District Nominating Commission has recommended a change to the judicial application form. The change will affect questions dealing with continuing education courses completed by applicants.

Motion:

A motion was made by Chief Justice Zimmerman that the recommended change to the judicial application be placed on the consent calendar of the Council. The motion was seconded by Judge Jackson and carried unanimously.

CORIS Update:

Rolen Yoshinaga provided an update on CORIS. There are three broad based variables which affect the speed and response time of CORIS. The variables include: a) the manner in which CORIS was created; b) hardware; and c) the design of CORIS.

Currently, efforts are being undertaken to accelerate the CORIS implementation schedule. Resources are being marshaled and working group of administrators, trial court executives and clerks are meeting to discuss the matter.

Release of Salary Information from Director of Finance:

The State Director of Finance's Office has released inappropriate "net" salary information to members of the press. The release of such information has resulted in a variety of inaccuracies in recently published articles. This has also lead to the perception that members of the judiciary are paid varying salaries. However, judicial wages throughout Utah are set by Legislation and are uniform throughout the state.

Motion:

A motion was made by Judge Jackson that the inappropriate release of "net" salary information be presented to the Judicial Council with the recommendation that the Council

Summary Minutes
Policy and Planning Committee of the Judicial Council

June 5, 1997

Members Participating

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

Staff Participating

Dan Becker
Gordon Bissegger
Holly Bullen
Peggy Gentles
Tim Shea

Guests

Judge Douglas Cornaby
Joan Ogden

1. **Senior Judge and Spouse Medical Insurance.** Gordon Bissegger presented the Committee with a proposal from the Board of Senior Judges that would increase health and medical benefits for retired judges. This issue had been referred from the Judicial Council to Policy and Planning last year. The Committee had requested actuarial information before making any recommendations to the Council. An actuarial study was commissioned to Joan Ogden from Joan Ogden Actuaries. The actuarial study considered two proposals. One was to include within the scope of Rule 3-501 Senior Judges and spouses who retired before Rule 3-501 was adopted. The other was to extend the benefits in Rule 3-501 from seven to ten years. Mr. Bissegger asked that the Committee consider the presentation and make recommendations the Council at the August Planning Meeting.

Judge Cornaby stated that the Senior Judges had asked him to come talk to the Committee. He stated that for the judges who benefit from Rule 3-501 the retirement package is excellent. However, the Senior Judges who do not benefit under Rule 3-501 are feeling the pinch.

Mr. Bissegger introduced Joan Ogden who presented the results of her actuarial study. She informed the Committee of the assumptions underlying her results. Then she presented her findings. The material presented to the Committee did not include the costs of extending benefits under Rule 3-501 from seven to ten years for current judges. The total cost for Senior

Judges over the next ten years is approximately \$655,000.

Mr. Bissegger identified another issue from the Senior Judges. They requested the Committee consider increasing the life insurance coverage available from \$18,000 to \$50,000. This insurance continues until the person covered reaches 65 years of age. Mr. Bissegger pointed out that this change was recommended by the benefits master plan.

The Committee discussed the presentations. In response to a question from James Jenkins, Dan Becker pointed out that any increase in coverage in Rule 3-501 would compete directly with salary increases and all other budget needs. Mr. Jenkins stated that the Committee should evaluate whether the additional benefit was needed to get qualified applicants for judicial positions. He asked Mr. Bissegger if it was possible to incorporate the Senior Judges in the PEHP plan so that the judges could purchase insurance themselves. Mr. Bissegger responded that, when previously contacted, PEHP had not been enthusiastic about the possibility.

Judge Van Dyke moved that the Committee present to the Council without recommendation the question of whether salary or benefit increases should be pursued and the information currently available about costs. Mr. Jenkins seconded. The Committee discussed the motion. Judge Nielson stated that he thought taking the issue to the Council was premature because the Committee did not have all the relevant information. The motion passed unanimously.

2. Rule 3-414. Court Security. Tim Shea presented proposed amendments to Rule 3-414. Judge Van Dyke stated that he was prompted to write the Council because he was concerned that the Council rules are too voluminous and micro-manage the courts. Specifically, he is concerned that Rule 3-414 takes away the judge's discretion in controlling the judge's courtroom. Mr. Shea presented proposed amendments to Rule 3-414 in response to Senate Bill 132. He stated that the amendments established minimum qualification for who may carry a firearm into a courthouse. The local security plan and individual judges and commissioners may be more, but not less, restrictive than the rule. The draft presented by Mr. Shea allows several categories of persons to be armed in the courthouse. Mr. Shea pointed out that allowing anyone to be armed in the courthouse is at odds with the recommendations of the Security Task Force.

The Committee engaged in spirited debate about the proposed amendments. The Committee voted on many provisions of the proposal, adopting some amendments. The Committee was not unanimous in its recommendations for changes. The Committee recommended that the Council debate the proposed amendments at its next meeting.

3. Comments to Rule Amendments. Peggy Gentles presented the Committee with comments received on the proposed rule amendments. She informed the Committee that the first time the rules were published for comment without mailing full text to all Bar members did not provoke complaints to the AOC. The Committee recommended changes to Rules 4-104, 4-401, 4-506, and 4-510 as a result of comments received. Judge Nielson asked that Ms. Gentles investigate whether Rule 4-704 could be further amended to include dismissals by clerks for no insurance and driving on a suspended license upon presentation of appropriate documentation. Ms. Gentles will bring Rule 4-704 back to the Committee in August for its consideration. With the exception of Rule 4-704, the Committee recommended that the Council adopt, after debate,

request that Chief Justice Zimmerman draft a letter to the State Department of Finance. The motion was seconded and carried unanimously.

Other:

Response to Request from Attorney General's Office:

In response to a request from the Utah Attorney General's Office, Brent Johnson asked Management Committee members for permission to send out a directive to judges regarding personal service of process. Rule 4 of the Federal Rules of Civil Procedure requires personal service or service upon an agent designated by law or an agent designated by the individual.

Motion:

A motion was made by Judge Jackson that Management Committee recommend this change in procedure to the Judicial Council for its review. The motion was seconded by Chief Justice Zimmerman and carried unanimously.

Electronic Law Library:

Effective July 1, 1997, the state is contracting for the Electronic Law Library with Lexis-Nexis. There will be statewide training provided for judges, law clerks and others. The Attorney General's Office has offered the courts access to their training facility which will train 8-9 individuals at a time.

Proposal:

Judge Sandberg suggested the Judicial Council consider a more broad-based education of legislative leadership than currently exists and that this matter be placed upon the Council agenda for consideration.

Motion:

A motion was made by Judge Sandberg that the Management Committee refer the proposal for a more broad-based education for legislative leadership to the Council for discussion and consideration. The motion was seconded by Judge Stirba and carried unanimously.

Adjourn:

On behalf of Hon. Pamela T. Greenwood, Chief Justice Zimmerman adjourned the meeting.

the rules as amended at its August meeting with an effective date of November 1, 1997.

REPORT TO THE JUDICIAL COUNCIL FROM THE AD HOC COMMITTEE ON COLLECTIONS/WARRANTS

May, 1997

BACKGROUND

The collection of court-ordered debts has been a controversial topic for many years, both inside and outside the court system. There has been an ongoing debate about the proper role of the court in the collection of outstanding debts. Opinions range from those who believe the courts should have no role whatsoever in collections, to those who believe the courts should take a very proactive role.

In Utah, the traditional means of collecting most court-ordered debts in felony matters has been for the court to put the defendant on probation to Adult Probation and Parole and let that agency take care of the collection as part of probation supervision. The traditional means of debt collection in most misdemeanor and traffic matters has been to set up periodic payments and then to issue a warrant when the defendant fails to pay.

In many areas of the state, particularly along the "Wasatch Front," both of these methods have been shown to be less than effective because a) AP&P's primary responsibility is to collect victim restitution; in many areas they no longer actively pursue the collection of fines and fees; and b) Warrants in minor matters are not actively served, particularly where law enforcement agencies are understaffed and jail space is limited.

During recent years the responsibility for collection of court ordered debts has been dealt with in several ways. In 1992 the Debt Coordination and Collections Act was passed by the Legislature, which provided for debt collection to be conducted by agencies and allowed part of the monies collected to be used to fund the programs. Under the provisions of this Act, active collections programs were established in the District and Juvenile Courts in Third, Fourth and Sixth Districts. While it is difficult to quantify the effectiveness of these program, particularly in the District Court, due to limitations in the data processing program, most judges and court personnel who have worked with the programs perceive that collections rates have increased substantially.

In 1995 the law was repealed and its provisions subsumed under 63A-8, UCA. This law established the Office of State Debt Collection in the executive branch with the

responsibility to collect all debts owed to the State of Utah. To date, that office has been engaged in planning their role in debt collection and has not yet undertaken debt collection activities. Meanwhile, the collections programs previously established in the courts have continued, through legislative funding of collections clerks. The courts on several occasions have requested an expansion of collections activities which, in turn, were recommended by the fiscal analyst and approved by the Legislature.

In order to address the ongoing questions about collections in the courts, and the related issues with respect to the issuance and execution of warrants, in 1996 the Utah Judicial Council established the Ad Hoc Committee on Collections and Warrants. The Council appointed members to the Ad Hoc Committee as follows:

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

In addition, a number of guests were invited to attend meetings in an advisory capacity because of their special knowledge and expertise regarding court collections issues. Although non-voting, these individuals provided very valuable input to the committee members during the discussions and decision making:

Fred Jayne, Courts Finance Manager
Elma Ashley, Judicial Support Coordinator
Judy Wilkins, Supervisor, Court Services Program
Scott Hennessy, Support Services Coordinator, Third District
Maggie Cooke, Collections Director, Third District
Pat Williams, Support Services Coordinator, Fourth District

About the time the study was getting underway, the Legislature was identifying specifically the function of the Office of State Debt Collection to collect delinquent accounts receivable for all state entities, including the courts. The 1997 legislature passed intent language regarding the issue as follows:

It is the intent of the Legislature that Courts implement the recommendation noted in the Annual Accounts Receivable Report and approved by the Advisory Board to the Office of State Debt Collection. Courts will work with the Office of State Debt Collection to develop a

plan of action whereby delinquent accounts can be transferred to the Office of State Debt Collection or its designee when an account is 60 to 90 days delinquent. The Office of State Debt Collection will be responsible to provide information as to the status of the transferred accounts so that appropriate judicial action can take place as required.

This stated policy raised issues about the courts' current collections efforts and how, or if, they should function along with the proposed efforts of the Office of State Debt collection. The input received by the Committee was not uniform. Some courts indicated they would welcome the opportunity to immediately turn over their debts to an executive branch agency for collection without any collections efforts by the court. On the other hand, some courts wanted to retain more control over their own collections processes. They expressed concern about the court's need to exert ongoing authority over defendants who are on probation to the court and questioned what would happen if those debts were turned over to someone else for collection while still an active part of a probationary agreement.

In January, 1997, the Ad Hoc Committee made an interim report to the Judicial Council. The Council reviewed the report and also discussed functions of the Office of State Debt Collection. The Council then directed the Ad Hoc committee to work with the Office of State Debt collection to develop policies and procedures that would promote the goals and purposes of both the courts and the Office of State Debt Collection.

Since then the Ad Hoc Committee has met several times, and has included Gwen Anderson and Roger Andrus from Office of State Debt Collection in the discussions and development of policies and procedures. During the discussions it was decided by both the Ad Hoc Committee and Office of State Debt Collection that the proposed policies and procedures should apply to the *District Courts only*. All were in agreement that the Juvenile Court collections programs were not only effective, but were an integral part of the Court's program of rehabilitation of youths. With respect to Justice Courts, the issue of collections was basically put off until another day, since the responsibility of the Office of State Debt Collection is *State* debts only.

As directed by the Judicial Council, the Ad Hoc Committee has now developed proposed policies and procedures for the District Court which have been agreed upon by the Office of State Debt Collection and are in accordance with the intent language of the Legislature. These policies and procedures are set forth on the following pages. It is recommended that the policies and procedures be implemented in the District Court as soon as practicable.

The Ad Hoc Committee appreciates the opportunity to provide input to the Judicial Council on this very important matter.

**PROPOSED POLICIES AND PROCEDURES
FOR COLLECTIONS IN THE DISTRICT COURTS**

POLICIES

There is a need for a statewide system of collections in the courts.

Collections programs in the court should perform the following functions

(where defendants are ordered to pay a court debt and placed on bench probation):

Obtain "up-front" information about the financial status of defendants who are requesting time payment of their court-ordered debts

Follow up on defendants who miss a payment

(where defendants are ordered to pay a court debt and placed on either bench probation or probation to the Office of Adult Probation and Parole):

Facilitate the conversion of criminal judgments to civil judgments

Facilitate the transfer of information about the case to the Office of State Debt Collection (OSDC)

Ultimately, collections programs in the courts should be funded from the general fund of the state. Until that can occur, there is a need to re-establish in statute the authority of courts to retain a percentage of collections to cover the operational costs of collections programs. The percentage to be used should be set forth in the court's rules of judicial administration.

Outstanding debts referred to in these policies and procedures include court-ordered fines, fees, costs and victim restitution.

Before a court-ordered debt is transferred to the Office of State Debt Collection, the criminal judgment shall be converted to a civil judgment. The authority of courts to docket a criminal judgment for a fine and/or restitution as a civil judgment is set forth in 77-18-6, U.C.A. There is a need to amend that statute to include the ability to docket a criminal judgment for *court fees and costs* as a civil judgment.

Judgments on court-ordered debts shall state the total amount of the debt and the portions that are owed to various entities: e.g., the state general fund, local

governments, surcharge, victim restitution, etc. When the debt is transferred to the OSDC, that agency shall distribute the funds collected to the appropriate entities.

While the debt remains with the court, the court's established priorities for payment shall be followed (i.e., victim restitution is paid first, surcharge second, fine is third) After the debt is transferred to the OSDC, statutory payment priorities and/or the priorities established by OSDC shall be followed (i.e., child support is paid first).

Debts owed by defendants whose probation is being supervised by AP&P shall be referred back to the court when they are 60 days past due and shall be handled as specified in the procedures stated below.

The adult court shall not use the "Finders" program or report cases to Driver License. These remedies shall be used by the OSDC.

PROCEDURES

IN COURTS WITH COLLECTIONS PROGRAMS

(Currently, this includes Third, Fourth and Sixth Districts):

At the time of sentencing, when a fine, fees, costs and/or restitution are ordered, the judge should emphasize the need to pay the debt *that day*, if at all possible. The judge should inform the defendant that if he/she cannot pay the debt immediately, the defendant **MUST** meet with the collections officer before leaving the courthouse to provide information in order to set up a time payment schedule.

The collections officer will meet with defendant before he/she leaves the courthouse after sentencing, and obtain as much information as possible about the defendant's financial status: assets, employment, etc.

(Under 1997 law, the defendant must complete a form affidavit regarding impecuniosity. The courts should explore possible ways to tie that process into the collections process.)

(The "Own Recognizance" interview covers financial and personal information. The courts should explore ways this data could be accessed for collections purposes.)

The collections officer will require the defendant to sign a contract regarding the payment schedule, which will include sanctions for failure to comply.

The collections officer will inform the defendant about the sanctions if he/she fails to

comply with the payment schedule: e.g.:

Issuance of a warrant, which increases the amount due

Turning debt over to the Office of State Debt Collections, which increases the amount due, and also the fact that OSDC will use the "Finders" program, report the debt to Drivers Licence, and use all other sanctions allowable by law.

If the defendant misses a payment, the collections officer will contact the defendant through letters and/or phone calls to remind him/her about the delinquent payment. Defendant will not be permitted to make arrangements for payment that will allow the debt to be past due on the 61st day after the missed payment.

If the defendant fails to bring the account current by the 61st day after the missed payment, the collections officer will refer the case to the judge for review.

While the debt is between 61 days and 90 days past due, the judge will review the case and make a determination of the next action in the case, using one or more of these options:

Convert the debt to community service (except victim restitution)

Convert the debt to jail time (except victim restitution)

Write off the remaining amount of the debt (except victim restitution)

Docket the criminal judgment as a civil judgment and transfer it to OSDC

Terminate probation

Continue the other terms of probation except for the debt

On cases that are delinquent prior to adoption of this policy, the collections officer will review the case and do one or more of the following:

Recall the warrant and determine if the debt can be pursued (review statute of limitations and whether an Information has been filed).

If the debt can be pursued, refer the case to a judge for determination.

Docket the criminal judgment as a civil judgment.

Transfer the case to OSDC for collection.

IN COURTS WITH NO COLLECTIONS PROGRAM

(Currently, this includes First, Second, Fifth, Seventh and Eighth Districts):

The procedures stated above for courts with collections programs will be followed if possible. If that is not feasible, the judge may do the following for non-payment of court-ordered debts:

After a payment is missed, the judge may order the criminal judgment docketed as a civil judgment and transfer the case to OSDC. The transfer of the case to OSDC may occur at any time after a payment is missed, but no later than the 90-day time frame set forth above.

The court may issue a warrant for failure to comply with other (non-fine or fee-related) conditions of probation.

"SUNSET" PROVISION

The Administrative Office of the Courts and the Office of State Debt Collection shall review the above policies and procedures after two years to determine their effectiveness and to recommend whether they shall be continued or different policies and procedures adopted.



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 *TMS*
Date: June 9, 1997
Re: Rule 3-414. Court Security

The draft amendments to the attached Rule 3-414 implement SB 132 and the recommendations of the Security Task Force. These amendments have been approved by the Policy and Planning Committee, but not always by unanimous vote. The Policy and Planning Committee directed the draft rule be presented to the Council for debate prior to approval for comment.

SECURITY TASK FORCE AMENDMENTS.

Page 3, Lines 8 - 14. The security task force recommends subsection (D) on lines 13 - 14, but, as the rule itself designates which law enforcement agency is responsible for security in the various courthouses (page 6, lines 6 - 22), I recommend this subsection not be added.

Page 6, Line 5. The local law enforcement agency would not be responsible for perimeter security in a justice court.

Page 6, Lines 8 - 22. I recommend the addition of the last sentence on lines 20 - 22 to cover municipal justice courts with no local police department.

Page 8, Lines 8 - 12.

SB 132 AMENDMENTS.

As agreed to by the Council in Vernal, these amendments to Rule 3-414 establish minimum qualifications for who may carry a firearm into a courthouse. The local security plan and

individual judges and commissioners may be more, but not less, restrictive. This draft permits only judges with the SB 132 certificate and all statutorily defined categories of law enforcement officers to carry a firearm in the courthouse. This draft does not permit judges with a concealed weapons permit to be armed in the courthouse. This draft does not permit members of the Board of Pardons or state, district, county, or municipal prosecutors to be armed in the courthouse even if they have an SB 132 certificate.

