JUDICIAL COUNCIL
MINUTES

Monday
November 24, 1997

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

Chief Justice Michael D. Zimmerman, Presiding

Members Present:

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

Staff Present:

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

Guests:

Hon. Jerald Jensen
Zakayo Lukaymay
Brian Maffly, Salt Lake City Tribune

Welcome:

Judge Greenwood welcomed guests, members and staff to the meeting.

Approval of Minutes:

A motion was made to approve the minutes of October 27, 1997. The motion was seconded and carried unanimously.

Management Committee Report:

Judge Greenwood reported on the presentation by Kim Allard, the courts' recently hired Web Publisher, on the State Court Home Page. Ms. Allard explained the main difference 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.

On November 19, 1997, Governor Leavitt signed the first digital signature to be officially recorded in the world.

Policy and Planning Committee Report:

Judge Schofield stated that the Policy and Planning Committee supported the Bail Bond Surety Bill. This bill will change the regulation of bail bond sureties from the Judicial Council to the Utah State Insurance Commission.

The Liaison Committee did not take a position on the proposed substance abuse bill or the proposed amendment to the adoption statute which would broaden the scope of those individuals able to consent to parental relinquishments. Judge Schofield stated that a bill which merits consideration deals with volunteer immunity. This bill would provide that volunteers are not liable for damage or injury to anyone/anything if the volunteer was acting within the scope of their appointment. It is also proposed that the entity appointing the volunteer receive the same benefit.

Policy and Planning Committee Report:

There has been no recent meeting of the Policy and Planning Committee.

Report from Chair:

Chief Justice Zimmerman indicated that Mr. Darwin Hansen has recently been appointed to the bench in the Second Judicial District by Governor Leavitt. Mr. Hansen will be sworn in by Chief Justice Zimmerman on January 2, 1998.

Hon. Alfred Van Wagenen suffered a stroke and has been reported as doing well.

State Court Administrator's Report:

Dan Becker introduced Zakayo Lukamay. Mr. Lukamay is an intern from Tanzania and has been with the Data Processing Dept. of the Administrative Office of the Courts for approximately two months. Mr. Lukamay is a graduate of law school in Tanzania. This internship is being sponsored by the U.S. Court Information Plan and Mr. Lukamay is attempting

to gain a better understanding for court administration in the United States.

As a result of John McNamara's scheduled retirement in February, recruitment has taken place for the Juvenile Court Administrator position. Dan Becker, along with Hon. Hans Q. Chamberlain, Hon. Kay A. Lindsay, Hon. Frederic Oddone, and Barbara Hanson recently interviewed candidates for the position and will submit names of finalists to the Board of Juvenile Court Judges on December 12, 1997.

Interviews for the court executive position in the Second District will be held during the week of November 24-28, 1997. This vacancy is the result of Margaret Satterthwaite's recent retirement.

Mr. Becker reported that there are no new developements since last meeting with Governor Leavitt. However, Governor Leavitt is expected to finalize the state's budget on November 26, 1997.

The Legislative Auditor General will begin to audit the Juvenile Court. The is an operational audit with a financial component.

Mr. Becker distributed copies of two surveys which were recently conducted by Dan Jones and Associates. One survey dealt with the public's perception of the Utah court system and the other survey shows how Utah is dealing with domestic violence. Mr. Becker encouraged members of the Judicial Council to review the surveys. He further stated that the courts have previously received a grant which will allow for additional training of employees in the area of domestic violence.

Justice Court Task Force Update:

Judge Schofield reported on past and present findings of the Justice Court Task Force Committee. Initially, the Task Force recommended that all concurrent jurisdiction be eliminated by creating a case shift of B and C Misdemeanors from the District Courts to Justice Courts. This proposal resulted in concerns being voiced by city representatives about the financial impact of such a decision.

Next, Judge Schofield cited the four major recommendations of the Task Force and they include: a) That all concurrent territorial jurisdiction between district court and justice court should be eliminated; b)Any local government that wants to create a Class I or II justice court should be able to do so upon two years notice. Formation of a Class III or IV court should require one year notice and continued demonstration of the need for the court; c) Municipal justice court judges should be reappointed absent a showing of "good cause" by the appointing authority; and further consideration of appeals/trial de novo and "court not of record."

Following Judge Schofield's remarks, a discussion ensued among members of the

Judicial Council regarding valid reasons for a needs test and to which court level the test should apply. A question was raised about promotion of legislation that would facilitate the change.

Motion:

A motion was made by Judge Stirba that the court creation recommendations of the Justice Court Task Force be supported by the Judicial Council. The motion was seconded by Judge Van Dyke and carried with two opposing votes.

The next issue addressed was that of judicial independence; the appointment and reappointment processes. There is the wide spread view that muncipalities sponsoring judges should be able to appoint and reappoint that judge. However, this lends itself to concerns about undue pressure on judges. Suggestions about curing this problem centered on having justice court judges stand for retention elections or possibly that judges be automatically reappointed unless there was a showing of good cause, at which time the judge would be subject to a hearing. The current recommendation of the Justice Court Study Task Force is that a judge would be reappointed unless there is a good cause to deny the appontment.

Motion:

A motion was made by Judge Stirba that the issue of judicial independence is very important and the Judicial Council affirm the Justice Court Study Task Force's recommendation. However, there needs to a reappointment criteria administered by an independent body, with a review or a combination of a review among the muncipalities and possibly the Board of Justice Court Judges. The motion was seconded by Judge Lindsay. There was no vote taken on this motion.

Motion:

A motion was made by Judge Stirba that this matter be reviewed by the Board of Justice Court Judges. The motion was seconded by Justice Russon. The motion carried with one opposing vote.

Judge Schofield reiterated the need for development of good cause standards. The Task Force further recommended that the appeal process remain status quo. Members of the Task Force felt that it was outside their charge to change this process.

Motion:

A motion was made by Judge Stirba that the appeal process, as it stands now, remain status quo. The motion was seconded by Judge Burton. The motion carried with one opposing vote.

The most difficult issue which the Task Force has addressed has been that of jurisdiction. The issue of criminal jurisdiction was addressed. However, civil jurisdiction was not addressed. The recommendation is to delete concurrent jurisdiction and at the present make no further changes to the jurisdictional issue. The changes to jurisdiction would require legislative action. By codifing jurisdiction, it would allow every case a venue but no case could be heard in two venues. This proposal would also eliminate county jurisdiction in some cases. Members of the Council voiced their support in eliminating concurrent jurisdiction.

Motion:

A motion was made by Judge Stirba that the sense of the Judicial Council is that the Council favor no concurrent jurisdiction and that it favor the bright line approach as a long term goal with recognition of the problems it would require the municipalities to deal with. Furthermore, that there be some consideration of a formal approach to accomplish the long term objective. The motion was seconded by Judge Braithwaite. There was no vote taken on this motion.

Amended Motion:

An amended motion was made by Judge Stirba that the Justice Court Task Force take another look at this issue and determine if they could incorporate into the recommendations a process by which the issue could be addressed, and that there be a mechanism to accomplish the goals to have all B & C Misdemeanors heard with the jurisdiction of the justice courts and not within the district courts. The motion was seconded by Judge Burton. There was no vote taken on this motion.

Restated Motion:

A motion was made by Judge Stirba that the consensus of the Judicial Council is that the Council does not favor concurrent jurisdiction and that ultimately the objective should be that all B & C Misdemeanors be heard within the exclusive jurisdiction of the justice court. But that in recognition of various problems, that the Task Force develop recommendations which would provide for a process for working out those problems in the long term objective. Furthermore, that the Task Force make whatever recommendations are necessary to ensure that for the time being the jurisdiction remain status quo and that there be recommendations about how a bright line distinction can be drawn in the future.

As an addendum, Judge Burton stated that in the opinion of the Council the Task Force should still work toward maintaining the status quo with the long term objective to remove all B & C Misdemeanors from the district court.

Amended Motion:

Judge Stirba amended her previous motion to reflect that the Judicial Council's perferance would be to eliminate concurrent jurisdiction, and that there be a recommendation for some mechanism to maintain the workload as it appears acheivable but that as an aspiration that a bright line test be developed as a goal to be worked toward in time. The motion was seconded by Judge Burton. The motion carried with four opposing votes.

Web Publishing - State Court Home Page:

Kim Allard, the court's newly hired Web Publisher, was introduced by Eric Leeson. Previously, Ms. Allard worked for the *Discovery Channel*, as Senior Production Manager for their Web Page.

Ms. Allard gave a presentation on the new State Court Home Page. She explained that she had been charged to structure a home page that would be an effective tool for communication. Ms. Allard showed the content of what will be offered on the home page which includes: a) the Annual Report; b) a media guide to the courts; c) how to sections, i.e., how to file a divorce, how to file a small claims actions; and d) introductions to judges serving the courts.

Ms. Allard also explained the differences between the *Intranet vs. Internet,* which is the audience and information content. The *Intranet* is available to all internal users and the *Internet* is available to everyone. The address for accessing the home page is http:\\courtlink.utcourts.gov

Rule 78-56-108- Transcripts and Copy Fees:

Rule 78-56-108 will be effective January 1, 1998. The committee addressing these areas of change has recognized an additional issue which is the cost that can be charged for expedited transcripts. Mr. Tim Shea recited the fees associated with different production times.

Motion:

A motion was made by Judge Stirba that the Judicial Council approve the Court Reporter Committee's recommendation for fees. The motion was seconded by Judge Glasmann and carried unanimously.

Fourth District Drug Court:

On behalf of Judge Ray M. Harding, Sr., Paul Sheffield, Fourth District Court Executive, was present and requested that the Judicial Council approve the proposal for a Drug Court in Judge Harding's court.

Mr. Sheffield explained that Judge Harding proposed the following: a) that drug court cases would be limited to those matters only before Judge Harding; b) that the drug court philosophy would only pertain to those first time offenders with non-violent backgrounds; and c)

that the program only encompass approximately 20 offenders at any given time. The program is scheduled to begin in January 1998, and is estimated to last a period of one year, providing that the Council approves.

Following Mr. Sheffield's presentation members of the Judicial Council debated questions about the program's length, prospects for funding, administration, and collection of data. A suggestion was made that Judge Harding be invited to a Council meeting to explain how the program, once implemented and evaluated is progressing.

Motion:

A motion was made by Judge Stirba that the Judicial Council request that Dan Becker develop standards by which the Council can evaluate drug courts and other similar initiatives. The motion was seconded by Judge Greenwood. The motion carried unanimously.

Executive Session/Adjourn:

A motion was made to move into executive session. There being no further business, Chief Justice Zimmerman adjourned the meeting.

MANAGEMENT COMMITTEE
MINUTES

December 10, 1997

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

Hon. Pamela T. Greenwood, Presiding

Members Present:

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

Staff Present:

Daniel J. Becker
Myron K. March
Holly M. Bullen
Richard H. Schwermer
Timothy Shea
Heather Mackenzie-Campbell
Brent Johnson
Eric Leeson
Cindy Williamson

Welcome:

Judge Greenwood welcomed members and staff to the meeting.

Judicial Council Agenda:

The Judicial Council agenda for December 17, 1997, was reviewed, suggestions made and implemented.

State Court Administrator's Report:

Dan Becker reported on the accelerated CORIS schedule. Currently, employees from Data Processing, the Court Services Team, and district volunteers are on site in the Third District installing CORIS. The conversion efforts have proceeded in a manner that has exceeded expectations. There have been approximately 1 million cases converted with only 50 cases with conversion problems. In addition, the financial conversion was implemented with only a $50.00 discrepancy.

Next, Mr. Becker gave an overview of Governor's Leavitt budget for FY98. The Governor has recommended $3.1 million for the courts O&M, $118,000 for law clerks, $150,000 for automation, $250,000 for juror/witness fees, $150,000 for security contracts, and $34,000 for

the legal institute.

Recently, Dan Becker and Myron March met with Judge Leslie Lewis, Presiding Judge for the Third Judicial District, and Judge Robin Reese, Associate Presiding Judge for the Third Judicial District, to discuss the budget impact of the extended use of senior judges within the Third Judicial District. The level of senior judge coverage in this district cannot continue to be provided. Judges Lewis and Reese agreed that this issue may need to be revisited in the future.

Judge Dennis Fuchs is going to be honored by Utah Substance Abuse-Anti Violence Coordinating Council (USAAV). Judge Fuchs will receive USAAV's annual award from the Governorfor his contribution to the Drug Court Program. In addition, Judge Sheila McCleve is slated to receive an award from the Domestic Violence Council.

1998 Audit Schedule - Proposed:

Heather Mackenzie-Campbell reported on scheduled audits, unscheduled audits, and the State Auditor's Report for 1997. Additional Audit Department activities include involvement in the following: a) fiscal training sub-committees; b) fiscal training for clerks of courts; and c) fiscal training during the Justice Court Clerks' Spring Conference and the Justice Court Judges' Annual Spring Conference. The department has also published the *Suggested Accounting Procedures* booklet which was adopted by the Board of Justice Court Judges, participated in new employee orientation, coordinated development and compilation of the courts' responses to the 1997 audit, and has worked with other committees to resolve audit findings.

Ms. Mackenzie-Campbell requested that members of the Management Committee approved the proposed 1998 audit schedule.

Motion:

A motion was made by Chief Justice Zimmerman that the Management Committee approve the 1998 audit schedule. The motion was seconded by Judge Stirba and carried unanimously.

Reappointment to Ethics Advisory Committee:

Holly M. Bullen indicated that there is a vacancy on the Ethics Advisory Committee. Judge Fred Howard is completing his first term and has indicated that he would serve for another term if reappointed.

Motion:

A motion was made by Judge Stirba that the Management Committee approve the reappointment of Judge Fred Howard to the Ethics Advisory Committee. The motion was

seconded by Judge Glasmann and carried unanimously.

There is also another vacancy on the Ethics Advisory Committee. This vacancy is the result Judge Kimberly Hornak's term expiring. The position vacancy was announced and responses received. Judge Sharon McCully indicated a willingness to serve on the committee.

Motion:

A motion was made by Judge Stirba to approve the appointment of Judge Sharon McCully to the Ethics Advisory Committee, providing that Judge McCully's name be submitted to the Board of Juvenile Court Judges for their approval and upon approval that the matter be placed on the consent calendar of the Council. The motion was seconded by Judge Sandberg and carried unanimously.

Appointments to the Uniform Fine/Bail Standing Committee:

Holly Bullen indicated there are three vacancies on the Uniform Fine/Bail Standing Committee. Two of the vacancies are for district court judges, one with felony experience and one with misdemeanor experience. The other vacancy is for a juvenile court judge. Ms. Bullen stated that the position had been announced and responses received.

Motion:

A motion was made by Judge Stirba that the names submitted be presented to the Board of District Court Judges and the Board of Juvenile Court Judges and that the boards submit recommendations to the Management Committee. Upon approval by members of the Management Committee that the matter be placed on the consent calendar of the Council in January. The motion was seconded by Chief Justice Zimmerman and carried unanimously.

Appointments to the Standing Committee on Judicial Performance Evaluation:

Holly Bullen stated that the vacancies on the Standing Committee on Judicial Performance Evaluation had been announced and responses received. The names of those responding individuals were presented to the Board of District Court Judges during their November meeting and the Board recommended the submission of those names to the Management Committee.

Motion:

A motion was made by Chief Justice Zimmerman that Hon. Robert Hilder be appointed to serve on the Judicial Performance Evaluation Committee and that this matter be placed upon the consent calendar of the Council. The motion was seconded by Judge Stirba and carried unanimously.

Tim Shea indicated that there is also a citizen vacancy on the committee and a commissioner vacancy.

Motion:

A motion was made by Chief Justice Zimmerman that Commissioner Scott Hadley be appointed to fill the commissioner vacancy on the committee. The motion was seconded by Judge Stirba and carried unanimously.

There were suggestions made by members of the Management Committee for the appointment of individuals to fill the citizen vacancy on the committee. Mr. Shea will contact several of the names mentioned and bring this matter back before the Management Committee.

User Fees for Exchange Customers:

Eric Leeson indicated that in August of 1995, the Judicial Council approved a report on access to electronic records. Since that time, there has been great demand for use of the electronic information system. Various entities are currently performing employment searches, title searches, etc. Recently, Mr. Leeson distributed a new fee schedule to which the various users objected, stating that the fees were too high.

Mr. Leeson requested direction from the Management Committee regarding the charges for access to electronic records. Members of the committee agreed that there is a dilemma of increased services which should allow for an increased fee. However, the committee suggested that perhaps Mr. Leeson should reconsider the amounts to be charged.

Motion:

A motion was made by Judge Greenwood that staff at the Administrative Office of the Courts assume responsibility for the development of a fee schedule and that recommendations be brought before the Policy and Planning Committee or the Management Committee for approval. The motion was seconded by Judge Stirba and carried unanimously.

Inclusion of Court Commissioners on the Policy and Procedure Committee:

In follow-up to the Council's discussion during their meeting in Ogden on October 27, 1997, Dan Becker spoke about court commissioners being included on the Personnel Policy and Procedure Committee. Mr. Becker will extend an invitation to all commissioners and name one commissioner to serve on the committee.

Court Commissioner - Salary Presumption:

Dan Becker reported that court commissioners have voiced a concern regarding salary presumptions. Commissioners are interested in having their salaries effective the same time as other employees and they are also concerned that the amount of their increases be the same as judges, unless during a given year the Judicial Council makes an alternate determination.

Members of the Management Committee discussed this issue at length, related past history and came to the conclusion that court commissioners are situated between judges and employees. Recommendations included that a commissioner be invited on a quarterly basis to address the Judicial Council and that a commissioner sit on the Board of District Court Judges.

Motion:

A motion was made by Judge Sandberg that a commissioner be invited to report to the Judicial Council on a quarterly basis and that their annual salary adjustment take place at the same time as other employees and judges. The motion was seconded by Judge Stirba and carried unanimously.

Informal Opinion 97-9:

Brent Johnson indicated that the Ethics Advisory Committee issued an informal opinion at the request of the Board of District Court Judges regarding the appropriateness of judges and clerks participating in the CASA juror check off program. The opinion indicated an area of concern was that of using court personnel and court premises to promote the CASA check off program. In light of the opinion, the practice of the check program has been suspended statewide.

This matter is to be placed on the Judicial Council agenda in December for further discussion. In addition, Informal Opinion 97-7 is also to be placed on the agenda.

Executive Session - Meeting Adjourned:

Upon motion, members of the Management Committee went into executive session. At the conclusion of the session Judge Greenwood adjourned the meeting.

Summary Minutes
Policy and Planning Committee of the Judicial Council

December 5, 1997

Members Present
Judge Michael K. Burton, Chair
Judge Kent Nielson
Judge Stephen A. Van Dyke

Members Absent
Judge Robert T. Braithwaite
James C. Jenkins

Staff Participating
Peggy Gentles
Barbara Hanson
Tim Shea

Guests
Bunny Neuenschwander, Managing Court Reporter, Third District Court
Nora Worthen, Court Reporter, Fourth District Court

Fees and disclaimer for disk record of court hearings. Bunny Neuenschwander and Nora Worthen presented a recommendation from the Court Reporter Transition Committee. The Transition Committee recommends adoption of a fee for providing rough draft transcripts on disk. The recommended fee is $25.00 for a half day and $50.00 for a full day. In addition, a disclaimer should be signed by each requesting party stating that the transcript may not be quoted from or used in any way to prepare an appeal.

The Policy and Planning Committee discussed the recommendation. Judge Van Dyke asked why the disk should be provided to any party. Ms. Worthen stated that, absent the disk, attorneys would need to order a transcript after each day which is very expensive. Ms. Neuenschwander added that the Committee wanted to continue the service provided to attorneys without having the draft transcript used after trial. Judge Burton pointed out that the uses of the disk can not be controlled once it is released. Tim Shea pointed out that the Council's records access rule (Rule 4-202.08) establishes a fee of $15.00 to copy a disk. Therefore, the rule would need to be amended.

The Committee recommends the use of the disclaimer with the addition of language to indicate that the draft transcript could not be used in any proceeding as the official record. The text of the disclaimer is attached to these minutes. The Committee recommends that the Council adopt on its consent calendar an emergency rule change to Rule 4-202.08 to implement the recommendation. The Committee will review the policy in a year.

Rules published for comment. Peggy Gentles presented the rules published for comment and the comments received. She noted that she was not addressing Rule 3-111 and 3-414. The Committee considered the comments received. Judge Bean of the Second District asked the a proposed change to Rule 4-608 be amended. The proposed change establishes venue of trials de novo of justice court criminal proceedings as the nearest district court in the same county. Judge Bean requested that the rule allow the Board of District Court judges approve variations. Staff's research determined that all Davis County justice courts reported less than twenty trial de novo requests in fiscal year 1997. The Committee felt that the rule should clearly inform attorneys and parties where the cases would be heard and therefore recommended no change in response to Judge Bean's comment. The Committee recommended the Council adopt the rules on its consent calendar with an effective date of April 1, 1998.

Court commissioners sick leave/retirement. The Committee approved a letter drafted for Judge Burton's signature inviting commissioners to the January meeting to discuss issues surrounding paid up medical insurance upon retirement and involvement in Council decision making.

Personnel Policies and Procedures. Barbara Hanson presented proposed changes to the Personnel Polices and Procedures. Many of the changes involve the change in court reporter status as of January 1, 1998. Another proposed change removes the provisions for a salary increase upon end of probation status. The Committee recommended that the Council adopt the changes on its consent calendar.

Certificate of Probable Cause. This issue was deferred to the next meeting.

Judicial Election Campaigns. Tim Shea informed the Committee that each of the Boards of Judges and the Board of Bar Commissioners have been invited to discuss issues regarding regulation of judicial retention election campaigns. They will attend one of the next two meetings.

Review of Comments to Rule 3-414, Court Security. Tim Shea presented the comments received to the proposed amendments to Rule 3-414. The Committee discussed the comments and made recommendations for the Council's consideration. Those recommendations are detailed in Tim Shea's memorandum included in the Council material. The Committee recommended the rule be placed on the Council's agenda for debate.

CASE NUMBER_____**CAPTION:**_____

REALTIME ROUGH DRAFT

The stenographic notes taken in this proceeding are being translated instantaneously into their English equivalent through an automated process called realtime translation.

The realtime rough draft is unedited and uncertified and may contain untranslated stenographic symbols, an occasional reporter's note, a misspelled proper name, and/or nonsensical word combinations. All such entries will be corrected on the final certified transcript.

Due to the need to correct entries prior to certification, **you agree to use this rough draft disk only for the purpose of augmenting counsel's notes and understand it is not admissible in any court proceedings and will not be distributed to any other parties for their use. It shall not be recognized as an official transcript nor shall it be used or cited at any time to rebut the official certified transcript or be used in any proceedings as if it were the official record.**

Should you request a final, certified transcript during this case, each requesting party shall be responsible for the payment of the portions of transcripts which they order unless other arrangements are approved by the Managing Reporter and the Court Administrator.

I have read the terms and conditions and agree to them.

