

**JUDICIAL COUNCIL  
AGENDA**

**Monday  
April 27, 1998**

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

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*Chief Justice Richard C. Howe, Presiding*

<b><u>Item:</u></b>	<b><u>Time:</u></b>	<b><u>Subject:</u></b>	<b><u>Presenter:</u></b>
1.	8:30 a.m.	Continental Breakfast .....	
2.	9:00 a.m.	Welcome - Remarks and Approval of Minutes .....	Chief Justice Richard C. Howe (Tab 1 - March 5, 1998 - Action)
3.	9:15 a.m.	State Court Administrator's Report .....	Daniel J. Becker
4.	9:30 a.m.	Judicial Council Sub-Committee .... Reports (Tab 2 - Information)	Hon. Pamela T. Greenwood Management Committee Report Hon. Michael K. Burton Policy and Planning Committee Report Hon. Anthony W. Schofield Liaison Committee Report
5.	9:45 a.m.	Regulation of Retention Election Campaigns .....	Tim Shea (Tab 3 - Action)
6.	10:05 a.m.	Break .....	
7.	10:20 a.m.	Report from Committee on Improving Jury Service (Report from the committee co-chairs on progress to date - Information)	Justice Christine Durham Hon. William Thorne
8.	10:40 a.m.	ADR Program Implementation and Update .....	Diane Hamilton (Tab 4 - Information)
9.	11:00 a.m.	Judicial Conduct Commission Update .....	Steven Stewart

10. 11:20 a.m. Court Information Line . . . . . Peggy Gentles  
(Tab 5 - Information)
11. 11:40 a.m. Lunch . . . . .
12. 12:40 p.m. Interim Report - Task Force on Racial . . . . . Hon. Tyrone Medley  
and Ethnic Fairness  
(Tab 6 - Information)
13. 1:00 p.m. Ethics Advisory Committee Update . . . . . Hon. Gregory Orme  
(Information)
14. 1:20 p.m. Executive Session . . . . . Chief Justice Richard C. Howe
15. **News Articles: (Information)**  
(Tab 7)
16. **Consent Calendar:**  
(Tab 8 - action)

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

1. Request for Continuation of VOCA Grant . . . . . Holly M. Bullen
2. Appointment of Chair to the Uniform Fine/Bail . . . . . Holly M. Bullen  
Schedule Standing Committee (Hon. Brent West)
3. New Justice Court Judge Certification . . . . . Richard H. Schwermer  
(Michael Kwan & Dennis Barker)

**Future Agendas:**

1. Web Page Updates

**Next Meeting:**

May 28-29, 1998

Site Visit to Wasatch County

Lodging pre-arranged - May 27 -28 at *Inn On The Creek* - Midway

JUDICIAL COUNCIL  
MINUTES  
Thursday  
March 5, 1998

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Holiday Inn  
Convention Center  
850 South Bluff Street  
St. George, Utah 84770

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*Chief Justice Michael D. Zimmerman, Presiding*

**Members Present:**

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

**Staff Present:**

Daniel J. Becker  
Myron K. March  
Richard H. Schwermer  
D. Mark Jones  
Holly M. Bullen  
Tim Shea  
Gordon Bissegger  
Cindy Williamson

**Guests:**

Hon. Michael Lyon, Presiding Judge Second District  
Brent Bowcutt, Court Executive, Sixth District  
Paul Sheffield, Court Executive, Fourth District  
Brian Maffly - Salt Lake City Tribune

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**Welcome:**

Chief Justice Zimmerman welcomed guests, members and staff to the meeting. Chief Justice Zimmerman extended a special welcome to Brian Maffly of the Salt Lake Tribune.

**Approval of Minutes:**

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

The minutes of February 23, 1998, will be amended to read:

Page four, third full paragraph, will read as follows: The Council needs to appoint a judge to the Access to Justice Task Force, and the Management Committee recommended the appointment of Judge Pamela T. Greenwood.

**Report from Chair:**

Chief Justice Zimmerman indicated that he would join in the discussion about the Legislative Session later.

**Management Committee Report:**

Chief Justice Zimmerman will be stepping down as Chief Justice and Associate Chief Justice Howe will become Chief Justice as of April 1, 1998. Judge Greenwood will host an open house in Chief Justice Zimmerman's honor on Thursday, March 26, 1998, from 6:30 p.m. - 9:00 p.m. at her home.

**Policy and Planning Committee Report:**

The Policy and Planning Committee has not met since the last Council meeting.

**Capital Facilities Report FY98:**

Gordon Bissegger reported that the Legislature approved the court's request for land acquisitions in Provo and in Vernal. The funds for the Provo land purchase will be obtained from a bond and those for Vernal will be obtained from general and redirected funds. There will be additional requests for facility design and construction money during FY99.

The Standing Committee on Facilities and Planning submitted a list of proposed improvements to the Building Board Committee. The four areas affected by the request for improvements are St. George, Provo, Ogden, and Richfield.

On December 18, 1997, the Judicial Council's Standing Committee on Facilities Planning approved paving and roofing projects. The Committee's top priorities include: a) 5th District Court in St. George; b) 4th district Court Provo - Public Elevators; c) Ogden Juvenile Court; and d) 6th District - Richfield.

## Legislative Update:

Dan Becker reported on discussions with Governor Leavitt's staff that focused on a \$2.3 million surplus of court fees. After this discussion, the Legislature appropriated \$2 million. Mr. Becker stressed that this is one time money which took approximately five years to generate and should not be appropriated on a regular basis.

The court's O&M budget has been increased by approximately 61%. This amount represents the cumulative effects of a ten-year building plan. The Legislature placed the court's leases and contracts as a budget line item.

The funding request for two judges, one in the Second District Juvenile Court and one in the Third District Court was approved at a cost of \$450,000. The Legal Institute was funded at \$33,900 and data processing and security each received \$25,000. The court's budget increased 11.46% which brings the total to approximately \$91,000,000.

Salaries for judges increased by 3.5% which is an annual salary for district and juvenile court judges of \$93,600; Supreme Court justices receive \$102,950; and judges from the Court of Appeals receive \$98,300. Staff received a salary increase of 3.5% money which translates into a 2.75% merit increase for those employees with a satisfactory performance evaluation rating.

Mr. Becker reported that several senior members of the Legislature are retiring as of next year. Next, Mr. Becker stated that it was his pleasure working with members of the court's legislative team; Gordon Bisseger, Fred Jayne, D. Mark Jones and Richard H. Schwermer.

Richard Schwermer said this was the most efficiently run Legislative session he had ever been involved in. Mark Jones indicated that legislators have a great deal of trust in the judiciary and were very fair in deliberations of the requests made by the judiciary. Mr. Jones stressed that budget focus in the future should be more diverse.

Mr. Schwermer and Mr. Jones reported on the following bills:

HB 11 - Juvenile Court Hearings and Records - increases access to juvenile court records - passed.

HB 35 - Minimum Fine for Possession of Tobacco Products by Underage Persons - passed.

HB 36- Juror Reimbursement - increases juror reimbursement fees from \$17.00 to \$18.50 for the first day and \$49.00 for each day thereafter - passed.

HB 81 - Motions to Vacate Ex Parte Protective Orders - provides a mechanism for an early hearing - passed.

HB 40 - Judicial Conduct Commission Amendments - provides that an alternate judge can attend when the sitting judge member is not available - passed.

HB 106 - Truancy Prevention Appropriation - passed.

HB 103 - Ethic Law Amendments - passed.  
HB 136 - Grandparents Visitation Rights - provides that any grandparent has the right to petition the court for visitation - passed.  
HB 157- Judicial Nominating Commission Amendments - alters the numbers of names submitted to the Governor - passed.  
HB 239 - Child Welfare Amendments - passed.  
HB 320 - Truancy Amendments -  
HB 376 - Bail Reform - moves the regulation of bail bond surety out of the judiciary - passed.  
HB 460 - Justice Court Amendments - passed.

SB 20 - Penalties for Speeding in Construction Zones - passed.  
SB 59 - Judicial Nominating Procedure Amendments -  
SB 70 - Judgment Lien on Real Property - passed.  
SB 103 - Indigent Defense Fund Amendments - passed.  
SB 109 - State Law Library Amendments - passed.  
SB 122 - New Judicial Positions - creates new judicial positions in the Second and Third Districts - passed.  
SB 187 - Utah Council on Victims -  
SB 62 - District Court Review of Tax Commission Cases - passed.

#### **Presentation to Chief Justice Zimmerman:**

On behalf of the Judicial Council, Dan Becker and Judge Greenwood presented Chief Justice Zimmerman with tokens of the Council's appreciation for his years of service on the Council.

Mr. Becker expressed his appreciation to the Chief Justice for his vision and leadership throughout the years. A number of programs and projects within the Judiciary have been a direct result of Chief Justice Zimmerman's efforts. Chief Justice Zimmerman said that serving on the Judicial Council had been a privilege and the highlight of his service in the judiciary. The Chief Justice indicated that he put a lot of energy into the Judicial Council and that it has given back as much and broadened his understanding of the system.

#### **Court Executive Update:**

On behalf of the court executives, Brent Bowcutt provided an update to the Council. Initially, Mr. Bowcutt stated his appreciation and that of others for being able to present to the Judicial Council. Next, Mr. Bowcutt indicated Dan Becker has set a fine example of administration for district administrators to follow.

There is an overall view by the court executives that communication has improved between various groups and that it has benefited everyone. Decentralization promoted by Mr.

Becker has also been well received within the districts. Mr. Bowcutt mentioned other positive issues, i.e., the customer service number and the aggressive schedule of CORIS.

Next, Mr. Bowcutt requested that Council members consider re-automation of the juvenile court computer system. He stated that there is a definite need to have the system evaluated and redesigned while preserving the strengths of the current juvenile court system.

The salary survey which is being conducted on an annual basis has proven to be a significant step in helping staff understand how important they are to the system. Mr. Bowcutt expressed his appreciation to Dan Becker, Richard Schwermer and Mark Jones for their efforts before the Legislature.

Mr. Bowcutt requested that the Judicial Council consider relaxing the current standards for secondary employment. Members of the Judicial Council thanked Mr. Bowcutt for his presentation.

**Rule 4-608, Trials de Novo of Justice Court Proceedings in Criminal Cases:**

Tim Shea stated that Rule 4-608, trials de novo of justice court proceedings in criminal cases establishes uniform procedures governing trials de novo of justice court adjudications. The rule shall apply to district and justice courts in trial de novo proceedings where the notice of appeal is filed with the justice court. The draft amendment was approved by the Policy and Planning Committee to go out for comment but the Board of Justice Court Judges opposed the nature of the changes to the rule.

**Motion:**

A motion was made by James Jenkins that the Judicial Council approve the rule change for publication. The motion was seconded by Judge Nielsen. The motion carried unanimously.

