

**JUDICIAL COUNCIL
AGENDA**

Monday
November 24, 1997
9:00 a.m. -

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

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 October 27, 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) (information)	Hon. Pamela T. Greenwood Management Committee Report Hon. Michael K. Burton Policy and Planning Committee Hon. Anthony W. Schofield Liaison Committee
6.	10:05 a.m.	Break	
7.	10:20 a.m.	Justice Court Task Force Update (Tab 3) (information)	Hon. Anthony W. Schofield
8.	11:20 a.m.	Web Publishing: State Court Home Page	Eric Leeson Kim Allard
9.	12:00 p.m.	Lunch	

- 10. 1:00 p.m. Fourth District Drug Court Update Paul W. Sheffield
- 11. 1:15 p.m. Court Reporters/Expedited Fees Timothy Shea
(Tab 4) Paul W. Sheffield
- 12. 1:40 p.m. Executive Session Chief Justice Zimmerman

Information:

- 13. News Articles
(Tab 5)

**14. Consent Calendar:
(Tab 6)**

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. Recertification for Active Senior Judges Status Holly M. Bullen
(Hon. Don V. Tibbs)

December Agenda Items

- 1. Court Improvement Project Hon. Kimberly Hornak
- 2. Code of Judicial Administration
- 3. Board of Juvenile Court Judges - Update Hon. Hans Q. Chamberlain
- 4. Information, Technology and Automation Committee - Update . . . Hon. Michael Wilkins
- 5. Judicial Conduct Commission - Update Steven Stewart

Judicial Council Meeting
Minutes

DRAFT

October 27, 1997

Second Judicial District
2525 Grant Avenue
Ogden, Utah

Chief Justice Michael D. Zimmerman, Presiding

Members Present:

Chief Justice Michael D. Zimmerman
Hon. Pamela T. Greenwood
Hon. Robert Braithwaite
Hon. Kay A. Lindsay
Hon. Michael Glasmann
James C. Jenkins, Esq.
Hon. Anthony W. Schofield
Hon. John Sandberg
Hon. Steven Van Dyke
Hon. Stan Truman
Hon. Anne M. Stirba

Members Excused:

Justice Leonard H. Russon

Staff Present:

Daniel J. Becker
Myron K. March
D. Mark Jones
Richard H. Schwermer
Jan Thompson
Fred Jayne
Holly M. Bullen
Timothy Shea
Cindy Williamson
Marilyn Branch
Gordon Bissegger
Margaret Satterthwaite
Peggy Gentles

Guests Present:

Hon. Anthony Quinn
Hon. Charles B. Behrens
Dale Kimball, Esq.
Hon. Dennis Fuchs
Lavell Prince, Taylorsville Mayor
John Brems, Taylorsville City Atty.

Welcome & Introductions:

Chief Justice Zimmerman welcomed guests, members and staff to the meeting. The Chief Justice introduced new members of the Council, Hon. Kay A. Lindsay, Hon. Michael Glasmann, and Hon. Stan Truman. Next, Chief Justice Zimmerman welcomed newly appointed judges to the judiciary, Hon. Anthony Quinn and Hon. Charles Behrens.

Approval of Minutes:

A motion was made by Mr. James Jenkins to approve the minutes of August 20, 21, & 22, 1997. The motion was seconded by Hon. Michael K. Burton and carried unanimously.

A motion was made by Hon. Michael K. Burton to approve the minutes of September 9, 1997. The motion was seconded by Mr. James Jenkins and carried unanimously.

Report from the Chair:

Chief Justice Zimmerman reported on proposed changes to the Nominating Commission statute. The changes are necessary because of a bill's passage last year which was defective. There will be ongoing discussions to better educate individuals about the Nominating Commission's policies and procedures.

On October 30, 1997, Chief Justice Zimmerman, Daniel J. Becker, Myron K. March, and Richard Schwermer will meet with Governor Leavitt and his staff to discuss the FY98 budget. Previously, a meeting was held between Administrative Office Staff and Robert Gross, the Governor's Chief of Staff. Chief Justice Zimmerman indicated that Mr. Gross appreciated the need to set certain budget items outside the 2% cap.

Chief Justice Zimmerman stated that he had received a letter from Ronald Yengich requesting that an agreement be reached between the Judiciary and members of the defense bar regarding security issues. Members of the Council considered placing this item on the next Management Committee agenda.

State Court Administrator's Report:

Judicial Appointments:

Hon. Anne Boyden will be sworn in as a new district court judge on November 5, 1997.

Grant Funding:

Dan Becker reported that the judiciary has received a grant in the amount of \$100,000 to employ a person for a period of two years to assist and conduct training sessions in case delay reduction. That person has yet to be selected. This program will also address and more fully develop the position of trial court executive.

The Commission on Criminal and Juvenile Justice (CCJJ) has agreed to provide \$62,000 for upgrading of the Juvenile Court automation system. Judge Mark Andrus is chairing a committee which will assist with the design of the new computer system.

A \$20,000 Violence Against Women Grant has also been received. This money will provide for computer training.

Budget:

During the budget meeting with Governor Leavitt on October 30, 1997, the Governor will consider the priority CCJJ has assigned various items. CCJJ has been very supportive of the judiciary and has given the request for a judge in the Third Judicial District an A rating, and the request for a juvenile court judge a B rating.

Presiding Judge and Court Executive Workshop:

A presiding judge/court executive workshop was held on October 3, 1997, in Moab. The session addressed the role of both the presiding judge and court executive. This focus will also serve to enhance case delay reduction. It was received well by the participants and it was suggested that this be a continuing effort.

National Association of Women Judges Conference:

During the month of September the National Association of Women Judges Conference was held in Salt Lake City. Judges McCully, Greenwood and Lewis served on the committee. In addition, the Education Department of the Administrative Office of the Courts played an extremely important role in hosting the conference. The conference was very successful and Mr. Becker expressed his appreciation to all those involved.

Judicial Council Sub-Committee Reports:

Policy and Planning Committee Report:

Judge Burton reported that the Policy and Planning Committee considered proposed changes to the court commissioner position under Rule 3-201. The outcome of the discussion was that the rule not be adopted as an emergency rule.

Motion:

A motion was made by Judge Greenwood that the Policy and Planning Committee limit their discussion of Rule 3-201 to specifics, i.e., retirement and sick leave benefits and submit a recommendation back to members of the Judicial Council. The motion was seconded by Mr. Jenkins and carried unanimously.

Management Committee Report:

Judge Greenwood reported on recent activities of the Management Committee which

included recommendations of newly appointed Judiciary Council members to various committees. The committee recommended that Judge Michael Glasmann serve on the Management Committee and Judges Truman and Lindsay serve on the Liaison Committee.

Motion:

A motion was made by James Jenkins to approve the recommendations and appointments of Judge Michael Glasmann to the Management Committee, and Judges Truman and Lindsay to the Liaison Committee. The motion was seconded by Judge Stirba and carried unanimously.

Liaison Committee Report:

Richard Schwermer distributed a list of proposed bills and their sponsors for the 1998 Legislative Session. The next meeting of the Liaison Committee will be in November.

There will be a request for the reauthorization of the Juvenile Justice Task Force for another year. Currently, there are no issues on their agenda. The authorization is for precautionary measures

The Utah State Bar has decided to take a more active role in the Legislature. The board will meet regularly during the session to discuss various legislation and will lobby independently for legislation. Chief Justice Zimmerman stated that this is a very proactive, long range activity that he would like to congratulate the Bar Commission on.

Motion:

A motion was made by James Jenkins to appoint Judge Anthony Schofield as chair of the Liaison Committee. The motion was seconded by Judge Stirba and carried unanimously.

Senior Judge Retirement Issues:

On behalf of senior court judges, Gordon Bissegger requested that members of the Judicial Council consider modification of a rule which governs insurance coverage of senior judges and their spouses. Previous to this meeting the issue had been considered by the Policy and Planning Committee and Management Committee of the Judicial Council. The Policy and Planning Committee recommended no revision to the existing rule. The Management Committee recommended against any modifications to the rule allowing for retroactivity and minimization of cost.

Motion:

A motion was made by Judge Nelson that no changes be made to the existing rules and statutes governing insurance provisions for retired judges. The motion was seconded by Judge

Greenwood and carried unanimously.

Funding for Collection of Accounts Receivable:

The Ad Hoc Committee on Collections has previously recommended that the responsibility for debt collection be transferred from the courts to the Office of State Debt Collection no later than 90 days after an account becomes delinquent. However, as of yet there has been no agreed upon funding mechanisms for the court's collection efforts and the clerical work necessary to record delinquent debts as a civil judgment and transfer cases to the Office of State Debt Collection.

Court staff, representatives from the Office of State Debt Collection and Bill Dinehart, Legislative Fiscal Analyst, have met and recommend the following:

- 1) reinstate for the juvenile court the authority to take from the fine payment, itself, a percentage 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 Office of State Debt Collection.

Motion:

A motion was made by Judge Greenwood to approve the recommendations of the committee. The motion was seconded by Judge Braithwaite and carried with three opposing votes.

Judicial Evaluation and Performance Committee Update:

Dale Kimball, Chair of the Judicial Evaluation and Performance Committee, was present to update Council members on recent activities of the committee. Harriet Marcus' term on the committee ends shortly and Dale Kimball will be resigning because of his recent appointment to the Federal Court Bench. Recommendations for these two upcoming vacancies are being sought.

Dan Jones and Associates has a one year to assess judicial performance. A survey of jurors indicates that jurors rate judges very high. The committee is also trying to determine how to increase attorney participation in the survey of judges. Currently, members of the Committee are considering ways to modify the survey by eliminating duplicative questions and eliminating the distinction between certification questions and those questions which relate to self improvement. Attention will also be given to eliminating the demographic questions.

Previously, this committee recommended to the Judicial Council that actual scores from the public surveys be used in reporting instead of the 5% incremental reporting. This recommendation was presented to judges at all levels and also to the Judicial Council. The District Court Board voted in favor of using the actual reporting scores, but by a split vote. All

other court levels and the Council approved the recommendation.

Chief Justice Zimmerman expressed his appreciation to Mr. Kimball for his presentation and also extended congratulations on behalf of the entire Judicial Council on Mr. Kimball's recent appointment to the Federal Court Bench.

Other Business:

Judge Van Dyke suggested the issue of family court be addressed. Chief Justice Zimmerman indicated that the issue is scheduled to be addressed in August of 1998, and will be addressed by a number of different groups and individuals. After continued discussion, Council members determined that the background of the family court proposed should be communicated to all judges. The family court issue will be placed upon the District Court Board agenda in December.