_____

_____

Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

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

December 3, 1997

Chief Justice Michael Zimmerman
Utah Judicial Council
230 South 500 East, Suite 300
Salt Lake City, UT 84102

Dear Chief Justice Zimmerman:

RE: Justice Court Study Committee Interim Report

The Justice Court Study Committee, formed by the Utah Judicial Council, has prepared an Interim Report to inform interested groups of the Committee's progress. The Committee wishes to receive comments on the proposals it has developed. Please direct any comments to me at the Administrative Office of the Courts. For consideration at the next Committee meeting, comments must be received by **January 2, 1998**.

If you have any questions or would like additional copies of the Interim Report, please call me at (801) 578-3819. The report is also available at the Utah State Court internet site (http://courtlink.utcourts.gov/jcscir.htm).

Sincerely,

Peggy Gentles

Margaret Gentles
Staff Attorney

cc Daniel J. Becker, State Court Administrator

JUSTICE COURT
STUDY COMMITTEE

INTERIM REPORT

DECEMBER 3, 1997

JUSTICE COURT STUDY COMMITTEE

Judge Anthony Schofield, Chair	Fourth District Court
Mayor V. Allen Adams	City of Kanab
Camille Anthony	Executive Director Commission on Criminal and Juvenile Justice
Judge Parley Baldwin	Second District Court
Representative Greg Curtis	Utah House of Representatives
Commissioner Gary Herbert	Utah County Commission
Senator Joseph Hull	Utah State Senate
Judge Jerald Jensen	Davis County Justice Court
Judge William Keetch	Lindon City Justice Court
Paul Morris	West Valley City Attorney
Commissioner Royal Norman	Box Elder County Commission
Judge Gregory Orme	Utah Court of Appeals
Mayor LaVelle Prince	City of Taylorsville
Richard Schwermer	Assistant State Court Administrator
Kevin Sundwall	Legal Defenders Association
Melvin Wilson	Davis County Attorney

TABLE OF CONTENTS

I. INTRODUCTION

In the Spring of 1997, the Utah Judicial Council formed the Justice Court Study Committee at the request of the Legislature. The Committee has met a number of times and prepared this Interim Report to inform interested parties of the Committee's work. The Committee will continue to meet to consider outstanding issues and reactions to this Report.

A. Charge from the Legislature.

In the 1997 Legislative Session, intent language was passed in House Bill 1.

> It is the intent of the Legislature that the Judicial Council coordinate a study of justice court issues and propose necessary legislation for the 1998 General Session. The study group should include representatives of counties and municipalities as well as judges and other interested parties. The group should consider the future role of justice courts in the judicial system, and propose any legislative changes necessary to promote stability in planning and revenue, equitable revenue distribution, judicial independence and exclusive jurisdiction.

The Utah Judicial Council, policy making body for the judicial branch, formed the Justice Court Study Committee ("Committee") by identifying the interested groups and requesting appointment of members. The following groups were included (requested appointments in parentheses):

Board of Justice Court Judges (one county justice court judge; one municipal justice court judge);

Defense Section of Utah State Bar (one attorney who represents defendants in justice courts);

Governor's Office (one member);

Judicial Council (two district court judges; justice court administrator);

Legislature (one member of the House of Representatives; one member of the Senate);

Presiding Judge of the Court of Appeals (one appellate court judge);

Statewide Association of Public Attorneys (one city attorney; one county attorney);

Utah League of Cities and Towns (one mayor from rural area; one mayor from urban area); and

Utah Association of Counties (one county commissioner from rural area; one county commissioner from urban area).

B. **Committee process.**

The Committee has met on the following dates:

May 23, 1997
June 13, 1997
June 24, 1997
July 11, 1997
July 29, 1997
September 8, 1997
October 1, 1997
October 28, 1997
November 4, 1997

Minutes prepared for each meeting are available upon request from the Administrative Office of the Courts.

The Committee began its deliberations by requesting from various interest groups input on the issues identified by the Legislature's intent language. A number of representatives graciously appeared before the Committee and presented the positions of their organizations. These representatives were

Paul Boyden, Criminal Co-Director, Statewide Association of Public Attorneys
David Church, General Counsel, Utah League of Cities and Towns
Judge Lynn Davis, Chair, Board of District Court Judges
Brent Gardner, Executive Director, Utah Association of Counties
Colonel Richard Greenwood, Superintendent, Utah Highway Patrol
Ben Hamilton, Member of Defense Bar
Judge John Sandberg, Board of Justice Court Judges
Chief Justice Michael Zimmerman, Chair, Utah Judicial Council.

After the presentations, the Committee established the following priority for issues to be studied:

1. Exclusive/concurrent jurisdiction;

2. Formation of justice courts and oversight by Judicial Council;

3. Record keeping, information sharing, and technology;

4. Revenue share/surcharges;

5. Issues of judicial independence in the reappointment/retention election process;

6. Appeals/trial de novo and justice court as a "court not of record";

7. Judicial Conduct Commission suspension ability.

This report contains recommendations for Issues 1, 2, 5, and 6. The Issue 1 proposal only addresses jurisdiction in criminal cases. The Committee has deferred consideration of justice courts' civil jurisdiction until later in its deliberations.

C. Introduction to justice courts.

Justice courts are authorized by statute pursuant to a Utah constitutional provision that allows the creation of a "court not of record" by statute. Utah Const. art. VIII, sec. 1; Utah Code § 78-5-101. The individual courts are created at the option of municipalities or counties. Currently, one hundred and thirty-two justice courts are in operation. Of these, ninety-six are municipal courts; thirty-six are county courts. One hundred and eighteen judges sit in Utah's justice courts (some judges sit in more than one court).

The Judicial Council is statutorily required to establish operational standards for justice courts. Utah Code § 78-5-139. The operational standards govern areas such as hours of operation, facilities, legal resources, and clerical resources. Because the localities served by the justice courts vary greatly in population and citations generated, justice courts are classified based upon monthly filings. The operational standards vary for each class of court. The classification is as follows:

Class I	501 or more citations or cases filed per month;
Class II	201-500 citations or cases filed per month;
Class III	61-200 citations or cases filed per month;
Class IV	60 or fewer citations or cases filed per month.

In fiscal year 1997, approximately 345,000 cases were filed in justice courts. The overwhelming majority of these cases were criminal filings. This caseload was comprised of the following case types:

Traffic misdemeanors and infractions: 85.5%
Non-traffic misdemeanors and infractions: 13.0%
Felony preliminary hearings: 0.1%
Small claims: 1.4%.

II. SUMMARY OF COMMITTEE'S RECOMMENDATIONS

The Committee has made recommendations concerning the future role of justice courts in the state court system. One of the Committee's objectives was to more clearly delineate the jurisdiction of the court. The Committee reached a consensus on the elimination of concurrent

jurisdiction between justice and district courts without giving certain offenses to justice courts exclusively. The Committee was divided on any further recommendation concerning jurisdiction. A majority favored no additional changes. The minority advocated moving all class B misdemeanors, class C misdemeanors, infractions and violations of ordinances exclusively to justice courts. To inform discussion, both positions are presented in this Interim Report.

The Committee proposes that the requirements for formation of a justice court be based upon the size of the court to be formed. Any local government should be allowed to form a Class I or II justice court without demonstrating any particular need for the court. Because formation of justice courts affects other entities supporting courts, two years notice should be required. To form a smaller Class III or IV court (except certain cities currently exempt from the needs test), the local government should demonstrate the need for the court and give a one year notice of intent to form the court. The Committee also recommends that provisions governing dissolution of justice courts be adopted.

Municipal justice court judges are currently reappointed by executive officers. Concerns about judicial independence in this scheme prompted the Committee to recommend a "good cause" standard for the non-reappointment of a justice court judge. Unless the judge agreed with the non-reappointment, the city executive officer would be required to make the showing of "good cause" to the municipal legislative body. The legislative body's decision would be final.

The Committee has considered issues surrounding the appeal mechanism from justice courts. Because justice courts are not courts of record, a de novo review appears to be mandated. Many, although not all, of the objections to de novo review lie in the potential for two jury trials. Any recommendations for changes to the jury system would be beyond the Committee's scope. Therefore, the Committee defers to other groups to address these issues.

III. COMMITTEE'S RECOMMENDATIONS

A. Jurisdiction of justice courts in criminal matters.

All concurrent territorial jurisdiction between district court and justice court should be eliminated.

Currently, justice courts have jurisdiction over class B and C misdemeanors, infractions, and violations of ordinances committed within their territorial jurisdiction. Utah Code § 78-5-104(1).[1] The district court has jurisdiction over class B and C misdemeanors, violations of

[1] Justice court jurisdiction is limited when the defendant is under 18 years of age. Utah Code § 78-5-105. The Committee makes no recommendation concerning the jurisdictions of the justice

ordinances, and infractions in the following circumstances:

1. no justice court has territorial jurisdiction;
2. the case was filed in the circuit court before July 1, 1996;
3. the offense occurred within a municipality in which a district courthouse is located and the municipality has not formed a justice court; or
4. the charges are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

Utah Code § 78-3-4(8). Of the four circumstances, numbers 1, 2, and 4 identify cases in which the district court has exclusive jurisdiction over B and C misdemeanors, infractions, and ordinance violation cases. However, number 3 (district courthouse in municipality that has not formed a justice court) results in concurrent jurisdiction between a county justice court and the district court located in municipalities without justice courts.[2] The language addressing the jurisdiction of the district court in misdemeanor, infraction, and violation of ordinances was added to Section 78-3-4 in the 1997 Legislative Session. It was added in response to the consolidation of the circuit and district courts which was completed as of July 1, 1996.[3]

The Committee considered the following three issues related to the jurisdiction of justice courts in criminal matters:

1. Should any concurrent territorial jurisdiction exist between the justice court and the district court?

2. Should any concurrent subject matter jurisdiction exist between the justice court and the district court?

3. If subject matter jurisdiction is to be exclusive, where should the jurisdictional line be drawn?

Many presenters who appeared before the Committee stated that all concurrent jurisdiction should be eliminated. Two reasons were given. Most prominently mentioned was forum shopping. Since the overwhelming majority of cases filed in justice courts are criminal, the presenters concerned about forum shopping were worried that prosecutors and law enforcement officers could choose in which court to file. Such a system may be unfair to a

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and juvenile courts over misdemeanors and infractions committed by persons under 18 years of age.

[2] The exception to this concurrent jurisdiction is in Cache County, which is the only of Utah's twenty-nine counties that has not formed a justice court.

[3] Section 78-3-4(8) expires on July 1, 1998. It was added to preserve the status quo while the Committee was formed to study the issues surrounding the justice courts.

defendant who may receive disparate treatment as a result of the choice of court. A second concern, mentioned by the Judicial Council representative, was difficulty in planning for the state court system. The Judicial Council requests resources for the district court from the Legislature based on case load projections. Concurrent jurisdiction holds the potential for large caseload shifts between the district and justice courts. Neither the Judicial Council nor the county government can predict such a case shift and therefore is unable to account for it in planning.

Some presenters and some Committee members were concerned about eliminating concurrent jurisdiction entirely. Concurrent jurisdiction gives prosecutors flexibility that may be appropriate especially in more serious class B misdemeanors such as driving under the influence and domestic violence. For example, filing in district court and avoiding the possibility of a trial de novo which would require a victim to testify twice may be a legitimate decision for a prosecutor.

The Committee's jurisdiction discussions were ultimately guided by three principles. First, forum shopping is the primary evil to be addressed. Second, as presently constituted and with proper training, justice court judges are fully competent to hear the types of cases within their current jurisdiction (class B and C misdemeanors, infractions, and ordinance violations). Ordinarily, the justice court is the court level that should hear those cases. Third, nothing inherent in the district court makes it an inappropriate forum for class B misdemeanors, class C misdemeanors, infractions, and ordinance violations in the limited circumstances in which it is hearing them currently.

Following deliberation, the Committee unanimously recommends that any concurrent territorial jurisdiction be eliminated. To effectuate the recommendation, it drafted the suggested legislation attached as Appendix A. The proposal keeps the existing district court jurisdictional statute except removal of the language limiting the provision from July 1, 1997 to July 1, 1998.[4] The proposal also amends the justice court jurisdictional statute to remove those offenses occurring within the boundaries of a municipality in which a district courthouse is located and the municipality has not formed a justice court or assumed local responsibility for the justice court. Essentially, concurrent jurisdiction is removed by excepting those cases in district court jurisdiction under Section 78-3-4 from justice court jurisdiction under Section 78-5-104. The Committee understands that removing concurrent jurisdiction using the language in Appendix A may move some cases currently in a county justice court to a district court. The Committee has not yet identified the magnitude of that case shift.

To ameliorate a case shift under the language of Appendix A, the Committee will

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[4] A non-substantive change recognizes that certain municipalities can "assume local responsibility for the jurisdiction of the justice court" without necessarily forming a municipal justice court.

consider a mechanism of allowing a city to choose which court to put cases arising within its municipal boundaries short of forming a court or executing an interlocal agreement. One proposal is to require each municipality in which the district court has jurisdiction to file an election every even-numbered year by July 1. Similar to the formation of a justice court by a municipality, the election would bind all agencies filing cases based upon offenses occurring within the municipality.

Under the proposed language in Appendix A, subject matter jurisdiction over class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances continues to be divided between district and justice courts depending upon location of the offense. The proposed language deprives the prosecution of any opportunity to pick from more than one forum. Wherever in Utah such an offense occurs, that charge may be filed in one -- and only one -- court. The Committee split on the issue of making further recommendations on jurisdiction. Because all members of the Committee recognize the merits of each position, the two views are presented in the body of this report. The majority of the Committee supports what follows as the "Primary Opinion." A minority of the Committee supports the designated "Secondary Opinion."

Primary Opinion

A majority of the Committee recommends no further change to justice court jurisdiction. The historical development of the district court and the justice court have lead to substantial resource commitments by the state and local governments. In addition, the municipalities that currently litigate all criminal matters in the district court have consciously elected to not form a municipal justice court. These municipalities have relied upon the continued availability of the district court in their planning decisions. A majority of the Committee felt that requiring those municipalities to form a justice court or prosecute in a county justice court by removing the district court jurisdiction over class B misdemeanors and lower was inappropriate.

Secondary Opinion.

A minority of the Committee felt that filing in a different level of court based upon only the location of the offense does not promote a coherent justice system. The Committee has heard neither philosophical nor policy reasons that justify treating identically charged defendants differently depending solely upon the location of the offense. A defendant in district court is afforded a trial and appellate review on the record. A defendant in justice court is afforded two trials but no appellate review unless a statute or ordinance is found unconstitutional. While the minority does not think one of these avenues of appeal is better than the other, the procedure available to the defendants is markedly different. Therefore, the minority would recommend that certain cases be heard only by justice courts. Because justice courts are currently hearing class B and C misdemeanors, infractions, and ordinance violations, drawing the line for exclusive jurisdiction at class B misdemeanors and lower seemed most appropriate. The minority's proposal included a study of the impacts of such a change of

jurisdiction and a comprehensive plan for the transition. The details are set out in Appendix B of this Interim Report.

B. **Formation of justice courts.**

Any local government that wants to create a Class I or II justice court should be able to do so upon two years notice. Formation of a Class III or IV court should require one year notice and continued demonstration of need for the court.

Under the statutory scheme for formation of justice courts, local governments are divided into two groups. Certain cities[5] can establish a justice court[6] at the city's option. These cities must give notice of their intent to form a court to the Judicial Council by July 1 of an odd-numbered year with the election effective the next even numbered year. Utah Code § 10-3-923. All local governments not enumerated in Section 10-3-923 are not subject to a time limit on notice. However, they must meet minimum standards set by the Judicial Council for the creation of justice courts. Pursuant to statute, these standards are established considering "factors of population, case filings, public convenience, availability of law enforcement agencies and court support services, proximity to other courts, and special circumstances which establish a need for the court." Utah Code § 78-5-139.

The Committee recommends that requirements for formation of a court be based upon the size of the court to be created. Generally, a local government should have the autonomy to form a justice court when the governing body feels its citizens would be best served by doing so. However, because of lower case filings, smaller courts raise a concern about the ability to support the efficacious administration of justice.

The Committee recommends removal of the needs test in Section 78-5-139 for local governments proposing to form a Class I or II justice court. However, the formation of a justice court may have a significant impact upon other courts. The larger the number of cases in the prospective court, the larger decrease in caseload for other courts. Any shift of cases has an impact on the resources of many governmental entities. Planning is particularly difficult if many cases can be shifted with relatively short notice. To balance local government's desire to be responsive to its community's needs with the recognition that a large case shift can impact other governmental entities, the Committee recommends requiring two years of notice. This

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[5] Brigham City, Logan, Ogden, Roy, Clearfield, Layton, Bountiful, Kaysville, Salt Lake City, Murray, Sandy, West Valley City, Tooele, Park City, Orem, Provo, Spanish Fork, American Fork, Elk Ridge, Salem, Cedar City, St. George, Richfield, Price, Moab, Taylorsville, Vernal, and Roosevelt.

[6] The statute refers to "assum[ing] local responsibility for those matters within the exclusive jurisdiction of the justice courts." A city may form a justice court, establish a justice court through interlocal agreement, or adjudicate matters in the county justice court.

requirement should apply to cities listed in Section 10-3-923. Because under the current statutory scheme, those cities can only give notice in odd-numbered years, they are not substantially affected by the change.

Except Section 10-3-923 cities, a local government that proposes to form a Class III or IV court should be required to give one year of notice and meet the needs test in Section 78-5-139. The cities listed in Section 10-3-923 who propose to form a Class III or IV court would continue to be exempt from the needs test. However, the notice provision would change to allow the Section 10-3-923 cities forming a Class III or IV court to give notice any year rather than only in odd-numbered years.

The notice required under the Committee's recommendation should be given by July 1 of the year. The local government should always give notice to the Judicial Council. The local government should also give notice to any entity that is hearing the cases that would be within the jurisdiction of the new court. The Judicial Council should be given the ability to shorten any required notice period if all the affected governments agree.

The Committee recommends continuing the requirement that the Judicial Council certify all new courts. Currently for certification of a new court, the Judicial Council requires the governing body of the local government entity to request an opinion from an attorney advising the entity of all requirements for the creation and operation of a justice court. The entity must pass a resolution requesting certification that affirms that the entity is willing to meet all requirements for the creation and operation of a court. This information is presented to the Justice Court Standards Committee.[7]

With the exception of the cities listed in Section 10-3-923, dissolution of justice courts is not addressed by Utah statute.[8] Because of the potential impact on other governmental entities of a dissolution of a court, the Committee recommends that legislation expressly address the issue. Any municipal justice court in a county with a justice court should be required to give the

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[7] Comprised of one municipal justice court judge from a rural area, one municipal justice court judge from an urban area, one county justice court judge from a rural area, and one county justice court judge from an urban area, all appointed by the Board of Justice Court Judges; one mayor from either Utah, Davis, Weber or Salt Lake Counties, and one mayor from the remaining counties, both appointed by the Utah League of Cities and Towns; one county commissioner from either Utah, Davis, Weber or Salt Lake Counties, and one county commissioner from the remaining counties, both appointed by the Utah Association of Counties; a member of the Bar from Utah, Davis, Weber or Salt Lake Counties, and a member of the Bar from the remaining counties, both appointed by the Bar Commission; and a judge of a court of record appointed by the Presiding Officer of the Council. Code of Judicial Admin. Rule 1-205.

[8] Once the Section 10-3-923 cities (*see* footnote 5) elect to assume jurisdiction for justice court matters, the Legislature must approve the revocation of the election. Utah Code § 10-3-923(6).

county notice of its intent to dissolve its municipal justice court. Notice of dissolution of any justice court should also be given to the Judicial Council. The time for notice should be the same as the notice for intent to create (two years for Class I and II courts; one year for Class III and IV courts). The notice would be required by July 1. Because the caseload would fall to the local district court, the dissolution of a county justice court or a municipal justice court in a county without a county justice court should be approved by the Legislature. The requirement for legislative approval for the revocation of assumption of justice court jurisdiction by Section 10-3-923 cites should remain. For dissolutions of justice courts that do not need legislative approval, the Judicial Council should be able to waive the time for notice. The Committee recommends two different schemes for dissolution because of the different impacts of dissolution. The Legislature should be given approval authority over any dissolution which will result in a shift of cases, by default, to the state district court.

C. **Judicial independence.**

Municipal justice court judges should be reappointed absent a showing of "good cause" by the appointing authority.

Justice court judges serve four year terms. The manner of initial appointment is identical for county and municipal judges. However, upon the expiration of the term, county judges are subject to an unopposed retention election while municipal judges are reappointed by the chief executive officer of the city. Utah Code § 78-5-134.

In their presentations to the Committee, both the Judicial Council and the Board of Justice Court Judges expressed concern with the reappointment of municipal judges. The Council and the Board see the reappointment process as a potential infringement upon judicial independence. The city (through the city attorney) is often a party to the criminal cases that a municipal justice court hears. In addition, the city is the recipient of at least fifty percent of most of the fines collected by the court. Even if no overt pressure is placed on a municipal court judge, the fact that the judge is subject to reappointment by the executive branch may be an implicit threat to independent judicial decision making.

The Board of Justice Court Judges favors retention elections for municipal justice court judges. The League of Cities and Towns stated that retention elections would subject city judges to undue political pressure. While retention elections are appropriate in the relatively populous counties and judicial districts, the small population in many municipalities would mean that a judge could be removed by a small number of voters. This reality of a small electorate has the potential of dissuading a judge from making a politically unpopular but legally correct decision, especially near the election date.

The Committee agrees that reappointment of municipal justice court judges is problematic. The potential for an undesirable injection of executive branch concerns into the judicial process is significant. Additionally, if the citizens have the perception that financial

concerns of the local government drive the court's decisions, the integrity of the judiciary is undermined. However, the League's concern about retention elections in small electorates was perceived as equally legitimate. The Committee recommends adoption of a "good cause" standard for the denial of a municipal justice court judge's reappointment. Under the present statutory scheme, the municipal executive is required to consider whether the judge has been certified by the Judicial Council as meeting the performance evaluation criteria and "any other factors considered relevant by the appointing authority." Utah Code § 78-5-134. Using a "good cause" standard for the failure to reappoint is designed to protect the judge's ability to independently exercise the judge's authority while allowing local governments an effective mechanism to ensure accountability.

At the end of a municipal justice court judge's term, the appointing authority would be required to articulate the basis for "good cause" to deny reappointment. At the judge's request, the appointing authority would have to present its "good cause" for non-reappointment to the municipal legislative body in a formal hearing. The legislative body would be the final arbiter of the question. Neither the justice court judge nor the appointing authority would have an avenue of appeal from the legislative body's decision. The Committee viewed the requirement that the appointing authority articulate the reasons for not reappointing as insulating the judge from some political pressures without removing local control. However, the Committee did not want to create a cause of action for a justice court judge who was not reappointed.

