

**Judicial Council Planning  
Session  
Minutes**

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**August 26, 1998**

**Park City, Utah**

**Chief Justice Richard C. Howe, Presiding**

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**Members Present:**

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

**Staff Present:**

Daniel J. Becker  
Myron K. March  
Tim Shea  
Eric Leeson  
Holly M. Bullen  
Fred Jayne  
Raymond H. Wahl  
Marilyn Branch  
Richard H. Schwermer  
D. Mark Jones  
Gordon Bissegger  
Gary Wilson  
Rolen Yoshinaga  
Kristin Brewer  
Blake Swain  
Cindy Williamson

**Guests:**

David Walsh, CCJJ  
Bill Dinehart, Leg. Fiscal Analyst  
Hon. Michael Lyon  
Hon. Michael Wilkins  
Hon. Jeril Wilson  
Hon. Hans Q. Chamberlain

**Welcome:**

Chief Justice Howe welcomed guests, members and staff to the Judicial Council's Annual Planning Session.

**Overview of Planning Session:**

Dan Becker provided an overview of the planning session which included segments on the following: a) trends and projections; b) building block presentations; c) discussion and debate; d) review of substantive legislation; and e) creating the budget plan/voting.

On behalf of Ted Stuart and Lynne Koga, David Walsh extended an apology to members of the Judicial Council for Mr. Stuart's and Ms. Koga's absence. Mr. Walsh said he has had numerous discussions with Dan Becker and those conversations have been helpful in understanding the Judiciary's budget needs.

Next, Mr. Walsh said that state surplus funds have not yet been determined. Mr. Walsh explained that the Governor's budget guidelines this year do not include match requirements. Mr. Walsh shared information on the new Juvenile Justice Block Grant which is estimated at \$2.8. Mr. Walsh stated that funds from the \$2.8 million will require a 10% match.

Mr. Walsh indicated that the judiciary competes with budgetary requests from other agencies, i.e., Public Safety and the Utah Dept. of Corrections. There are a number of difficult budget choices to be made on behalf of each of these entities.

Leo Memmott, Legislative Fiscal Analyst, has announced his retirement. John Massey will replace Mr. Memmott.

**Placing the Budget Proposal in Context:**

Eric Leeson provided an overview on workload data and trends which included: a) FY1996-FY1998 state court workload summary; b) district and juvenile court changes in criminal/delinquency filings; c) average annual growth in filings; and d) top ten fastest growing counties. Mr. Leeson indicated that the detailed presentation is made possible through the Data Warehouse Program. Information from the Data Warehouse Program will be available to judges on the Internet next month.

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

District court filings 1997-1998	4.45%
Juvenile court referrals 1997-1998	-8.26%
Justice court filings 1997-1998	-9.59%
Total state court filings 1997-1998	2.50%

Top ten fastest growing counties:  
Grand County  
Tooele County

Washington County  
Utah County  
Wasatch County  
Wayne County  
Kane County  
Summit County  
Sevier County  
Iron County

**Fiscal Data and Trends:**

Dan Becker stated that the courts budget is \$90,730,800 and 1.5% of the state's total budget. The Juvenile Court, Guardian ad Litem, Security, Leases, and Justice Courts have received large increases relative to other areas, shifting the pro-rata share per program the last five years. The Juvenile Court has received additional funding because of the continued emphasis on juvenile crime.

Summarization of new building block requests total \$5,292,500. The \$5,292,500 has been reduced from approximately \$9,000,000 in requests considered by boards and committees. Mr. Becker noted that the boards and committees have been much more disciplined in advancing their budgets to the Council this year. The FY1999 General Fund budget for the courts is \$83,495,700 and 2% of that amount equals \$1,669,914.

**Discussion/Consideration of the District Court Board Request:**

Judge Michael Lyon was present on behalf of the Board of District Court Judges and accompanied by D. Mark Jones, District Court Administrator. Judge Lyon indicated that the District Board set three priorities totaling \$751,500: a) twenty new clerks; b) capital law clerk; and c) five new law clerks.

Judge Lyon indicated that district judges are concerned about the recruitment of new clerks and retention of a qualified work force. Currently, clerks are facing complex work loads that are overwhelming because of onerous work assignments. Next, Judge Lyon stated that the shortage of clerks is only part of the problem and that there should also be an increase in salaries for clerks. A request was made by Judge Lyon that the Administrative Office of the Courts review clerk classifications.

The Board's second priority is for a capital law clerk. The capital law clerk position presently exists and is funded through a grant from the State Justice Institute (SJI). The grant expires in October of 1999. The Board feels that the service provided to the bench by this position is invaluable and should not lapse.

The third priority of the Board is for five law clerks. Judge Lyon stated that judges have a

high workload and the use of law clerks would allow a judge to be more effective with his/her time.

**Discussion/Consideration of the Request from the Appellate Court:**

Judge Michael Wilkins was present to make a request on behalf of the Appellate Court. The Judicial Council approved the Court of Appeals Mediation Program as their 16<sup>th</sup> priority for FY1997. The legislation was submitted, initially supported by both houses, but not funded by the Legislature. Judge Wilkins requested current funding for the program in the amount of \$180,100.

The Court of Appeals temporarily reallocated internal resources to fund a pilot program that began in January of 1998. Karin Hobbs is the program director and the program functions under the supervision of the Presiding Judge of the Court of Appeals. Settlement of appeals has two primary benefits. First, it is good public policy and provides an improved level of service to litigants, attorneys, and the public at large. Second, it assists the court in the management of its caseload.

**Discussion/Consideration of the Base Budget Request:**

Myron K. March, Deputy State Court Administrator, was present and requested that the base budget be increased by 0.6% which totals \$500,000. The base budget covers a number of items, some of which include: a) communications; b) postage; c) security; and d) office supplies.

**Discussion/Consideration of the Technology Committee Request:**

Judge Michael Wilkins, Chair of the Technology Committee, along with Rolan Yoshinaga, Director of Data Processing, were present on behalf of the Committee.

Judge Wilkins explained that the Legislature in years past reduced the data processing base capital budget. The impact of the reduction is being felt and the data processing function is operating at simple maintenance levels. Judge Wilkins stated that the CORIS program has been hampered because of lack of funds. In addition, the data processing department is not able to upgrade major servers at three different levels, i.e., database servers, desktop computers, and desktop operating systems. Expansion of existing programs is also impossible at the current funding level. On behalf of the Technology Committee, Judge Wilkins requested funding in the amount of \$400,000 to improve performance for court users.

**Discussion/Consideration of Supplemental Requests:**

Fred Jayne, Director of Finance, explained that supplemental requests are funds that are appropriated during the current fiscal year to cover budget shortages. Mr. Jayne requested funds in the amount of \$380,600 for juror, witness and interpreter costs.

**Discussion/Consideration of the Request from the Security Committee:**

Myron K. March, Deputy State Court Administrator, stated that the security request is a standard request. The Security Committee previously prepared a report and recommendations stating that the courts should retain the current service providers and provide adequate funding. Mr. March requested funding in the amount of \$328,350. Mr. March noted that to fully implement the recommendations of the Committee the cost would be approximately \$2 million.

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

Judge Hans Q. Chamberlain, Juvenile Court Board Chair, Judge Jeril Wilson, Juvenile Court Board Chair-Elect, and Raymond H. Wahl, Juvenile Court Administrator were present to make budgetary requests on behalf of the Board of Juvenile Court Judges. The Board of Juvenile Court Judges requested a Juvenile Court Judge in the Seventh Judicial District; a Juvenile Court Judge in the First District; eight deputy court clerks; a mediation grant replacement; three deputy court clerks; drug court grant replacement; and funds for security. The total request from the Board is \$1,157,725.

Judge Chamberlain recognized that Dan Becker's recommendations for funding of the juvenile court requests differed from those of the Board's. Mr. Becker recommended that the Juvenile Drug Court grant continue and be funded by continuation of the Byrne Grant, that pro-tem Juvenile Court Judges be appointed, and that Juvenile automation be funded.

**Discussion/Consideration of the Request from the Facilities Committee:**

Judge Hans Q. Chamberlain and Gordon Bisseger presented an overview of facilities statewide. On behalf of the Facilities Committee, Judge Chamberlain requested that the Council consider the Vernal Eighth District Court Project as the first priority, the Third District, Summit County: Coalville, Silver Summit and Park City as the second priority and Cache County First District Hall of Justice the third priority. The total budgetary request from the Committee is \$1,214,800.

**Discussion/Consideration of the Request from the Dept. of the Guardian ad Litem:**

Kristin Brewer, Director of the Guardian ad Litem Program, requested funding in the amount of \$632,900. The funding would allow the department to obtain additional attorneys, CASA coordinators, and computer equipment to better serve child clients. Ms. Brewer stated that because of the lack of attorneys the office may not be able to meet statutory requirements. Alternative funding mechanisms were discussed, i.e., tax check off boxes, license plate decals, and employees' charitable funds.

**Discussion/Consideration of a Request for Judicial Compensation:**

Myron March, Deputy State Court Administrator, reported that there is nothing listed under this category as of yet. A citizens' committee will meet to discuss the matter and report their recommendations to the Legislative Committee.

**Adjourn:**

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

**JUDICIAL COUNCIL  
PLANNING SESSION  
MINUTES**

**August 27, 1998**

**Park City, Utah  
Chief Justice Richard C. Howe, Presiding**

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**Members Present:**

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

**Staff Present:**

Daniel J. Becker  
Myron K. March  
Fred Jayne  
Raymond H. Wahl  
Tim Shea  
Blake Swain  
Holly M. Bullen  
Barbara Hanson  
Gordon Bissegger  
Marilyn Branch  
D. Mark Jones  
Richard H. Schwermer  
Peggy Gentles  
Cindy Williamson

**Guests:**

David Walsh

**Welcome:**

Chief Justice Howe welcomed guests, members and staff to the meeting.

**Overview of Agenda:**

Initially, there will be a review of Mr. Becker's recommendations. After that, time will be used to discuss the market salary plan and proposals, and then the Council will set priorities. There will also be a review of the proposed legislative agenda.

**Staff Analysis:**

The purpose in preparing the court administrator's recommendations is to look at the Governor's Guidelines, the needs of the Judiciary from a system wide perspective, and suggest

how the Judiciary might advance a building block that will fit within the 2% Guidelines. The Boards and Committees that have made presentations to the Council have their individual perspective and the Council should balance both perspectives.

Mr. Becker advanced a request at the 2% funding level that totals \$1,669,914. There are four elements to Mr. Becker's recommendations: a) clerks offices, i.e., deputy clerk positions, salary selectives, and CORIS enhancements; b) base budget increase; c) district court law clerk; and d) guardian ad litem.

Mr. Becker proposed 20 new clerk positions. These positions would be positions allocated both to the District and Juvenile Courts. The combined request from both courts was for 31 positions. Since 1994, clerk personnel has only increased by 5.6%. The allotment of clerks between court levels would be reviewed in July of 1999 when the most recent data has been obtained from the Clerical Weighted Caseload Study. Besides Mr. Becker's recommendation for new clerk positions, he recommended \$250,000 for an upgrade to CORIS; \$200,000 for the base budget; one district court law clerk at \$59,400; and four part-time Guardian ad Litem attorneys at \$100,000. Recommendations outside the Governor's two-percent guideline include: a) leases O&M; b) security; c) court connection to the State Human Resource Payroll System; and d) juvenile child welfare mediation.

Next, Mr. Becker proposed alternative recommendations to be funded by a means other than the General Fund which would not compete with funding priorities under the 2% Guideline. Mr. Becker recommended the following: a) juvenile drug court; b) pro-tem juvenile court judge (2); and c) juvenile automation, be funded through federal grant programs.

Following Mr. Becker's budget recommendations, he made a presentation on clerk salaries. Mr. Becker proposed that the entry level clerks' salary be raised to \$8.83 an hour. Although this will cause salary compression, the market survey and a very high turnover rate of employees at the entry level, show that these positions require attention. In addition, supervisors have noted that it is very difficult to attract and keep experienced, mature employees in the entry level positions. In increasing the deputy court clerk I salary, the proposal also suggested that the deputy clerk positions II and III be combined into a single position and that the qualifications be upgraded. Under the proposal, supervisors will be able to underfill the position if the candidate does not meet the job requirements. In order to address compression, the plan provides for providing in-range adjustment for deputy clerk II & III and lead clerks.

**Discussion:**

Judge Stirba proposed an adjustment to Mr. Becker's recommendations by providing that deputy court clerks III and above receive salary adjustments first because encouragement should be given to those employees with the greatest responsibilities. Judge Nielsen proposed reducing the number of clerks requested and designating the money for CORIS improvements.



The Board of District Court Judges, the Board of Juvenile Court Judges, court executives and clerks of courts support the proposal to raise entry level salaries because of the need to attract and keep qualified individuals in the court system. It was noted that court clerk III's and lead deputies received increases from the market survey in 1996, while entry level positions did not.

**Motion:**

A motion was made by Judge Braithwaite to adopt the salary survey and implementation proposal, effective October 1, 1998. The motion was seconded by Mr. Jenkins. The motion carried with one vote opposed.

Judge Stirba requested that the record reflect that she favors the 1998 salary survey, she voted in opposition to the motion because she believes the Judicial Council should address the deputy clerk III and lead deputy clerk salaries first.

**Proposal:**

Judge Van Dyke proposed that the Judicial Council send a message to the Legislature that the judiciary is a separate branch of government. Furthermore, that the judiciary's needs are real and substantial although just a small portion of the total state budget. Judge Van Dyke suggested that the judiciary's budget request be doubled. Judge Nielsen stated that funds received by state entities are the result of taxes paid by state residents and that if the judiciary increases its request, then other agencies will follow suit and this will result in increased taxes to residents. Judge Nielsen opposed Judge Dyke's proposal and indicated the judiciary should work within the 2% guidelines.

Judge Lindsey and Justice Russon asked about the history of the 2% guideline. David Walsh, Director of Planning and Budget, indicated that a number of years ago the Governor's office asked agencies to submit no more than a 10% request and that was unrealistic because agency budgets could not be funded at 10%. This resulted in a subsequent request to agencies within the last four to five years that budget requests be more reasonable i.e., in the 2% range. Mr. Walsh stated that the Legislature appreciates the Judiciary's attempt to work within the 2% guidelines and that some items are granted outside the guidelines.

James Jenkins said the he appreciates the sentiment of Judge Van Dyke's suggestion but as a practical matter the Judicial Council should take advantage of setting its own priorities and participating within the rules applied to government generally. Mr. Jenkins indicated that failure to do so may result in the Judiciary losing some of its credibility

**Motion:**

A motion was made by Judge Van Dyke to increase the judiciary's request to 4%, rather than 2%. The motion was seconded by Judge Stirba. The motion failed for lack of a majority vote.