Motion:

A motion was made by Judge Stirba that a letter describing the family court concept and background be sent by Chief Justice Zimmerman to all members of the judiciary along with a copy of the Family Court Task Force Report. In addition, that the letter and report are sent along with a statement that no action will be taken on Family Court until August, 1998. The motion was seconded by Mr. Jenkins and carried unanimously.

Third District Drug Court Update:

Judge Dennis Fuchs reported on the Third District Drug Court. There are currently 256 drug court participants. Out of the 256 participants there has been a total of 18 bench warrants issued and 12 graduates. Judge Fuchs indicated that he expects 10-12 more graduates within the next couple of months. On an average it takes an individual approximately 18 months to graduate from drug court.

Funding for the drug court remains an issue but is presently sought through grant monies. Additional funding may be found through solicitation of private funds from local foundations.

A request has been made to the Salt Lake County Sheriff's Department to assign a full time deputy sheriff to the Third District Drug Court. This deputy sheriff would be present for all hearings, make home visits, and have the power to arrest when necessary.

Judge Fuchs said that the drug court is unique in its therapeutic adjudication process. The biggest advantages of drug court are sanctions that are immediate and there is also a great deal of positive reinforcement for a defendant who is doing well. The defendants are allowed contact with all entities involved with drug court, i.e., judge's phone number, legal defender's telephone numbers, pretrial services, etc.

Chief Justice Zimmerman expressed his appreciation and that of the entire Judicial Council to Judge Fuchs for his extraordinary efforts toward making this a very successful program. Judge Fuchs extended an invitation to all Judicial Council members to visit the Third District Drug Court.

Justice Court Task Force Update:

Judge Anthony Schofield reported on behalf of the Justice Court Task Force. On October 28, 1997, the Justice Court Task Force will review a draft interim report. This report has been prepared by Judge Schofield, Richard Schwermer, and Peggy Gentles. The interim report will recommend that all B and C misdemeanors and infractions be moved on a date certain, tentatively in the year 2002, to the justice courts and out of the district courts in every area where there is a justice court having territorial jurisdiction. This will result in a significant case shift and a significant financial impact on the general fund. There is no recommendation for a requirement that an area must create a county wide justice court if they do not want to.

The committee also proposes that there be no retention elections for municipal judges but once appointed, that the judges be reappointed unless there is good cause shown which would be reviewable by committee. This is an issue which is to be presented to the League of Cities and Towns, etc.,

Judge Schofield asked Council members their opinions with respect to the recommendation and its effect of having a significant case load shift. The following concerns were raised: a) increase in appeal numbers; b) city justice courts; c) judge projections and work loads.

The Justice Court Study Task Force will review the draft interim report and meet thereafter to approve finalization of the report so that it is prepared in time for the 1998 Legislative Session. Judge Schofield stressed that the issue of jurisdiction must be resolved because otherwise jurisdiction will expire in 1998. The report will be distributed to members of the Judicial Council upon final preparation.

Taylorsville Application for a New Justice Court:

LaVelle Prince, Taylorsville Mayor, and John Brems, Taylorsville City Attorney, were present and requested that the Judicial Council approve the city's application for the creation of a new justice court.

Motion:

A motion was made by Judge Braithwaite that members of the Judicial Council approve Taylorsville is application for the creation of a new justice court. The motion was seconded by Judge Stirba and carried unanimously.

Request for 1998 Supplementals:

Fred Jayne, Administrative Office Financial Director, requested that Council members approve a request for a 1998 supplemental in the amount of \$25,000. This request is the result of additional costs for an accelerated CORIS schedule. This money will not compete with the general funds requests.

Motion:

A motion was made by Judge Greenwood to approve the request for the supplemental in the amount of \$25,000. The motion was seconded by James Jenkins and carried with one opposing vote.

Motion:

A motion was made by Judge Anthony Schofield for members of the Judicial Council to go into an executive session. The motion was seconded by James Jenkins and carried unanimously.

Adjourn:

There being no further business, Chief Justice Zimmerman adjourned the meeting and members of the Judicial Council toured the new court complex in Ogden.

**MANAGEMENT COMMITTEE
MEETING MINUTES**

November 12, 1997

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

Hon. Pamela T. Greenwood, Presiding

Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
Eric Leeson
Kim Allard
D. Mark Jones
Richard H. Schwermer
Timothy Shea
Peggy Gentles
Cindy Williamson

Members Excused:

Hon. Anne M. Stirba
Hon. Michael Glasmann

Welcome:

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

Web Publishing: State Court Home Page:

Eric Leeson, Director of Information Services, and Kim Allard, the courts' recently hired Web Publisher, were present to make a presentation on Web Publishing and the State Court Home Page. Ms. Allard explained the differences between the *Internet* and the *Intranet*. The *Internet* is subject to access by everyone and the *Intranet* is subject to use by individuals internal to the court system.

A proposal of items contained on the *Internet/Intranet* include: a) meeting minutes; b) education schedules; c) a guide to the Utah State Courts; d) a gallery of judges; e) how to file a small claims case; f) how to file a divorce case; and g) a glossary of terms. Ms. Allard also stressed that news in the court system will be found on the system and include: a) new programs; b) new judges; and c) facilities. The Web Page will be kept current with update articles and perhaps Supreme Court and Court of Appeals decisions.

The use of this system is not only informative but economical and powerful as well.

Executive Session:

Upon motion, Management Committee members moved into executive session. Upon conclusion of the session the meeting resumed.

Judicial Council Agenda:

The Council agenda for November 24, 1997, was reviewed and approved.

State Court Administrator's Report:

Dan Becker distributed the results of a survey that was conducted for the Domestic Violence Task Force. The courts did not rank very high in the ratings. Mr. Becker suggested that this matter be considered very carefully. A recent study on domestic violence commissioned by the Governor's Commission on Women and Families was distributed to members of the Management Committee. Domestic violence is a large problem which the courts will address by further education efforts.

Mike Unruh, records specialist from North Carolina, will be in Utah from November 17-20, 1997, to perform an assessment of court records and the management of court records for Utah. The courts have a record management dilemma which needs to be addressed. Mr. Unruh will also review the Utah Courts forms process and suggest various alternatives for the use of forms.

On November 19, 1997, the first digital signature to be officially recorded in the world will be here in Utah and recorded by Governor Leavitt.

Interviews for the Juvenile Court Administrator position will be held on November 19 & 20, 1997. The interview panel consists of Dan Becker, Hon. Kay A. Lindsay, Hon. Hans Q. Chamberlain, Hon. Joseph Jackson, Hon. Frederic M. Oddone, and Barbara Hanson.

Recently, the court system received a grant in the amount of \$62,000 from the Commission on Criminal and Juvenile Justice. These funds will be utilized to help research and establish a new juvenile court automation system.

Request from the Utah Association of Criminal Defense Lawyers:

Recently, Chief Justice Zimmerman received a letter from Ronald Yengich which expressed concerns about court security. The concerns expressed will be considered by the Judicial Council during its December 17, 1997, meeting when the Council debates issues surrounding proposed changes to the Code of Judicial Administration 3-414.

Oaths of Office:

The issue of oaths of office will be referred to the Policy and Planning Committee of the Judicial Council for a review and recommendation back to the Council.

Application for Recertification for Active Senior Judge Status:

The application for recertification for active senior judges status by Hon. Don V. Tibbs will be placed on the November 24, 1997, consent calendar of the Judicial Council.

Adjourn:

There being no further business, Judge Greenwood adjourned the meeting.

APPROVED MINUTES

JUSTICE COURT STUDY COMMITTEE MINUTES

October 1, 1997
12:30 p.m.

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

Members Present

Judge Parley Baldwin
Representative Greg Curtis
Senator Joseph Hull
Judge William Keetch
Paul Morris
Mayor LaVelle Prince
Judge Anthony Schofield, Chair
Richard Schwermer
Kevin Sundwall

Members Excused

Camille Anthony
Mayor Allen Adams
Commissioner Gary Herbert
Judge Jerald Jensen
Commissioner Royal Norman
Judge Gregory Orme
Melvin Wilson

Guests

Daniel Becker, State Court Administrator
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. Upon motion, the minutes of the September 8 meeting were approved unanimously.

II. INFORMATION REPORT

Judge Schofield stated that if the Committee's previous discussions on exclusive jurisdiction were implemented B and C misdemeanors would be transferred from the district court into the justice courts. The Committee expressed concern about the effect of the proposal on the state's general fund. Ms. Gentles reported on the information she gathered.

She reported on the number of Bs and Cs handled in district court fiscal year 1997. They were broken down in charges and cases. The number of charges counts offenses; the number of cases indicates filings which may consist of more than one offense. B charges were 77,397; C charges were 126,053. B cases were 63,276; C cases were 102,565. These cases plus infractions are the types of cases that would be transferred to the justice courts if the Committee's proposal is adopted.

The state's portion of the fiscal year 1997 revenue associated with district court misdemeanors and infractions that are subject to the 50% split with the prosecutor was approximately \$4.4 million. This figure includes the fines on class A misdemeanors. The exact portion attributable to class As is not known. The \$4.4 million figure represents fine revenue collected not fines assessed. Taking the amount paid in 35% surcharge from state courts and determining how much fine revenue was associated with it results in a fine figure of approximately \$1.8 million associated with 35% surchagable offenses. The \$1.8 million figure is intended to give the Committee a rough idea of the probable floor on the revenue associated with the cases under discussion.

Neither the \$1.8 million or \$4.4 million figures include surcharge revenue which would continue to be paid to the designated funds regardless of the court hearing the case. Issues surrounding debt collection will change somewhat if some anticipated legislation goes through this year.

The statewide caseload in justice courts for fiscal year 1996 was approximately 360,000. Rick Schwermer stated that he thought that the district court volume is approximately 40% of the justice court volume.

Ms. Gentles reported that of the \$4.4 million from fiscal year 1997 \$1.1 million is generated out of the downtown Salt Lake district court. While she did not have the exact figure, Ms. Gentles stated that she expected Salt Lake, West Valley, Provo, Murray, Sandy and Ogden district courts to generate most of the \$4.4 million.

III. DISCUSSION OF EXCLUSIVE JURISDICTION PROPOSAL

The Committee discussed the portion of revenue that may be attributable to class A misdemeanors. Ms. Gentles stated that a report prepared in the early 1990s attributed approximately one percent of misdemeanor and infraction revenue to class A misdemeanors.