D. Appeals/trial de novo and "court not of record."

If a litigant is not satisfied with the decision of a justice court, the litigant is entitled to a "trial de novo" in the district court. This "de novo" review varies from traditional appellate review of trial court rulings. The entire case is presented again in the district court. Unless the court rules on the constitutionality of an ordinance or statute, no additional review is available from a justice court judgment. Utah Code § 78-5-120. For fiscal year 1997, the Administrative Office of the Courts received reports of 501 trial de novo requests (compared with more than 300,000 cases in justice courts).

During presentations to the Committee, three major disadvantages with the trial de novo process were identified. One disadvantage is, at least in certain types of proceedings, a de novo review may be burdensome on witnesses. For instance, testifying twice may be emotionally difficult for victims. A second disadvantage is that providing two trials may be resource intensive particularly if a jury is impaneled twice. A third disadvantage is that, absent a question about the constitutionality of a statute, no opportunity for multi-judge review of questions of law, as is typical of traditional appeals, exists. However, the Committee feels that recommendations related to jury trial would be beyond its scope. Therefore, it defers to the groups to address the issue.

IV. ISSUES STILL TO BE ADDRESSED

A. Revenue share/surcharges.

Misdemeanor and infraction fines are subject to a split between the entity prosecuting and the entity supporting the court. In addition, a surcharge earmarked for certain funds is paid on many fines. The Committee will consider whether changes to these allocations should be recommended.

B. Record keeping, information sharing, and technology.

The criminal information infrastructure relies on all participants to facilitate the transfer of accurate information. Justice courts hear a majority of the class B misdemeanor and lower cases filed. Their ability to interact with the state's information systems appropriately is crucial. The Committee will consider issues related to record keeping, information sharing, and technology.

C. Judicial Conduct Commission suspension ability.

Justice courts have been established by many local governments, many of which cannot easily afford to pay more than one judge. However, the possibility exists that a government may be forced to employ a second judge because of alleged misconduct by the sitting justice court judge. Only the Judicial Conduct Commission has the power to suspend a judge during the judge's term. Without the suspension, a government is required to pay the judge. The Committee has not yet addressed this issue.

D. Civil Jurisdiction.

Small claims cases involve disputes for $5,000 or less which are conducted under a simplified process. Both district and justice courts have subject matter jurisdiction over small claims matters. In district courts, the cases are often heard by judges pro tem, attorneys who volunteer to hear the cases. In judicial districts without a judge pro tem program, small claims cases filed in district court may be transferred to the appropriate justice court. The Committee has not yet addressed proposed changes to the civil jurisdiction of justice courts.

APPENDIX A

PROPOSED JURISDICTION LEGISLATION

78-3-4. Jurisdiction -- Appeals.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(4) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(5) The district court has appellate jurisdiction to adjudicate trials de novo of the judgments of the justice court and of the small claims department of the district court.

(6) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78-2-2 and 78-2a-3.

(7) The district court has jurisdiction to review agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings.

(8) Notwithstanding Subsection (1), [~~between July 1, 1997, and July 1, 1998,~~]the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

(a) there is no justice court with territorial jurisdiction;

(b) the matter was properly filed in the circuit court prior to July 1, 1996;

(c) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed a justice court or assumed local responsibility for the jurisdiction of the justice court under 10-3-923; or

(d) they are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

78-5-103. Territorial jurisdiction -- Voting.

(1) [~~Except as provided in Section 10-3-923, the~~] The territorial jurisdiction of county justice courts extends to the limits of the precinct for which the justice court is created and includes all [~~cities or towns~~] municipalities within the precinct, except

(a) [~~cities~~] municipalities where a municipal justice court exists[~~,~~] or

(b) municipalities which have assumed local responsibility for the jurisdiction of the justice court under Section 10-3-923(7)(a)(ii).

(2) The territorial jurisdiction of municipal justice courts extends to the corporate limits of the municipality in which the justice court is created.

(3) The territorial jurisdiction of county and municipal justice courts functioning as

magistrates extends beyond the boundaries in Subsections (1) and (2):

(a) as set forth in Section 78-7-17.5; and

(b) to the extent necessary to carry out magisterial functions under Subsection 77-7-23 (2) regarding jailed persons.

(4) For election of county justice court judges, all registered voters in the county justice court precinct may vote at the judge's retention election.

78-5-104. Jurisdiction.

(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction, except

(a) [~~those~~] offenses over which the juvenile court has exclusive jurisdiction[~~.~~]; and

(b) offenses occurring within the boundaries of the municipality

(i) in which a district courthouse is located and

(ii) that municipality has not formed a justice court or assumed local responsibility for the jurisdiction of the justice court under 10-3-923.

(2) Justice courts have jurisdiction of small claims cases under Title 78, Chapter 6, Small Claims Courts, if the defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

APPENDIX B

SECONDARY OPINION ON JURISDICTION

The Secondary Opinion on jurisdiction recommends all class B misdemeanors and lower be heard only by justice courts. When the Committee considered this proposal, it researched the potential impact of a shift in jurisdiction. This information, along with a transition plan, is included in this Appendix.

The minority recognized that in some areas of the state a justice court may not exist with territorial jurisdiction. If a county does not have a justice court (*see* footnote 2 in the body of the report), those areas not within the jurisdiction of a municipal justice court would not be within the jurisdiction of any justice court. The minority would recommend that the territorial jurisdiction of the county seat's municipal justice court in any county without a justice court be expanded to include the entire county. Therefore, the system's coherence would be preserved.

Some Committee members expressed concern about particular offenses being exclusively within the jurisdiction of justice courts. At various times during the discussions, reviewing all A and B misdemeanors was proposed. While the Committee has declined to undertake this process, it has recognized the validity of the recommendation. The minority feels that any necessary reclassification of offenses would occur as part of the normal legislative process. In many localities, justice courts are currently hearing all class B and C misdemeanors. If justice court is not the best forum for particular cases, any impetus to reclassify the offenses exists regardless of whether the minority's recommendation of exclusive jurisdiction was adopted.

In its discussions, the Committee investigated the impact of changing to an exclusive jurisdiction scheme. The most significant impact would be a one-time shift of cases out of the district court system and into justice courts. Fine revenue from most misdemeanors and infractions is split between the entity supporting the court (50%) and the government which prosecutes the offense (50%). Utah Code § 78-3-14.5 (district courts); Utah Code § 78-5-116 (justice courts). In addition to fines, a surcharge is imposed in many criminal cases. The surcharge is assessed as a percentage of fines as follows:

> 85% in felonies; class A misdemeanors; driving while intoxicated and reckless driving; and class B misdemeanors not established in Title 41 (Motor Vehicles).
>
> 35% on other offenses except nonmoving traffic violations, orders for community service, and penalties assessed as part of an nonjudicial adjustment in a juvenile court case.

Utah Code § 63-63a-1.

The Administrative Office of the Courts provided information to the Committee about fiscal year 1997 caseloads[a] and fine revenue in the district court.

	CHARGES	CASES
B misdemeanor	77,397	63,276
C misdemeanor	126,053	102,565

The state's fiscal year 1997 revenue from misdemeanor and infraction fines subject to the 50/50 split was approximately $4.4 million.[b] This figure includes fine revenue associated with class A misdemeanors. The Committee staff attempted to identify how much of this amount is associated with cases that would remain in the district court under the minority's proposal (all class A misdemeanors and all misdemeanors and infractions filed with a class A misdemeanor). Unfortunately, data tying fine revenue to specific charges are not available. For fiscal year 1997, class A misdemeanors were five percent of the misdemeanor and infraction charges filed in district court. While fines would not necessarily correspond with charges filed as a percentage (because class A misdemeanors would be expected to have larger fines), this proportion gives an estimate of the portion of the $4.4 million associated with class A charges.

In addition to the fines subject to a 50/50 split, the general fund receives fifteen percent of fines from wildlife and state parks violations filed in district court. Utah Code § 78-3-14.5. If those cases are filed in a justice court, the fifteen percent is paid to entity sponsoring the court. Utah Code § 78-5-116.[c] For fiscal year 1997, the general fund's portion of these fines was approximately $9,000. For citations for overweight vehicles under Utah Code Sections 27-12-151 and 27-12-154, the fines minus a fee established by the Judicial Council are paid to the B and C road account. The fees are paid to the state's general fund if the case is in district court and to the entity supporting the court if the case is in justice court. Utah Code § 78-3-14.5 (district court); Utah Code § 78-5-116 (justice court). In fiscal year 1997, the fees assessed for overweight vehicle cases in district court were approximately $6,500.

The rate of increase in surcharge revenue may be expected to decrease slightly under the minority's proposal. All surcharge revenue would continue to flow to the funds designated by state statute. However, the different payment formula for justice courts would affect the rate of payment of the surcharge. District courts attribute money to the surcharge first. Utah Code §

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[a] The caseload information is provided by charge and case. "Charges" include all offenses filed; "cases" reflect number of cases in which a relevant misdemeanor was filed.

[b] This figure is for revenue collected not fines imposed.

[c] The balance of the fine is paid to Division of Wildlife Resources or Division of Parks and Recreation regardless of the court in which the citation is filed.

63-63a-2(1). Therefore, if a defendant does not pay all the money owed, the deficiency will all be attributed to the fine (unless the defendant does not pay enough to cover the surcharge). Amounts collected by the justice courts are attributed to surcharge and fine in a ratio designed to pay each off at the same rate. Utah Code § 63-63a-2(2). Therefore, unless the defendant pays the entire amount owing, some portion of the surcharge assessed by a justice court would remain unpaid.

In addition to a decrease in fine revenue to the state general fund, moving B misdemeanors, C misdemeanors, and infractions to justice courts would have an impact on the State Courts Complex Account. Seven dollars for each violation of Title 41 (Motor Vehicles) in a court of record is paid to the Division of Facilities Construction and Management Capital Projects Fund. Utah Code § 21-1-5(2)(d)(i). This fund is designated for repaying costs associated with the construction of the court complex and for operating and maintaining the court complex. Utah Code § 21-1-5(3)(b). In fiscal year 1997, approximately $611,000 was generated from the Title 41 violations. As with the fine revenue, part of this amount would be associated with class A misdemeanors or lesser charges filed with a class A or felony which, under the minority's proposal, would remain in district court.

Shifting the caseload from district court to justice court would have a significant one-time resource impact for the affected governmental entities. The district court has judges and associated personnel that currently hear some class B and C misdemeanors, infractions, and ordinance violations. These judges and personnel would no longer service those cases. The Judicial Council, as the planning body for the state court system, requests additional judgeships and court personnel based upon caseload projections. The one-time caseload shift probably would mitigate the need for additional district court judgeships in the short term.

While, under the minority's proposal, the state system would see a short-term decrease in caseload, the justice court system would see a commensurate one-time jump in caseload. The increase in cases would not be uniform throughout the state. Four of the largest municipalities in the state (Ogden, Provo, Salt Lake City, and West Valley City) currently file many class B and C misdemeanor, infraction, and ordinance cases in district court. These cases would have to be heard by either new or existing justice courts. In either situation, the local government entity would need the capability to hear these cases.

An additional concern is facilities planning. A number of district court sites are city-owned. The district court uses the buildings under long-term leases with the cities. Issues related to these facilities should the municipalities wish to use some or all of the space for a municipal justice court would need to be addressed. Because each arrangement between the state and a municipality is different, the minority is unable to make recommendations for treatment of such facilities. However, it has attempted to identify issues related to its proposal to prompt discussion by the interested groups. The minority would expect that all the parties would be treated fairly in the transition process.

Given the impact upon the affected entities, the minority felt that a significant lead time should be built into its proposal to allow adjustments in resource allocation. Therefore, the minority would recommend that legislation be put in place in the 1998 Legislative Session to effectuate the change to exclusive jurisdiction in the justice court in 2002. The year 2002 was chosen as a compromise recognizing that the state and local governments may have conflicting interests in the date. For the state court system, the longer the time period the more difficult case management would become because an increasing caseload may not be relieved by additional judgeships in anticipation of the loss of the misdemeanors and infractions. For the local governments, the infusion of additional cases would require a lead time to plan facilities and personnel (if the locality decides to handle the cases itself) or to negotiate intergovernmental agreements with other localities.

FOR ADDITIONAL INFORMATION:

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REPORT OF THE BOARD OF DISTRICT COURT JUDGES TO THE UTAH JUDICIAL COUNCIL ON WEIGHTED CASELOAD

INTRODUCTION

For many years the district court has needed a better method of allocating its judicial resources, a method in which the judges have confidence. That need has led to much debate and study but not to resolution. A weighted caseload is a better method than the unweighted comparisons of the past, but the formula needs further refinements and regular reviews.

In July 1997, the Judicial Council approved a weighted caseload as its preferred method of determining the need for new judgeships and asked the Board of District Court Judges for its recommendations on implementation. In August, Tim Shea presented to the Board the weighted caseload report prepared on behalf of the Judicial Council. The Board raised many concerns regarding particulars within the report and appointed a subcommittee of Judge Guy Burningham, Judge Glen Dawson, Judge Gordon Low and Judge Ron Nehring to further investigate the weighted caseload and to make recommendations to the Board. The subcommittee invited Judge Jon Memmott to its meetings.

RECOMMENDATIONS FOR IMPLEMENTATION OF THE WEIGHTED CASELOAD

Incremental Implementation. Based on the work of the subcommittee and its own consideration of the issues, the Board recommends the weighted caseload be implemented in an incremental fashion, with increasing reliance placed on the measurements of the weighted caseload as the identified shortcomings are addressed and as the application of the formula to the real-life situations of the districts returns results within the common experience of most judges.

Eliminate or Delay Weighted Caseload as a Threshold. The Board recommends the weighted caseload not establish a threshold a district must meet or surpass before a request by that district for a new judgeship will be considered. Particularly in the early going, when the weighted caseload is not as precise as it might be, no single factor should automatically preclude consideration of a judicial district's needs. If other indicators show the need for an additional judge, the fact that the weighted caseload measurement falls below some threshold should not preempt a request for a judge. The weighted caseload results should be considered, but only minimally until the improvements recommended below can be made.

Temporarily Remove the Judge Year from Calculations. Because of the serious concerns about the elements of the judge year, the Board recommends the judge year not be used in the calculation of the weighted caseload for judge requests made for the 1998/99 fiscal year. Temporarily removing the judge year from the calculation precludes the use of the weighted caseload as a measure of the number of judges needed within a district or the percentage of a caseload carried by each judge of a district, but it still permits the Judicial

Council and the Board to compare the growth in weighted, rather than unweighted, filings. This in itself represents significant improvement to the current comparisons, and it does no harm because the number of judges needed, at least as measured in the weighted caseload report, is significantly beyond any realistic expectation of fulfillment in the near future.

The possibility of misuse of the judge year, which appears to be an incomplete and undesirable standard, poses a very serious threat to the judiciary and to the ability to modify that standard in the future. The Board and the staff of the Administrative Office of the Courts should work to improve the measurement of the judge year as soon as possible. If that further work is completed prior to the initial use of the weighted caseload for the 1998/99 fiscal year budget requests, the judge year could then be used in the calculations.

RECOMMENDATIONS FOR MODIFICATION OF THE WEIGHTED CASELOAD

CASE WEIGHTS

The weighted caseload is divided into three parts: case weights; case filings; and the judge year. The Board is willing to use the initially assigned case weights developed in the Judicial Council report. The continuing research of the variables and data that form the case weights, as proposed in the report, is necessary to refine the precision of the weights and to keep them current. It is important the Judicial Council commit to the resources necessary to gather, analyze and apply these data.

CASE FILINGS

Incomplete clerical entries, differing practices by prosecutors and the simply stated but nonetheless complex issue of defining a unit case measurement lead to inadequacies in the case filing data. Technically, this is not a weighted caseload issue; these definitional features of a caseload must be settled irrespective of a weighted caseload. Until these disparities can be removed, multiplying the case filing data by an established weight will only multiply the disparity. To improve the results of the weighted caseload, the judiciary must develop a uniform method of filing and counting criminal cases, even to the point of requiring prosecutors to follow prescribed filing practices.

JUDGE YEAR

Length of Judge Work Day. The determination of the judge year, or time available for hearings, remains the most troubling aspect of the weighted caseload. The weighted caseload calculation of the judge year assumes a judge will devote nine hours of each day in a five day work week to court work. This calculation converts work time logged over a seven day week, but even with this observation, a nine hour work day is an erroneous standard. This is especially true when, as here, all of the nine hours are presumed to be productive hours engaged in judicial activities. The Board recommends, if the standard work day used in the weighted caseload continues to be nine hours, the formula be modified to include 90 minutes

per day for lunch, breaks and non-judicial tasks. This is time permitted of clerks and all other civil service employees. It is time needed by all workers to maintain some reasonable quality of life and needed within the judiciary to maintain the quality of justice. This change leaves an estimate of seven and one-half hours as a much more reasonable estimate of productive work time per business day.

Research Time. The shift of case related research time from the judge year to the case weights represents an improved model for using this information. Such an approach distributes this time to the case types in which the time is actually spent. Giving all judges credit for the same amount of research time regardless of the nature of a judge's particular docket is not a proper treatment of this component. However, the weighted caseload report does not yet sufficiently account for case related research time. Case related research time was removed from the calculations because including this variable yielded results well outside commonly perceived needs. The happenstance that removing case related research time from the judge year yields a result more closely approximating collective experience does not necessarily mean the research time has been properly allocated among the several case types. Considerably more work is needed to more accurately allocate research time among the case types.

OTHER CHANGES

Referees and Registrars. The weighted caseload report treats court commissioners as the equivalent of judges and eliminates small claims cases from the calculations in districts using judges pro tempore. However, the report does not account for traffic referees or probate registrars at all. Cases assigned to referees and registrars should not be included in the calculations or the results will inflate the need for judges in districts using them.

Regional Application. The eight judicial districts should be organized into four regions for weighted caseload measurements. The Board recommends the following regions based on the similarity of the districts in size.

Region 1: Districts 1 and 5
Region 2: Districts 2 and 4
Region 3: District 3
Region 4: Districts 6, 7, and 8

Such a regional approach will measure both the time needed for hearings and the time available for conducting hearings more accurately than the "one-size-fits-all" approach of the weighted caseload report.

VALIDATION OF THE STUDY

The methodology and data in the report should be validated and then modified as indicated by the validation process. The weighted caseload report should be evaluated by an independent professional to identify any flaws in the method of gathering data. Additional data on hearings

should be gathered by a means more objective than a survey of judges and then incorporated into the results.

Since the Judicial Council intends the weighted caseload as only a relative measure of judicial need, any errors in the data will apply equally to all. However, to allocate the workload among the judges of a district -- the second identified purpose of the weighted caseload -- the results need to be more accurate in an absolute sense. The independent evaluation of the weighted caseload report and an alternative method of gathering data should show where the current measurements are reliable and where they can be improved.

The Council should continue to explore alternative and complimentary tools for judicial resource allocation. In this regard the Board notes that California, which originated the weighted caseload method, has shifted its focus to a simulation methodology.

Finally, the judges forming the subcommittee have volunteered to apply the weighted caseload measurements in a retrospective manner to their personal caseloads and to evaluate those results. These validation efforts need to be completed before a reasonable level of confidence in the weighted caseload can be achieved.

CONCLUSION

The weighted caseload study holds the promise of bringing heightened credibility to resource assessment decision making and with it a welcome reduction in the suspicion and envy that too often has infected resource issues. More important, the study presents a welcome opportunity to improve the efficiency and quality of justice.. Over time, the weighted caseload should achieve a high degree of respect, but initially the Board recommends the Council proceed slowly and incrementally with its implementation and recommends the AOC staff work with the Board to develop the modifications presented in this report.

Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

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

MEMORANDUM

To: Judicial Council
From: Timothy M. Shea
Date: December 10, 1997
Re: Comments to Rule 3-414, Court Security

The amendments to Rule 3-414 were designed to implement the recommendations of the Court Security Task Force and the provisions of SB 132. The draft rule and SB 132 are attached. The comments received orally are summarized in this memo. The written comments are summarized and attached. The recommendations of the Policy and Planning Committee with respect to these comments is summarized immediately following the comment. The amendments necessary to implement the recommendations of the Policy and Planning Committee have been incorporated into the rule.

Written Comments

The Board of Bar Commissioners recommends that all weapons be banned from courthouses with airport style perimeter security systems. **Policy and Planning did not approve.**

The Utah Association of Criminal Defense Lawyers recommends that a task force be formed to consider the issue of court security and fair access to the courthouse. The recommendation is prompted by incidents in which lawyers have not been treated with respect when passing through the security checkpoint at the courthouse. The Association is also concerned about searches of lawyers' papers and delays while bailiffs deal with people who do not understand the security procedures. The chief justice has invited Mr. Ronald Yengich, president of the Association, to address the Judicial Council on this matter. **Policy and Planning took no action.**

The court executives recommend that:

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- ◊ they not be responsible for the security plans of the justice courts, but only of the courts of record within their districts; **P&P approved.**
- ◊ the rule expressly prohibit court employees from carrying a firearm while on duty even if outside the courthouse; **P&P approved.**
- ◊ the rule be amended to eliminate the reference to a bailiff's station as a fixed location within the courtroom; **P&P approved.**
- ◊ the district's security plan not be refiled with the AOC unless there is an amendment to it; **P&P approved.**
- ◊ probation officers be included with clerks in the responsibility to coordinate with jails and Corrections in scheduling hearings for persons in custody; **P&P did not approve.**
- ◊ the presiding judge be permitted to designate another judge to take responsibility for security within the district; and **P&P approved.**
- ◊ if a judge is carrying a firearm in the courthouse that the court executive and the bailiff be notified. **P&P approved.**

Judge Beacham recommends that judges with a concealed weapons permit be permitted to carry a firearm in the courthouse. **P&P did not approve.**

Mr. Parkinson Lloyd recommends that references to statutes retain "Utah Code Annotated" as part of the reference and that references proposed for deletion be retained. **P&P did not approve.**

Oral Comments

The Judicial Rules Review Committee of the Utah State Legislature recommends that:

- ◊ the term "circulation" be defined or used more clearly to mean foot traffic within the courthouse; **P&P approved.**
- ◊ the rule be amended to permit a person in custody to have contact only with the members of the defense team rather than prohibit contact with "family, friends, or spectators"; **P&P approved.**
- ◊ the rule be amended to require for a firearm two points of restraint (including concealment) rather than three; and **P&P approved.**
- ◊ law enforcement officials, as that term is defined in SB 132 (i.e., prosecutors and members of the Board of Pardons), be permitted to carry a firearm if they have obtained an SB 132 certificate. **P&P approved.**

The Board of District Court Judges recommends that:

- ◊ there be a process for reporting noncompliance with building standards and obtaining an exemption from the standards; **P&P approved.**

- ◊ windows not necessarily be draped but that other means of obscuring sight from outside be recognized; **P&P approved.**
- ◊ annual retraining for judges with an SB 132 certificate consist of firing range qualification only; and **P&P approved.**
- ◊ court commissioners and senior judges with a concealed weapons permit be permitted to carry a firearm. **P&P approved court commissioners if they obtain the training required for an SB 132 certificate, and P&P did not approve senior judges.**

The Board of Justice Court Judges recommends that:

- ◊ there be a process for reporting noncompliance with building standards and obtaining an exemption from the standards; **P&P approved.**
- ◊ where the rule refers to the presiding judge, the rule include the judge of a single judge court; **P&P approved.**
- ◊ in the delineation of who is responsible for security in the justice court, the rule anticipate that the county sheriff or municipal police may appoint a constable; **P&P approved.**
- ◊ there be a pre-formatted security plan available to guide the justice courts in developing security plans. **P&P approved.**

Summary of who may carry a firearm in the courthouse under the most current draft of Rule 3-414.