Page 9 Lines 8 - 12. The firearm must be in the possession of the person authorized to carry it. If the weapon is in a purse or briefcase (or, in the case of a judge, in a drawer), the person must have possession of the purse or briefcase or control of the drawer. Modern holsters are designed to prohibit the firearm from being removed by anyone other than the person wearing it. These typically are standard issue to police and would be required of judges and others issued a special certificate under SB 132. This is part of the security plan of the Third District Court developed with the assistance of the Salt Lake City Police Department and the Salt Lake County Sheriff's Office.

Page 9 Line 13 - Page 10, Line 5. All of the statutorily recognized law enforcement officers would be permitted to carry a firearm if permitted by the local security plan and the judge presiding at the hearing. Also, the firearm or other weapon (nightstick, mace, etc.) has to be issued by or approved by the officer's appointing authority. This rule does not authorize a weapon that is not authorized by the appointing authority. For example, a deputy sheriff transporting a prisoner to a court hearing may be armed under this rule if the Sheriff's policies require or permit the transportation officer to be armed. If the Sheriff does not permit the transportation officer to be armed, this rule cannot be used to permit it.

Page 10, Lines 6 - 7. Judges and senior judges with a concealed weapons permit would no longer be authorized to carry a firearm in the courthouse. The rationale for the Council's support of SB 132 was to use it as a vehicle for requiring special training, distinguishable from that received by those who have concealed weapons permits, for judges to be armed in the courthouse.

Page 10, Lines 8 - 10. Judges would be permitted to carry a firearm if they have the certificate authorized by SB 132. By omission, "law enforcement officials" (i.e., members of the Board of Pardons and state, district, county and municipal prosecutors) would not be permitted to carry a firearm in a courthouse even if they have a certificate issued under SB 132.

Page 10, Lines 11 - 13. A party to litigation may not carry a firearm even though the person may otherwise qualify to do so.

Page 10, Lines 14 - 17. Employees and volunteers (arguably including jurors, who are recognized as volunteers for purposes of worker's compensation) could carry pepper spray, a

Rule 3-414. Court Security

June 9, 1997

Page 3

knife, a club or any other personal protection device provided that item is not a firearm and is not otherwise illegal.

Page 10, Lines 19 - 21. The annual retraining for judges is the same as the initial training.

Page 10, Lines 22 - 24. The judge is responsible for all costs associated with an SB 132 certificate.

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.

Rule 3-414. Court security.

Intent:

To promote the safety and well being of judicial personnel, members of the bar and citizens utilizing the courts [~~by: 1) establishing~~].

To establish uniform policies for court security[~~; and 2) delineating~~].

To delineate responsibility for security measures by the Council, the administrative office, local judges, court executives, and law enforcement agencies.

Applicability:

This rule shall apply to all courts [~~and law enforcement agencies of the State~~].

Section (8) on weapons shall not apply to trial exhibits.

Statement of the Rule:

(1) Definition. Court security includes the procedures, technology, and architectural features needed to ensure the safety and protection of individuals within the courthouse and the integrity of the judicial process. Court security is the joint effort of law enforcement and the judiciary to prevent or control such problems as verbal abuse, insult, disorderly conduct, physical violence, demonstrations, theft, fire, bomb threats, sabotage, prisoner escapes, kidnappings, assassinations, and hostage situations.

(2) Responsibilities of the Council.

(A) The Council shall ensure that all design plans for renovation or new construction of court facilities are reviewed for compliance with security standards.

(B) The Council shall promulgate general security guidelines to assist[~~; insofar as is practical;~~] local jurisdictions in the development of court security plans. These guidelines [~~shall include~~] and local security plans may supplement but shall not conflict with the following minimum requirements:

(i) [~~A requirement that all~~] All persons in [~~the~~] custody [~~of a local jail, state correctional facility, federal facility, or a federal, state or local law enforcement agency be secured~~] shall be kept in a holding cell, restrained by restraining devices, or supervised at all times while in court [~~and throughout the proceedings~~] unless otherwise specifically ordered by the judge in whose courtroom the individual appears.

1 ~~[(ii) A provision requiring restraint devices to remain on individuals in custody throughout~~
2 ~~court proceedings and authorizing the agency which has custody of the incarcerated person to~~
3 ~~determine the type of restraint devices to be utilized unless the judge otherwise orders.]~~

4 ~~[(iii)]~~ (ii) Reserve parking ~~[located]~~ near the entrance to the court facility shall be provided
5 for court officials. ~~[Such reserved]~~ Reserved parking shall not be identified ~~[by number only~~
6 ~~and not]~~ by the name or title of the individual assigned to the space.

7 ~~[(iv) Separate building]~~ (iii) Building entrances, restrooms, holding cells and circulation for
8 ~~[the public,]~~ law enforcement personnel transporting individuals in custody shall be separate
9 from the general public and court officials. Building entrances, restrooms, offices and
10 circulation for court officials shall be separate from the general public. Access to non-public
11 areas shall be controlled.

12 ~~[(v) Hallways separated from general public access for the exclusive use of law~~
13 ~~enforcement personnel transporting individuals in custody and for court officials.]~~

14 ~~[(vi) Elevators for the exclusive use of transportation officers and jail personnel.]~~

15 ~~[(vii) Separate restrooms for the exclusive use of transportation officers and jail personnel,~~
16 ~~the judge or court commissioner, the jury, and the public.]~~

17 ~~[(viii) Restricted public access in areas such as judges' or court commissioners' chambers,~~
18 ~~holding cells, jury rooms, restrictive hallways and entrances, etc.]~~

19 ~~[(ix)]~~ (iv) Holding cells shall be adjacent to courtrooms.

20 ~~[(x)]~~ (v) Courtroom windows ~~[which are]~~ shall be draped and securely fastened.

21 ~~[(xi)]~~ (vi) Physical barriers shall be provided between the public seating area of the
22 courtroom and the participants' area.

23 ~~[(xii) A prohibition against the possession of]~~ (vii) Weapons and miscellaneous items ~~[in~~
24 ~~the courtroom]~~ which can be used as weapons shall be regulated as provided in this rule.

25 ~~[(xiii)]~~ (viii) An emergency power system shall be provided for lighting and electrically
26 operated doors.

27 ~~[(xiv) Judicial chambers with more than one exit.]~~

28 ~~[(xv)]~~ (ix) Separate waiting areas shall be provided for defense witnesses, plaintiff or
29 prosecution witnesses, and jurors.

1 ~~[(xvi) Gun lockers in restricted areas for use by law enforcement agencies.]~~ (x) Lockers
2 shall be provided for the storage of weapons legally carried but not permitted in the
3 courthouse.

4 ~~[(xvii) A requirement that the bailiff shall be situated in a strategic location within the~~
5 ~~courtroom which provides]~~ (xi) The bailiff's station shall provide a clear line of sight ~~[and~~
6 ~~observation]~~ of all courtroom participants and ~~[that the bailiff and transportation officer place~~
7 ~~themselves physically]~~ shall be between individuals who are in custody and courtroom exits.

8 (C) As a condition for the certification of a new justice court or the continued certification
9 of an existing justice court pursuant to Section 78-5-139, the justice court shall file an
10 acceptable local security plan which shall provide for the presence of a law enforcement officer
11 in court during court sessions or a reasonable response time by the local law enforcement
12 agency upon call of the court.

13 ~~[(D) The council shall designate courts of record locations where the county sheriff shall~~
14 ~~provide building security officers pursuant to Section 17-22-27.]~~

15 (3) Responsibilities of the Administrative Office.

16 (A) The ~~[Administrative Office]~~ state court administrator shall appoint a statewide security
17 coordinator who shall:

18 (i) review, approve and keep on file copies of all local security plans; and

19 (ii) periodically visit the various court jurisdictions to offer assistance in the development
20 or implementation of local security plans.

21 (B) The ~~[Administrative Office]~~ state court administrator shall appoint a court executive in
22 each judicial district to serve as a local security coordinator.

23 (C) The ~~[Administrative Office]~~ director of human services shall maintain as part of each
24 official personnel file ~~[necessary biographical]~~ information on each employee of the judiciary
25 and his or her family necessary to ensure that adequate information is available to law
26 enforcement agencies to respond ~~[in the event of]~~ to an emergency.

27 (4) Responsibilities of the court executive.

28 (A) The court executive ~~[who has been]~~ designated as the local security coordinator~~[-is~~
29 ~~primarily responsible for the development, implementation and coordination of]~~ shall, in
30 consultation with the law enforcement administrator responsible for security, develop and

1 implement a local security plan~~[- The local security plan shall include a security plan]~~ for each
2 court facility within the district. The court executive shall annually review the local security
3 plan with the presiding judge and the law enforcement administrator to identify deficiencies in
4 the plan and problems with implementation. The court executive shall provide a copy of the
5 local security plan and any amendments to the security coordinator by July 1 of each year.

6 ~~[(B) The court executive shall initiate a meeting with the law enforcement administrator~~
7 ~~who has responsibility for court security in that court executive's geographical area of~~
8 ~~responsibility. The court executive shall ensure that in conjunction with the local law~~
9 ~~enforcement administrator a local security plan is adopted.]~~

10 ~~[(C)]~~ (B) The court executive ~~[is responsible for an initial]~~ shall conduct an annual survey
11 ~~[to be conducted]~~ of all court facilities ~~[and periodic ongoing surveys]~~ to identify steps
12 necessary ~~[improvements, modifications or design features required]~~ to meet security
13 ~~[standards]~~ guidelines established by the Council.

14 ~~[(D) The court executive shall file a copy of the local security plan with the Administrative~~
15 ~~Office by July 1 of each year commencing in July, 1989.]~~

16 ~~[(E) The court executive shall review the local security plan with the presiding judge~~
17 ~~responsible for the court facility and the responsible law enforcement administrator on an~~
18 ~~annual basis.]~~

19 ~~[(F) The court executive shall conduct quarterly reviews to identify deficiencies in the local~~
20 ~~security plan, problems with implementation of the security plan and recommendations for~~
21 ~~improvements.]~~

22 ~~[(G) The court executive shall provide copies of the written evaluation to the presiding~~
23 ~~judge and the local law enforcement administrator.]~~

24 ~~[(H)]~~ (C) The court executive shall ~~[ensure that annual training on]~~ provide a copy of the
25 current the local security plan ~~[is provided]~~ and annual training on the plan to all ~~[judicial and~~
26 ~~non-judicial]~~ employees, volunteers and security personnel ~~[working in any court facilities]~~.

27 ~~[(I)]~~ (D) The ~~[court executive shall ensure that the]~~ local plan shall clearly ~~[delineates]~~
28 delineate the responsibilities between court personnel and law enforcement personnel for all
29 areas and activities in and about the courthouse ~~[facility and all activities within the facility]~~.

1 ~~[(F)]~~ (E) The court clerk, under the supervision of the court executive, shall ~~[be responsible~~
2 ~~for coordinating court appearances of individuals in custody with the Department of~~
3 ~~Corrections and local law enforcement agencies.~~

4 ~~(i) The court executive shall be responsible for]~~ provide timely notice to ~~[the Department~~
5 ~~of Corrections and other law enforcement agencies]~~ transportation officers of required court
6 appearances and cancellation of appearances for individuals in custody. The court shall
7 consolidate scheduled appearances whenever practicable and ~~[make every effort to provide~~
8 ~~reasonable advance notice of appearances or cancellation of appearances.~~

9 ~~(ii) Court personnel and corrections officials shall]~~ otherwise cooperate with transportation
10 officers to avoid unnecessary court appearances ~~[in order to minimize security risks].~~

11 ~~[(iii)]~~ (F) To the extent possible, the clerk of the court ~~[executive]~~ shall establish certain
12 days of the week and times of day for court appearances of persons in custody in order to
13 permit ~~[law enforcement agencies and corrections officials]~~ transportation officers reasonable
14 preparation and planning time. ~~[Where individuals appear in court in custody, the]~~ The court
15 shall give priority to ~~[such]~~ cases in which a person in custody appears in order to prevent
16 increased security risks resulting from lengthy waiting periods.

17 (5) Responsibilities of law enforcement agencies.

18 (A) The law enforcement agency with ~~[designated]~~ responsibility for security of the
19 courthouse, through the law enforcement administrator, shall:

20 (i) ~~[Have exclusive authority to]~~ coordinate all law enforcement activities within the
21 courthouse necessary for implementation of the security plan and for response to emergencies~~[-~~
22 ~~Such activities shall be conducted in a manner consistent with the requirements of this Code.];~~

23 (ii) ~~[Through the administrator of the designated law enforcement agency or the~~
24 ~~administrator's designee,]~~ cooperate with the court executive in the development and
25 implementation of a local security plan ~~[consistent with the requirements of this Code and the~~
26 ~~implementation of the local plan.];~~

27 (iii) ~~[Ensure that]~~ provide local law enforcement personnel ~~[receive adequate training on~~
28 ~~the local security plan.]~~ with training as provided in this rule;

29 (iv) ~~[Appoint]~~ appoint court bailiffs~~[-];~~ and ~~[The county sheriff shall appoint court bailiffs~~
30 ~~to serve in the district and juvenile courts. In courts of record and commissioner hearings,~~

1 where full time bailiffs are assigned to individual judges and court commissioners,
2 appointments shall be subject to the concurrence of the presiding judge of the jurisdiction. In
3 all other cases, the appointment shall be made in consultation with the presiding judge of the
4 jurisdiction.]

5 (v) provide building and perimeter security for all courts of record.

6 (B) The ~~[designated responsible]~~ law enforcement agency responsible for court security
7 shall be as follows:

8 (i) The Department of Public Safety ~~[shall provide bailiff services]~~ for the Supreme Court
9 and the Court of Appeals when they are in session in Salt Lake County. When convening
10 outside of Salt Lake County, security shall be provided by the ~~[law enforcement agency with~~
11 ~~designated responsibility for the court facility where the appellate court is convening]~~ county
12 sheriff. The Department of Public Safety may call upon the Salt Lake County Sheriff for
13 additional assistance as necessary when the appellate courts are convening in Salt Lake
14 County.

15 (ii) The county sheriff ~~[shall be responsible for the provision of building security services~~
16 ~~at all]~~ for district ~~[court sites]~~ courts and ~~[all]~~ juvenile ~~[court sites]~~ courts within ~~[that~~
17 ~~jurisdiction as provided by this rule]~~ the county.

18 (iii) ~~[Any unit of local government which establishes a]~~ The county sheriff for a county
19 justice court and the municipal police for a municipal justice court ~~[is responsible for the~~
20 ~~funding and provision of security services consistent with this Code].~~ If a municipality has no
21 police department, then the law enforcement agency with which the municipality contracts
22 shall provide security services to the justice court.

23 (6) Court bailiffs.

24 (A) Qualifications. ~~[After the effective date of this rule, persons appointed as court bailiffs]~~
25 Bailiffs shall be ~~[qualified as]~~ "peace officers" as defined in ~~[Utah Code Ann.]~~ Section 77-1a-
26 1. ~~[or may, at]~~ At the discretion of the law enforcement administrator and with the consent of
27 the presiding judge, or, if there is no presiding judge, then the judge[, judges or
28 commissioners] of a particular court, bailiffs may be ~~[qualified as]~~ "special function officers"
29 as defined by ~~[Utah Code Ann.]~~ Section 77-1a-4.

1 (B) Training. Prior to exercising the authority of their office, bailiffs shall satisfactorily
2 complete the basic course at a certified peace officer training academy or pass a waiver
3 examination and be certified. ~~[Where special function officers are approved, they shall~~
4 ~~complete the basic training program as approved by the peace officer training and standards~~
5 ~~academy. Once certified, court bailiffs]~~ Bailiffs shall complete 40 hours of annual training as
6 established by the Division of Peace Officer Standards and Training. ~~[In addition to the~~
7 ~~training requirements set forth above, court bailiffs]~~ Bailiffs shall receive annual training on
8 the elements of the court security plan, emergency medical assistance and the use of firearms.

9 (C) Physical and mental condition. Court bailiffs shall be of suitable physical and mental
10 condition to ensure that they are capable of providing a high level of security for the court and
11 to ensure the safety and welfare of individuals participating in court proceedings. ~~[They]~~
12 Bailiffs shall be capable of responding appropriately to any potential or actual breach of
13 security~~[, and be trained in emergency medical assistance and the use of firearms. The~~
14 ~~appointing authority shall be responsible for assuring that the court bailiffs possess the required~~
15 ~~training and physical and mental qualifications]~~.

16 (D) Appointment. The appointment of a bailiff is subject to the concurrence of the
17 presiding judge of the court or, if the court has no presiding judge, then subject to the
18 concurrence of the judge or judges of the court.

19 ~~[(D)]~~ (E) Supervision. The court bailiff shall be supervised by the appointing authority and
20 perform duties in compliance with directives of the appointing authority~~[, the judge, or the~~
21 ~~court commissioner pursuant to this Code]~~.

22 ~~[(E)]~~ (F) Responsibilities. Court bailiff responsibilities shall include but are not ~~[be]~~ limited
23 to~~[:]~~ the following.

24 (i) The bailiff shall ~~[assure that criminal defendants, who are]~~ prevent persons in custody,
25 ~~[are prevented]~~ from having physical contact with family, friends, or spectators ~~[in order to~~
26 ~~prevent the passing of weapons or contraband]~~. Visitation shall be in accordance with jail and
27 prison policies and be restricted to those facilities.

28 (ii) The bailiff shall observe all persons entering the courtroom, their movement and their
29 activities. The bailiff shall ~~[limit]~~ control access to the bench and other restricted areas.

(iii) The bailiff shall search the interior of the courtroom[, ~~judicial chambers, commissioners' chambers, jury room, restrooms,~~] and [other] restricted areas [each morning] prior to the arrival of any other court participants. Similar searches shall be conducted following recesses to [~~assure that~~] ensure the room is clear of weapons, explosives, or contraband.

(iv) Bailiffs shall [~~at all times while on duty~~] wear the official uniform of the law enforcement agency by whom they are employed.

(v) Bailiffs shall comply with the directives of the judge or commissioner with respect to security related activities and shall perform other duties incidental to the efficient functioning of the court which do not detract from security functions. Activities wholly unrelated to security or function of the court, including personal errands, shall not be requested nor performed.

[~~(v)~~] (vi) Bailiffs shall perform [~~such~~] responsibilities [~~as defined~~] provided for in the local court security plan.