Rick Schwermer asked if there would be savings to the state if district courts do not hear the B and C misdemeanors and infractions in the future. If the jurisdiction change occurs, the savings to the State may be clerk time and reduction in growth. Judge Schofield stated that the proposed change would impact the caseload of approximately 12 district judges. Judge Baldwin stated that the experience in the Second District has not been that the number of judges in the district court has constantly grown. In fact, the district currently has one less judge than when Judge Baldwin was in private practice. Ms. Gentles pointed out that none of the Committee's proposals affected the jurisdiction between the justice and juvenile courts.

Senator Hull was asked what the likely response of legislators looking at the financial issues only would be. He stated that it depends on how well they have been educated. Without an understanding of the issues, the legislators will see the fiscal impact and look no further. However, emphasizing that justice courts may more efficiently handle these cases may appeal to those legislatures who are concerned about the best use of dollars at every level of government. If they realize that this would result in having to appoint fewer district court judges in the future and in more efficient case processing by the district courts, they may vote for it. Ms. Gentles pointed out

that any fiscal note would include the costs to local government. Senator Hull stated that the extent to which the state accepts some responsibility for funding the local justice courts in the transition is a significant question which will need to be answered by this Committee.

Mayor Prince stated that obviously there would be a time period for the transition of cases to the local courts. Mayor Prince asked what portion the cases proposed to be shifted form of the district court caseload. Judge Schofield stated that the actual numbers could be calculated. A great deal the of cases proposed to be shifted are traffic cases in which the violators never see the judge. They take relatively small amounts of judge time. Judge Schofield stated in districts that are handling a large number of Bs, Cs and infractions usually those cases are not divided evenly among all the judges. Instead, certain judges hear most of those cases and other judge hear very few. Rick Schwermer stated that the Judicial Council is working on a weighted caseload study for the judges and clerks to attempt to identify the relative resource intensity of cases. Mayor Prince summarized that the Bs and Cs are larger volume and lower time use than other cases in the district court.

Senator Hull asked what the district court judges' and the justice court judges' reaction to moving these cases into the justice court would be. If the Committee's proposal goes to the legislature, a unified agreement from all parties would be needed. Judge Schofield stated that the district judges may be concerned about the elimination of their positions at the end of their term. There may have to be a stipulation in the legislation stating that a sitting judge would not lose his or her job over this decision. Judge Schofield's subjective opinion was that most district judges are presently over worked and would welcome the change. Senator Hull stated that he thought that some in the Legislature have an opinion that district judges do not work hard enough and would view the case loss as unacceptable. Rick Schwermer stated that timing for this change will be the key to getting it passed by the Legislature. The caseload projections show that the bubble of juvenile court cases will be moving into adult courts in the next few years. Mr. Schwermer stated that not only is there a steady increase in cases but also a reduction in clearance rates. If the Committee's recommendation is adopted, the district court caseload can be expected to catch up relatively quickly.

Judge Baldwin stated that he thinks that concurrent jurisdiction is the problem. The Committee's recommendation should not appear to adopt a view that district court judges do not want to hear the cases. Knowing which cases are going where is the issue. Ms. Gentles stated that she had heard a district court judge express the concern "is this starting down the circuit court road again?" Paul Morris stated that the perception is there that some district court judges do not want to hear the city cases. Those cases are big deals to the cities that are trying to enforce the ordinances. Rick Schwermer stated that there are also district court judges who want to hear only the Bs, Cs and infractions.

In response to a question from Judge Schofield, Mr. Morris stated that the Committee's direction was contrary to what he had perceived as the state court system's philosophy of one unified district court. Mr. Morris stated that he expected West Valley City to have mixed feelings about switching these cases. Every two years, the city studies the issue of forming a municipal court in earnest. He would expect that if these cases are forced out of district court West Valley City would form its own court rather than using the county justice court. The reason West Valley has not switched to a

justice court is financial. The 50% split is not enough to support the infrastructure. West Valley also has a fear that the appeal rate would be high and a large number of cases would have to be tried twice. Judge Schofield stated that historically the appeal rate out of the justice court to the district court has been low.

Mr. Morris stated that the Committee's recommendation will come under criticism from those people who view it as their fears about consolidation coming true: the district court does not want to hear those cases. This proposal may be viewed as a beginning of the same cycle that lead to consolidation. Judge Baldwin asked if all courts could come under the state judicial umbrella, letting the local entities keep some of the revenue and control the selection of the judge. Mr. Morris stated that he thought that would be perceived as the worst of all worlds. Local governments have elected officials that do not need a state overseer telling them how to run their courts. Judge Baldwin stated that if the local governments got the independence and revenue that they wanted a statewide justice court could answer a number of the other issues. Mayor Prince stated that some of the smaller courts may not break even while some of the larger courts may make money. The administrative efficiencies that come from a larger system really help. However, improvements in technology and administration in the justice courts may have the same result. Judge Baldwin stated that he agrees with Mr. Morris that a cycle that would reproduce the creation and consolidation of circuit courts should not be initiated. However, putting all courts clearly in the judicial branch with build-in control by cities and counties would give more flexibility and efficiencies in the system especially in the area of capital expenditures. Mayor Prince stated that he expects a number of interlocal agreements in lieu of building new facilities. Rick Schwermer stated that a state-funded justice court would not only address some of the jurisdiction issues but also addresses some of the other aspects of the Legislature's intent language. Stability of planning would be addressed; revenue would not have to be split; judicial independence would be balanced between local governments' interests in the identity of the judges and independent judicial decisions. Mr. Schwermer concluded that it would be an enormous change. Mr. Morris stated that he viewed it as a diverging from the previous positions of the court administrator's office.

Senator Hull stated that Senator Hillyard had told him that he had some feelings on the issues before the Committee. The Committee discussed briefly the process that might be necessary if the Committee's proposals were to be introduced in the Legislature.

Judge Schofield suggested the Committee put together a proposal that would state that on a date certain there would be a shift of all Bs, Cs and infractions out of the district courts into justice courts and let every city or county decide how it wants to handle its cases. If the Committee is looking at the charge "what is in the best long-term interest" then some sort of state funding of the justice courts with local control over the selection of justice court judges, and a commitment that justice court judges would be dealing with local issues ought to be considered.

Senator Hull asked what the Committee expected to accomplish before the next legislative session. Rick Schwermer stated that some legislation has to be introduced next session because the district court jurisdiction issue must be dealt with before July 1, 1998 when it sunsets. Judge Schofield stated that this Committee would provide its final report to the Judicial Council. If the Council

chose to sponsor the recommendations of the Committee it would work through the Judiciary Committee of the Legislature. Senator Hull pointed out that not much time is left to fit in with the legislative hearing schedule before the 1998 Session. Mayor Prince stated that at a minimum the Committee needs to make an outline of the time-frame and pick the date of the case shift. Then, if that proposal has support, the detailed legislation can be introduced in a later session. Mr. Schwermer stated that he thought the only legislation that had to be introduced this year would be the draft language already approved by the Committee that addresses the district court jurisdiction. Judge Schofield stated that the Committee has invested a lot of effort and time and it would be nice to have a report in writing and recommended legislation as soon as possible. At minimum, legislation should designate that there would come a date certain by which the cases will shift and everybody will begin to focus on it. Mr. Schwermer stated that he thinks that this may have to be done in two phases. Phase I would be the proposed legislation already drafted. Phase II would be the detailed legislation in the 1999 Session. This time frame would give the Committee time to further study the fiscal impacts and develop more information.

Judge Schofield stated that in 1998 the Judicial Council has planned to study the family court issue. Rick Schwermer stated that if the Committee stays with the position that it has tentatively taken to date, which is leave Bs, Cs, and traffic in the juvenile court as it is, the family court discussion would not affect the justice court. Judge Schofield's concern would be that in the 1999 legislature there would be two major structural changes in the judiciary; one the family court and the other the justice court. Senator Hull stated that maybe they should be done as a package if that is the case. Mr. Schwermer stated that he did not think the family court issue would be ready for legislation until the 2000 session.

Judge Schofield asked if there is anyone troubled about the discussions so far and think that another approach ought to be taken. If the answer is no, then Judge Schofield suggested asking Ms. Gentles, Mr. Schwermer, and himself to put together a draft report, draft legislation, etc. for the Committee to consider. The Committee still needs to address several issues before it can finalize the report. One issue is judicial independence, i.e. how are the judges appointed and what is the procedure for retention. Presently, county justice court judges are retained by retention election and city justice court judges are retained by reappointment. If the Committee will give a little more direction in this area, a draft report and legislation could be prepared.

Judge Schofield stated that he did not want the perception to be that the Judicial Council was putting together a report that the Committee would be expected to "rubber stamp." Judge Schofield stated that he did not begin the Committee's work with the idea that one day Bs and Cs should be in justice courts. In fact, his initial opinion was to preserve the district court jurisdiction as is. He has been converted to a different view point. He presented a sense of where the Committee is headed to the Judicial Council at their last meeting. While the Council members were interested in Judge Schofield's report, the members did not take a position. They want this Committee to make its decisions and recommendations. Then the Council will do whatever the Council sees fit to do. Mr. Morris stated that positions do change and he is not opposed to where the Committee is going, just surprised.

Ms. Gentles asked when the Committee should report to the appointing groups. The Committee responded that it would wait for the report to be prepared.

Paul Morris asked what the Committee was proposing to do about the existing opt-out provision for the Section 10-3-923 cities. Mr. Morris stated that his recommendation would be to leave that provision alone for the time being. Rick Schwermer stated that he had not heard anyone suggest otherwise.

Senator Hull asked about proceeding on the issue of judicial independence. Judge Schofield stated that the issue is one of great interest to the Judicial Council. The Committee discussed retention election verses reappointment by the city council. Mayor Prince asked if the number of municipal justice court judges who had not been reappointed was significant. Mr. Schwermer responded that there have not been very many cases when a judge has not been reappointed. However, it is impossible to know how many times municipal justice court judges have been reappointed because they have complied with a request to do something the judge has felt inappropriate. Mr. Schwermer stated that he suspected the number of judges in the second category is quite a bit higher. Administrative and money pressures may influence a judge's actions. Mr. Schwermer stated that it is difficult to measure the effect of the current system because how do you measure people changing their behavior rather than being removed from office. Senator Hull stated that if the Committee's proposal on jurisdiction is adopted mayors and city council may have alot more power. The public may have the perception that municipal justice court judges are reappointed so long as a quota is kept. Mayor Prince stated that the judge should not have the pressure of the administration of the court, but just be effective in disposing of cases.