- ◊ Judges with an SB 132 certificate.
- ◊ Prosecutors with an SB 132 certificate.
- ◊ Members of the Board of Pardons with an SB 132 certificate.
- ◊ All statutorily defined categories of law enforcement officers.
- ◊ Commissioners with a concealed weapons permit and the training required for an SB 132 certificate.

Judges, senior judges, staff and members of the public with a concealed weapons permit would not be permitted to carry a firearm in the courthouse.

encl.

copy w/o enclosures Susan Creager Allred
Jerry Howe

Rule 3-414. Court security.

Intent:

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

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

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

Applicability:

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

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

Statement of the Rule:

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

(B) Presiding judge. As used in this rule, presiding judge includes the judge of a single-judge courthouse. The presiding judge may delegate the responsibilities of this rule to another judge.

(2) Responsibilities of the Council.

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

(B) The Council shall promulgate general security guidelines to assist[~~, insofar as is practical,~~] local jurisdictions in the development of court security plans. These guidelines [~~shall include:~~] and local security plans may supplement but shall not conflict with the following minimum requirements. If a facility fails to conform to the following requirements, the security plan for the courthouse shall note the deficiency, and the presiding judge and court executive shall use reasonable efforts to obtain funding for necessary modifications.

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

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

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

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

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

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

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

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

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

[~~(x)~~] (v) Courtroom windows [~~which are~~] shall be draped or otherwise treated to restrict vision from outside the courtroom and securely fastened.

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

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

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

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

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

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

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

(C) As a condition for the certification of a new justice court or the continued certification of an existing justice court pursuant to Section 78-5-139, the justice court shall file an acceptable local security plan with the statewide security coordinator and shall file amendments to the plan with the statewide security coordinator as amendments are made. The local security plan shall provide for the presence of a law enforcement officer or constable in court during court sessions or a reasonable response time by the local law enforcement agency upon call of the court.

(3) Responsibilities of the Administrative Office.

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

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

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

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

(C) The [~~Administrative Office~~] director of human resources shall maintain as part of each official personnel file [~~necessary biographical~~] information on each employee of the judiciary

and his or her family necessary to ensure that adequate information is available to law enforcement agencies to respond [~~in the event of~~] to an emergency.

(4) Responsibilities of the court executive.

(A) The court executive [~~who has been~~] designated as the local security coordinator[~~, is primarily responsible for the development, implementation and coordination of~~] shall, in consultation with the law enforcement administrator responsible for security, develop and implement a local security plan[~~. The local security plan shall include a security plan~~] for each court of record facility within the district. The court executive shall annually review the local security plan with the presiding judge and the law enforcement administrator to identify deficiencies in the plan and problems with implementation. The court executive shall file an acceptable local security plan with the statewide security coordinator and shall file amendments to the plan with the statewide security coordinator as amendments are made.

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

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

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

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

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

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

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

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

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

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

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

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

(5) Responsibilities of law enforcement agencies.

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

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

(ii) [~~Through the administrator of the designated law enforcement agency or the administrator's designee,~~] cooperate with the court executive in the development and

implementation of a local security plan [~~consistent with the requirements of this Code and the implementation of the local plan.~~]:

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

(iv) [~~Appoint~~] appoint court bailiffs[~~.~~]; and [~~The county sheriff shall appoint court bailiffs to serve in the district and juvenile courts. In courts of record and commissioner hearings, where full-time bailiffs are assigned to individual judges and court commissioners, appointments shall be subject to the concurrence of the presiding judge of the jurisdiction. In all other cases, the appointment shall be made in consultation with the presiding judge of the jurisdiction.~~]

(v) provide building and perimeter security.

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

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

(ii) The county sheriff [~~shall be responsible for the provision of security services at all~~] for district [~~court sites~~] courts and [~~all~~] juvenile [~~court sites~~] courts within [~~that jurisdiction~~] the county.

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

(6) Court bailiffs.

(A) Qualifications. [~~After the effective date of this rule, persons appointed as court bailiffs~~] Bailiffs shall be [~~qualified as~~] "peace officers" as defined in [~~Utah Code Ann.~~] Section 77-1a-1. [~~or may, at~~] At the discretion of the law enforcement administrator and with the consent of the presiding judge, [~~judges or commissioners of a particular court,~~] bailiffs may be [~~qualified as~~] "special function officers" as defined by [~~Utah Code Ann.~~] Section 77-1a-4.

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

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

(D) Appointment. The appointment of a bailiff is subject to the concurrence of the presiding judge.

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

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

(i) The bailiff shall [~~assure that criminal defendants, who are~~] prevent persons in custody, [~~are prevented~~] from having physical contact with [~~family, friends, or spectators in order to prevent the passing of weapons or contraband~~] anyone other than the members of the defense

counsel's team. Visitation shall be in accordance with jail and prison policies and be restricted to those facilities.

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

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

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

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

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

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

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

(b) courtroom areas inside well;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Weapons Generally.

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

(ii) All firearms permitted under this rule shall remain in the physical possession of the person authorized to possess it and shall not be placed in a drawer, briefcase or purse unless the person has physical possession of the briefcase or purse or immediate control of the drawer or the drawer is locked. All firearms permitted under this rule shall be concealed unless worn as part of a law enforcement agency uniform. All firearms permitted under this rule shall be secured in a holster with restraining device.

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

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

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

[~~(ii) Officers having the custody of persons incarcerated in the county jail or Utah State Prison, charged with the responsibility of transporting and escorting such persons to a court,~~

~~may possess a firearm and ammunition in a secure area or the courthouse if required by policy of the appropriate law enforcement agency unless otherwise ordered by the judge.~~]

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

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

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

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

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

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

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

(ii) A judge or law enforcement official as defined in Section 53-5-710 may possess in a courthouse or a secure area of a courthouse a firearm and ammunition for which the judge or law enforcement official has a valid certificate of qualification issued under Section 53-5-710.

(iii) A court commissioner may possess in a courthouse or a secure area of a courthouse a firearm and ammunition for which the court commissioner has a concealed weapons permit, but only if the court commissioner has obtained the training and annual retraining necessary to qualify for a certificate issued under Section 53-5-710

(iv) A person permitted under subsections (i), (ii) or (iii) to possess a firearm or other weapon nevertheless shall not possess a firearm firearm or other weapon in a courthouse or a secure area of a courthouse if the person is appearing at the courthouse as a party to litigation. A person carrying a firearm in a courtroom shall notify the court executive and the bailiff.

(v) If required or permitted by the local security plan, a court employee or volunteer may possess in a courthouse or a secure area of a courthouse an otherwise legal personal protection device other than a firearm. An employee or volunteer shall not possess a personal protection device while appearing as a party to litigation. An employee or volunteer shall not possess a firearm while on duty.

(C) Firearm training requirements.

(i) To requalify for a certificate issued under Section 53-5-710 a judge shall annually complete the firing range proficiency qualifications established by the Division of Peace Officer Standards and Training.

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

(9) Security devices and procedures.

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

[~~(C)~~] (B) Physical search. Searches of persons in or about the courthouse or courtroom shall be conducted at the discretion of the law enforcement agency responsible for security when the local law enforcement agency has reason to believe that the person to be searched is carrying a weapon or contraband into or out of the courthouse or when the court so orders. No other person is authorized to conduct such searches. Written notice of this policy shall be posted in a conspicuous place at the entrance to all court facilities.

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

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

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

[~~(A) General provisions.~~

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

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

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

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

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

~~(B) Probationers and parolees.~~

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

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

~~(iii) Probation and parole agents of the Department of Corrections are responsible for notifying in advance the local law enforcement agency responsible for court security, the court~~

~~bailiff and the judge of the court of any suspected security problems or high risk situations and the necessity for any special precautionary measures.~~

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

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

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

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

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

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

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

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

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

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

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

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

DEFINITION OF LAW ENFORCEMENT OFFICIAL AND JUDGE

1997 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO PUBLIC SAFETY; DEFINING LAW ENFORCEMENT OFFICIAL AND JUDGE FOR PURPOSES OF EXEMPTION FROM WEAPONS LAWS; PROVIDING TRAINING AND CERTIFICATION REQUIREMENTS; AUTHORIZING CERTAIN ENTITIES TO ESTABLISH RULES FOR REQUALIFICATION FOR PERSONS UNDER THEIR JURISDICTION; PROVIDING FOR REVOCATION; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-10-523, as last amended by Chapter 80, Laws of Utah 1995

ENACTS:

53-5-710, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53-5-710** is enacted to read:

53-5-710. Law enforcement officials and judges -- Training requirements -- Qualification -- Revocation.

(1) For purposes of this section and Section 76-10-523:

(a) "Judge" means a judge or justice of a court of record or court not of record, but does not include a judge pro tem or senior judge.

(b) "Law enforcement official of this state" means:

(i) a member of the Board of Pardons and Paroles;

(ii) a district attorney, deputy district attorney, county attorney or deputy county attorney of a county not in a prosecution district;

(iii) the attorney general;

(iv) an assistant attorney general designated as a criminal prosecutor; or

(v) a city attorney or a deputy city attorney designated as a criminal prosecutor.

(2) To qualify for the exemptions enumerated in Section 76-10-523, a law enforcement official or judge shall complete the following training requirements:

(a) meet the requirements of Sections 53-5-704, 53-5-706, and 53-5-707; and

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

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

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

(b) Judicial Council by rule for judges; and

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

(4) The division may:

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

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

(i) who fails to meet the annual requalification criteria established pursuant to Subsection (3); or

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

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

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

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

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

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

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

official duties;

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

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

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

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

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

(i) unloaded; and

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

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

Tom

Utah State Bar

Office of the President
645 South 200 East, Suite 310 • Salt Lake City, Utah 84111-3834
Telephone: (801) 531-9077 • FAX # (801) 531-0660

Pour for Council
review. - Ct
8/15

Charlotte L. Miller
President
440 Lawndale Drive
Salt Lake City, UT 84115
Tel: (801) 463-5553
Fax: (801) 463-5585

August 15, 1997

Chief Justice Zimmerman and Members of the Judicial Council
Utah Judicial Council
230 South 500 East, Suite 300
Salt Lake City, UT 84102

Re: Courtroom Security

Dear Chief Justice Zimmerman and Members of the Judicial Council:

The Bar Commission is aware that the Judicial Council is currently considering amendments to rule 3-414 of the Code of Judicial Administration relating to security in the courtrooms. The Commission shares the concern of the Council and all judges that our courtrooms be safe and secure for all persons -- judges, lawyers, court personnel, parties, witnesses and the general public.

The Bar Commission recommends the way to increase safety in the court buildings is to provide reliable security systems and procedures and to ban all weapons from courthouses. The weapons ban should apply to all, including lawyers, judges, bailiffs, and other law enforcement officers at least in those courthouses with adequate security systems. Firearms may fall into the wrong hands and bystanders may be shot. Modern ammunition will not be stopped by typical courtroom walls and, thus, the risk extends to persons outside of the courtrooms.

A courtroom is a place where disputes are resolved without resort to violence. We encourage the Council to take steps to increase the safety of all those who enter the courthouses in Utah.

Sincerely,

Charlotte L. Miller

Charlotte L. Miller
President

UTAH ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS
P.O. BOX 510846
SALT LAKE CITY, UTAH 84151-0846

Defense Legal Committee

October 21, 1997

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

Dear Judge Zimmerman:

I am writing as the president of the Utah Association of Criminal Defense Lawyers. I am writing about what appears to be the constant problems between bailiffs and people who enter the courthouses.

Let me state at the beginning that it is my belief, and the belief of the members of the UACDL, that most if not virtually all of the people who are bailiffs attempt to do their job in a courteous fashion. Indeed, it has been my experience in almost a quarter of a century in the courts that the bailiffs perform an incredible service to the people of the State of Utah and to defense attorneys as well.

Unfortunately, there have been a number of incidents between lawyers and citizens with the bailiffs that bring to attention the problem not simply with security in the courts, but in the civil treatment of individuals who go to courtrooms to seek redress or to practice their profession. It cannot be gainsay that for many of us the courthouses and the courtrooms in the State of Utah are quite literally our work place. We believe we should be treated with the respect that comes with the appellation of lawyer and with the profession that provides the ability to resolve disputes, sometimes quite literally life and death matters, in a civil fashion. We do not believe we should be subjected to constant search of the papers we carry in our briefcases, nor to interminable delays while bailiffs single out individuals who do not understand the rules of ingress and egress from the courts for searches. In fact, it is our responsibility to be in court on time, and when there are long lines of individuals who simply don't understand the rules and we are held up from our work space, it becomes extremely frustrating.

We believe it is time that the concerns of security be balanced with some understanding of the obligations that we have to our clients and to the system of justice. It is also our belief that the people who are providing security measures do not understand our responsibilities or our problems, and in many instances simply don't care.

We propose that a task force be appointed to deal with the issues of security and fair access to the courts by lawyers. The proliferation of security matters to protect judges and other people who work in the court does not mean that lawyers have to be treated like criminals. It is our request that this task force include the presiding judges or designated judges of each district, a representative from the justice courts, as well as representatives from the Supreme Court and the Court of Appeals. We also believe that County Sheriffs who are responsible for security have a representative or representatives, and that individual bailiffs who have handled security also be involved. The Utah State Bar Association has shown little interest in the past in this problem, but we believe that they should also be involved, as well as representatives of the Statewide Association of Prosecutors and the Utah Association of Criminal Defense Lawyers.

Sincerely,

RONALD J. YENGICH
President

RJY/kyo

Supreme Court of Utah
The Capitol
Salt Lake City, Utah 84114

Chambers of
The Chief Justice

October 29, 1997

Ronald J. Yengich, President
Utah Association of Criminal Defense Lawyers
Box 510846
Salt Lake City, Utah 84151-0846

Dear Ron:

I have your letter of October 21st regarding the issue of whether lawyers should be granted some special rights of ingress and egress to courthouses so as to avoid the delays incident to security checks.

You propose that a task force be appointed to deal with the issues of security and access to the courts by lawyers. The Utah Judicial Council recently received a task force report addressing questions of security in all of the courthouses in the state. I am informed that the issue you raise was reviewed in a general way by that task force. However, I am referring your letter to the Judicial Council and requesting that the issue be looked into again. In the event that the Council accepts this recommendation, I anticipate that your group will have an opportunity to present its views.

I understand the concern you have with the sometimes annoying requirements that are imposed by current security plans. I am also sometimes mildly irritated at having to have my briefcase checked and my pockets emptied every time I enter a courthouse. However, I also understand the difficulty of singling out one group for exemption from the security plans' requirements. Clearly, there are interests to be balanced on

both sides of the question. I suspect that much of the discord you describe in your letter could be alleviated by better training of bailiffs(and lawyers).

You will hear from the Administrative Office of the Courts within the next several weeks. Thank you for making your concerns candidly known.

Sincerely,

MDZ/cam
cc. Utah Judicial Council

Can employee w/ concealed weapon permit carry a gun on court business outside the courthouse?

Sixth Judicial District

K. L. McIff, District Judge
David L. Mower, District Judge
Louis G. Tervort, Juvenile Judge

Brent Bowcutt, Court Execut
Peggy Johnson, Court Cle
Steven Higgins, Chief of Probati

MEMORANDUM

To: Brent Johnson, General Counsel
Office of the State Court Administrator

Date: October 3, 1997

From: Brent Bowcutt

Re: Rule 3-414 UCJA, follow up of 9-26 memo

The Court Executives have reviewed the memo dated September 26 to you regrading this rule on October 2. They asked me to submit additional comment. Please consider the following additional suggestions:

Page 4, paragraph (4)(A), First sentence. After the words "develop and implement a local security plan for each" insert the word "state" before the words "court facility within the district."

Page 4, paragraph (4)(B). After the words "survey of all" insert the word "state" before the word "court". This clarifies that the court executive is not responsible for security plans for county and municipal justice courts.

These changes give the court executive responsibility for the development, implementation and training of the security plans and the annual surveys for state court facilities. We recommend the justice court judge or presiding judge, if a multiple judge county or municipal court be responsible for the development, implementation and training of the security plans and the annual surveys for their county or municipal court facilities.

895 East 300 North
Richfield, Utah 84701
435-896-2700
Fax -896-8047
TTY-435-896-2754

Page 10, paragraph 8. We request this rule prohibit non judicial court employees from carrying a fire arm while on duty as court employee.

Your continued consideration is sincerely appreciated.

Please contact me if you have any questions.

895 East 300 North
Richfield, Utah 84701
435-896-2700
Fax -896-8047
TTY-435-896-2754

Sixth Judicial District

K. L. McIff, District JudgeBrent Bowcutt, Court Executive
David L. Mower, District Judge Peggy Johnson, Court Clerk
Louis G. Tervort, Juvenile JudgeSteven Higgins, Chief of Probation

MEMORANDUM

To:Brent Johnson, General Counsel
Office of the State Court Administrator

Date: September 26, 1997

From: Brent Bowcutt

Re: Rule 3-414 UCJA

The Court Executives have reviewed this rule that is out for comment. Please consider the following suggestions:

Page 3, paragraph (2)(B)(xi). Delete the words "The bailiff's station shall " and insert the words "The bailiff shall place him or herself in a location that will" provide a clear line of sight....." This will diminish the assumption that bailiff's are to be fixed, and sitting.

Page 4, paragraph (4)(A), last sentence. We recommend this be reworded to require the security plan be on file. And that this be sufficient until the security plan is amended then require that amended security plan be filed by July 1st of the year it was amended.

Page 4, paragraph (4)(B). After the words "survey of all" insert the word "state" before the word "court". This clarifies that the court executive is not responsible for security plans for county and municipal justice courts.

Page 5, paragraph (4)(E.) After court clerk, insert "or probation officer".

Page 7, paragraph (6)(D). After the words "presiding judge" insert "or designee" before the words "of the court or, ...",.

Page 10, paragraph 8(B)(ii). We request that if a judge is carrying a firearm within a court facility that the trial court executive and the bailiff be notified. The rationale behind this is that the court executive is responsible for court security within the court facility. Therefore, he or she should have knowledge if the judge is possessing a firearm. The bailiff is responsible for security in the courtroom and should know if someone has possession of a firearm,

Your consideration is sincerely appreciated.

Please contact me if you have any questions.

Second District Juvenile Court

Michael B. Strebel
Court Executive

Department of Court Services

W. Deloy Archibald
Chief Probation Officer
Davis County
Jeanette Gibbons
Clerk of the Court
Thomas L. Jensen
Chief Probation Officer
Weber/Morgan Counties
Julee G. Smith
Court Liaison

MEMORANDUM

TO: **Brent Johnson, General Counsel**
Office of the State Court Administrator

FROM: Michael B. Strebel, Court Executive

DATE: September 23, 1997

RE: **Rule 3-414 Court Security**

This Rule was reviewed at the last Court Executives' meeting by Tim Shea. He indicated if there was any input it should be provided to you prior to September 26.

I have two suggestions to request consideration be given to.

1. Page 5 under IE the first line after court clerk, I suggest 'or probation officer' be inserted.

2. I would also request that if a judge is carrying a firearm within a court facility that the trial court executive and the bailiff be notified. The rationale behind this is that the court executive is responsible for court security within the court facility. Therefore, he or she should have knowledge if the judge is possessing a firearm. The bailiff is responsible for security in the courtroom and should know if someone has possession of a firearm,

Your consideration in recommending these changes is sincerely appreciated. As always, this district appreciates your continued support and response with respects to those matters that require legal direction.

From: "Lloyd, Park" <LLOYD@ballardspahr.com>
To: "Gentles, Peggy" <peggyg@email.utcourts.gov>
Date: 10/15/97 3:27pm
Subject: Proposed Amendments to the Code of Judicial Administration

Ms. Gentles:

I have obtained and reviewed a copy of the proposed amendments to the various court rules and have one comment.

The proposed amendments to Rule 3-414 of the Code of Judicial Administration have removed every reference to the Utah Code Annotated as the source for authority. I have reviewed the remainder of the CJA, and have been unable to find a statement that references to statutory sections are deemed to be references to the Utah Code unless specifically stating otherwise.

The amended sections, including Section (8) are replete with statutory references, but give no source. Other sections, such as Section (6), actually delete the references to the Utah Code, for no apparent reason or benefit.

Other amended Rules in the CJA, such as Rule 4-803, have retained their cites to the Utah Code Annotated, giving the reader sufficient information to locate the reference.

The Rules Committee may wish to remedy this problem to make Rule 4-803 more comprehensible to attorneys and lay people.

Very truly yours,

C. Parkinson Lloyd
Ballard Spahr Andrews & Ingersoll
201 South Main Street, Suite 201
Salt Lake City, Utah 84111
Ph. 531-3000
lloyd@ballardspahr.com

Fifth District Court

Judge G. Rand Beacham

December 2, 1997

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

Re: Proposed Amendments to Rules

Dear Peggy:

I realize that the deadline has passed for comments on the proposed rules amendments, but I was just re-reading the proposals before throwing them away and I have noticed a problem with CJA Rule 3-414, regarding court security. The current version, Rule 3-414(8)(A)(iv), provides that "Judges and active senior judges with valid concealed weapon permits may possess firearms and ammunition in a [sic] secure areas or courthouses." The amendment, proposed Rule 3-414(8)(B)(ii), would limit this to judges who have "a valid certificate of qualification issued under Section 53-5-710." I assume this should refer to Section 53-5-711. The amendment would appear to prevent a judge who has a valid concealed weapons permit from carrying the weapon in the judge's own courthouse unless the judge also has the "additional course of training" required by Section 53-5-711(2). I have two problems with that change.

First, the "additional course of training" was not made reasonably available to all judges. It was offered at rather short notice and only in Salt Lake County. Consequently, it was not possible for me to vacate my court calendar to attend either of the sessions. It is my understanding that the course would be offered only once each year, so it appears to be impossible for me to obtain this training until next fall.

Second, after-hours security outside the Washington County Hall of Justice, and particularly in the judges' parking lot, is non-existent. In fact, the judges in this county enter and exit this building from a door which is within ten feet of the door to the Washington County Jail through which work release inmates are processed and inmates posting bail are released. Upon leaving the courthouse, I have literally come face-to-face with people who have recently appeared in my courtroom, with no security and no other person present. During the winter months, when it is dark outside and there

is only one street light for the entire parking area, this is especially unnerving.