**Motion:**

A motion was made by James Jenkins that the Judicial Council request funding for capital expenditures for building projects. The motion was seconded by Judge Burton and carried unanimously.

**Legislation:**

Tim Shea presented a summary of proposed Legislation.

Appellate Mediation Office - Legislation provides immunity for mediator.

Court Jurisdiction Amendments - Legislation provides that small claims actions cannot be brought against a governmental entity. In addition, this legislation clarifies amendments made by HB460.

**Motion:**

A motion was made by Judge Schofield to approve the Court Jurisdiction Amendments. The motion was seconded by Judge Stirba and carried unanimously.

Proposed Amendments to Cohabitant Abuse Act; Juvenile Court Act - Legislative intent is to leave cohabitant abuse petitions between adults in the district court; when the petition is on behalf of a child between parents it would also be in district court; when the petition is on behalf of a child between non-parental petitioners then the petition would be in juvenile court.

**Motion:**

A motion was made by Judge Stirba to approve the proposed amendments to the Cohabitant Abuse Act; Juvenile Court Act. The motion was seconded by Judge Van Dyke and carried unanimously.

Fine Collection Program - Legislation delineates agency responsibility for maintaining and collecting past due accounts.

**Motion:**

A motion was made by Judge Stirba to refer proposed Legislation on the Fine Collection Program back to the Liaison Committee for redrafting, taking into consideration the jurisdictional issues as well as others. The motion was seconded by Judge Nielsen and carried unanimously.

**Prioritization Vote:**

The Judicial Council, by individual vote, after a lengthy discussion and debate prioritized requests from the various boards and committees.

The final prioritization by the Judicial Council is as follows:

1.	15 District Court Clerks	619,125
2.	Data Pro. CORIS	318,000
3.	Salary Selectives	235,000
4.	Capital Law Clerk	59,400
5.	7 <sup>th</sup> Juvenile Judge	230,800
6.	GAL	100,000
7.	Base Budget	<u>107,575</u>
		\$1,669,900

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8.	Appellate Mediation	90,000
9.	1 <sup>st</sup> Juvenile Judge	<u>230,800</u>
		\$1,990,700

**Adjourn:**

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

**JUDICIAL COUNCIL  
MEETING MINUTES**

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**Friday  
August 28, 1998**

Resort Center Lodge and Inn  
1415 Lowell Ave.  
Park City, Utah

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*Chief Justice Richard C. Howe, Presiding*

**Members Present:**

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

**Members Excused:**

Hon. Michael K. Burton

**Staff Present:**

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

**Guests:**

Edward McConkie, Director  
Utah Sentencing Commission  
Steven Stewart, Director  
Judicial Conduct Commission  
Hon. Judith Atherton  
Joe Costanzo, Deseret News

**Welcome - Approval of Minutes:**

Chief Justice Howe welcomed guests, members and staff to the meeting.

**Motion:**

A motion was made by Judge Greenwood to approve the minutes of July 1 & 3, 1998. The motion was seconded by Judge Van Dyke and carried unanimously.

**Report from the Chairman:**

Chief Justice Howe received a letter from Hon. Frank Noel, Presiding Judge for the Third Judicial District, suggesting that the Judicial Council support legislation that would reform Judicial Conduct Commission membership. Judge Noel included three recommendations in his letter to Chief Justice Howe: a) the investigating and prosecutorial responsibilities of the Judicial Conduct Commission should be separated from the adjudication duties of the Commission; b) the American Bar Association Model for Judicial Conduct Committees suggests that membership should consist of a majority of judges; and c) the reconstituted Commission should also include a provision that judges may be provided paid counsel of their choice in proceedings, at a minimum if a judge prevails payment of the judge's attorneys fees should be required of the Commission or the State.

The process for studying the proposal for Family Court will begin on October 27, 1998, from 3:00 p.m. to 5:00 p.m. at the Scott M. Matheson Courthouse. A number of various entities will be invited to hear a panel presentation moderated by Judge Judith Billings.

**State Court Administrator's Report:**

A list of budget priorities reached by members of the Judicial Council on August 27, 1998 was distributed. The priorities are as follows:

1.	15 District Clerk	619,125
2.	Data Pro. CORIS	318,000
3.	Salary Selectives	235,000
4.	Capital Law Clerk	59,400
5.	7 <sup>th</sup> Juvenile Judge	230,800
6.	GAL	100,000
7.	Base Budget	<u>107,575</u>
	Total	1,669,900

Dan Becker suggested that next year's budget planning session workbook include a section on a set process for arriving at budget priorities and voting on building blocks. Mr. Becker relayed that Justice Russon suggested that initial discussions be based upon an alphabetical list of requests with no dollar amounts attached.

The Racial and Ethnic Fairness Task Force received a grant of \$33,500 for second year funding. The Task Force is in the process of holding public hearings and judges are encouraged to attend. Some concerns of individuals who have attended the hearings include: a) allegations of profiling by law enforcement; b) failure to use certified interpreters; and c) lack of communication with defense counsel.

### **Management Committee Report:**

Judge Greenwood reported that Kim Allard, the court's Web Publisher, was present during the last meeting and provided an extensive update on the Internet and Intranet. Holly Bullen reviewed a current list of judges serving on various committees. Suggestions were made that the following individuals be contacted and asked if they would like to serve on an internal committee of the Capital Facilities Standing Committee: Hon. Christine Durham, Hon. Parley Baldwin and Hon. Robert Yeates.

After Judge Greenwood's report to the Council about the Management Committee meeting, James Jenkins suggested that a member of the Utah State Bar be asked to participate on the internal committee.

### **Policy and Planning Committee Report:**

On behalf of Judge Burton, Judge Braithwaite said the minutes are reflective of the last meeting of the Policy and Planning Committee.

### **Liaison Committee Report:**

Judge Schofield stated that the Liaison Committee met yesterday to discuss substantive legislation which will be discussed again prior to the next Interim Committee Meeting.

### **Biannual Jury Inclusiveness Report:**

The Biannual Jury Inclusiveness Report compares adult population in a region with a count of jurors to determine if lists are inclusive. The process gathers names in each county from a voter registration list and drivers' license list. The duplicate names are purged and remaining names are merged to form a master jury list for a six month period. Tim Shea stressed the importance and difficulty of purging duplicate names. Once the master jury list is compiled, jurors are then drawn at random. This report was presented for information purposes to apprise the Council of the status of efforts to ensure inclusiveness.

### **Utah Sentencing Commission Update:**

Edward McConkie, Director of the Utah Sentencing Commission, updated the Council on recent developments within the Sentencing Commission. Copies of the new Adult Sentencing and Release Guidelines were distributed. Approximately 1000 individuals from various agencies will be trained in the use of the new Guidelines. The Guidelines are not intended to be a substitute for experience or expertise, nor are they intended to change the system. Rather, the Guidelines attempt to communicate a standard in sentencing. The Guidelines will be effective October 15, 1998.

The Sentencing Commission has also developed the Juvenile Court Sentencing Guidelines. The Juvenile Justice Task Force has requested reports based upon the Juvenile Court Sentencing Guidelines. There has been request for federal grant funds to assist in evaluating the impact of the guidelines.

Lastly, Mr. McConkie mentioned that the Sentencing Commission has also directed efforts toward intermediate sanctions. Commission members have worked with members of the Board of District Court Judges and developed alternative sanctions i.e., day reporting, half-way houses, and privatized pre-sentence evaluation reports.

#### **Judicial Conduct Commission Update:**

Steven Stewart, Director of the Judicial Conduct Commission, was present and provided the following statistical report:

Total number of open files: 66  
Formal complaints: 7  
Files under preliminary review: 47  
Files under preliminary investigation: 15.

Following the statistical report, Mr. Stewart recited an analysis of several case examples and what the Commission might do with each case in a like situation. Recently, the composition of the Judicial Conduct Commission changed because of a Supreme Court ruling in *In Re: Young*. Commission membership now includes a total of six individuals. The Commission is considering proposed legislation to address Commission membership for consideration by the 1999 Legislature.

#### **Education Standing Committee Update:**

Judge Judith Atherton, Chair of the Education Standing Committee, was present along with Dr. Diane Cowdrey, Education Director. Judge Atherton expressed her appreciation to Dr. Cowdrey for the excellent job that both she and her staff are doing in the education division.

Annually, the Education Department is in charge of the Appellate, District and Juvenile Court Conferences, the Annual Judicial Conference, Justice Court Conferences, and Annual Employees' Conference. This past year the department has also been involved in a joint court executive meeting with the State of Idaho, a sexual violence program, and a Winter Institute on Law and Religion.

Future endeavors of the Department will include the Legal Institute training for non-lawyer trained judges. A total of 10-20 judges will participate in this one to two week residential program taught by law professors and other judges. The Education Department would also like to become more involved in technology issues and promote training, conference registration, etc.

by e-mail.

**Budget Administration Discussion:**

This budget administration discussion is in follow-up to the Council's meeting in Sun Valley about how the Judiciary's budget is created and administered. The discussion focused on the roles and responsibilities of those individuals involved in the budget process.

Mr. Becker distributed the Rule of Judicial Administration that relates to budget and fiscal management, Rule 3-406. Next, Mr. Becker cited Rule 3-301 which addresses the specific fiscal duties of the State Court Administrator and the Administrative Office of the Courts. Rule 3-301 provides that the State Court Administrator prepare, administer and manage the state judicial budget and establish a fiscal management system, including accounting, auditing and procurement procedures. In addition, Rule 1-203 provides that the presiding officer of the Judicial Council supervise the State Court Administrator in all of his/her responsibilities.

Rule 3-406 attempts to identify all individuals that have responsibility in the area of budget and fiscal management i.e., program directors, Judicial Council, State Court Administrator, court executives, and the budget director of the Administrative Office. Mr. Becker said current office procedure is consistent with the rule. However, there are two areas which could be improved upon: Rule 3-406 (C) Responsibility of the Administrative Office. It is the responsibility of the administrative office to: (iii) provide monthly expenditure reports to court executives, program directors, the state court administrator, Boards of Judges and the Council. Mr. Becker stressed that those reports are generated and provided to court executives and program directors, but the reports have not routinely been provided to Boards of Judges and to the Council. Additionally, there is some concern about Rule 3-406 (A) Responsibility of the Council. It is the responsibility of the Council to: (iv) allocate funds to the geographic division of courts in accordance with priorities established by the Council.

Mr. Becker proposed changes in the application of the rule as it presently reads. The changes would include that: a) the Chief Justice and Mr. Becker review in detail all the elements of the annual budget with the Management Committee following the conclusion of a Legislative session and then make a report to the Judicial Council; b) once the budget has been established, transfers or adjustments from one program to another would be discussed in advance between the State Court Administrator and the Council chair. If the transfer involved a material change in a program, the change would be reviewed by the Management Committee and c) that the application of turnover savings to non personnel expenses, would be reviewed with the Management Committee when projections allowed for a distribution plan.

Following discussion of these procedures, Chief Justice Howe indicated that he sensed it was the consensus of the Judicial Council that large budgetary expenditures, such as transfers in facility funding, should be approved by the Management Committee.



**Motion:**

A motion was made by Judge Stirba that Mr. Becker's proposals be approved and that any substantial additions or reductions to or from any specific capital facilities budget in connection with construction of a courthouse be brought before the Management Committee. Judge Stirba's motion included that any transfer of funds from one budget to another budget within the judiciary be discussed in advance with the Council Chairman and any proposal for material program changes be brought to the Management Committee. The motion was seconded by Judge Greenwood. The motion carried unanimously.

**Motion:**

A motion was made by Judge Glasmann that Mr. Bissegger and a representative of DFCM be present during an upcoming meeting of the Judicial Council to provide a review of how the capital facility budget works, using the Ogden Courthouse as an example. The motion was seconded by Judge Stirba. The motion carried unanimously.

**Approval of Amendment to Council Rules:**

Tim Shea indicated that amendments to Judicial Council Rules are published for comment twice a year. The Policy and Planning Committee referred two rules to the Council for debate, the balance of the rules reviewed by the Policy and Planning Committee appeared on the Consent Calendar of the Council.

The first of the two rules is Rule 2-205. Expedited [~~Emergency~~] rulemaking procedure. The usual practice is to have the effective date of the changes coincide with publication of Utah Court Rules Annotated or the supplement following the comment period. However, if the Council adopts a rule under its emergency rulemaking, the Council establishes an effective date prior to the comment period. The emergency rule is published for comment with the next set of proposed changes and is in effect during the comment period. Mr. Shea stated that not many of the rules are actually emergencies but there is a need for the change to be in effect earlier than three to four months after the process starts. The rationale for the change is simply to describe the process as an expedited process, rather than emergency.

**Motion:**

A motion was made by Judge Braithwaite that the rule be adopted with the word "emergency" in the title of the rule, in place of the proposed term "expedited". The motion was seconded by James Jenkins and carried unanimously.

The second rule is Rule 4-608. Trials de novo of justice court proceedings in criminal cases. This rule would eliminate probable cause in the appeal from the justice court trial to the district court trial de novo. The rationale behind the change is that there is a not a review of the

record for error but rather a brand new trial and it is as though the trial basically never occurred. Several justice court judges are opposed to the the change. The Policy and Planning Committee reviewed the comments from the justice court judges and the Committee decided to propose a change to the rule.

**Motion:**

A motion was made by Judge Stirba that the Council deny approval of the amendment and refer the matter back to the Policy and Planning Committee for further consideration. The motion was seconded by Judge Sandberg. The motion carried unanimously.

**Motion:**

A motion was made by James Jenkins that the Judicial Council approve Rule 2-205, as amended. The motion was seconded by Judge Glasmann. The motion carried unanimously.

**Consent Calendar - Uniform Fine and Bail Schedule:**

Judge Nielsen suggested several changes to the proposed Uniform Fine and Bail Schedule.

**Motion:**

A motion was made by Judge Schofield to approve everything on the Consent Calendar with the exception of the Uniform Fine and Bail Schedule and that that matter be placed upon the next Council agenda with certain modifications. The motion was seconded by Judge Stirba and carried unanimously.

**Executive Session:**

A motion was made by Judge Van Dýke to move into executive session. The motion was seconded by Judge Glasmann and carried unanimously.

**Adjourned:**

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

**JUDICIAL COUNCIL  
MINUTES**

\*\*\*\*\*

**Tuesday  
September 8, 1998**

**Homestead  
Midway, Utah**

\*\*\*\*\*

**Members Present:**

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

**Staff Present:**

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

**Guests Present:**

Hon. Gregory Orme  
Hon. F. Kirk Heaton  
Bruce Thomas

**Welcome:**

Chief Justice Howe welcomed guests, members and staff to the meeting. The Chief Justice expressed his appreciation to the Council for their efforts during the budget planning session.