**Other:**

Tim Shea indicated that in preparing for the move to the Matheson Courthouse, employees of the Third Judicial District have identified two pallets of court reporter transcripts that are more than nine years old. Mr. Shea requested an emergency rule that would change the record retention schedule so that court reporter transcripts could be destroyed after nine years.

**Motion:**

A motion was made by Judge Burton that the request for an emergency rule be granted and that court reporter transcripts are allowed to be destroyed after a nine year period. The motion was seconded by Judge Greenwood. The motion failed for lack of a majority vote.

Opposition was raised to the motion because the matter was not on the Council agenda. A question was raised about whether or not the records should be retained until public disclosure is made.

**Motion:**

A motion was made by Judge Stirba to put the issue of the emergency rule change on the Judicial Council agenda for April. The motion was seconded and carried unanimously.

**Board of District Court Judges Update:**

Judge Michael Lyon, Chair of the Board of District Court Judges, was present to report to the Council on behalf of the Board.

The Board of District Court Judges is a 10-member Board that meets once a month to discuss matters affecting the District Court Bench. The make up consists of one judge from the First District, two judges from the Second and Third Districts, three judges from the Third District, two from the Fourth District and two collectively representing Districts Five through Eight. Presently the Board's membership includes: Judge Michael Lyon, Judge Gordon Low, Judge Glen Dawson, Judge Tyrone Medley, Judge Ronald Nehring, Judge Sandra Peuler, Judge Guy Burningham, Judge Steven Hansen, Judge Bryce Bryner, and Judge John Anderson. Judge Lyon indicated that he finds the Board meetings to be very warm and congenial. Next, Judge Lyon acknowledged the assistance of D. Mark Jones, District Court Administrator.

As a Board there have been efforts to be more proactive. Therefore, last Fall the Board met in a two-day workshop to discuss the purpose of the Board and to take a hard look at some objectives and define certain goals for the Board. An additional meeting will be held in June of 1998 to further discuss and define the Board's goals.

Next, Judge Lyon indicated that the weighted caseload study had been the subject of heated debate. There was a sense that the data was very divergent, given the differences between the various districts. However, the Board agreed that there is a place for the study and that it should be utilized to redefine the work of the districts. Judge Lyon suggested that the study continue to be fine tuned and that historical information also be used to determined needs within a district.

He suggested that the juvenile court be reviewed and that the possibility of interfacing the two systems, i.e., district and juvenile court be considered. Judge Lyon said the Board is anxious about the clerical weighted caseload study and that some districts feel a shortage of clerical help.

The Board of District Court Judges is dissatisfied with recent legislation affecting the Judicial Conduct Commission. As a Board, the members believe that the composition of the Commission is unfair. Judge Lyon requested that the Judicial Council be more assertive in



requesting additional representation on the Commission.

The Board discussed the issue of family court. The Board is not prepared to make a recommendation at this time. However, the Board requested that it be allowed to work closely with the Council on this issue. Chief Justice Zimmerman explained that the Judicial Council will not even begin discussing this matter until August. Information will then be disseminated to all judges in the hopes of obtaining well-informed opinions from everyone. The Chief Justice stressed that all interested parties are going to have a chance to provide input.

Chief Justice Zimmerman indicated that the Council is pleased that the Board wants to be more proactive.

**Justice Court Resolution:**

Chief Justice Zimmerman explained that the Justice Court Resolution was before the Council in order for the Council to state a position:

**Utah Judicial Council Statement of Position  
Jurisdiction in Courts of Record and not of Record**

The Utah Judicial Council has the responsibility to oversee the operation of all of the courts in the State of Utah; and

The major purpose for which the Legislature approved consolidation of the district and circuit courts into a single, general jurisdiction court of record was to more efficiently and effectively manage and process cases in the courts of record; and

The Legislature directed the creation of a Justice Court Study Committee; and

Among other issues, the Justice Court Study Committee is investigating appropriate jurisdiction for district courts (courts of record) and justice courts (courts not of record); and

Some parties involved in the debate have suggested the creation of new courts of record such as a city court or a justice court of record.

It is the position of the Utah Judicial Council that no new or further trial courts of record should be created. All cases not fitting within the unique jurisdiction of the juvenile court should find a home within either the jurisdiction of district courts (courts of record) or justice courts (courts not of record). The Utah Judicial Council adopts this statement of position so that as the Justice Court Study Committee wrestles with the appropriate jurisdiction for each level of court, all interested parties know its position on this issue.

**Motion:**

A motion was made by James Jenkins that the Judicial Council adopt the Justice Court Resolution as presented. The motion was seconded by Judge Sandberg and carried unanimously.

**Murray City Resolution:**

Murray City requested that its notice of intention to create a Justice Court be submitted to the Judicial Council for approval. Representatives requested that the City be allowed to commence operation of the Justice Court on December 31, 1998.

**Motion:**

A motion was made by Judge Stirba that the Council authorize Dan Becker to draft a letter to Shannon H. Smith, Executive Director of Murray City Corporation, recognizing the City's right to proceed. The motion was seconded by Judge Schofield and carried unanimously.

**Executive Session:**

A motion was made to move into executive session. The motion was seconded and carried unanimously.

**Adjourn:**

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

MANAGEMENT COMMITTEE  
MINUTES

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Thursday  
April 9, 1998

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

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*Hon. Pamela T. Greenwood, Presiding*

**Members Present:**

Hon. Pamela T. Greenwood  
Chief Justice Richard C. Howe  
Hon. Anne M. Stirba  
Hon. Michael Glasmann  
Hon. John Sandberg

**Staff Present:**

Daniel J. Becker  
Myron K. March  
D. Mark Jones  
Richard H. Schwermer  
Holly M. Bullen  
Brent Johnson  
Eric Leeson  
Cindy Williamson

**Welcome:**

Judge Greenwood welcomed members and staff to the meeting. The judge extended a special welcome to Chief Justice Richard Howe.

**Management Committee Meeting Date Changes:**

The Management Committee meeting in May has been changed from May 14 to May 11, 1998, at 12:00 p.m. The meeting will be held in the Scott M. Matheson Courthouse. June's Management Committee meeting may be changed from June 11, 1998.

**Judicial Council Agenda for April 27, 1998:**

The Judicial Council agenda for April 27, 1998, was discussed, changes suggested and implemented.

**State Court Administrator's Report:**

Dan Becker reported that two senior management positions, one in the Third and one in the Eighth District, have been filled. Bruce Thomas has been hired as the Court Executive in the Third Judicial District and Sherry Stettler has been hired as the Court Executive in the Eighth

Judicial District. Previously, Mr. Thomas was a chief probation officer within the Third District and Ms. Stettler held a hospital administrative position in Vernal.

The 1999 Utah State Bar Conference will be held in Sun Valley, Idaho. The Bar Commission has not yet decided on the location for the year 2000 conference.

The Scott M. Matheson Courthouse dedication was very successful. The dedication was held on March 27, 1998, and was followed with an open house and tours the week of March 30-April 3, 1998.

Dan Becker reported that the *History of the Utah Judicial Council* has been completed and once additional copies are made, will be distributed to members of the Council and senior level management staff.

#### **Canon 4G of the Code of Judicial Conduct :**

Brent Johnson reviewed a letter written by Steve Stewart, Executive Director of the Judicial Conduct Commission. Mr. Stewart's letter referenced the possibility of "contradictory language" in Canon 4G of the Code of Judicial Conduct and § 78-7-2 concerning the practice of law. Mr. Johnson researched the issue and is not certain if there is an actual contradiction. Mr. Johnson was asked by members of the Management Committee to discuss the matter with Mr. Stewart.

#### **Request for Continuation of VOCA Grant:**

Holly Bullen informed members of the Management Committee that the request for continuation of this VOCA grant comes from the Third District Juvenile Court and is for third year funding for a victim coordinating office. Ms. Bullen indicated she has not submitted this matter to the Board of Juvenile Court Judges because the Board has approved this identical request for the last two years. The Third District has indicated that they might request ongoing funding once the grant ends. Dan Becker recommended that the Management Committee approve the grant request.

#### **Motion:**

A motion was made by Judge Glasmann to approve the request for third year grant funding by the Third District Juvenile Court. The motion was seconded by Judge Stirba and carried unanimously.

#### **Process for Finalizing Clerical Weighted Caseload Study:**

The clerical weighted caseload study is close to completion and will be presented to clerks of court and court executives on April 22, 1998. The meeting will focus on application of

the caseload study. There will be standards for each group of districts that have common case loads, etc. Senior management will be asked to develop a range of employment standards for their district. A report will be produced for presentation to the Judicial Council on April 27, 1998. A suggestion was made that this issue be given adequate presentation time at the judicial level.

**Xchange Service Rate Structure:**

Previously, Eric Leeson spoke to members of the Management Committee regarding the need to adopt a fee which was already set by rule. The fee previously set was not put in place for a number of reasons. One of those reasons was a lack of software. Letters have been sent out to more than 300 subscribers advising them of the raise in the fee and there was such an outcry from the subscribers that the fees were studied again.

The recommendation from the Standing Committee on Technology is that the \$55.00 set up fee now charged for Xchange services be maintained. The Committee also recommended that the Xchange service rate should be modified to reflect a base rate of \$30.00 per month for the first 120 minutes of online time used per month. After 120 minutes, users will be assessed a \$.10/minute charge. Both low and high volume users will benefit from this structure. Low volume users may plan their usage time to be close to the 120 minute per month allotment. High volume users will be given a discounted rate of \$.10/minute compared to the \$.25/minute that is being charged for the first 120 minutes of time. The Committee believes that this rate structure provides a fair and reasonable recovery schedule that allows for a quality product while planning for future service upgrades and growth.

This information will go back before the Standing Committee on Technology, from there, forwarded to the Management Committee and then presented to the Judicial Council for consideration.

**Motion:**

A motion was made by Judge Stirba that the committee draft a proposed rule for submission to the Judicial Council consistent with the recommended concept. The motion was seconded by Judge Glasmann and carried unanimously.

**Additional Judge for Judicial Conduct Commission:**

Steve Stewart, Executive Director for the Judicial Conduct Commission, has requested that the Judicial Council submit either the name of a juvenile court judge or a district court judge for a newly created position on the Judicial Conduct Commission. Currently, Judge Timothy Hanson occupies the sole judicial position on the Commission.

Members of the Management Committee discussed the merits of selecting balanced

judicial representation for recommendation to the Conduct Commission. Currently, there are 70 district court judges and 22 juvenile court judges. A suggestion was made that Judge Timothy Hanson be contacted and that the matter be discussed before the Judicial Council.

**Motion:**

A motion was made by Judge Stirba that the Judicial Council discuss the selection process of individuals for recommendation to the Commission and at that point refer this matter to the appropriate board level for selection. Additional statistical information will be collected for dissemination to the board levels and consistent with policy, three names will be submitted to the Commission for consideration. The motion was seconded by Judge Glasmann and carried unanimously.