Mr. Morris stated that one of the concerns of local government is that their issues are not a priority to the state courts. However, the judges should not be untouchable. There should be some pressure on the judges to recognize that these cases are important and that fines should be meaningful to deter unwanted activity. Mr. Morris stated that, in his opinion, the process should not be a retention election. Instead, there should be a "for cause" removal system. The reappointing authority would have to be able to explain in detail what the judge has done wrong. Judge Baldwin stated that he thinks that those concerns could be addressed.

Senator Hull stated that maybe some sort of retention election combined with reappointment would be a good process. If the public votes against the judge, then the issue would be brought to the reappointing authority to investigate throughly. If there is no cause shown then the judge would be retained.

Mr. Schwermer stated that the next term for municipal justice court judges ends the first Monday in February, 2000, so they would be up for election in November, 1999 if that is the direction the Committee is taking. If these proposals did not go to the Legislature until 1999, the time-frame is relatively short.

Paul Morris suggested that judges should only be removed for cause but that citizens would be able to force the judge's placement on the ballot. He pointed out that board of adjustment members can

only be removed before end of term for cause.

Mayor Prince stated that the "for cause" process may be a place where the Committee can fairly balance the independence issue and the political realities with a municipality wanting to be able to have some checks. Such a proposal may get support from the cities. Mr. Schwermer proposed that if a municipality has a judge that it wanted removed it could bring it before a retention committee with four mayors and one judge and have a review process similar to binding arbitration. Mayor Prince responded that he liked that option better than going to the city council because of the background necessary to make a "for cause" determination. This committee could look at the cause cited and would be looking at it from local government perspective. Judge Keetch stated that he agreed with Mayor Prince. Ever since Judge Orme brought the issue up, he has thought there was merit in the proposal. Judge Schofield stated that if the appointing authority also has reappointment authority a cause standard would promote accountability. In response to a question from Ms. Gentles, the Committee affirmed that there would be no entitlement to the office for the judge. If a judge were no longer needed because the workload was down, the judge could be dismissed at the end of the term. Rick Schwermer stated that possibly the same mechanism should apply to county judges. Senator Hull stated that he thinks the county judges should continue to be elected. The population base is large enough to avoid the potential problems in a city retention election process.

Judge Schofield stated that there needs to be a mechanism establishing a "for cause" standard. If there is an aggrieved party, there would be an appeal to some kind of a group of mayors and city council members with a judge from the Board of Justice Court Judges. Mr. Becker pointed out that this board should be in place and available at any given time. The board would only be called to act at the end of the judges' terms. Other mechanisms, such as the Judicial Conduct Commission, exist for the removal of a judge during a term.

It was the consensus of the members present that the initial draft report should incorporate these ideas for discussion at the next meeting with the objective of getting something to the legislature this year.

Judge Schofield stated that he would like to find out soon whether the Committee's recommendations make sense to the other interested bodies. The plan is to put the draft report together with the jurisdictional language that the Committee has already approved, and try to put together some language for the phase II and include retention language.

Representative Curtis stated that the Committee has taken a position of Bs and Cs in justice courts with the responsibility falling on the counties unless cities opt to create a court. Politically, all the interest groups will have to support or it will not get passed. Also, he would like to be assured that there will be full service district courts throughout the districts as there are set now.

IV. FUTURE MEETING DATES

The next meeting of the Committee will be October 28, at 12:30. The following meeting November 4th at 12:30.

The last time the Committee can have a legislative committee hear any proposals is November 19th, unless management committee hears it.

Judge Schofield adjourned the meeting.

JUSTICE COURT STUDY COMMITTEE MINUTES

October 28, 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
Judge Parley Baldwin
Representative Greg Curtis
Commissioner Gary Herbert
Senator Joseph Hull
Judge William Keetch
Paul Morris
Judge Anthony Schofield, Chair
Richard Schwermer
Melvin Wilson

Members Excused

Camille Anthony
Judge Jerald Jensen
Commissioner Royal Norman
Judge Gregory Orme
Mayor LaVelle Prince
Kevin Sundwall

Guest

Roger Cutler, Salt Lake City Attorney

Staff

Peggy Gentles
Lyn Peterson

I. WELCOME AND APPROVAL OF MINUTES

Judge Schofield welcomed the members to the meeting. Upon motion by Senator Hull and second by Judge Baldwin, the minutes of the October 1 meeting were approved unanimously.

Judge Schofield introduced Roger Cutler, Salt Lake City Attorney. Mr. Cutler has some concerns about the Committee's direction and has expressed those to Paul Morris and Chief Justice Zimmerman. Mr. Cutler stated that Salt Lake City went into the circuit court system and, later, court consolidation reluctantly. The city was concerned that court consolidation would result in the city's cases not getting the attention that they deserve. Mr. Cutler stated that the state court system approached the city and specifically requested that the city support consolidation. In that process, Salt Lake City was assured that its cases would get the proper attention and the city would have a limited number of forums that it would have to address. The city council had not been happy with the way the state judiciary was handling its cases, particularly zoning and building code. As a result, Salt Lake City considered forming a justice court. Mr. Cutler stated that the state courts made a strong case to the mayor to support consolidation and promised that the city's cases would be properly handled. Since that time, the city has had quarterly meetings with the court administrator's office and the city has been impressed with the attention to the city's concerns. Mr. Cutler stated that Salt Lake City's immediacy is the city-owned old Circuit Court building in downtown which will be vacated upon Third District Court's move to the Matheson Courthouse in 1998. The city has been planning on using the building for other purposes or replacing it with a

library. However, Mr. Cutler has recently been informed of the Committee's recommendation to place Bs, Cs and infractions exclusively within justice court jurisdiction. That proposal would be welcomed by the city council because it wants more control over local issues. Financially, the city needs to know quickly if it will be required to form a court in a few years. According to Mr. Cutler, Salt Lake City sees the proposal as a complete reversal of what the city has been told by the court administrator's office.

Mr. Cutler asked that the Committee consider a couple of issues. One, the year for transition is too far in the future. Salt Lake City needs to know sooner because it has a building about which it needs to make a decision next year. Second, the current split of fines and forfeitures will not support the court. A Salt Lake City Justice Court would have a large volume, and it is important to the well-being of the community that local offenses be addressed effectively. Mr. Cutler believes strongly that the court should not be a revenue generator but the city needs the resources to run a quality court. Mr. Cutler does not want to try appeals de novo. First class, and maybe second class, cities should be able to form a court of record with law trained judges. While percentage-wise there may not be many trials de novo, it affects how cases are managed. Plea bargains are struck to avoid the trial de novo.

Judge Schofield thanked Mr. Cutler for his comments. Judge Schofield stated that the Committee is not a judiciary committee so it would be unfair to say the judiciary is backing out of agreements it has made. Mr. Cutler stated that minutes of the Committee's meetings have reflected a consensus on the jurisdiction issue. If that is the direction, Salt Lake City needs to be made whole financially and needs to be able to quickly make a decision on its facilities. Mr. Cutler thanked the Committee for its time.

II. INFORMATION REPORT

Peggy Gentles distributed fiscal 1997 justice court data to the Committee. This data is reflected in the draft Interim Report. The numbers are similar to the fiscal 1996 numbers previously presented to the Committee. She also directed the Committee to the additional revenue information in the draft Interim Report. The revenue from the wildlife, state parks, and overweight offenses, which are subject to treatment different from other misdemeanors, is included. The fiscal 1997 amount that the state received is approximately \$15,500. Another revenue impact of the Committee's exclusive jurisdiction proposal would be on a Division of Facilities Construction and Management Capital Projects Fund. For each Title 41 (Motor Vehicles) offense in a court of record, seven dollars is paid to the fund. In fiscal year 1997, approximately \$611,000 was generated.

III. REVIEW OF DRAFT INTERIM REPORT

Judicial independence recommendation.

Judge Schofield began the discussion of the draft Interim Report by discussing the judicial independence issue. The proposal in the draft report would require "good cause" before a justice court judge is not reappointed. That determination would be reviewable by a body consisting of

four mayors appointed by the League of Cities and Towns and one justice court judge appointed by the Board of Justice Court Judges. Without "good cause" being found, a judge would be presumptively reappointed.

Mayor Adams expressed his support for the "good cause" standard. Representative Curtis expressed concern that the proposed scheme would create a wrongful termination cause of action for a judge who was not reappointed. Rick Schwermer stated that the proposal arose in the last meeting as an attempt to balance concerns about retention elections in small populations with a need for more independence. The review panel was constituted to give some oversight but to have a local perspective. Mel Wilson asked how many justice court judges sit in towns with such small electorates. Mr. Schwermer replied that, although he was not sure, municipalities with class III and IV courts are likely to be quite small. Commissioner Herbert suggested varying the reappointment process of judges by class of city or town. In the larger classes of cities, retention election should be used. In small cities and towns, the "good cause" proposal of the Committee should be used. Paul Morris stated that he likes the "good cause" concept. Even in a larger city, the election of a justice court judge could be very political. Mr. Morris stated that cities already deal with a similar standard with their boards of adjustment. While he likes the "good cause," Mr. Morris expressed concerns with the review panel. The hearing should be in front of the city legislative body. If the reappointment is a "municipal function," the Ripper Clause of the Utah Constitution may be violated by the Committee's proposal.

Representative Curtis questioned the assumption that retention elections are appropriate in counties and judicial districts but not cities. The number of potential voters in the rural judicial districts are probably less than the population of many Wasatch Front cities. Mayor Adams pointed out that rural communities already operate under a presumption of reappointment because of the time and money invested in the incumbent. Representative Curtis stated that he is uncomfortable with legislating municipal discretion. During the legislative session, the local governments often cite accountability to the citizens as the appropriate control mechanism. Senator Hull stated he liked the "good cause" and the appeal board as set out in the draft report. However, he suggested the proposal include two justice court judges and three mayors. Possibly, first and second class cities should have retention elections if the Committee is opposed to the "good cause" proposal for all municipalities. Paul Morris stated that, while cities vigorously argue for their right to have a judicial branch, they do not argue for more power than other levels of government over the judiciary.