(7) Secure areas. Pursuant to Section 78-7-6, the following areas of all courthouses of courts of record and not of record are designated as "secure areas":

(a) [~~judicial~~] judges' and court commissioners' chambers;

(b) courtroom areas inside well;

(c) [~~clerk~~] employees' and volunteers' offices;

[~~(d)~~] court reporter offices;

[~~(e)~~] (d) private hallways, stair wells and elevators;

[~~(f)~~] (e) jury deliberation rooms;

[~~(g)~~] (f) jury assembly rooms;

[~~(h)~~] (g) holding cells;

[~~(i)~~] (h) victim and witness rooms;

[~~(j)~~] (i) attorney conference rooms;

[~~(k)~~] (j) reserved parking areas;

[~~(l)~~] central staff attorneys offices;

[~~(m)~~] (k) breakrooms;

[~~(n)~~] (l) conference rooms; and

1 ~~[(e)]~~ (m) libraries not open to the public.

2 (8) ~~[Security devices and procedures.]~~ Weapons.

3 (A) Weapons Generally.

4 (i) No person may possess an explosive device in a courthouse or a secure area of a
5 courthouse. Except as permitted by [a local court security plan or by] this rule, no person may
6 possess any firearm, ammunition, or dangerous weapon [, or explosive] in a courthouse[:] or a
7 secure area of a courthouse.

8 (ii) All firearms permitted under this rule shall remain in the physical possession of the
9 person authorized to possess it and shall not be placed in a drawer, briefcase or purse unless
10 the person has physical possession of the briefcase or purse or immediate control of the
11 drawer. All firearms permitted under this rule shall be secured in a holster with at least three
12 points of restraint. Concealment is the equivalent of one point of restraint.

13 (B) Persons authorized to possess a firearm or other weapon.

14 (i) The following officials may possess a firearm and ammunition or other weapon in a
15 courthouse or a secure area of a courthouse if the firearm or weapon is issued by or approved
16 by the official's appointing authority and if possession is required or permitted by the official's
17 appointing authority, the local security plan and the judge or court commissioner presiding in
18 the courtroom:

19 ~~[(i) Bailiffs may possess a firearm and ammunition in a secure area or the courthouse if~~
20 ~~required by the appointing authority and provided for in the local court security plan. The~~
21 ~~judge or court commissioner, in consultation with the appropriate law enforcement agency,~~
22 ~~may order otherwise on a case by case basis.]~~

23 ~~[(ii) Officers having the custody of persons incarcerated in the county jail or Utah State~~
24 ~~Prison, charged with the responsibility of transporting and escorting such persons to a court,~~
25 ~~may possess a firearm and ammunition in a secure area or the courthouse if required by policy~~
26 ~~of the appropriate law enforcement agency unless otherwise ordered by the judge.]~~

27 ~~[(iii) Other "peace officers" and "federal officers" as defined in Utah Code Ann. Section~~
28 ~~77-1a-1 may possess a firearm and ammunition in a secure area or the courthouse if permitted~~
29 ~~in the local court security plan and if permitted by the policy of the officers' appointing~~
30 ~~agency-]~~

1 (a) "peace officer" as defined in Section 77-1a-1;

2 (b) "correctional officer" as defined in Section 77-1a-2;

3 (c) "reserve and auxiliary officer" as defined in Section 77-1a-3

4 (d) "special function officer" as defined in Section 77-1a-4; and

5 (f) "federal officer" as defined in Section 77-1a-5.

6 ~~[(iv) Judges and active senior judges with valid concealed weapon permits may possess~~
7 ~~firearms and ammunition in secure areas or courthouses.]~~

8 (ii) If required or permitted by the local security plan, a judge as defined in Section 53-5-
9 710 may possess in a courthouse or a secure area of a courthouse a firearm and ammunition
10 for which the judge has a valid certificate of qualification issued under Section 53-5-710.

11 (iii) A person permitted under subsections (i) and (ii) to possess a firearm nevertheless shall
12 not possess a firearm in a courthouse or a secure area of a courthouse if the person is
13 appearing at the courthouse as a party to litigation.

14 (iv) If required or permitted by the local security plan, a court employee or volunteer may
15 possess in a courthouse or a secure area of a courthouse an otherwise legal personal protection
16 device other than a firearm. The employee or volunteer may not possess the personal
17 protection device while appearing as a party to litigation.

18 (C) Firearm training requirements.

19 (i) To requalify for a certificate issued under Section 53-5-710 a judge shall annually
20 complete the additional course of instruction established by the commissioner of public safety
21 under Subsection 53-5-710(2)(b).

22 (ii) The cost of firearms, ammunition, initial qualification, requalification and any other
23 equipment, supplies or fees associated with a certificate of qualification issued under Section
24 53-5-710, shall be the responsibility of the judge and shall not be paid from state funds.

25 (9) Security devices and procedures.

26 ~~[(B)]~~ (A) Metal detectors. The use of metal detectors or other screening devices should be
27 at the discretion of the law enforcement agency responsible for security/bailiff services. Such
28 devices shall be operated only by law enforcement agencies.

29 ~~[(C)]~~ (B) Physical search. Searches of persons in or about the courthouse or courtroom
30 shall be conducted at the discretion of the law enforcement agency responsible for security

1 when the local law enforcement agency has reason to believe that the person to be searched is
2 carrying a weapon or contraband into or out of the courthouse or when the court so orders. No
3 other person is authorized to conduct such searches. Written notice of this policy shall be
4 posted in a conspicuous place at the entrance to all court facilities.

5 ~~[(D)]~~ (C) Emergency communication system. An emergency communications system
6 should be installed in each courtroom, judge's chamber, commissioner's chamber, and clerk's
7 office. The system should be capable of alerting ~~[local]~~ the law enforcement ~~[agencies]~~ agency
8 responsible for security of a disturbance situation by panic button, direct telephone line, or
9 walkie-talkie. The system should be designed to identify the exact location of the emergency
10 and the circumstances of the emergency to ensure that law enforcement may respond in a
11 timely manner with sufficient capability to control the situation.

12 ~~[(E)]~~ (D) Extra security. In anticipated high risk situations or a highly publicized case, the
13 law enforcement agency responsible for security should, on its own initiative or in response to
14 an order of the court, ~~[have the ability to]~~ provide extra security including additional
15 personnel, controlled access, etc.

16 ~~[(9) Individuals]~~ (10) Transportation of persons in custody.

17 ~~[(A) General provisions.~~

18 ~~(i) Representatives of federal, state and local law enforcement agencies and the Department~~
19 ~~of Corrections are responsible for the transportation, custody, and conduct of all individuals in~~
20 ~~official custody throughout the court proceedings. Such law enforcement agencies are~~
21 ~~responsible for the return of such custodial individuals to their proper place of confinement~~

22 ~~Individuals in custody include prison inmates, 90 day diagnostic offenders, individuals in~~
23 ~~the custody of a local county jail, or individuals in the custody of a law enforcement agency.~~
24 ~~Such responsibility shall not be interrupted or delegated while on court premises.~~

25 ~~(ii) Support and assistance to outside law enforcement agencies shall be rendered by the~~
26 ~~court bailiff and the local law enforcement agency responsible for court security as~~
27 ~~circumstances dictate. If so directed by the local law enforcement agency responsible for court~~
28 ~~security, representatives of outside law enforcement agencies may transport individuals in~~
29 ~~eustody to the county jail and deliver custody to the county sheriff for processing in~~
30 ~~conformance with local jail policy.~~

1 ~~(iii) Upon exit from the jail by the most secure means available adjacent to the scheduled~~
2 ~~courtroom, custody of the person shall be returned to the responsible law enforcement agency~~
3 ~~who is thereafter responsible for the conduct and custody of the person with the support and~~
4 ~~assistance of the court bailiff and the local law enforcement agency responsible for court~~
5 ~~security.~~

6 ~~(iv) All law enforcement agencies delivering individuals in custody to court shall notify in~~
7 ~~advance the local law enforcement agency responsible for security, shall coordinate all~~
8 ~~necessary arrangements and shall advise the local law enforcement agency of any potential~~
9 ~~problems.~~

10 ~~(B) Probationers and parolees.~~

11 ~~(i) Probationers and parolees who are under arrest shall be delivered to the custody of the~~
12 ~~county sheriff or the local law enforcement agency responsible for court security for~~
13 ~~transportation to and from court and for supervision during the court process.~~

14 ~~(ii) Probation and parole agents of the Department of Corrections may be called upon by~~
15 ~~the local law enforcement agency responsible for court security to provide additional backup~~
16 ~~assistance.~~

17 ~~(iii) Probation and parole agents of the Department of Corrections are responsible for~~
18 ~~notifying in advance the local law enforcement agency responsible for court security, the court~~
19 ~~bailiff and the judge of the court of any suspected security problems or high risk situations and~~
20 ~~the necessity for any special precautionary measures.~~

21 ~~(C) Individuals in county jails.~~

22 ~~(i) The county sheriff responsible for the local jail and jurisdiction of the court shall, in~~
23 ~~person or by deputy, transport and escort all persons in the custody of the county sheriff to and~~
24 ~~from the courtroom of all courts within the jurisdiction of the sheriff.~~

25 ~~(ii) The county sheriff, at his discretion, may transfer the custody of jail prisoners to~~
26 ~~another law enforcement agency for the purposes of transportation and supervision while in~~
27 ~~court.]~~

28 (A) The federal, state, county or municipal agency with physical custody of a person
29 whose appearance in court is required is responsible for transportation of that person to and
30 from the courtroom.

1 ~~[(iii)]~~ (B) The transportation officer shall:

2 (i) remain present at all times during ~~[such]~~ court appearances~~[-, shall]~~;

3 (ii) be responsible for the custody of such persons ~~[and will]~~;

4 (iii) support the court bailiff in the preservation of peace in the courthouse and
5 courtroom~~[-]~~;

6 ~~[Advance]~~ (iv) provide advance notice ~~[shall be provided]~~ of the transportation and of any
7 extraordinary security requirements to the law enforcement agency responsible for court
8 security, to the judge, and to the bailiff ~~[of any unique security requirements necessary for~~
9 ~~individual cases]~~;

10 (v) comply with any regulations of the county sheriff regarding the transportation of
11 persons in custody to court; and

12 (iv) return the person in custody to the proper place of confinement.

13 (C) The law enforcement agency responsible for court security shall provide assistance to
14 the transportation officer as circumstances dictate.

Administrative Office of the Court

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

June 11, 1997

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

Honorable Anthony W. Schofield
Fourth District Court
125 North 100 West
Provo, UT 84601

Re: Justice Court Task Force Issues

Dear Judge Schofield:

At a recent meeting of the Board of District Court Judges, we discussed several issues that will be addressed by the Task Force. Admittedly, we were not aware of the scope of the Task Force mandate.

Let me share the conclusions of the Board at this early stage.

1. Class A Misdemeanors

The Board does not favor the expansion of jurisdiction, allowing Class A misdemeanors to be adjudicated by the justice court. This is not a simple turf protecting, knee-jerk reaction, but the fruit of extensive debate.

2. Concurrent/Exclusive Jurisdiction for Class B and C Misdemeanors

The "concurrent jurisdiction problem" is a thorny one. While we do not have a satisfactory solution, we have made some observations which must be considered by the Task Force as it fashions recommendations. The District Court is, historically and constitutionally, a court of general jurisdiction. That power should not be infringed upon. As a matter of administrative efficiency, the justice courts may end up exercising de facto exclusive jurisdiction over many B and C misdemeanors and infractions. But on the other hand, the Board declared that the District Court must retain misdemeanor jurisdiction to preserve its constitutional "general jurisdiction" component. In addition, any major shift of misdemeanor adjudication could significantly affect long-term district court planning. It would automatically require the creation of additional justice courts.

230 South 500 East/ Suite 300/ Salt Lake City, Utah 84102/ (801) 578-3843

BOARD OF DISTRICT COURT JUDGES

Judge Lynn W Davis
Chair

D. Mark Jones
District Court Administrator

Lastly, an "exclusivity" directive could affect judicial economy. For example, misdemeanor charges are now appended to felony charges against the same defendant when the charges arise out of the same criminal episode. Events which form the basis of an infraction or misdemeanor charge often serve also to establish probable cause for a search. Such a search often results in additional charges of felony offenses. In addition, in some jurisdictions, for judicial, prosecutorial and defense efficiency, misdemeanor charges against a defendant are filed in the district court with co-defendants who are charged with felonies out of the same single criminal episode.

Some thought has been given to a "pour over" rule; the District Court would retain jurisdiction over all misdemeanors filed in the court, but by rule, the court may transfer any misdemeanor to the justice court.

3. Judicial Education

We recommend continued judicial educational opportunities. These efforts have resulted in the positive and well-recognized professionalization of the justice court.

4. Judicial Independence

The Board expressed a concern about the judicial independence of the justice court and the need for protection of justices from potentially abusive local officials and /or from the perception of partiality. We talked about the inclusion of justices in judicial retention elections. We reached no conclusions in these areas.

Lastly, our discussion of these issues was done without full disclosure of the charge of the Task Force. I would emphasize that our conclusions are preliminary, and we are open to further dialogue and consideration.

Respectfully,



Lynn W. Davis, Chair
Board of District Court Judges

sgj

cc: John Sandberg
Members of District Court Board

JUSTICE COURT STUDY COMMITTEE MINUTES

May 23, 1997, 1:30 p.m.

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

Members Present

Mayor Allen Adams
Camille Anthony
Representative Greg Curtis
Senator Joseph Hull
Judge Jerald Jensen
Judge William Keetch
Paul Morris
Judge Gregory Orme
Mayor LaVelle Prince
Judge Anthony Schofield, Chair
Richard Schwermer

Members Excused

Judge Parley Baldwin
Commissioner Gary Herbert
Commissioner Royal Norman
Melvin Wilson
Ronald Yengich

Guest

Dan Becker

Staff

Peggy Gentles
Lyn Peterson

I. WELCOME AND INTRODUCTION OF COMMITTEE MEMBERS

Judge Schofield called the meeting to order. He indicated that this Committee was formed by the Judicial Council at the request of the Legislature. To form the Committee, the Council relied on groups to appoint members. Therefore, the Committee consists of members appointed by the Legislature, Governor, Utah Association of Counties, Utah League of Cities and Towns, Statewide Association of Public Attorneys, and Judicial Council. Judge Schofield then asked that the committee members introduce themselves.

Following introductions, Judge Schofield discussed meeting protocol. With the Committee's consent, each meeting will be taped. The members will be provided with summary minutes of each meeting and the tapes will be preserved. The Committee will operate on Robert's Rules relying on motions and seconds followed by Committee votes for decision making. Mayor Adams moved that the meeting protocol as outlined by Judge Schofield be adopted by the Committee. Judge Keetch seconded the motion. The motion passed unanimously. Judge Schofield indicated that the tape recorder would be turned on at this point in the meeting.

II. INTRODUCTION OF LEGISLATIVE MANDATE

Judge Schofield discussed the background of the Committee. During the 1997 Session, the

Legislature adopted intent language in House Bill 1 asking the Judicial Council to form a committee. This committee was directed to study justice court issues and propose necessary legislation to the 1998 General Session. Judge Schofield stated that he interpreted that mandate to require proposed legislation to be complete sufficiently in advance to allow meaningful consideration in the next session. The Committee was to consist of people who have an interest in justice court issues. Therefore, the Council went to groups such as the Utah Association of Counties, the League of Cities and Towns, the Statewide Association of Public Attorneys, the Legislature and the Governor to appoint members. The intent was to allow all the diverse interests to be represented. The issues suggested for study by the Legislature were future role of justice courts in the judicial system, legislative changes necessary to promote stability in planning and revenue, equitable revenue distribution, judicial independence and exclusive jurisdiction.

Judge Schofield discussed the history behind the request for a study. In part, the formation of the Committee has occurred through the Judicial Council's urging. The Council's request has been driven by an interest to have the relationships between the local governments, the courts, and the Judicial Council clarified. The judiciary has a concern about jurisdiction between justice courts and district courts. As circuit courts were consolidated with district courts, uncertainty existed in how cases were divided between justice courts and district courts. An interim solution has been adopted returning jurisdiction to the status in which it existed prior to circuit court consolidation. However, the solution is time limited to allow studies such as that by this Committee to recommend permanent measures. The judiciary is concerned that the types of cases that belong in justice courts and the types of cases that belong in district courts be clearly identified.

Judge Schofield discussed another issue important to the judiciary, judicial independence. He expressed his personal opinion that judicial independence is an area of serious concern. Although district court judges like Judge Schofield stand for retention election every six years, they are not subject to the day-to-day oversight of the reappointing authority. The judiciary feels that independence justice court judges should be similarly preserved. Judge Schofield stated that he was aware that other issues that the Committee will be looking at are of particular interest to the other groups represented on the Committee. One of the issues in which he expects other groups to take particular interest is the fair apportionment of revenue.

Judge Schofield pointed to the number of reports, provided to the Committee members before the meeting, that have addressed justice court issues in the prior ten years. With the mandate from the Legislature and commitment of the Judicial Council, Judge Schofield hopes to seriously grapple with having the justice courts fulfill the role that the Constitution establishes for them. Judge Schofield pointed out that on a numerical basis justice courts handle more cases than the district courts do. Therefore, more people come in contact with justice courts than with the district courts. The justice courts provide this service well.

Judge Schofield stated that he welcomed the participation of all groups with an interest in the issues to be discussed by the Committee. He stated that he did not come with a preconceived conclusion and not here to foster a particular conclusion. His assignment from the Judicial

Council is to Chair the group as it works through an important deliberative process.

III. SCHEDULE FOR COMING MEETINGS

Judge Schofield opened a discussion of timing of the Committee work. He noted that lead time for proposed legislation is significant. The Legislators meet monthly to prepare for the Session. The Judicial Council has an annual planning meeting in August and was hopeful that the Committee's recommendations would be made by then. Judge Schofield has informed the Council that he was not sure that this was a realistic time frame. However, he hopes that some issues may be seriously considered and resolved by then. The issue of jurisdiction is particularly critical because an interim solution is in place until July 1, 1998. Judge Schofield proposed meeting once or twice a month for the next two or three months.

Because a number of groups have appointed members to the Committee, to give the members an understanding of the views of the other groups represented, Judge Schofield suggested that the Committee would take its first meeting time and invite the interested groups to make presentations to the group. These presentations would express the groups' concerns. The groups suggested by Judge Schofield were the League of Cities and Towns, Utah Association of Counties, the Board of Justice Court Judges, the Board of District Court Judges, possibly the Board of Juvenile Court Judges. These presentations would facilitate the members' understanding of the larger picture. Judge Schofield suggested June 13 and June 24 as possible dates for these presentations.

Senator Hull inquired into the status of any proposal for a family court and any potential impact on the Committee's discussion. Judge Schofield stated that the Judicial Council had studied the issue a number of years ago. However, final recommendations by the Council have been deferred while circuit court consolidation was accomplished. A family court would take domestic cases from district court and merge them with juvenile court jurisdiction. In Judge Schofield's opinion, any such change would have little impact on justice courts. Judge Jensen stated that there may be an overlap on the criminal side with the domestic violence cases that are currently heard by justice courts.