**Appointment of Chair to the Uniform Fine/Bail Schedule Standing Committee:**

Holly M. Bullen indicated that the Board of District Court Judges has recommended that Judge Brent West be appointed as chair of the Uniform Fine/Bail Schedule Standing Committee and that if approved, that the matter be placed on the consent calendar of Judicial Council.

**Motion:**

A motion was made by Judge Glasmann to approve the recommendation of Judge Brent West as chair of the Uniform Fine/Bail Schedule Standing Committee and that the matter be placed on the consent calendar of the Council. The motion was seconded by Judge Stirba and carried unanimously.

**Court Commissioners' Salaries:**

Rule 3-201.8(A), Code of Judicial Administration states that the Council shall establish the salary of court commissioners annually. There are two options which include, a recommendation of a 3.5% raise which is equivalent to judicial increases or a 2.75% raise which is equivalent to non-judicial staff increases. Dan Becker recommended that the commissioners be given a 3.5% raise. This matter will be on the Council agenda and will be communicated to court commissioners.

**Motion:**

A motion was made by Judge Stirba that Dan Becker's recommendation of a 3.5% salary increase for commissioners be submitted to the Judicial Council. The motion was seconded by Judge Glasmann and carried unanimously.

**Rules 4-902, 4-407, & 3-303:**

Peggy Gentles represented that the Policy and Planning committee has recommended that the Management Committee, acting as the Judicial Council, approve publishing the following rules: Rule 3-303. Justice Court clerks, Rule 4-202.12. Access to electronic data elements, Rule 4-407. Commercial bail bond sureties, and Rule 4-902. Certification of district court cases to juvenile court.

**Motion:**

A motion was made by Judge Glasmann to approve the rules for publication and comment. The motion was seconded by Judge Stirba and carried unanimously.

**Request to Pursue Drug Court Planning Funding by Davis County Attorney:**

Holly M. Bullen represented that the Davis County Attorney requested permission to pursue drug court planning funding. Members of the Management Committee suggested that the Davis County Attorney or his designee be invited to a Judicial Council meeting to discuss the matter of drug court funding or that written documentation be submitted to the Council.

**Motion:**

A motion was made by Judge Sandberg that a letter be drafted and sent to the Davis County Attorney requesting additional information and expressing appreciation to him for keeping the Judicial Council apprised of any requests. The motion was seconded by Judge Stirba and carried unanimously.

**Executive Session/Meeting Adjourned:**

**Motion:**

A motion was made by Judge Glasmann to move into an executive session after which Judge Greenwood adjourned the meeting.

## **Summary Minutes Policy and Planning Committee of the Judicial Council**

April 3, 1998

### **Members Present**

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

### **Staff Participating**

Peggy Gentles  
Tim Shea

**Approval of Rule Amendments for Comment.** Peggy Gentles presented rule changes to be recommended for approval for publication for comment. Amendments to Rule 3-303 were requested by a justice court judge. Amendments to Rules 4-202.12 and 4-407 were proposed in response to 1998 legislation. Amendments to Rule 4-902 were proposed in response to previous legislation. After discussion, the Committee recommended repeal of Rule 4-902 and recommended publication of all proposals for comment. The Committee recommended that the Management Committee, acting as the Council, approve the rules for publication.

**Retention Schedule for Transcripts.** Tim Shea referred the Committee to Brent Johnson's memorandum requesting a Records Retention Schedule change. The issue had been referred from the Council. The request was to change the schedule to allow the destruction of transcripts after nine years. Various Committee members expressed concern with destroying transcripts in certain types of cases. Both Jim Jenkins and Judge Van Dyke mentioned adoption and capital homicide cases. The Committee was also concerned about applying any change to existing records without notice. After discussion, the Committee decided to discuss the issue of excluding certain cases from a nine year retention schedule at the May meeting when Brent Johnson could attend.

**Small Claims Actions Against Governmental Entities.** Tim Shea referred the Committee to his memorandum discussing small claims suits against governmental entities. The Salt Lake City Attorney has asked that the AOC instruct the clerks not to accept small claims cases against governmental entities. Mr. Shea stated that the Committee faced two questions. First, how to respond to Mr. Cutler. Second, what, if anything, to do in the future. Mr. Shea recommended against any action that would administratively interfere in pending cases. Judge Braithwaite agreed and stated that pending cases should be handled on a case-by-case basis until a legislative change was made. Governmental entities who are defendants can make motions if they feel that the cases are not appropriately filed in the small claims department of the district court. Judge Burton stated that clerks should not be instructed to reject small claims cases against



governmental entities. After discussion, Judge Van Dyke moved that the Committee recommended that the Council propose legislation to clarify the issue for the 1999 session. Judge Nielsen seconded the motion. The motion passed unanimously.

The Committee moved its next regularly scheduled meeting from May 1 to April 27 immediately following the Council meeting.

1           **UTAH CANON 5. A JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY**  
2                           **INAPPROPRIATE TO THE JUDICIAL OFFICE.**

3           . . . .

4           C. If a candidate for judicial office in a retention election or reappointment process has  
5 drawn active public opposition, the candidate may operate a campaign for office subject to the  
6 following limitations:

7           (1) The candidate shall not make pledges or promises of conduct in office other than the  
8 faithful and impartial performance of the duties of the office or misrepresent the candidate's  
9 identity, qualifications, present position, or other facts.

10          (2) The candidate shall not directly solicit or accept campaign funds or solicit publicly  
11 stated support, but may establish committees of responsible persons to secure and manage the  
12 expenditure of funds for the campaign and to obtain public statements of support, however, the  
13 committee shall not publish the names of lawyers who support the candidate in his or her  
14 campaign. Committees may solicit public statements of support from <sup>lawyers</sup> non-lawyers and may  
15 solicit campaign contributions [and public support] from lawyers and non-lawyers, but must  
16 inform [lawyers] those contacted that their contribution or lack of contribution will not be  
17 [known] disclosed to the judge or candidate. Within 90 days following the election, the  
18 committee shall submit to the Judicial Conduct Commission an itemization of its receipts and  
19 expenditures. Such itemization shall not be made public except to the extent that proceedings  
20 and records of the Judicial Conduct Commission are made public. Surplus contributions held  
21 by the committee after the election shall be contributed without public attribution to the Utah  
22 Bar Foundation. Committees must not permit the use of campaign contributions for the private  
23 benefit of the judge or members of the judge's family.

24          (3) The candidate may speak to public gatherings on the candidate's own behalf.

25          (4) A candidate may respond to personal attacks or attacks on the candidate's record as  
26 long as the response does not violate Canon 5C(1).

27          D. Judges and candidates for judicial office:

28          (1) should maintain the dignity appropriate to judicial office and act in a manner consistent  
29 with the integrity and independence of the judiciary, and should encourage members of the

1 judge's or candidate's family to adhere to the same standards of political conduct in support of  
2 the judge or candidate as apply to the judge or candidate;

3 (2) should discourage employees or officials subject to the judge's or candidate's direction  
4 and control from doing on the judge's or candidate's behalf what the judge or candidate is  
5 prohibited from doing under this Canon; and

6 (3) except to the extent permitted by Canon 5C(2), shall neither request nor encourage, and  
7 should not knowingly permit, any other person to do for the judge or candidate what the judge  
8 or candidate is prohibited from doing under this Canon.

9 E. A judge shall resign from judicial office upon becoming a candidate for non-judicial  
10 office either in a primary or in a general election, except that the judge may continue to hold  
11 judicial office while being a candidate for election to or serving as a delegate in a state  
12 constitutional convention.

13 F. A lawyer who is an unsuccessful candidate for judicial office is subject to lawyer  
14 discipline for violations of this Canon pursuant to Rule of Professional Conduct 8.2.

April 20, 1998

HAND-DELIVERED

The Honorable Richard C. Howe  
Chairperson  
Utah Judicial Council  
450 South State Street, Fifth Floor  
Salt Lake City, Utah 84114

Re: Proposed Amendment to Canon 5 of the Utah Code of Judicial Conduct

Dear Justice Howe:

I represent the Utah Chapter of the Society of Professional Journalists ("SPJ"). SPJ is a not-for-profit professional association of Utah journalists and news organizations dedicated to openness in government and public affairs as well as the protection of our constitutional guarantees of freedom of speech and of the press.

It is our understanding that the Judicial Council and/or the Utah Supreme Court will be considering amendments to that portion of Canon 5 of the Utah Code of Judicial Conduct regulating the conduct of judges who are candidates in retention elections. SPJ respectfully submits the following comments concerning the proposed amendments contained in the draft dated February 6, 1998.

The proposed amendments would make two major changes to the current Canon. First, the amendments would prohibit a judicial candidate's campaign committee from publishing the names of lawyers who support the candidate in his or her retention campaign. Second, the proposed amendments would require the campaign committee to submit an itemization of its receipts and expenditures to the Judicial Conduct Commission, which would be required to keep the report secret.

The amendments appear to be well-intentioned attempts to preclude the conflicts of interest (or appearance thereof) that may arise when lawyers donate money to or publicly support a judicial candidate's retention. SPJ believes, however, that the approach reflected in the

The Honorable Richard C. Howe  
April 20, 1998  
Page 2

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amendments ignores practical reality and runs contrary to the public interest in receiving full and fair disclosure about the amounts of money spent in judicial retention campaigns and where that money comes from.

Under the proposed amendments, the public would receive less, not more, information about the lawyers and other individuals who fund and support a judge's retention election and the amounts raised and donated in such campaigns. Such an approach is, to say the least, highly anomalous at a time when the public is demanding more, not less, campaign-finance disclosure from the executive and legislative branches of government. Public disclosure of campaign finance records allows potential conflicts of interest to be fully aired and fosters judicial accountability. Without such disclosure, the public is left in the dark about the amounts of money being spent to finance judicial retention campaigns in Utah, the individuals and entities making financial donations to such campaigns, and the potential conflicts of interest and other public policy issues raised by such donations.

In addition, the premise underlying the amendments -- that an impenetrable wall can be constructed to keep judicial candidates from learning the identities of lawyers who publicly support and make financial contributions to their campaigns -- is highly questionable. The amendments assume that the only manner in which a candidate will learn that a lawyer supported or made a financial contribution to the judge's candidacy is through publication of the lawyer's name in a public statement of support or inclusion in a campaign-finance disclosure report.

Logic suggests, however, that a judge is far more likely to acquire such information through more informal and less public means. First, there is no prohibition, nor could there be, on the ability of a lawyer to communicate, publicly or otherwise, his or her support of and financial contribution to a judge's retention campaign. Second, a judge who organizes a campaign committee obviously will know the names of the lawyers and other individuals who make up the committee. Finally, the relatively small size of the legal communities that exist throughout the state make it more likely than not that the identities of many of the lawyers supporting and funding a judge's retention campaign will become known to the judge.