**Judicial Council Sub-Committee Reports:**

**Management Committee Report:**

Judge Greenwood said that the Management Committee met last week to discuss the

Council agenda and several other issues.

Policy and Planning Committee Report:

Judge Burton indicated that the Policy and Planning Committee has not met since he reported to the Council last.

Liaison Committee Report:

Judge Schofield reported that the Liaison Committee has not met since he last reported to the Council.

Fine Collection Program:

Tim Shea proposed draft legislation that amends two areas of Subsection 77-18-1(10) as requested by the Judicial Council:

- Permitting, but not requiring, the court to continue the defendant on bench probation after the close of supervised probation
- Striking the reference to imposing the suspended sentence for failure to pay the fine after the close of supervised probation.

Next, Mr. Shea addressed the following items, inclusion of Juvenile Court in the fine collection program and calculation of interest in criminal judgments in the Justice Court. Mr. Shea recommended endorsement of the proposed legislation.

Motion:

A motion was made by Judge Nielsen that the word "transfer" in line 19 be changed to "confer." The motion failed for lack of a second.

Motion:

A motion was made by Judge Schofield that the Judicial Council approve the proposed legislation. The motion was seconded by Judge Lindsay and carried.

Executive Session:

A motion was made by Judge Greenwood to go into executive session. The motion was seconded by Judge Stirba and carried unanimously.

The Council concluded the executive session and resumed the business agenda.

**Motion:**

A motion was made by Judge Nielsen to rescind the retention certification of Judge Kirk Heaton based upon his failure to satisfy all the requirements of certification. The motion was seconded by Judge Greenwood. The motion carried with seven in favor and six opposed.

**Motion:**

A motion was made by Judge Glasmann that notice of the Council's action be given to the county authority that employed Judge Heaton and that be the extent of the notification. The motion was seconded by Judge Sandberg.

**Motion:**

A motion was made by Judge Stirba that a letter be written to the County Commission recognizing that Judge Heaton has provided valuable service. However, the Council acted to rescind retention certification of Judge Heaton because the judge did not take timely action on specific cases that he had indicated to the Council that he would. The motion was seconded by Judge Sandberg.

**Restatement of Previous Motion:**

A motion was made by Judge Glasmann to notify the County Commission of the Council's action. Additionally, that an explanation be provided that the judge has given valuable service and that the action was based upon the technical reason that the judge did not make certain decisions in a timely manner. Further modification of the motion included that Judge Heaton made representations he would rectify the situation by a certain date and failed to do so. The motion was seconded by Judge Stirba.

**Motion Withdrawn:**

Judge Glasmann withdrew his original motion. Judge Sandberg withdrew his second to the motion.

**Motion:**

A motion was made by Judge Greenwood that the Judicial Council mail a letter to Judge Heaton's employing entity notifying them that the Council rescinded its retention certification for Judge Heaton on the basis that he initially failed to comply with the timely resolution of cases criteria. Furthermore, that the judge then failed to comply with his representations to the Council

that he would rule on certain pending cases in a timely manner. The motion was seconded by Judge Stirba. The motion carried with seven in favor and six opposed.

**Motion:**

A motion was made by James Jenkins that notification to the County Commission reflect that the vote was seven to six. The motion was seconded by Judge Van Dyke. The motion carried.

**Motion:**

A motion was made by Judge Greenwood that the Justice Court Administrator along with Judge Heaton, develop a method of calendaring cases that would avoid similar problems in the future and provide for oversight by the Judicial Council in the future, and that a suggestion be made to the judge that he discuss this matter with other judges in the system. The motion was seconded by Judge Glasmann. The motion carried.

**Ethics Advisory Committee Report:**

Judge Gregory Orme, Chair of the Ethics Advisory Committee, was present to provide the committee's annual report to the Council. Judge Orme indicated that the most important thing about the Advisory Committee is that the volume of the work has increased substantially. In review of the records, Judge Orme found that the Committee issued the following number of opinions:

- 1992 - issued 3 informal opinions
- 1991 - issued 1 informal opinion
- 1994 --issued 6 informal opinions
- 1995 - issued 4 informal opinions
- 1996 - issued 3 informal opinions
- 1997 - issued 9 informal opinions
- 1998 - issued 14 informal opinions.

Judge Orme stated that it would not have been possible for the Committee to issue this many opinions but for the excellent service that Brent Johnson has provided.

Next, Judge Orme provided a summary of Opinion 98-14. The Committee addressed the question of judges automatically recusing themselves when a court employee in their district or a family member of a court employee is a litigant. In Opinion 98-14 the Committee refined their ruling, stating that the recusal is automatic only when an employee is a litigant. In other instances the judge is to make full disclosure and make inquires if the parties. In Opinion 98-8 the Committee revisited the question of marriages performed by judges, compensation and the use of public facilities to perform marriages. Judges have a duty to perform marriages, although

it is not a core judicial function. A judge may collect a fee for performing a marriage if the marriage occurs during non-working hours and is not at the court facility.

Judge Orme brought to the Council's attention the Code of Judicial Conduct and Ethics which he said provides judges an excellent resource in answering approximately 90% of all questions referred to the Ethics Advisory Committee. Judge Orme suggested that a copy be provided to each judge for his/her chambers.

**Approval of Third District Juvenile Court Commissioner:**

Bruce Thomas, Third District Juvenile Court Executive, requested that the Judicial Council consider approving the appointment of a replacement commissioner for the Third District Juvenile Court upon Commissioner Richard Birrell's retirement. The judges of the Third District Juvenile Court met this morning and asked that Mr. Thomas submit the following three names to the Council for consideration: William Roger Russell, Debra Creek-Mendez and Cheryl Luke. The Board of Juvenile Court Judges recommended the appointment of William Roger Russell.

**Motion:**

A motion was made by Judge Lindsay that the Judicial Council approve the appointment of William Roger Russell as Third District Juvenile Court Commissioner. The motion was seconded by Judge Greenwood and carried unanimously.

**Recognition of Outgoing Council Members:**

Chief Justice Howe and the Council recognized and thanked outgoing Council members, Judge Pamela T. Greenwood, Judge Steven Van Dyke and Judge Kent Nielsen for their years of dedicated service on the Judicial Council.

**Adjourned:**

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

**PROPOSED  
MANAGEMENT COMMITTEE  
&  
JUDICIAL COUNCIL CALENDAR FOR  
1999**

**Management Committee Meeting:**  
(generally 2<sup>nd</sup> Wednesday - - 12:00 p.m.)

January 13, 1999

February 10, 1999

February 25, 1999

April 14, 1999

May 12, 1999

June 16, 1999

August 11, 1999

September 8, 1999

October 13, 1999

November 10, 1999

December 8, 1999

**Judicial Council Meeting:**  
(generally 4<sup>th</sup> Monday - - 8:30 a.m.)

January 25, 1999

February 22, 1999

March 3-6 1999 (Mid-Year Bar - St.  
George)

April 26, 1999

May 24-25, 1999 (Site visit — Farmington)

June 30-July 3, 1999 (In conjunction with  
Annual Bar Conference-Sun Valley)

August 18-20, 1999 (Planning Session)  
(Site to be determined)

In conjunction with Annual Judicial Conf.  
TBD

October 25-26, 1999 (Site visit — Kanab)

November 22, 1999

December 20, 1999

\*Site visits for 1998 - Wasatch County, Monticello



**MANAGEMENT COMMITTEE  
MINUTES**

**October 15, 1998**

**Administrative Office of the Courts  
450 South State  
Salt Lake City, Utah  
\*\*\*\*\***

**Members Present:**

Chief Justice Richard C. Howe  
Hon. Michael Glasmann  
Hon. John Sandberg

**Staff Present:**

Daniel J. Becker  
Myron K. March  
Holly M. Bullen  
Timothy Shea  
Raymond H. Wahl  
Richard H. Schwermer  
Peggy Gentles  
Jennifer Yim  
Fred Jayne  
Cindy Williamson

**Guests:**

Hon. Tyrone Medley

**Welcome:**

Chief Justice Howe welcomed members, guests and staff to the meeting.

**Proposal for the Family Court Process:**

Tim Shea presented a proposal for the structure of the debate about the Family Court issue. A panel discussion will be held on October 27, 1998, from 3:00 p.m. to 5:00 p.m. and will be moderated by Hon. Judith Billings. There will be six panelists who are former members of the Family Court Task Force, Chaired by James B. Lee. The purpose of the debate is for everyone to familiarize themselves with the findings and recommendations contained in the final report of the Task Force.

During the next phase of the process the Council and the Boards will educate themselves about the public's perspective of Family Court. This will provide entities a forum with the Judicial Council in which to identify issues and alternative solutions. This process would occur in January during the Council meeting. As part of the process, the Council would invite at least two members of the Board of District Court Judges and Board of Juvenile Court Judges to attend

the Council meeting during that specific portion of the meeting. Representatives of the Boards would rotate so that all of the members would have at least some exposure to the reports.

A total of seven meetings will be held within a six-month period. As a preliminary step to receiving opinions from different organizations, the Judicial Council will conduct a joint workshop in December with all Board Members. Representatives from organizations such as the National Center for State Courts or the National Council of Juvenile and Family Court Judges will make presentations on how different states have responded to similar issues. There will also be a representative from the judiciary of a state with a formal structural family court, plus a representative from a state with a procedural family court.

At the end of the six-month period the Judicial Council and the Boards of Judges will assimilate all of the information, debate what it means and consider what the action plan of the judiciary ought to be in response to the Family Court proposals. In September of 1999, in conjunction with the Annual Judicial Conference there would be a report issued to the judiciary as a whole during the business meeting.

**Motion:**

A motion was made by Judge Sandberg to approve the proposed structure for debate of the Family Court issue and refer this matter to the Judicial Council for consideration. The motion was seconded by Judge Glasmann and carried unanimously.

**Murray Justice Court Certification:**

Richard Schwermer indicated that Murray City is creating a new justice court. The city needs final approval of their standards and their application. Representatives of the city intend to begin operation of the court on January 1, 1999. Past practice of the Council has been to have new court applications referred to the Justice Court Standards Committee with a recommendation back to the Council. However, the Committee will not meet again until November and representatives from the city are anxious to have final approval because of the January 1, 1999 implementation date. Based upon the short time frame the city has requested that the Council consider approval without a recommendation from the Justice Court Standards Committee.

**Motion:**

A motion was made by Judge Glasmann to place the request of Murray City for approval of a new justice court on the Judicial Council agenda for October 27, 1998. The motion was seconded by Judge Sandberg and carried unanimously.

**Appointment of Chair for Justice Court Standards Committee:**

Richard Schwermer provided a list of the current membership to the Justice Court

Standards Committee which has an additional five members to be appointed. All of the members are newly appointed except Craig R. Madsen, Utah Deputy County Attorney. Based upon Committee membership, Richard Schwermer recommended that Craig R. Madsen be appointed Chair of the Justice Court Standards Committee.

**Motion:**

A motion was made by Judge Sandberg that Craig R. Madsen be appointed as Chair of the Justice Court Standards Committee. The motion was seconded by Judge Glasmann and carried unanimously.

**Replacement Members (2) for the Racial and Ethnic Task Force:**

Jennifer Yim, Director of the Racial and Ethnic Task Force, was present on behalf of the Task Force and submitted the names of two individuals for membership. Ileana M. Porras, Professor of Law at the University of Utah Law School, will replace Dean Lee Tittlebaum on the Task Force and William P. Afeaki will replace Lorena Riffo.

**Motion:**

A motion was made by Judge Glasmann to approve the appointments of Ileana M. Porras and William P. Afeaki. The motion was seconded by Judge Sandberg and carried unanimously.

**Judicial Council Agenda:**

The Council agenda for October 27, 1998, was reviewed, changes suggested and implemented.

**1999 Judicial Council Calendar:**

The proposed Judicial Council calendar for 1999 was reviewed and referred to the Judicial Council for further suggestions and final approval.

**Court of Appeal's Decision:**

Richard Schwermer provided a brief overview of two companion cases that raised the question about what can be appealed de novo from a justice court. Further explanation by Mr. Schwermer included that there was a probation revocation which was appealed de novo to the district court. In both instances the district court indicated that the probation revocation was not a judgment, rather a post judgment order. The district court maintained that it did not have jurisdiction. The Court of Appeals said that probation revocation is a civil proceeding and under the civil definition of judgment, judgment means anything from which an appeal lies and since this is the final judgment of the court, the district court does have jurisdiction. Judge Atherton,

respondent in one of the cases, would like to appeal the decision.

**Motion:**

A motion was made by Judge Glasmann that Brent Johnson, General Counsel, preserve the right to appeal and that the matter be placed on the next agenda of the Judicial Council. The motion was seconded by Judge Sandberg and carried unanimously.

**Racial and Ethnic Task Force Funding:**

Judge Tyrone Medley, Co-Chair of the Racial and Ethnic Fairness Task Force, said he is appreciative of Judicial Council support for the Racial and Ethnic Task Force. Judge Medley reported that there is a shortfall of funding from State Justice Institute and asked that the Judicial Council supplement the shortfall. The funds would be used to hire an intern and increase Ms. Yim's, Director of the Task Force, salary at the same level state employees received effective July 1, 1998.

Dan Becker recommended that the Judicial council consider using one time money, not on-going funds, up to a cap of \$31,000 to make up the difference in the grant reduction, with the understanding that the Task force will continue to seek alternate sources of funding to help defray this expense.

**Motion:**

A motion was made by Judge Sandberg to approve the allocation of \$31,000 to supplement the funds that the Task Force is already receiving from other sources. The motion was seconded by Judge Glasmann and carried unanimously.

**Grant Information:**

**Hud Grant:**

Raymond Wahl, Juvenile Court Administrator, indicated that Salt Lake City has submitted a grant application to the Federal Office of Housing and Urban Development which involves Juvenile Court. The city requested funding to allow for the placement of police officers in certain schools within Salt Lake City. The concept is that probation officers and the police officers would work in tandem on enforcement and treatment programs of those juveniles under the supervision of Juvenile Court. The city receives the grant and then contracts with the Juvenile Court to hire seven probation officers on a time-limited basis.

**Bryne Grant:**

Rolen Yoshinaga, Director of Data Processing, explained that during the last few years

the Data Processing Dept. has developed a method of filing cases electronically e.g., criminal informations. The project is now at the testing phase. A concept paper has been prepared and a request has been made for Bryne Grant funding. Funding will allow prosecutors to acquire technology needed to allow for electronic filing, as well as pay for a project coordinator for two years to develop the program. If the concept is accepted, a grant request could be submitted at a later date.