Rick Schwermer pointed out that the concerns about independence address the judge's adjudication decisions not administration of the courts. Representative Curtis stated that he sees the state court system pushing cases out while at the same time trying to retain control over the process. If the state court system does not want the cases, the local officials should be trusted to handle the courts. Judge Baldwin stated that he thought that Representative Curtis was incorrect that the state court system wants to give up the cases. Judge Schofield stated that the Committee is not synonymous with the state courts. Rick Schwermer stated that Mr. Cutler was addressing issues that have arisen out of the question of what to do with district courts and district court caseload. The answer has been that district court handle misdemeanors. However, this Committee is addressing the other side

of the issue: what is the role of the justice court? Given that there is a justice court system, what should its caseload and jurisdiction be? The answer to that question happens to be different from the answer to the question about district courts. Mr. Schwermer stated that he understands Mr. Cutler's concern to be that the Judicial Council has reversed its position. However, the Judicial Council has not done anything yet. Mr. Schwermer added that the Committee was not an attempt of the Judicial Council to circumvent the answer that was given previously. The Judicial Council has been trying to get a committee formed for four years to look at the role of justice courts. Mr. Morris responded that the perception will remain that the Committee's recommendation is a state courts' initiative.

Mr. Morris stated that he would prefer the reappointment process remain as it is. However, if any changes are to be made, he favors the "good cause" process because the retention election alternative is unappealing. The municipalities may be concerned that under a retention election process a judge that is too lenient on offenders will be retained because the public likes the judge. Commissioner Herbert stated he also likes the "good cause" process because, unlike county government, municipalities have a separation of powers. Judge Schofield stated that having the mayor establish "good cause" will require the obligation to be taken seriously. Mr. Morris stated that when the process is formalized the participants are more deliberative. Senator Hull stated that he would be uncomfortable with the possible public perception of a review by the city council. Mr. Morris asked about adding an appeal to court. Representative Curtis asked what a city would do while the appeal was pending; the judge should have to remain on the bench. Judge Schofield stated that he does not think the court is the right place for such a decision. Mel Wilson asked whether the city would be foreclosed from considering other alternatives such as consolidation. Judge Schofield replied that the city's ability to close its court or enter an interlocal agreement at the end of the term should be clearly stated. Mr. Morris agreed. Mel Wilson stated that he supported Mr. Morris' proposal for a hearing before the city legislative body with no appeal. Paul Morris stated that the proposal would not require a mayor to justify reappointing a judge only not reappointing. Judge Keetch stated that he supported the proposal of review of the city council.

MOTION: Paul Morris moved that the draft Interim Report on page 16 be amended to remove paragraph recommending a separate review body and to recommend a "good cause" standard for nonreappointment by the municipal chief executive with a hearing before the city council and no appeal. Judge Keetch seconded. The motion passed unanimously.

Trial de novo

Judge Schofield reminded the Committee that the appeal from a justice court judgment is a trial de novo in the district court with no further appeal unless the court declares an ordinance or statute unconstitutional. The reason for this de novo review is that the justice court does not keep a record that another court could review. Judge Baldwin pointed out that the de novo is the final appeal. Therefore, the requirement that the district court proceeding be on the record is possibly superfluous. Judge Baldwin stated that many times the justice court proceeding is used similarly to a preliminary hearing. The defense counsel uses the process to find out the prosecution's evidence

so when the district court trial de novo is held defense counsel is better prepared to answer. However, he does not see that use of the process as much as he used to. Representative Curtis stated that defense counsel often uses the potential for a trial de novo as a tool to extract a plea from the prosecution following a justice court conviction. Representative Curtis also said that another issue is whether a defendant is entitled to a jury trial in the district court. The answer to this question is affected by the fact that while a district court Judge may sentence more leniently than a justice court Judge, the district court Judge may not impose a stiffer sentence. Paul Morris stated that West Valley City had just argued a case before the Court of Appeals on the issue of if a judge says that a defendant will not be sentenced to jail, is a jury trial required. Judge Schofield stated that his experience has been that usually the defendant is seeking a new sentence not a retrial on the underlying offense. Rick Schwermer stated that he thinks that the limiting factor is cost to the defendant. He also stated that a legislative task force is currently looking at issues related to DUI's. One bill that has already been filed would abolish jury trials in all Title 41 cases.

Judge Schofield stated that he does not think the Committee can recommend making justice courts courts of record. He stated he does not think there is any sentiment to do so. Paul Morris stated that he agreed with Roger Cutler that the larger cities should have the option of creating a court of record to avoid the de novo review. In response to a question from Judge Schofield, Mr. Morris stated that if a city wants to spend the money to have a law trained judge and the equipment to keep a record, the city should be able to form a city court of record. Mel Wilson questioned whether a statutory scheme should be fashioned that would transfer to the district court all justice court cases in which a jury trial has been requested. The defendant would be able to opt for a jury trial in the justice court. However, the defendant would be precluded from another jury trial in district court. Representative Curtis stated that jury trials are very expensive. The cost of the juror fees and the time in selecting the jury is significant. Rick Schwermer stated that the Committee could say that the de novo process makes sense but there is potential abuse in the availability of two jury trials. The jury system is beyond the mandate of the Committee. Judge Schofield asked whether there was merit in saying that the Committee has discussed the issue and does not see a better appeals model than the de novo review and leave it to other interest groups to address the Committee's concerns about jury trials.

In response to Mr. Wilson's suggestion that the defendant be required to pick one forum to have one jury trial, Mr. Morris was concerned about the fact that if the jury trial was in justice court there would be no way to assure that the jury trial met constitutional standards due to the lack of a record.

MOTION: Mel Wilson moved that the reference to trial de novo in the draft Interim Report be left as is, moved to the section of the report that deals with the Committee's recommendations rather than issues still to be addressed, and be modified to reflect the Committee's deferring the issue of when jury trial should be afforded to other groups. The motion was seconded by Mayor Adams. The motion passed unanimously.

Formation of courts

Judge Schofield reminded the Committee that the material in the draft Interim Report that was

italicized was material that the Committee had discussed briefly but had not fully discussed and come to a conclusion on. Judge Schofield asked Peggy Gentles to summarize the recommendation as drafted in the report on the issue of formation of courts. Ms. Gentles stated that the proposal was to remove the distinction between the cities listed in Section 10-3-923 and all other municipalities. Currently, Section 10-3-923 cities can upon one year's notice in an odd numbered year form a justice court. All other local governments must demonstrate a need for the court in order for the court to be certified by the Judicial Council. The proposal would remove the needs requirement for non-10-3-923 cities. It also would remove the requirements in section 10-3-923 about formation of courts in those enumerated cities. Instead, the suggestion of the League of Cities and Towns would be accepted and any city that was prepared to meet the standards set by the Judicial Council could form a court. However, because the formation of a court will affect a case shift, notice would be required from any city proposing to form a court. The notice would be based upon the size of the court to be created. If a city proposed to form a class 1 or 2 court, two year's notice would be required. If a city proposed to form a class 3 or 4 court, one year's notice would be required. Ms. Gentles noted that the proposal on formation is entirely independent from any proposal on jurisdiction. Therefore, it contemplates that the state court as well as other governmental entities would be affected by the formation of a new court. Ms. Gentles also pointed out that the report as currently drafted does not address how the transition would be made if the exclusive jurisdiction proposal were adopted. For example, there is no recommendation that local governments that are going to form courts in response to change in justice court jurisdiction be required to wait until the transition date to form their courts. Nor is there any statement about whether the Committee's proposal on formation (i.e. time of notice of formation) would be in place during the transition period from adoption of legislation to, as the report says now, 2002. Ms. Gentles also stated that the proposal contemplates the Judicial Council being able to shorten the period of time between notice and formation of the court if affected entities agree. Paul Morris stated that he was opposed to changing from a one year to a two year notice for the 10-3-923 cities that would be forming larger courts. Mr. Morris stated that the cities had fought very hard for the right to leave the state system on a one year notice and he did not think they would be willing to give that up. Rick Schwermer pointed out the two years notice is not very long in the world of budgeting. Mr. Morris stated that the state had always seen the one year notice as sufficient before. However, Mr. Schwermer responded that the state only needed to be concerned about getting such notice every other year.

Judge Schofield asked if, leaving aside the issue of the cities listed in 10-3-923, the Committee was willing to accept the proposal that notice be given two years in advance of forming a class 1 or 2 court and one year in advance of forming a class 3 or 4 court and removing the requirement that the need for the court be demonstrated before the Judicial Council certifies the court.

MOTION: Paul Morris moved that Judge Schofield's recommendation be adopted. Commissioner Herbert seconded the motion. The motion passed unanimously.

Ms. Gentles pointed that the proposal in the report does not affect the Council's involvement in setting standards for justice courts other than the recommended addition of a technology standard.

Judge Schofield then asked the Committee to discuss the inclusion of 10-3-923 cities in the new

notice scheme. Mr. Morris stated that on second thought he was not sure the cities would object to the proposed scheme because the cities currently can only give notice every other year. Judge Schofield stated that he thought while the 10-3-923 cities would be affected they would not be significantly impacted by the draft report's proposal. It would, however, force those cities to make their decisions sooner. Mel Wilson pointed out that the proposal did not specify a certain date on which notice had to be given.

MOTION: Commissioner Herbert moved that the draft report's proposal on formation of courts, including its provisions for section 10-3-923 cities, be approved with the clarification that the Judicial Council's ability to shorten the time period for notice would apply for all courts. Rick Schwermer seconded. Senator Hull asked whether Commissioner Herbert's motion included the proposal at the end of the section on dissolution of courts. Judge Schofield clarified that the motion did not include that paragraph. The motion passed nine to one. Mr. Morris voted against the motion.

Judge Schofield then referred the Committee to page fifteen of the draft report that proposed a scheme for the dissolution of courts. Judge Schofield pointed out that currently only 10-3-923 cities were governed by any requirements for dissolution of their justice courts. Those cities are required to get legislative approval before revoking their assumption of jurisdiction over justice court cases. For all other governments the Legislature has been silent. The proposal in the draft report would require that the Legislature approve dissolution of any justice court. The theory behind this proposal is that the state court may be affected by the dissolution of the court. Paul Morris stated that he thought that any notice or approval should be to the body that will be left with the cases upon dissolution of the court. Representative Curtis asked whether the other government would have to approve the dissolution. Rick Schwermer stated that he thought that the legislative approval was the only option because of the impossibility of addressing all issues that could possibly come up. Representative Curtis stated that he thought the Committee's direction was to make the county ultimately responsible for the cases that would be moved under the exclusive jurisdiction proposal. Rick Schwermer stated that he did not understand that to be the Committee's recommendation. If no justice court has jurisdiction, the cases would go to district court. Therefore, the body that should have approval over dissolution should be the Legislature. Commissioner Herbert stated that he would rather that the city have to go to the county that will have to pick up the cases rather than the Legislature. Senator Hull stated that possibly rather than requiring approval by any other body the proposal should just require notice to allow for resources to be adjusted before the case shift. Rick Schwermer stated that that would bring the Committee back to concerns about how long notice should be. Mel Wilson stated that the notice should be the same as is required by the Committee's proposal to form a court, two years for a class 1 or 2 court, one year for a class 3 or 4 court.