Judge Schofield listed the following groups that had been mentioned for invitation to the meeting: Boards of Judges, League of Cities and Towns, Utah Association of Counties, and perhaps the Statewide Association of Public Attorneys. Judge Schofield expressed the opinion that the discussion should not be closed. Representative Curtis stated that he thinks municipalities with a justice court need to be heard from. Because the League represents all municipalities, it is difficult for that organization to speak for the individual cities. Senator Hull suggested contacting all the municipalities with justice courts and asking if they wanted to make one presentation because of the logistical difficulty of hearing from all municipalities with justice courts. Richard Schwermer stated that any recommendations of the Committee should probably be sent to all municipalities with justice courts. Therefore, their input could be sought later in the process. However, it may be impractical to invite them all to come and present at this time. Judge Orme suggested that the organizations be invited on the 13th and a small cross-section of cities be invited on the 24th.

The Committee discussed the questions that the municipalities would be asked. Senator Hull stated that he would like to know what problems the municipality sees and the municipality's vision of how they could be solved. Judge Orme said that the revenue side of the issues needs to be explained. Mayor Adams agreed with Judge Orme; in very rural areas, the economics of the region and the court are critical. Judge Keetch stated that he thought it would be crucial to be sure that the municipality representatives had enough knowledge of justice court operations to give the Committee meaningful information. Judge Schofield stated that possibly the League could come and then four or five cities could be asked to come also. Judge Keetch stated that guidelines to the presenters about the information the Committee is seeking. Judge Jensen agreed.

The Committee discussed the possibility of meeting on the dates suggested by Judge Schofield. Representative Curtis moved that the Committee meet in the afternoons of June 13 and 24 for presentations. Senator Hull seconded the motion. The motion passed unanimously. Judge Schofield asked that Peggy Gentles contact the Boards of Judges, the League, UAC, and SWAPA. Richard Schwermer suggested a 10 to 15 minute presentation on the numbers of cases involved in justice courts. Mr. Schwermer also questioned the order that the Committee would be considering issues. Judge Schofield stated that he thought jurisdiction should be addressed first because it may be the easiest to resolve. Judge Orme questioned whether the area of jurisdiction could be resolved without creating a revenue impact. Judge Schofield agreed that all the issues may have revenue impacts. Judge Jensen stated that if the Committee could come to a consensus about where jurisdiction ought to fall then the revenue impacts should be investigated. Judge Orme inquired into whether law enforcement should be invited. Representative Curtis stated that he thought the law enforcement officers do have a concern about in which court they will have to appear.

Judge Schofield stated that, with the Committee's approval, he and Peggy Gentles would put together the invitations to the groups with enough guidance and time constraints to elicit information efficiently. The Committee decided to begin its meetings on the 13th and the 24th at 1 p.m. The meetings will be at the Administrative Office of the Courts.

Judge Keetch stated that he feels that it is important for each Committee member who does not have experience with justice courts to visit one before the next meeting. The Committee agreed with Judge Keetch's suggestion. Judge Schofield asked that each of the members commit to visit a justice court before the 24th.

Judge Schofield inquired into scheduling the next meeting on July 11 at 1 p.m. That this meeting would have a discussion based on the presentations. The Committee agreed to that date.

IV. INTRODUCTION OF ISSUES

Judge Schofield invited the Committee members to express any concerns about any of the issues identified from the Legislative intent language. Judge Keetch agreed with Judge Schofield's earlier statement that jurisdiction should be considered first. Judge Keetch suggested establishing a priority for the issues.

Paul Morris stated that he had been involved with the League of Cities and Towns when HB 436 was considered. The League viewed the ability of local governments to form justice courts as a hard fought compromise. The cities are concerned that they have access to judges who are interested in municipal cases. Some municipalities perceive that district court judges do not care about the municipal cases. Therefore, cities like having the option of forming their own courts to hear these kinds of cases. For the cities, the two big issues are a the split of revenue and ability to form justice courts. Judge Schofield stated that the other side of the issues that Mr. Morris raised is that the uncertainty that exists makes it difficult for the state judiciary, and possibly the Legislature, to engage in long term planning. Judge Jensen stated that the planning ability is further constrained by the possibility that one of the justice courts may close. Mr. Morris noted that the cities can not dissolve the court without Legislative approval. Representative Curtis pointed to press reports a few years ago that implied that Salt Lake City used the possibility of forming a justice court to get concessions from the Judicial Council/Court Administrator's Office. Judge Schofield stated that it was his understanding that Taylorsville felt much the same way. The Council turned down Taylorsville's request to form a justice court for two reasons. One was the hope that this study would take a more systemic look at the formation of justice courts. The other reason was an uncertainty about whether Taylorsville was not already serviced by existing courts. Richard Schwermer stated that in his opinion the direction to look at "stability in planning and revenue" was meant in part to allow the district courts to engage in conversations with municipalities every two years. However, other planning issues arise related to the small cities without district court locations. Mr. Schwermer stated that possibly the existing process is good but maybe the standards for forming a court need to change. Representative Curtis stated that those questions address the fundamental role of the justice court in the system. For instance, West Jordan is approaching 65,000 people but it does not have a district court location while other smaller cities do have a district court. Without the West Jordan Justice Court, the residents of West Jordan would have to drive out of the jurisdiction to court.

Mayor Adams stated that the Committee should look at how a small community can remove a judge who is not performing the duties of the office. In Kanab City, this situation has required the employment of two judges for a period of time. It is a drain on resources. Judge Schofield stated that Mayor Adams had touched on one of the issues for the Committee to consider: the appointment and retention/reappointment for justice court judges.

Representative Curtis expressed a concern that some of the material provided to the Committee may indicate a forgone conclusion by the Judicial Council. Judge Schofield assured the Committee that none of the material was prepared specifically for the Committee. Instead, all the prior reports from other groups have been provided in order to give the members all the material available.

Judge Keetch indicated that the Board of Justice Court Judges had prepared a handout for the Committee which was distributed to the Committee.

Judge Schofield stated that he has a deep concern about the issue of judicial independence. In his opinion, the independence insures that the judge's decision is made based on the litigants appearing and not the interests of the local entity who sponsors the court. Judge Jensen stated

that it would be easier to remove a municipal justice court judge under retention election process because of a smaller population. Mayor Adams stated that the process should be changed from the current one to make it easier to remove judges accused of misconduct. Camille Anthony stated that a retention election process is never going to be the most effective way to deal with misconduct by a judge. Representative Curtis stated that the presence of a retention election for judges with small voting bases could actually work against the litigants before the judge. In some circumstance, the judge may wish to dispose of a case in a way that, while most appropriate in the case, is likely to be unpopular. This perceived political pressure may impact the judge's decision.

Paul Morris stated that the pressure he has heard from local governments on justice court judges is on the revenue side. Judges are told that they are not collecting enough money. However, retention election for municipal judges is not without problems. The mayor and city council may be better informed than the populous in a volatile community. If there are protections on salary and revenue side, reappointment is not necessarily a bad system.

Senator Hull requested information on the flow of money through justice courts. Judge Schofield requested that Richard Schwermer help put together that information for the next meeting. Mr. Schwermer stated that the division of funds is statutory. The Administrative Office of the Courts gets reports from the courts each month. The AOC has information about the money that is paid to the state through the surcharge. The information that the AOC does not have that may be relevant to the Committee is the expense involved in running a court.

The Committee discussed the standards for closing a court and other standards that apply to the justice courts. Paul Morris stated that he thought the League would be in favor of reasonable standards to be met. However, the League is also in favor of the ability to form the third branch of government a city wants to. Judge Keetch stated that he wanted to be sure that the Committee returned to the issue of standards before the end of the process.

V. ADJOURN

Judge Keetch made the motion to adjourn. Judge Jensen seconded. The motion passed unanimously.

JUSTICE COURT STUDY COMMITTEE MINUTES

June 13, 1997, 1:00 p.m.

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

Members Present

Mayor Allen Adams
Camille Anthony
Judge Parley Baldwin
Commissioner Gary Herbert
Senator Joseph Hull
Judge Jerald Jensen
Judge William Keetch
Mayor LaVelle Prince
Judge Anthony Schofield, Chair
Richard Schwermer
Melvin Wilson

Members Excused

Representative Greg Curtis
Commissioner Royal Norman
Paul Morris
Judge Gregory Orme
Ronald Yengich

Guests

Dan Becker
David Church
Judge Lynn W. Davis
Chief Justice Michael D. Zimmerman

Staff

Peggy Gentles
Lyn Peterson
Debbie Thurman
Kirsten Walker

I. WELCOME AND APPROVAL OF MINUTES

Judge Schofield welcomed everyone to the meeting. He excused Commissioner Norman, Judge Gregory Orme, Paul Morris and Representative Curtis.

Judge Schofield asked for a motion on the minutes.

Motion: A motion was made by Judge Keetch to approve the minutes of the May 23rd meeting as prepared. The motion was seconded by Judge Jensen. The motion carried unanimously.

Judge Schofield stated that the minutes will be fairly detailed until the committee members become familiar with all the issues.

Judge Schofield explained that the intent of the committee is to invite interested groups of people to make presentations about their concerns about the Justice Courts. Some of the presentations

have been scheduled for this meeting and the rest are scheduled for June 24th.

The Committee will meet again on June 24th and July 11th.

Camille Anthony volunteered her staff if more information on surcharges is warranted.

II. BACKGROUND INFORMATION ON JUSTICE COURTS

Peggy Gentles provided background information on the justice courts. She distributed statutes on the jurisdiction of the juvenile court and the surcharge. She stated that there are 132 justice courts. Of the 132, 96 are municipal courts and 36 are county courts. Salt Lake County Justice Court is the only multi-judge court. Sandy City has approval to have a multi-judge court. There are 117 Judges. Some judges sit in more than one court. Courts are broken down by class. (See handouts for detailed information.)

She distributed a handout listing the justice courts by class as of May, 1997. She explained that justice courts are certified by the Judicial Council. She distributed the forms used for court certification and recertification .

Judge Jensen asked for the percentage of cases that each level of court handles. Ms. Gentles stated she will try to generate that for the next meeting.

Ms. Gentles introduced Kirsten Walker from Administrative Office of the Courts who presented information on the basic caseload and tracking of revenue of the justice courts. Ms. Walker distributed detailed handouts on the information she presented.

She stated that each justice court sends a monthly report form in to the Administrative Office. This report is data entered into the database by a AOC staff member. The only information shown on the report form is total numbers of offenses.

Offenses are growing at about 2% annually. This is equal to the population growth. Utah is growing rapidly compared to other states in the country.

Justice Court filings jumped 11 % in 1995-1996 fiscal year. There are more traffic and misdemeanor filings. This may be due to more accurate reporting and the fact that some courts were formed around that time.

Even though the filings jumped, the composition of what the justice courts are handling is nearly the same as previously reported. About 85 to 90 % of the workload of justice courts is traffic (this includes DUIs and reckless driving); 13% of the workload is misdemeanors; 1% of the workload is felony preliminary hearings and small claims cases.

Debbie Thurman from the Administrative Office of the Courts addressed the Committee regarding revenue and revenue distribution. She stated the AOC just collects aggregate data on a monthly basis. There is no correlation between the case information and the revenue

information. She described the process and how it works as justice courts collect the revenue. It starts with the Uniform Fine and Bail Schedule which is generated each year by the Uniform Fine and Bail Schedule Committee. Most justice court judges follow the recommended bail and fine schedule amounts.

UCA 78-5-116 outlines the distribution of revenue. Fines and forfeitures are distributed 50% to local government responsible for the court and 50% to prosecutor's agency (most of the these two are the same resulting in 100% going to the local court). Of wildlife fines and forfeitures, 85% goes to the Division of Wildlife Resources, 15% goes to the local government; of Parks & Recreation fines and forfeitures 85% goes to the Division of Parks and Recreation, 15% goes to the local government. Overweight violations fines and forfeitures 100% goes to the B & C Road account, \$50 is kept by the local government for court costs.

UCA 63-63a-1 outlines the distribution of surcharge. The surcharge is an amount which is added to the fine. One hundred percent of the surcharge goes to the State. There is an 85% surcharge on non-traffic Class B misdemeanors, DUI's and reckless driving. There is a 35% surcharge on Class B traffic, all Class C offenses and infractions. There is no surcharge on non-moving violations. Small claims filing fees are kept by the local government. Approximately \$11,000,000 was generated by the surcharge which goes directly to the State and then it is disbursed. This fund is divided among several recipients. It goes to provide victim reparations, POST training, EMT training, support for the Guardian ad Litem volunteers, and several others.

UCA 63-63a-1, states that when partial payments or time payments are made, of the fines that are subject to a 35% surcharge, 74% of that payment stays with the local government and 25% of the payment is sent to the State. Of the fines subject to 85% surcharge, 54% of the payment stays with the local government and 46% goes to the State. None of this money comes into the courts, all of it goes directly to the State general fund (State treasurer) or other designated funds.

Judge Schofield thanked Ms. Thurman and Ms. Walker for their presentations.

II. PRESENTATION BY UTAH LEAGUE OF CITIES AND TOWNS

Judge Schofield introduced David Church, General Counsel for the Utah League of Cities and Towns. Mr. Church began his presentation by giving information about the League. The League is the association to which most Utah cities belong (230 cities and towns). Ninety six have justice courts. These justice court issues are very important to the League and individual cities. Those cities in the justice court business guard that opportunity jealously. Those cities without a justice court at times wish they were and have been frustrated by their inability to make a decision that in the past the leaders would have had the opportunity to make.

Mr. Church responded to the questions posed in the letter from Judge Schofield to the League. Mr. Church related his experience prosecuting in justice courts. He stated that he personally appreciates the justice courts; it is an important part of the system. From the League's standpoint, the role of justice courts is part of the necessary services that cities provide. The function of cities is divided into three areas: provision of services to citizens; promoting and

preserving a sense of community; and local control issues. Having a justice court is part of those functions. Cities, as part of governing, pass ordinances. To make them efficient on a local level, cities need a court readily accessible for quick determinations on issues that are important to the cities but are not necessarily important to others. Some of these issues are dog enforcement, traffic cases, and zoning. Cities do not want sent those types of cases to district court. The League sees it as important that local people can get to a local court for a quick determination of disputes. A primary purpose of courts is dispute resolution. If a dispute comes up that involves a local issue, the citizens should have access to a local court. The justice court provides that. A justice court builds and maintains a sense of community. The Taylorsville experience is instructive. It incorporated in part to preserve that sense of community that it had as a pioneer community. One of the first things Taylorsville wanted was to have its own justice court system and not send citizens to Salt Lake County.

The importance of the local control issue should not be underestimated. Mayor Adams has the right to appoint the judge with the advise and consent of the city council every four years. In addition the mayor has the right to evaluate the judge's qualifications and determine who the judge will be.

Mr. Church stated that the identification of criminal and civil cases exclusively within the justice court jurisdiction is a less important issue to the League members than it is to the justice court judges. The League does not want forum shopping. Some of the judges are more jealous of their jurisdiction than others. The League does feel strongly that local issues that are of a particular local importance and not necessarily statewide importance should be exclusively within the justice court. There should not be the opportunity to move those cases out of the justice court to a judge who does not understand the local issues.

The judges, rather than the mayors and council persons, are concerned with concurrent jurisdiction in the justice courts. The League does not think that there should be the opportunity to forum shop. However the League does appreciate that some of the misdemeanors that currently can be filed in justice courts are very serious offenses with high fines and penalties (DUI's, domestic assaults for example). Mr. Church personally thinks that concurrent jurisdiction should be maintained although it does at some times promote forum shopping by law enforcement. For example, Mr. Church represents a city that has a contract with the county for law enforcement. The sheriff could file certain misdemeanors in the city justice court, the county justice court and possibly in the district court. For a period of time, questions existed about the ability of the city justice court judge to handle certain cases. In that circumstance, the law enforcement officers were encouraged to file the more serious cases in the county justice court.

Mr. Church responded to a question from Ms. Anthony about the burden on justice courts of domestic violence prosecutions. He stated that these cases were not cases that the justice courts did not want to handle. However, the reality is that domestic violence cases are becoming a bigger part of the justice court filings. Ms. Anthony said that she would not be surprised if legislation was introduced to enhance some domestic violence cases to felonies. Mr. Church responded that to some extent they already are enhancible and some cases may leave the justice court for district court.

The League firmly believes that judicial independence for justice court judges needs to be maintained. The League can not control who gets elected to city office. Sometimes there may be mayors and council persons who want interfere with the justice court judges. The League thinks that, whatever the Committee decides, a justice court judge who is properly functioning needs to be protected from local politicians just like a state court judge is. In response to a question, Mr. Church stated that city justice court judges do not go through a retention election process. Judges are reappointed by the mayor with advise and consent of the city council. Mr. Church stated that he personally was not in favor of politicizing the process by adding a retention election. Mr. Wilson stated that he thought that the appointment and reappointment by city officials opened the possibility that those officials would try to control the dealings of the judge. Mr. Church pointed out that the reappointment occurs only every four years and that a sitting judge can not be removed. The League's position is that the independence needs to be maintained. Mr. Church does not believe that retention elections do any more to promote judicial independence than the current system. In fact, in smaller communities, retention elections would diminish judicial independence. With a small population, elected officials can be removed based on one issue. In response to a question from Senator Hull, Mr. Church stated that traditionally there is little turnover. As an example, he pointed to the Alpine justice court judge who served for twenty years through the terms of several mayors. In most communities, it has not been a very political office. However, the mayors are very jealous of the opportunity to appoint the judge every four years with the advise and consent of the council.

The League is opposed to any restriction on formation of justice courts. The cities should have as much discretion with as few strings attached as possible. If a city who does not have a court wants one and meets minimum standards that the Judicial Council and laws provide, it ought to have the opportunity to create it. A justice court is an important service to provide to the local residents. Some communities are very frustrated when they are told that they can not have a justice court. This was the experience of Taylorsville, West Haven, and Leeds. These cities are forced to tell their citizens to go elsewhere to pay a ticket because someone in Salt Lake City says that they can not have a justice court even though a town of a similar size in a similar county has a court because historically that community had one. The League does understand that minimum standards and qualifications do need to be set. The League thinks that training issues are important and appreciates the help the cities have received in that area. The training has improved the quality of the justice court judges and clerks. However, the number of courts should not be limited. The cities should not have to ask permission to create new courts. If a city can meet the minimum standards, the city ought to be able to have a court. Having to send a city the size of Taylorsville to the Legislature for permission to have a court when Bluffdale City has one does not make any sense.