This is the precise reason that I, a person who has avoided involvement with firearms as a matter of principle, decided to take a course from a member of the Washington County Sheriff's Office and obtain a concealed weapon permit. I seldom carry a weapon except when entering and leaving the courthouse, but I certainly intend to continue doing that.

I suggest that the committee which reviews this rule reconsider this amendment, and continue to allow judges who have valid concealed weapon permits to carry those weapons in their own courthouses. Please feel free to contact me if there is any question.

Sincerely,

G. Rand Beacham

G. Rand Beacham
Fifth District Court Judge

Informal Opinion 97-9
November 19, 1997

The Ethics Advisory Committee has been asked by the Board of District Court Judges whether judges and court employees may be involved in the CASA Juror Checkoff Program.

In 1997, the Utah State Legislature enacted a statute which allows jurors to donate their $17.00 juror fee to the CASA volunteer program. In order to make jurors aware of the donation option, court clerks distribute to jurors a flier which describes the CASA program and instructs jurors on how they may donate the $17.00 fee. If a juror chooses to donate, a clerk processes the bearer checks into the appropriate accounts.

The CASA program is operated by the judiciary's Office of the Guardian Ad Litem. It assists children who are victims of child abuse or neglect. In appropriate cases, the court appoints a volunteer to work with one child to help that child through the court system. CASA volunteers occasionally appear as witnesses. The juror donations and other funds are used to train the volunteers who assist the children.

The concerns addressed by the Board of District Court Judges are that the judges are impermissibly engaged in fund-raising, and that the donation program creates the appearance of partiality. Canon 4C(3)(b) states that a judge "shall not personally participate in the solicitation of funds or other fund raising activities." This canon has been strictly interpreted. Judges are prohibited from directly or indirectly participating in fund raising. See Jeffrey M. Shaman et al., Judicial Conduct and Ethics, 291 (2d ed. 1995). For instance, judges are prohibited from direct fund raising, such as requesting funds for the Boy Scouts of America. Judges are also prohibited from indirect fund raising, such as sitting in a "dunking booth" at a fund raising event. Federal Advisory Comm. on Judicial Activities, Advisory Op. No. 32 (March 4, 1974). Informal Opinion 89-8.

Because of the legislative enactment and the manner in which the program is structured, the CASA donation program is unique when compared to other fund-raising activities typically considered by ethics advisory committees and other authorities. The CASA donation program as presently constituted may or may not constitute indirect fund-raising by judges but, at the very least, the program creates the appearance of fund-raising and may compromise the integrity and impartiality of the judiciary.

Canon 2A states that "A judge ... should exhibit conduct that promotes public confidence in the integrity and impartiality of the judiciary." Promoting the impartiality of the judiciary is an obligation of fidelity, and is therefore imposed on both judges and court personnel. See Informal Opinion 97-6. The committee has two primary concerns with the donation program and its effect on the integrity and impartiality of the judiciary.

First, because the CASA donation fliers are distributed on court premises before jurors have been paid or excused, jurors who receive the donation flier may feel pressure to donate. This perceived pressure may be compounded by the fact that CASA is clearly a court-sponsored or court-

related program, and it alone is singled out for special consideration by the jurors. The coercive effect of the donation program undermines the integrity of the judiciary. When prospective jurors enter courthouses they do not expect to be solicited for donations, least of all by the judicial system for a judicial branch program. Prospective jurors anticipate playing a role in the judicial system and do not anticipate being viewed as a funding source for a volunteer program, no matter how worthwhile.

The committee's second concern is the appearance of partiality. The impartiality of the judiciary is compromised when a person or group conveys, or is allowed to convey, the impression that they are in a special position to influence the judge. See Informal Opinion 97-5 and Canon 2B. Through the juror donation plan, the CASA program occupies, or at least appears to occupy, a unique position. As the beneficiary of a court-sponsored donation arrangement, the CASA program appears to be a favored group of the judiciary. As witnesses and participants in court proceedings, CASA volunteers may be perceived by litigants or counsel as carrying special influence with the court. The CASA program must not be allowed to convey an impression that is not permitted by the Code.

In conclusion, the participation of judges and other court personnel in the CASA donation program compromises the integrity and impartiality of the judiciary. The integrity of the judiciary is affected by participation of court personnel and the use of court premises in the solicitation and donation process. An appearance of partiality may result from allowing the CASA program to convey the impression that it has favored status with the judiciary. Neither court personnel nor court premises may be used in soliciting members of the public for charitable donations, even if those solicited are jurors, the amount sought is limited to the juror's statutory fee, and the intended beneficiary is a program for which the judiciary is ultimately responsible.

Informal Opinion 97-7
November 19,1997

The Ethics Advisory Committee has been asked the following questions:

1. May a judge have lunch or dinner with a lawyer who has a case before the judge if: a) there are no issues pending before the judge; b) motions have been filed but have not been submitted for decision; c) motions are under advisement; d) during a trial; or e) while the case is under advisement. Does it make a difference if the attorney pays for the meal?

2. How should a judge deal with situations such as CLE classes, Bar functions and other large social functions attended by judges and attorneys under the same scenarios as those involved in the first question.

Resolution of these issues involves Canons 2B , 4A and 4D. Canon 2B states: " a judge shall not allow family, social or other relationships to influence the judge's judicial conduct or judgment." Canon 4A states: " a judge shall conduct the judge's extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) demean the judicial office; (3) interfere with the proper performance of judicial duties; or (4) exploit the judge's judicial position." Canon 4D(5)(c) permits a judge to accept "ordinary social hospitality" from attorneys and others.

The questions that have been posed distinguish between private social interactions, which will be between a judge and no more than a few attorneys and other persons, and larger gatherings attended by more than a few persons. The Committee will first address private social interactions.

The Committee initially recognizes a distinction between those attorneys who may be considered close friends of a judge and those attorneys who may be considered acquaintances. In proceedings involving those close personal friends, the judge will of course enter disqualification. Because the judge will not preside over any proceedings involving those friends, private social interaction with them is not limited and this opinion will not apply to those relationships. This opinion addresses interaction between judges and those attorneys who might be considered acquaintances or strangers.[1]

When dealing with social activities of judges, the Code strikes a careful balance. The Code recognizes that it is not wise to isolate judges and therefore judges may accept social invitations, except when those invitations interfere with the duties of the bench, undermine public confidence in the judiciary, or create the appearance of partiality or favoritism. See Jeffrey M. Shaman et al, Judicial Conduct and Ethics, 303, 304 (2d ed 1995). The committee will first address those activities that are clearly prohibited.

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[1]We also note that the analysis of this opinion will apply to litigants acting as their own attorney. Because the issue has not been presented, the Committee does not address social interaction with parties, although many of the same considerations will apply.

The New York Advisory Committee on Judicial Ethics, in Opinion 92-22, discussed whether a judge may have lunch with local lawyers who practice before the judge. That committee stated that:

> no impropriety exists with a judge having breakfast, lunch, or dinner with an attorney who practices in the judge's court, as long as no discussions of pending matters take place between the judge and the attorney, and as long as there is no appearance of impropriety. [However], during the course of a trial, on actual trial days, a judge should avoid any private social activity with the attorneys appearing before the judge for one side in a matter so as to avoid the appearance of impropriety. In other situations, the judge should exercise discretion and circumspection, depending on the circumstances, to avoid justifiable fears or complaints by lawyers or their clients.

The New York committee was concerned with the appearances when a judge and an attorney privately interact while an issue is squarely before a judge. However, the Committee believes that the appearance concerns are not limited to trials or other discrete stages of a proceeding. The Committee believes also that more of a bright line is needed than "discretion and circumspection, depending on the circumstances," for the nontrial stages of a lawsuit.

Each stage of a proceeding must be free from the appearances of partiality. In every case, it is ordinarily only a question of time until a trial will be held or that there will be dispositive or other motions. The filing of a complaint and assignment of the case to the judge is a more reliable bright line than trying to identify one later in the proceedings, as the phrasing of the first question would suggest possible. Every judicial decision must be free from even the appearance of taint. The fact that motions or other issues are not pending does not lessen the concerns an attorney or party may have upon witnessing opposing counsel dining with the judge presiding over a case. Issues must ultimately be decided and the specter of the judge dining privately with opposing counsel may cause concern or even cast doubts on the judge's ability to be impartial. The Committee is therefore of the opinion that a judge should not engage in private social activities, such as lunch and dinner engagements, with attorneys who have cases pending before the judge. The Committee's determination is consistent with In re D'Auria, 334 A.2d 332 (N.J. 1975). In that matter a judge was disciplined for being "a luncheon guest in public restaurants of persons who were the attorneys or representatives of insurance companies in matters then pending" before the judge. Of course, the prohibition is not limited to dining engagements. For example, attending theater or sporting events, or engaging in activities such as golf, will also be subject to the standards of this opinion.

The Committee recognizes that it may be administratively difficult for judges to be aware of those attorneys who have cases pending before the judge at any given time. Before accepting or extending an invitation to socialize, the judge should inquire of the attorney as to whether the attorney has cases pending. The judge may reasonably rely on the attorney's assertions. If the attorney's assertions prove to be incorrect, the judge should be circumspect about future engagements with the attorney.

In situations involving attorneys who do not have cases pending, judges must still exercise caution. Because of the range of possibilities, no bright-line is possible in this context and the standard of the New York opinion, requiring judges to exercise discretion and circumspection to

avoid justifiable fears on the part of attorneys or their clients, is an appropriate one. For example, certain attorneys may almost always have one or more cases pending before a particular judge, having only brief windows during which they do not have cases pending. The standard crafted by this committee would lose some of its effect if attorneys and judges interacted knowing that an attorney will likely have cases pending in the immediate future. Judges may therefore also be required to avoid social engagements with those attorneys who frequently have cases before the judge or are otherwise likely to appear. At the very least, a judge should carefully consider private engagements with attorneys who are frequent litigators or have regularly appeared before the judge.

Likewise, while the prohibitions created by this opinion do not automatically extend to other members of the firm of an attorney who has a case pending, judges must be circumspect about interaction in certain circumstances. A judge should consider factors such as the size of the firm and the nature of the litigation when determining whether to accept or extend an invitation. Appearance issues may be of more concern when dealing with small firm practitioners than with larger firms, because of the perceived closer relations between members of smaller firms. Within larger firms, caution should be exercised when dealing with attorneys who practice in the same substantive area. Appearance concerns might also be evident when a firm has a large contingency case before the judge, when the case is highly publicized or when a case is such that the reputation of the firm may be at stake. The greater the presence of these factors, the more likely a judge should refuse social invitations from attorneys in such situations.

In those circumstances in which a judge may interact socially with attorneys, a judge should not let attorneys pay for the event. In Informal Opinion 89-6 we stated that a judge may not accept Christmas gifts from attorneys. A meal that exceeds the bounds of ordinary social hospitality, concert or sport event tickets, or a round of golf might well be considered a gift. Although a judge may never accept a truly free meal from an attorney, it is consistent with ordinary social hospitality that frequent dining companions take turns paying dining tabs. A judge may therefore allow an attorney to pay for a meal if the judge did so the last time or expects to the next time.

The prohibitions created by this opinion do not extend to bar functions, committee meetings, law firm open houses, and other large gatherings in which refreshments or even a meal might be served, even though it may not be possible, consistent with ordinary social hospitality, for the judge to pay his or her own way. Judges are free to attend these functions even if attorneys who have issues pending before the judge are also in attendance. The committee is mostly concerned with situations in which an attorney has a private audience with the judge. To that end, when a judge attends gatherings such as bar functions, CLE classes, law firm open houses, and other social settings attended by attorneys, the judge must avoid situations which create the appearance that an attorney who has a case pending before the judge is having private conversations with the judge. A judge should not, for example, sit at the same lunch table with an attorney who has a case pending, unless others are present at the table. A judge should also not engage in private or extended conversations with those attorneys. Conversations should be limited to ordinary social pleasantries.

The Committee recognizes the practical difficulties in determining which attorneys at a social

gathering have cases before a judge. Because it may be difficult or awkward to ask attorneys if they have cases pending before engaging in private conversations, the practical effect of this opinion may be that judges will be limited to social pleasantries at such gatherings, unless the judge knows for certain that an attorney does not have cases pending and is not likely to have cases pending in the near future.

As a final issue, because of the prohibition against accepting gifts, versus receiving ordinary social hospitality, judges must use caution when accepting invitations to attend social gatherings hosted by attorneys or law firms. The value and extravagance of the gathering must be considered. The more lavish the gathering--the greater the value of the hospitality received-- the more likely the invitation could be considered an impermissible gift to the judge. Judges must avoid those gatherings hosted by attorneys in which the expense would be considered anything but ordinary from the viewpoint of an average person.

In conclusion, the Committee finds that a judge must avoid private social interactions with an attorney who has a case pending before the judge. The judge must use caution when presented with other social invitations, taking into consideration various factors such as whether the attorney is likely to appear before the judge, whether the attorney is associated with an attorney appearing before the judge, and whether the attorney is associated with a firm which has financial or reputational interests at stake in a case before the judge. Judges may attend larger social events at which attorneys are present, but judges must avoid private or extended conversations with attorneys who have cases pending. Judges may not accept truly free meals from attorneys in private settings, but may attend larger gatherings hosted by an attorney who does not have a case pending before the judge as long as a reasonable person would consider the expense of the gathering to be ordinary.

MEMORANDUM

To: Judicial Council
From: Peggy Gentles, Staff Attorney
Subject: Comments Received on Proposed Rules
Date: December 10, 1997

The Policy and Planning Committee considered the attached comments received on rules published for commnet rules and makes the following recommendations concerning the comments.

RULE 3-104. PRESIDING JUDGES

CHANGE: Minimum term of presiding judge as two years changed to presumption with option for one year term.

Comment: In response to issues raised at the Presiding Judge/TCE training conference, the rule should be changed to expressly allow a presiding judge to serve successive terms. *Judge Michael Lyon, Second District Court.*

Recommendation: " . . . and may re-elect a judge to serve successive terms of office as presiding judge" has been added.

RULE 3-111. PERFORMANCE EVALUATION FOR CERTIFICATION OF JUDGES AND COMMISSIONERS.

This rule has not yet been considered by the Judicial Performance Evaluation Standing Committee. Therefore, it is not included in the rules for recommendation to the Judicial Council.

RULE 3-414. COURT SECURITY.

On agenda for debate.

RULE 4-608. TRIALS DE NOVO OF JUSTICE COURT PROCEEDINGS IN CRIMINAL CASES.

CHANGE: Requires trial de novo to be heard in the district court "nearest to the justice court from which the appeal is taken."

Comment: Rule should indicate that district court should be in same county. *Judge Kent Nielson, Sevier County Justice Court (in Policy and Planning Committee meeting 8/29/97).*

Recommendation: Change has been made. Paragraph (1)(B) has been amended to remove redundant reference to location of appeal (*see* Leslie Slaugh's comment to Rule 4-803).

Comment: Rule should be amended to read "Unless the Board of District Court Judges has agreed otherwise." This change would allow the Second District to continue to allocate all criminal and civil appeals from justice courts to one court location (assuming that the Board of District Court Judges agreed). *Judge Roger Bean, Second District Court.*

Recommendation: No change.

RULE 4-803. TRIALS DE NOVO IN SMALL CLAIMS CASES.

CHANGE: Requires trial de novo of justice court case to be heard in the district court "nearest to the justice court from which the appeal is taken."

Comment: Because location of court for appeal is addressed in paragraph (1)(B) the provision in paragraph (1)(A), paragraph (1)(A) should be amended to ready "The appeal shall be by trial de novo." *Leslie W. Slaugh, Howard, Lewis, & Petersen, Provo.*

Recommendation: Change has been made.

Comment: Paragraph (2)(H) conflicts with the governing statute. Section 78-6-10(2) states "The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions." The rule states that it should be conducted "as if . . . originally filed in district court." *Leslie W. Slaugh, Howard, Lewis, & Petersen, Provo.*

Recommendation: Change has been made.

Comment: The rule refers to "justice court" a number of places in the rule. The word "justice" should be removed so that the rule applies equally in small claims cases originally filed in district court. *Leslie W. Slaugh, Howard, Lewis, & Petersen, Provo.*

Recommendation: In instances where the change clearly would not affect current practice, the change has been made. Further consideration of this rule should be undertaken in the future.

From: "Judge Lyon (Michael D.)" <JLYON@ogden.utcourts.gov>
To: AOC.aocadmin(MarkJ)
Date: 10/22/97 8:53am
Subject: Proposed amendments to Rules

Mark, in light of our discussions at the recent PJ&TCE training conference regarding the possible advantage of having PJs serve longer than two years, you may want to visit with Peggy Gentles regarding rule 3-104, Code of Judicial Administration. There is presently a proposed rule change that recognizes the possibility of a one-year term of office rather than the presumed two-year term of office. I would suggest that the last sentence of the proposed rule change read as follows instead: "A district, by majority vote of the judges of the court, may opt for a one-year term of office and may re-elect a judge to serve successive terms of office as presiding judge.

If I am in error, just disregard the message.

Thanks.

Michael

CC: AOC.aocadmin(Peggyg)

Second District Court

Judge K. Roger Bean

November 18, 1997

Mr. Daniel J. Becker
State Court Administrator
230 S. 500 East, Suite 300
Salt Lake City, Utah 84102

Dear Dan:

In the forepart of 1997, the Second District judges agreed on a formula for handling the Davis County caseload after July 1. As part of that, what were formerly district court cases filed at Farmington are still filed there, but some of them are sent to the judges at Layton and Bountiful as part of their caseload. In exchange, the judges at Farmington handle all Class A misdemeanors (except those that arise in the Bountiful area) and handle all civil and criminal appeals from the justice courts. Although the case filing numbers have not been reviewed since we began, the system seems to be working well.

The proposed revision of Rule 4-608 of the Code of Judicial Administration would interfere with the arrangement. It provides: "The trial de novo of a justice court adjudication in a criminal case shall be heard *in the district court nearest to the justice court from which the appeal is taken."* (Emphasis added). This would change our present agreement and require us to go back to the drawing board to try to work out a new allocation of caseloads. In view of our earlier agreement, Judge Van Wagenen and I feel certain that all the judges in this district favor the present arrangement.

We suggest amending the proposed change to read: "Unless the Board of District Court Judges has agreed otherwise, the trial de novo (etc.)." That would leave our Davis County agreement intact and allow the rule to operate elsewhere on a default basis.

I am sending copies of this letter to Peggy Gentles and the judges and administrators of this district.

Very truly yours,

K. Roger Bean

Judge

HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW

Jackson Howard
Don R. Petersen
Craig M. Snyder
John L. Valentine
D. David Lambert
Leslie W. Slaugh
F. Richards Smith III
Richard W. Daynes
Phillip E. Lowry
Kenneth Parkinson
Helen H. Anderson

OF COUNSEL
S. Rex Lewis

File No.

Reply to:
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Facsimile: (801) 463-6658

November 17, 1997

Peggy Gentles
Staff Attorney
Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, UT 84102

Re: Code of Judicial Administration

Dear Peggy:

This letter concerns the proposed changes to Rule 4-803, which governs trials de novo in small claims cases.

The second sentence of section (1)(A) states: "The appeal shall be by trial de novo of the matter in the district court of the county in which the justice court is located." Because the location of the court will be addressed in section (1)(B), the provision in (1)(A) should be shortened to "The appeal shall be by trial de novo."

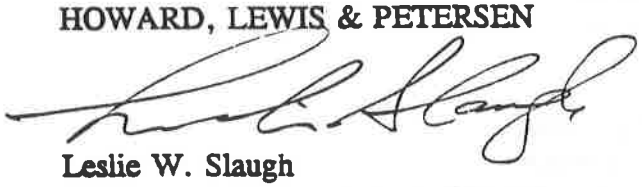
Throughout the rule, there are references to appeals from the justice court. (In subsections A, D, E, F and H of section (2).) The word "justice" could be omitted wherever it occurs. This would permit the rule to apply equally to small claims matters heard in justice court as well as those heard in the small claims division of a district court.

Section (2)(H) conflicts with the governing statute. Utah Code Ann. § 78-6-10(2) states: "The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions . . . ." Section (2)(H), however, states that the trail de novo shall be "conducted as if the matter were originally filed in the district court," which would mean that regular district court rules and procedures would apply. The rule should be amended to conform with the statute.

I realize these comments do not address the proposed amendment to the rule, but rather suggest changes in the balance of the rule. As long as the rule is being changed, however, all of the problems should be fixed.

Sincerely,

HOWARD, LEWIS & PETERSEN



Leslie W. Slaugh

LWS/lo

J:\LWS\GENTLES.LT

Administrative Office of the Courts

Chief Justice Michael D. Zimmerman
Chair Utah Judicial Council

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

MEMORANDUM

TO: Judicial Council Management Committee

FROM: Holly M. Bullen
Assistant State Court Administrator

DATE: November 26, 1997

RE: ETHICS ADVISORY STANDING COMMITTEE

In January of 1998, Judge Fred Howard will complete his first term on the Ethics Advisory Standing Committee. Judge Howard has indicated he would like to serve a second three-year term, and staff has indicated that there were no issues with Judge Howard's attendance or participation on the Committee during his first term.

As you will recall, Management Committee has taken the position that, if the incumbent desires a second term and there are no problems with his/her participation with the standing committee during the first term, the incumbent is reappointed without the need of announcing the vacancy.

Accordingly, I submit the name of Judge Fred Howard for reappointment to the Ethics Advisory Standing Committee. If Management Committee agrees with this, I request that the reappointment be placed on the consent calendar of the next Judicial Council meeting.

Thank you for your consideration of this matter.

c: Brent Johnson, Staff, Ethics Advisory Committee
Mark Jones, District Court Administrator

230 South 500 East / Suite 300 / Salt Lake City, Utah 84102 / (801) 578-3800 / Fax: (801) 578- 3843 / Fax: (801) 578-3968

I am interested in serving on the **JUDICIAL PERFORMANCE EVALUATION STANDING COMMITTEE.**

A) **Present** committee assignments and the approximate dates of service for each assignment:

Electronic Filing Committee - Summer 1997

B) **Past** committee assignments and the approximate dates of service for each assignment:

None.

DATE: 28 Oct 1997

NAME: Robert K. Hilder (PLEASE PRINT OR TYPE)

Please return the completed information by **November 7, 1997** to:

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

Proposed Amendments to the

Code of Judicial Administration

Recommended by the Policy and Planning Committee
for adoption by the Judicial Council
with an effective date of April 1, 1998

December 10, 1997

TABLE OF CONTENTS

CODE OF JUDICIAL ADMINISTRATION

Rule 1-205. Standing and ad hoc committees.

Intent:

To establish standing and ad hoc committees to assist the Council and provide recommendations on topical issues.

To establish uniform terms and a uniform method for appointing committee members.

To provide for a periodic review of existing committees to assure that their activities are appropriately related to the administration of the judiciary.

Applicability:

This rule shall apply to the internal operation of the Council.

Statement of the Rule:

(1) Standing committees.