For the foregoing reasons, SPJ believes that more, not less, public access is warranted with respect to campaign finance disclosure reports filed by judicial campaign committees. SPJ urges the Judicial Council to make any such reports filed with the Judicial Conduct Commission freely accessible to the public.

Thank you for your consideration of these views.

The Honorable Richard C. Howe  
April 20, 1998  
Page 3

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Respectfully,

PARR WADDOUPS BROWN GEE & LOVELESS



Jeffrey J. Hunt

Attorneys for the Utah Chapter  
of the Society of Professional Journalists

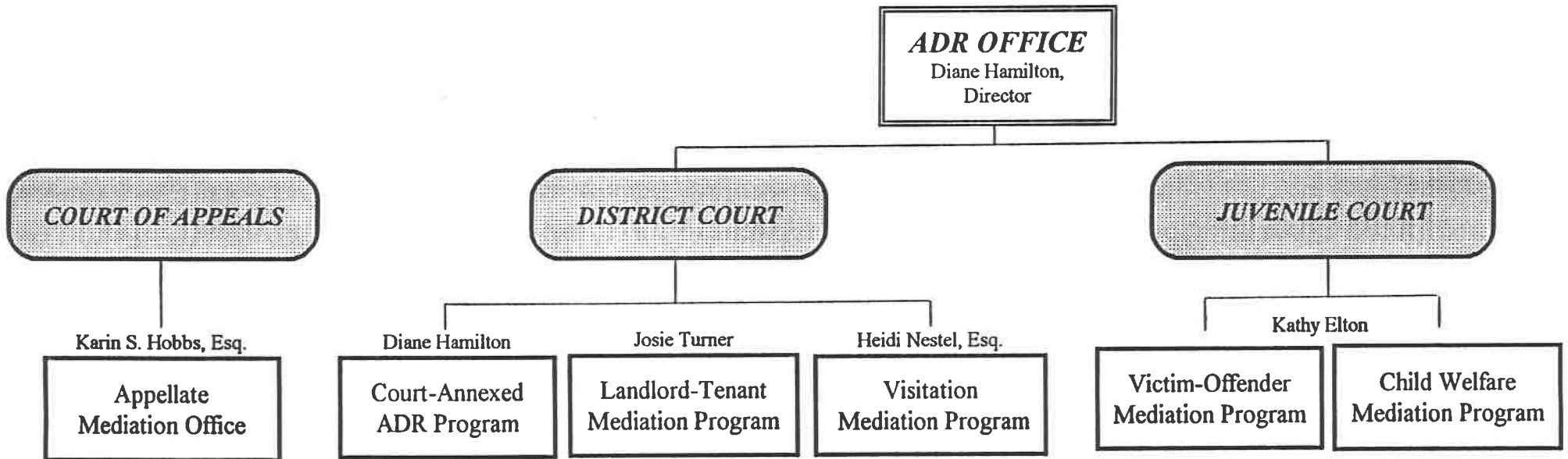
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cc: Timothy M. Shea, Esq.

# UTAH STATE COURTS



## PROGRAMS



- mandatory
- staff mediator
- appellate court cases
- all districts

- voluntary or judge referred
- private, professional providers
- cases over \$120,000 in district court
- 2nd, 3rd & 4th Districts

- voluntary or judge referred
- volunteer mediators
- collaboration with Community Action Program
- 3rd District

- mandatory participation
- private, professional providers
- disputed visitation cases
- 3rd District

- voluntary for victims; mandatory for some offenders
- volunteer mediators
- facilitate communication between victims and offenders and provide resolution regarding damages
- 2nd, 3rd & 4th Districts

- judge referred
- staff mediators
- dependency, abuse, & neglect
- 2nd, 3rd & 7th Districts

## Summary of ADR Program Progress

### **Court-Annexed ADR Program**

- Created by statute 78-31b and implemented in 3rd and 5th District Courts, January 1995.
- Requires viewing of mandatory videotape and filing of a notice certifying that parties will consider using mediation or arbitration sometime before the first pre-trial conference.
- Expanded into 2nd and 4th Judicial Districts on April 1, 1998. (ADR requirement was lifted from the 5th Judicial District because utilization was low in the rural district).
- Maintains a list of private professional providers from which parties may choose their mediator or arbitrator.
- Domestic commissioners are requiring mediation of all cases before certifying them as ready for trial in the 3rd District.
- 747 cases were mediated in 1997 with 74% success. This is a 50% increase in mediations since 1995 when only 498 cases were mediated.

### **Court of Appeals Program**

- Implemented into the Court of Appeals in January, 1998.
- Staff attorney position was converted to a mediator position.
- All cases are mandatorily referred and then randomly selected by the mediator for mediation.
- Majority of mediations take place in a telephone conference call.
- Mediations have been successful in many cases so far in 1998.

### **Visitation Mediation Program**

- Created by statute 30-3-38 and implemented into 3rd District Court in December, 1998.
- Disputed visitation matters are automatically referred to mediation.
- A roster of private professionals provide services at cost to the parties. The court provides services to impecunious parties.
- Program also facilitates visitation services including supervised visitation and neutral drop-off.
- Funding provided by federal grant for approximately \$80,000 through Human Services / Child Access and Visitation Programs and a state appropriation of \$20,000.
- 44 cases have been mediated so far in 1998 with 78% success.

### **Juvenile Court Victim-Offender Mediation Program**

- Implemented in the 2nd, 3rd, and 4th Judicial Districts.
- Volunteer mediators provide mediation sessions between perpetrators of juvenile crime and their crime victims.
- Purpose of the program is to give victims an opportunity to meet juvenile offenders and express the impact that the crime had on their lives. It also gives them a more active role in the justice process in determining restitution and ways for the offender to help restore the community.
- Legislative appropriation of \$30,000 enabled the hiring of a full-time program coordinator so the service could be provided statewide.
- 96% of cases are mediated successfully. Offenders have a 20% lower rate of recidivism



when compared to similar offenders who have not gone through the program. Only 2% of restitutions have gone past due.

#### **Child Welfare Mediation Program**

- Created by Court Improvement Project Grant and implemented in December, 1998 in 2nd, 3rd, and 7th Judicial Districts. Program has recently been expanded into the 4th Judicial District.
- Federal money provided two full-time mediators and one administrative assistant to the juvenile court to provide mediation in child welfare cases.
- The program's purpose is to build cooperation among families, attorneys, state agencies and the juvenile court and to serve the best interests of the child in negotiating parental treatment plans and placement of the child.
- 63 cases have been referred to the program in 1998. Complete agreements have been reached in 57% of cases. Partial agreements have been reached in 21% of cases.

#### **Landlord-Tenant Mediation Program**

- Implemented in January 1996 in 3rd District court.
- Provides mediation services to landlord and tenants involved in eviction proceedings.
- Services provided by volunteers who appear at the court to conduct mediations.
- Community Action Program provides funding for a program coordinator.
- 20% of eviction proceedings are mediated with 80% success.

# NOTICE

## NEW ADR REQUIREMENTS IN THIRD DISTRICT DIVORCE CASES

The Utah Judicial Council has amended Rule 4-510, Alternative Dispute Resolution, Utah Code of Judicial Administration. Effective January 1, 1998, the following procedures will be implemented in all divorce matters before Commissioners in the Third District Court.

1. In accordance with paragraph 6 of Rule 4-510, all divorce cases shall proceed to mediation within 30 days after the filing of the responsive pleading unless the parties choose one of the three alternatives in paragraph 6(A) prior to the expiration of 30 days from the date of the filing of the last responsive pleading.
2. If the parties choose alternative dispute resolution and are unsuccessful in resolving the matter, then either party shall be entitled to certify the case as ready for trial.
3. If one or both parties choose to defer ADR consideration as contained in paragraph 6(A)(i) of Rule 4-510, then the usefulness of mediation or arbitration shall be addressed at the Pre-Trial Settlement Conference before the Commissioner. If good cause is shown that the case is not appropriate for mediation or arbitration, the Pre-Trial Settlement Conference shall proceed. If good cause is not shown that mediation or arbitration is appropriate, then the Pre-Trial Settlement Conference shall be continued without date and the case shall proceed to mediation or arbitration. If either is unsuccessful, then the Pre-Trial Settlement Conference may be rescheduled.
4. **PLEASE NOTE:** REQUESTS FOR TEMPORARY ORDERS ARE NOT AFFECTED BY THIS RULE.

# 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:** Utah Judicial Council  
**From:** Peggy Gentles, Staff Attorney *log*  
**Subject:** Court Information Line Update  
**Date:** April 20, 1998

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### Goals of Court Information Line

- Solve problems encountered by court users;
- Enhance customer service, customer satisfaction, and public perception of the courts;
- Resolve problems at earliest and least formal level appropriate; and
- Identify recurring problems so that systemic issues can be addressed.

### Implementation

- Hired half-time person;
- Placed posters in each state court house in early February except Salt Lake County (mid March);
- Informed all court personnel via e-mail;
- Tracking all calls on software program;
- Will report quarterly to Trial Court Executives, Clerks of Courts, and others on specific calls.

### Usage

- Between February 20 and April 17, 387 calls have been received (average 48 calls per week);
- Overwhelming majority are requests for information rather than complaints;
- Beginning to identify some areas in which court users are frustrated by lack of information/assistance on process (e.g., probate cases);
- Many callers express their appreciation of having someone that takes the time to listen.



## Utah Task Force on Racial and Ethnic Fairness in the Legal System Spring 1998 Interim Report

### BACKGROUND INFORMATION

The Utah Task Force on Racial and Ethnic Fairness in the Legal System was established by the Judicial Council on March 6, 1996 to examine issues of racial and ethnic fairness within Utah's criminal justice system. The Task Force is chaired by Supreme Court Justice Michael D. Zimmerman. There are two co-chairs, Third District Court Judge Tyrone E. Medley and John T. Nielsen, senior counsel for Intermountain Health Care. The Task Force membership, approved by the Judicial Council, has thirty members. Members include representatives from all aspects of the criminal justice system, including judges, law enforcement officials, prosecution and defense attorneys, corrections officials, and juvenile corrections officers. The Task Force also has significant representation from Utah's communities of color. All of the members are influential in their respective organizations and are supportive of the Task Force objectives. Members are listed below.