In past, the number one issue that Mr. Church has heard of is the state surcharge. The cities resent being a tax collector for the state. When an 85% surcharge is added to a fine, the total amount gets high. The cities get the impression that they are collecting monies for the state general fund because it is easy for the Legislature to impose a surcharge to fund the very necessary programs. The League appreciates the change in recent years which pays the state and other entities proportionally as partial payments are made. Previously, the cities would get their money last and took the risk of less than 100% payment. However, as long as the surcharge is

there, it will always be an irritant to the cities to collect a tax for the state. To the person paying, the entire amount is a fine. To the judge assessing, it is all money. Ms. Anthony asked if the state tax collectors thought they benefited from the surcharge money. Mr. Church responded that his guess was that it was easier to fund the programs from the surcharge rather than the general fund. Senator Hull stated that it is easier to place a surcharge than raise taxes. The justice court judges that speak to Mr. Church state that they do feel like tax collectors. In response to a question from Mr. Schwermer, Mr. Church state that the League's position is that the programs ought to be funded. If a surcharge is the only way that they can be funded, then fine. However, to a number of judges it has always been an accounting problem requiring a lot of paperwork and subject to audit. There ought to be a better way to fund the programs than having the justice courts account for the money to the state and have the state distribute it. A lot of the paperwork and the audits are related to the surcharge. Even with internal auditors, it becomes a big issue every year. If there is an easier way to fund the programs, it should be adopted. In response to a question from Mr. Wilson, Mr. Church stated that the revenue should be distributed first to pay the costs of the court. These public services should not be run at a loss if it can be helped. Second, some of the revenue ought to pay the cost of enforcement. The courts ought not be run at a profit. The revenue should be sent to the state for the services provided. The League would prefer that some of the revenue go to the Administrative Office to provide training rather than requiring the judges and clerks to ask the city council for the money. If there are sufficient fines coming in to pay for operating the court and to pay portions of the real enforcement costs, the League does not think that at any level, with very few exceptions, justice courts should be run to subsidize local governments' general funds. If they are, Mr. Church would be surprised; the League feels that that is inappropriate. Especially in the smaller courts, the money collected barely covers the costs of the clerks.

The League supports continuation of justice courts. From the prosecuting attorney's standpoint, the League does not think that, with all due respect, in dog or planning cases the district courts will give a quick decision of the same quality as if it was taken to a justice court. In response to a question from Judge Baldwin, Mr. Church stated that the perception is that those kinds of cases, when considered in the typical district court caseload, are not high on the judge's priority. The cases have a higher priority in justice courts because of the judge's connection to the local community. The League also thinks that the tradition of less formal courts should be maintained. It likes having non law-trained judges. The members have the perception that the position of justice court judge is served well by non law-trained "wise man or woman" of the community when appointed and serving locally. Mr. Church acknowledged that it may be a false impression but it is a strong impression.

Senator Hull asked Mr. Church how the positions in support of concurrent jurisdiction but against forum shopping could be reconciled. Mr. Church responded that the League's position is in favor of exclusive jurisdiction. Concurrent jurisdiction works in some specific situations where prosecution or law enforcement personnel have lost confidence in the justice court judge and feel that the case is so serious that it needs to go elsewhere. Personally, Mr. Church has a problem with concurrent jurisdiction because it does promote forum shopping. Also, it allows those who make the filing decision to not only avoid a judge but also, at least to some extent, choose a judge. The Uniform Fine and Bail Schedule and training have ameliorated this problem

to some extent. A few years ago the League compromised on concurrent jurisdiction over some of the more serious automobile violations. Mr. Church stated that he realizes that there is the temptation to move those more serious charges to the district court. However, the League's members would be opposed to that.

In conclusion, Mr. Church stated that it is sometimes difficult to speak for as diverse a group as the League of Cities and Towns. Judge Schofield stated that Peggy Gentles knows how to get in touch with Mr. Church if any of the Committee members had other questions for him. Judge Schofield thanked Mr. Church for coming.

III. PRESENTATION BY THE JUDICIAL COUNCIL

Judge Schofield introduced Chief Justice Michael Zimmerman, Chair of the Utah Judicial Council. Chief Justice Zimmerman began by informing the Committee about the Judicial Council. As established by the Constitution, the Council is the elected group of judges that runs the judicial system. Its tasks include budgeting, planning, and promulgating rules. Chief Justice Zimmerman stated that he was appearing before the Committee not as a judge but as an administrator. The Council needs to know what future caseloads will be so that it can get adequate funding from the Legislature.

The Council consists of three justice court judges, two juvenile court judges, five district court judges, and two appellate court judges. Therefore, the justice court judges have substantial representation on the Council and their views are made known in the Council. The Council has been concerned for a number of years about various issues regarding the justice courts. The Council's view is that justice courts have a substantial role to play in the justice system as a whole. Lay judges are an important part of the judicial system; the Constitution says that and the Council agrees.

The Council has several interests. One interest has always been fortifying the independence of justice courts from political influences by local government officials who appoint, and re-appoint in the case of municipalities, and from revenue pressures. The Council does not think that justice should be administered based on how much a court grossed this year for the governmental entity that put the judge in place. The Council is also concerned about the quality of facilities and training provided for judges. Through the certification standards, the Council tries to maintain that quality. The history of the past six or seven years would show that the Council's attempts to set standards and provide training have improved the quality. The general sense of the justice court judges is that they like the service and advocacy that the Council provides.

The Council's concerns about justice court issues go back a number of years. One issue is concurrent jurisdiction. Some changes were made in 1991 that addressed some of the issues. However, the Council feels that those changes have not adequately dealt with the problem. The basic concern is the unfairness of the process. Once arrested for a crime the process ought to be the same for everybody. Chief Justice Zimmerman understands the statement from Mr. Church from the League that once the prosecutor loses confidence in the justice court judge the case should be able to be taken to district court and vice versa. Everyone would like to be able to pick

who decides the cases that they bring. This problem is exacerbated if the prosecutor is able to pick a forum that will increase the revenue to the local government that hires the prosecutor. As judges, the Council feels that the system should not work that way. The Council also thinks that the average citizen would say that prosecutors should not be able to judge shop. Therefore, the Council thinks that concurrent jurisdiction is inherently bad. If there are problems with a district court judge, one way to work it out is to call the Chief Justice or the district court administrator. The judge's job is to decide cases; no one is going to tell the judge how to decide cases but the judge can be told to administer the court fairly and appropriately. The remedy is not to take the case to another judge. The same should be true at the justice court level. If local law enforcement does not feel comfortable with the justice court judge, the answer is to deal with that judge somehow.

Concurrent jurisdiction also has a substantial impact in the planning process. The Council is charged with ensuring that the state court system has adequate clerks, courtrooms, and judges to deal with the workload. Therefore, the Council needs some predictability with the workload. The Council tracks filings, population, and trends to try to plan out a couple of years. At the same time, once judgeships are created, they can not be abolished. If the state builds a building, the courts have to use it. With concurrent jurisdiction, Sandy City could decide to file all its cases in district court for the summer. That would increase the caseload by 2,000 cases per month. Alternatively, if a city forms a justice court and can do so on short notice, all the cases leave the district court and substantial fixed resources are marooned. While the local government's revenue is not affected, the state is substantially effected. Concurrent jurisdiction not only makes the state's projection of need difficult. Local governments are also uncertain about caseload because the formation and dissolution of a justice court may impact another justice court's caseload.

In 1993 the Council recommended that Class B misdemeanors be given to justice courts. It was not pursued because of the fiscal note associated with the shift in revenue. In 1994, 1995, and 1996, the Council sought to get interim legislative task forces going but could never get high enough on the list. In 1996, the jurisdiction issues got more important and the Council decided it could put a study group together without legislative funding but with a mandate to have broad representation. The Board of Justice Court Judges want these issues dealt with. The Board's concerns are being revenue driven, independence, concurrent jurisdiction, and professionalization.

Chief Justice Zimmerman then addressed an issue brought up by Mr. Church and Judge Baldwin: do state courts pay enough attention to local government issues. The Council tries to be as responsive as possible on those issues. For example, Salt Lake City came to the Council and said that more judges need to be up to speed on zoning matters. The Council made the commitment that a number of judges would be trained and a special calendar developed for those matters. If a local government has a problem related to service, the answer is not necessarily to go out and form a justice court. The city may choose to do that but it is not because the city can not get service from the state system.

The Council recommends that concurrent jurisdiction be eliminated entirely. Regardless of the

pragmatic value to a prosecutor or law enforcement official, it just should not be part of the equation of where a case is heard. It is not fair. The Council thinks there should be a bright line between justice courts, district courts and juvenile courts rather than a line based on where the offense appears in the Utah Code. The division of cases should be based on long term considerations not what fits with the current structure. If this Committee decides that the jurisdiction must be changed, the Council can provide different training if the Committee thinks it is appropriate. Everyone has a vested interest in the status quo, but the Committee needs to set that aside and ask what is the best way to put the system together. In response to a question from Ms. Anthony, Chief Justice Zimmerman responded that the lines should be as clearly defined as possible so that all people involved know where the case needs to go.

On the issue of revenue, while local governments want the flexibility to form and abolish courts, the state needs to have some certainty in the planning process. The lead times for formation of a justice court are necessary to allow the state to make adjustments in anticipation of the formation of new courts. Also, the existing statutory criteria for forming a court include a demonstration of need. A municipality should not be able to undermine existing state resources based on a concern about local identity. The same concerns apply between counties and cities. For instance, if a municipality forms a court, the existing county court may lose a substantial number of cases. Local governments and the state need some predictability. The Council does not have a specific recommendation on stability of planning and revenue. However, major shifts in cases should be discouraged. They should either be prohibited somehow or made with long advance notice. Cases should not be shifted for light and transient reasons including local identity. If the issue is service and the state courts can not serve the local government's needs, then creation of a court may be appropriate. However, the Council does not feel that local identity and revenue are appropriate reasons for making shifts. The substantial advance notice requirement should apply for cases both leaving and entering the state system. Therefore, a local government who wants to close a court should be required to give the same notice.

Equitable revenue distribution is not primarily the Council's concern. Instead, it is a Legislative concern. However, the Council feels that revenue should not affect where a case is heard or how it is decided. The distribution should be fair and designed to reimburse for resources expended. The funding of the court should not be based on the revenue it generates.

The League's position as stated by Mr. Church is that judicial independence should be maintained. The Council's view is that it is inadequate and this is substantiated by feedback from the justice court judges. It is not likely that the judges will go to the local government and say that it is inadequate; however, they do say that to the Council. At a minimum, the retention election process in place for county justice court judges should be adopted for the municipal judges. This may not be a perfect system. However, the mayor and city council, who usually put revenue considerations high on the list when they decide to create a court, should not be looking at those revenue numbers when deciding to reappoint and communicating about revenue levels to the judge. That does not seem appropriate for the same reasons that prosecutors should not be able to decide where cases are filed. Chief Justice Zimmerman has heard from one large municipality who has not created a justice court saying that the perception of the citizens would be that the justice court was too closely tied to the municipality.

Justice courts have a place in the system but the place should be because they provide justice that is close to the people and informal. The place should not be because a city or county wants to make more money or to “home town” everyone who drives through or to create a job for someone. There should never even be a perception that justice is distributed for reasons other than the merits of a case. The Council asks that this Committee look at fortifying the independence of the justice court judges. In recent years, the Council has run into the situation where court are created or abolished to get rid of judges. That should not be possible.

In conclusion, other than the general guidelines presented, the Council does not have any prescriptions except getting rid of concurrent jurisdiction. Once the Committee decides what to do on the jurisdiction issue, the rest of the issues will be affected and the Council would welcome the opportunity to have further discussions with the Committee.

Mayor Adams asked Chief Justice Zimmerman about the Council’s view on the very rare case where a local government has a problem with a judge that might involve criminality. Chief Justice Zimmerman responded that the Judicial Conduct Commission would be the first avenue. Also, for criminal acts, a judge can be prosecuted. Mayor Adams stated that, although there may be many avenues, no body wants to act until the criminal case is finished. Chief Justice Zimmerman suggested that possibly the Conduct Commission statute could be amended to allow the order of interim suspension pending an adjudication. Mr. Schwermer stated that there is a process by which an impeachment proceeding can be pursued in district court. However, in the particular situation to which Mayor Adams refers, that proceeding is also pending the outcome of the criminal case. Chief Justice Zimmerman stated that another possibility would be to provide by statute that cases can be filed in district court if the judge is under indictment.

In terms of not being happy with a judge, if it is a state court judge, the local government should contact the Council or Administrative Office. Measures, such as transferring a judge, can be taken. If the judge is a justice court judge, it may be time to sit down with a judge and try to work out the problems rather than moving cases around or creating another court. Chief Justice Zimmerman stated that judges do respond to feedback and try to change.

Ms. Anthony asked if there is something in the Conduct Commission statute that requires the Commission to wait until after the criminal case. Chief Justice Zimmerman responded that the statute does not require the wait.

Commissioner Herbert asked Chief Justice Zimmerman what the Council’s position is on having non law-trained judges in justice court. Chief Justice Zimmerman responded that the Constitution requires a court not of record and being an attorney can not be a qualification. The people of the state have spoken on that issue. The Council is not hostile to non law-trained judges. However, the Council supports better training programs for justice court judges. The Council has been trying for three years to get a modest amount of money to set up a program for justice court judges that would be similar to the first year of law school. The justice court judges would like to have this service but local governments do not want to pay for it and the Legislature has not proposed funding thus far.

Senator Hull stated that he thought the public preferred having a non-attorney in the position. He added that if the concurrent jurisdiction were to be eliminated without addressing the reappointment issues, the public would be harmed. If a person is forced into a court, the person should feel that they are going to get the best judgment from that court. However, justice court judges are closer to the community that they serve than district court judges. Senator Hull asked if the Council envisioned a mesh between retention election and Council involvement. Chief Justice Zimmerman responded that the Council has not addressed that issue. However, he does not think the Council should have anything in particular to do with the retention/reappointment. The present county system works well. Possibly, in a municipality, there may be more turnover. On balance, however, Chief Justice Zimmerman stated he would rather take that risk if he were a justice court judge than having to be reappointed by the mayor. Senator Hull said if the perception is that a judge is making a ruling because of pressures from the city council or the mayors, there will be political ramifications for the local government.

Judge Schofield thanked Chief Justice Zimmerman for his presentation.

IV. PRESENTATION BY THE BOARD OF DISTRICT COURT JUDGES

Judge Schofield introduced Judge Lynn W. Davis, Presiding Judge of the Fourth District Court and Chair of the Board of District Court Judges. The Board of District Court Judges is a group that represents the interests of all district court judges in the state.

Judge Davis distributed a letter to Judge Schofield representing the Board's positions on the issues before the Committee. Judge Davis stated that the Board's conclusions are preliminary. The Board does not favor expansion of justice court jurisdiction to include Class A misdemeanors. The Board had extensive debate related to that issue. In response to a question from Judge Schofield, Judge Davis stated that the Board feels that the penalties are so severe that imposition by someone who is not law trained may have a possibility of abuse. At the outset, Judge Davis stated that times have changed. Ten years ago, the District Court Board would have had a number of stories of abuse in the justice courts. However, those stories are now largely absent. The Board recognizes that there has been a substantial amount of education during that time.

On concurrent and exclusive jurisdiction, the Board does not have the answer although it does recognize that it is a major concern of this Committee. The Board thinks that the District Court is a court of general jurisdiction by constitution and statute. Therefore, there can not be exclusive jurisdiction in the justice court for any type of case. The district court needs to retain jurisdiction over those cases. A "pour over" rule may be appropriate. The Board states a number of reasons why the district court should maintain jurisdiction over all offenses. One is that a misdemeanor may be part of a single criminal episode that includes a number of felony charges. Second a search warrant that may be issued that will result in a number of people being charged including some with misdemeanor charges. Prosecutors, defense counsel and the courts would enjoy judicial economy if those misdemeanors defendants were tried with the felony defendants. In the future, Judge Davis said that he thinks that most B and C misdemeanors and infractions will be heard at the justice court level. However, the Board can not endorse any exclusive

jurisdiction in the justice court.

Judge Davis cited the Chief Justice's discussion of the effect on district court planning if jurisdiction were exclusive in justice court and if justice courts proliferated. Resource issues are significant. Mr. Schwermer asked Judge Davis whether the Board's position is that there should not be exclusive jurisdiction or that there can not be exclusive jurisdiction in the justice court. Judge Davis replied that if there is a court of general jurisdiction it covers all types of cases. If the jurisdiction is carved up by rule or by statute, the general jurisdiction would be impinged. Mr. Schwermer pointed to the juvenile court and circuit court as examples of where that had happened previously. Judge Davis replied that the question ultimately becomes whether justice court substitutes for the old circuit court. He stated that the Board did not debate that issue. Some Board members state that consolidation attempted to reduce the number of levels and a replacement of the circuit court by the justice court would just return the system to the pre-consolidation status.

The Board suggests that a "pour over" rule could be crafted to allow the district court to transfer all cases of a certain type to the justice court. All members of the Board complemented the justice court judges for their increasing professionalization over the last decade. The Board is concerned that the justice court judges be independent. The judges need to be protected from the potential abuse of local officials or the perception of abuse. The Board also discussed retention elections but did not reach any conclusion on that issue.

Judge Davis stated that the Board's report is only preliminary. Judge Davis said he was pleased to represent the Board before this Committee and would be happy to respond to any questions.

In response to a question, Judge Davis stated that the campaigning involved in contested elections for judges is problematic. The sitting judge will not have time to perform the judge's duties. In addition, the judge is soliciting funds from those people who appear in front of the judges. In those circumstances, the judge's impartiality is suspect. Judge Davis stated that the system in Utah is far preferable to any contested election system. Mr. Wilson stated that the only argument he had heard in favor of contested elections was that it made it easier to remove judges. To remove a judge in a retention election is an expensive proposition. Judge Davis stated that the Board did not have a formal opinion about retention elections versus reappointment at this time. Judge Davis stated that there are two ways judges who are doing a poor job can be removed. One is in-house - judges can be asked not to stand for retention election or can be transferred. The other is the retention election. Judge Davis said that he thought retention elections in a local jurisdiction may result in more judges being removed. Mr. Schwermer commented that the one time that there was any campaign against a county justice court judge, the justice court judge was not retained.

Mayor Prince asked about the information provided to voters about Bar surveys during the previous retention election. Peggy Gentles responded that the Council conducts a survey of attorneys for the state court judges. Information from those surveys is provided in the voter information pamphlet. However, the Council does not conduct an attorney survey for the justice court judges. The Council has received a grant to conduct attorney and litigant surveys in the

justice courts. Dan Becker clarified that the Council contracts with an outside consultant to perform the survey. Judge Davis added that a juror survey is now being conducted in the district courts.