**Zion's Bank Corporate Resolution:**

Fred Jayne, AOC Finance Director, stated that six years ago the Management Committee approved a resolution which authorized Mr. Jayne to work as the chief financial officer (CFO) for the courts with Zions Bank. Recently, the bank asked that the resolution be re-confirmed because of the change in state court administrators. Mr. Jayne has been working as the CFO for the past six years.

**Motion:**

A motion was made by Judge Glasmann that the resolution authorizing Mr. Jayne to serve as CFO for the courts with Zions Bank be approved. The motion was seconded by Judge Sandberg and carried unanimously.

**Proposed Change to Rule 3-501:**

Holly Bullen asked that the minutes of the Management Committee reflect that the Board of Senior Court Judges requested referral of a proposed change to Rule 3-501 to the Policy and Planning Committee as opposed to the consent calendar of the Judicial Council. Next, Ms. Bullen indicated that Judge Cornaby wrote a letter to the Chief Justice asking for a review of a possible change to Rule 3-501. Chief Justice Howe responded by requesting that this matter be placed on the Management Committee agenda. Rule 3-501 controls benefits that retired judges receive.

**Motion:**

A motion was made by Judge Sandberg that this matter be referred to the Policy and Planning Committee of the Council. The motion was seconded by Judge Glasmann and carried unanimously.

**Small Claims Judges Pro Tempore:**

Recently, Scott Sabey, Esq. wrote a letter to Chief Justice Howe suggesting that a training program be developed to assist small claims pro tempore judges. Holly Bullen stated that this is an issue which has been addressed to some degree in the past by the Administrative Office of the Courts. The AOC provided training classes and formed a committee to address the issue.

### **Motion:**

A motion was made by Judge Glasmann to refer Mr. Sabey's suggestion to Dr. Diane Cowdrey. Furthermore, that Dr. Cowdrey contact Mr. Sabey and attempt to work with him in developing a judge pro tempore program. The motion was seconded by Judge Sandberg and carried unanimously.

### **Briefing on Immunity in an Administrator's Capacity:**

Brent Johnson addressed a question raised by members of the Management Committee about what concerns Judicial Council members should have when they act in an administrative capacity in terms of whether there is immunity for their actions. Mr. Johnson indicated there is a United States Supreme Court case *Forester v. White*, which discusses immunity of judges in an administrative capacity. *Forester vs. White* held that judicial immunity does not apply to judges in an administrative capacity. Other states have found that judges are protected under the states' governmental immunity act while acting within the scope of their administrative authority.

Mr. Johnson indicated that judges within Utah should be protected under the Utah Governmental Immunity Act while acting within the scope of their administrative authority. However, Mr. Johnson recommended that judges receive continuing education about their individual judicial roles and cautioned that if they go outside those roles they may not be protected.

### **Appointment of Members to Public Trust and Confidence Committee:**

A meeting will take place in Washington D.C. in May that is part of a national effort on public trust and confidence. Initially, when Chief Justice Howe and Dan Becker shared this information with the Judicial Council they thought the best approach would be not to name a separate task force but to allow the Council to review these kinds of issues. However, Utah has been asked along with all of the other states to send a five person team from Utah to attend this meeting. The team would meet prior to the meeting and talk about issues relative to this topic in Utah. The team is to consist of the Chief Justice, the State Court Administrator, the President of the Utah State Bar and two additional members. Members of the Management Committee suggested that the matter of the appointment of the two additional members be placed upon the Council agenda for further consideration.

### **Appointments, Assignments & Recertifications:**

#### **Appointments to the Uniform Fine/Bail Standing Committee:**

There are three vacancies on the Uniform Fine and Bail Standing Committee, one for a district court judge and two for justice court judges. The standard announcements for the vacancies were sent out. There was one application for the district court position and there were

thirteen applications for the justice court positions. The applications were submitted to the appropriate board levels. The Board of District Court Judges recommended the appointment of Judge Lyle Anderson and the Board of Justice Court Judges recommended that Judge Daniel Bertch and Judge R. Scott Waterfall be selected to serve on the committee.

**Motion:**

A motion was made by Judge Glasmann that the names of the recommended individuals be referred to the consent calendar of the Judicial Council. The motion was seconded by Judge Sandberg and carried unanimously.

**Judges' Committee Assignments:**

For information purposes Holly Bullen provided an updated list of judges' committee assignments to members of the Management Committee.

**Senior Judge Recertification:**

The three-year appointments of several active senior judges will expire during November, December and January. Holly Bullen sent out a reminder to judges along with an application form for recertification. Ms. Bullen received application forms back from the following individuals: Judge Boyd Bunnell, Judge Robert W. Daines, Judge Merrill L. Hermansen, Judge Ronald Ol Hyde, Judge Robert L. Newey, Judge John Ruggeri and Judge Raymond S. Uno.

**Motion:**

A motion was made by Judge Sandberg to place the names of six of the seven individuals on the consent calendar of the Judicial Council for approval with a review of an individual's education hours and whether an actual problem exists or the matter is simply one of reporting. Furthermore, if there is a problem obtaining education hours that a report be given during the next Management Committee meeting to determine whether or not there is any remediation available. The motion was seconded by Judge Glasmann and carried unanimously.

**Judicial Council Committee Assignments:**

A proposal for new Judicial Council Committee assignments was discussed between members of the Management Committee and the matter was referred to the Judicial Council agenda for further discussion.

**State Court Administrator's Report:**

Dan Becker reported that the courts submitted a request to the Commission on Criminal and Juvenile Justice (CCJJ) for two pro tempore judges and a juvenile court automation program.

Both of these requests have been approved by the Executive Committee of CCJJ and will be considered by the full Commission next week. If approved, the funding will be available from a Juvenile Justice Incentive Block grant of \$2.8 million.

Recently, Dan Becker and Gordon Bissegger made a presentation to the State Building Board on facilities in Vernal and Logan. The State Building Board will consider the requests during a meeting next week.

The Citizens' Committee on Judicial Compensation has recommended a 3.5% increase to judicial salaries. If approved, that would raise district court salaries to \$96,900.

David Walsh, Legislative Fiscal Analyst, telephone Dan Becker today and said that the Governor is asking agencies to provide an explanation as to how their continuation base budgets for FY 2000 can be reduced by ½ percent. Mr. Becker discussed with the committee what approach might be taken in responding to this request.

**Adjourn:**

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



**JUDICIAL COUNCIL  
1998-1999 COMMITTEE  
ASSIGNMENTS**

**Management Committee:**

Hon. Anthony W. Schofield, Chairman	(District Court)
Chief Justice Richard C. Howe	(Supreme Court)
Hon. John Sandberg	(Justice Court)
Hon. Anne M. Stirba	(District Court)
Hon. Russell Bench	(Court of Appeals)

**Liaison Committee:**

Hon. Leonard H. Russon, Chairman	(Supreme Court)
Hon. Michael K. Burton	(District Court)
Hon. Stan Truman	(Justice Court)
Hon. Kay A. Lindsay	(Juvenile Court)

**Policy and Planning Committee:**

Hon. Robert Braithwaite, Chairman	(District Court)
Hon. Michael Glasmann	(District Court)
Hon. Ronald Hare	(Justice Court)
Hon. Scott Johansen	(Juvenile Court)
Steven Kaufman, Esq.	(Utah State Bar Rep.)



# Administrative Office of the Courts

Chief Justice Richard C. Howe  
Chairman, Utah Judicial Council

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

## MEMORANDUM

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**To:** Judicial Council  
**From:** Timothy M. Shea *Shea*  
**Date:** October 16, 1998  
**Re:** Proposal: Family Court Planning Process

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October 27, 1998. Panel presentation of the Family Court Task Force report. Focus on family law issues and task force process, findings and recommendations. Instruct invited organizations to debate the issues within their constituencies and report back to the Council over the course of the next several months. Objectives for the organizations: 1) Identify problems and issues facing the practice of family law from their perspective; 2) Identify alternative solutions; 3) Identify preferred solutions.

January - July, 1999. Schedule organizations to provide their observations and recommendations to the Council. Invite a minimum of two representatives from the Board of District Court Judges and the Board of Juvenile Court Judges to attend the presentations. Objective: Understand the issues from the perspectives of those who practice in the many areas of family law. Schedule the presentations so they occur over the course of several months. Take advantage of the Council's travel schedule to hear from local organizations. I have attached a proposed announcement of the schedule and invitation, which would be distributed at the workshop on October 27.

December 18, 1998: Joint meeting of the Council, the Board of District Court Judges and the Board of Juvenile Court Judges. Presentations: 1) Overview of family court alternatives by the National Center for State Courts or the National Council of Juvenile and Family Court Judges; 2) Representative of state judiciary with a structural family court; 3) Representative of state judiciary with a "procedural" family court. Objective: Provide the Council and Boards

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

with a broader perspective within which to consider the issues and the reports and recommendations of various organizations.

July or August, 1999. Joint workshop of the Council, the Board of District Court Judges and the Board of Juvenile Court Judges. Objectives:

- ◇ Identify issues facing the practice of family law from the public's perspective.
- ◇ Identify alternative solutions.
- ◇ Identify preferred solutions.
- ◇ Build a broad-based coalition among the judiciary.
- ◇ Consider and develop an action plan in response to the recommendations of the Family Court Task Force and the organizations reporting to the Council.

Precursor to workshop. Develop the role of the Boards in the workshop. Develop protocol for the workshop to avoid spending time questioning the process and to avoid counter-productive techniques. Use a process of debate and consensus. Assign members of the Council and of both Boards to subcommittees to develop particular issues.

September 8, 1999; (Annual Judicial Conference). Judicial Council considers the work product of the joint workshop, which, if approved, forms the judiciary's action plan on family law issues.

encl.

## SCHEDULE OF PRESENTATIONS TO THE JUDICIAL COUNCIL ON ISSUES IN FAMILY LAW

The Judicial Council is committed to a thorough discussion of the issues facing the public in the administration of justice in family law and anticipates widespread interest in this process. Beginning with its meeting in January and continuing through July, 1999, the Judicial Council invites representatives of the many organizations involved in the different aspects of family law to share their perspectives with the Council. To offer this opportunity to as many groups as possible, the Council has established the schedule shown below. The unfortunate but unavoidable effect of this schedule is to require some groups to organize presentations more quickly than others.

The Council requests interested organizations to present the problems they face in family law and to develop alternative and preferred solutions to those problems. The final report of the Family Court Task Force offers both a comprehensive framework for the debate and the detailed recommendations of a committee representing diverse interests, but organizations should not necessarily limit themselves to responding to the report. Issues not considered by the task force or issues coming to light since the report may be preeminent for some groups.

Some organizations may be comprised of departments with different perspectives. The Judicial Council defers to those organizations the decision on whether to present the issues and solutions by the departments or by the parent organization. Time on the Council agenda is limited, however, and the Council encourages groups to cooperate with one another within their professions. Because of the number and variety of groups involved, the Judicial Council anticipates approximately 30 minutes with each organization, including both a presentation by a representative of that group and discussion or questions involving members of the Judicial Council and the Boards of Judges. Organizations interested in scheduling a presentation with the Judicial Council should contact Tim Shea at 578-3808 or at <timmys@email.courtlink.gov> .

<b>Council Meeting Date</b>	<b>Presentation by Representatives of:</b>
January 25, 1999 SLC	Organizations within the Office of the Governor Divisions of the Office of the Attorney General Educators
February, 22 1999 SLC	Public and Private Service Providers Agencies of the Executive Branch
March 4, 1999 St. George	Prosecution Counsel; Defense Counsel Guardian Ad Litem & CASA Southern Utah Organizations
April 26, 1999 SLC	Public and Private Service Providers Agencies of the Executive Branch Governing and Advisory Councils
May 24 - 25, 1999 Farmington	Local Organizations Court Staff Supreme Court Advisory Committees
July 1, 1999 Sun Valley	Bar Commission; Bar Sections Local Bar Associations Legal Aid Society; Utah Legal Services Family Court Task Force

APPLICATION  
FOR  
CERTIFICATION  
OF  
MURRAY CITY  
MUNICIPAL JUSTICE COURT

September 21, 1998

## APPLICATION FOR CERTIFICATION

This is an application, to the Judicial Council, for certification of a Municipal Justice Court in Murray City, Utah, together with a waiver request. The Court is proposed to be located at 688 East Vine Street, Murray, Utah. The Court will occupy the main floor (approximately forty-four hundred square feet) of a building currently under construction. A floor and site plan are attached hereto as Exhibits "A" and "B," respectively.

### AUTHORITY

In 1991, the Utah State Legislature adopted Utah Code Ann. §10-3-923(4)(a) which specifically named and authorized Murray City to establish and assume responsibility for a Justice Court within its boundaries. The Utah statutes set forth minimum requirements for the creation and operation of Justice Courts and place the responsibility for promulgating and publishing additional requirements and monitoring compliance with the Judicial Council, *see* Utah Code Ann. §78-5-139(1). The Judicial Council may also review requests for waiver of the minimum requirements and may authorize the creation of a court by waiving compliance with minimum requirements or by allowing for an extension of time to meet the minimum requirements, *see* Utah Code Ann. §78-5-139(1). In 1997, the Legislature adopted Utah Code Ann. §78-5-101 which placed a one year moratorium on the creation of Justice courts **except** for the municipalities enumerated in Utah Code Ann. §10-3-923(4)(a). In 1998, the Utah State Legislature enacted Utah Code Ann. §78-5-101.5, which, among other things, incorporated the enumerated cities from Utah Code Ann. §10-3-923(4)(a), *see* Utah Code Ann. §78-5-101.5(5)(a), and specifically granted the Judicial Council the authority to shorten the required notice periods, *see* Utah Code Ann. §78-5-101.5(6).

## PROCEDURAL BACKGROUND

On or about May 14, 1996, the Murray City Council passed a resolution declaring its intent to create a Murray City Municipal Justice Court, see Exhibit "C," attached hereto. That intent was conveyed to the Judicial Council on or about May 29, 1996. Based upon the resolution, the Court was to commence operation on July 1, 1998. After a presentation by staff from the Court Administrator's Office, Judges and members of the Judicial Council and on or about April 8, 1997, the Murray City Council passed a resolution to rescind the previous resolution and possibly withdrawing its notice, see Exhibit "D," attached hereto. Based upon a significant need to maintain justice at a grass roots level, the Murray City Council passed a resolution rescinding the resolution of April 8, 1997. This rescission took place on February 24, 1998, see Exhibit "E," attached hereto. At that time, the Murray City Council informed the Judicial Council of its intent to rely upon the previous notification and create a Murray City Municipal Justice Court. At the request of the Court Administrator's Office and the Judicial Council, the City Council waited until after newly enacted legislation took affect and, on June 9, 1998, passed a second resolution declaring its intent, see Exhibit "F," attached hereto. This resolution was forwarded to the Utah Judicial Council. On or about June 18, 1998, the Mayor received written notification that the Judicial Council had accepted the notice and that an application for certification be submitted prior to the Court's start-up date of January 1, 1999.