The Committee discussed what would happen if the affected governments decided that they could shift the cases earlier. Judge Schofield suggested that the Judicial Council be able to waive the time period for notice. Rick Schwermer stated that the legislative approval idea would allow the system wide interests to be addressed by a neutral body and also allow for flexibility. For instance, the Legislature could approve the dissolution with an effective date that would allow all the other governments to adjust their budget planning accordingly. Representative Curtis asked if the state's

system is not going to be affected because all those cases are in justice courts under the Committee's jurisdiction proposal, then why should the Legislature be involved in the decision making about dissolution of the court. Senator Hull suggested that if a city is going to dissolve that it should have to deal with the county because the county will picking up the cases. However, if a county court is going to dissolve, then the Legislature should have to approve because those cases would be required to go to district court. Representative Curtis stated that he did not think that the counties would be allowed to dissolve their courts under the Committee's proposal. Rick Schwermer stated that he did not think that in the face of local autonomy arguments the Legislature would buy off on forcing a county to form a court. Judge Schofield reiterated Senator Hull's proposal that notice be given to the county of the city court's dissolution but approval by the Legislature would be required before a county court could dissolve. Rick Schwermer pointed out that legislative approval is already required for the dissolution of a court in a 10-3-923 city.

MOTION: Senator Hull moved that a city in a county with a justice court be required to give notice to the county before dissolving the court. Dissolution of a county court or municipal court in a county that does not have a justice court would be required to get legislative approval. The time frame for notice would be the same as the time frame for formation of courts under the Committee's proposal. Paul Morris seconded. The motion passed unanimously.

Jurisdictional proposal

Judge Schofield referred the Committee to page seven of the draft report. Judge Schofield referred to Representative Curtis' earlier comments about the Committee's prior discussion of effectively requiring a county to have a justice court. As the draft report now reads, it contemplates that there may counties that do not have justice courts. In the current environment the Committee is basically addressing the question of whether Cache County should be required to form a justice court under the Committee's proposal, since all other counties currently have a justice court. Rick Schwermer stated that Cache County has in the past studied whether it wants to form a justice court and has decided that it does not. Philosophically, he does not think that it should be forced to form a court. Cache County currently has a significant number of municipal courts that are serving a great deal of that community already. Given the number of municipal courts in the county, it would be difficult, in Mr. Schwermer's opinion, for Cache County to be able to support a justice court on case filings from the unincorporated areas and any municipalities that do not already have courts.

Representative Curtis objected to the draft as written. He stated that it burdens the other counties that already have courts to take up the caseload from dissolving municipal courts while a county such as Cache that does not have a court is not similarly impacted. Rick Schwermer stated that all the other counties had chosen to form their courts and abide by the rules that the Council establishes for those courts. Cache County has not decided to do so. Judge Schofield suggested that the Committee could strike the language in the report and allow other groups to debate the issue if they chose. Representative Curtis asked if the Committee's proposal would prevent a county with a currently existing justice court from dissolving its court. Rick Schwermer responded that the Committee's proposal now contemplated that with legislative approval a county will be able to

dissolve its court. Representative Curtis stated that the effect of the Committee's recommendation would be to require the state to support misdemeanor trials in Cache County while the county and city citizens would be supporting them in other parts of the state. Rick Schwermer stated that there is a revenue stream that would be flowing to the entity supporting the court that would offset the costs of the prosecution and providing the court.

Rick Schwermer stated that to address Representative Curtis' concerns, the Committee could adopt a proposal that would require if there is no county justice court the cases in justice court jurisdiction be filed either in the nearest municipal justice court or in the municipal justice court of the county seat. Senator Hull stated that the legislation could allow the counties some time to opt out of their justice court if they did not want to continue to support the courts under the new jurisdictional scheme. Representative Curtis agreed with Senator Hull so long as legislative approval would not be required for the opt out of the justice court system. Judge Baldwin stated that he preferred Rick Schwermer's suggestion of keeping the cases in a justice court rather than allowing the cases to flow the justice and district courts depending upon decisions by county and city governments. Representative Curtis stated that he had voted for the exclusive jurisdiction proposal with the understanding that all the counties would be required to have a justice court. He does not think that it is appropriate to have the counties treated differently.

MOTION: Judge Baldwin moved that if a county does not have a county justice court, the territorial jurisdiction of the municipal justice court in the county seat is expanded to incorporate the entire county. Senator Hull seconded. The motion passed nine to one. Representative Curtis voted against the motion.

III. OTHER BUSINESS

Judge Schofield asked that the Committee meet on Tuesday, November 4. At that meeting he hopes to approve the final Interim Report so that it can be distributed to the various interest groups. If possible, he would like to address presenting the Committee's report to the various groups.

Paul Morris asked that the report include some reference to addressing facilities issues. A number of district court sites are owned by the cities and leased to the state under various lease agreements.

Representative Curtis reiterated his objection to the proposal concerning county justice courts. He would be in favor of allowing the counties to opt in or out of the justice court system knowing that they may be responsible for the caseload of a dissolved municipal justice court. Rick Schwermer stated that his only issue with the proposal would be that it invites practical problems. In his opinion, the counties most likely to opt out at an invitation are those with very low caseloads. Then, the relatively expensive district court judge would be required to cover those cases in the small counties taking resources that had previously been used elsewhere.

Senator Hull moved that the Committee meeting adjourn. The motion passed unanimously.

JUSTICE COURT STUDY COMMITTEE MINUTES

November 4, 1997

12:30 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
Commissioner Gary Herbert
Judge William Keetch
Paul Morris
Judge Gregory Orme
Mayor LaVelle Prince
Judge Anthony Schofield, Chair
Richard Schwermer
Kevin Sundwall
Melvin Wilson

Members Excused

Judge Parley Baldwin
Senator Joseph Hull
Judge Jerald Jensen
Commissioner Royal Norman

Guest

Judge John Sandberg

Staff

Peggy Gentles
Lyn Peterson

I. WELCOME AND APPROVAL OF MINUTES

Judge Schofield welcomed the members to the meeting and excused those members who could not be present. Judge Jensen who was unable to attend, asked Judge John Sandberg to attend in his place. Judge Schofield stated that, while Judge Sandberg could not vote, the Committee's procedure had been in the past that he would be able to participate in the discussion. Because the minutes of the October 28th meeting had not been distributed until the day before the meeting, there was no motion to approve them. The minutes will be approved at the next meeting.

II. DISCUSSION OF DRAFT AND INTERIM REPORT

Judge Schofield stated that the Committee had began its discussion of the draft interim report at its last meeting. He asked that the Committee begin discussing the unresolved issues in that report. A second item for the Committee's discussion was the distribution of the draft interim report. Judge Schofield indicated that Peggy Gentles had faxed a proposed distribution list to all the Committee members for their consideration.

Peggy Gentles indicated that the draft interim report dated October 29 contains changes made after October 28th meeting. Those changes were indicated by redline and strikeout; the material the

Committee did not address was in italics. She indicated that the Committee had discussed all the issues in the report with the exception of the jurisdiction section. Ms. Gentles indicated that the report on jurisdiction contained two sections. The first section addressed the Committee's proposal on the concurrent jurisdiction which essentially removed jurisdiction in justice court over cases that were in district court. The second section of the jurisdiction proposal would at some point in the future make jurisdiction exclusive in the justice courts over Class B, Class C misdemeanors and infractions. Ms. Gentles indicated that she had added a paragraph to the second section of the jurisdiction discussion to address a concern raised by Paul Morris at the previous meeting. His concern was that certain facilities that are currently used by the district court are owned by the municipal government and leased to the state under varying long-term lease provisions. Because each contract arrangement is unique, the report only recognizes that there may be a problem and expresses the hope that all parties will be treated fairly in any process to address the issue. Ms. Gentles indicated that the report also contained a recommendation in the jurisdiction section that the Judicial Council adopt a technology standard for justice courts to address some of the concerns expressed by the justice court judges and CCJJ. That standard would vary based on size of court. The draft report also contained a proposed effective date of 2002 for the exclusive jurisdiction in justice courts legislation. Ms. Gentles indicated that that date was selected to be far enough away to allow the local governments to plan while not being so far away that district court case management would be greatly impacted because of an increasing case load with no expected additional resources.

Judge Schofield asked the Committee to discuss the section of the report dealing with jurisdiction. He expressed the hope that the Committee could work through both the general concept and the specifics as spelled out in the draft in the report. Paul Morris stated that he had some concerns about a mandatory case shift in 2002. He stated that he had met with the district court judges who sit in West Valley City along with some of the Third District Court administrative staff and his sense was that they did not like the proposal. They stated that the proposal was contrary to their view of how these types of cases should be handled in an urban area. Mr. Morris stated that he thought it was possible to recommend a lot the Committee's work without having to go forward at this time with the 2002 proposal. He stated he is especially concerned about the facilities issue. He also stated that the Committee's proposal could have an impact on the district court's representation that it was going to have full-service courts at a number of locations in Salt Lake County. Mr. Morris stated that he would like to see the Committee separate the issues as far as any proposals to the 1998 Legislature.

Judge Orme stated that he shared Mr. Morris' concern but does think that avoiding the issue is the solution. He stated that having read the report he felt that the proposal to shift all of a certain class of cases to justice court is contrary to much of what is in the report. A consistent thread through the rest of the report is an emphasis on local autonomy. However, the jurisdiction proposal would in effect require certain cities to form justice courts when they would otherwise not choose to. He said the proposal seems to him to not have a logical basis especially when the Committee has not heard concerns from those municipalities that are litigating their Bs, Cs and infractions in district court. While Judge Orme thinks that it is perfectly appropriate for justice courts to hear Bs, Cs and infractions, he does not think that it follows that law trained judges and courts of record should not be hearing those cases. Judge Orme agrees with the first part of the report that addresses concurrent

jurisdiction. A prosecutor should never have a choice of where to file a particular case. Mr. Morris stated that he agreed with Judge Orme and that West Valley City has been happy with the services received from the district court. He stated that possibly it was more appropriate to have Class Bs and lower in urban areas heard in district courts where presumably the volume is higher. Judge Orme stated that he suspected that the excess judicial capacity was the result from moving all Class Bs and lower to justice courts would remain well past 2002, at least in Ogden and Provo. Judge Sandberg pointed out that removing the proposal for certain cases to be heard only in justice court would not address the concerns that had been expressed about the ability of different government entities to plan. Judge Orme stated that that may be an argument to make the period for the cities to elect to form a justice court longer than two years.