Judge Jensen asked if, in its discussion of the jurisdiction issue, the Board considered the fact that a trial de novo is held in a district court if someone appeals a justice court decision. In Judge Jensen's opinion, the existence of the trial de novo answers a number of the concerns expressed by the Board. The trial de novo rests the final say with the district court. Judge Davis responded that the Board had discussed the issue. Judge Jensen further explained that all matters in the justice court are subject to a trial de novo in the district court which means that the case is done over again. The trial de novo is automatic. Mr. Schwermer stated that much less than one percent of the justice court cases are appealed. Judge Schofield stated that those numbers indicated that there is not extensive dissatisfaction with the results from the justice courts. Commissioner Herbert stated that he receives very few complaints about the justice court judge in his jurisdiction.

Mr. Wilson stated that, in response to the Board's concern about the misdemeanors that are part of a single criminal episode, the statute could compel those to be filed with the felonies in district court. Judge Davis asked Mr. Wilson if he filed in the district court when there are multiple felonies and a separate defendant with misdemeanor charges. Mr. Wilson said that they were filed in district court. Judge Davis stated that the practice was the same in Utah County.

Judge Davis referred to the letter to Judge Schofield that the Board is very interested in discussing issues with the Committee. If there are specific questions the Committee wants the Board to consider, the Board would be happy to make recommendations. Judge Jensen stated that the relationship between the Board and district court judges and Justice Court Board and judges is excellent. Judge Davis agreed and noted that there had not been a lot of turf battles.

Judge Schofield thanked Judge Davis for his presentation.

V. OTHER BUSINESS

Judge Schofield reminded Committee members that the meetings are taped. If any member wants a copy of the tapes, they will be made available. The Committee had asked last time that each member attend a justice court session. Judge Schofield reminded each person of that discussion. The Committee's next meeting is scheduled for June 24 at 1 p.m. at the Administrative Office of the Courts. Judge Keetch made a motion to adjourn. Judge Baldwin seconded. The motion passed unanimously.

M E M O

TO: Management Committee/Judicial Council
FROM: Matty Branch, Appellate Court Administrator *MB*
DATE: June 13, 1997
RE: Rule 3-111(C) (I) Case under Advisement Standard
Problems with Application in Supreme Court

Rule 3-111(C) (I) of the Code of Judicial Administration provides that a justice of the Supreme Court demonstrates satisfactory performance by circulating not more than six principal opinions more than 180 days after submission.

It has come to my attention that the Supreme Court justices have relied upon a 6 month rather than 180 day standard. The justices' position is that it was represented to them that the Judicial Council was adopting as the time standard the rule used internally in the Supreme Court. The Supreme Court's internal rule was stated in months, not days. Apparently, when the rule was formalized in the Code of Judicial Administration, the standard was restated in days, perhaps on the theory that 180 days is more precise or easier to calculate than 6 months. In any case, the Supreme Court's internal rule has remained as 6 months, and the justices have acted in reliance on that rule.

If a 180 day standard rather than a 6 month standard is applied, all of the justices are faced with having opinions that were timely circulated under the court's internal rule being classified as late-circulating under Rule 3-111. By way of example, a case was submitted on 6/3/96. The opinion was circulated on 12/3/96. Under the Supreme Court's internal rule, the opinion was timely circulated. But, under the 180-day standard of Rule 3-111, the opinion must have circulated no later than 11/30/96.

Conceptually (and when considered under the "spirit" of the case under advisement standard), 6 months and 180 days are the same. But, a strict application of the 180 day standard will cause recertification problems for some of the justices. I recommend that the Judicial Council change the formal rule to 6 months, at least through 1977. Thank you for your consideration of this matter.

MEMO

To: Chief Justice Michael D. Zimmerman
From: Jan Thompson
Subject: Deseret News salary story
Date: June 12, 1997

BACKGROUND

On May 25, 1997, the Deseret News published a story entitled "Slim State Salaries" by government reporter Jerry Spangler. The story was an analysis of salaries of state employees -- particularly in comparison with Gov. Mike Leavitt's salary. Spangler points out that 327 state employees receive a higher salary than the governor.

There are several inaccuracies in the story. Of concern to the Judiciary is the misinformation conveyed in the statement, "Any discussion of salaries begs the question of fairness. For example, is it fair that the state court administrator makes more money than any Utah judge, including all five of the Utah Supreme Court justices?"

Accompanying the news story was a chart listing 106 state employees earning more than \$100,000 in 1996. Dan Becker's salary was listed incorrectly at \$102,175.

I contacted Chuck Larsen, Assistant Director of the Department of Finance, to inquire what information was given to Spangler by his office. He informed me that Spangler had made a request several months ago for the salaries of everyone in state government earning more than the governor. In response to this request, the Department of Finance provided Spangler with the information on state employees' W-2 forms. Becker's W-2 form, under the category Medicare, Wages and Tips, reported a \$102,174.76 total, Larsen said. I informed Larsen that this figure exceeded Becker's salary which must, according to Judicial Code, be the same as district and juvenile court trial judges -- \$89,550. He examined Becker's W-2 information and determined that \$14,000 of the \$102,174.76 was a one-time allowance for relocation costs. He admitted giving Spangler wrong information and offered to clarify the information with Spangler. After consulting with Becker, I asked Larsen to phone Spangler and explain the error. I also provided Larsen with the salary levels of Utah State judges.

However, when the Deseret News correction was published, it clarified some of the misinformation but stated erroneously again that Becker earned more than any district or juvenile court judge. The clarification, which ran May 29, states, "A Deseret News story on Sunday, May 25, questioned whether it was fair that state court administrator Daniel Joseph Becker earned more money than any of Utah's Supreme Court justices. According to salary information provided by the Division of Finance, Becker earned \$102,175 in 1996, compared to justice salaries of \$90,000 to \$96,000. The Deseret News was unaware that Becker's 1996's earnings included about \$14,000 in taxable moving expenses. His actual salary is \$89,190, which is less than the Supreme Court justices but more than any district court or juvenile court judge." (The correction then continues to clarify information relating to the executive branch.)

After talking with Becker and Myron March about the Deseret News incorrect "correction," it

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was decided I should talk to Spangler and explain what the salary levels are within the Judiciary for his understanding but NOT request yet another "correction" in the newspaper. We felt it would be important for Spangler, who frequently writes articles on government salaries, to have the correct information for reference in any further articles.

When I spoke with Spangler, he apologized for the error in Becker's listed salary but insisted that Becker did earn more salary than any other district or juvenile court judge based on his W-2 information. I explained the information he received from Larsen was misleading because it included deductions, Flex Plans, etc. but that the salary or hourly wages for all trial judges is the same as Becker's. Spangler then referred to the specific YTD Medicare Wages amounts on the Judicial Branch Employees Earning Over \$80,000 list that he received from Larsen's office. This list, he said, clearly shows variance in salaries. He told me that after his story ran, he had heard from several judges who were upset by the salary information. I indicated that I wanted him to understand why there was variance in the reported W-2 incomes but that I was definitely not requesting another correction. He was cordial, but he concluded the conversation by saying he could only report on the information as it was given to him.

I have heard from four judges (who asked not to be identified) expressing concern about Spangler's story and the published "correction." They wanted to know where Spangler received his incorrect information and had questions about the privacy of W-2 forms.

Consequently, I consulted with Brent Johnson about the GRAMA requirements regarding salary information. He referred me to sections 63-2-301 and 63-2-302 which state that general gross compensation information is public but that records concerning payroll deductions are private.

Attached to this memo are copies of the May 25 news article, the May 29 correction, the GRAMA references, a copy of the Judicial Branch Employees Earning Over \$80,000 list referred to by Spangler, the Judicial Code referring to the Court Administrator's salary and an AOC Salary Schedule provided by the Human Resources Department.

I hope this background information is helpful. Please call me if I can answer any further questions. I understand the sensitivity of salary issues and am obviously interested in assisting in improving the accuracy of future news reports on the Judiciary in any way that may be appropriate. (For your information, when I receive inquiries about salaries from reporters, I refer the calls to Barbara Hanson if the questions require information beyond the uniform salary scale records. From the feedback I receive from reporters, they have always been satisfied with the salary information they obtain from the AOC.)

cc: Dan Becker, State Court Administrator

Deseret News Utah News

Slim state salaries

Last updated 05/25/1997, 12:01 a.m. MDT

Related stories:

Leavitt not extravagant — or deprived
Making more than \$100,000 in state funds in 1996

By Jerry Spangler

Deseret News staff writer

Gov. Mike Leavitt's management strategy is simple: Government should operate more like a business. A lean, cost-conscious, efficient one.

But there is one area where government is not — and probably never will be — like the private sector. From the top down, government employees typically earn less money, sometimes far less money, than their counterparts in the private sector.



In fact, 71 percent of the almost 18,000 state employees earn less than the average for someone doing the same work in the private sector. And many, if not most, of the more than 25,000 higher education employees are making less than their colleagues at other institutions.

It is a wage disparity that grows worse as unemployment in Utah goes down and competition for experienced workers drives wages ever higher. In the past two years alone, more than 2,500 state employees have left government service; there was a 7.7 percent turnover in 1996, and 6.8 percent the year before.

"That is a lot of training and experience walking out the door," said Karen Suzuki-Okabe, director of the Department of Human Resource Management. "And with the current market, that experience is not something we can replace (with entry-level employees)."

The average wage of state employees in Utah in 1996 was \$29,629, which is not that bad when compared to a state average of about \$24,200.

But they aren't good when you consider that state employees historically stay with the state longer. (Higher pay is usually a function of longevity). The state-employee average also does not include many part-time workers, unlike the state average.

The most alarming trend, officials say, is that 75 percent of state employees are professionals, such as accountants, lawyers, economists, nurses and geologists. Those are also the same trained positions now in high demand in

the private sector.

"But it's more than money," Suzuki-Okabe says. "There is a perception of heavy work loads and demand that they do more."

It is bad enough that the state must compete with the private sector, but now the state loses trained employees to counties. One state employee making \$58,000 was offered \$80,000 to work for Salt Lake County.

"We can't even compete with government," she said.

So why stay in state government service if the pay is better in the private sector, if the working conditions are better and a private employer also offers you benefits such as stock options and profit sharing? According to Leavitt, those who work for the state must share a public service vision where money is not the key motivator.

Governor perks

In the business world, the chief executive officer is typically the highest paid employee. In Utah, Leavitt, the state's chief executive officer, made \$84,415 in 1996.

Given that Leavitt also gets use of the Governor's Mansion and a state car, that's not particularly a bad wage. (See accompanying story.).

But as good as Leavitt's paycheck was, it was still less money than 327 other employees who drew their paychecks from state tax coffers in 1996.

In fact, 26 state employees and 80 university employees dipped into the public tax coffers for their paychecks to the tune of more than \$100,000 each in 1996; collectively, those 89 employees cost taxpayers more than \$12 million.

At the top of the list is former University of Utah President Arthur K. Smith, who earned \$165,743 in 1996, almost twice as much money as Leavitt, and who enjoyed many of the same housing and transportation perks. Smith left Utah last month for a higher-paying presidency at the University of Houston.

Utah State University President George Emert was the second highest paid with \$148,720, plus perks.

His 328th-place ranking notwithstanding, Leavitt does not begrudge those employees who make more money than he does. In fact, he says they could probably make far more money in the private sector, and the fact they remain in government is a testament to their public service.

"The hardest thing about being CEO of Utah is being able to compete with the private marketplace, and even county governments, for qualified people," he said. "Our salary schedule is not as competitive as it ought to be. We need to attract the best and the brightest because their service has the most profound impact. That does not need to be the highest pay, but at least we need to be competitive."

Currently, Leavitt sees a \$100,000 barrier in state government that impedes the hiring of the best and brightest. Only a handful of state government employees, most of them doctors and psychiatrists, make more than \$100,000. Substantially more university employees have broken the \$100,000 barrier.

Other states and even local governments have no qualms about breaking the \$100,000 barrier. For example, when the state was seeking a new director of the Division of Wildlife Resources, all of the out-of-state candidates were already earning more than \$100,000.

The state's top salary for that position was \$77,000. Leavitt eventually

promoted John Kimball, a long-time DWR administrator, to the post. "We simply could not compete for those out-of-state candidates," Leavitt said.

While Leavitt is unequivocally supportive of Kimball for that job, he wonders how many other qualified individuals turn their backs on state service because the pay is not even close to competitive.

"If you have children in college and you find yourself in the most expensive time of your life, you simply may not be able to afford public service," Leavitt said.

Leavitt, who is independently wealthy, can afford public service, explaining, "I made substantially more money before I was elected and I suspect there will be a day in my life where I will make more than I do now. I chose to do this because I felt I could make a contribution, and I have found it more rewarding than anything I have ever done. Little wonder that Leavitt has deliberately sought managers who share his philosophy that government service entails some financial sacrifice. "What's nice about people making more than I do is that it allows me to set a public service tone for this administration," he said.

Ivory towers

According to a Deseret News review of state employee salaries, it appears University of Utah administrators and professors have done better than their counterparts in state government and at other Utah state colleges and universities.

Of the 106 highest paid employees (those paid with state tax dollars), 57 are U. employees. In fact, 12 of the top 20 highest paid employees work there, led by Smith.

Weber State University President Paul Thompson would have made the Top 20 list, but he voluntarily took a \$15,000 pay cut because of budget shortfalls caused by falling enrollments. His current \$110,980 salary is roughly the same as for the presidents of Utah Valley State College and Salt Lake Community College; he now ranks as the 52nd highest paid.

Thirty-seven of the employees making more than \$100,000 a year are university professors, and 43 are university administrators (some deans and department heads also teach). Most of the professors are in the "hard sciences" of chemistry, mathematics, medicine and engineering.

Ironically, the highest paid "professor" at the U. was not a chemist or medical specialist. It was Steven Manaster, a business professor who earned \$130,928 last year in state funds.

The highest paid administrator, beyond the university presidents, was Walter Stevens, dean of the School of Medicine at the U., who earned \$146,797 last year. John Matsen, vice president of health sciences, was close behind at \$145,069.

That may seem like a lot of money, but acting U. President Jerilyn McIntyre says salaries for academic and administrative positions are at the lower end of the scale when compared to other research universities with which the U. competes for research dollars, students and faculty.

"We are not competitive in most fields, but we are competitive in a few," she said. "We do well in the sciences and some areas of medicine. But not in most of the disciplines."

How much university employees receive in taxpayer funds is only part of

their salary story. A significant percentage of the U.'s professors supplement their state pay with grants and other revenues that come from non-tax sources.

For example, U. basketball coach Rick Majerus earned \$295,452 in 1996, but none of it came from state funds.

Even that was a paltry amount compared to S.V. Karwande, a University Hospital heart surgeon who earned \$510,507 from outside sources. Another six employees earned more than \$400,000 each, almost all of it from non-state sources. In all, 459 U. employees earned more than \$100,000 when non-tax revenues are added in.

Also dipping into the taxpayer trough last year were a couple of familiar names. Democratic state party chairman Mike Zuhl was paid \$4,000, and prominent defense attorney Ron Yengich was paid \$2,400, both by the political science department.

Glass ceilings

Scanning the list of the 100 or so highest paid state employees, you will see a lot of individuals named Robert, John and Richard. But you won't find a lot of female names on the list.

In fact, only about 9 percent of the highest paid employees are women, the highest paid being Cecelia Foxley, commissioner of higher education with a 1996 salary of \$138,320. That was enough to rank seventh overall.

When compared to similar positions in other states, Foxley said her pay is about \$5,000 a year lower than the national average. She took a pay cut when she returned to Utah from the University of Iowa, and she added she could easily double her pay if she were willing to leave Utah.

Rebecca Dalisay, a psychiatrist with the Department of Human Services, ranked eighth overall with a salary of \$134,749. The next highest woman was McIntyre, the U. academic vice president before she took the reins when Arthur Smith resigned. She ranked 17th with a salary of \$125,870.

"It is a problem and not just a Utah problem," McIntyre said of the gender gap. "It is better than it was a generation ago, but there still aren't that many women (moving into the upper pay ranges) anywhere in the country. Traditionally, there have been more men in the sciences and engineering, and those positions tend to be better compensated."

But McIntyre added there is still a troubling lack of women in tenured faculty positions throughout the institution, and the U. has had difficulty in recruiting women into its academic ranks. The highest paid female professor is F. Marian Bishop, who teaches family and preventative medicine; she ranked 42nd with wages of \$113,720.

The U. has made a particular effort to recruit women faculty and administrators in the science fields, but those limited number of candidates are also heavily recruited by other universities that offer more than the U.

Outside of academia, women would appear to fare even worse. None of the three women state employees who made the \$100,000 club are in administrative positions; one is a doctor and two are psychiatrists, all of them with the Department of Human Services.

Leavitt says he has made a concerted effort to appoint women to Cabinet and management positions. Suzuki-Okabe is director of Human Resource Management; Dianne Nielsen is director of Environmental Quality; Raylene Ireland is director of Administrative Services, and Camille Anthony is director

of the Commission on Criminal and Juvenile Justice. Vicki Varela is Leavitt's spokeswoman and has Cabinet status in the administration.

"The governor has worked very hard to provide leadership opportunities for women and minorities, and the track record demonstrates a lot of success," Varela said.

However, all of those female appointees earn less than Leavitt's \$84,415 annual salary. (Executive director salaries are determined by the Legislature, not the governor). And none of the appointees heads major Utah departments such as transportation, public education or human services.

Foxley, who is hired by the state Board of Regents and is not part of Leavitt's Cabinet, defended the governor. "As I attend at the governor's Cabinet, I recognize Utah is very promising right now with women in very responsible positions."

But does responsibility equate to pay equity? "I think Utah women have broken the glass ceiling, but I don't know if they have broken the salary ceiling," Foxley said. "Utah salaries are low anyway, and I don't expect anyone's salary would be at the national median."

Given the increased number of women in management positions over the past decade, it is possible that women will eventually work themselves to the top of the state's pay scale over time. But the generally lower wages paid to state employees appear to be driving women employees out of government service faster than men.

Suzuki-Okabe says 54 percent of those who have left government employment in recent years were women.

Fair is as fair does

Any discussion of salaries begs the question of fairness. For example, is it fair that the state court administrator makes more money than any Utah judge, including all five of the Utah Supreme Court justices?

Is it fair that prison psychiatrist David Egli is the 67th highest paid state employee out of more than 40,000? It was, after all, Egli who was repeatedly sanctioned by state license regulators before he landed a job with the state. It is Egli who is now being blamed for authorizing the use of a restraining device that killed an inmate.

Is it fair that assistant professors (an entry-level teaching job) in some university science departments make more than double the money being paid to full professors in other departments like education and anthropology?

Suzuki-Okabi has been studying Utah's state salary structure, and she sees a problem that extends much farther than how much certain individuals are being paid. Rather, the problem lies in the basic salary philosophy where all state employees — "the stars and the slugs" — get annual cost of living adjustments.