As part of the certification process, Murray City has carefully reviewed all requirements for the creation and operation of a Municipal Justice Court. The City has also obtained an opinion from its attorney advising the City Council and the Mayor of all requirements for the creation and operation of a Justice Court and the feasibility of maintaining a Justice Court. A copy of the City Attorney's opinion is attached hereto as Exhibit "G."

A resolution, formally requesting certification and affirming that Murray City is willing to meet all requirements for the creation and operation of the Court during the period of certification, was duly passed on September 8, 1998, *see* Exhibit "H," attached hereto. A budget for the Court was adopted on June 9, 1998 and funds the Court for fiscal 1998-99, *see* Exhibit "I," attached hereto.

This application for certification is submitted by Murray City for consideration by the Judicial Council at its regular meeting on October 15, 1998.

## COMPLIANCE WITH REQUIREMENTS

Murray City declares its willingness to comply with all statutory standards in the operation of a Municipal Justice Court, to wit:

1. All official court business will be conducted in a courtroom or an office located in a public facility which is conducive and appropriate to the administration of justice, *see* Utah Code Ann. §78-5-108.

2. The court will be opened and judicial business will be transacted every business day. This is presumed to be each weekday, except legal holidays, from 8:00 a.m. to 5:00 p.m., *see* Utah Code Ann. §78-5-108, although the judge is not required to be present during all hours that the court is open.

3. The hours that the court will be open will be posted conspicuously at the court, the Murray City Hall and the Murray City Library, *see* Utah Code Ann. §78-5-108.

4. The judge and the clerk of the court will attend the court at regularly scheduled times, *see* Utah Code Ann. §78-5-108.

5. Murray City will provide and compensate a judge and clerical personnel to conduct the business of the court, *see* Utah Code Ann. §§ 78-5-128 and 78-5-110.



6. Murray City will assume the expenses of travel, meals, and lodging for the judge of that court to attend required judicial education and training, *see* Utah Code Ann. §78-5-127.
7. Murray City will assume the cost of travel and training expenses of clerical personnel at training sessions conducted by the Judicial Council, *see* Utah Code Ann. §78-5-110.
8. Murray City will provide a sufficient staff of public prosecutors to attend the court and perform the duties of prosecution, *see* Utah Code Ann. §78-5-111.
9. Murray City will provide adequate funding for attorneys where persons are indigent as provided by law, *see* Utah Code Ann. § 78-5-111.
10. Murray City will provide one bailiff and other police officers to attend court when required and will provide security for the court, *see* Utah Code Ann. §78-5-111.
11. Witnesses and jury fees as required by law will be paid by Murray City.
12. Any fine, surcharge or assessment which is payable to the State will be forwarded to the State as required by law, *see* Utah Code Ann. §§78-5-135 and 78-5-126.
13. Murray City will pay the Municipal Justice Court Judge a fixed compensation, *see* Utah Code Ann. §78-5-128.
14. Court will be held in Murray City, except as provided by law, *see* Utah Code Ann. §78-5-107.
15. Murray City will provide, for the court, a copy of the Motor Vehicle Laws of the State of Utah, appropriate copies of the Utah Code, the Justice Court Manual, state laws affecting local governments, local ordinances, and other necessary legal reference material. These materials will also be kept current, *see* Utah Code Ann. §78-5-109.
16. All required reports and audits will be filed as required by law or by rule of the Judicial Council, *see* Utah Code Ann. §78-5-130.

In addition to those requirements which are directly imposed by statute, Utah Code Ann. §78-5-139, directs the Judicial Council to promulgate minimum requirements for the creation and certification of Justice Courts. The Murray City Municipal Justice Court will meet the minimum requirements so promulgated as follows:

1. The Court will be open during regular business hours each day that the court is required to be open.
2. The Court will have a judge and at least three clerks.
3. The Courtroom will be dedicated for the exclusive use of the justice court. Furnishings for the courtroom will include: a bench and chair for the judge (on a twelve to eighteen inch riser), a desk and chair for the court clerk, chairs for witnesses, separate tables and appropriate chairs for plaintiffs and defendants, a Utah State flag, a United States flag, a separate area and chairs for at least four jurors, a separate area with appropriate seating for the public, an appropriate room for jury deliberations, and an appropriate area or room for victims and witnesses which is separate from the public, *see* Exhibits A and B, attached hereto.
4. A Judicial robe, a gavel, current bail schedules, a copy of the Code of Judicial Administration, and necessary forms and supplies, will be provided.
5. Office space for the Judge and clerks will be located within the same facility. The office space will include a desk for the judge and a desk for each of the clerks, secure filing cabinets for the judge and clerks, a telephone for the judge and telephones for the clerks, appropriate office supplies to conduct court business, a computer, and access to a copy machine.
6. A clerk will be present during the time the court is open each day and during court sessions, as required by the judge.

7. The Murray City employs a police force of sworn law enforcement officers and will direct such officers to attend court when required to testify or provide security.

8. After certification, the City Council and the Mayor will meet with the Municipal Justice Court Judge at least once a year to review the budget of the court, review compliance with the requirements and operational standards of the court, and discuss other items of common concern and certify that this meeting has been held, and that the operational standards for the court have been met during the prior year.

## Waivers

The Judicial Council has authority to waive any minimum requirement which has not been specifically imposed by the Legislature, *see* Utah Code Ann. §78-5-139(1). Waivers are based on a demonstrated public need for the court to conduct judicial business and upon public convenience. The Judicial Council may also grant an extension of time for compliance with any standard which is not specifically required by statute, *see* Utah Code Ann. §78-5-139.

Murray City can comply with all essential requirements. However, one waiver is necessary or recommended. For this reason, the Murray City's application for certification includes the following waiver request:

### Proximity to other Courts

Murray City requests a waiver of the following requirement promulgated by the Judicial Council:

"In the case of a new court, the proposed court must be at least 25 miles from the location of the Court which is currently hearing the majority of the cases which will be filed in the new Court."

The waiver request is based upon former law found in Utah Code Ann. §10-3-923(4)(a) which stated as follows:

"Notwithstanding any other provision of law, the following municipalities may elect to assume local responsibility for those matters within the exclusive jurisdiction of the Justice courts: . . . Murray . . ."

and upon the language in Utah Code Ann. §§ 78-101.5(5)(a):

"The following municipalities may create a justice court by filing a written declaration with the Judicial Council: . . .Murray . . ."

A location waiver is needed because the Murray City Municipal Justice Court is proposed to be sited within twenty-five miles of the Murray Department of the Third District Court, which is currently hearing Murray City cases. It is anticipated that the Murray Department of the Third District Court will continue at its present location.

DATED this 14<sup>th</sup> day of September, 1998.



Attest:

A handwritten signature in black ink, appearing to read "Ludell Pierson".

Ludell Pierson  
Murray City Recorder

A large, stylized handwritten signature in black ink, appearing to read "Dan Sharr".

Hon. Dan Sharr  
Mayor, Murray City

## APPLICATION FOR NEW JUSTICE COURT FOR MURRAY CITY

Applicant: **Murray City Municipal Justice Court**

Proposed Court Location: **688 E. Vine Street, Murray, Utah 84107**

Anticipated Level of the Court: **I**

Anticipated average case filings per month: **>501**

Please attach a map which shows the boundaries of the proposed Court's jurisdiction. (The map should also show all Courts which are located within 25 miles of the location of the Court). **In that Murray City has requested a waiver of the 25 mile provision, no other courts are shown, see Exhibit "J," attached hereto.**

State the population within the jurisdiction of the proposed court according to the most recent figures: **36,000.**

List all law enforcement agencies which will be regularly involved in law enforcement within the jurisdiction of the proposed court: **Murray City Police, Utah State Highway Patrol, Salt Lake County Sheriff's Department.**

If the applicant has a law enforcement department, state the number of sworn law enforcement officers within the department. **Sixty-three (63)**

If the applicant does not have a law enforcement department, identify the law enforcement agency which will provide law enforcement services to the proposed Court: **N/A.**

List all existing Justice Court locations within 25 miles of the proposed Court: **N/A**

For each Court listed above, list the average number of cases filed each month during the most recent calendar year which would have been filed in the proposed Court, had the proposed Court been in operation: **N/A.**

If waiver or extension of any requirement is requested, please specify each requirement and indicate factors which demonstrate a need for the waiver or extension. For any requested extension, please include the time requested. For each requested waiver, please indicate whether or not this application is conditioned upon receiving a waiver. Remember, those items which are statutory are not waivable (Numbers 1-16).

**Murray City requests a waiver of the following requirement promulgated by the Judicial Council:**

**"In the case of a new court, the proposed court must be at least 25 miles from the location of the Court which is currently hearing the majority of the cases which will be filed in the new Court."**

**The waiver request is based upon former law found in Utah Code Ann. §10-3-923(4)(a) which stated as follows:**

**"Notwithstanding any other provision of law, the following municipalities may elect to assume local responsibility for those matters within the exclusive jurisdiction of the Justice courts: . . . Murray . . ."**


and upon the language in Utah Code Ann. §§ 78-101.5(5)(a):

"The following municipalities may create a justice court by filing a written declaration with the Judicial Council: . . .Murray . . ."

A location waiver is needed because the Murray City Municipal Justice Court is proposed to be sited within twenty-five miles of the Murray Department of the Third District Court, which is currently hearing Murray City cases. It is anticipated that the Murray Department of the Third District Court will continue at its present location.


I am familiar with the minimum operational standards for a Justice Court. Enclosed please find a written opinion from our attorney Frank Nakamura, advising Murray City of all requirements for the creation and operation of a Justice Court, and the feasibility of this entity maintaining a Justice Court. Also, please find enclosed a resolution requesting certification for a new Court which resolution affirms that Murray City is willing to meet all requirements for certification (except for the requested waiver) during the initial term of the proposed Court.

DATED this 15 day of September, 1998

  
Hon. Dan Snarr  
Mayor, Murray City

SUBSCRIBED AND SWORN to before me this 15<sup>TH</sup> day of September, 1998.



  
Ludell P. Pierson, Murray City Recorder  
NOTARY PUBLIC

Residing at:  
My Commission Expires:

## SECTION I

THE FOLLOWING TWELVE ITEMS ARE STATUTORY AND CANNOT BE WAIVED.  
CERTIFICATION WILL NOT BE GRANTED UNLESS EACH REQUIREMENT IS MET.

Please indicate YES OR NO to each of the following:

1. Arrangements have been made so that all official court business will be conducted in a public facility. YES
2. Court will be open daily. YES
3. The hours of court operation will be posted conspicuously. YES
4. The judge and the clerk will be required to attend court at regularly scheduled times based on the level of the court. YES
5. The judge will be compensated at a fixed rate. YES
6. The responsible governmental entity will provide and compensate sufficient clerical personnel necessary to conduct the business of the court. YES
7. This entity will assume the expenses of the travel of the judge for purposes of required judicial education. YES
8. This entity will assume the expenses of the travel of the clerk for the purposes of attending training sessions conducted by the Judicial Council. YES
9. The responsible governmental entity will provide the Court with:
  - a. Sufficient prosecutorial support YES
  - b. Funding for attorneys for indigent defendants, as appropriate YES
  - c. Sufficient local law enforcement officers to attend court as provided by statute YES
  - d. Security for the court as provided by statute YES
  - e. Witness and juror fees YES
  - f. A current copy of the motor vehicle laws of the state of Utah, appropriate copies of the Utah Code, the Justice Court manual, state laws affecting local governments, local ordinances and other necessary legal reference materials YES
10. Procedures have been adopted to insure that fines, surcharges and assessments which are payable to the state will be forwarded as required by law. YES
11. Court will be held within the jurisdiction of the court, except as provided by law (78-5-107). YES

## SECTION II

Section II contains minimum requirements established by the Judicial Council, and those requirements may be waived or an extension granted pursuant to the procedure set forth in the instructions to applicant included with this application for re-certification.

Please indicate YES OR NO to each of the following:

1. Arrangements have been made so that court will be open for at least one hour each day, or more as appropriate for the classification of the court. YES

2. Arrangements have been made so that the judge will be available to attend court and to conduct court business as needed. YES

3. Minimum furnishings in the courtroom have been provided, including:

a. Desk and chair for the judge YES

b. A six inch riser YES

c. Desk and chair for the Court Clerk YES

d. Chairs for witnesses YES

e. Separate tables and appropriate chairs for plaintiffs and defendants YES

f. A Utah State flag YES

g. A United States flag YES

h. A separate area and chairs for at least four jurors YES

i. A separate area with appropriate seating for the public YES

j. An appropriate room for jury deliberations YES

k. An appropriate area or room for victims and witnesses which is separate from the public YES

l. A judicial robe YES

m. A gavel YES

n. Current bail schedules YES

o. A copy of the Code of Judicial Administration YES

p. Necessary forms and supplies YES

q. Office space for the judge YES

r. Office space for the court clerk YES



- s. Secure filing cabinets YES
- t. Appropriate office supplies YES
- u. A cash register or secured cash box YES
- v. A typewriter or word processor YES
- w. Access to a copy machine YES

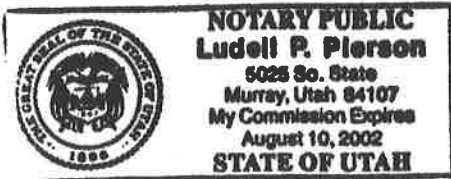
4. The appropriate number of clerks will be provided as determined by the approved classification of the court, and a clerk will be provided as needed during the time court is open each day during court sessions. YES

5. I am familiar with the minimum operational standards for this court, and except as noted below, those standards are currently in place and available to the court. YES

DATED this 15<sup>th</sup> day of September, 1998

*Dan Snarr*  
 Hon. Dan Snarr  
 Mayor, Murray City

SUBSCRIBED AND SWORN to before me this 15<sup>TH</sup> day of September, 1998.



