

**JUDICIAL COUNCIL
AGENDA**

Monday
October 27, 1997
9:00 a.m. -

Second Judicial District Courthouse
Courtroom 3B
2525 Grant Avenue
Ogden, Utah

<u>Item:</u>	<u>Time:</u>	<u>Subject:</u>	<u>Presenter:</u>
1.	8:30 a.m.	Continental Breakfast	
2.	9:00 a.m.	Welcome/Approval of Minutes August 20, 21 & 22, 1997 September 9, 1997 (Tab 1 - action)	Chief Justice Zimmerman
3.	9:15 a.m.	Report from Chair	Chief Justice Zimmerman
4.	9:30 a.m.	State Court Administrator's Report	Daniel J. Becker
5.	9:45 a.m.	Judicial Council Sub-Committee Reports (Tab 2)	Hon. Pamela T. Greenwood Management Committee Hon. Michael K. Burton Policy and Planning Richard Schwermer Liaison Committee
6.	10:05 a.m.	Senior Judge Retirement Issues	Gordon Bissegger (Information)
7.	10:25 a.m.	Funding for Collection of Accounts	Timothy Shea Receivable (Tab 3)
8.	10:45 a.m.	Judicial Evaluation & Performance	Dale Kimball Committee Update (Information) (Tab 4)

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| 9. | 11:10 a.m. | Third District Drug Court Update | Hon. Dennis Fuchs |
| 10. | 11:30 a.m. | Justice Court Task Force Update
(Tab 5) | Hon. Anthony W. Schofield |
| 11. | 12:00 p.m. | Taylorsville Application for New
Justice Court
(Tab 6) | Richard H. Schwermer |
| 12. | 12:15 p.m. | Request for FY98 Supplementals
(Tab 7) | Fred Jayne |
| 13. | 12:30 p.m. | Lunch | |
| 14. | 1:30 p.m. | Tour of Facility and Dedication | |

Information

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| 15. | News Articles
(Tab 8) |
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Consent Calendar (Tab 9)

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.

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| 1. | Appointment of Pete Haun, Director of Corrections, to Task Force
on Racial & Ethnic Fairness | Jennifer Yim |
| 2. | Request to make Beaver County a Primary Site
of the District Court | Daniel J. Becker |
| 3. | Request for Grant Funding for a
Passenger Van for Provo Juvenile Court | Holly M. Bullen |
| 4. | Application for Recertification for
Active Senior Judge Status - Hon. John A. Rokich | Holly M. Bullen |
| 5. | Application for Certification of Active
Senior Judge Status - Hon. Philip K. Palmer & Hon. Albert A. Mitchell | Holly M. Bullen |
| 6. | Application for Certification of Senior Justice Court Judges | Richard H. Schwermer |

Hon. Paul Thompson & Hon. Wayne Dimmick

7. Application for Certification of Justice Court Judges Richard H. Schwermer
Donald Sawaya & Clinton Balmforth

Next Judicial Council Meeting

November 24, 1997
Administrative Office of the Courts

**JUDICIAL COUNCIL
MINUTES**

August 20 & 21
1997

Council Planning Session

Homestead
Midway, Utah

Chief Justice Michael D. Zimmerman, Presiding

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Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
Holly M. Bullen
D. Mark Jones
Richard H. Schwermer
Eric Leeson
Fred Jayne
Timothy Shea
Marilyn Branch
Jan Thompson
John McNamara
Gordon Bissegger
Mark Tronrud
Rolen Yoshinaga
Cindy Williamson

Members Excused:

Hon. Jerald Jensen
Hon. Kent Nielsen (8/20/97)

Guests Present:

Pat Ogden, Manager Office of Planning and Budget
William Dinehart, Legislative Fiscal Analyst
David Walsh, Director of Programming and Budget
Hon. Ronald Nehring
Hon. Regnal Garff
Hon. Michael Wilkins
Hon. Hans Q. Chamberlain
Dale Kimball, Esq.
Dale Sessions, Esq.

Welcome:

Chief Justice Zimmerman welcomed guests, members and staff to the meeting. Next, Chief Justice Zimmerman acknowledged Mr. Pat Ogden, Office of Planning and Budget Manager.

Overview of Planning Session:

Dan Becker indicated that the Planning Session would begin with a visual presentation on trends and projections on caseloads. Following the presentation, there will be a discussion on court dockets with a focus on those districts which have requested new judgeships. Afterward, there will be a check and balance on perception versus reality. Finally, a review on fiscal trends, growth and the impact of budget decisions.

Budget presentations will be given by board/committee chairs and by staff. Representatives have been requested to prepare their building block requests incrementally. The purpose of the presentation is to learn more about the particular request, and the consequences if approved or, if not approved. Thereafter, the merits of all requests will be debated and voted on by Council members.

In addition, Dan Becker indicated he has prepared recommendations to the Council taking into account an overall view of the court system and the Governor's budget guidelines of a 2 % increase limitation from last year's budget.

Executive Branch Remarks - Pat Ogden, Manager of the Office of Planning & Budget:

Mr. Ogden has been with the Office of Planning and Budget for approximately 13 years. Mr. Ogden extended the apologies of Mr. Bob Gross, Lynn Koga, David Walsh and William

Dinehart for not being in attendance today.

Next, Mr. Ogden stated that the Governor's Office is very appreciative of the Judiciary's efforts in budget planning. The Judiciary brings a credibility to its requests and also to the Governor's recommendations. The Governor has requested that agencies submit budget requests in an amount not to exceed the guideline cap of 2%. This enforces the Governor's suggestion that all budget requests should not exceed unrealistic expectations. However, this year for the first time, there has been additional flexibility built into the guidelines. There are customized guidelines for each entity and areas have been identified which are exempt from the 2% cap. The Governor's Office has also requested that agencies locate funds from within their own budget to match their requests. Agencies have been asked to look at new ways to offset their expenditures by assessing what can be accomplished with their present budget allocations.

Workload/Demographic Trends:

Eric Leeson reported on the following items: a) FY97 caseload filings; b) advance caseload measures; c) clearance rates; d) pending caseloads; e) the age of cases at disposition; and f) future projections.

Mr. Leeson indicated that he based his research on population increases and/or decreases. In Utah, the net migration has decreased and has affected case filings within the court system. However, future projections show that criminal filings will increase approximately 11.7% by the year 2000, and that civil case filings will increase by 8.3% which is an overall increase of 9.3%. The average annual growth is expected to be 3.1%.

A sample of Mr. Leeson's presentations indicates the following:

District Court Case Filings for 96-97, % change:	-5.36%
Juvenile Court Referrals for 96-97, % change:	-2.69%
Justice Court Filings for 96-97, % change:	-5.48 %
State Court <u>total</u> Filings for 96-97, % change:	- 4.96%

District Court Civil Clearance Rates:

Third District for 1995:	103%
Third District for 1996:	95%
Third District for 1997:	100%

State Civil Clearance Rates without Third District:

State 1995:	101%
State 1996:	97%
State 1997:	89%

The Juvenile Court referrals per judge were reviewed exclusively for the Second and

Seventh Districts. The Second Judicial District shows a slight increase when compared with the Seventh District which is experiencing a decrease in total referrals per judge. By the year 2000, Mr. Leeson is predicting a 2% decrease in Juvenile Court referrals.

Fiscal Data and Trends:

Dan Becker reviewed budget increases for the system from 1993 to 1998. The total court budget has grown from \$53,426,000 in FY93 to \$81,006,900 in FY98 (51.6%). During this same five year period, the state budget grew from \$3,966,733,100 to \$5,656,519,350 (42.6%). The percentage of the state budget received by the Judicial Council was 1.35% in FY92 and 1.34% in FY97. However, in FY98, the Judicial Council budget jumped to 1.43% of the state budget.

Discussion/Consideration of the District Court Board Request:

Judge Ronald Nehring was present on behalf of the Board of District Court Judges. Judge Nehring indicated that core functions are at the heart of the Board of District Court Judges' request.

Next, Judge Nehring emphasized the longstanding view that the Third Judicial District Court is in need of judicial assistance. Third District Court judges have approximately 1000 more cases than district judges elsewhere in the state. The quality of service to the citizens of Utah will inevitably be compromised if the workload continues to increase per judge. Until a judicial position was created last year, the last new judicial position created within the Third District was in 1984.

The request from the Board of District Court Judges include the following and totals \$834,350.

- 1st priority - Third Judicial District Judge & Law Clerk
- 2nd priority - Six Law Clerks
- 3rd priority - A second judge for the Third Judicial District

State Court Administrator's recommendation: \$535,925.

Discussion/Consideration of the Request from Education Committee:

Hon. Regnal Garff, Chair of the Education Committee, was present to make requests on behalf of the Committee. Since Dr. Diane Cowdrey has been Director of the Education Dept. Judge Garff stated that the department has had a more global approach to the education of the judiciary and staff. The professional competence of judges and staff has improved. There is more uniformity and implementation of policies and procedures of the Judicial Council. The department's leadership has improved the administration of justice and enhanced confidence in

the system.