(A) Establishment. The following standing committees of the Council are hereby established:

(i) Information, Automation and Records Committee;

(ii) Uniform Fine/Bail Schedule Committee;

(iii) Performance Evaluation Committee;

(iv) Ethics Advisory Committee;

(v) Justice Court Standards Committee;

(vi) Judicial Branch Education Committee; and

(vii) Court Facility Planning Committee.

(B) Composition.

(i) The Information, Automation and Records Committee shall be comprised of one judge from each court of record, one justice court judge, one lawyer recommended by the Board of Bar Commissioners, two court executives, two court clerks and two staff members from the Administrative Office, all of whom shall be voting members. The Committee may add additional non-voting, ad hoc members as needed.

(ii) The Uniform Fine/Bail Schedule Committee shall be comprised of one district court judge who has experience with a felony docket, three district court judges who have experience with a misdemeanor docket, one juvenile court judge and three justice court judges.

(iii) The Performance Evaluation Committee shall be comprised of one judge from each court of record, one justice court judge, one court commissioner, one Bar Commissioner recommended by the president of the State Bar, two practicing attorneys who are members of the Bar in good standing, and three lay members. The terms of office of the two practicing attorneys shall be staggered. The Judicial Council shall appoint one of the two practicing attorneys to serve as chair.

(iv) The Ethics Advisory Committee shall be comprised of one judge from the Court of Appeals, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, one justice court judge, and an attorney from either the Bar or a college of law.

(v) The Justice Court Standards Committee shall be comprised of one municipal justice court judge from a rural area, one municipal justice court judge from an urban area, one county justice court judge from a rural area, and one county justice court judge from an urban area, all appointed by the Board of Justice Court Judges; one mayor from either Utah, Davis, Weber or Salt Lake Counties, and one mayor from the remaining counties, both appointed by the Utah League of Cities and Towns; one county commissioner from either Utah, Davis, Weber or Salt Lake Counties, and one county commissioner from the remaining counties, both appointed by the Utah Association of Counties; a member of the Bar from Utah, Davis, Weber or Salt Lake Counties, and a member of the Bar from the remaining counties, both appointed by the Bar Commission; and a judge of a court of record appointed by the Presiding Officer of the Council. All Committee members shall be appointed for two year staggered terms.

(vi) The Judicial Branch Education Committee shall be comprised of one judge from an appellate court, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, one justice court judge, one state level administrator, the Human Resource

Management Director, one court executive, one juvenile court probation representative, two court clerks from different levels of court and different judicial districts, one data processing manager, one adult educator from higher education, and such other members as may be appointed by the Council. The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.

(vii) The Court Facility Planning Committee shall be comprised of one judge from each level of trial court, the state court administrator, a trial court executive, and two business people with experience in the construction or financing of facilities.

(C) Standing committees shall meet as necessary to accomplish their work but a minimum of once every six months. Standing committees shall report to the Council as necessary but a minimum of once every six months. Council members may not serve, participate or vote on standing committees. Standing committees may form subcommittees from their own membership as they deem advisable. The continued existence and composition of standing committees shall be reviewed annually.

(2) Ad hoc committees. The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.

(3) General provisions.

(A) Appointment process.

(i) Administrator's responsibilities. The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:

(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;

(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;

(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and

(d) present a list of prospective appointees and reappointees to the Council, and, when appropriate, make recommendations to the Council regarding the appointment of members and chairs.

(ii) Council's responsibilities. The Council shall appoint the chair of each committee and all committee members. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.

(B) Terms. Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms. Each standing committee may determine the annual date on which its members' terms expire.

(C) Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.

(D) The Administrative Office shall serve as secretariat to the Council's committees.

Rule 3-104. Presiding judges.

Intent:

To establish the procedure for election, term of office, role, responsibilities and authority of presiding judges and associate presiding judges.

Applicability:

This rule shall apply to presiding judges and associate presiding judges in the District and Juvenile Courts.

Statement of the Rule:

(1) Election and term of office.

(A) Presiding Judge. The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court[~~and shall serve a minimum term of two years beginning on July 1~~]. The presiding judge's term of office is presumed to be two years. A district, by majority vote of the judges of the court, may opt for a one year term of office and may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the presiding officer of the Council to serve [~~a minimum term of~~] for two years.

(B) Associate presiding judge.

(i) In a court having more than two judges, the judges may elect one judge of the court to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A).

(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge or by the court.

(2) Court organization.

(A) Court en banc.

(i) Multi-judge courts shall have regular court en banc meetings, including all judges of the court and the court executive, to discuss and decide court business. The presiding judge has the discretion to excuse the attendance of the court executive from court en banc meetings called for the purpose of discussing judicial business. In single-judge courts, the judge shall meet with the court executive to discuss and decide court business.

(ii) The presiding judge shall call and preside over court meetings. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(iii) Each court shall have a minimum of four meetings each year.

(iv) An agenda shall be circulated among the judges in advance of the meeting with a known method on how matters may be placed on the agenda.

(v) Minutes of each meeting shall be taken and preserved.

(vi) Other than judges and court executives, those attending the meeting shall be by court invitation only.

(vii) The issues on which judges should vote shall be left to the sound discretion and judgment of each court and the applicable sections of the Utah Constitution, statutes, and this Code.

(B) Absence of presiding judge. When the presiding judge and the associate presiding judge, if any, are absent from the court, an acting presiding judge shall be appointed. The method of designating an acting presiding judge may be by supplemental court rule or at the discretion of the presiding judge. All parties that must necessarily be informed shall be notified of the judge acting as presiding judge.

(3) Administrative responsibilities and authority of presiding judge.

(A) Generally. The presiding judge is charged with the responsibility for the effective operation of the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and directives of the Council as they pertain to the administration of the courts, orders of the court en banc and supplementary rules. The presiding judge has the authority to delegate the performance of non-judicial duties to the court executive.

(B) Coordination of judicial schedules.

(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.

(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge.

(C) Court committees. The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(D) Outside agencies and the media.

(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court at ceremonial functions.

(ii) Generally, the presiding judge or court executive shall represent the court and make statements to the

media on matters pertaining to the total court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(E) Docket management and case and judge assignments.

(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the Administrative Office, request assistance of visiting judges when needed to handle the workload of the court.

(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

(F) Local supplemental rules.

(i) Prior to submission of a local supplemental rule to the Board, the presiding judge shall submit the rule to a vote of the judges of that jurisdiction. Upon a majority vote, the rule shall be submitted to the Board and the Council for review, adoption and ratification as provided in this Code.

(ii) The presiding judge shall ensure that copies of local supplemental rules are available and disseminated to interested persons.

(G) Court executives.

(i) The presiding judge shall review the proposed appointment of the court executive made by the state level administrator for the respective court level and must concur in the appointment before it can be effected. The presiding judge shall obtain the approval of a majority of the judges in that jurisdiction prior to concurring in the appointment of a court executive.

(ii) The presiding judge for the respective court level and the state level administrator shall jointly develop an annual performance plan for the court executive.

(iii) Annually, the state level administrator shall consult with the presiding judge in the preparation of an evaluation of the court executive's performance for the previous year.

(iv) The presiding judge shall be aware of the day-to-day activities of the court executive, including coordination of annual leave.

(v) Pursuant to Council policy and the direction of the state level administrator, the court executive has the responsibility for the day-to-day supervision of the non-judicial support staff and the non-judicial administration of the court. The presiding judge, in consultation with the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the support staff and the general administration of the court including budget, facility planning, long-range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

(H) Courtrooms and facilities. The presiding judge shall coordinate the assignment of courtrooms and facilities in accordance with supplemental court rules.

(I) Recordkeeping. Consistently with Council policies, the court executive, in consultation with the presiding judge, shall:

(i) coordinate the compilation of management and statistical information necessary for the administration of the court;

(ii) establish policies and procedures and ensure that court personnel are advised and aware of these policies;

(iii) approve proposals for computerization within the court in compliance with administrative rules.

(J) Budgets. The presiding judge, in consultation with the court executive, shall oversee the development of the budget for the court.

In courts for which the county clerk serves as the clerk of court, the presiding judge shall supervise the preparation and management of the county budget for the court on an annual basis and in accordance with Utah Code Ann. Section 78-3-29(5).

(K) Judicial officers. In the event that another judge of the court fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, or violates the Code of Judicial Conduct, the presiding judge shall consider one or more of the following options:

(i) Explain to the judge the reasons for the directive given or the position taken and consult with the judge.

(ii) Reevaluate the position.

(iii) If the problem persists, determine the available alternatives. Discuss and evaluate the alternatives with the judge.

(iv) Discuss the position with other judges and reevaluate the position.

(v) Present the problem to the court en banc or a committee of judges for a recommendation or establish a procedure within the court for resolving disputes between judges and the presiding judge, such as requiring the judge and the presiding judge to state in writing, within a stated and reasonable time, the reasons for their positions.

(vi)Refer the problem to a higher authority such as the appropriate Board.

(vii) Where the refusal is willful and continual, refer the problem to the Council or the Judicial Conduct Commission.

(L) Cases under advisement.

(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination.

(ii) Once a month each judge shall submit a signed statement on a form to be provided by the Administrative Office notifying the presiding judge of any cases or issues held under advisement for more than 60 days and the reason why the case or issue continues to be held under advisement.

(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than 60 days to the Chair of the appropriate Board and indicate the reasons why the case or issue continues to be held under advisement.

(iv) If a case or issue is held under advisement for an additional 30 days, the Board shall report that fact to the Council.

(M) Board of Judges. The presiding judge shall serve as a liaison between the court and the Board for the respective court level.

(N) Supervision and evaluation of Court Commissioners. The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

Rule 4-201. Record of proceedings.

Intent:

To establish the means of maintaining the official record of court proceedings in all courts of record.

To establish the manner of selection and operation of electronic devices.

To establish the procedure for requesting a transcript for a purpose other than for an appeal.

Applicability:

This rule shall apply to the courts of record.

Statement of the Rule:

(1) **Guidelines for court reporting methods.** The official verbatim record of court proceedings shall be maintained in accordance with the following guidelines:

(A) Except as provided in this rule, a video recording system shall maintain the official verbatim record of all District Court proceedings.

(B) An official court reporter or approved substitute court reporter shall maintain the official verbatim record of District Court proceedings using real time reporting methods in computer integrated courtrooms (CIC) in the following proceedings:

(i) all evidentiary hearings and trial proceedings and all phases of sentencing in capital felonies;

(ii) all evidentiary hearings after arraignment and trial proceedings in first degree felonies; and

(iii) at the judge's discretion, subject to availability of a court reporter and CIC equipment,

(a) in cases in which the judge finds that an appeal of the case is likely, regardless of the outcome in the trial court;

(b) in cases in which the judge determines there is a substantial likelihood the a video recording would jeopardize the right to a fair trial or hearing; or

(c) in any other proceeding or portion of a proceeding, upon a showing of good cause.

(C) An audio recording system shall maintain the official verbatim record of all proceedings in the Supreme Court and Court of Appeals.

(D)(i) An audio recording system shall maintain the official verbatim record in proceedings of the district court in which the Judicial Council has previously determined that the volume of cases in a courtroom is not sufficient to justify the cost of installation of a video recording system.

(ii) An audio recording system may be used to maintain the official verbatim record in any hearing in a small claims case.

(E) An audio recording system shall maintain the official verbatim record of all proceedings in the juvenile court, except a juvenile court judge may use, subject to availability, an official court reporter or a video recording system:

(i) if an appeal of the case is likely regardless of the outcome in the trial court. or

(ii) in any other proceeding or portion of a proceeding, upon a showing of good cause.

(F) When the judge determines that the privacy interests of the victim of a crime, a party in a civil case or a witness outweigh the interest of the public in access to a video record of the person, the judge may record the proceeding or portion of the proceeding by use of a court reporter or an audio recording system.

(G) Reporters shall be assigned to cover courtroom proceedings as set forth above. In the event of a conflict in the request for an official court reporter, the trial court executive or managing reporter shall confer with the presiding judge, who shall resolve the conflict.

(H) A recording technology other than the presumed technology may be used if the presumed technology is not available. The use of a technology other than the presumed technology shall not form the basis of an issue on appeal.

(I) The Administrative Office shall periodically study the state of the art of electronic recording technology and technology employed in computer integrated courtrooms and make recommendations to the Judicial Council of systems to be approved.

(2) **Operating and maintaining the electronic recording system.**

(A) The clerk of the court or designee shall operate the electronic recording system in the courtroom so as to record the proceedings before the court accurately. The operator shall be trained in the operation of the system. A separate log of each recorded proceeding shall be maintained on a form approved by the Administrative Office.

(B) When [~~an electronic~~] a video recording system is used to maintain the official verbatim record of court proceedings, at least two original recordings shall be made. One original recording and log shall be filed with the clerk of the court as part of the official court record. A second original recording shall be kept in a secure, off-site storage area. The clerk of the court shall keep the original recording at the courthouse in accordance with the record retention schedule. When an audio recording system is used to maintain the official verbatim record of court proceedings one original recording shall be made.

(C) If a proceeding is recorded by a court reporter, an electronic recording of the proceeding shall not be made, except that a judge may direct a single original of an electronic recording be made as part of the judge's notes for personal use in the deliberative process under Section 63-2-103(18)(b)(ix).

(3) **The official court record.**

(A) In proceedings in which a video or audio recording system is used, the court's original video or audio tape and accompanying log shall be the official court record. In proceedings in which an official court reporter is used, the reporter's shorthand notes shall be the official court record. The Utah Rules of Appellate Procedure govern the record on appeal.

(B) The official court record shall be filed with the clerk of the court.

(C) The clerk of the court shall be the custodian of the official court record and may release the official court record only to a judge, the clerk of the appellate court, the trial court executive, or the official court transcriber. The clerk shall enter in the docket the name of the recipient and when the official court record was released and returned. Obtaining a copy of the official court record shall be governed by rules regulating access to court records.

(4) Requests for transcripts.

(A) A request for transcript for an appeal is governed by Utah R.App.P. 11 and Utah R.App.P. 12.

(B) A request for transcript for any purpose other than for an appeal shall be accompanied by the fee established

by Section 78-56-4 and filed with the court executive. A request for an expedited transcript shall be accompanied by the fee established by Section 78-56-4 and filed with the court executive. The court executive shall assign the preparation of the transcript in the same manner as Utah R.App.P. 12.

Rule 4-510. Alternative dispute resolution.

Intent:

To establish a program of court-annexed alternative dispute resolution for civil cases in the District Courts.

Applicability:

These rules shall apply to cases filed in the District Court in the Second, Third and [~~Fifth~~] Fourth Judicial Districts. The rules do not apply to: actions brought by or through the Office of Recovery Services under Title 26, Chapter 19, Medical Benefits Recovery Act, Title 62A, Chapter 11, Recovery Services, Title 78, Chapter 45, Uniform Civil Liability for Support Act, and Title 78, Chapter 45a, Uniform Act on Paternity, or to: actions brought under Chapters 3a, 6 and 36 of Title 78, Chapter 6 of Title 30, Chapter 12 of Title 62A, Chapter 20a of Title 77, Rules 64 and 65 of the Utah Rules of Civil Procedure, temporary orders requested under Title 30, or to: uncontested matters brought under Chapter 1 of Title 42, Title 75, and Chapters 22a, 30 and 41 of Title 78; or actions where the claim is for a sum less than $20,000.

Statement of the Rule:

(1) Definitions.

(A) "ADR" means alternative dispute resolution and includes arbitration, mediation, and other means of dispute resolution, other than court trial, authorized by this rule and URCADR;

(B) "ADR program" means the alternative dispute resolution program described in Chapter 31b, Title 78;

(C) "Binding arbitration" means an ADR proceeding in which the award is final and enforceable as any other judgment in a civil action unless vacated or modified by a court pursuant to statute, and in which the award is not subject to a demand for a trial de novo;

(D) "Director" means the Director of Dispute Resolution Programs;

(E) "Nonbinding arbitration" means an ADR proceeding in which the award is subject to a trial de novo as provided in Utah Code Ann. § 78-31b-6(2);

(F) "Roster" means the list of those persons qualified to provide services under the ADR program, and includes the information supplied by such persons pursuant to paragraph (3)(A)(i) of this rule;

(G) "URCADR" or "Utah Rules of Court-Annexed Alternative Dispute Resolution" means the rules adopted by the Utah Supreme Court which govern the ADR program.

(2) Responsibilities of the Director. The Director shall:

(A) have general responsibility for the administration of the ADR program;

(B) annually prepare and submit the report required by Utah Code Ann. § 78-31b-4(5);

(C) establish and maintain the roster, and provide copies of the roster upon request;

(D) prepare model forms for use by the courts, counsel and parties under these rules, and provide copies of the forms upon request; and

(E) establish procedures for the review and evaluation of the ADR program and the performance of ADR providers.

(3) Qualification of providers.

(A) To be eligible for the roster, an applicant must:

(i) submit a written application to the Director setting forth:

(a) a description of how the applicant meets, or will meet within a reasonable time, the requirements specified in paragraph (3)(B)(i), if applicable;

(b) the major areas of specialization and experience of the applicant, such as real estate, estates, trusts and probate, family law, personal injury or property damage, securities, taxation, civil rights and discrimination, consumer claims, construction and building contracts, corporate and business organizations, environmental law, labor law, natural resources, business transactions/commercial law, administrative law and financial institutions law;

(c) the maximum fees the applicant will charge for service as a provider under the ADR program; and

(d) the judicial districts in which the applicant is offering to provide services and the location and a description of the facilities in which the applicant intends to conduct the ADR proceedings;

(ii) agree to complete and annually complete up to six hours of ADR training as required and offered by the Judicial Council;

(iii) submit an annual report to the Director indicating the number of mediations and arbitrations the ADR provider has conducted that year; and

(iv) be recertified annually.

(B) To be included on the roster as a mediator, the provider must also:

(i) have successfully completed at least 30 hours of formal mediation training and 10 hours of experience in either conducting mediations or observing a qualified mediator conduct mediations, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program; and

(ii) agree to conduct at least three pro bono mediations each year as referred by the Director.

(C) To be included on the roster as an arbitrator, the provider must also:

(i) have been a member in good standing of the Utah State Bar for at least ten years, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program; and

(ii) agree to conduct at least one pro bono arbitration each year as referred by the Director.

(D) To be recertified as a mediator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least six mediations during the previous year.

(E) To be recertified as an arbitrator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least three arbitrations during the previous year.

(F) A provider may be removed from the roster by the director for failure to comply with the code of ethics for ADR providers as adopted by the Supreme Court or for failure to meet the requirements of this rule. The director shall notify the provider in writing of the director's intent to remove the provider from the roster. If the provider seeks to challenge the removal, the provider must notify the director within 10 days of receipt of the notification. The provider may request reconsideration by the director or a hearing by the Judicial Council's ad hoc committee on ADR. The decision of the committee is final.

(4) Responsibilities of the Administrative Office of the Courts. The Administrative Office shall establish programs for the education and training of ADR providers, attorneys, and judges in the applicable judicial districts of this State as to the purposes and operation of, and the rules governing, the ADR program. The Administrative Office shall prepare a videotape demonstrating the use of ADR to resolve disputes and the application of this rule and the URCADR to the ADR program. The videotape shall include information as to the differences between mediation and arbitration, and the different procedures and the different effects of an award between nonbinding and binding arbitration. Sufficient copies of the videotape shall be available for use as required by paragraph [~~(6)(A)(ii)~~] (6)(A)(i) of this rule, and for the purchase or rental by members of the Bar and other persons interested in the ADR program.

(5) Referral of civil actions pending on January 1, 1995. Any party may file a motion that the case or any unresolved or specified issues therein be referred to the ADR program. If the motion is granted, the matter shall proceed pursuant to the URCADR.

(6) Referral of civil actions filed after January 1, 1995.

(A) All cases subject to this rule shall be referred to the ADR program, pursuant to this rule and URCADR, upon the filing of a responsive pleading. The matter will proceed to mediation 30 days after the filing of the responsive pleading unless one of the following occurs:

(i) One or more parties file with the clerk a statement asking the court to defer ADR consideration until a later date. The statement shall be signed by both counsel and the party and shall state that counsel and the party have reviewed the ADR videotape and have discussed proceeding under the ADR program, but have determined that participation in ADR should be deferred. If participation in the ADR program is deferred, the court and parties are required to address the usefulness of mediation or arbitration in resolving the case no later than the first pre-trial conference. In no event shall this supersede a trial judge's ability to proceed with a trial on a date certain.

(ii) All parties file with the clerk a written agreement signed by counsel and the parties to submit the case to nonbinding arbitration pursuant to URCADR Rule 102.

(iii) All the parties file with the clerk a written agreement signed by counsel and the parties to submit the case to binding arbitration pursuant to Chapter 31a of Title 78 or the Federal Arbitration Act, 9 USC § 1 et seq., or as

otherwise provided by law.

(B) At the time a complaint is filed, the clerk shall provide to the party filing the complaint a notice stating the requirements and options set forth in the preceding subparagraphs. The notice shall include directions for obtaining a copy of the videotape. The party shall serve a copy of the notice on the other parties.

(C) If no response has been filed under (6)(A)(i), (ii) or (iii) within 30 days after the responsive pleading is filed, the action shall be stayed pending compliance with [~~the~~] URCADR rules applicable to mediation.

(D) If the parties have timely filed an agreement to submit the case to nonbinding arbitration under URCADR Rule 102, the court shall issue an order staying the action and all discovery under the Utah Rules of Civil Procedure, except that discovery may continue under URCADR Rule 102(e). All subsequent proceedings shall be conducted in accordance with URCADR Rule 102 and such timetable as the court may establish to ensure the arbitration is instituted and completed without undue delay or expense. All timelines shall be tolled during the pendency of the ADR proceedings, and the timelines shall resume upon notification to the court of the final conclusion of ADR proceedings.

(7) At any time:

(A) the court, on its own motion, may refer the action or any issues therein to the ADR program[~~, although the parties may opt out of the ADR program pursuant to subparagraphs (A) or (B)~~];

(B) upon its own motion, or for good cause shown upon motion by a party, the court may order that an action that has been referred to the ADR program be withdrawn from the ADR program and restored to the trial calendar; or

(C) a party, believing that continuing in mediation is no longer productive, may terminate participation and shall notify the other party and mediator.

(8) If a party unilaterally terminates a nonbinding arbitration procedure after the hearing has begun, that party shall be responsible for all of the ADR provider's fee, and any other party may move that the court also award reasonable attorney fees against the terminating party unless the terminating party shows good cause for the termination.

(9) The judge to whom an action is assigned shall retain full authority to supervise the action consistent with the Utah Rules of Civil Procedure and these rules.

(10) Notice requirements.

(A) [~~Any time an ADR provider is selected to arbitrate or mediate a case pursuant to the ADR program, the ADR provider shall so notify the Director and the court clerk on a form provided by the Director.~~]Any time the parties determine to use mediation or arbitration in the resolution of the case, the plaintiff shall notify the court and specify the expected date for completion of the ADR process.