*Ludell P. Pierson*  
 Ludell P. Pierson, Murray City Recorder  
 NOTARY PUBLIC

Residing at:  
 My Commission Expires:

## **MURRAY CITY MUNICIPAL JUSTICE COURT CERTIFICATION AFFIDAVIT**

**Proposed Court Location: 688 E. Vine Street, Murray, Utah**

**Applicant: Murray City Corporation**

**Address: 5025 South State, P.O. Box 57520, Murray, Utah 84157-0520**

**Telephone: (801) 264-2526**

**Level of Court: I**

**Case Filings Per Month: >501**

**Daily Court Hours: 8:00 a.m.-5:00 p.m.**

**Number of Full-time Clerks: 3 # Hours Worked Per Week: 40 each**

**Number of Part-time Clerks: 0 # Hours Worked Per Week: N/A**

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Comes now the Hon. Dan Snarr, Mayor, Murray City for Murray City Municipal Corporation, and, except as specifically noted below, certifies as follows:

S:\COR\GFerrero\Justice Court\CERTAPP.WPD




# MURRAY CITY CORPORATION

City Attorney's Office  
(801) 264-2640  
(801) 264-2642  
(801) 264-2641 Fax

## MEMORANDUM

**TO:** The Murray City Municipal Council

**FROM:** Frank M. Nakamura 

**DATE:** September 3, 1998

**RE:** Statutory Requirements for the creation and operation of Murray City Justice Court

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On June 9<sup>th</sup>, 1998, the Murray City Municipal Council ("Council") established a Justice Court. This office is required to provide to the Council a written opinion advising it of all statutory requirements for the creation and operation of the Court. This opinion will be submitted with the City's application to the Utah Judicial Council for certification of the Court.

A Resolution, requesting certification and affirming that the City is willing to meet all requirements for the creation and operation of the Court, must be passed by the Council prior to the submitting of the application.

Accordingly, the following are the statutory requirements and operational standards promulgated by the Judicial Council for the creation and operation of the City's Court.

1. All official business of the Court shall be conducted in a courtroom or an office located in a public facility which is conducive and appropriate to the administration of justice.<sup>1</sup> This office is reviewing the draft of a lease agreement for a location that meets the requirements of Section 78-5-108 of the Utah Code.
2. The Court shall be open and judicial business shall be transacted every weekday except legal holidays from 8:00 A.M. to 5:00 P.M..<sup>2</sup> The Court may offer some night appointments in order to meet the needs of the community.

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<sup>1</sup>Section 78-5-108 of the Utah Code.

<sup>2</sup>Id.

3. The hours that the Court will be open shall be posted conspicuously at the Court, and in local public buildings such as City Hall and the Library.<sup>3</sup>

4. The Judge and the Clerk of the Court shall attend the Court at regularly scheduled times.<sup>4</sup>

5. The City shall provide and compensate the Judge and clerical personnel to conduct the business of the Court. As stated in an opinion letter from this office dated July 29, 1998, the Council confirmed the appointment of P. Gary Ferrero to be the Court Judge. On August 11, 1998, the Council, by a Resolution, approved the compensation for the Judge of the Court. Additionally, the Council, in its budget for fiscal year 1998-1998, appropriated sufficient funds to compensate the Judge and clerical personnel to conduct the business of the Court. The City's Human Resource Department director developed job descriptions and classifications for court clerks.<sup>5</sup>

6. The City must assume the expenses of travel, meals and lodging for the Judge to attend judicial education and training.<sup>6</sup> The Council, in its budget for fiscal year 1998-1998, appropriated monies to meet the expenses of travel, meals and lodging for the Judge to attend training.

7. The City shall assume the costs for travel and training expenses of the clerical personnel at training sessions conducted by the Judicial Council.<sup>7</sup> The City, in its budget for fiscal year 1998-1999, appropriated monies to meet the costs of travel and training expenses for clerical personnel attending training.

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<sup>3</sup>Section 78-5-108 of the Utah Code.

<sup>4</sup>Section 78-5-108 of the Utah Code.

<sup>5</sup>Id.

<sup>6</sup>Section 78-5-127 of the Utah Code.

<sup>7</sup>Section 78-5-110 of the Utah Code.

8. The City shall provide a sufficient staff of public prosecutors to attend the Court and perform the duties of prosecution.<sup>8</sup> The City Attorney's Office has assigned one attorney to prosecute cases in the Court.

9. The City must provide adequate funding for attorneys where persons are indigent as provided by law.<sup>9</sup> The City Attorney's Office presently contracts with specific attorneys to represent indigent persons in District Court. The services provided under the contract will continue in the Justice Court.

10. The City must provide sufficient law enforcement officers to attend Court when required and provide security for the Court.<sup>10</sup> One bailiff with law enforcement experience will be assigned to the Court.

11. Witness and jury fees as required by law must be paid by the City.<sup>11</sup> There are funds available in the City's 1998-1999 budget to cover witness and jury fees.

12. Any fine, surcharge or assessment which is payable to the State of Utah shall be forwarded to the State as required by law. For purposes of accuracy and expediency, the City will develop a cash receipts and disbursements accounting package for the Court.<sup>12</sup>

13. The City must pay the Judge of the Court a fixed compensation.<sup>13</sup> The Council has set, by Resolution, the compensation for the Judge. The annual salary of the Judge shall be Sixty One Thousand, Nine Hundred and Thirty Two Dollars

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<sup>8</sup>Section 78-5-111 of the Utah Code.

<sup>9</sup>Id.

<sup>10</sup>Id.

<sup>11</sup>Section 78-5-112 of the Utah Code.

<sup>12</sup>Section 78-5-135 and 78-5-126 of the Utah Code.

<sup>13</sup>Section 78-5-128 of the Utah Code.

(\$61,932.00). The annual salary of the Judge cannot and does not exceed 72% of the salary of a District Court Judge.

14. The Court must be held within the boundaries of the City.

15. The City must provide and keep current for the Court, copies of the Motor Vehicle Laws of the State of Utah, the Utah Code, the Justice Court Manual, State laws affecting local governments, including the Murray City Municipal Code and other necessary legal reference material.<sup>14</sup>

16. The City must provide reports and audits as required by law and the rules of the Judicial Council.<sup>15</sup> The City will have accounting and management software to insure that required reports and audits will be filed.

17. The City's Finance Office prepared a feasibility study dated January 28, 1997, attached as Appendix "B". The Murray City Municipal Council, in passing the Court's initial budget, relied heavily upon the study with two clear variations. The original study included costs of prosecution in the Court's budget. Since the City Attorney's Office would prosecute cases whether or not a Court was created, those costs were left in the City Attorney's budget. In addition, the Council also left the costs for the public defender in the City Attorney's budget.

Based upon the study, a Court is financially feasible. The City has a sufficient economic base to absorb any cost overruns by the Court.

The Court will handle cases that would have been heard by the Third District Court and will allow the District Court to devote its time and attention to more serious cases. The Court established by the City will be able to devote time to cases that more uniquely concern the City.

The City has or will hire the necessary staff to handle the needs of the Court. The City Police Department writes in excess of 7000 citations a year for moving or nonmoving violations. This does not include Domestic Violence, Assault, Shoplifting or

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<sup>14</sup>Section 78-5-109 of the Utah Code.

<sup>15</sup>Section 78-5-130 of the Utah Code.

Code Enforcement cases. The Court will be able to devote its full attention to these cases. Therefore, based upon the study and my opinion as to the City's ability to meet the legal requirements, this office believes the creation of the Court is not only feasible, but promotes the administration of justice in the City.

18. In addition to those requirements which are directly imposed by state statutes; Section 78-5-139<sup>16</sup> of the Utah Code directs the Judicial Council to promulgate minimum requirements for the creation and certification of Justice Courts. The Judicial Council has adopted minimum requirements, specified in Appendix "A", attached. The City must comply with the minimum standards.

It is the conclusion of this office that the City is able to meet all statutory requirements and minimum standards promulgated by the Judicial Council except the rule that the Justice Court must be at least 25 miles from the location of the Third District Court, Murray Division, which is currently hearing the cases that will be filed in the Justice Court. The City will need to seek a waiver of the proximity requirement.

If the Council needs additional information regarding this opinion, it should not hesitate to contact this office.

FMN:se  
Enclosure(s)

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<sup>16</sup>Section 78-5-139 of the Utah Code.

**TO: MAYOR LYNN PETT  
MURRAY CITY COUNCIL**

**FROM: DON WHETZEL  
JAMES SCOTT**

**DATE: JANUARY 28, 1997**

**SUBJECT: JUSTICE COURT ANALYSIS**

The Utah Legislature adopted H.B. 436, which permits cities to establish Justice of the Peace Courts in lieu of state operated Circuit Courts. Cities electing to install justice courts receive a greater portion of court derived revenues in order to finance court operations. Following is a report of the anticipated financial impact for the establishment of a justice system in Murray.

In order to produce this summary, estimates were gathered from internal and external sources. Assumptions were also generated from those estimates and from input from Murray city's prosecutors and other individuals working in the related field. These are the assumptions:

1. The space needed for the court will not be located within Murray City's building. Said space will be rented in a building located within a mile of City Hall. The Court room may well be established within the State Court's building if at all possible.
2. The personnel needed for the justice court was determined by the number of citations issued by Murray City's police department.
3. The first year a Municipal Court is in operation, it will require a capital investment up to \$100,000 for additional equipment and structural improvements.
4. The amount of revenue will depend on the number of citation's issued in the future and the percent of fines and forfeitures that are actually collected. The State Court currently collects about fifty percent of their fines and forfeitures.
5. Revenue from a Small Claims Division is based on information from the City Attorney's office.
6. The Court will employ a full time, law trained judge whose maximum salary will be 72% of what a District Court Judge is paid.
7. All cases over which Murray City has jurisdiction will be tried in the Murray Justice Court.



## CURRENT COURT REVENUES

During the current fiscal year the city will receive about \$180,000.00 from the District Court, to cover our cost of prosecution. Approximate expenditures for prosecution are as follows.

<u>DEFINITION</u>	<u>AMOUNT</u>
Prosecuting Attorney	\$ 61,000.00
Legal Secretary	\$ 34,000.00
Defense Counsel	\$ 30,000.00
Miscellaneous Expenditures	<u>\$ 5,000.00</u>
Total Expenditures	\$ 130,000.00

During the current fiscal year the city will receive \$50,000.00 more in revenues than it needs for prosecution.

## PROJECTED COURT REVENUES

Court revenues were estimated using two sources. The first revenue source was derived by using the current revenue received from the state's court, multiplying this amount by two.

The second revenue source was estimated by using current citations issued by Murray city's police department. The revenue was calculated from the number of citations issued, times the estimated fines Murray will receive, minus the uncollectible citations of fifty percent. Because the revenue from the court is an actual amount, rather than estimated, it will be used in the balance of this report.

Revenue estimated by Citations issued:		Actual revenue received from the State Court:	
1995	1996	1995	1996
\$ 334,005.00	\$ 430,065.00	\$ 337,428.00	359,740.00

Revenue could also be obtained by adding a small claims division within the proposed system. The expenses by adding this division would be minimal. The State Court had 4313 small claims cases during 1996. If Murray City could hear 1,000 cases during a year the revenue would equal \$37,000.00. This amount will be included in the revenue calculations.

## COURT EXPENDITURES

In order for Murray City to establish a court system a large capital expenditure will be incurred in the first year. The estimated start up cost would be approximately \$70,000.00 to \$100,000.00.

Below is the estimated monthly expenses.

	Amount
<b>SALARIES AND BENEFITS</b>	
1 Judge	\$ 89,000.00
1 Supervisor/Technical Clerk	\$ 38,000.00
3 Clerks	\$ 96,000.00
1 Bailiff	<u>\$ 40,000.00</u>
 Total Personnel	 \$ 263,000.00
 <b>OPERATING EXPENDITURES</b>	
Rent	3,000 sq ft X \$14.00
Equipment	\$ 42,000.00
Travel and Meetings	\$ 11,000.00
Books Subscriptions, Memberships	\$ 1,000.00
Law Books	\$ 300.00
Office Supplies	\$ 4,000.00
Copying	\$ 3,000.00
Postage	\$ 1,000.00
Mileage Reimbursement	\$ 1,000.00
Utilities and Maintenance	\$ 1,000.00
Telephone	\$ 13,000.00
Witness/Jury Fees	\$ 4,000.00
Computer and Equipment Maintenance	\$ 5,000.00
Professional and Technical Service.	\$ 1,000.00
	<u>\$ 1,000.00</u>
 Total Operating Expenditures	 <u>\$ 88,300.00</u>
 Total Court Expenditures	 <u>\$351,300.00</u>

## EXPENDITURES OVER REVENUE

Revenues were then netted with expenses to estimate the annual revenue received by establishing a justice court in Murray.

	1997	1998	1999
Revenues	\$ 397,000.00	\$ 417,000.00	\$ 437,000.00
Court Expenditures	351,000.00	372,000.00	392,000.00
Prosecuting Expenditures	131,000.00	138,000.00	144,000.00
Initial Capital Outlay	<u>70,000.00</u>	<u>0.00</u>	<u>0.00</u>
Expenditures Over Revenue	<u>\$ (155,000.00)</u>	<u>\$ (93,000.00)</u>	<u>\$ (99,000.00)</u>

## OBSERVATIONS

Under current circumstances a Murray Justice Court would have to be subsidized by the General Fund because it has a high fixed cost relative to the number of cases it processes. As a Class I Justice Court, (501 or more citations or cases filed per month) Murray City would be required by the Judicial Council to provide a dedicated court facility, a full time Judge, Bailiff, at least three full time clerks, and a City Prosecutor. The revenue currently generated by 500 citations or cases per month is not sufficient to cover the high fixed cost required by the Judicial council.

There may be a number of ways the city could increase the revenue flow to the Justice Court, so that it could at least break even:

1. Increase the number of citations the Police Department issues.
2. Eliminate the Judge's discretion to reduce fines by strictly adhering to the Uniform Bail Schedule.
3. Increase the percentage of fines and forfeitures collected from the current rate of 50% to, say, 75%.
4. Enter into an inter-local agreement with Midvale or South Salt Lake to process their cases in the Murray Court. One half of the net fine or forfeitures would be returned to them to cover their cost of prosecution.

We reviewed our financial statements for the last two years (FY 82 and FY 83) that Murray City had its own court. During those two years expenditures exceeded revenues by an average of \$50,000.00 per year.

## COMPARISONS

The foregoing revenue was then compared to other cities. The other cities do not include rent, utilities, and maintenance because their court systems are located within their building. In Order to compare other cities with Murray City we have included our rent, utility projections, and prosecuting expenditures within the other cities figures so that a more realistic evaluation can be achieved. Below are three other cities that have established a Justice Court.