Even though many benefits have been realized, the budget from 1992-1996 remained constant. However, in 1997 the education budget was reduced by several thousand dollars. The reduction was made in spite of increased numbers in judges and staff. Education efforts were only maintained through the momentum of previous programming and the creative ideas of Dan Becker.

The request from the Education Committee includes a building block request of \$84,425 for increased operating funds to provide in-state and out-of-state programs for judges and staff.

State Court Administrator's recommendation - \$33,275.

Discussion/Consideration of the Law Library Request:

Marilyn Branch, Appellate Court Administrator, was present and requested that the Judicial Council allocate funds to the law library in the new Scott M. Matheson Courthouse. The relocation of the State Law Library from the Capitol to the more centrally located Matheson Courthouse will result in greatly increased use of the library facility necessitating the addition of two new FTE's to the library staff.

The request is for funding for new staff which totals \$67,200.

State Court Administrator's recommendation - no general fund appropriation.

Discussion/Consideration of the Base Budget Request:

Myron K. March, Deputy State Court Administrator, was present and requested that the base budget be increased incrementally to cover costs of such items as: a) general operations; b) the contract increases; and c) motor pool.

The request from Mr. March for the base budget totals \$438,500.

State Court Administrator's recommendation - \$300,000.

Discussion/Consideration of the Technology Committee Request:

Hon. Michael Wilkins, Chair of the Technology Committee, along with Rolen Yoshinaga, Director of Data Processing, were present on behalf of the committee.

The 1997 Legislature reduced the Data Processing base capital budget by \$462,100. A total of \$300,000 was restored as a non-lapsing one-time supplemental. The ongoing impact of the base reduction has resulted in many projects either being terminated or suspended. Judge

Wilkins stressed that Council members recognize that programs and services slated for reduction or deletion are those that have been committed to by the judiciary.

The request from the Technology Committee totals - \$400,000.

State Court Administrator's recommendation - \$245,450.

Discussion/Consideration of the Request from the Board of Justice Court Judges:

Hon. John Sandberg reported on behalf of Judge Stan Truman and the Justice Court Board. Judge Sandberg requested funding in the amount of \$33,900 for a legal institute for non-law trained judges.

State Court Administrator's recommendation: no general fund appropriation

Discussion/Consideration of the Request from the Security Committee:

Myron K. March reported on behalf of the Security Task Force Committee. Mr. March indicated that the final report of the task force has been presented to the Judicial Council. The report recommended that the current system be maintained with additional bailiff services, that some improvement for perimeter security be provided, and that funding for juvenile court security be absorbed.

In reviewing recommendations of the task force and considering current budget needs that are not being meant, additional funds are required. Mr. March requested that the Council allocate additional funding for security in the amount of \$725,000.

State Court Administrator's recommendation: \$303,000 (included in exemption proposal)

Discussion/Consideration of the Request from the Court Reporter Technology Committee:

S.B. 155, Court Reporter Amendments, were passed by the 1997 Legislature. Although, the bill becomes effective January 1, 1998, and establishes a general fund restricted account to fund court reporter technology, no appropriation was made. In order for the Court Reporter Technology Legislation and concomitant rules to be fully implemented, it is necessary to receive an appropriation of \$150,000 from the General Fund Restricted Account.

Discussion/Consideration for Grand Jury Prosecution:

Pursuant to statute, the Grand Jury meets three times a year in various areas of the state. In order to abide by statute, a request for \$6,000 was made to ensure that the Grand Jury continues to meet in various areas of the state. The \$6,000 covers the cost of travel.

Discussion/Consideration of Request for Funds for Court Services Specialist:

The Court Services Program was established a year ago. Holly M. Bullen, Assistant Court Administrator, administers the program which consists of four individuals. This service has provided an invaluable aid to the court system and Ms. Bullen requested funding in the amount of \$46,200 for an additional FTE.

State Court Administrator's recommendation: office reorganization

Discussion/Consideration of a Request for Judicial Salary Adjustments:

The Citizen Committee on Judicial Compensation was established by the Utah Judicial Council in 1985 to assist the Council with its responsibility for consultation with the Executive and Judicial Compensation Commission regarding salary levels for the Utah State Judiciary. The committee met recently and recommends that judicial salaries be increased by 2.4%.

State Court Administrator's recommendation: n/a

Discussion/Consideration of a Request for Extended Senior Judge Retirement Benefits:

In November of 1995, the Board of Senior Judges requested that the Policy and Planning Committee consider improving the health and life insurance benefits of retired judges. During 1996, the Policy and Planning Committee discussed the issue on several occasions and decided that additional review was needed before a recommendation or findings could be made to the Judicial Council. The Policy and Planning Committee authorized an actuarial study that would establish a definitive cost impact for benefit improvements. The recommendation of the actuarial study is to extend benefits for a period of three years to judges who currently benefit under Rule 3-501. The cost is estimated at \$88,200.

Dan Becker indicated that he has no recommendation on this issue because the Judicial Council has not dealt with the policy issue. The matter will be addressed tomorrow in its entirety.

Discussion/Consideration of the Request from the Board of Juvenile Court Judges:

Hon. Hans Q. Chamberlain and John McNamara were present to make budgetary requests on behalf of the Board of Juvenile Court Judges. The Board of Juvenile Court Judges requested two judges; one in the Second Judicial District and one in the Seventh Judicial District. In addition, the Board requested funding for a juvenile drug court. The total request of the Board is \$531,100.

State Court Administrator's recommendation: \$216,050

Discussion/Consideration of the Request from the Facilities Committee:

Hon. Hans Q. Chamberlain and Gordon Bissegger presented an overview of facilities statewide and also presented the budget requests of the Facilities Committee which totaled \$6,548,900. The objective of the request is to obtain funding for additional lease expense, O&M increases and building security.

Guardian ad Litem Department:

Dale Sessions was present on behalf of Kristin Brewer and the Guardian ad litem program. Mr. Sessions indicated that resources are very limited and rural areas have even fewer resources. Ms. Brewer, Guardian ad Litem Director, is committed to finding alternative sources of funding. However, at times that is extraordinarily difficult.

Mr. Sessions requested \$330,000 for the Guardian ad Litem Department. The focus of the budget request for FY99 is the rural areas.

State Court Administrator's recommendation: \$108,100

Discussion/Consideration of Supplemental Requests:

Fred Jayne requested funding for supplemental requests for document imaging up-grade and CD Rom writer in the amount of \$25,000 (which is general fund restricted). Next, Mr. Jayne requested \$350,000 to supplement the Juror/Witness/Interpreter Program; \$234,000 for lease contracts; and \$75,000 for court reporter technology.

Mr. Jayne stressed that these requests for supplemental funding do not compete with other requests for funding.

Adjourn:

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

August 21, 1997

Welcome:

Judge Greenwood welcomed guests, members and staff to the meeting

Analysis, Discussion, and Prioritization:

Dan Becker presented his recommendations to members of the Judicial Council, and also encouraged members to take into account the Governor's Guidelines. In addition, Mr. Becker focused on perspectives which were not discussed yesterday. These items were not identified by any board or committee chair.

The first request of Mr. Becker is for a reserve fund for clerks' offices in the amount of \$100,000. This fund would be used to pay for temporary assistance for clerks' offices when the need arises. Holly M. Bullen would be the administrator of the fund and be authorized to allow use of these monies.

The second proposal is for funding of an automation re-engineering effort within the Juvenile Court. The present Juvenile Court system has served the system for years. However, it is now at a point where serious considerations ought to be given to its usefulness. The system is very difficult and expensive to maintain. Mr. Becker suggested that grant funding be applied for to initiate this effort and that savings be utilized to maintain the new system.

Motion:

A motion was made by Judge Jackson that the Judicial Council authorize staff in the Administrative Office to proceed with an application for grant funding, and to also establish a process to evaluate and make a recommendation to the Council for the establishment of an information system for the Juvenile Court. The motion was seconded by Mr. Jenkins and carried unanimously.

Next, Mr. Becker addressed the issue of delay reduction and case management. There are two ways in which to deal with issues in the court system, i.e., one is to seek additional resources and the other is to review how the system does business. Mr. Becker would like to provide a focus on case management over the next several years. A proposal was made to hire an expert in the area of case management to assist with setting up the program. This position would be temporary and obtained through grant funding.

Motion:

A motion was made by Judge Stirba to seek grant funding consistent with Mr. Becker's proposal to hire an expert in case management for a period of two years. The motion included

that the expert would work with judges, court executives and clerks to accomplish the goal of successful case management. The motion was seconded by Judge Greenwood and carried unanimously.

Lastly, Mr. Becker proposed a Community Dispute Settlement Center Pilot Program. Mr. Becker suggested that minor neighborhood disputes may lend themselves to mediation within the community. This program would involve a grant and seek participation of those in the neighborhoods. It is envisioned that this type of program would be more successful in larger communities.

Motion:

A motion was made by James Jenkins to refer the proposal of a Community Dispute Settlement Center to the Alternative Dispute & Resolution Committee for review and recommendations to the Policy and Planning Committee for recommendations back to the Judicial Council. The motion was seconded by Judge Page and carried with one opposing vote.