Daniel J. Becker, *State Court Administrator*

Paul W. Boyden, *Statewide Assn. of Prosecutors*

Susan V. Burke, *Governor's Commission on  
Criminal & Juvenile Justice*

Reverend France A. Davis, *Calvary Baptist Church*

Judge Lynn W. Davis, *Fourth District Court*

David Dominguez, *BYU, College of Law*

Representative Christine Fox-Finlinson

James Gillespie, *Northern Utah Community  
Corrections*

E. Neal Gunnarson, *Salt Lake District Attorney*

H.L. "Pete" Haun, *Utah Department of Corrections*

F. John Hill, *Salt Lake Legal Defenders Association*

Judge Glenn K. Iwasaki, *Third District Court*

Sheriff Aaron D. Kennard, *Salt Lake County Sheriff*

Donna Land Maldonado, *KRCL Community Radio*

Dan Maldonado, *Division of Youth Corrections*

Charlotte L. Miller, *President, Utah State Bar*

Haruko Moriyasu, *University of Utah, Asian  
American Studies*

Judge Jody Petry, *Uintah County Justice Court*

Lorena P. Riffo, *Division of Corporations*

Michael R. Sibbett, *Utah Board of Pardons & Parole*  
Senator Pete Suazo

Dean Lee E. Teitelbaum, *University of Utah, College  
of Law*

Judge William A. Thorne, *Third District Court*

Filia H. Uipi, *Attorney at Law*

Judge Andrew A. Valdez, *Third District Juvenile  
Court*

Judge W. Brent West, *Second District Court*

Jeanetta Williams, *Salt Lake Chapter NAACP*

The mission statement of the Task Force was developed by its members through an involved process of consensus. As the membership of the Task Force was created with diversity of perspective in mind, there is considerable difference of opinion about the existence of bias within our criminal justice system. Opinion varies from those who believe that bias on the basis of race and ethnicity does not exist in the criminal justice system to those who are offended by the mere insinuation that racial and ethnic bias might not exist. The wording of this mission statement takes into account these differences and thus has gained the approval of every member of the Task Force. The mission is as follows:

*The Utah Task Force on Racial and Ethnic Fairness exists to organize and lead the effort to honestly examine and address real and perceived bias toward racial and ethnic minorities within Utah's criminal justice system. The Task Force shall conduct necessary research, develop and disseminate findings and recommendations, advancing and advocating in all quarters for the implementation of those recommendations.*

Subcommittees are generally co-chaired by two Task Force members and include 15 to 20 others selected by the co-chairs and approved by the Operations Committee. The subcommittee membership is intended to be as truly diverse as possible so as to bring a wide range of perspectives and ideas to each group. Including subcommittee members, the Task Force now has approximately 120 people involved in its examination of the criminal justice system.

### **A WORK IN PROGRESS . . .**

Preliminary activities to begin the Task Force took approximately one year. Those activities included the establishment of the Task Force's official membership, seeking adequate funding for its initial activities, and the recruiting and hiring of a director.

The Task Force held its first monthly meeting on May 21, 1997. The National Center for State Courts sent a representative to assist the Task Force in developing and focusing its agenda, as well as providing historical information to members about task forces and commissions in other states. Jennifer M.J. Yim was hired on August 1, 1997 to serve as the Task Force director. Ms. Yim is employed half-time at the Administrative Office of the Courts. Funding for her position and the Task Force's activities during its first year have come from the State Justice Institute, the Administrative Office of the Courts, the Utah Bar Foundation, the Herbert I. and Elsa B. Michael Foundation, and the Ruth Eleanor Bamberger and John Ernest Bamberger Memorial Foundation.

In the Fall of 1997, the Task Force focused its efforts on organizational issues. The first order of business included mission statement development. The Task Force then determined a subcommittee structure, subcommittee leadership and membership. The subcommittees began to meet near the beginning of 1998.

#### **Task Force Education**

During the winter, the Task Force conducted several educational sessions for task force and committee members.

December                      *Research Agendas of Other States' Task Forces*  
-- Presented by staff.

January                        *Introduction to Research Methods* workshop  
-- Presented by Lois M. Haggard, Ph.D., a social scientist with survey research expertise.

*Racial Data in Existing Justice System Databases* panel discussion  
-- Presented by database managers from the Department of Corrections, the Administrative Office of the Courts, the Division of Youth Corrections, and the Commission on Criminal and Juvenile Justice.

March                          *Criminal Law & Procedure* introductory workshop  
-- Presented by Salt Lake attorneys, Gregory G. Skordas and Scott W. Reed.

These workshops were created to enhance the knowledge and skills of task force and committee members to complete the mission of the Task Force. Members have also received baseline data about the current status of minorities in the criminal justice system. All education has been offered either by staff or via donated services by Utah attorneys or research experts.

The Task Force director has made significant efforts to announce the existence of the Task Force to community groups, with an emphasis on Utah's minority communities. Ms. Yim has spoken to the directors of the Governor's Offices of Ethnic Affairs, to the Steering Committee of the Utah Hispanic Symposium, the Disproportionate Minority Confinement Committee, and the Utah Minority Bar Association. Upcoming presentations to the Ethnic Advisory Councils and the Utah State Bar Annual Conference are also scheduled.

### **Research Agenda**

The Task Force is in the process of creating a research agenda. Subcommittees are looking at existing data and information and developing a prioritized list of research questions. The Operations Committee will then develop an overall research agenda. This effort should be complete by June 1998.

### **Research Director**

The Task Force is soliciting funds to hire a Research Director. This position would be a part-time, contracted position that would be responsible for coordinating the research activities of the Task Force. The position would be one year in duration. The Research Director position would be filled via a request for proposal process which will ask potential contractors to propose a plan by which the Task Force would conduct its research. The position would likely be filled by a social science graduate student or a university faculty member. The Research Director would oversee the coordination and contractual processes of the research projects. The position would also provide expertise and overall guidance on research matters.

### **Public Hearings**

One type of research that the Task Force will almost certainly conduct is public hearings. Every state that has ever commissioned a task force on racial and ethnic issues has held public hearings as a method to determine the perception of bias in the system. These public hearings are also helpful to the other task force research efforts because the information gleaned from the public hearings can help frame issues and provide context to more complex issues. The Task Force hopes to conduct multiple public hearings across the state.

The Client Committee, co-chaired by Filia Uipi and Haruko Moriyasu, is taking the lead in determining the methods to be used in the public hearings and in planning the hearing themselves. A law student intern has been hired this summer to help coordinate the hearings.

## **... THE SECOND YEAR**

The second year of the Task Force, beginning in the summer of 1998, will focus on conducting selected research projects to determine the existence and extent of real and perceived bias in Utah's criminal justice system. The Task Force hopes to commission several large research studies. Research projects will be contracted out to social science research teams and overseen by the proposed Research Director. Examples of types of research could include:

- A survey of judges and attorneys about their perceptions of bias in the courtroom,
- A secondary data analysis of charging decisions by race and ethnicity,
- An analysis to determine the effect of race and ethnicity on sentencing,

(\$5,000), the Herbert I. and Elsa B. Michael Foundation (\$4,000), and the Ruth Eleanor Bamberger and John Ernest Bamberger Memorial Foundation (\$2,500). Funding from the Administrative Office covers office space, staff time, supplies, postage, telephone, and copying expenses. Total financial support for the first year of the Task Force is \$79,500.

Other in-kind and pro bono support has been donated by attorneys, law students, and research experts. The National Center for State Courts has provided in-kind technical assistance by sending a staff member to assist in the initial Task Force meeting. In addition, task force and committee membership is voluntary and as it is state-wide, there are several members providing their own travel and accommodations from locations outside the Wasatch Front.

### **Year Two**

The second year of funding for the Task Force (FY 1999) will focus on research costs. The Task Force intends to solicit financial support from local foundations, businesses, and individuals. It is difficult to provide an exact estimate for research costs because cost depends largely upon specific project design. However the Task Force estimates it will require approximately \$60,000 for research in the adult criminal justice system. These funds will be used to contract out the different projects to social science research teams. The Task Force also proposes to hire a part-time Research Director. To fund juvenile justice system research, the Task Force is in the process of applying for \$48,925 in funding from the Commission on Criminal and Juvenile Justice.

The Task Force is in the process of submitting an application for a continuation grant from the State Justice Institute. This funding request of \$65,000 would cover existing staff, a student internship, and limited funds for research activities. Total Task Force expenses during Year Two are estimated at \$195,000. None of these funds have been secured to date.

### **CONCLUSION**

**T**he Utah Task Force on Racial and Ethnic Fairness in the Legal System was created by the Judicial Council with the mission to examine the existence and extent of real and perceived bias within Utah's criminal justice system. Its members, representatives from every aspect of the system, have dedicated themselves to conducting an honest inquiry without assumptions about what they will find.

This first year has been dedicated to the organizational aspects of the Task Force. To date, the Task Force has accomplished those elements of task force development that will help to ensure that its upcoming work will be of the highest possible quality. The ability of the Task Force to secure "buy in" both from its members and from the community is critical in securing support for implementation of any recommendations.

The second year of the Task Force will focus on the research that must be done in order to achieve our mission. Although the challenge of discussing racial issues is very real, the Task Force has achieved a strong start toward creating a process that will not only determine the existence and extent of real and perceived racial and ethnic bias but that will also address those issues with a view toward active implementation of resulting recommendations.

**From:** "Carolyn Andersen (Central)" <CAROLYNA@wvc.utcourts.gov>  
**To:** AOC.aocadmin(HOLLYB)  
**Date:** 4/3/98 5:05pm  
**Subject:** VOCA GRANT

As a followup to our conversation this morning I am notifying you and the administrative office that I would like approval to apply for the third (and last) year of the VOCA grant for the Victim Coordinating Office located at Third District Juvenile Court

As in the past two years, I think that we can easily provide the required match with my salary, office space, etc without any additional cash outlay by the court. This year we received \$18,000 and I would hope that this amount will increase to sufficiently cover the salary of a full time assistant, so it may be closer to \$26,000 if the grant is fully funded as I will request.

The program is receiving favorable reviews from the grant monitors at Crime Victim Reparations and we expect our numbers (of victims requesting assistance) to increase dramatically as many problems with the district attorney's office have now been worked out. I will send you a pamphlet, which we assisted the court victim committee to prepare, has now been printed and which should also increase the numbers of victims served.

For informational purposes- our victim office does not duplicate any services provided by the victim/witness program at the district attorney's office (we often work together on a case) as we do not provide the direct counseling service it does.

I had been working with my TCE and will continue to do so with our new TCE to prepare the formalization of this program at the end of the third year grant.

The grant would be in effect October 1998 to September 1999.

If you need any further information just let me know. thanks for your help

**CC:** AOC.aocadmin(rayw) , Internet.3DistTooel (brucet)




# 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: Management Committee of the Judicial Council  
FROM: Holly M. Bullen  
Assistant State Court Administrator  
DATE: March 26, 1998  
RE: Uniform Fine/Bail Schedule Standing Committee  
Appointment of Chairperson

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Rule 1-205, CJA, requires that the chairpersons of the Judicial Council standing committees be appointed by the Judicial Council. The Board of District Judges has recommended that Judge Brent West be appointed as chair of the Uniform Fine/Bail Schedule Standing Committee.

If you agree with this recommendation, I ask that the matter be placed on the consent calendar of the next Judicial Council meeting.