### ANNUAL INCOME OF OTHER CITIES

#### SANDY CITY

	1995	1996
Revenue	\$ 805,723.00	\$ 1,092,564.00
Rent/Utilities	59,000.00	59,000.00
Prosecuting Expenditures	196,500.00	196,500.00
Court Expenditures	<u>277,535.00</u>	<u>376,821.00</u>
Revenue over Expenditures	\$ 272,188.00	\$ 460,243.00

#### WEST JORDAN

	1995	1996
Revenue	\$ 483,619.00	\$ 594,510.00
Rent/Utilities	59,000.00	59,000.00
Prosecuting Expenditures	131,000.00	131,000.00
Court Expenditures	<u>389,654.00</u>	<u>402,302.00</u>
Revenue over Expenditures	\$ (96,035.00)	\$ 2,208.00

#### LOGAN

	1995	1996
Revenue	\$ 457,570.00	\$ 580,241.00
Rent/Utilities	59,000.00	59,000.00
Prosecuting Expenditures	131,000.00	131,000.00
Court Expenditures	<u>201,524.00</u>	<u>221,029.00</u>
Revenue over Expenditures	\$ 66,046.00	\$ 169,212.00

# Administrative Office of the Court

Chief Justice Richard C Howe  
Chair Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator  
450 So. State St.  
P.O.Box 140241  
Salt Lake City, Utah 84114-0241  
Phone: (801) 578-3800  
Fax: (801) 578-3843

## MEMORANDUM

To: Management Committee  
From: Brent Johnson  
Re: Appeal of Court of Appeals Decision  
Date: October 8, 1998

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Attached to this memorandum you will find an opinion recently issued by the court of appeals. The facts that gave rise to this opinion are adequately set forth in the opinion. This office is seeking input from the management committee as to whether the decision should be appealed.

The issue for consideration is the types of justice court decisions that should be appealable. In the facts of this case, a probation revocation decision was at issue. We argued that the statute only provides for appeal of the final conviction and not pre- and post-judgment orders. As a policy matter, we argued that allowing appeals of these orders would begin the slippery slope of allowing appeals of other orders; possibly allowing appeals issues such as pre-judgment motions in limine. We argued that because appellate review is by trial de novo, the legislature did not contemplate that all of these types of orders would be argued anew in the district court.

Many justice court judges and several district court judges are concerned about the impacts of this decision. The main concern is a lack of direction on what will be considered appealable. This decision may open the door for other orders to be appealed. My concern is that the definition of judgment, as determined by the court, is too broad. Although the definition arises from a probation revocation proceeding being "civil", it doesn't preclude other orders from being defined similarly.

An appeal to the supreme court may reverse this decision, or at least provide additional clarification on what other types of orders might be considered appealable. In the alternative, we could look toward legislative clarification. At the same time the court of appeals issued this decision, they issued a decision stating that a person could plead guilty at the justice court level and obtain a trial de novo appeal of the guilty plea. Pursuing legislative clarification could also address this issue. Many judges feel that it would be best if a person not be allowed to appeal a guilty plea. A person should only be allowed to appeal a sentence from a guilty plea or to appeal

a motion to set aside a guilty plea.

Because we need to make an immediate decision on whether to appeal, we need to discuss this issue at the next management committee meeting and make a final decision. In order that the management committee has all the facts, I must tell you that approximately two years ago a petition for extraordinary writ was filed on the same issue in the Third District Court. Judge William Bohling, who heard the petition, issued a decision similar to the court of appeals'. The management committee, as it existed at that time, also addressed this issue and decided not to appeal Judge Bohling's decision. I look forward to discussing this issue.

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of September, 1998, a true and correct copy of the attached OPINION was deposited in the United States mail to:

Benjamin A. Hamilton, Esq.  
356 E 900 S  
Salt Lake City UT 84111

and a true and correct copy of the attached OPINION was placed in Interdepartmental Mailing to be delivered to:

Brent Johnson  
Administrative Office of the Courts  
450 S State Street 2nd Floor  
Salt Lake City UT 84114

  
\_\_\_\_\_  
Judicial Secretary

TRIAL COURT: Original Proceeding in this Court.  
APPEALS CASE NO.: 981186-CA

FILED

SEP 17 1998

This opinion is subject to revision before  
publication in the Pacific Reporter.

IN THE UTAH COURT OF APPEALS

COURT OF APPEALS

-----ooOoo-----

State of Utah,	)	OPINION
Plaintiff and Appellee,	)	(For Official Publication)
v.	)	
Joseph J. Hudecek,	)	
Defendant and Appellant.	)	Case No. 971463-CA
-----	)	
Donald Ralph McDougall,	)	Case No. 981186-CA
Petitioner,	)	
v.	)	
The Honorable Judith H.	)	
Atherton,	)	
Respondent.	)	FILED
	)	(September 17, 1998)

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No. 971463-CA: Fifth District, Cedar City Department  
The Honorable Robert T. Braithwaite

No. 981186-CA: Original Proceeding in this Court

Attorneys (No. 971463-CA): Willard R. Bishop, Cedar City, for  
Appellant  
Scott M. Burns, Cedar City, for  
Appellee

Attorneys (No. 981186-CA): Benjamin A. Hamilton, Salt Lake City,  
for Petitioner  
Brent Johnson, Salt Lake City, for  
Respondent

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Before Judges Davis, Billings, and Jackson.

JACKSON, Judge:

Joseph J. Hudecek challenges the Fifth District Court's  
order ruling that it did not have jurisdiction to hear his appeal  
of the Parowan Precinct Justice Court's order revoking his



1998) ("Any person not satisfied with a judgment rendered in a justice court, whether rendered by default or after trial, is entitled to a trial de novo in the district court of the county as provided by law." (Emphasis added.)). The State in Hudecek's case and Judge Atherton in McDougall's case characterize the "judgment" in each of these cases as the conviction and sentencing of each defendant. They therefore argue that the later orders revoking probation and reimposing a sentence are post-judgment orders over which district courts have no jurisdiction. They posit that each defendant's constitutional right to appeal their cases is satisfied by their right to bring petitions for extraordinary relief under Utah Rule of Civil Procedure 65B.

Probation revocation proceedings are civil in nature and involve an evidentiary hearing. See State v. Hodges, 798 P.2d 270, 278 (Utah Ct. App. 1990) ("'[T]he proceeding for revocation of probation is not a criminal prosecution.' . . . [T]he standard to be used in proving a violation of a condition of probation is a preponderance of the evidence."); cf. Petersen v. Utah Bd. of Pardons, 907 P.2d 1148, 1154 (Utah 1995) ("A parole revocation proceeding is a civil proceeding . . ."). Such proceedings are "entirely independent of any related criminal proceeding." Peterson, 907 P.2d at 1154.

Regarding civil matters, we have found judgment defined as <sup>Very</sup> "a decree and any order from which an appeal lies," Utah R. Civ. <sup>Circular</sup> P. 54(a); "the final consideration and determination of a court on matters submitted to it in an action or proceeding," Crofts v. Crofts, 21 Utah 2d 332, 335, 445 P.2d 701, 702 (Utah 1968); and "'[t]he official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination,'" John Deere Co. v. A & H Equip., Inc., 876 P.2d 880, 884 n.6 (Utah Ct. App.) (quoting Black's Law Dictionary 841 (6th ed. 1990)).

Under these broad definitions of judgment, we conclude that the orders in these two cases are judgments of the justice court and, therefore, may be appealed to the district court. Rule 54(a) explicitly includes "any order from which an appeal lies" in its definition. In these cases, we indeed have orders with a right of appeal. For instance, in a different context, the court of appeals routinely reviews district court orders revoking probation and reinstating sentences. See, e.g., Hodges, 798 P.2d at 271-79. Likewise, the justice court's orders in these cases represent its "final consideration and determination" regarding the matters presented in a proceeding--i.e., a proceeding to decide whether the defendants violated their probation and, if so, what the consequence should be. The orders are the "official" decisions of the justice courts, after hearing

**ILEANA M. PORRAS**

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SALT LAKE CITY, UT 84112-0730  
(801) 581 4295  
(801) 581 6897 (fax)  
E-MAIL: PORRAS@LAW.UTAH.EDU

**EDUCATION**

HARVARD LAW SCHOOL, J.D. *cum laude*, June 1989 Cambridge, MA  
UNIVERSITY OF CAMBRIDGE, Institute of Criminology,  
Master of Philosophy, June 1983 Cambridge, UK  
UNIVERSITY OF LEEDS, BA Honors in English Literature  
& Philosophy, June 1981 Leeds, UK

**ACADEMIC HONORS & ACTIVITIES**

Associate, Foundation for International Environmental Law and Development,  
London, UK, August 1993 to present  
Senior Fellow, Graduate Program, Harvard Law School, 1992-93  
Ford Fellow in Public International Law, Harvard Law School, 1991-92  
Editor, Harvard Environmental Law Review, 1987-88

**EMPLOYMENT**

**UNIVERSITY OF UTAH, COLLEGE OF LAW:**

ASSOCIATE PROFESSOR, July 1993 to present. (Subjects taught:  
international environmental law, international trade, property law and  
seminars on international legal theory and on the relationship between  
international trade & environmental law.)

**HARVARD LAW SCHOOL GRADUATE PROGRAM:**

SENIOR FELLOW, July 1992 to June 1993. Designed and taught a seminar  
on international environmental law for LLM and JD students.

**DELEGATION OF COSTA RICA TO THE UNITED NATIONS CONFERENCE ON  
ENVIRONMENT AND DEVELOPMENT (UNCED) AND TO THE  
INTERGOVERNMENTAL COMMITTEE NEGOTIATIONS ON CLIMATE CHANGE:**

DELEGATE AND LEGAL ADVISER, February 1992 to June 1993. Advised  
and briefed the Costa Rican Minister of Environment, Energy and Mines  
and other members of government. As official Costa Rican delegate to

UNCED, the Fourth Meeting of the Preparatory Committee of the United Nations Conference on Environment and Development and the Fifth Session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, negotiated various international instruments.

**FORD FELLOWSHIPS IN PUBLIC INTERNATIONAL LAW, HARVARD LAW SCHOOL:**  
GRADUATE FELLOW, September 1991 to June 1992. Researched and wrote on issues of international environmental law, international trade and violence and international law.

**PILLSBURY MADISON & SUTRO, SAN FRANCISCO, CALIFORNIA:**  
ASSOCIATE ATTORNEY (Environmental Group), 1989 to 1991. Worked on matters involving CERCLA, air quality, water quality, wetlands, disposal and treatment of solid and hazardous wastes, regulation of toxic substances (including pesticides), worker safety and land use planning.  
PUBLICATIONS: Case Commentary, 9 Cal. Envtl. L. Rep. (MB) 136 (1991)  
Case Commentary, 9 Cal. Envtl. L. Rep. (MB) 137 (1991)  
Case Commentary, 8 Cal. Envtl. L. Rep. (MB) 97 (1991)

**BAUDEL, SALES, VINCENT ET GEORGES, PARIS, FRANCE:**  
LAW CLERK, summer 1988. Worked on a wide variety of issues including French labor law and European Community rules on product liability.

**LEGAL DEFENSE INSTITUTE, LIMA, PERU:**  
LAW CLERK, summer 1987. Clyde Ferguson Fellow in Human Rights. Assisted Peruvian attorneys defending political prisoners and union workers.

**AMERICAN CORRECTIONAL ASSOCIATION (ACA), COLLEGE PARK, MARYLAND:**  
INTERNATIONAL ASSISTANT, 1984-1986. Directed the formation of "Corrections International," an international non-governmental organization for correctional professionals. Served as ACA delegate to the Seventh United Nations Conference on the Prevention of Crime and the Treatment of Offenders.  
PUBLICATIONS: INTERNATIONAL DIRECTORY OF CORRECTIONAL ADMINISTRATIONS, ACA Publications, 1986. "*The United Nations Crime Congresses*," in INTERNATIONAL CORRECTIONS: AN OVERVIEW, ACA Publications, 1987.

**UNITED NATIONS, CRIME PREVENTION AND CRIMINAL JUSTICE BRANCH, CENTER FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS, VIENNA, AUSTRIA:**

Research Intern, January to August 1984. Assisted in the design and preparation of United Nations working papers for the Seventh United Nations Conference on the Prevention of Crime and the Treatment of Offenders.

**LEGAL PUBLICATIONS**

*A LatCrit Sensibility Approaches the International: Reflections on Environmental Rights as Third Generation Solidarity Rights*, 28 *Miami Inter-American L. Rev.* 413 (1997)

Book Review: *Ozone Discourses. Science and Politics in Global Environmental Cooperation*, by Karen T. Litfin; and *The Politics of Global Atmospheric Change*, by Ian H. Rowlands. 90 *AJIL* 703 (1996).

"*The Puzzling Relationship Between Trade and the Environment: NAFTA, Competitiveness and Environmental Welfare Objectives*," 3 *Indiana Journal of Global Legal Studies* 65 (1995)

"*Trading Places: Greening World Trade or Trading In the Environment?*", 88 *Proceedings of the American Society of International Law* (1994)

"*The Rio Declaration: A New Basis for International Cooperation*," 1 *Review of European Community and International Environmental Law* 3 (1992), Reprinted in GREENING INTERNATIONAL LAW, P. Sands ed., Earthscan Publications, 1993. Reprinted in U.S. edition of GREENING INTERNATIONAL LAW, P. Sands ed., New Press, October 1994.

"*On Terrorism: Reflections on Violence and the Outlaw*," 1994 *Utah L. Rev.* 119. Reprinted in AFTER IDENTITY: A READER IN LAW AND CULTURE, D. Danielsen & K. Engle eds., Routledge, 1994.

Book Review, *Cassandra: A Book and Four Essays*, by Christa Wolf, 12 *Harv. Women's L.J.* 309 (1989).

**WORKS IN PROGRESS**

"Resisting the Irresistible: Difference Under Pressure in the Age of Fair Trade — The Limits of Harmonization" (working title)

**CONFERENCES, LECTURES & PRESENTATIONS**

Keynote address, "Resisting the Irresistible: Difference Under Pressure in the Age of Fair Trade—The Limits of Harmonization," the American Society of International Law International Economic Law Interest Group, Linkage as Phenomenon: An Interdisciplinary Approach, Washington, D.C., December 5-7, 1997

Participant, New Approaches to International Law Dighton Writers' Workshop, Dighton, Massachusetts, November 21-23, 1997. (Session devoted to discussion of working paper "Difference Under Pressure in the Age of Fair Trade: Finding the Limits of Harmonization")

Moderator, Panel on Sustainable Solutions – From Restoration to Preservation, Utah College of Law's Stegner Symposium, "To Cherish and Renew" Restoring Western Ecosystems and Communities, Salt Lake City, Utah, April 17-19, 1997

Participant, New Approaches to Third World Legal Studies Conference, sponsored by the Graduate Program of Harvard Law School, Cambridge, Massachusetts, March 7-8, 1997

Participant, West International Law Workshop, University of California at Berkeley, Berkeley, California, January 17- 18, 1997

Co-organizer and closing panelist, Utah Law Review Symposium on New Approaches to Comparative Law, Salt Lake City, Utah, October 11-12, 1996.