Council Discussion on Proposals and Prioritization:

Members of the Judicial Council proceeded to engage in a lengthy discussion about the merits of the requests from staff, board and committee chairs.

Discussion/Consideration of Request for Capital Projects:

Hon. Hans Q. Chamberlain and Gordon Bissegger recommended that the Council consider setting the following priorities with respect to capital projects: a) Vernal programming; b) Fourth Judicial District land purchase; and c) Summit County Courthouse Project.

Vernal is a number one priority as far as programming is concerned. Many available sites have been reviewed and the most preferable site is three miles east of Vernal. The total square footage of the Vernal facility is estimated at 36,000 square feet. The current lease between the state and county is \$48,000. In the future, the \$48,000 could be applied toward the O&M costs. This project has the full support of local legislators.

The recommendation from the committee studying the Fourth Judicial District land purchase is to purchase the land and use it for surface parking rather than tiered parking.

Mr. Bissegger explained that the proposed site for the new courthouse in Summit County would be next to the county jail which is not within the city limits of the county seat. The Facilities Committee has recommended that this issue be the subject of further study.

Motion:

A motion was made by Judge Schofield that the Council refer further study of facility location in Summit County to the Facilities Committee. The motion was seconded by Mr. Jenkins. The motion carried unanimously.

Motion:

A motion was made by Judge Jackson to approve all capital facilities projects i.e., Provo land acquisition, the study on the Summit County facility and the Vernal planning process. The motion was seconded by Judge Van Dyke and carried unanimously.

Proposed Legislation for the 1998 Legislative Session:

Tim Shea presented a summary of proposed Legislation.

77-27-13 - Board of Pardons and Parole - Duties of the judiciary, the Department of Corrections, and law enforcement - Removal of material from files.

Motion:

A motion was made by Judge Jackson to adopt the changes to 77-27-13 as proposed by Mr. Shea. The motion was seconded and carried unanimously.

12-1-8 - Designating and limiting activities as to assignments.

Motion:

A motion was made by Judge Greenwood that the legislation be approved as amended. The motion was seconded by Judge Jackson and carried unanimously.

20A-7-702 - Voter information pamphlet - Form - Contents - Distribution. This rule repeals the provision in the rule that survey scores are published in 5% increments and provides for reporting in actual increments.

Motion:

A motion was made by Judge Schofield that the Council accept this legislation and publish actual scores. The motion was seconded by Judge Jackson and carried with 9 in favor and 3 opposed.

Mr. Shea reported that another recommendation from the Performance Evaluation Committee was to eliminate the private sanctions section.

Motion:

A motion was made by Judge Greenwood that legislation eliminating private sanctions section be endorsed. The motion was seconded by Mr. Jenkins and carried unanimously.

21-1-5 (2)(ii)- Civil fees of the courts of record - Courts complex design.

After June 30, 1998, the administrator of the courts shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture paid.

Motion:

A motion was made by Mr. Jenkins that the Judicial Council permit the change in the rule to allow a \$7 transfer rather than \$2 transfer to the Division of Finance. The motion was seconded by Judge Stirba and carried unanimously.

77-31-1.1. Procedure for determination of indigency -- Standards.

This legislation permits the use of new forms for verification of indigency which could be verified by a notary or other person authorized by law to administer an oath.

Motion:

A motion was made by Mr. Jenkins to accept the procedure for determination of indigency legislation. The motion was seconded by Judge Greenwood and carried unanimously.

78-3-29. Presiding judge - Election - Term - Compensation - Powers Duties.

This legislation eliminates wording that indicates that the presiding judge of a district shall act in that capacity for a term of not fewer than two years.

Motion:

A motion was made by Judge Van Dyke to accept the changes in 78-3-29. The motion was seconded and carried unanimously.

78-3a-115. Hearings - Public excluded, exceptions - Victims admitted - Minor's cases heard separately from adult cases - Minor or parents or custodian heard separately - Continuance of hearing - Consolidation of proceedings involving more than one minor.

Legislation in this section adds misdemeanor language as provided in Section 77-38-5.

Motion:

A motion was made by Mr. Jenkins to accept the additional reference to misdemeanors in this section. The motion was seconded by Judge Jackson and carried unanimously.

78-3a-313. Periodic review hearings -- Foster care citizen review boards.

The following language has been added to this rule: The report by a board, if determined to be an ex parte communication with a judge, shall be deemed a communication authorized by law.

Motion:

A motion was made by Judge Jackson to accept the changes to this section. The motion was seconded by Judge Greenwood and carried unanimously.

63A-8-201. Office of State Debt Collection created - Duties.

This rule allows for the collection and transfer of court created fines and debts to be collected by the Office of State Debt Collection.

Motion:

A motion was made by Mr. Jenkins to approve the amendments in this section. The motion was seconded by Judge Stirba and carried with one opposing vote.

Motion:

A general motion was made by Judge Stirba that the Judicial Council approval non-substantive legislative changes. The motion was seconded by Justice Russon and carried unanimously.

Prioritization Vote:

The Judicial Council, by individual vote, prioritized the requests from the various boards and committees.

The final prioritization by the Judicial Council is as follows:

1.	3rd District Court Judge	239,050
2.	Law Clerks (296,875
3.	Computer Network	245,450
4.	Base Budget (all levels)	300,000
4.	2nd District Court Judge	216,050
6.	Legal Institute (Justice Courts)	33,900
7.	Operating funds (Education)	33,275
8.	GAL Operations	55,000
9.	Clerical Reserve (all levels)	100,000
10.	Computer Network	<u>19,200</u>
TOTAL		1,538,800

Motion:

A motion was made by Judge Braithwaite to adopt the budget prioritizations of the Council. The motion was seconded by Judge Van Dyke. The motion carried unanimously.

Adjourn:

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

**JUDICIAL COUNCIL
MINUTES**

August 22, 1997

**Homestead
Midway, Utah**

Chief Justice Michael D. Zimmerman, Presiding

Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
D. Mark Jones
Richard H. Schwermer
Timothy Shea
Jan Thompson
Peggy Gentles
Cindy Williamson
Brent Johnson

Members Excused:

Hon. Jerald Jensen

Welcome - Approval of Minutes:

Chief Justice Zimmerman welcomed members and staff to the meeting.

The minutes of July 2, 1997, were reviewed and amended. Page two, seventh paragraph, will read as follows: There are ongoing discussions which address the Judicial Nominating Commission processes.

Motion:

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

Report from Chair:

Chief Justice Zimmerman reported that efforts are still underway to modify the rules governing the voting process of the Judicial Nominating Commission. Currently, a candidate is required to receive six out of seven votes to make it out of commission. The voting is accomplished in rounds and if there is a tie, both names are sent to the Governor. Additionally, the Governor has requested that the Commission follow a uniform policy of sending five names to him for his consideration and give him the option to reject the list and start over.

Recently, Chief Justice Zimmerman and Camille Anthony, Director of the Commission on Criminal and Juvenile Justice, have discussed the structure and focus of the Juvenile Justice Task Force. There is the sense that the structure needs to be more formal. In conjunction with this conversation, Chief Justice Zimmerman, Hon. Pamela T. Greenwood, Hon. Kay A. Lindsay, and Dan Becker will meet to discuss the position of the Juvenile Court.

Court Administrator's Report:

Dan Becker reported that Judge Roger Bean has announced his retirement which will be effective December 31, 1997. Also, Charles Behrens has been appointed as a new juvenile court judge in the Third District, and Anthony Quinn has been appointed as a new district court judge in the Third District. Mr. Behren's swearing-in is scheduled for September 5, 1997. Mr. Quinn's swearing-in date has yet to be set.

Margaret Satterthwaite, Second District Court Executive, has announced her retirement effective November 1, 1997. Dan Becker, Mark Jones and Judge Michael Lyon will meet on Monday, September 8, 1997, to discuss the vacancy within the Second Judicial District.

Judicial Council Sub-Committee Reports:

Management Committee Report:

Judge Greenwood reported that during the Management Committee meeting on August 11, 1997, the following items were reviewed: a) status of the 1997 audit plan; b) approval of the appointment of a juvenile court probation officer to the Court Interpreter Advisory Panel; c) training for those individuals who would like approval to carry a firearm, pursuant to SB 132; and d) the fact that an issue with traffic schools has been referred to CCJJ.

Policy and Planning Committee Report:

Judge Burton stated that one item discussed during the last Policy and Planning Committee meeting was Rule 3-201(7). This rule indicates that the Council should look to "non-judicial officers" rather than "judges" when setting commissioner salaries. Judge Burton asked whether or not Council members wanted to change this statement. Tim Shea also brought up the

issue of accrued sick leave which could be used to purchase health insurance. These issues were referred back to the Policy and Planning Committee for further review and a request for a recommendation back to the Judicial Council.

Liaison Committee Report:

Judge Page reported that Liaison Committee has not met since the last reporting period.