Thank you for your consideration of this matter.

c: Mark Jones

**JUSTICE COURT JUDGES' ORIENTATION**

April 17, 1998

1. Full Name: KENT L. CHRISTIANSEN
2. Home Address: 362 INDEPENDENCE  
N. SALT LAKE, UTAH 84054
3. Home Phone Number: 359-3762 / 599-3126
4. Date of Birth: 5-13-57
5. Current Occupation: ATTORNEY
6. Expected Part-time Employment While Serving as Judge: ATTORNEY  
IN CIVIL PRACTICE, NO CRIMINAL LAW  
PRACTICE
7. Past Educational Background: JD, BA
8. Previous Employment History: CITY OF NSL - CITY ATTORNEY; <sup>12 yrs</sup>  
ATTORNEY - PRIVATE PRACTICE <sup>14 yrs.</sup>

SCORE:	100
BCI:	OK
CERT:	

K. CHRISTIANSEN

-0

100%

JUSTICE COURT JUDGES!

Orientation Exam

April 17, 1998

1. What is the maximum contempt penalty that a justice court judge can order?

\$500 FINE AND 5 DAYS JAIL (78-32-10)

2. What is the subject matter and territorial jurisdiction of YOUR justice court?

1- CLASS B, C, AND INFRACTIONS (76-3-205 & 76-3-301)  
EXCEPT THOSE WHICH INVOLVE JUVENILES FOR DUI, RECKLESS DRIVING,  
SOME JOYRIDING, EVADING POLICE OFFICER.  
2- TERRITORIAL - MUNICIPAL LIMITS NORTH (78-5-103)  
EXCEPT: THOSE OVER WHICH SALT LAKE CITY  
SEARCH JUVENILE COURT HAS EXCLUSIVE.  
NOTE: WARRANTS MAY BE ISSUED WITHIN JUDICIAL DISTRICT.

3. What is the standard of proof in a criminal proceeding?

BEYOND A REASONABLE DOUBT

4. Under what circumstances can a justice court judge deny bail?

IF CHARGED WITH B, C MISDEMEANOR OR INFRACTION JUSTICE  
JUDGE CANNOT DENY BAIL; EXCEPT IF ACTING AS COMMITTING  
MAGISTRATE IN MURDER CASE OF 1<sup>st</sup> DEGREE OR WHERE  
PERSON IS ACCUSED OF FELONY WHILE ON PROBATION OR PAROLE  
OR WHILE FREE ON BAIL AWAITING TRIAL OR PREVIOUS  
FELONY CHARGE AND WHEN CONSTITUTES DANGER TO ANOTHER  
PERSON OR IS LIKELY TO  
FREE. (71-20-1)

5. How many jurors hear a jury trial in justice courts?

FOUR (4)

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

CANONS 4C(1)(a), 4C(2), 4E, 4F, and 4G.

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

YES.

CITATIONS MAY BE USED UNLESS DEFENDANT REQUESTS INFORMATION BE FILED. IF PLEA IS (72-7-18) NOT GUILTY, DO INFORMATION.

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

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

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

URCrP 6(b)

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

- 1- DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS (41-644)
- 2- VIOLATION OF ENFORCEMENT PROVISIONS OF HEALTH CODE (26-23-6)
- 3- PROSTITUTION (76-10-1302)
- 4- GAMBLING (76-10-1102)

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

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

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

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No BECAUSE OF "POTENTIAL" FOR JAIL TIME

13. Can justice court judges appoint public defenders?

Yes  No

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

     Yes    No

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

   Yes    No

CANNOT ISSUE A BENCH WARRANT ON NON-JAILABLE OFFENSES. (MUST HAVE INFORMATION FILED ON FTA BEFORE ISSUING BENCH WARRANT)

16. The standard for issuing a search warrant is:

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

SUPPORTED BY OATH OR AFFIRMATION

17. A "no bail" warrant can:

b.

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

AS A COMMITTING MAGISTRATE MAY ISSUE SUCH A WARRANT UNDER CERTAIN CONDITIONS

18. The maximum sentences for the following are:

- a. Class B misdemeanor      Fine \$1,000 <sup>and/or</sup> Jail 6 months (180 days)
- b. Class C misdemeanor      Fine \$750 <sup>'</sup> Jail 90 days
- c. Infractions                  Fine 750.00 <sup>'</sup> Jail 0

TRUE OR FALSE

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

*TRUE IN CIVIL ACTIONS  
==>  
SMALL CLAIMS*

*CRIMINAL CASE APPEAL  
MUST BE WITHIN 30 DAYS  
AFTER JUDGE PRONOUNCES  
SENTENCE.*

**JUSTICE COURT JUDGES' ORIENTATION**

April 17, 1998

1. Full Name: Michael Kwan
2. Home Address: 3320 Brook Haven Drive  
Taylorville, UT 84118
3. Home Phone Number: 965-9355
4. Date of Birth: 5/22/62
5. Current Occupation: Prosecutor
6. Expected Part-time Employment While Serving as Judge: None
7. Past Educational Background: Law School - Whittier  
East China ~~Univ.~~ Univ. of  
Politics & Law
8. Previous Employment History: SLC Prosecutor

SCORE:	
100	
BCI:	
OK	
CERT:	



JUSTICE COURT JUDGES'

- 0  
100%

Orientation Exam

April 17, 1998

1. What is the maximum contempt penalty that a justice court judge can order?

\$500 fine & 5 days jail

UCR § 78-32-10

2. What is the subject matter and territorial jurisdiction of YOUR justice court?

Criminal = class B, C & infractions committed  
in corporate limits of Taylorsville

Civil = \$5000 & Defendant resides in or debt arose in  
corporate limits of Taylorsville

3. What is the standard of proof in a criminal proceeding?

Beyond a reasonable doubt

4. Under what circumstances can a justice court judge deny bail?

NONE, Although some would argue that  
the new Domestic Violence law allows denial where  
there is a probability of <sup>further</sup> violence.

5. How many jurors hear a jury trial in justice courts?

4

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

4C(1)(a), 4C(2), 4E, 4F 4G

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

Yes subject to UCA  
§ 77-7-21  $\frac{1}{2}$   
41-6-167

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

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

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

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

DUI, Controlled substance, Theft, Prostitution  
Traffic

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

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

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

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

13. Can justice court judges appoint public defenders?

Yes  No

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

Yes  No

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

Yes  No

16. The standard for issuing a search warrant is:

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

17. A "no bail" warrant can:

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

18. The maximum sentences for the following are:

a. Class B misdemeanor

Fine 1022 + 85% S.C. heavy Jail 180

b. Class C misdemeanor

Fine 750 + 85% S.C. Jail 90

c. Infractions

Fine 750 + 85% S.C. Jail 0

TRUE OR FALSE

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

*30 days*

**JUSTICE COURT JUDGES' ORIENTATION**

April 17, 1998

1. Full Name: DENNIS J. BARKER
2. Home Address: 91 S. 200 E.  
NEWTON, UTAH, 84327
3. Home Phone Number: 1-435-563-5742
4. Date of Birth: 10-4-39
5. Current Occupation: SCHOOL BUS DRIVER
6. Expected Part-time Employment While Serving as Judge: \_\_\_\_\_  
SCHOOL BUS DRIVER  
OFFICER IN BARKER BUILT HOMES
7. Past Educational Background: High School GRAD  
ALUMINI RICKS COLLEGE  
UNIVERSITY OF UTAH
8. Previous Employment History: Bus DRIVER 30 years  
Insurance Agent 11 years DAVID FARMER  
Loan Officer 10 years 15 years

SCORE:	95		
BCI:	OK		
CERT:			

JUSTICE COURT JUDGES'

Orientation Exam

April 17, 1998

1. What is the maximum contempt penalty that a justice court judge can order?

\$1500 and/or 5 DAYS

2. What is the subject matter and territorial jurisdiction of YOUR justice court?

BUS & MIS  
INFRACTIONS

Power to try and decide certain TYPES OF  
CASES  
Power to exercise JUDICIAL AUTHORITY IN  
A CERTAIN LOCALITY OR TERRITORY  
CORPORATE LIMITS NEWTON TOWN BOUNDARIES

3. What is the standard of proof in a criminal proceeding?

THE DEFENDANT MUST BE FOUND GUILTY BEYOND  
A REASONABLE DOUBT.

4. Under what circumstances can a justice court judge deny bail?

MURDER 1ST Degree

PERSON ACCUSED OF A FELONY WHILE  
ON PROBATION OR PAROLE OR FREE ON  
BOND AWAITING TRIAL ON PREVIOUS FELONY

OR IS LIKELY  
TO FREE PERSON

OR WOULD CONSTITUTE A DANGER TO ANOTHER PERSON

5. How many jurors hear a jury trial in justice courts?

FOUR

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

CANONS 4C(1)(a), 4C(2), 4E, 4F, 4G

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

yes

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

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

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

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

DUI

DRUGS

CONTROL SUBSTANCES

Repeat SEX OFFENDERS & HABITUAL

DEPT OF AGRICULTURE  
REGS

REAL ESTATE LICENSING  
COMMISSION

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

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



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

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Yes  No

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Yes  No

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Yes  No

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Yes  No

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Yes  No

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Yes  No

13. Can justice court judges appoint public defenders?

Yes  No

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

     Yes X No

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

X Yes      No

16. The standard for issuing a search warrant is:

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

17. A "no bail" warrant can:

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

18. The maximum sentences for the following are:

- a. Class B misdemeanor      Fine \$1000 Jail 6 MOS OR BOTH
- b. Class C misdemeanor      Fine \$750 Jail 90 DAYS
- c. Infractions                  Fine \$750 Jail No Jail

TRUE OR FALSE

*FALSE* 19. T  F A pro se defendant may not cross-examine prosecution witnesses because only attorneys may practice before the court.

*FALSE* 20. T  F A defendant has 10 days from the entry of judgment in a criminal matter in a justice court to appeal for a trial de novo to be held in the circuit/district court.