(B) Upon [~~any final~~] conclusion of an ADR process,[~~the ADR provider shall notify the Director and the court~~] the plaintiff shall notify the court of the outcome of the ADR process on a form provided by the court.

(11) Selection of ADR provider(s).

(A) Upon referral of a case or any issues therein to the ADR program, the Director shall provide the parties with a copy of the roster, and the parties shall choose the ADR provider(s) for the case. If mediation is the selected ADR process, one mediator shall be selected. If arbitration is the selected ADR process, one arbitrator shall be selected, unless the parties stipulate to or the court orders the use of a panel of three arbitrators. If a panel is used, the Director shall, from the panel selected, designate a chair who shall preside at all arbitration proceedings.

(B) The parties[~~, by stipulation filed with the court,~~] may select:

(i) An ADR provider from the roster; or

(ii) An ADR provider pro tempore having specialized skill, training, or experience in relevant subject matter. Pro tempore providers must agree in writing to comply with this rule and the URCADR.

(C) If the parties are unable to select a provider within 15 days of referral of the case to the ADR program, the parties shall return the list to the Director with the names of up to half of the members of the roster stricken. If there are more than two parties, each party shall be permitted to strike a proportion of names equal to or less than its proportion of the number of the parties. The Director shall select the provider(s) from among those providers not stricken by any party. If the parties do not return the list within 15 days or express no preference, the Director shall make the selection. The Director shall mail notice of the selection to all parties and the selected ADR provider.

(D) If a party, within 10 days of mailing of the notice of selection, files a written request that the selected provider be disqualified under Canon II of URCADR Rule 104, or if the ADR provider requests to withdraw for good reason from participation in a particular case to which that provider was appointed, the Director shall select another available qualified ADR provider to participate in that case, giving deference to the expressed preferences of the parties, if any, as provided in these rules.

(E) If the parties choose to utilize mediation or non-binding arbitration, the parties shall contact the ADR provider directly for services.

(12) The fees of the ADR provider shall be paid in advance and divided equally between or among the parties unless otherwise provided by the court or agreed by the parties. Any party may petition the court for a waiver of all or part of the fees so allocated on a showing of impecuniosity or other compelling reason. If such waiver is granted, the party shall contact the Director who will appoint a pro bono ADR provider.

(13) An ADR provider acting as a mediator or arbitrator in cases under the ADR program shall be immune from liability to the same extent as judges of this state, except for such sanctions the judge having jurisdiction of the case may impose for a violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

(14) No ADR provider may be required to testify as to any aspect of an ADR proceeding except as to any claim of violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

(15) All ADR providers providing services pursuant to the ADR program shall be subject to this rule and the URCADR.

(16) Location of ADR Proceedings. Unless otherwise agreed upon by all the parties, all ADR proceedings shall be held at the office of the ADR provider or such other place designated by the ADR provider.

Rule 4-608. Trials de novo of [~~Justice Court~~] justice court proceedings in criminal cases.

Intent:

To establish uniform procedures governing trials de novo of [~~Justice Court~~] justice court adjudications.

Applicability:

This rule shall apply to [~~District~~] district and [~~Justice Court~~] justice courts in trial de novo proceedings where the notice of appeal is filed with the [~~Justice Court after January 1, 1987~~] justice court.

Statement of the Rule:

(1) General Provisions.

(A) Right to trial de novo. Any party to a judgment of the justice court may obtain a trial de novo[~~of the matter in the district court of the county in which the justice court is located~~].

(B) Venue. [~~The Board of District Court Judges shall develop procedures for determining the location of trials de novo. The procedures shall take into account the proximity of the justice court to the district court, the workload of the district court and any statutory provisions governing the venue of trials de novo. The procedures and court locations shall be published as an appendix to this Code.~~] The trial de novo of a justice court adjudication in a criminal case shall be heard in the district court location nearest to and in the same county as the justice court from which the appeal is taken. Either party may move for a change of venue under the applicable Rules of Criminal Procedure.

(2) Criminal appeals.

(A) General provisions. The trial de novo of a justice court adjudication in a criminal case shall be held in accordance with Rule 4-803 governing trials de novo in small claims cases, except that no bond for costs on appeal or filing fees shall be required of a criminal defendant.

(B) The notice of appeal. The notice of appeal must be filed within thirty days of the entry of judgment. The justice court shall transmit to the district court a certified copy of the docket, the information or waiver of information, the judgment and sentence and other papers filed in the case within twenty days after receipt of the notice of appeal.

(C) Stay of judgment. Upon the filing of the notice of appeal and the issuance of a certificate of probable cause as provided for in the Rules of Criminal Procedure, the judgment of the justice court shall be stayed.

(D) Orders governing trial de novo. Upon the filing of the notice of appeal, the district court shall issue all further orders governing the trial de novo, including posting of bail and release from custody.

(E) Disposition. The trial de novo shall be conducted in the district court as if the matter were originally filed in that court and the disposition of fine revenue shall be according to district court procedures. Upon entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case. Such notice shall be for informational purposes only and shall not be construed as a remand of the case inasmuch as a remand of a de novo proceeding is not authorized.

(F) Appeal from de novo review. The prosecution may take an appeal from a de novo review of the district court only as provided for in the Rules of Criminal Procedure.

(G) Traffic convictions. Notwithstanding the filing of a notice of appeal, if a person is convicted of a traffic offense in justice court, the justice court shall require the person to surrender all of his or her license certificates and the justice court shall forward them with the record of conviction to the Driver License Division within ten days as provided in Utah Code Ann. Section 41-2-126.

Rule 4-803. Trials de novo in small claims cases.

Intent:

To establish uniform procedures governing trials de novo of small claims actions.

Applicability:

This rule shall apply to the trial de novo of small claims actions.

Statement of the Rule:

(1) General provisions.

(A) Right to trial de novo. Any party to a judgment in a small claims action may appeal the judgment in accordance with Section 78-6-10. The appeal shall be by trial de novo[~~of the matter in the district court of the county in which the justice court is located~~].

(B) Venue. [~~The Board of District Court Judges shall develop procedures for determining the location of trials de novo. The procedures shall take into account the proximity of the justice court to the district court, the workload of the district court and any statutory provisions governing the venue of trials de novo. The procedures and court locations shall be published as an appendix to this Code.~~] The trial de novo of a justice court adjudication shall be heard in the district court location nearest to and in the same county as the justice court from which the appeal is taken. The trial de novo from the small claims department of the district court shall be held at the same district court location. Either party may move for a change of venue under the applicable Rules of Civil Procedure.

(2) Small claims appeals.

(A) Filing notice of appeal. Either party may appeal a small claims judgment by filing a notice of appeal in the [~~justice court~~] court issuing the judgment within ten days of the notice of entry of the judgment.

(B) Contents of notice of appeal. The notice of appeal shall designate the district court location in which the trial de novo will be held, shall specify the parties in their original capacity, shall identify the party obtaining the trial de novo, and shall designate the judgment and the court from which the appeal is taken.

(C) Service of notice of appeal. The appellant shall give notice of the filing of the notice of appeal by personally serving or mailing a copy [~~thereof~~] to the counsel of record of each party to the judgment, or, if a party is not represented by counsel, then to the party at his last known address. The appellant shall file proof of service or mailing with the district court.

(D) Fees. At the time of filing the notice of appeal, the appellant must deposit into [~~justice court~~] court issuing the judgment the fees established under Utah Code Ann. Section 21-1-5 and Section 78-6-14. The payment of the filing fee is necessary for conferring jurisdiction upon the district court. Payment of filing fees may be waived upon filing of an affidavit of impecuniosity pursuant to Utah Code Ann. Section 21-7-3.

(E) Stay of judgment. A judgment [~~of the justice court~~] is automatically stayed upon the filing of a notice of appeal with the [~~justice court~~] court issuing the judgment and the posting of a supersedeas bond with the district court. The stay shall continue until the entry of the judgment or final order of the district court.

(F) Procedures - Record of justice court. Within ten days of the filing of the notice of appeal in a justice court, the [~~justice~~] court shall transmit to the district court the notice of appeal, the district court fees, a certified copy of

the docket or register of actions, and the original of all pleadings, notices, motions, orders, judgment, and other papers filed in the case.

(G) Orders governing trials de novo. Upon the filing of the notice of appeal, the district court shall issue all further orders governing the trial de novo.

(H) Disposition. The trial de novo shall be [~~conducted as if the matter were originally filed in the district court~~] tried in accordance with the procedures of small claims actions. [~~and the~~] The enforcement, collection or satisfaction of a judgment shall be according to district court procedures. Upon the entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case. Such notice shall be for informational purposes only and shall not be construed as a remand of the case.

Rule 4-906. Guardian ad litem program.

Intent:

To establish the policy and procedures for the management of the guardian ad litem program.

To establish responsibility for management of the program.

To establish the policy and procedures for the selection of guardians ad litem.

To establish the policy and procedures for payment for guardian ad litem services.

To establish the policy and procedures for complaints regarding guardians ad litem and volunteers.

Applicability:

This rule shall apply to the management of the guardian ad litem program.

This rule does not affect the authority of the Utah State Bar to discipline a guardian ad litem.

Statement of the Rule:

(1) Appointment of Director. The Judicial Council shall appoint the Director of the Office of Guardian Ad Litem. The Director shall have the qualifications provided in §78-3a-911.

(2) Responsibilities of the Director. In addition to responsibilities under §78-3a-911, the Director shall have the following responsibilities.

(A) Manage the Office of Guardian ad Litem to ensure that minors who have been appointed a guardian ad litem by the court receive qualified guardian ad litem services.

(B) Develop the budget appropriation request to the legislature for the guardian ad litem program.

(C) Coordinate the appointments of guardians ad litem among different levels of courts.

(D) Monitor the services of the guardians ad litem, staff and volunteers by regularly consulting with users and observers of guardian ad litem services, including judges, court executives and clerks, and by requiring the submission of appropriate written reports from the guardians ad litem.

(E) Determine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6, 7, and 8 is best managed by full or part time employment or by contract.

(F) Select guardians ad litem and staff for employment as provided in this rule. Select volunteers. Coordinate appointment of conflict counsel.

(G) Supervise, evaluate, and discipline guardians ad litem and staff employed by the courts and volunteers. Supervise and evaluate the quality of service provided by guardians ad litem under contract with the court.

(H) Recommend rules of administration and procedure governing the management of the guardian ad litem program to the Judicial Council and Supreme Court.

(I) Prepare and submit to the Judicial Council in August an annual report regarding the development, policy, and management of the guardian ad litem program and the training and evaluation of guardians ad litem, staff and volunteers. The Judicial Council may amend the report prior to release to the Legislative Interim Human Services Committee pursuant to §78-3a-911.

(3) Qualification and responsibilities of guardian ad litem. A guardian ad litem shall be admitted to the practice of law in Utah and shall demonstrate experience and interest in the applicable law and procedures. The guardian ad litem shall have the responsibilities established by §78-3a-912.

(4) Selection of guardian ad litem for employment.

(A) A guardian ad litem employed by the Administrative Office of the Courts is an at-will employee subject to dismissal by the Director with or without cause.

(B) A guardian ad litem employed by the Administrative Office of the Courts shall be selected by a committee

consisting of the following officers:

(i) the Director;

(ii) the trial court executive of the district court and juvenile court; and

(iii) a member of the Utah State Bar Association and a member of the public selected by the Director.

(C) Prior to making a selection, the committee shall provide the name of the finalist to and invite comments regarding the finalist's qualifications from the judges and court commissioners of the judicial district in which the guardian ad litem will primarily practice.

(5) Conflicts of interest and disqualification of guardian ad litem.

(A) In cases where a guardian ad litem has a conflict of interest, the guardian ad litem shall declare the conflict and request that the court appoint a conflict guardian ad litem in the matter. Any party who perceives a conflict of interest may file a motion with the court setting forth the nature of the conflict and a request that the guardian ad litem be disqualified from further service in that case. Upon a finding that a conflict of interest exists, the court shall relieve the guardian ad litem from further duties in that case and appoint a conflict guardian ad litem.

(B) The Administrative Office of the Courts may contract with attorneys to provide conflict guardian ad litem services.

(C) If the conflict guardian ad litem is arranged on a case-by-case basis, the Court shall use the order form approved by the Council. The Order shall include a list of the duties of a guardian ad litem. The court shall distribute the Order as follows: original to the case file and one copy each to: the appointed conflict guardian ad litem, the guardian ad litem, all parties of record, the parents, guardians or custodians of the child(ren), the court executive and the Director.

(D) A conflict guardian ad litem's compensation shall not exceed $50 per hour or $1000 per case in any twelve month period, whichever is less. Under extraordinary circumstances, the Director may extend the payment limit upon request from the conflict guardian ad litem. The request shall include justification showing that the case required work of much greater complexity than, or time far in excess of, that required in most guardian ad litem assignments. Incidental expenses incurred in the case shall be included within the limit. If a case is appealed, the limit shall be extended by an additional $400.

(6) Staff and Volunteers.

(A) The Director shall develop a strong volunteer component to the guardian ad litem program and provide support for volunteer solicitation, screening and training. [~~A volunteer~~] Staff and volunteers shall have the responsibilities established by §78-3a-912.

(B) Training for staff and volunteers shall be conducted under the supervision of the attorney guardian ad litem with administrative support provided by the Director. [~~Volunteers~~] Staff and volunteers shall receive training in the areas of child abuse, child psychology, juvenile and district court procedures and local child welfare agency procedures. [~~Volunteers~~] Staff and volunteers shall be trained in the guidelines established by the National Court Appointed Special Advocate Association.

(7) Complaints regarding guardians ad litem, staff and volunteers.

(A) Any person may submit to the Director a complaint regarding a guardian ad litem, staff person or a volunteer. The Director may require that the complaint be submitted in writing. The complaint should state the nature of the complaint and the facts upon which the complaint is based.

(B) If the complaint is by the client, the Director may meet separately or together with the complainant and the guardian ad litem, staff person or volunteer in an effort to resolve the complaint.

(C) If the complaint is by any other person, the Director shall review the complaint and determine whether to invoke the complaint resolution process of paragraph (B).

(D) This subsection (7) shall not apply to conflict guardians ad litem.

(8) Dispute between a Guardian ad Litem and volunteer.

(A) If a guardian ad litem and a volunteer disagree on the major decisions involved in representation of the client, the Director is to be informed if the dispute cannot be resolved.

(B) A committee comprised of the Director, three guardians ad litem selected by the Director, and three volunteers selected by the Director shall review the dispute, conduct such investigation as it determines reasonable, and enter a determination regarding the resolution of the complaint. The determination may include removal of the guardian ad litem or volunteer from the case and appropriate discipline of the guardian ad litem or

volunteer, which may include but is not limited to reprimand, suspension, or termination. The determination of the committee is binding on all participants.

(C) This subsection (8) shall not apply to conflict guardians ad litem.

[~~**Rule 4-910. Sanctions for denial of child visitation.**~~

~~**Intent:**~~

~~To implement and administer the Mandatory Sanctions for Substantial Noncompliance with Visitation Orders Pilot Program established by Chapter 152, Laws of Utah 1993.~~

~~**Applicability:**~~

~~This rule shall apply to all proceedings filed between July 1, 1993 and July 1, 1994 in the First Judicial District seeking compliance with a visitation order in a decree of divorce or subsequent visitation order.~~

~~**Statement of the Rule:**~~

~~(1) All "petitions" referred to in Utah Code Ann. § 78-32-12.2 shall be designated, filed, and procedurally dealt with as orders to show cause seeking compliance with a visitation order.~~

~~(2) All pleadings filed pursuant to Utah Code Ann. § 78-32-12.2 shall indicate, in the case caption, whether the proceeding is a first order to show cause, a second order to show cause, or a third or subsequent order to show cause.~~

~~(3) The filing fee for an order to show cause which only seeks compliance with a visitation order shall be $5.00. The filing fee for an order to show cause which seeks modification of the visitation order or modification of the custody order shall be $30.00.~~]

Rule 4-913. Divorce decree upon affidavit.

Intent:

To authorize the use of an affidavit of a party for the entry of a default divorce decree as permitted by § 30-3-4.

To establish the minimum requirements for the content of the affidavit and accompanying documents.

Applicability:

This rule shall apply in district court.

Statement of the Rule:

(1) A party in a divorce case may apply for a default judgment in accordance with the Utah Rules of Civil Procedure if the opposing party fails to make a timely appearance after service of process or other appropriate notice, waives notice, stipulates to the withdrawal of the answer, or stipulates to the entry of the decree or entry of default. An affidavit in support of the decree shall accompany the application for default. The affidavit shall contain evidence sufficient to support necessary findings of fact and a final judgment by stating that:

(A) either [~~plaintiff~~] petitioner or [~~defendant~~] respondent was at the time of the petition

(i) a resident of Utah for at least three months immediately prior to the commencement of the action and

(ii) a resident of the county in which the action was filed;

(B) [~~plaintiff~~] petitioner and [~~defendant~~] respondent are currently married;

(C) the grounds for divorce provided in § 30-3-1 that exist;

(D) public assistance has been provided or is being provided, or that public assistance has not been and is not being provided; and

(E) the proposed findings of fact and decree conform to the complaint or to the stipulation, whichever forms the basis for entry of the decree by default.

(2) If the grounds for divorce are irreconcilable differences of the marriage, the affidavit shall further state the steps taken to try to resolve the differences and that despite the attempts at resolution, irreconcilable differences remain.

(3) At a minimum the affidavit shall contain or be accompanied by the following:

(A) the stipulation of the non-moving party, if applicable; and

(B) as required by CJA 4-504, proof of service of the proposed order on the non-moving party; and

(C) as required by § 78-45-7.3 and Rule 4-912,

(i) a written statement that there are no dependent children of the marriage; or

(ii) two copies of a completed child support worksheet: and

(iii) a written statement that the amount of requested child support is or is not consistent with the child support guidelines; and

(D) as required by § 78-45-7.5,

(i) a statement of [~~plaintiff's~~] petitioner's current earnings;

(ii) a statement of [~~defendant's~~] respondent's current earnings;

(iii) verification of earnings such as [~~plaintiff's~~] petitioner's and [~~defendant's~~] respondent's tax returns, pay stubs, or employer statements or records of the Department of Employment Security pursuant to the Employment Security Act, Section 35-4-312 and the rules of the Department; and

(E) as required by § 30-3-11.3 and Rule 4-907, a certificate of completion of a parenting class or a written statement that there are no dependent children of the marriage; and

(F) as required by § 78-45-9, if public assistance has been or is being provided, proof of service upon the Office of Recovery Services of an invitation to join; and

(G) as required by § 62A-11-501 through § 62A-11-504, universal income withholding forms and affidavits.

(4)(A) If the requested amount of child support is not consistent with the child support guidelines, the statement regarding child support shall include facts sufficient to support a finding of good cause why the amount of child support should deviate from the guidelines.

(B) If the application is for a divorce decree upon the failure of the [~~defendant~~] respondent to answer, and if verification of earnings of the [~~defendant~~] respondent are not available, the [~~plaintiff~~] petitioner may, by affidavit based on the best available evidence, represent to the court the income of the [~~defendant~~] respondent. The affidavit shall be served on the [~~defendant~~] respondent. The court may permit the verification of income by this process in other cases governed by this rule upon a showing of diligent efforts to obtain verification of the income of the [~~defendant~~] respondent.

(5) The party applying for entry of the decree or counsel on behalf of the party shall file with the affidavit and accompanying documents a "notice to submit" that shall identify each document or statement required by this rule and note whether the document or statement is being filed concurrent with the notice to submit. If the document or statement is not being filed concurrently, the notice to submit shall state that the document or statement has already been filed with the court or shall explain why the document or statement is not required in the application of this rule to the facts of the particular case. The Administrative Office of the Courts shall develop a notice to submit form that may be used.

(6) A complaint for divorce alleging the insanity of the [~~defendant~~] respondent shall not be granted under this rule, but shall proceed as provided in § 30-3-1.

Rule 9-101. Board of Justice Court Judges.

Intent:

To prescribe the membership, method of selection, term of office and basic procedures of the Board.

Applicability:

This rule shall apply to the Board of Justice Court Judges.

Statement of the Rule:

(1) There is hereby established a Board of Justice Court Judges comprised of the chair, six at-large me and the [~~two~~] three Council representatives.

(2) The Justice Court judges shall, by majority vote of those in attendance at the annual spring trai conference, elect the members of the Board.

(3) The chair and the at-large members shall serve staggered two year terms. The Council repres serve during the length of their term as Council representatives.

(4) The chair shall preside over all meetings of the Board and over the Justice Court judges' ir conferences. The chair may not simultaneously serve as a Council representative.

(5) Members of the Board shall elect a vice-chair. The vice-chair shall serve as chair in the chair or upon request of the chair. The vice-chair may not simultaneously serve as a Council

(6) There shall be an Executive Committee comprised of the chair, vice-chair and one o representatives designated by the chair. The Executive Committee may take necessary ac Board between Board meetings.

(7) If vacancies occur for any reason on the Board between elections, the Board shall elect a replacement for the unexpired term of the vacancy.

(8) Should the chair resign or leave the Board for any reason, the vice-chair shall become chair for the remainder of the term.

(9) Should the vice-chair of the Board resign or leave the Board for any reason, a new vice-chair shall be elected by the Board from among its members to serve the unexpired term of the vice-chair.

(10) If a vacancy occurs for any reason among the representatives to the Council, the Board shall designate an interim representative to serve until the next annual training conference, at which time a representative shall be elected to fill the unexpired term.

(11) The Board shall meet at least quarterly to transact any and all business that is within its jurisdiction. The Board shall rule by majority vote. All members, except the two Council representatives, are voting members. Four voting members of the Board constitute a quorum. Board meetings shall be conducted generally in accordance with Robert's Rules of Order.

(12) All business conducted by the Board shall be conducted in accordance with this Code.

Rule 4-202.08. Fees for records, information, and services.

Intent:

To establish uniform fees for requests for records, information, and services.

Applicability:

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts.

This rule does not apply to transcribing the record of a court hearing.

Statement of the Rule:

(1) Fees payable. Fees are payable to the court or office that provides the record, information, or service at the time the record, information, or service is provided. The initial and monthly subscription fee for public on-line services is due in advance. The connect-time fee is due upon receipt of an invoice. If a public on-line services account is more than 60 days overdue, the subscription may be terminated. If a subscription is terminated for nonpayment, the subscription will be reinstated only upon payment of past due amounts and a reconnect fee equal to the subscription fee.

(2) Use of fees. Fees received are credited to the court or office providing the record, information, or service in the account from which expenditures were made. Fees for public on-line services are credited to the Administrative Office of the Courts to improve data quality control, information services, and information technology.