Justice Court Study Committee Update on Committee's Progress:

Judge Anthony Schofield reported on the progress of the Justice Court Study Committee. The committee is composed of 16 members from diverse backgrounds. The committee has met with representatives from the League of Cities and Counties, various board levels and courts. Each entity has expressed their concerns and put together a ranking of issues to consider.

The committee has ranked the issues for study in the following order:

1. Exclusive/concurrent jurisdiction over which types of cases;
2. Formation of justice courts and oversight by Judicial Council;
3. Record keeping, information sharing, and technology;
4. Revenue share/surcharges;
5. Appointment/retention;
6. Appeals/trial de novo and "court not of record";
7. Judicial Conduct Commission discipline.

The committee concluded that all Class B and C misdemeanors and infractions should be transferred from the district courts to the justice courts. All committee members accepted the philosophy of eliminating forum shopping. Next, Judge Schofield stated that some of the formation issues include: a) location of the justice courts in proximity to existing courts; b) personnel; and c) revenue. Judge Schofield emphasized that he has tried not to be a Council spokesperson in an effort to maintain the committee's independence.

Council members expressed their appreciation to Judge Schofield, members of the committee, and to staff for their efforts in this regard.

Court Security Task Force Report:

Myron K. March stated that the Judicial Council had previously received the report of the Court Security Task Force but had not approved it. Because of upcoming budget and legislative considerations the matter is now before the Council for action.

Mr. March reiterated the committee's recommendations for the benefit of Council members. The recommendations of the committee include: a) retain the current basic service

providers; b) address funding issues; c) clarify selection process and minimum qualifications; d) clarify and increase training requirements; e) clarify duties and supervision responsibilities; and f) clarify responsibility for perimeter security.

After discussion among Council members about various agency responsibilities and funding, there were suggestions that this matter should be referred to the Commission on Criminal and Juvenile Justice, the Appropriations Committee or to the Policy and Planning Committee for review.

Motion:

A motion was made by Judge Jackson that court administration meet with various entities, i.e., local sheriffs, the Association of Counties, etc. to discuss the recommendations of the Court Security Task Force Report. The motion was seconded by Judge Stirba and carried unanimously.

Motion:

A motion was made, seconded and carried unanimously for members of the Judicial Council to move into Executive Session.

Executive Session:

After the conclusion of the executive session, Chief Justice Zimmerman adjourned the meeting.

**Judicial Council Meeting
Minutes**

Tuesday
September 9, 1997

Snowbird

Chief Justice Michael D. Zimmerman, Presiding

Members Present:

Chief Justice Michael D. Zimmerman
Hon. Pamela T. Greenwood
Hon. Anthony W. Schofield
Hon. Michael K. Burton
Hon. Stephen A. Van Dyke
Hon. Leonard H. Russon
Hon. Robert Braithwaite
Hon. Jerald Jensen
James C. Jenkins
Hon. Joseph Jackson
Hon. Rodney S. Page
Hon. Kent Nelson

Members Excused:

Hon. John Sandberg
Hon. Anne M. Stirba

Staff Present:

Daniel J. Becker
Myron K. March
D. Mark Jones
Timothy Shea
Richard H. Schwermer
Marilyn Branch
Jan Thompson
Cindy Williamson

Guests Present:

Steven Stewart, Exec. Director
Judicial Conduct Committee
Hon. Lynn W. Davis, Chair
District Board
Robert Gross, Governor's Chief of
Staff
Lavell Prince, Mayor, Taylorsville City
John Brems, City Attorney, Taylorsville City

Welcome:

Chief Justice Zimmerman welcomed members and staff to the meeting.

State Court Administrator's Report:

Dan Becker distributed a list of Judicial Council budget priorities which were voted on during the Council's Budget Planning Session in August.

3rd District Court Judge	239,050
Law Clerks	296,875
Computer Network	245,450
Base Budget (all levels)	300,000
2nd District Juvenile Court Judge	216,050
Legal Institute (Justice Courts)	33,900
Operating funds (Education)	33,275
GAL Operations	55,000
Clerical Reserve (all levels)	100,000
Computer Network	<u>19,200</u>
Total	1,528,800

The National Association of Women Judges (NAWJ) is holding their annual conference in Salt Lake City at Little American from September 24-27, 1997. Currently, there are more than 200 judges registered for the conference from across the country. Justice Christine Durham is being honored at the conference.

Recently, eight Egyptian judges visited the Administrative Office of the Courts and showed a keen interest in judicial education. In the near future, a group of Macedonian judges will also be visiting the Administrative Office.

A workshop on Alternative Work Strategies is scheduled for September 17, 1997. The workshop will present a positive focus on alternative work arrangements that include flex time, compressed work weeks, and telecommuting.

Judge Kimberly Hornak previously reported to the Judicial Council in Logan on the Court Improvement Project. Items before the committee are foster care and dependency issues. A mediation project is now planned as part of Court Improvement Program. Mediators will be employed through grant funding. The mediators will mediate dependency cases within the Second, Third and Seventh Judicial Districts. The Seventh District was chosen because of a recent request for a juvenile judge. It is hoped that by extending this program it will offer some support within that district. This is a very innovative project and represents a great opportunity for the courts to do business in a different way.

As a result of recent planning efforts by the Judicial Council, Dan Becker has prepared a list of initiatives built around the top three objectives of the Council which were to develop

When questioned, Mr. Stewart indicated that the vast majority of complaints are without merit. Neither is there any pattern which might indicate that the judiciary is not following the standards set forth in the rules. Mr. Stewart stressed that all judges carefully consider Canon 3 which states: "A judge shall perform the duties of the office impartially and diligently." Mr. Stewart concluded his presentation with the thought that complaints have decreased because the judiciary has been better educated about ethics.

Board of District Court Judges Report

Judge Lynn W. Davis, Chair of the District Court Board, was present to report on recent developments of the Board. The Board's composition will change due to term expirations of Judges Davis, Hanson and Payne.

Recently, the Board of District Court Judges requested an opinion from the Judicial Ethics Advisory Committee on the issue of the legislative juror check off program for CASA. The Board has reservations about this bill because it may violate Canon 4 which states: "A judge shall so conduct the judge's extra judicial activities as to minimize the risk of conflict with judicial obligations."

Another concern of the Board exists with the Weighted Caseload Study. Members of the Board have expressed the opinion that there is an inherent mistrust associated with the study. There is the argument that the caseload results should only be one factor with which to consider performance and that the study is not sufficiently valid to be used as a legitimate tool. Members of the Council stressed that the study is subject to modifications based upon experience and it not meant to be something that is cast in stone.

Judge Jensen indicated that traditionally you cannot ask someone who is being evaluated to approve of the evaluative measure and that at some point, a decision needs to be reached. Judge Jackson concurred with those thoughts and stated that the present study can work within a high degree and level of fairness.

Judge Davis recommended that Judge Gordon Low from the First District, Judge Ronald Nehring from the Third District, and Judge Guy Burningham from the Fourth District, work closely with Tim Shea and be part of the solution. Judge Davis said it is in the best interest of everyone if judges have confidence and trust in the study. Council members reminded Judge Davis that district court judges have been a part of this process and should offer more than a subjective point of view. Mark Jones suggested that improved communications between members of the Council and Board may be helpful.

Motion:

A motion was made by Judge Jackson that members of the Judicial Council appoint Judges Low, Nehring and Burningham to work with Tim Shea on the Weighted Caseload Study;

the courts. Next, Judge Jensen said he is concerned about the erosion of judicial independence. The judge has enjoyed all of the associations made through the Council and he has had the opportunity to gain a perspective on court operations.

Chief Justice Zimmerman thanked each of the judges for their service on the Council, their representation of the judiciary and the manner in which they conducted themselves while on the Council. The Chief Justice presented each member with a recognition plate citing their years of service on the Council.

Executive Session:

A motion was made that the Judicial Council go into executive session. The motion was seconded and carried unanimously.

Adjourn:

Upon conclusion of the executive session, Chief Justice Zimmerman adjourned the meeting.

Other:

At the conclusion of the Council meeting, Robert Gross, Governor Leavitt's Chief of Staff, joined members of the Council for lunch.

**MANAGEMENT COMMITTEE
MINUTES**

October 8, 1997

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

Honorable Pamela T. Greenwood, Presiding

MEMBERS PRESENT:

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

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Holly Bullen
Mark Jones
Tim Shea
Rick Schwermer
Brent Johnson
Elaine Lindsey

WELCOME

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

JUDGES SERVICE:

The committee reviewed its discussion of the issue of judges serving in non-judicial capacities and what avenues existed for addressing the issue. The approach of allowing the issue to be addressed by the entity which seeks a judge's participation is not viable.

In order to better focus the issue, Judge Greenwood offered to put in draft form a question articulating the issue for further consideration by the Management Committee.

MOTION:

A motion was made by Judge Stirba to recommend this procedure to the Judicial Council. Judge Sandberg seconded the motion and it carried unanimously.

JUDICIAL COUNCIL AGENDA

Dan Becker discussed the Judicial Council agenda. Rick Schwermer noted the need to add the Taylorsville Application for a new justice court to the agenda. Myron March stated that another topic should be added to the consent calendar and that is the appointment of Pete Haun to the Task Force on Racial and Ethnic Fairness Committee.