Mel Wilson pointed out that under the current statutory framework county justice courts have jurisdiction in the municipalities that currently take their Class Bs and lower to district court. Mr. Wilson stated that in his jurisdiction, Davis County, the county justice court has concurrent jurisdiction with the district court in Bountiful, Layton, and Kaysville. The cases from those municipalities account for probably sixty percent of the revenue of the justice court. All state cases and cases filed by the Sheriff's Department are heard in the county justice court currently. All of those cases will have to be filed in district court if the Committee's proposal on concurrent jurisdiction is adopted. Mr. Wilson stated that Davis County may be unique in the potential impact. As the county prosecutor, the Davis County Attorney's Office puts all of its Bs and lower in the county justice court. Mr. Morris clarified that the city prosecutors would still be filing all of their matters in the district court. Only the cases that would normally be prosecuted by the county prosecutor in Davis County are going to the county justice court. Mr. Wilson stated those cases would either be initiated by the Highway Patrol or by a county sheriff. If it is a Layton City police investigation, the case would be in district court. Judge Orme stated that he thought the Committee's proposal would no longer allow those cases initiated in the municipalities with district court locations but no justice court to be filed in the county justice court. In his opinion, that is the forum shopping that the Committee was trying to eliminate. Representative Curtis stated that he agreed.

Camille Anthony suggested having each prosecution entity declare where it will file all of its Class Bs and lower. She stated that this proposal would allow for the elimination of concurrent jurisdiction without trying to make the statutory jurisdiction fit every exception to the norm. Judge Schofield stated that suggestion implicated the stability of planning about which many interested entities are concerned. Ms. Anthony replied that while she understood the desire for stability, planning in state government is always fluid as a result of legislative and executive branch elections. Judge Orme pointed out that some planning already had been done that assumed the case loads would remain in the district court. Facilities and judicial requests have been made in the past that assumed the continued hearing of those cases in district court. Paul Morris stated that West Valley has done its advanced planning based on an assumption that probably the Third District Court would remain in its facility. He thinks that the two year option for certain cities was negotiated. In his opinion, this has allowed for better planning by both the city and the state. Mr. Morris stated that a few years ago West Valley City was unhappy with the service it was receiving from the district court and was able to use the ability to opt out of the district court system as a bargaining tool to get better service for

its cases by the district court. Therefore, taking away the two year notice period or making it so long that it is ineffective will not work. Mr. Morris stated that the state courts are not weak in the bargaining position either. They have long term leases on the facilities owned by the city.

Mel Wilson stated that he thought the Committee a few meetings ago had decided that it felt that at some time all Class Bs and lower should be heard only by justice courts. Now, he thinks that the Committee is changing its direction in favor of the status quo. Representative Curtis stated that, having thought about the Committee's action the week prior, he has come to agree with Judge Orme that if the system is not broken, the Committee should not try to make any major changes. Representative Curtis stated that while he recognizes that stability and planning is a concern, a system has been put in place that municipalities have relied upon. Representative Curtis said that he has been considering the role of city prosecutors as the Committee has done its work. The city prosecutors' authority has been expanded so that now they may prosecute all state misdemeanors and infractions including Class As. Logistically, it is difficult for the municipal prosecutors to go to one court for certain of their cases and other courts to hear the Class As. Judge Schofield responded that the only answer to Representative Curtis' concern would be to have a single trial court. Representative Curtis stated that his estimate was that almost fifty percent of the state's population was in the cities that had the option of going to district court. Those cities do not face the same problem of having to use different courts for different cases. Judge Schofield stated that there is not a rational basis for a scheme that puts a defendant in a court of record or a court not of record based solely on the location of offense. It was his understanding that that was Judge Baldwin's objection to the legislation that the Committee considered in the middle of the summer. Judge Schofield stated that if the Committee is considering what the system should look like, it is difficult to justify a distinction based on location of offense. Judge Orme stated that he agreed with Judge Schofield if the Committee were able to design a system from scratch. However, because there is a significant amount of history in the development of both the justice court and the district court, the Committee's proposal to eliminate concurrent jurisdiction without moving all cases to justice court while maybe not rational is the most sensible course.

Kevin Sundwall stated that there is a lot of good case law made by the court of appeals in Class B misdemeanor cases. If all those cases are heard in justice court, given the current structure of appeals from justice courts, there would be no ability for that case law to develop because very few cases can move beyond the district court de novo review. Mr. Sundwall stated that the system could be changed to allow for some kind of petition for certiorari out of the district court de novo review. However, no such relief is available now. Judge Orme stated that it might be a good idea for the Committee to consider a very narrow addition to the ability to appeal from the district court de novo review by allowing some kind of discretionary petition to the court of appeals.

Judge Orme stated that there appeared to a split in the Committee on what the recommendation concerning jurisdiction should be. Rather than having a vote that would probably be very close, possibly the Committee should send out the report laying out both positions indicating which one has a majority of the Committee members but allowing those reading the report to have the benefit of both positions. Judge Schofield stated that he had never hoped to have near an unanimity on every

question. Judge Orme suggested a straw-poll of the Committee to see how many would support the proposal to move all Bs and lower into justice courts. Mayor Prince stated that he could see both sides of the issue. While he understands the desire of some to have a more clear jurisdictional line drawn between types of court, he also understands that the more urban cities may have some needs that are better met in district court. However, he does think that forum shopping is an important issue to address. Judge Schofield stated that he hears the Committee expressing that there should be at least a minority report from the Committee. Camille Anthony suggested rather than having a minority report, maybe a motion to reconsider should be made to see if the Committee wanted to change the report. Rick Schwermer stated that he disagreed only because an enormous amount work had gone into the proposal as set out by the report and he did not think that work should be lost regardless of whether it is in fact the right way to go. Judge Schofield said that his personal preference would be to have the language in the report remain substantially the same and ask Judge Orme to write what would essentially be the other position. Judge Sandberg stated that, although he had not been at the Committee meetings, he had studied the minutes carefully. If the Committee at this meeting votes to remove the second part of the jurisdictional recommendation it would be contrary to several votes the Committee had taken at previous meetings. Representative Curtis stated that he did not have a problem with presenting both opinions. However, he is not sure which should be identified as the minority. Judge Schofield stated that his proposal did not contemplate which of the opinions would be identified as the majority opinion; he only was concerned that the work of the Committee on the issue of exclusive jurisdiction in justice courts be retained so that others reading the report would have the benefit of the information gathered.

Rick Schwermer made a motion that Judge Orme draft a majority report that would reflect his opinion and that what was sent out in the report as drafted be designated as the minority opinion. He pointed out that his motion would require looking again at the other issues in the report to see if any of them were effected by this change in the report. Mayor Prince stated that he thought the motion should be amended to use the terminology "primary" and "secondary" rather than "majority" and "minority." Judge Orme seconded the motion. The motion was amended to indicate that staff would draft what would become the "primary opinion." The motion passed unanimously.

Rick Schwermer asked what the Committee should do, given the last vote, with the judicial independence proposal part of the report. The Committee did not feel that any changes needed to be made. Peggy Gentles stated that the impact of the insertion of the primary opinion into the report would be largely on the Committee's discussion last time on the formation of justice courts. As currently drafted, the report would remove the distinction between Section 103-9-23 cities and other governments particularly in the current requirement that the Legislature approve the dissolution of a court formed by one of those cities. Under the current proposal the cities dissolving their court would take their cases to the county justice court. With the primary opinion, some of those cases may conceivably come back into the district court.

Judge Schofield asked if the Committee was still in favor of moving the judicial independence proposal forward. Judge Orme stated that he had a comment on the section as drafted. As he reads it, the proposal currently requires the hearing in front the legislative body. He thinks it would make

more sense to have that hearing only if the justice court judge wants it. In other words, if the mayor sits down with the judge and puts forward what the mayor considers the "good cause" for non-reappointment and the judge agrees, there should not be a requirement to go to the legislative body. Judge Schofield asked if anyone was opposed to an amendment to the section of the report as described by Judge Orme. Hearing none, Judge Schofield asked for a motion to approve the judicial independence section of the report. Paul Morris moved to include Judge Orme's change in the proposal as drafted. Judge Keetch seconded the motion. The motion passed unanimously.

The Committee then discussed whether the vote on jurisdiction changed any of the Committee's recommendations on trial de novo. Judge Orme stated that he has always had some concern about the narrowness of the ability to appeal beyond the district court from matters initiated in the justice courts. He understands, however, the concern that prosecutors would have about two full trials and then an appeal. Judge Orme stated he would like to see the Committee come up with some narrow criteria for a discretionary appeal to the court of appeals from the district court de novo review. As an example, he suggested "the matter is of important public interest of recurring sort that is not likely to be resolved if not in this case" and a couple of other grounds. Rick Schwermer wondered whether the possibility of appellate court review would encourage more appeals. Representative Curtis stated that in his personal opinion it would not make much difference. Judge Schofield stated that most district court judges with whom he had spoken about the trial de novo issue were not overly concerned because most of the cases that they saw involved a defendant looking for a different sentence rather than a new adjudication of the facts. Peggy Gentles asked whether because the only record being reviewed was the district court record there would be some matters occurring in the justice court that would never be reviewable. Judge Orme replied in the affirmative. However, he pointed out that the assumption is that everything that happened at the district court also happened at the justice court. Mayor Adams pointed out the problem that had been mentioned before of defense attorneys who have no intention of stopping at the justice court level. Instead, they use the justice court proceeding to perfect their case for the district court de novo review. Mr. Morris agreed that the mayor identified to a problem. However, he was unaware of anything that could be done as long as justice courts were courts not of record. Judge Schofield stated that he thought that addressing that issue was probably beyond the scope of the Committee's work. It would probably require making the justice court a court of record which in turn might require constitutional amendment.

Judge Schofield asked that the Committee consider its future course. He stated that upon leaving the meeting last time he expected that the Committee would approve the final parts of the report for distribution at this meeting. He knows that many groups want to know the Committee's direction. He referred the Committee members to the list of proposed recipients of the interim report that had been distributed to the Committee. He suggested that the Committee approve the report with any changes made as a result of this meeting by written ballot rather than at another meeting.