"Money is not a great motivator," she said, "but the lack of money can be a great dissatisfier. Even more so if the slugs are getting the same pay increases you are."

Suzuki-Okabi has approached the Legislature about redirecting the money set aside for employee pay increases. Instead of cost-of-living adjustments, or COLAs, she wants the same amount of money directed at raising the average pay of that 71 percent that is now below the market average. And she wants greater flexibility in directing the money at job performance rather than

longevity.

As part of their study, the Department of Human Resource Management examines pay ranges of 133 "benchmark" positions that encompass virtually all state employees. The study looks at how much the private sector and other government entities are paying for the same job.

Even though the study identified doctors as being underpaid, the highest paid non-university state employee is a doctor. Robert D. Jones, the clinical director at the prison, earned \$147,307 in 1996. It was Jones who was criticized earlier this year for supplementing his state salary with outside contracts.

Prison psychiatrist Van O. Austin ranked as the second highest paid non-university employee with a salary of \$138,460.

Two state employees made the \$100,000 Club because they cashed out unused vacation and sick time when they retired. Former Department of Public Safety director Doug Bodrero's salary is set by the Legislature at no more than \$85,450 for 1996, but state records show he earned \$123,375. Transportation engineer Sheldon McConkie also retired, taking \$129,683 with him in 1996, making him the 14th highest paid employee.

Whether some state employees earn more than they are worth is always subject to debate. But the Human Resource Management survey did identify employees at three positions who are making substantially more than the market average. Golf professionals, psychologists and some attorneys are all being paid more than 10.5 percent above the market midpoint. None made the \$100,000 club.

The problem is not so much those employees at the upper end of the pay scale, Suzuki-Okabi said. It is adjusting the lower pay ranges to make them marginally competitive with the private sector and other governments.

"No one hires at minimum wage anymore. Not even the fast-food places. We shouldn't either," she said.

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Deseret News Utah News

Leavitt not extravagant — or deprived

Governor gets use of state cars, a separate business income and is successful at raising PAC funds.

Last updated 05/25/1997, 12:01 a.m. MDT

By Bob Bernick Jr.

Deseret News political editor

There may be 327 state employees who make more money than Gov. Mike Leavitt.

But the governor and his family aren't exactly poor. That's because along with the \$84,815 Leavitt earned in 1996, he receives a lot of perks that come with being chief executive.

Besides the salary and perks, Leavitt is also a very successful fund-raiser, raising upward of \$500,000 a year at various events. That money, contained in the governor's personal political action committee, mostly goes toward defraying a variety of political expenses, including paying for the fund-raisers themselves.

But the governor does reimburse some family travel and other personal expenses out of his PAC.

By law, Leavitt can spend his PAC money any way he wishes, including giving it to himself as long as he claims the money as income on his personal taxes.

Leavitt is careful about how that PAC money is spent, says his chief of staff, Charlie Johnson. A certified public accountant, Johnson says he helped draw up guidelines for how the PAC money would be spent when Leavitt took office in 1993 and hired him.

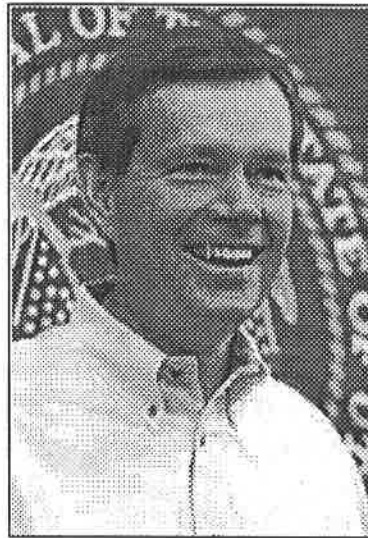
Utah law requires that only political expenditures of PACs be listed in PAC reports. Former Gov. Norm Bangerter started the practice of listing all expenditures from his PAC, political and nonpolitical.

Leavitt spokeswoman Vicki Varela said that in 1994, after filing two years of PAC reports that only listed political expenditures (a rather narrow category), Leavitt decided to list all expenditures from his PAC.

For some reason, his 1995 filing didn't include all expenditures, but his 1996 filings did. Varela, along with Leavitt's PAC accountant, Stan DeWaal, reconstructed a complete 1995 expenditure report for the Deseret News.

However, Varela says for technical accounting reasons Leavitt's staff wasn't able to reconstruct nonpolitical expenditures for 1993 and 1994.

Leavitt is known as being tight with a nickel, personally and professionally. For example, when the governor flies commercial airlines he buys a coach



ticket, but he is almost always upgraded to first class by the airline as a professional courtesy. Most often, however, Leavitt use PAC money to pay for his staff to ride first class with him. Often, they are left in the rear seats and must shuttle up to first class if he wants to talk to them during the flight.

The following is a general summary of what the governor gets in salary and perks as part of his official expenses and how he's spent some of his PAC monies over the past two years:

- ☐ Besides his \$84,815 in state salary, Leavitt also has a small yearly income from his family business. His father, former state Sen. Dixie Leavitt, and five brothers operate various businesses, the main one being an multistate insurance agency called the Leavitt Group.

Before his 1992 election, Leavitt ran the Leavitt Group. While the governor hasn't drawn a salary from the Leavitt Group since his election, he does take his one-seventh share of what Varela terms a "disbursement of profits." The governor's share is historically less than \$20,000 a year, she said.

- ☐ Leavitt gets two state cars, both leased. His security staff drives him around in a 1996 Lincoln Towne Car, and his family, his wife, Jackie, and the three children remaining at home, have use of a late-model passenger van. The cars are gassed up at the state pumps and maintained by the state.

- ☐ The governor receives a \$30,000-a-year household account. The money is used to buy food and other small household items. Sometimes the Leavitts' food is charged to a state account; sometimes it's paid out of pocket by the Leavitts and they are reimbursed.

- ☐ The Leavitts could live in the Governor's Mansion, located on South Temple street, for free. But after the mansion burned several years ago, the Leavitts moved back into their east-side home and decided to live there day-to-day, even after the mansion's restoration was finished last year.

While living in that home during the mansion's restoration, the Leavitts took a yearly housing allowance of \$16,000. That allowance was paid by the state's insurance company as compensation for the loss of the mansion. When the mansion was finished, the Leavitts gave up that yearly allowance, because it was their choice to remain in their own home.

- ☐ When the governor travels on state business, he either takes one of two state airplanes or is booked on commercial airlines in coach class. But Leavitt says he is "almost always" bumped up to first class by the airlines as a courtesy, no charge to the state. Once asked how the airlines know it is Utah's governor on the flight, Leavitt just smiled and said it's amazing to him, but they always know.

- ☐ Johnson said Leavitt doesn't usually use the PAC account for personal expenses like buying suits. Leavitt does use the account to buy a gown each year for Jackie to wear to Leavitt's main fund-raiser, the Governor's Spring Gala. However, Johnson said, Jackie Leavitt only uses PAC money to pay the

difference of what she would normally spend on an everyday dress and the gala gown.

□ Leavitt has started what he calls the "Governor's Residence Political Account." That account is fed from his PAC as needs arise. Varela and Johnson provided a summary of the residence account, which showed \$10,000 was spent in 1996.

Leavitt uses the residence account to buy small items for guests visiting the state and to pay for such things as Christmas presents for his personal staff and Cabinet members.

He used to account to pay his oldest two sons, Michael and Taylor, to take pictures of guests visiting the Leavitts and at various fund-raisers. The sons were official interns in the governor's office and as such could have been paid a small, state-financed salary. But Leavitt believed that wasn't right, so he paid the intern salaries out of his PAC, Varela said.

And the governor spent \$2,646.88 to buy an oil painting, entitled "Keeper of the Flame," that depicts his grandfather keeping a campfire going all night in a snowstorm while older brothers search for lost sheep — a favorite story of Leavitt's.

□ In addition to the Leavitt Group, the Leavitt family business owns Road Creet Ranch near Loa in central Utah and the Road Creek Inn, a bed-and-breakfast inn in Loa.

Leavitt has started holding exclusive fund-raisers at the ranch. Some of those attending paying \$10,000 a pop for several days at the ranch and inn. His 1995 and 1996 PAC filings show the ranch and inn were reimbursed for fund-raising activities held at those facilities.

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Deseret News Utah News

Making more than \$100,000 in state funds in 1996

Last updated 05/25/1997, 12:01 a.m. MDT

(Listing is by name, title, department and salary.)

1. Arthur K. Smith, former president, University of Utah, \$165,743
2. George Emert, president, Utah State University, \$148,720
3. Robert D. Jones, prison clinical director, Department of Corrections, \$147,307
4. Walter Stevens, dean of the School of Medicine, University of Utah, \$146,797
5. John M. Matsen, vice president of health sciences, University of Utah, \$145,069
6. Van O. Austin, prison psychiatrist, Department of Corrections, \$138,460
7. Cecelia Foxley, commissioner of higher education, \$138,320
8. Rebecca Dalisay, psychiatrist, Department of Human Services, \$134,749
9. Richard B. Spencer, clinical director of state hospital, Department of Human Services, \$132,024
10. Lee Teitelbaum, dean of College of Law, University of Utah, \$131,144
11. Steven Manaster, business professor, University of Utah, \$130,928
12. John K. Morris, general counsel, University of Utah, \$130,696
13. Richard Koehn, vice president for research, University of Utah, \$130,231
14. Sheldon W. McConkie, engineering manager, Department of Transportation, \$129,683
15. John Simons, chemistry professor, University of Utah, \$127,524
16. Kenneth Devries, mechanical engineering professor, University of Utah, \$126,658
17. Jerilyn Sue McIntyre, academic vice president, University of Utah, \$125,870
18. Peter Stang, chemistry professor, University of Utah, \$124,003
19. Thomas Nycum, vice president of administrative services, University of Utah, \$123,910
20. Douglas Bodrero, executive director, Department of Public Safety, \$123,375
21. John Seybolt, dean of School of Business, University of Utah, \$122,824
22. John Mauger, dean of College of Pharmacy, University of Utah, \$122,465
23. Lisa Ditlev-Aste, doctor, Department of Human Services, \$121,331
24. Richard M. Garden, assistant prison clinical director, Department of Corrections, \$121,147
25. G. Jay Gogue, provost, Utah State University, \$120,000
26. Peter Heinbecker, supervising psychiatrist, Department of Human Services, \$118,032

27. David Grant, chemistry professor, University of Utah, \$117,961
28. John Dunn, dean of College of Health, University of Utah, \$117,676
29. Theodore Capener, vice president of university relations, University of Utah, \$116,525
30. Gerald Sherratt, president, Southern Utah University, \$116,480
31. Janos Kollar, mathematics professor, University of Utah, \$116,403
32. Alexei Efros, physics professor, University of Utah, \$115,944
33. James Swenson, professor of physical and medical rehabilitation, University of Utah, \$115,720
34. Hugo Rossi, professor of mathematics, University of Utah, \$115,496
35. Anthony Wayne Morgan, vice president of budget and planning, University of Utah, \$115,308
36. David Feigal, doctor, Department of Human Services, \$115,199
37. William Kanen, civil and environmental engineering professor, University of Utah, \$115,122
38. John A. Nilsen, psychiatrist, Department of Human Services, \$114,991
39. Todd Grey, medical examiner, Department of Health, \$114,124
40. Linda Amos, dean of College of Nursing, University of Utah, \$114,120
41. Scott Bean, superintendent, Office of Education, \$114,043
42. F. Marian Bishop, family and preventative medicine professor, University of Utah, \$113,720
43. Peter Gerity, vice president of research, Utah State University, \$113,700
44. T. Benny Rushing, dean of College of Science, University of Utah, \$113,470
45. Calvin Boardman, business professor, University of Utah, \$121,862
46. Wayne F. Brown, psychiatrist, Department of Human Services, \$112,393
47. Charles Dale Poulter, chemistry professor, University of Utah, \$111,827
48. William J. Raitt, physics department chairman, Utah State University, \$111,475
49. Frank Budd, president, Salt Lake Valley Community College, \$111,280
50. A. Bruce Bishop, dean of College of Engineering, Utah State University, \$111,100
51. Ed Firmage, law professor, University of Utah, \$111,035
52. Paul Thompson, president, Weber State university, \$110,980
53. Robert Walter Schunk, director of space sciences center, Utah State University, \$110,852
54. Jon Michael Mattson, vice president of development, University of Utah, \$110,762
55. Kerry Romesburg, president, Utah Valley State College, \$110,240
56. Debra Scammon, business professor, University of Utah, \$110,146
57. Robert Roemer, mechanical engineering professor, University of Utah, \$109,410
58. James MacMahon, dean of College of Science, Utah State University, \$109,357
59. Rodney Alan Cheal, psychiatrist, Department of Human Services, \$108,080
60. Robert Gilliland, vice president of extension service, Utah State University, \$108,000
61. David Pershing, dean of College of Engineering, University of Utah, \$107,827

62. Alfredo Cervantes, psychiatrist, Department of Human Services, \$107,599
63. Ronald C. Lease, finance professor, University of Utah, \$107,545
64. H. Paul Rasmussen, director of experiment station, Utah State University, \$107,142
65. John Helfer, prison psychiatrist, Department of Corrections, \$106,756
66. Marcus Jacobson, anatomy professor, University of Utah, \$106,609
67. David Lambert Egli, prison psychiatrist, Department of Corrections, \$106,482
68. Joel Steven Miller, chemistry professor, University of Utah, \$106,460
69. Paul Fife, mathematics professor, University of Utah, \$106,399
70. Sidney Gregory Roberts, prison doctor, Department of Corrections, \$106,393
71. Martin B. Solomon, special assistant to the president, University of Utah, \$106,262
72. Thomas Parks, anatomy professor, University of Utah, 106,114
73. Vilma Fideldia Helmer, psychiatrist, Department of Human Services, \$105,837
74. Edmund Brodie, biology department chairman, Utah State University, \$105,729
75. Donna Gelfand, dean of College of Social and Behavioral Sciences, University of Utah, \$105,744
76. John Roth, biology professor, University of Utah, \$104,998
77. James Anthony Gillett, psychiatrist, Department of Human Services, \$104,680
78. Sybil R. Todd, vice president for Student Affairs, University of Utah, \$104,522
79. Samuel Shomaker, assistant anesthesiology professor, University of Utah, \$104,406
80. P. Craig Taylor, physics professor, University of Utah, \$104,361
81. Robert Keiter, law professor, University of Utah, \$104,276
82. Donald Keith Wilkerson, psychiatrist, Department of Human Services, \$103,705
83. Scott Williams, deputy director, Department of Health, \$103,670
84. William Scouten, director of biotechnology center, Utah State University, \$103,333
85. Edward A. Leis, deputy medical examiner, Department of Health, \$103,302
86. Vincent Wicknar, professor of space sciences, Utah State University, \$103,129
87. Gerald Stringfellow, math, science and engineering professor, University of Utah, \$103,019
88. Rodney J. Brown, dean of School of Agriculture, Utah State University, \$102,957
89. Sherwood Casjens, professor of oncological sciences, University of Utah, \$102,523
90. Stephen Warner, assistant vice president for health sciences development, University of Utah, \$102,469
91. Irwin Altman, psychology professor, University of Utah, \$102,442
92. Barry Cushing, accounting professor, University of Utah, \$102,090

93. Daniel Joseph Becker, state court administrator, Judicial Branch, \$102,175
 94. Martin Rechsteiner, biochemistry professor, University of Utah, \$101,762
 95. Baldomero Olivera, biology professor, University of Utah, \$101,755
 96. Lionel Frankel, law professor, University of Utah, \$101,729
 97. Paul Norton, vice president of university relations, Utah State University, \$101,700
 98. Alma Moser, associate dean of engineering, Utah State University, \$101,520
 99. Lawrence Reaveley, civil engineering professor, University of Utah, \$101,665
 100. G. Lynn Powell, medical professor, University of Utah, \$100,736
 101. Allen Simkins, vice president of administrative services, Weber State University, \$101,600
 102. Terry Alger, provost, Southern Utah University, \$101,000
 102. David Eisler, provost, Weber State University, \$101,000
 104. Joseph Lawrence Taylor, mathematics professor, University of Utah, \$100,463
 105. H. Craig Petersen, associate provost, Utah State University, \$100,440
 106. Bernard Grosser, psychiatry professor, University of Utah, \$100,434
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METRO

THURSDAY, MAY 29, 1997

Corrections, clarifications

A Deseret News story on Sunday, May 25, questioned whether it was fair that state court administrator Daniel Joseph Becker earned more money than any of Utah's Supreme Court justices. According to salary information provided by the Division of Finance, Becker earned \$102,175 in 1996, compared to justice salaries of \$90,000 to \$96,000. The Deseret News was unaware that Becker's 1996 earnings included about \$14,000 in taxable moving expenses. His actual salary is \$89,190, which is less than the Supreme Court justices but more than any district court or juvenile court judge.

The story also identified several women appointed by Leavitt to direct minor departments of Utah state government but failed to identify Robin Arnold-Williams as executive director of the Department of Human Services, one of the largest departments in state government. Robin-Williams is a key member of Leavitt's Cabinet and reports directly to the governor.

(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

(a) the record is necessary to the performance of the requesting entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(a) is entitled by law to inspect the record; or

(b) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds.

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(7) A governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the material as the originating entity.

(8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(9) The following records may not be shared under this section:

(a) records held by the State Tax Commission that pertain to any person and that are gathered under authority of Title 59, Revenue and Taxation;

(b) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and

(c) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

1992

63-2-207. Subpoenas.

(1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63-2-204.

(2) (a) In judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this act, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63-2-202(7) before ordering disclosure. Until

the court or an administrative law judge orders disclosure, these records are privileged from discovery.

(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63-2-202(7), in order to protect the privacy interests recognized in this act.

(c) This section does not otherwise limit a person's right to obtain records through the procedures set forth in this chapter, unless the court or an administrative law judge includes such a limitation in its order.

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PART 3

CLASSIFICATION

63-2-301. Records that must be disclosed.

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304(15), (16), and (17);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights or other governmental entities that give public notice of

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider; and
 (k) summary data.