MOTION:

A motion was made by Judge Stirba to make an addition to the consent calendar for the appointment of Pete Haun to the Task Force on Racial and Ethnic Fairness Committee. Judge Sandberg seconded the motion. It was carried unanimously.

Myron March brought to the committee's attention Rule 3-306, Court Interpreters. The Policy and Planning Committee had considered some proposed changes. Holly Bullen stated that the Council has already addressed this issue, and that when the Policy and Planning Committee reviewed it they also wanted to delete one sentence relating to the intent of the rule. The suggestion was also made that this should be put out as an emergency rule. Following discussion, it was determined that treatment as an emergency rule was necessary and that the proposed change should be reconsidered at a subsequent meeting.

APPROVAL OF MANAGEMENT COMMITTEE & JUDICIAL COUNCIL CALENDAR

MOTION:

A motion was made by Judge Stirba to move the May 21, 22, 1998 meeting to May 28, 29 1998, September 9, 1998 to September 2, 1998, and December 21, 1998 to December 18, 1998. The motion was seconded by Judge Sandberg. It was carried unanimously.

STATE COURT ADMINISTRATOR'S REPORT

Dan Becker stated that the traffic school issue has been raised with CCJJ. They are to name a committee to look at this issue in some depth. Mr. Becker stated that there was good news from CCJJ on the grant request for the case management proposal which has been given a priority for Byrne funding, which will be made available in July of 1998.

Mr. Becker also stated that the Presiding Judges' Workshop which was held on October 3, 1997, was very well received by the participants.

JUDICIAL COUNCIL COMMITTEE ASSIGNMENTS

Judge Greenwood discussed the need for the Management Committee to make recommendations on Judicial Council Committee assignments. There are three new members on the Council, Judge Glasmann, Judge Truman, and Judge Lindsey. The recommendation was made that Judge Glasmann serve on the Management Committee, Judge Truman and Judge Lindsey to serve on the Legislative Liaison Committee.

MOTION:

A motion was made by Judge Sandberg to have Judge Glasmann serve on the Management Committee, Judge Truman and Judge Lindsey to serve on the Legislative Liaison Committee. Judge Stirba seconded the motion. It was carried unanimously.

REQUEST TO MAKE BEAVER A PRIMARY

Dan Becker brought to the Management Committee's attention a letter from the Beaver County Commission that Beaver County be eliminated as one of the contract sites. This action has the support of Presiding Judge Braithwaite and is being advanced in conjunction with the new court facility in that community.

MOTION:

A motion was made by Judge Stirba to have this approved and put on the consent calendar. Judge Sandberg seconded the motion. It was agreed to unanimously.

COURTROOM SECURITY

Judge Greenwood asked that this be set aside for now.

DEBT COLLECTION ISSUES

Tim Shea reviewed proposed legislation that would be recommended to the Office of State Debt Collection for inclusion with their legislation. Mr. Shea indicated that he had met with the individuals at the Office of State Debt Collection and Bill Dinehart and incorporated their suggestions and comments into the proposed legislation. The major revision of the bill is to find alternative funding for the debt collection program in the district court. The Juvenile Court is recommended to remain

the same.

POLICY ON SENIOR JUDGE RETIREMENT

This is an issue that came before the Judicial Council and its planning session. The proposal originated a couple of years ago by the senior judges to have the state pick up the cost of health benefit premiums for judges who did not benefit under Rule 3-501. The proposal also extended the seven year coverage to ten years. Discussion centered on what benefits the rest of state government received. This proposal would exceed what benefits were provided to other government employees.

MOTION:

A motion was made by Judge Sandberg to pass this on with an unfavorable recommendation. Judge Stirba seconded the motion. It was agreed to unanimously.

REQUEST FOR FY98 SUPPLEMENTAL

Fred Jayne presented information for a request for supplemental funding for a temporary programmer to establish a program on the CORIS system for the accounts receivable module. This is required for the new procedures with the Office of State Debt Collections. This program needs to be in place when the new procedures go into effect this fiscal year. This is a request for supplemental funding which would come from a general fund restricted account.

MOTION:

A motion was made by Judge Stirba that this go to the council and be put on the agenda. Judge Sandberg seconded the motion. It was agreed to unanimously.

REQUEST FOR GRANT FUNDING

Holly Bullen stated that Wanda Santiago had put together a grant request to request a large 15 passenger van that they would use for their work crew for Juvenile Court. Discussion was held by the committee regarding whether this would be our van, Utah County's, or the State's vehicle. After further inquiry, it was determined that the grant money would be used to lease the van from Utah County. This issue will also be presented before the Board of Juvenile Court judges on Friday.

MOTION:

A motion was made by Judge Stirba to approve this request subject to the approval of the Juvenile Court Board. If approved by the Board, this item should be placed on the consent calendar of the Judicial Council. The motion was seconded by Judge Sandberg and carried unanimously.

APPLICATION FOR RECERTIFICATION FOR JOHN A. ROKICH

MOTION:

A motion was made by Judge Stirba to recertify Senior Judge John A. Rokich. Judge Sandberg seconded the motion. It was agreed to unanimously.

MOTION:

A motion was made by Judge Stirba to certify Senior Judge Philip K. Palmer. Judge Sandberg seconded the motion. It was agreed to unanimously.

MOTION:

A motion was made by Judge Stirba to certify Senior Justice Court Judge Albert A. Mitchell. Judge Sandberg seconded the motion. It was agreed to unanimously.

ADJOURNMENT

SUMMARY MINUTES
POLICY AND PLANNING COMMITTEE OF THE JUDICIAL COUNCIL

October 3, 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

Peggy Gentles
Barbara Hanson

1. Court Commissioner Issue. Peggy Gentles presented the Committee with the issue raised by the proposed change to the court commissioner rule that was published for comment last Spring. Ms. Gentles' memo addressed the narrow issue of clarifying rules related to the insurance benefits upon retirement. The Committee discussed the hybrid quality of the court commissioner position under Rule 3-201. The Committee requested additional information be collected.

2. Certificate of Probable Cause

James Jenkins stated that he had previously done some research on the appropriateness of requiring a certification of probable cause before a justice court criminal judgment can be stayed pending a trial de novo. Mr. Jenkins stated that the legislature has determined that as a matter of policy a trial de novo is the defendant's "appeal" from the justice court. However, requiring a certificate of probable cause to stay a judgment means that, if the request is denied, a defendant may very well have served the sentence before the trial de novo is held. Judge Nielson stated that he thought a better scheme would be to have a notice of appeal stay the sentence. Upon filing of the notice of appeal, the justice court judge would set bail to guarantee the defendant's appearance at the trial de novo. Mr. Jenkins noted that a practical consequence of a change may encourage requests for trials de novo as an incentive to avoid incarceration.

The Committee was concerned about the effect of making a change on juveniles who appear in justice courts. However, the Committee decided to consider that further when specific language was proposed. The Committee asked Peggy Gentles to draft amendments to Rule 4-608 for the next meeting. Additionally, some Rules of Criminal Procedure may be impacted.

Proposed Calendar for 1998

The Committee approved the proposed calendar for Committee meetings in 1998.

Proposed Change to Rule 3-306 (Emergency Rule)

Holly Bullen had requested a change to Rule 3-306 (Court Interpreters) to allow a probation officer to be appointed to the Advisory Council. With an additional proposed change to the intent statement, the Committee recommended the Judicial Council adopt the change as an emergency rule on its consent calendar.

The Committee will conduct its next meeting by telephone.

MEMORANDUM

To: Judicial Council
From: Timothy M. Shea
Date: October 8, 1997
Re: Funding for Collection of Accounts Receivable

The Judicial Council reviewed and approved an earlier version of the attached legislation at the annual planning workshop in August. The bill implements the recommendation of the Ad Hoc Committee on Collections to transfer responsibility for collections from the courts to the Office of State Debt Collection (OSDC) no later than 90 days after an account becomes delinquent.

At that meeting I advised the Council that there was as yet no agreed upon funding mechanism for the courts' collection efforts and the clerical work necessary to record delinquent debts as a civil judgment and transfer the case to the OSDC for collection. Currently, the cost of collection by state court clerks is paid by an appropriation of a percentage of the fine amount received on delinquent accounts. The statutory authorization to take a percentage of the fine was repealed several years ago, but the Legislature has sanctioned the practice by annually appropriating money from that source.

Relying on this current method for continued funding, although recommended by the ad hoc committee, appears not to be a realistic option once the new procedures are in place. First, because the court is responsible for collection of delinquent accounts only for the first 90 days, it is estimated the percentage of payments necessary to fund the program would be extremely high. Second, in the district court, fine money earmarked to offset collection costs is money that would otherwise go to county or municipal governments, which likely would oppose reinstating the statutory authority.

Funding for Collection of Accounts Receivable

October 8, 1997

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Since the August planning workshop, court staff has met with the OSDC and with the legislative fiscal analyst to develop a reliable alternative revenue stream to fund state court collection efforts. The recommendation of staff is to:

- 1) reinstate for the juvenile court the authority to take from the fine payment, itself, a percentage of the payment that represents the cost to collect the delinquent account; and
- 2) in the district court, impose on all accounts receivable paid over time interest at the rate set by the OSDC.