Representative Curtis stated that he thought the history of the state had indicated that for people convicted of certain types of offenses they received a certain type of appeal. To say otherwise would be very resource intensive. Judge Schofield stated that while he agreed with Representative Curtis,

he saw a distinction because the process available depended solely upon the location of the offense which determines whether the defendant originally appeared in justice or district court. Peggy Gentles pointed out that, in contrast, a small claims case whether filed in district or justice court was only given the trail de novo in district court. Judge Orme stated that he did not think that any expansion on the civil side was necessary. While Judge Orme agreed with Representative Curtis that clearly a policy decision had been made about the process available to criminal defendants in cases in justice court, in his opinion the line had possibly been drawn a little too soon. Paul Morris stated that he had thought the Committee had decided not to address the de novo issue. However, if it was going to address concerns that would require giving the defendant a slightly increased appeal right, then he would like the Committee to also consider the potential abuse that the defendant may cause by requiring two jury trials.

Judge Schofield asked the Committee to return to the issue of distributing the draft interim report. He asked if the Committee was willing to have the report with the changes made by the Committee at this meeting distributed by mail with a written vote rather than having to meet again. Mayor Prince suggested removing the Section 10-3-923 cities from the distribution list. As they are all members of the League of Cities and Towns, he felt that mailing to the League was sufficient. The Committee agreed. Ms. Gentles asked that if she got the report to the Committee members by Friday, November 7th could they respond by Monday, November 10th. Judge Schofield pointed out that this was only an interim report and the Committee would continue to meet. Ms. Gentles stated that Camille Anthony had asked that the legislative staff be added to the distribution list, unless the Committee objected, she would send the report to those people as well. Ms. Gentles pointed out that the distribution plan included a date of January 1, 1998 by which the Committee would receive comments on the interim report. Ms. Anthony asked how many bills were expected out of this Committee for the 98 Session. The Committee assumed there would be at least one bill to address the jurisdiction issue that sunsets on July 1, 1998. Rick Schwermer stated that he thought possibly a bill addressing the Committee's recommendations on judicial independence be ready for the '98 Session also, depending whether there was any opposition to it.

Judge Schofield stated that he would like to know if the Committee was ready to move forward with the recommendation on formation of courts. The Committee discussed whether it wanted to include some of the discussions about trial de novo, one jury trial only, and some form discretionary appeal beyond the trial de novo as issues that the Committee has discussed but not yet reached a recommendation on. After discussion, the Committee decided that it did not want to include items in the report that had not been flushed out into a recommendation from the Committee.

Peggy Gentles stated that the draft report on the formation issue removed the distinction between Section 10-3-923 cities and all other local governments wishing to form justice courts. Instead of allowing Section 10-3-923 cities to form justice courts with one years notice which can only be given every other year and all other government having to show the "need for the court," the report contemplates no need and notice based on size of courts to be formed. The requirement that the Council certify new courts would be retained. Ms. Gentles pointed out that this recommendation is affected by the Committee's earlier decision on jurisdiction. As the report is currently drafted it

contemplated that no cases in justice courts would be able to come back into the district court system. However, under the Committee's primary opinion it would be possible for any court in a Section 10-3-923 city to dissolve and those cases would come back in the district court. The current law requires the Legislature approve the dissolution of those courts. In the report as drafted, legislative approval is not required because the state court system is not affected by the shift of those cases. Representative Curtis asked what time during the year the notice would have to be given. He stated that municipalities and the state have the same fiscal year. Counties' fiscal year coincides with the calendar year. Representative Curtis suggested that a notice would have to be given by the beginning of the fiscal year of the entity proposing to form the court. Mayor Prince stated he did not think it would make a big difference because the notice to form a Class 1 or 2 court would bridge at least one fiscal year regardless on when the notice is given because two years notice would be required. The Committee decided that the notice should be due by July 1st of every year no matter which entity is electing to form a court.

Judge Schofield asked if the Committee was in agreement with the proposal for notice based on size of courts, elimination of the needs test, and notice due by July 1 of the year. Rick Schwermer stated that he was comfortable with the larger courts and Section 10-3-923 cities not being required to show need. However, he is uncomfortable with removing the needs test for the formation of Class 3 and 4 courts. Mr. Schwermer is concerned that municipalities that do not have a case load to justify the court will form the court for other inappropriate reasons. Mr. Schwermer stated that other entities are affected, not only the municipality that wants to exercise its local autonomy. The state court system, the county court system, and the law enforcement agencies may all be affected. Mayor Prince suggested having a minimum case load before any government could form a court. Mr. Schwermer stated that that had been suggested in 1990. A number of cities objected saying if they wanted to form a court, even if it was going to lose money, they should be allowed to do so. Judge Orme pointed out that there would be a concern that pressure would be placed to generate cases to meet the minimum case load requirement. Mayor Adams stated that he agreed with a needs test for forming a Class 3 or 4 court.

Representative Curtis moved that governments proposing to form a Class 1 or 2 court and all Section 10-3-923 cities have no needs test. Those governments will be required to give two years notice to form a Class 1 or 2 court and the one year for the Section 10-3-923 cities that are forming smaller courts. Non-section 10-3-923 cities should be required to give one years notice and demonstrate the need for the court. Judge Orme seconded the motion. The motion passed unanimously.

Judge Schofield referred the Committee to the proposal on dissolution of courts. Peggy Gentles stated that the report as drafted would require notice to dissolve the court. The time period for notice would be the same as the time period for formation, dependent upon the size of courts. Any court the dissolution of which would put cases into the state system would require legislative approval before it could disband. If the cases will go to the county justice court, then notice to the county, using the same time frames, would be required. The Committee decided that the notices required under dissolution proposal should also be given by July 1 of the year. The Committee discussed the requirements that should be applied to the dissolution of a county justice court. Camille Anthony

expressed concern about the counties' ability to continue to operate the court after it decided to dissolve the court. Representative Curtis stated that he thought that the prosecuting entity would ensure that there was a forum its cases until the dissolution. The Committee clarified that the affected entity should be able to waive the time period for notice if all effected entities agree. Notice should also be given to the Judicial Council.

Mayor Adams made a motion to approve the formation section of the report with the changes discussed by the Committee. Judge Keetch seconded the motion. The motion passed unanimously.

Judge Schofield clarified that the final version of the draft interim report would be circulated for written ballot by the Committee members. The report as distributed would not be designated as a draft but would be designated as an interim report. Judge Schofield stated that he would have Ms. Gentles get in contact with the Committee members fairly soon with a proposed date for a January meeting to consider comments on the report.

There being no further business the meeting adjourned.

78-56-108. Transcripts and copies - Fees - Establishment of Court Reporting Technology Account [Effective January 1, 1998].

(1)(a) The fee for a transcript of a court session, or any part of a court session, shall be 80 cents per folio for the initial preparation of the transcript and 20 cents per folio for a copy. If two or more persons order copies, the fee shall be 30 cents per folio for the first copy furnished each person, and 20 cents per folio for each additional copy furnished each person. The transcript shall be prepared within the time period permitted by the Rules of the Supreme Court. The fee for a transcript prepared within 3 days of the request shall be one and one-half times the base rate. The fee for a transcript prepared within 1 day of the request shall be double the base rate.

(b) When a transcript is ordered by the court, the fees shall be paid by the parties to the action in equal proportion or as ordered by the court. The fee for a transcript in a criminal case in which the defendant is found to be impecunious shall be paid pursuant to Section 77-32-5.

(c) There is established within the General Fund a restricted account known as the Court Reporting Technology Account. The clerk of the court shall transfer to the state treasurer for deposit into this account all fees received under this section. The state court administrator may draw upon this account for the purchase, development, and maintenance of court reporting technologies and for other expenses necessary for maintaining a verbatim record of court sessions.

(2) The fee for the preparation of a transcript of a court hearing by an official court transcriber other than an official court reporter and the fee for the preparation of the transcript by a certified shorthand reporter of a hearing before any referee, master, board, or commission of this state shall be as provided in Subsection (1)(a), and shall be payable to the person preparing the transcript.

**JUDICIAL COUNCIL
AGENDA**

Wednesday
December 17, 1997
9:00 a.m. -

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

Chief Justice Michael D. Zimmerman

<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 November 24, 1997 (Tab 1)(action)	Chief Justice Zimmerman
3.	9:10 a.m.	Report from Chair	Chief Justice Zimmerman
4.	9:25 a.m.	State Court Administrator's Report	Daniel J. Becker
5.	9:40 a.m.	Judicial Council Sub-Committee Reports (Tab2)(Information)	Hon. Pamela T. Greenwood Management Committee Hon. Michael K. Burton Policy and Planning Committee Report Hon. Anthony W. Schofield Liaison Committee Report
6.	10:00 a.m.	Break	
7.	10: 15 a.m.	Judicial Conduct Commission Update (Information)	Steven Stewart Executive Director
8.	10:30 a.m.	Standing Committee on Information, Technology & Automation (Information)	Hon. Michael Wilkins
9.	10:45 a.m.	Juvenile Court Board Update (Information)	Hon. Hans Q. Chamberlain

- 10. 11:00 p.m. Justice Court Study Interim Report . . Hon. Anthony W. Schofield
(Tab 3)(Information)
- 11. 11:30 a.m. Implementation of Weighted Caseload Hon. Ronald Nehring
(Tab 4)(Action)
- 11:45 a.m. Senior Judge Recertification Daniel J. Becker
(Tab 5)(Action) Myron K. March
- 12: 12:00 p.m. Lunch
- 13. 1:00 a.m. Rule 3-414. Court Security Timothy Shea
(Tab 6)(Action) Charlotte Miller & Fran Wikstrom
Utah State Bar Representatives
Rich Mauro, Gil Athay and/or Loni Deland
Utah Association of Criminal Defense Laywers Representatives
*Consideration of comments to the draft rule and approval of
final version*
- 14. 2:00 p.m. Ethics Advisory Standing Committee Brent Johnson
Informal Opinion 97-9
(Tab 7)
- 15. 2:10 p.m. Ethics Advisory Standing Committee Brent Johnson
Informal Opinion 97-7
(Tab 8)
- 16. 2:25 p.m. Executive Session Chief Justice Zimmerman

Information

- 17. News Articles
(To be distributed at meeting)
- 18. **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.

- 1. Council Rules for Approval Peggy Gentles
Effective April 1, 1998

2. Re-appointment of Judge Fred Howard for second term Holly Bullen
on Ethics Advisory Standing Committee
Appointment of Judge Sharon McCully
3. Appointments to Standing Committee on Judicial Tim Shea
Performance Evaluation
Hon. Robert K. Hilder
Commissioner Scott Hadley
John P. Ashton, Attorney, Chair
4. Rule 4-202.08. Fees for records, information, and services Timothy Shea
(Approval of Rule on emergency basis)
5. Personnel Policies and Procedures Paul Sheffield
Barbara Hanson