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

(a) administrative staff manuals, instructions to staff, and statements of policy;
 (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access to records. 1996

63-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing;

(ii) after the meeting, if the meeting was closed to the public; and

(f) records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private

DATE: 03-20-97

EMPLOYEES PAID OVER \$80,000 IN 1996

PAGE 4

AGENCY DESC

EMPLOYEE NAME

CURR CLASS TITLE

YTD EMPLOYEE
MEDICARE WAGES

JUDICIAL BRANCH

LARRY ALLEN STEELE	JUVENILE COURT JUDGE	\$22,339.23
STEPHEN A VANDYKE	JUVENILE COURT JUDGE	\$87,742.51
DIANE W WILKINS	JUVENILE COURT JUDGE	\$86,874.23
J. MARK ANDRUS	JUVENILE COURT JUDGE	\$87,742.51
LORIN KENT BACHMAN	JUVENILE COURT JUDGE	\$86,874.23
KIMBERLY KAY ¹ HORNAK	JUVENILE COURT JUDGE	\$87,783.89
OLOF A JOHANSSON	JUVENILE COURT JUDGE	\$87,260.42
ROBERT STAFORD YEATES	JUVENILE COURT JUDGE	\$86,702.51
ANDREW A VALDEZ	JUVENILE COURT JUDGE	\$88,874.92
SHARON P MCCULLY	JUVENILE COURT JUDGE	\$87,095.05
ARTHUR G CHRISTEAN	JUVENILE COURT JUDGE	\$87,875.05
JOSEPH WALTER ANDERSON	JUVENILE COURT JUDGE	\$87,875.05
FREDERIC MOORE ODDONE	JUVENILE COURT JUDGE	\$87,875.05
JERIL BRENT WILSON	JUVENILE COURT JUDGE	\$85,535.05
KAY ALDRICH LINDSAY	JUVENILE COURT JUDGE	\$86,874.23
STERLING BAILEY SAINSBURY	JUVENILE COURT JUDGE	\$87,875.05
LESLIE DEAN BROWN	JUVENILE COURT JUDGE	\$83,842.51
CHRISTINE M DURHAM	SUPREME COURT JUSTICE	\$96,164.13
MICHAEL DAVID ZIMMERMAN	SUPREME COURT JUSTICE	\$89,649.20
I DANIEL STEWART	SUPREME COURT JUSTICE	\$92,294.13
LEONARD H RUSSON	SUPREME COURT JUSTICE	\$96,294.13
RICHARD C HOWE	SUPREME COURT JUSTICE	\$96,038.87
JAMES Z. DAVIS JR.	APPELLATE COURT JUDGE	\$91,625.02
RUSSELL W BENCH	APPELLATE COURT JUDGE	\$90,975.02
JUDITH M BILLINGS	APPELLATE COURT JUDGE	\$92,239.38
PAMELA R T GREENWOOD	APPELLATE COURT JUDGE	\$91,274.20
MICHAEL J WILKINS	APPELLATE COURT JUDGE	\$91,274.20
GREGORY KEITH ORME	APPELLATE COURT JUDGE	\$92,781.02
NORMAN H JACKSON	APPELLATE COURT JUDGE	\$91,336.55
DANIEL JOSEPH BECKER	STATE COURT ADMINISTRATOR	\$102,174.76
RONALD W GIBSON	APPELLATE COURT ADMINR	\$82,838.90
MYRON K MARCH	DEP COURT ADMINR	\$77,701.48

JUDICIAL BRANCH

BEN HUNSAKER HADFIELD	DIST COURT JUDGE	\$87,875.05
GORDON J LOW	DIST COURT JUDGE	\$87,742.51
CLINT S. JUDKINS	DIST COURT JUDGE	\$88,357.51
BURTON H HARRIS	DIST COURT JUDGE	\$85,703.89
JEFFREY R. BURBANK	JUVENILE COURT JUDGE	\$73,287.31
PAMELA G HEFFERNAN	DIST COURT JUDGE	\$87,875.05
STANTON M TAYLOR	DIST COURT JUDGE	\$86,874.23
PARLEY R BALDWIN	DIST COURT JUDGE	\$87,875.05
WILLIAM BRENT WEST	DIST COURT JUDGE	\$85,574.23
MICHAEL J GLASMAN	DIST COURT JUDGE	\$85,505.85
ROGER S DUTSON	DIST COURT JUDGE	\$86,874.23
MICHAEL D LYON	DIST COURT JUDGE	\$86,942.49
JON M MEMMOTT	DIST COURT JUDGE	\$88,374.94
MICHAEL G ALLPHIN	DIST COURT JUDGE	\$87,875.05
GLEN ROGER DAWSON	DIST COURT JUDGE	\$86,575.05
RODNEY S PAGE	DIST COURT JUDGE	\$87,389.15
K ROGER BEAN	DIST COURT JUDGE	\$88,283.78
ALFRED CLYDE VANWAGENEN	DIST COURT JUDGE	\$87,836.89
TYRONE E MEDLEY	DIST COURT JUDGE	\$87,564.39

DATE: 03-20-97

EMPLOYEES PAID OVER \$80,000 IN 1996

PAGE 3

AGENCY DESC	EMPLOYEE NAME	CURR CLASS TITLE	YTD EMPLOYEE MEDICARE WAGES
JUDICIAL BRANCH	ANNE M STIRBA	DIST COURT JUDGE	\$86,874.23
	SANDRA N PEULER	DIST COURT JUDGE	\$87,389.15
	J DENNIS FREDERICK	DIST COURT JUDGE	\$87,485.05
	KENNETH RIGTRUP	DIST COURT JUDGE	\$86,154.91
	TIMOTHY REX HANSON	DIST COURT JUDGE	\$87,346.24
	WILLIAM BRINTON BOHLING	DIST COURT JUDGE	\$86,575.05
	LESLIE A LEWIS	DIST COURT JUDGE	\$88,133.22
	HOMER F WILKINSON	DIST COURT JUDGE	\$87,519.15
	PAT B BRIAN	DIST COURT JUDGE	\$88,090.51
	FRANK GILMAN NOEL	DIST COURT JUDGE	\$87,835.51
	DAVID S YOUNG	DIST COURT JUDGE	\$86,354.23
	WILLIAM W. BARRETT	DIST COURT JUDGE	\$79,812.65
	GLENN K IWASAKI	DIST COURT JUDGE	\$87,783.89
	WILLIAM THORNE JR	DIST COURT JUDGE	\$87,875.05
	MICHAEL KUHRE BURTON	DIST COURT JUDGE	\$87,260.42
	DENNIS M FUCHS	DIST COURT JUDGE	\$87,222.51
	JUDITH S. H. ATHERTON	DIST COURT JUDGE	\$84,362.51
	SHEILA KENICE MCCLEVE	DIST COURT JUDGE	\$87,487.83
	ROBERT K HILDER	DIST COURT JUDGE	\$84,755.05
	PHILLIP K PALMER	DIST COURT JUDGE	\$87,752.77
	L. A. DEVER	DIST COURT JUDGE	\$82,092.71
	STEPHEN L HENRIOD	DIST COURT JUDGE	\$87,875.05
	ROBIN W REESE	DIST COURT JUDGE	\$87,060.16
	MICHAEL L HUTCHINGS	DIST COURT JUDGE	\$85,532.51
	ROGER A LIVINGSTON	DIST COURT JUDGE	\$87,742.51
	RONALD E NEHRING	DIST COURT JUDGE	\$87,389.15
	EDWARD A WATSON	DIST COURT JUDGE	\$87,875.05
	FRED D HOWARD	DIST COURT JUDGE	\$87,875.05
	STEVEN L HANSEN	DIST COURT JUDGE	\$87,742.51
	BOYD L PARK	DIST COURT JUDGE	\$87,133.35
	RAY M HARDING	DIST COURT JUDGE	\$86,874.23
	GUY RAWSON BURNINGHAM	DIST COURT JUDGE	\$87,355.05
	DONALD J EYRE	DIST COURT JUDGE	\$87,742.51
	RAYMOND MURRAY HARDING JR	DIST COURT JUDGE	\$87,875.05
	LYNN WILLES DAVIS	DIST COURT JUDGE	\$88,742.38
	HOWARD H MAETANI	DIST COURT JUDGE	\$87,742.51
	ANTHONY W SCHOFIELD	DIST COURT JUDGE	\$87,875.05
	JOHN CARL BACKLUND	DIST COURT JUDGE	\$86,874.23
	JOSEPH I DIMICK	DIST COURT JUDGE	\$86,874.23
	ROBERT T BRAITHWAITE	DIST COURT JUDGE	\$84,362.51
	JASPER PHILIP EVES	DIST COURT JUDGE	\$87,742.51
	JOSEPH E JACKSON	JUVENILE COURT JUDGE	\$87,875.05
	GARTH RAND BEACHAM	DIST COURT JUDGE	\$87,875.05
	JAMES LYNN SHUMATE	DIST COURT JUDGE	\$86,479.15
	HANS QUINN CHAMBERLAIN	JUVENILE COURT JUDGE	\$87,875.05
	KAY L MCIFF	DIST COURT JUDGE	\$87,809.29
	DAVID L MOWER	DIST COURT JUDGE	\$86,575.05
	LOUIS G TERVORT	JUVENILE COURT JUDGE	\$87,606.05
	BRYCE K BRYNER	DIST COURT JUDGE	\$87,006.77
	BRUCE KENNETH HALLIDAY	DIST COURT JUDGE	\$86,874.23
	SCOTT NIXON JOHANSEN	JUVENILE COURT JUDGE	\$87,751.51
	LYLE ROBERT ANDERSON	DIST COURT JUDGE	\$86,575.05
	A LYNN PAYNE	DIST COURT JUDGE	\$87,222.51
	JOHN R ANDERSON	DIST COURT JUDGE	\$87,875.05

group, task force, study group, advisory group, or other body with a defined limited membership that is created to operate for more than six months by the constitution, by statute, by judicial order, by any justice or judge, by the Judicial Council, or by the state court administrator, a district court administrator, trial court executive, or by any clerk or administrator in the judicial branch of state government.

(2) The Judicial Council shall designate a person from its staff to maintain a computerized data base containing information about all judicial boards.

(3) The person designated to maintain the data base shall ensure that the data base contains:

- (a) the name of the judicial board;
- (b) the statutory or constitutional authority for the creation of the judicial board;
- (c) the court or other judicial entity under whose jurisdiction the judicial board operates or with which the judicial board is affiliated, if any;
- (d) the name, address, gender, telephone number, and county of each person currently serving on the judicial board, along with a notation of all vacant or unfilled positions;

(e) the title of the position held by the person who appointed each member of the judicial board;

(f) the length of the term to which each member of the judicial board was appointed and the month and year that each judicial board member's term expires;

(g) the organization, interest group, profession, local government entity, or geographic area that the member of the judicial board represents, if any;

(h) whether or not the judicial board allocates state or federal funds and the amount of those funds allocated during the last fiscal year;

(i) whether the judicial board is a policy board or an advisory board;

(j) whether or not the judicial board has or exercises rulemaking authority; and

(k) any compensation and expense reimbursement that members of the executive board are authorized to receive.

(4) The person designated to maintain the data base shall:

- (a) make the information contained in the data base available to the public upon request; and
- (b) cooperate with other entities of state government to publish the data or useful summaries of the data.

(5) (a) The person designated to maintain the data bases shall prepare, publish, and distribute an annual report by April 1 of each year that includes, as of March 1 of that year:

- (i) the total number of judicial boards;
 - (ii) the name of each of those judicial boards and the court, council, administrator, executive, or clerk under whose jurisdiction the executive board operates or with which the judicial board is affiliated, if any;
 - (iii) for each court, council, administrator, executive, or clerk, the total number of judicial boards under the jurisdiction of or affiliated with that court, council, administrator, executive, or clerk;
 - (iv) the total number of members for each of those judicial boards;
 - (v) whether each board is a policymaking board or an advisory board and the total number of policy boards and the total number of advisory boards; and
 - (vi) the compensation, if any, paid to the members of each of those judicial boards.
- (b) The person designated to maintain the data bases shall distribute copies of the report to:
- (i) the chief justice of the Utah Supreme Court;
 - (ii) the state court administrator;

(iii) the governor;

(iv) the president of the Utah Senate;

(v) the speaker of the Utah House;

(vi) the Office of Legislative Research and General Counsel; and

(vii) any other persons who request a copy of the annual report.

1993

78-3-22. Presiding officer — Compensation — Duties.

(1) The chief justice of the Supreme Court shall serve as the presiding officer of the Judicial Council. The presiding officer shall receive as additional compensation the sum of \$1,000 per annum or fraction thereof for the period served.

(2) The presiding officer of the Judicial Council shall supervise the courts to ensure uniform adherence to law and to the rules and forms adopted by the council and to promote the proper and efficient functioning of the courts. The presiding officer of the council may issue orders as necessary to assure compliance with uniform administrative practices.

1993

78-3-23. Administrator of the courts — Appointment — Qualifications — Salary.

The Supreme Court shall appoint a chief administrative officer of the council who shall have the title of the administrator of the courts and shall serve at the pleasure of the council and/or the Supreme Court. The administrator shall be selected on the basis of professional ability and experience in the field of public administration and shall possess an understanding of court procedures as well as of the nature and significance of other court services. He shall devote his full time and attention to the duties of his office, and shall receive a salary equal to that of a district judge.

1973

78-3-24. Court administrator — Powers, duties, and responsibilities.

Under the general supervision of the presiding officer of the Judicial Council, and within the policies established by the council, the administrator shall:

- (1) organize and administer all of the nonjudicial activities of the courts;
- (2) assign, supervise, and direct the work of the nonjudicial officers of the courts;
- (3) implement the standards, policies, and rules established by the council;
- (4) formulate and administer a system of personnel administration, including in-service training programs;
- (5) prepare and administer the state judicial budget, fiscal, accounting, and procurement activities for the operation of the courts of record, and assist justices' courts in their budgetary, fiscal, and accounting procedures;
- (6) conduct studies of the business of the courts, including the preparation of recommendations and reports relating to them;
- (7) develop uniform procedures for the management of court business, including the management of court calendars;
- (8) maintain liaison with the governmental and other public and private groups having an interest in the administration of the courts;
- (9) establish uniform policy concerning vacations and sick leave for judges and nonjudicial officers of the courts;
- (10) establish uniform hours for court sessions throughout the state and may, with the consent of the presiding officer of the Judicial Council, call and appoint justices or judges of courts of record to serve temporarily as Court of Appeals, district court, or juvenile court judges and set reasonable compensation for their services;
- (11) when necessary for administrative reasons, change the county for trial of any case if no party to the litigation files timely objections to this change;

AOC Salary Schedule
Effective 7/96

Job Code	Job Title		Hourly	Annual
10857	Juvenile Court Judge	JJ		\$89,550
10861	Supreme Court Justice	SJ		\$98,500
10851	Appellate Court Judge	AJ		\$94,050
10855	District Court Judge	DJ		\$89,550
10539	Court Commissioner	CC	\$37.95	
10525	State Court Administrator	CA		\$89,550

AOC Salary Schedule
Effective 7/97

10857	Juvenile Court Judge	JJ		\$90,450
10861	Supreme Court Justice	SJ		\$99,500
10851	Appellate Court Judge	AJ		\$94,950
10855	District Court Judge	DJ		\$90,450
10539	Court Commissioner	CC	\$38.96	
10525	State Court Administrator	CA		\$90,450

Note: Presiding Judges - \$1,000/year additional
Chief Justice - \$2,000/year additional

JUN 18 1997

Second District Court

Chambers of
Judge Michael D. Lyon

June 13, 1997

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

Re: Appointment of Scott M. Hadley, Commissioner for the Second District Court

Dear Chief Justice Zimmerman:

The judges of the Second District Court have selected Scott M. Hadley 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. Further, I am requesting that your committee recommend to the Judicial Council that it concur in this selection in the next Judicial Council meeting on July 2, 1997.

Thank you.

Sincerely,



Michael D. Lyon
Presiding Judge

cc: Mr. Daniel J. Becker

Third District Juvenile Court

Judge Arthur G. Christean
Judge Kimberly K. Hornak
Judge Olof A. Johansson
Judge Franklyn B. Matheson
Judge Sharon P. McCully
Judge Frederic M. Oddone
Judge Andrew A. Valdez



Richard W. Birrell
Court Commissioner

Roy W. Whitehouse
Court Executive

MEMORANDUM

TO: Holly Bullen
FROM: Don Leither
DATE: June 6, 1997
RE: Grant Contract with South Salt Lake

Per our recent discussion, please see attached memo to the Utah Board of Juvenile Justice affirming our conditional willingness to participate with South Salt Lake Police Department in their Reduction of Truancy Project. This is a one year project that does not require any financial match. The city of South Salt Lake would be the recipient of the grant if awarded. The court would then enter into a contract with South Salt Lake for the services as identified in the grant application. This would include a half time probation officer to work with, and coordinate services for, truants who are taken into custody by law enforcement.

If additional information is needed, or if I can be of any further assistance in this matter, please give me a call. I appreciate your support and efforts in this regard.

*No subsequent funding will be requested for
program continuation —
per discussion with Don Leither 6-6-97*

*Holly M.
Bullen*

Third District Juvenile Court

Judge Arthur G. Christean
Judge Kimberly K. Hornak
Judge Olof A. Johansson
Judge Franklyn B. Matheson
Judge Sharon P. McCully
Judge Frederic M. Oddone
Judge Andrew A. Valdez



Richard W. Birrell
Court Commissioner

Roy W. Whitehouse
Court Executive

To: Utah Board of Juvenile Justice

From: Third District Juvenile Court

RE: Reduction of Truancy Project

Date: June 5, 1997


We hereby commit to providing the following services or referrals to further the objective of the Reduction of Truancy project:

1. Will provide coordination, linkage, and support on truants that are brought to the Juvenile Receiving Center. This will include meeting with the minor and parent and providing services to "connect" and support/reinforce the referral to intervention services.
2. Will conduct Juvenile Information Services record checks and coordinate response and intervention efforts between law enforcement, service providers, and the court for those minors who either have a matter pending before the Juvenile Court or are under the continuing jurisdiction of the Juvenile Court.
3. Will participate with law enforcement and service providers in developing and presenting information and education/awareness programs for first time at risk offenders.
4. Will participate on an oversight/management board to effectively implement and monitor the Reduction of Truancy project.
5. Will dedicate one half time juvenile probation officer to the project to be on sight at the Juvenile Receiving Center.

A handwritten signature in black ink, appearing to read "Don Leither".

Don Leither
Chief of Intake

MEMORANDUM

To: Management Committee
From: Timothy M. Shea 
Date: June 9, 1997
Re: Change to Judicial Application Form

The Nominating Commission for the Third Judicial District recommends the indicated change to the attached excerpt of the judicial application form. Past changes to the form have been approved by Management Committee and placed on the consent calendar of the Judicial Council.

Street Address

City, State, Zip

Dates

8. Date of Birth: _____

9. Are you currently admitted to practice law in Utah? _____

II. EDUCATION

10. Show all post high school education other than law school.

School Name
and Location

Dates of
Attendance

Major

Degree
Awarded

11. (A) Show all law schools you have attended.

School Name
and Location

Dates of
Attendance

Degree
Awarded

(B) Please list ~~[the continuing law related or judicial education courses you have completed during]~~ for the last five years any years in which you did not obtain the mandatory minimum of continuing legal education or judicial education credit hours.

12. Indicate any academic distinctions you received.