Juvenile Court. The study by the ad hoc committee revealed that the juvenile court is very effective at collecting fines and other penalties ordered by the court. The recommendation of the committee, agreed to by the OSDC, is to leave juvenile court in the status quo. This will require reinstating for the juvenile court the authority to keep the percentage of delinquent payments that represents the cost of collection. Municipal and county governments do not receive any percentage of the juvenile court fines; all juvenile court revenue is state revenue, although not all General Fund revenue. There should be no fiscal note to reinstating the statutory provision because the new statute will do nothing more than recognize a practice long authorized by the Legislature. The implementing language is on page 4, lines 19 - 22 of the draft bill.

District Court. The OSDC has had since its inception the authority to establish an interest rate chargeable on time payments. To conform that existing discretion with the interest rate on restitution and with the post-judgment interest rate generally, the amended language on page 4, lines 2 - 4 is recommended.

The authority of the court to permit installment payments of a fine and other obligations, such as the surcharge, restitution, etc., remains intact. But to pay for the cost to collect delinquent accounts, the interest rate established by the OSDC would be imposed on all installment payments. This is a standard feature of commercial installments, but something new in the Utah courts. The amount due is financed by paying something less than the full amount, but the debtor pays the creditor -- in this case the courts -- for the cost of "borrowing" the balance due over time.

The language implementing this funding mechanism is on page 6, lines 18 - 21 of the draft bill. Most of §76-3-201.1 continues to apply to justice court as well as district court, but the obligation to impose the interest rate (page 6, line 19 - 21) and the obligation to transfer the debt to the OSDC (page 7, line 20 - 22) apply only in district court.

Funding for Collection of Accounts Receivable
October 8, 1997
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The balance of the draft bill has been reviewed and approved by the Judicial Council. The Management Committee recommends the Council adopt the further changes. Upon approval, this draft will be integrated into a larger bill sponsored by the OSDC.

Annual Report
of the
Standing Committee on Judicial Performance
Evaluation
to the
Utah Judicial Council



October 27, 1997

Annual Report
of the
Standing Committee on Judicial Performance Evaluation
to the
Utah Judicial Council

October 27, 1997

Prepared by
Administrative Office of the Court
230 South 500 East
Suite 300
Salt Lake City, Utah 84102
801-578-3800

COMMITTEE MEMBERS

		Term Ends September
Thomas N. Arnett, Jr.	District Court Commissioner	1998
Hon. Steven L. Hansen	District Court	1999
Hon. Richard C. Howe	Supreme Court	1998
Scott Daniels	Board of Bar Commissioners Utah State Bar Snow, Christensen & Martineau	1999
Dale A. Kimball Committee Chair	Attorney Representative Kimball, Parr, Waddoups, Brown & Gee	2000
Harriet L. Marcus	Citizen Representative	1997
Charlotte L. Miller	Attorney Representative General Counsel, Summit Family Restaurants, Inc.	2000
Hon. Gregory K. Orme	Court of Appeals	2000
R. Thayne Robson	Citizen Representative Bureau of Economic and Business Research	2000
Hon. Lynn Sadler	Justice Court	1999
Verl R. Topham	Citizen Representative Utah Power and Light	1999
Hon. Jeril B. Wilson	Juvenile Court	1998
Peggy Gentles	Committee Staff	
Timothy M. Shea	Committee Staff	

THE COMMITTEE WISHES TO ACKNOWLEDGE AND EXPRESS ITS APPRECIATION FOR THE EXEMPLARY SERVICE OF HARRIET MARCUS. AFTER SIX YEARS, HARRIET HAS COMPLETED THE MAXIMUM ALLOWABLE TWO TERMS ON THE COMMITTEE. HARRIET'S CONTRIBUTIONS TO THE GOAL OF AN UNSURPASSED PROGRAM FOR JUDICIAL IMPROVEMENT ARE WELL KNOWN TO ALL OF US ON THE COMMITTEE. HER KNOWLEDGE AND SOUND ADVICE WILL NOT EASILY BE REPLACED.

Table 2.

Gender	
Gender	Percent
Female	54
Male	45
No Response	1

Table 3.

Age	
Age	Percent
18-29	13
30-39	23
40-49	28
50-59	19
60-69	10
70 +	6
No Response	1

Table 4.

Race/Ethnicity	
Race/Ethnicity	Percent
African American	0
Asian	1
Caucasian	90
Hispanic	3
Native American	3
Pacific Islander	0
Other	0
No Response	3

SURVEY CONTRACT

The contract for the attorney survey and the juror survey has been awarded to Valley Research, Inc., after issuing a request for proposals. The Administrative Office of the Courts received responses to its RFP from the following four firms:

Vendor	Cost for Principal Surveys	Cost Per New Judge Surveys Oct. 97 - July 98
Dan Jones and Associates	\$82,660.00	\$1780
National Research Center, Inc.	\$83,085.00	1-5: \$0; > 5 \$2500 ea.
Dr. Richard Oldroyd, Ph.D.	\$58,390.00	\$1000
Valley Research, Inc.	\$53,518.69	\$1837

Valley Research not only submitted the lowest bid, but also has experience with the attorney survey. The project manager, Brian Robertson, has administered the attorney survey twice in the past through the Survey Research Center of the University of Utah.

The contract with Valley Research combines the juror survey and the attorney survey under one consultant. Also, for the first time, the contract can be renewed for an additional cycle through the mutual agreement of the parties. The ability to renew the contract will better assure a qualified consultant while avoiding the time consuming RFP process every two years.

INCREASE ATTORNEY SURVEY PARTICIPATION RATE

With the assistance of Dan Jones and Associates, the Committee has identified several modifications to the attorney survey process designed to increase the participation of lawyers. The Committee thanks Chief Justice Michael Zimmerman for his words of encouragement to lawyers at the Utah State Bar Annual Conference, and the Committee thanks Committee member and Bar President Charlotte Miller for her column in the September *Bar Journal*. The survey was administered during September, and the response rates are not yet calculated, but the Committee is hopeful these two high profile efforts convinced lawyers that the evaluation

The Committee will consider these proposals in an effort to streamline the survey process and thereby encourage more lawyers to participate in the judicial evaluation survey. The Committee will present recommendations to the Judicial Council in time to implement the changes for the 2000 retention election cycle.

PUBLICATION OF SURVEY SCORES

Last year, the Committee recommended to the Judicial Council that the actual score of questions used for certification be published in the voter information pamphlet, rather than publishing that score as being within a 5% range. At the direction of the Council, the Committee staff presented this proposal to the judges of each level of court. The Supreme Court endorsed the proposal by the unanimous vote of the four justices present. The Court of Appeals also approved the change. The district court endorsed the proposal, but only by a one vote margin. The juvenile court endorsed the proposal unanimously. The Judicial Council at its Annual Planning Session in August voted to pursue legislation to authorize the publication of scores to certification questions.

JUSTICE COURT JUDGE EVALUATION PILOT PROGRAM

Judges of the justice court have long been subject to the same performance evaluation criteria as judges of the courts of record. However, the ability to measure a judge's performance against those criteria has historically been limited to the self-declaration of the judge regarding cases under advisement, education, mental and physical fitness for office, and compliance with the Code of Judicial Conduct. For about five years, the Committee has worked with the Board of Justice Court Judges to develop a survey process by which respondents would have the opportunity to evaluate the performance of the justice court judge.

Last year the Committee designed and recommended to the Judicial Council a pilot program to survey lawyers appearing in Level I and Level II justice courts and litigants appearing in all justice courts. This year the Committee has obtained a grant from the State Justice Institute for \$36,000 and the Council has contributed \$19,000 to enable the Committee to conduct a pilot program in the justice courts. The Committee anticipates submitting its analysis and recommendations to the Council during the latter half of 1998.

APPROVED MINUTES

JUSTICE COURT STUDY COMMITTEE MINUTES

September 8, 1997, 12:30 p.m.

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

Members Present

Mayor Allen Adams
Camille Anthony
Representative Greg Curtis
Commissioner Gary Herbert
Senator Joseph Hull
Judge Jerald Jensen
Judge William Keetch
Mayor LaVelle Prince
Judge Anthony Schofield, Chair
Richard Schwermer
Kevin Sundwall
Melvin Wilson

Members Excused

Paul Morris
Judge Parley Baldwin
Commissioner Royal Norman
Judge Gregory Orme

Guest

Jennifer Hemenway, Director
Research and Data,
Commission on Criminal & Juvenile Justice

Staff

Peggy Gentles
Lyn Peterson

I. WELCOME AND APPROVAL OF MINUTES

Judge Schofield welcomed everyone to the meeting. He excused those members who could not be present today.

Motion: A motion was made by Mr. Schwermer to approve the minutes of the July 29, 1997, meeting as prepared. The motion was seconded by Judge Jensen. The motion carried unanimously.