*30 Days*

**Utah Task Force on Racial and Ethnic Fairness in the Legal System**  
**Committee Membership**  
**April 1998**

**Operations Committee**

Honorable Tyrone E. Medley, (Co-chair), Third District Court  
John T. Nielsen, (Co-chair), Senior Counsel, Intermountain Health Care  
Daniel J. Becker, State Court Administrator  
Susan Burke, Commission on Criminal and Juvenile Justice  
Dean Lee Teitelbaum, University of Utah, College of Law  
Honorable William Thorne, Third District Court

**Pre-Adjudication Committee**

Honorable Glenn Iwasaki, (Co-chair), Third District Court  
Jeanetta Williams, (Co-chair), President, Salt Lake Chapter NAACP  
Honorable John R. Anderson, Eighth District Court  
Ross Anderson, Anderson & Karrenberg  
Diane Cowdrey, Director, Education Department, Administrative Office of the Courts  
Lt. Guy B. Dodge, West Valley City Police Department  
Ginger L. Fletcher, Drug Court Case Manager, Pre-Trial Services  
James Gillespie, Director, Northern Utah Community Corrections  
Larry Houston, community member  
Sheriff Aaron Kennard, Salt Lake County Sheriff  
Phil Kirk, Public Information Officer, Salt Lake Police Department  
Theresa Martinez, Ph.D., Department of Sociology, University of Utah  
G. Fred Metos, Attorney at Law  
Dane Nolan, Salt Lake District Attorney's Office  
Ross Romero, Attorney at Law  
Eric Swensen, Attorney at Law

**Representation Committee**

E. Neal Gunnarson, (Co-chair), Salt Lake County District Attorney  
F. John Hill, (Co-chair), Salt Lake Legal Defenders Association  
Steve Chapman, Salt Lake City Police Department  
Augustus Chin, Salt Lake City Attorney's Office  
Chris Davis, Roy City Attorney's Office  
Betty Gaines-Jones, Workforce Diversity Coordinator, Department of Corrections  
Shauna Graves-Robertson, Salt Lake Legal Defenders Office  
Martin Gravis, Weber County Public Defenders Office  
Steven Harrison, Social Research Institute, University of Utah  
Michelle Heward, Weber State University  
Steven Killpack, Utah County Public Defenders Office  
Edward Lewis, NAACP  
Cheryl Luke, Salt Lake City Attorney's Office  
Honorable Jody Petry, Uintah County Justice Court  
Mary Ellen Sloan, Salt Lake County Attorney's Office

Leam Moeung, Employment Coordinator, SL Community Action Program  
Professor Dan Pence, Social Sciences Department, Southern Utah University  
Gwen Springmeyer, University of Utah  
Richard Uday, Attorney at Law  
Carolyn Webber, University of Utah, Ethnic Studies Program  
Rolen Yoshinaga, Director, Information Technology, Administrative Office of the Courts

### **Community Resources Committee**

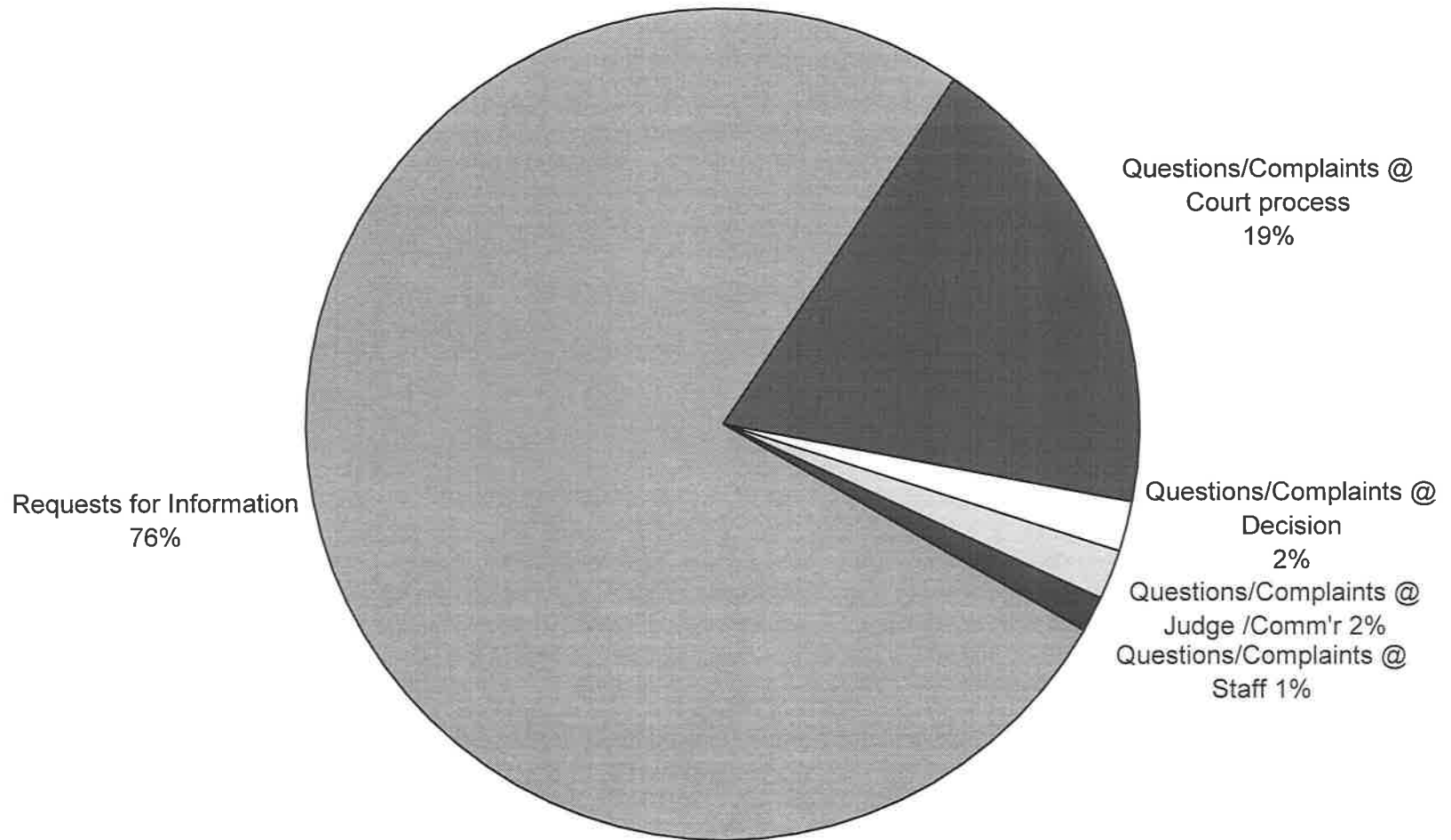
Sandra Adams, Director (Co-chair), MLK Human Rights Commission  
Donna Land Maldonado (Co-chair), Program Director, KRCL Community Radio  
William Afeaki, Director, Office of Polynesian Affairs  
Peter Appleby, Ph.D., University of Utah, Philosophy Department  
Jim Bradshaw, Attorney at Law  
Representative Mary Carlson  
Bruce Cohne, Cohne, Rappaport & Segal  
Forrest Cuch, Director, Division of Indian Affairs  
Professor David Dominguez, Brigham Young University Law School  
Christine Fox-Finlinson, Callister Nebeker & McCullough  
Thomas Larry, Department of Community and Economic Development  
Mary Lee Longhair, Red Pine Alcohol & Drug Center  
Tina Martinez, United Way of the Great Salt Lake Area  
Travis Parashonts, Director, Economic Development, Paiute Tribe  
Mike Peterson, Pre-Trial Services  
Rose Reilly, Legal Services  
Debbie Rocha, Youth Corrections Region II  
Joan Smith, Director, National Conference of Christians & Jews  
Karen Stam, SL Legal Defenders Association  
Abby Trujillo Maestas, Executive Director, Centro de la Familia de Utah

### **Juvenile Committee**

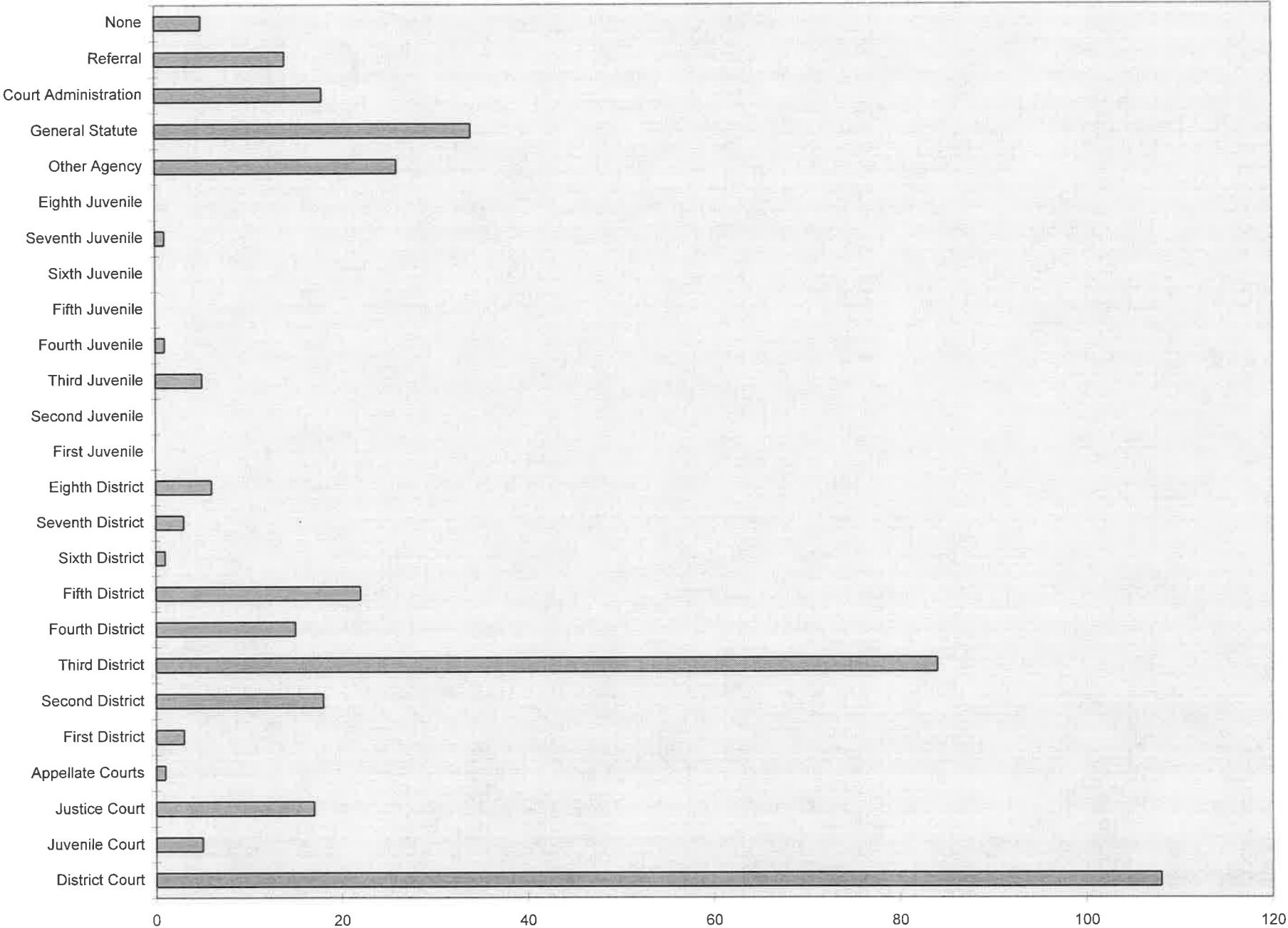
Dan Maldonado, (Co-chair), Assistant Director, Division of Youth Corrections  
Leticia Medina, (Co-chair), Director, Office of Hispanic Affairs  
Lt. Mark Nosak, (Co-chair), Sandy Police Department  
William Afeaki, Director, Office of Polynesian Affairs  
Polo Afuvai, Chief, North Ogden Police  
Honorable Mark Andrus, Presiding Judge, Second District Juvenile Court  
Narda Baes-Nordell, SL District Attorney's Office  
Craig Barlow, Attorney General's Office  
Susan Burke, Commission on Criminal & Juvenile Justice  
Kent Cravens, SL District Attorney's Office  
Jacob Fitisemanu, Polynesian Advisory Council  
Richard Gomez, Office of Education  
Russ Hagood, Probation Officer, Third District Juvenile Court  
Doug Peterson, Iomega  
Lorena Rizzo, Director, Division of Corporations  
Ron Stallworth, Utah Division of Investigation  
Senator Pete Suazo  
Honorable Raymond Uno, Senior Judge