(3) Copies. Copies are made of court records only. The term "copies" includes the original production. For tapes and floppy disks, an additional $2.00 shall be charged if the person making the request does not provide the medium. Fees for copies are based on the number of record sources to be copied and are as follows:

(A) paper: $.25 per sheet;

(B) microfiche: $1.00 per card;

(C) audio tape: $5.00 per tape;

(D) video tape: $15.00 per tape;

(E) floppy disk of court reporter stenographic text: $25.00 for each one-half day of testimony or part thereof;

[~~(E)~~] (F) for any other floppy disk: $15.00 per disk; and

[~~(F)~~] (G) compact disk: $40.00 per disk.

(4) Mailing. The fee for mailing is the actual cost. The fee for mailing shall include necessary transmittal between courts or offices for which a public or private carrier is used.

(5) Personnel time. There is no fee for personnel time to copy an audio tape or video tape. There is no fee for the first 15 minutes of personnel time. The fee for time beyond the first 15 minutes is charged in 15 minute increments for any part thereof. The fee for personnel time is charged at the following rates for the least expensive group capable of providing the record, information, or service:

(A) clerical assistant: $13.00 per hour;

(B) technician: $15.00 per hour;

(C) senior clerical: $21.00 per hour

(D) programmer/analyst: $21.00 per hour;

(E) manager: $33.00 per hour; and

(F) consultant: actual cost as billed by the consultant.

(6) Public on-line services. The fee for public on-line services shall be a subscription fee of $20.00 per month for any portion of a calendar month and $.50 per minute of connect-time.

(7) No interference. Records, information, and services shall be provided at a time and in a manner that does not interfere with the regular business of the courts. The Administrative Office of the Courts may disconnect a user of public on-line services whose use interferes with computer performance or access by other users. The Administrative Office of the Courts may establish reasonable time limits per access call to promote access by a variety of users.

(8) Waiver of fees.

(A) Fees established by this rule shall be waived for:

(i) any government entity that executes a reciprocity agreement with the Administrative Office of the Courts to provide its records to the judiciary without charge;

(ii) any government entity required by law to obtain court records;

(iii) any person who is the subject of the record and is impecunious; or

(B) Fees established by this rule may be waived for a student engaged in research for an academic purpose.

EMPLOYMENT CATEGORIES

PURPOSE

The purpose of this policy is to define the categories of employment in the courts.

SCOPE

This policy outlines the mechanisms for appointing individuals to positions such as career service, time-limited, career exchange, reassignments, transfers, internships and volunteers. It also specifies the conditions associated with these appointments.

This policy applies to all employees and applicants for employment.

CROSS REFERENCES

Recruitment and Selection, Policy 210
Leave, Policy 400
Relocation, Policy 250
Code of Personal Conduct, Policy 500

POLICY AND PROCEDURE

1. Career Service.

   1.1 A career service employee is one whose selection, advancement, and discipline is conducted consistent with the courts' philosophy of human resources management. However, management shall not discriminate against career service exempt employees in personnel actions as prescribed by section 5, code of personal conduct.

      1.1.1 An exempt employee may obtain career service status by successfully competing for placement on a competitive register or occupying a position which is moved from exempt to career service status by decision of the director.

2. Career Service Exempt.

   2.1 A career service exempt employee is one who serves at the will and pleasure of management. However, management shall not discriminate against career service exempt employees in personnel actions as prescribed by Section 5, Code of Personal Conduct.

3. Career Service Employee in Exempt Position.

3.1 Management may use the competitive selection process to appoint a career service employee to an exempt position. Such an employee relinquishes career service status while in the exempt position.

3.2 A career service employee serving in an exempt position, who is not retained in the exempt position, shall be placed on a statewide reappointment register for a 12 month period from the date of separation. The register shall be maintained by the director.

3.2.1 Management shall reappoint the employee to any career service position for which the employee qualifies in a pay grade comparable to the employee's last career service position. Alternatively, management may appoint the employee to a lesser career service position for which the employee is qualified, pending the opening of a position at the original level.

3.3 Management shall not reappoint the employee to a career service position if the discharge from the exempt position was for cause.

4. Trainee Appointment.

4.1 A trainee appointment may be approved, provided that the possibility of such an appointment has been announced. The appointment shall be subject to the following criteria:

the trainee shall meet the minimum qualifications for the position within a period of 18 months. Any exceptions shall be approved by the director prior to the appointment; and

the trainee shall be selected through a competitive application process, subject to the approval of the court level administrator, in consultation with the director.

4.2 Trainee pay shall be two grades lower than the pay for the target class. The salary amount paid shall be approved by the court level administrator, in consultation with the director.

4.3 Trainee service shall not be applied toward satisfying the probationary requirement. Upon successfully completing the objectives of the trainee appointment, management shall give the employee probationary status and an appointment to the target class with salary established at the entry level of the appropriate pay grade.

4.4 If a career service employee is unable to complete the objectives of the trainee appointment, management shall return the trainee to a position similar in grade and position from which the employee was appointed.

5. Probation.

5.1 The probationary period is part of the selection process. Management evaluates an employee's suitability for career service employment during this period based upon demonstrated competence and conduct.

5.1.1 Management shall give an employee a reasonable opportunity to demonstrate competence and satisfactory conduct. Management shall provide a reasonable amount of guidance regarding expectations. Management may dismiss an employee at any point during the probationary period for failure to demonstrate progress in correcting deficiencies in performance or behavior.

5.1.2 The standard period for successful advancement from probation to career service status is one year. Deviation from the standard period shall be approved by the court executive, in consultation with the court level administrator and the director, prior to the expiration of the probation period. The period may not be shortened or extended by more than six months.

~~5.2 An employee is eligible to receive a probationary increase at the conclusion of the probationary period. Such an increase is contingent upon the legislature funding merit increases for the same fiscal year.~~

5.32 If a probationary employee is promoted to a different class series, the probationary period shall run anew.

5.43 Management may not discharge a probationary employee without first preparing and providing to the employee a written statement outlining the reasons for discharge.

6. Trial Period.

6.1 Upon promotion to a position of significantly different duties and responsibilities, a career service employee shall serve a trial period of one year. If the employee fails to pass the trial period, the employee may be reassigned to a similar position at the same grade and step as was formerly held. The employee is not eligible for a pay increase at the end of the trial period.

6.2 An employee currently serving a trial period may not make a lateral transfer to

another district without the approval of both court executives.

7. Contingent.

7.1 The court executive, in consultation with the court level administrator and the director, may create a non-permanent position funded by contingent funding such as grants, self-funding, or similar sources. If the contingent position is created in the administrative office, the director, in consultation with the state court administrator, shall authorize the position.

7.2 Appointment to a contingent position must be made with a competitive selection process and may include benefits.

7.3 The director shall develop a memorandum of understanding outlining the conditions of employment and expected duration of the contingent position. Management and the employee shall sign the memorandum of understanding when the employee is hired.

8. Temporary.

8.1 The court executive, in consultation with the court level administrator, may create a temporary position when temporary, emergency or other special needs justify such action. If the temporary position is created in the administrative office, the director, in consultation with the state court administrator, shall authorize the position. A temporary employee serves at the will of management.

8.2 Appointment to a non-career service position for a period of nine months or less in a 12 month period shall be made on a temporary basis. Management may appoint an individual to a temporary position without a competitive examination; however, appointment from temporary to career service or contingent status shall not be made unless the individual successfully completes a competitive selection process for the original temporary position.

8.3 Appointment to fill a vacancy created by an employee on approved leave without pay shall be made on a temporary basis.

8.4 A temporary employee shall be compensated on an hourly basis, without benefits.

9. Part-Time Employment.

9.1 The court executive, in consultation with the court level administrator, may establish or dissolve part-time positions within the approved FTE allocation.

9.2 Management and the employee shall sign a memorandum of understanding outlining the terms of the part-time employment including salary, benefits and job description.

10. Career Mobility Assignment.

10.1 The court executive, in consultation with the court level administrator and director, may authorize a temporary promotion or assignment when emergency or other special needs justify such action. If the temporary promotion or assignment involves an employee of the administrative office, the director, in consultation with the state court administrator, shall authorize the promotion or assignment.

10.2 Appointment to the temporary position may be based on the competitive selection process.

10.3 Management shall not permanently appoint the employee to the position without first opening the position to the competitive selection process.

10.4 The director shall develop a memorandum of understanding outlining the conditions of employment, including the duration, salary of the position, and whether the exchange may become permanent. Management and the employee shall sign the memorandum of understanding when the employee is placed in the temporary position.

10.5 If the employee returns to the employee's previous position or to another like position, the employee shall receive the same salary, plus any salary advancements that the employee would have attained for satisfactory performance in the previous position had the employee not participated in the career mobility.

10.6 If the career mobility assignment does not become permanent, management shall return the employee to the employee's previous position or another like position.

11. Career Exchange Program.

11.1 Exempt and career service employees may participate in career exchange programs designed to develop resources and enhance the career growth of employees. An employee may request to participate in a career exchange.

11.1.1 A participating employee shall retain all rights of the employee's previous position.

11.1.2 A participating employee shall be treated as other reduction-in-force

employees if the position the employee left is affected by a reduction in force.

11.2 A career exchange participant who may be from outside state government, must meet the minimum qualifications of the career exchange position.

11.3 Subject to 11.1.2 above, if the employee returns to the employee's previous position or to another like position, the employee shall receive the same salary prior to the career exchange, plus any salary advancements that the employee would have attained for satisfactory performance in the previous position had the employee not participated in the career exchange.

11.4 Management and the employee shall sign a memorandum of understanding defining the nature and terms of the career exchange, including whether the exchange may become permanent.

12. Transfer.

12.1 All interdistrict openings shall be posted.

12.1.1 Voluntary Transfer.

12.1.1.1 Management shall conduct an internal recruitment prior to initiating an interdistrict transfer.

12.1.1.2 Before initiating a transfer, management shall verify with the director the employee's eligibility for transfer, including minimum qualifications, salary eligibility, benefit status and career status.

12.1.1.3 Management may initiate a transfer only at the beginning of a pay period, as defined by the state payroll system.

12.1.1.4 In accepting a transferred executive branch employee, the courts shall accept all accrued benefits supported by official records except accumulated comp time which must be used or paid out by the agency from which the employee is transferring prior to the transfer date.

12.2.1 Involuntary Transfer.

12.2.1.1 Management may involuntarily transfer an employee if the transfer is required to meet the needs of the organization.

12.2.1.2 Management may offset an employee's moving expenses if the employee is required to relocate to an office outside the employee's judicial district. Moving expenses may also be offset in other appropriate circumstances, as determined jointly by the state court administrator and the director.

13. Reassignment.

13.1 Management may reassign employees from one position to another based on need.

13.2 A reassignment may be initiated by management for administrative reasons or may be requested by an employee, provided the position remains within the class specification.

14. Rehire.

14.1 Management may rehire a former career service employee, without going through a competitive selection process, if the employee is rehired within 12 months of the employee's termination date.

14.1.1 A former employee who has been terminated for cause is not eligible for rehire under this section.

14.1.2 An employee who is rehired under this section may be required to serve a trial period.

14.2 An employee is eligible to be rehired without going through a competitive selection process only in a former or substantially equivalent position and comparable or lower salary to that formerly held.

15. Volunteer.

15.1 Management may establish a program for the use of volunteers.

15.2 The director shall develop guidelines for the use of volunteers.

15.3 Volunteer service credit will be recognized for determining minimum qualifications for a career service position.

15.4 Prior to accepting volunteer services, the court executive and the volunteer shall sign a memorandum of understanding defining the nature and terms of the volunteer services.

15.5 A volunteer is considered an employee of the courts for the purposes of:

15.5.1 Worker's compensation benefits for any injuries sustained by the volunteer while performing assigned service; or

15.5.2 Operating state vehicles or equipment when the volunteer is properly licensed for that operation; or

15.5.3 Indemnification offered salaried employees.

16. Internship/Student Practicum.

16.1 Management may authorize a student internship/practicum program. Management may pay the intern a stipend.

17. Telecommuting.

17.1 Telecommuting is an alternative working arrangement that may be considered by management for expanding work site possibilities and allowing work to be accomplished in a more productive or efficient manner.

17.2 The director, in consultation with the State Court Administrator, shall identify criteria which would make a position potentially suitable for telecommuting.

17.2.1 Management may request in writing that the director evaluate a specific position for telecommuting suitability. Such a request shall include justification for making the change.

17.3 Management may enter into a telecommuting agreement with an employee only with prior approval of the court level administrator, in consultation with the director.

17.4 Management and the employee shall sign a memorandum of understanding specifying the terms of the telecommuting agreement. Such a memorandum shall include, but not be limited to, duties, working hours and conditions, use and care of state-owned equipment and supplies, confidentiality of information, and means of assessing employee performance.

17.5 An employee who is on corrective or disciplinary action may not telecommute.

17.6 A telecommuting agreement maybe terminated at will by management.

COMPENSATION

PURPOSE

The purpose of this policy is to establish a compensation program which provides salaries and benefits that are adequate to attract and retain the best qualified employees and to provide equitable treatment of employees. Base compensation shall relate to the complexity, skill level, judgment, responsibility, experience, and education required to perform a job. Additional compensation shall relate to performance, based upon objective criteria established in each employees's performance plan.

SCOPE

This policy sets forth guidelines for establishment of a pay plan and provides salary adjustment procedures.

This policy applies to all court employees except those paid on an approved plan separate from the General Classified Pay Plan (e.g. law clerks and central staff attorneys).

CROSS REFERENCES

Utah Code Ann. § 67-19-15.6
Classification, Policy 330

POLICY AND PROCEDURE

1. Pay Plan Development and Allocation.

   1.1 The director shall conduct a study of salary levels of comparable positions in the public and private sector and shall make adjustment recommendations to the state court administrator at least every three years. Implementation of adjustments is subject to the availability of funds.

   1.2 The director shall assign each position class to a pay range based upon the class' relationship to other classes as defined in the classification plan and by market data.

2. Appointment.

   2.1 A job offer shall not be made without the approval of the court executive. For a position in the Administrative Offices, a job offer shall not be made without the approval of the State Court Administrator.

2.2 Pay for newly hired employees shall normally be set at the minimum of the pay range assigned to a job class. However, management, with the concurrence of the director, may approve hires up to the midpoint as warranted by exceptional job qualifications or by a shortage of qualified applicants, subject to the availability of funds. If an increase is being considered because of exceptional job qualifications, the additional step increases, if approved, shall be given at the time of hire. The exceptional qualifications should be directly related to the job for which the applicant is applying.

2.3 Management shall not hire above the midpoint of a pay range except in unusual circumstances, and with prior approval from the court-level administrator or the state court administrator and the director.

2.4 Employees sharing a single position may be assigned to different salaries and different pay ranges corresponding to the same class series based upon fair employment practices.

3. Merit Increase.

3.1 Management shall adopt eligibility guidelines for merit ~~and probation~~ increases effective July 1 of each fiscal year subject to funding approved by the Legislature.

3.2 ~~Permanent full-time and part-time employees are eligible to receive a merit increase.~~ Subject to funding by the legislature, employees who receive a successful rating on their performance evaluations and who have been in a paid status by the courts for at least six months are eligible to receive a merit increase on the first pay period in July.

3.3 Temporary, seasonal, or probationary employees who have been in a paid status by the courts for less than six months, employees at or above the pay range maximum, and employees whose performance is rated less than successful shall not be eligible to receive a merit increase.

3.4 A part-time employee is eligible to receive a merit increase in the same amount of elapsed calendar time on the job as a full-time employee.

3.5 Management shall complete an employee's performance evaluation within three months preceding the effective date of a merit increase.

3.6 A merit increase shall not exceed the range maximum assigned to a job class.

4. Career Ladder.

4.1 Subject to the availability of funds, management shall give a career ladder advancement when an employee completes the requirements outlined in the job specifications and career ladder program, has received a performance evaluation rating of successful or above on the most recent performance evaluation, and is subject to no current disciplinary action.

4.2 Pay increases for career ladder advancements shall be limited to two steps. However, if the new salary is below the minimum for the new range, it shall be increased to the new minimum.

5. Selective Salary Adjustment.

5.1 Management may recommend a selective salary adjustment for a career service exempt employee.

5.2 Management may recommend a selective salary adjustment for a career service employee in order to mitigate an inequity caused by a merit increase freeze or other similar circumstance. For career service employees, equal consideration shall be given for selective salary adjustments based upon consistently applied criteria.

5.3 Management shall submit a written rationale supporting the recommendation to the director and the court level administrator.

5.4 A selective adjustment is subject to the availability of funds, guidelines established by the director, and approval of the court level administrator.

6. Administrative Salary Adjustment

6.1 Management may recommend an administrative salary adjustment for employees in extraordinary situations that fit no other category.

6.2 An employee below the midpoint of the employee's salary range may receive a maximum of four steps. An employee at or above the midpoint of the salary range may receive a maximum of two steps.

6.2.1 Administrative salary adjustments cannot exceed the maximum of the employee's salary range.

6.3 Management shall submit a written rationale supporting the recommendation to the director and the state court administrator. The state court administrator shall have final approval on all administrative salary adjustments.

6.4 An administrative salary adjustment is subject to the availability of funds.

7. Longevity Increase.

7.1 Management may grant a longevity increase not to exceed 3.5% to a career service employee who has been paid at or above the range maximum for at least one year, provided the employee has received a successful or outstanding performance rating and has been employed by the courts for at least eight years.

7.2 In determining longevity increase eligibility, management shall credit a former city or county court employee assimilated into the state courts or an employee transferring to the courts from an employer having reciprocity with the courts for years of service with the former employer.

7.3 An employee whose salary exceeds the range maximum is eligible to receive a longevity adjustment no more frequently than every five years after the initial longevity adjustment. Any subsequent longevity increase shall not exceed 3.5%.

7.4 An employee is eligible to receive a maximum of eight successive 3.5% adjustments beyond the range maximum (longevity scale maximum).

7.5 A former city and county employee who is assimilated into the state courts or an employee transferring to the courts from an employer having reciprocity with the courts, whose salary exceeds the longevity scale maximum, is ineligible to receive a pay increase until the longevity scale is adjusted as a result of cost-of-living or market studies to incorporate the salary rate.

8. Cost-of-Living Adjustments.

8.1 When the legislature grants a cost-of-living adjustment (COLA) which exceeds an across-the-board pay plan adjustment, the COLA shall not exceed the new range maximum or the new longevity scale maximum for an employee in longevity status.

9. Promotion.

9.1 At the discretion of management, a minimum of two steps and a maximum of four steps salary increase shall be granted to an employee receiving a promotion. If the new salary is below the minimum of the new range, it shall be increased to the new minimum.

9.2 Management, with the concurrence of the director, may approve an increase up to step 8 of the new range when a promotion results from a competitive recruitment to

a new class series. Such an adjustment shall be based on exceptional qualifications and subject to the availability of funds.

10. Order of Salary Calculation.

10.1 Multiple categories of pay increases awarded simultaneously shall be calculated in the following order:

(1) cost of living adjustment;
(2) merit;
(3) career track;
(4) selective adjustment;
(5) promotion;
(6) longevity.

11. Reassignment.

11.1 An employee who is reassigned shall be paid the same salary received prior to the reassignment.

12. Reclassification.

12.1 If the director reclassifies a position to a higher class, the director shall adjust the incumbent's salary to at least the minimum of the new range and may give up to a four step salary increase, based upon increased responsibility.

12.2 A reclassification increase is subject to the availability of funds.

12.3 If the director reclassifies a position to a lower class, the incumbent's salary shall remain the same. If the incumbent's salary exceeds the maximum of the new range or, provided the individual meets longevity status criteria, the longevity scale maximum, the incumbent is ineligible to receive a salary increase until the salary range or longevity scale increases to incorporate the incumbent's pay rate. An employee is ineligible to receive cost of living increase until the salary range increases.

12.3.1 If the reclassified employee is promoted or upgraded in the future, management shall take the employee's salary history into consideration before providing a salary increase.

13. Demotion.

13.1 If an employee is demoted, either voluntarily or involuntarily, management may treat the employee's salary according to 12.3 above or reduce the salary.

13.1.1 If an employee is demoted and the salary is not reduced, a future promotion or upgrade shall not be accompanied by an increase unless management considers the employee's demotion and salary history.

14. Benefits.

14.1 Furloughed employee.

14.1.1 A furloughed employee shall continue to receive state contributions to retirement and the courts shall pay the full cost of premiums for health, dental, disability and life insurance benefits through the effective period of the furlough.

14.2 Suspended Employee.

14.2.1 An employee suspended for disciplinary reasons shall continue to receive state contributions to retirement, health, dental, disability and life insurance programs. However, the employee shall pay the employee portion of insurance premiums to continue coverage through the period of suspension.

14.3 Part-time Employee.

14.3.1 With the exception of converted sick leave, an employee working at least 50% of full time per pay period shall be eligible for benefits in proportion to the number of hours worked.

14.3.2 An employee hired or transferred to a position of less than 50% of full time per pay period on or after August 1, 1988 shall not be eligible for benefits except as provided in 13.3.4.

14.3.3 An employee hired or transferred to a position qualified as a job share position of less than 50% of full time per pay period before August 1, 1988 shall be eligible for benefits in proportion to the hours worked.

14.3.4 Retirement benefits shall accrue to employees working less than 50% of full time at the period beginning of the employee's seventh month of employment with the courts.

COURTS POSITIONS BY OVERTIME CATEGORY
APPENDIX A, PERSONNEL POLICIES AND PROCEDURES

NON-EXEMPT

All positions not listed below.

EXEMPT FROM OVERTIME PAY

Administrative Assistant
ADR Program Director
Appellate Court Administrator
Assistant Clerk of Court I, II
Assistant Court Administrator
Assistant Manager, Information Technology
Budget & Accounting Officer IV
Central Staff Attorney
Chief Probation Officer I, II
Clerk of the Court I, II, III
Court Executive
~~Court Reporter/~~Managing Court Reporter
Deputy Juvenile Court Administrator
Deputy State Court Administrator
Director of Administrative Services
District Court Administrator
Financial Manager
GAL Program Director
General Counsel
Human Resources Director
Internal Audit Manager
Judicial Education Officer
Judicial Support Coordinator
Juvenile Court Administrator
Law Clerk
Manager, Information Services
Manager, Information Technology
Media Relations Officer
Public Information Officer
Senior Staff Attorney
Staff Attorney
State Court Administrator

CAREER SERVICE EXEMPT POSITIONS
APPENDIX B, PERSONNEL POLICIES AND PROCEDURES

The following is a list of career service exempt positions, based upon our policies, past practice, and consistent with Sec. 67-19-15 of the Utah Code.

Administrative Assistant
Appellate Court Administrator
Assistant Court Administrator
Central Staff Attorney
Court Executive
~~Court Reporter/Managing Court Reporter~~
Deputy State Court Administrator
Deputy Juvenile Court Administrator
Director of Administrative Services
District Court Administrator
Financial Manager
Guardian Ad Litem Program Director
General Counsel
Human Resources Director
Internal Audit Manager
Judicial Education Officer
Judicial Support Coordinator
Juvenile Court Administrator
Law Clerk
Manager, Information Services
Manager, Information Technology
Media Relations Officer
Public Information Officer
Senior Staff Attorney
Staff Attorney
State Court Administrator