II. MEETING SCHEDULE

The Committee discussed several meeting dates and decided to change the meeting scheduled for September 25 to September 29.

III. DISCUSSION OF OPTIONS ON FORMATION OF JUSTICE COURTS

Ms. Anthony stated that shifting a number of cases from the district court to the justice court may mean that a district court judge would no longer be needed and judges are not subject to being dismissed. Maybe legislation would have to provide that judges would be able to be reassigned within the district or more flexibility may be needed to maximize the resources statewide. Under current statutes, judges cannot be permanently assigned to a different district.

Mayor Prince stated that he did not think that one budget cycle is enough lead time for forming a court; it may take two or more budget cycles. Before a local government forms a court, other affected entities have known of the intent to elect to form the court. Mayor Prince thinks that a two year notice of intent to form a court would be appropriate. This would allow for the district court caseloads to be adjusted. Beyond two years would be excessive. In most cases the two years would have been preceded by a discussions with the affected entities giving even more notice.

Ms. Anthony asked what the Council's role would be. Judge Schofield stated that he understood Mayor Prince to be saying that the Legislature would take away the ability of the Judicial Council to provide any oversight with regard to need in the approval process. The criteria would be whether or not required standards for a justice court are met. In other words, the needs test would be removed. Mayor Prince suggested that formalizing the notice of intent requirement may ensure that local governments are serious in their desire to assume the responsibilities for a court.

Mr. Schwermer suggested that if a judge retired the Council could go to the Legislature and ask that the slot be moved to another district wherever the need exists or, if none exists, that the slot not be filled. In response to a question from Ms. Anthony, Mr. Schwermer said that a district judge must stand for retention election in his or her district of residence. On a short term basis, the Chief Justice can assign judges to sit in another district. In response to a question from Mayor Adams, Judge Schofield stated that under the Constitution a district court judge may not be terminated except for disciplinary reasons by the Supreme Court.

Judge Schofield asked the Committee if they were starting from square one and designing the best of all worlds, what municipalities ought to be able to have a justice court? Commissioner Herbert replied that any city who wants to pay for one should be able to have one. Mayor Prince stated that if the Committee were starting from scratch there would not be the two groups of cities, those within Section 10-3-923 and those not. The city should be able to make that election based on need and revenue, as long as they meet the standards for facilities and judicial education set by the Judicial Council.

Rick Schwermer stated that possibly Option II is the answer. On a date certain all the Class B & C misdemeanors go into the justice court system and any municipality that gives notice (no need requirement) and meets basic quality standards can form a court. Option II provides a good compromise by allowing municipalities create courts without constraint except timing for notice of intent to create and by giving the Judicial Council and the Legislature a chance to plan. The

Ms. Anthony stated that she is not comfortable with the shift until she looks at a list of the B and C offenses. She is concerned that there would be a tendency to make Class A or lower felonies out of Class Bs in order to get them heard in the district court. She is concerned from resource and sentencing perspectives. She would like the Sentencing Commission review the list of Bs to say that they would be appropriately heard before a non-law trained judge. There are domestic violence and DUI issues. Rick Schwermer stated that many of these cases are heard by justice court judges now. Judge Keetch stated that he thought that the Committee had already discussed the issue of reclassification a few meetings ago and decided that that would occur naturally regardless of what the Committee does. Judge Keetch stated that the Justice Court Board at its meeting last month voted to support exclusive jurisdiction. Senator Hull stated that it was his opinion that legislation would likely be developed to reassign specific cases.

Judge Jensen stated that if jurisdiction is exclusive the offenses of concern, including domestic violence and DUI, can more coherently be studied. Now, the information is split between city, county, and state and it is hard to get input from the Sentencing Commission.

Senator Hull stated that the legislators would like to see changes. If ultimately these cases went directly to the justice court you would move 50% of the state funding automatically out although the surcharges would stay. Other arrangements could be made, possibly a sliding scale with the state still receiving some portion of the funding.

Judge Jensen asked if the Committee was willing to say it would be ideal to have all Class Bs and Cs and below to the courts not of record, i.e. the justice courts would be an ideal solution. Is it cost effective; is it in the interest of justice; is it best for all concerned to have these matters heard in a court not of record (justice court). This would not include juveniles except for minor traffic as it is now. Camille Anthony asked if the answer would change if a family court was formed. Judge Jensen replied that he assumed that all juvenile court jurisdiction would be shifted to the family court.

Representative Curtis asked if Option II contemplated no Bs and Cs in district court. If district courts are not the appropriate place for these cases, the question should have been asked at the time court consolidation was being discussed. Representative Curtis stated that he, as a member of the appropriations Committee, is frustrated at being asked for more district court judgeships at the same time that Bs and Cs will be kicked out of the system. Judge Schofield explained that consolidation brought two courts together to make one trial court of record. The question of justice courts did come up at that time, but the parties did not want to try to solve that problem at the same time as consolidation. The Committee has received three different committee reports, several from the time of consolidation. Judge Schofield stated that he thinks that even though there was a campaign to move circuit court cases into the district court that does not preclude taking a look at B and C misdemeanor cases and finding a home that solves the greater needs of the administration of justice. Rick Schwermer stated that the issue was raised in 1990. The original drafts of the consolidation bill did do something similar to what the Committee is discussing. However, in 1990, the Justice Court Act had barely been implemented. Mandatory

Ms. Hemenway stated that there is a 46% disposition reporting rate on misdemeanors. One of the reasons that the rate is so low is that the justice courts are not automated.

Motion: A motion was made by Judge Jensen supporting the general concept of exclusive jurisdiction of B and C misdemeanors and below in a court not of record as outlined in the Utah State Constitution. The motion was seconded by Judge Keetch. The motion carried unanimously.

This motion is just the basic concept assuming that all the other issues can be addressed. This is a policy decision. The Committee will build the framework that is required from here.

Judge Schofield stated that what is needed is a date certain that these cases will go to the justice courts exclusively and then the Committee needs to decide on policy issues such as:

(These issues are not prioritized.)

1. Revenue sharing.
2. Automation requirements.
3. Creation of new courts.
4. Selection of judges.
5. Retention elections.
6. Require all counties to have a justice court or contract with a municipality in the county to handle these cases however they see fit.
7. Time frame.
8. Provision to allow the Judicial Council or some other authority to reassign district judges as needed if the workload shifts significantly impact the district courts and it is required.
9. Judicial Conduct Commission authority.
10. Appeals.
11. Dissolution of courts

The Committee asked Ms. Gentles to gather revenue distribution information for the next meeting. Rick Schwermer stated that his conversation with Ms. Hemenway at the break had indicated that she would investigate the issues surrounding justice courts reporting to DLD and BCI.

Judge Schofield adjourned the meeting.

TAYLORSVILLE, UTAH
RESOLUTION NO. 97-17

**A RESOLUTION REQUESTING CERTIFICATION OF
THE TAYLORSVILLE CITY JUSTICE COURT**

WHEREAS, on August 26, 1996, the City submitted to the judicial council a Resolution Requesting the Certification of the Taylorsville Justice Court and an Application for a New Justice Court, a copy of the resolution and application are attached hereto; and

WHEREAS, on October 28, 1996, the judicial council voted not to certify a justice court for the City; and

WHEREAS, during the 1997 General Session, the Utah Legislature enacted House Bill 324 that, among other things, amended UTAH CODE ANN. § 10-9-923 to provide that the City may elect to assume local responsibility for a justice court; and

WHEREAS, on June 4, 1997, pursuant to House Bill 324, the City elected to assume local responsibility for a justice court, a copy of the election delivered to the judicial council is attached hereto; and

WHEREAS, shortly after the June 4, 1997 election, the judicial council raised concerns about the House Bill 324 requirement that an election be given "at least one year prior to the effective date of the election" and the effective date of House Bill 324; and

WHEREAS, on September 9, 1997, the judicial council met to discuss, among other things, the concern about the election requirement and the June 4, 1997 election to assume local responsibility for a justice court; and

WHEREAS, at the September 9, 1997 meeting, the judicial council requested that the City submit a new resolution and application requesting certification of a justice court; and

WHEREAS, the City Council has determined that it is in the best interest of the health, safety and welfare of the citizens of Taylorsville to adopt a resolution requesting the certification of the Taylorsville City Justice Court.

BE IT RESOLVED by the Taylorsville City Council as follows:

A. The City hereby resubmits the application attached hereto and requests certification of the Taylorsville City Justice Court by the Justice Court's Standards Committee and the Utah Judicial Council.

6. What parts of the Code of Judicial Conduct do **not** apply to part-time justice court judges?

4 C (1)(2) 4 F
4 C (7) 4 G
4 F

7. Does a defendant who has been cited for speeding have a right to have a formal information filed if he so requests?

YES

8. What is the correct class of misdemeanor for the following offense:

CLASS B

"Any person willfully violating his written promise to appear in court, given as provided in this act is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested."