**Court Information Line Calls**

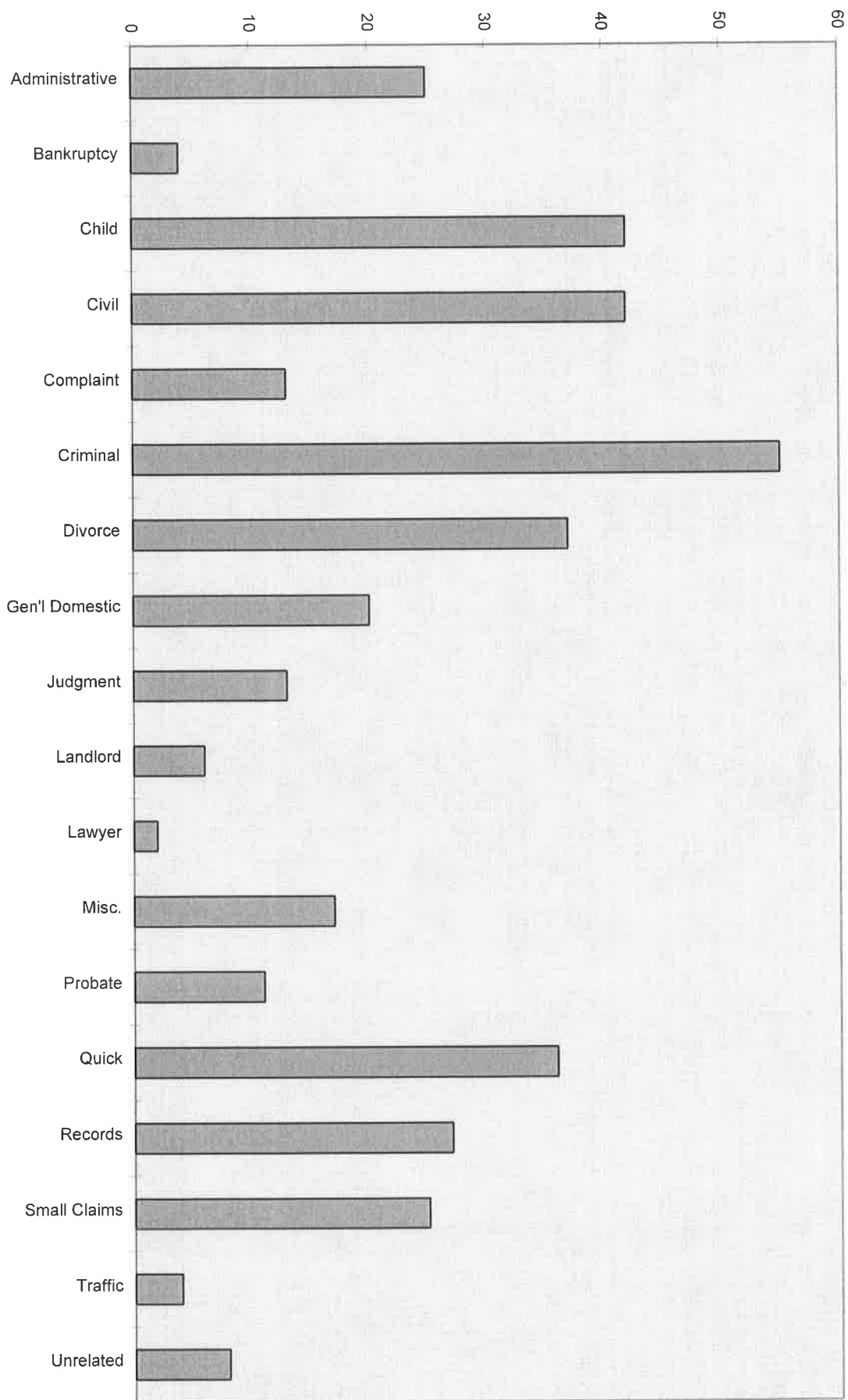
**Calls by Question Type (Feb. 20 - Apr. 17)**



**Court Information Line  
Calls by Entity (Feb. 20 - Apr. 17)**



**Court Information Line  
Calls by Subject Matter (Feb. 20 - Apr. 17)**





**JUDICIAL CONDUCT COMMISSION  
STATISTICAL REPORT**

**April 7, 1998**

**TOTAL NUMBER OF OPEN FILES: 78**

**FORMAL COMPLAINTS: 8**

**AWAITING FINAL ORDER FROM SUPREME COURT: 2**

**District - 1 Justice - 1**

**AWAITING DISPOSITION BY JCC: 6**

**District - 3 Justice - 3**

**FILES UNDER PRELIMINARY REVIEW: 49**

**District - 39 Juvenile - 4 Justice - 6 Pro Tem - 0**

**FILES UNDER PRELIMINARY INVESTIGATION: 21**

**District - 17 Juvenile - 0 Justice - 3 Pro Tem - 1**

**FILES CLOSED SINCE JULY 1, 1997: 45**

**FILES OPENED SINCE JULY 1, 1997: 73**

**NET INCREASE (DECREASE) IN CASE LOAD SINCE JULY 1, 1997: 28**

**TOTAL WRITTEN COMPLAINTS FILED IN FY 95: 115**

**TOTAL WRITTEN COMPLAINTS FILED IN FY 96: 84**

**TOTAL WRITTEN COMPLAINTS FILED IN FY 97: 72**

**SANCTIONS IMPOSED IN FY 96 (JULY 1, 1995-JUNE 30, 1996):**

**SUSPENSION AND CENSURE: 1 (REMANDED BY SUPREME COURT)**

**CENSURE: 1 (REMANDED BY SUPREME COURT)**

**PRIVATE REPRIMAND: 3**

**DISMISSED WITH ADMONITION: 5**

**SANCTIONS IMPOSED IN FY 97 (JULY 1, 1996-JUNE 30, 1997):**

**STIPULATED CENSURE: 1**

**PUBLIC REPRIMAND: 0**

**STIPULATED PUBLIC REPRIMAND: 3**

**PRIVATE REPRIMAND: 5**

**DISMISSED WITH ADMONITION: 4**

**DISMISSED WITH COMMENT: 1**

**SANCTIONS IMPOSED TO DATE IN FY 98 (JULY 1, 1997-JANUARY 6, 1998):**

**PUBLIC REPRIMAND: 2 (1 PENDING SUPREME COURT REVIEW)**

**STIPULATED PUBLIC REPRIMAND: 2 (1 PENDING SUP. CT. REVIEW)**

**PRIVATE REPRIMAND: 1**

**DISMISSED WITH CAUTION: 4**

# Priority of Jury Issues

## 1. IN COURT PROCEDURES

### A. VOIR DIRE (11)

- (1) Develop statement of purpose of voir dire so judges might better determine propriety of questions
- (2) Who asks questions?
- (3) Routine juror questionnaires prior to day of trial
- (4) Case specific juror questionnaires prior to day of trial
- (5) Ensure jurors are treated with respect & regard for their privacy
- (6) Preliminary opening statements prior to voir dire
- (7) Training judges in conducting voir dire

### B. JUROR NOTES AND QUESTIONS

- (1) Establish right of jurors to take and keep notes and ensure jurors are advised of the right to do so
- (2) Establish the right of jurors to ask questions and ensure jurors are advised of the right to do so
- (3) Develop process by which jurors ask questions of a witness about evidence; of a judge about instructions

### C. JURY ORIENTATION & INSTRUCTIONS

- (1) Pretrial instructions
- (2) Instructions during trial
- (3) Juror questions about instructions
- (4) Plain English instructions
- (5) Case-specific instructions
- (6) Final instructions prior to closing arguments
- (7) Written instructions
- (8) Is orientation video being shown uniformly?
- (9) What is the nature and content of local orientation programs?
- (10) Improve orientation information

### D. PRESENTATION OF EVIDENCE

- (1) Parties provide jurors with notebooks for keeping trial materials organized
  - ◇ witness list & photos
  - ◇ criminal charges
  - ◇ pleadings & documents
  - ◇ evidence
  - ◇ instructions
- (2) Improve management of trial exhibits
- (3) Use deposition summaries
- (4) Develop procedures for periodic summaries during trial
- (5) Develop use of modern technology in the presentation of evidence

### E. PEREMPTORY STRIKES

- (1) Eliminate/Limit

- (2) Hold alternate jurors until a verdict is announced and jury discharged
- (3) Allow alternate civil jurors to deliberate and vote
- (4) Judge should set deliberation schedule and advise jurors
- (5) Process to allow jurors to identify point on which there is an impasse, permit one session only of further argument or instruction

**I. DISCUSSION OF EVIDENCE**

- (1) Develop rule change and instruction that would permit jurors to discuss the evidence prior to deliberation
- (2) Develop circumstances under which discussion may occur
- (3) Develop limits to the discussion

**J. REMOVAL FROM THE JURY PANEL FOR CAUSE**

- (1) Eliminate URCrP 18(h) regarding exemptions because Utah has no exemptions from jury service
- (2) Standard for impartiality of jurors

**2. COMPOSITION OF JURIE**

**A. RANDOM SELECTION PROCEDURES**

- (1) Random stratified selection
- (2) Striking grossly unrepresentative juries
- (3) Obtain demographic information (as an assist to making juries representative)
- (4) Summon jurors on regional (Judicial District) basis

**B. JURY SOURCE LISTS**

- (1) Eliminate data errors in current juror source lists
- (2) Use additional juror source lists

**C. NOTIFICATION AND SUMMONING PROCEDURES**

- (1) Improve effort to pursue no shows (including failure to return qualification form)
  - ◇ Locator services
  - ◇ Process servers
  - ◇ County sheriff
  - ◇ Penalty for failure to respond/appear
- (2) Combine qualification and summons process
- (3) Develop uniform qualification and summons process
- (4) Provide more useful information to the jurors as part of qualification and/or summons
- (5) Obtain voir dire information as part of qualification process

**D. ELIGIBILITY FOR JURY SERVICE**

- (1) Should mental or physical disability be a disqualification or grounds for requesting to be excused?
- (2) Is the need to read, speak, and understand English a valid minimum qualification?