- a. Infraction
- b. Class C misdemeanor
- c. Class B misdemeanor
- d. Class A misdemeanor

9. List four enhanceable offenses on which justice courts must maintain records of conviction.

OUI
Possession of MAR.
Theft
Furnishing Tobacco

10. Justice Court judges are required to attend the Annual Spring Conference

- a. every year
- b. every four years
- c. whenever they feel that they need some additional judicial education
- d. every year if their municipality/county funds them to go

11.

Read each fact situation and indicate whether the judge's conduct may be prohibited by the Code of Judicial Conduct

- a. A defendant calls the judge at home and wants to tell him or her about evidence in his case. May the judge listen?

☐ Yes ☒ No

- b. May a judge solicit money for the Boy Scouts of America?

☐ Yes ☒ No

- c. May a judge hear a case involving his nephew?

☐ Yes ☒ No

- d. May a judge be a delegate to the Republican Convention?

☒ Yes ☐ No

- e. May a judge allow Channel 5 to tape a trial?

☐ Yes ☒ No

- f. May a judge charge for performing a wedding outside regular court hours?

☒ Yes ☐ No

12. In the state of Utah does the defendant have a right to a trial by jury in a Class C misdemeanor?

☒ Yes ☐ No

13. Can justice court judges appoint public defenders?

☒ Yes ☐ No

14. Can the trial court judge rely on defense counsel to inform the defendant of his rights and the consequences of his plea?

___ Yes ~~X~~ No

15. Must an information always be filed prior to the issuance of a bench warrant?

___ Yes ~~X~~ No

16. The standard for issuing a search warrant is:

- a. an articulable suspicion
- b. probable cause
- c. reasonable suspicion
- d. some evidence

17. A "no bail" warrant can:

- a. only be issued by a district court judge
- b. never be issued by a justice court judge under any circumstances
- c. be issued by a justice court judge if there is a strong reason to believe the defendant will not appear if released on bail
- d. can be used in both misdemeanor and felony cases
- e. both C and D

18. The maximum sentences for the following are:

- | | |
|------------------------|-------------------------------------|
| a. Class B misdemeanor | Fine <u>1000</u> Jail <u>2 mos</u> |
| b. Class C misdemeanor | Fine <u>750</u> Jail <u>90 days</u> |
| c. Infractions | Fine <u>750</u> Jail <u>-0-</u> |

TRUE OR FALSE

19. T ☒ F A pro se defendant may not cross-examine prosecution witnesses because only attorneys may practice before the court.
20. T ☒ F A defendant has 10 days from the entry of judgment in a criminal matter in a justice court to appeal for a trial de novo to be held in the circuit/district court.

Sponsor Requests - 1998 General Session

10/22/97 7:27:36 AM *

Sponsor

A Committee Bill

- Administrative Rules Amendments
- Auto Homicide Amendments
- Budget Review Task Force
- Charter Schools
- Collection Of Uniform Motor Vehicle Fees Amendment
- Correctional Officer Amendment
- Driving Under The Influence Law Amendments
- Educational Services For The Autistic
- Educational Technology Initiative Amendments
- Electronic Data Proscriptions On License Certificate
- Electronic Posting Of Notices
- English As Official Language Of State
- Felon Voting Restrictions
- Membership On Utah Sports Authority
- Motor Vehicle Fee Collection Amendments
- Native American Coordinating Board Membership
- Patient's Right to Medical Records
- Personal Information Privacy Amendments
- Preparing Individuals to Teach in Middle Schools
- Privacy Limitations for Corporations
- Privacy Task Force
- Professional Development Programs For Educators
- Public Education Middle Schools
- Reauthorization of Juvenile Justice Task Force
- Recodification Of Special Districts
- Resolution Amending Legislative Session
- Resolution Amending Local Government Provisions
- Resolution Amending Notice For Special Sessions
- Resolution Amending Qualifications Of Voters
- Resolution Amending Special Districts And Debt Limits
- Resolution Amending Special Sessions
- Resolution Revising Special Districts Provisions
- Resolution Supporting Resources For Affordable Housing
- Special Session Public Hearing Requirements
- State Elections Commission
- Strategic Planning Act For Educational Excellence Amendments
- Transportation Code Recodification
- Transportation Of Students By School Districts

Sponsor

- Homicide By Assault
- Juvenile Funding
- Regulation of Insurance Payments

Beattie, L.

Repeal of Sunset Provisions over Private Collection of Delinquent Tax

Beck, T.

- Health Care Consumer Protection Act
- Insurance Coverage For Metabolic Disease

Becker, R.

- Community Relations Requirements of Utah Department of Transportation
- County Recorder's Duties
- Nuclear Waste Storage Opposition
- Utah Department of Transportation Responsibilities

Bigelow, R.

Resolution Supporting Uniform Building Code Commission

Blackham, L.

- Beer Industry Distribution Act
- Indigent Defense Fund Amendments

Bourdeaux, D.

- Sound Wall Projects
- Truancy Amendments

Bowman, D.

- Compensation for Communication Bureau Personnel
- Snowmobile User Fee
- Utah Summer Games Appropriation

Bradshaw, A.

- Acupuncture Practice Amendments
- Task Force On Whistleblower Protections

Brown, M.

- House Rules Resolutions - Citations
- Local Government Law Amendments

Buckner, P.

- DUI Penalties Amendment
- Jail Reimbursement
- Metropolitan Police Task Force
- Statute of Limitations

Sponsor

Insurance Coverage for Diabetes Treatments
Property Tax - Rollback Taxes
Rural Enterprise Zones
Task Force on Telecommunications
Tax Credit for Workovers

Evans, R.

Optional Forms Of County Government

Frandsen, L.

Education Programs for State Aging and Adult Service Agencies

Goodfellow, B.

Mail Theft
Mail Theft Provisions

Harper, W.

Affordable Housing Amendments
Motor Vehicle Safety Inspection
Olene Walker Housing Trust Fund Appropriation

Harward, B.

Nurse Practice Act Amendments
Special District Registration
State Building Processes

Hatch, T.

Duties of Water Commissioners
Natural Gas Amendments
Title Insurance Amendments

Haymond, J.

Choice of Services for Persons with Disabilities
Consumer Choice in Aging Services
Endowment Funds for Utah Charities
Health Care Assistant Registration Act
Independent Service Provider for Telecommunications
Restrictions On Truck Trailers
Tax Incentives For Adoption And Guardianship

Hickman, J.

Higher Education Tuition Waivers
✓Penalties for Drunk Drivers
Property Tax - Circuit Breaker Eligibility

Hillyard, L.

Sponsor

Limiting Liability in Hockey Facilities
Real Estate Recovery Fund Amendments
Regulation of Lead Based Painting
Voluntary Release Cleanup Program

Mantes, G.

Motor Vehicle Registration
Property Taxes: Uniform Fees And Certified Tax Rate

Montgomery, R.

Clinical Exercise Physiologists
Impact Fees Amendments
License Plates - Snowboard Utah
~ Penalties for Sale of Tobacco to Youth

Myrin, A.

Agricultural License Plate
Management Plans of Wildlife Resources Land
Olympic Security Coordination
Resolution Declaring 1998 the Year of the Farmer

Nelson, L.

Landlord Inspection Rights
Merchant Or Service Provider Obligations For Dishonored Checks
Regulation of Motorized Scooters
Termination of Insurance Agents

Nielson, H.

Income Tax Amendments
Research and Experiment Tax Credit

Olsen, E.

Resolution On The Family

Peterson, M.

Bow Hunter Certification
Creating A Public School District
Restriction on Use of Public Monies to Lobby

Poulton, L.

~ Anti - Violence Committee Organization
Correction Career Service
Eminent Domain Amendments
Health Insurance Amendments
Insurance Law Changes
~ Juvenile Correctional Sentencing

Sponsor

Higher Education Goals Resolution
Special Fuel Tax Certificate Repeal

Steiner, R.

Animal Shelter Pet Sterilization Act

Stephens, N.

- Adoption Amendments
- Blood Alcohol Testing Amendments
- Counseling And Support Of Adoptive Families And Children
- Director of State Foster Parent Association
- Driving Under The Influence
- Genetic Testing Privacy Act
- Governor's Budget Requirements
- Impact Of Driving Under The Influence On Drivers Licensing
- Information to Adoptive Parents
- Kinship Care Act
- Privatization of State Adoption Services
- Statewide Implementation Of Foster Care Citizen Review Boards
- Substance Abuse Prevention, Enforcement, And Treatment Funding
- Traffic Offense Trial Process

Stephenson, H.

- Approving Tax Rate Changes
- Attempted Purchase Of Tobacco By Children
- Duties of the State Superintendent of Public Instruction
- Education Reform Pilot Program
- Income Tax - Credit for Sales Tax on Food
- Procurement of Private Sector Goods and Services
- Prompt Government Service Requirements
- Public Access to Accident Reports
- Resolution Providing Review of Tax Commission Cases

Styler, M.

Salary Increases For Local Government Officials

Suazo, P.

- Criteria for Sound Walls on Freeways
- Funding for Olene Walker Housing Trust Fund
- Gross Receipts Tax on Pay for View Boxing
- Offenders - Income Withholding
- Parental Responsibility for Wrongful Conduct of a Child

Swallow, J.

- Boundary By Acquiescence