Panelist, "Environmental Rights as Third Generation Human Rights", Colloquium on International Law, Human Rights and LatCrit Theory sponsored by the University of Miami, School of Law, Miami, Florida, October 4, 1996.

Chair, Working Group on Trade and Environment in a Post-Colonial Era, New Approaches to International Law Conference on International Law, Critique and Social Change, co-sponsored by the European Law Research Center at Harvard law School and the Global Studies Research Program at the University of Wisconsin-Madison, Madison, Wisconsin, June 14-16, 1996.

Participant, First Annual LatCrit Conference sponsored by the California Western School of Law, La Jolla, California, May 2-5, 1996.

Moderator, Panel on Time, People and the Great Basin, Utah College of Law's Stegner Symposium "The Native Home of Hope", Community, Ecology and the West, Salt Lake City, Utah, April 12-13, 1996.

Participant, New Approaches to Third World Legal Studies, sponsored by the Graduate Program of Harvard Law School, Cambridge, Massachusetts, April 26, 1996.

Participant in personal capacity in Expert Group Meeting on Identification of Principles of International Law for Sustainable Development, convened by the Secretariat of the United Nations Commission on Sustainable Development, Geneva, Switzerland, September 26-28, 1995.

"What are the Effective Legal Mechanisms Necessary to Enforce International (Environmental Treaties at the Local Level?", Colloquium Series — "Trade, Treaties, Transnational Advocacy Groups and Tropical Timber," and Guest Lecturer for Comparative Law Seminar, University of Wisconsin-Madison, May 8-9, 1995.

"Imagining Transnational Spaces: The Globalizing Rhetorics of Environment and Trade Law." Narrative: An International Conference, hosted by the University of Utah, Department of English, Park City, Utah, April 20-23, 1995.

Commentator on Panel on "The Culture of International Law" and Respondant on Panel on "Transnational Regulatory Regimes." Conference on The Market, The Sovereign and Culture, Co-sponsored by the Harvard European Law Research Center and the University of Connecticut, Hartford, Connecticut, April 9-11, 1995.

"Resurgent Boundaries: The Meeting of Free Trade and the Environment in NAFTA," Symposium on NAFTA at Age One: A Blueprint for Hemispheric Integration?, University of Connecticut School of Law, held at the University of Puerto Rico School of Law, Rio Piedras, Puerto Rico, March 16-17, 1995.

"Resurgent Boundaries: The Meeting of Free Trade and the Environment in NAFTA," Symposium on International Environmental Laws and Agencies: The Next Generation, Indiana University, School of Law, Bloomington, March 8, 1995.

"International Environmental Law Principles," Symposium on Greening International Law, New York University School of Law, October 7, 1994.

"Latest Directions in Critical Approaches to Law — Moving to the International," Workshop on Critical Approaches and Socio-Legal Studies: What Links, Oñati International Institute for the Sociology of Law, Oñati, Spain, June 8-10, 1994.

"Critical Methodologies or Making the Fact of Choice Apparent in Bureaucratic Forms: A Response to Gerald Frug." Conference on New Approaches to Public Law and Constitutional History, Athens, Greece, May 22-23, 1994.

"Trading Places: Greening World Trade or Trading In the Environment?," Panel on Access to Transnational Justice: Responding to NAFTA, 88th Annual Meeting of the American Society of International Law, Washington, D.C., April 9, 1994.

"Integrating Theory and Practice," remarks presented at the Workshop on Interdisciplinary Approaches to International Economic Law, sponsored by the International Economic Interest Group, American Society of International Law, Washington, D.C., February 27, 1994.

"Planning to Teach a Law School Class for the First Time," talk delivered as part of the Harvard Law School Graduate Program's Teaching and Legal Education Colloquium Series, November 22, 1993.

Participant Conference on New Approaches to International Law, Essex Massachusetts, October 9-12, 1993. Acted as moderator for one panel; draft on

"Emerging Principles of International Law" was a reading discussed in another panel.

Participant Conference on New Directions in European Community Law, held at the European University Institute in Florence, Italy, July 5, 1993.

"Emerging Principles of International Environmental Law," A Consultation on Sustainable Development: The Challenge to International Law, St. George's House, Windsor Castle, England April 27-29, 1993.

"On Terrorism: Reflections on Violence and the Outlaw," Symposium on Violence and the Outlaw: The Creation and Treatment of the Outlaw in Contemporary Legal Culture, held at University of Utah, College of Law, March 12, 1993.

"A Community of Differences, Parts I and II," lectures to incoming LLM students as part of the graduate program orientation process, Harvard Law School, August 25 and 27, 1992.

Presentation to the Minister and Vice-Minister of Environment, Energy and Mines, Members of Parliament and officials of the Department of Foreign Affairs (Cancilleria) concerning UNCED and the Rio Declaration negotiations, the Framework Convention on Climate Change and issues of particular significance to Costa Rica arising out of the upcoming Earth Summit in Brazil. San Jose, Costa Rica, May 28, 1992.

"Environmental Issues and the North American Free Trade Agreement," Panel on Free Trade, Conference on Policy in the Nineties, Boston, MA (Northeastern U. School of Law), April 11, 1992.

"The Right to Development in the Rio Declaration on Environment and Development," Panel on Law and Development, Conference on Policy in the Nineties, Boston, MA (Harvard Law School), April 12, 1992.

### ***SERVICE AND PROFESSIONAL ORGANIZATIONS***

#### ***University of Utah***

University Discrimination Complaints Hearing Panels Committee,  
1994-1997

University Task Force on International Studies, 1994-1997

College of Law, Appointments Committee, 1994-present

College of Law, LLM/Stegner Center Committee, 1993-present

College of Law, Faculty Development Committee, 1995-97

College of Law, Re-admissions Committee, Summer 1995

*Professional Organizations*

Member, American Society of International Law  
Member, Hispanic Bar National Association  
Member, Inter-American Bar Association  
AALS Minority Groups Mentoring Program

**PERSONAL**

Bar Membership:	California 1989
Languages:	Fluent Spanish & French
Citizenship:	U.S. & Costa Rica



**JUDGES' ASSIGNMENTS  
TO COUNCILS, COMMITTEES, BOARDS, P.J. POSITION**

(\* denotes a Standing or Ad Hoc Committee of the Judicial Council)

**SUPREME COURT**

DURHAM	*Committee on Improving Jury Services (Ad Hoc) - Co-Chair Board of Appellate Court Judges Associate Chief Justice, Supreme Court
HOWE	Board of Appellate Court Judges Chief Justice, Supreme Court Judicial Council - Chair
RUSSON	Judicial Council Board of Appellate Court Judges
STEWART	Supreme Court Committee on Rules of Evidence Board of Appellate Court Judges *Judicial Performance Evaluation (Standing) Supreme Court Committee On Rules of Professional Conduct
ZIMMERMAN	Board of Appellate Court Judges *ADR Committee (Ad Hoc) *Racial and Ethnic Fairness in the Legal System (Ad Hoc) Supreme Court Committee on Rules of Professional Conduct Law Library Committee Appellate Rules Committee

**COURT OF APPEALS**

BENCH	Board of Appellate Court Judges Legislature's Judiciary Committee Substance Abuse and Anti-Violence Coordinating Council Judicial Council
BILLINGS	Board of Appellate Court Judges Appellate Rules Committee

## JUDGES' ASSIGNMENTS

---

BALDWIN

DAWSON

Board of District Court Judges  
Tax Judge  
Criminal Procedures Committee

DUTSON

Legislature's Judiciary Committee Substance Abuse  
and Anti-Violence Coordinating Council

GLASMANN

\*Committee on Improving Jury Service (Ad Hoc)  
Judicial Council

HANSEN, D.

HEFFERNAN

KAY

LYON

Divorce Education Oversight Committee

MEMMOTT

Tax Judge

PAGE

TAYLOR

Grand Jury Panel of Judges, Chair  
Board of District Court Judges

WEST

Associate Presiding Judge, Second District Court  
\*Racial and Ethnic Fairness (Ad Hoc)  
\*Uniform Fine and Bail Committee (Standing) - Chair

### SECOND DISTRICT JUVENILE

ANDRUS

Board of Juvenile Court Judges  
Presiding Judge, Second District Juvenile Court

BACHMAN

VAN DYKE

WILKINS, D.

Court Interpreter Advisory Panel

## JUDGES' ASSIGNMENTS

---

LIVINGSTON	*Uniform Fine and Bail Committee (Standing)
MCCLEVE	*Uniform Fine and Bail Committee (Standing) *Court Facility Planning Committee (Standing)
MEDLEY	Racial and Ethnic Fairness (Ad Hoc) - Co-Chair Sentencing Commission
NEHRING	Board of District Court Judges (Chair Elect) *Supreme Court Committee on Rules of Professional Conduct
NOEL	Presiding Judge, Third District Court
PEULER	ADR Committee (Ad Hoc) Board of District Court Judges
QUINN	Supreme Court Committee on Civil Procedure
REESE	Associate Presiding Judge, Third District Court
STIRBA	Judicial Council
THORNE	*Technology Committee (Standing) *Racial and Ethnic Fairness (Ad Hoc) *Committee on Improving Jury Service (Ad Hoc) - Co Chair District Court Data Processing User Group - Chair Court Improvement Committee
WILKINSON	
YOUNG	

### **THIRD DISTRICT JUVENILE**

ANDERSON, JOE	*Technology Committee (Standing) Juvenile Court User's Group
BEHRENS	

## JUDGES' ASSIGNMENTS

---

HARDING, JR.      \*Uniform Fine and Bail Committee (Standing)  
                         \*Judicial Branch Education Committee (Standing)

HOWARD            \*Ethics Advisory Committee (Standing)

MAETANI

SCHOFIELD        Judicial Council

STOTT

### **FOURTH DISTRICT JUVENILE**

BROWN            Board of Juvenile Court Judges

LINDSAY          Board of Juvenile Court Judges (Ex Officio)  
                         Judicial Council

SAINSBURY        Presiding Judge, Fourth District Juvenile Court

WILSON            Board of Juvenile Court Judges (Chair)  
                         \*Performance Evaluation Committee (Standing)

### **FIFTH DISTRICT**

BEACHAM

BRAITHWAITE     Judicial Council

EVES              \*Committee on Improving Jury Services (Ad Hoc)

SHUMATE         Legislature's Judiciary Committee Substance Abuse  
                         and Anti-Violence Coordinating Council  
                         Presiding Judge, Fifth District Court

### **FIFTH DISTRICT JUVENILE**

CHAMBERLAIN    Board of Juvenile Court Judges  
                         \*Court Facilities Planning (Standing) - Chair

JACKSON          Presiding Judge, Fifth District Juvenile Court

As of October, 1998

80 judges (78%) are participating on at least one committee, board and/or serving as P.J.

52 judges (51%) of all judges are participating on more than one committee, board and/or serving as P.J.

22 judges (22%) are not participating on any committee, board, and not serving as P.J.

COURT	JUDGES ON COMMITTEES/BOARDS AND/OR SERVING AS P.J.	
Supreme Court	100%	(5 out of 5)
Court of Appeals	100%	(7 out of 7)
First District	75%	(3 out of 4)
First District Juvenile	100%	(1 out of 1)
Second District	62%	(8 out of 13)
Second District Juvenile	50%	(2 out of 4)
Third District	75%	(21 out of 28)
Third District Juvenile	75%	(6 out of 8)
Fourth District	75%	(9 out of 12)
Fourth District Juvenile	100%	(4 out of 4)
Fifth District	75%	(3 out of 4)
Fifth District Juvenile	100%	(2 out of 2)
Sixth District	100%	(2 out of 2)
Sixth District Juvenile	100%	(1 out of 1)
Seventh District	67%	(2 out of 3)
Seventh District Juvenile	100%	(1 out of 1)
Eighth District	100%	(2 out of 2)
Eight District Juvenile	100%	(1 out of 1)

## ***EDUCATION***

TONGA HIGH SCHOOL Nuku'alofa, Tonga  
ST. JOHN HIGH SCHOOL Ma'ufanga, Tonga (DUX/VALEDICTORIAN-1962)  
POST HIGH SCHOOL:

Auckland Boys Grammar School, Auckland, New Zealand

TERTIARY:

University of Auckland, Auckland, New Zealand;  
Long Beach State College, Long Beach, CA.;  
Brigham Young University Provo, UT.

## ***BOARDS/COMMITTEES***

Utah Adult Education Advisory Board (1996-); Granite School District Adult Education Advisory Committee (1997-); Utah Center for Families in Education, Advisory Board (1998-); GIFT (Governor's Initiative on Families Today) Advisory Board (1997-); FACT [Families, Agencies, and Communities Together] Steering Committee (1998-); Coalition for Utah Families, Advisory Board (1998-); Utah Ethnic Health Advisory Committee (1996-); Ethnic Coalition on HIV/AIDS Board (1996-); Community Resource Committee, Utah Task Force for Racial and Ethnic Fairness in the Legal System); Wasatch Youth Center Citizen's Advisory Board (1997-); West High PTSA Board (1997-); West High Community Council (1997-); Salt Lake Community Development Committee (1998-); Pacific Resource Center (1997-); Utah Folk Arts Advisory Panel (1998-).

## ***LEADERSHIP/HONORS***

Chairman Administrative Committee of Asian Pacific Parliamentarians Union 1989-1992;  
Asian Pacific Expert Conference on Development, Okinawa, Japan 1987; Secretary General of Asian Pacific Parliamentarians Union (APPU) 49th Council meetings 1990; Delegate APPU Council Meetings: Papua New Guinea 1989; Seoul, Korea 1990; Tokyo, Japan 1991; Taipei, Republic of China 1992; Tonga National Tourist Advisory Board 1991-1996 (Guest Observer of Sabbath Law in Jerusalem, Israel 1992); Member of Cultural Convention, Tokyo, Japan 1992; Director of Ha'alata Fisheries (Tonga) Ltd 1984-1988; Director of Kolotau Development Project 1980-1984.

## ***COMPERE/BROADCASTER***

Announcer, Radio Tonga, Tonga Broadcasting Commission 1984-1988; Commentator, Tonga National Inter-Collegiate Athletic Meet 1983-1986; Master of Ceremony, Tonga National Heilala Festival 1980-1993; Master of Ceremony, Miss Heilala Pageant 1983-1993; Announcer, Mini South Pacific Games 1991; Master of Ceremony, Annual Ha'apai Festival 1989-1995

## ***ETHNIC/CULTURAL PRODUCTIONS***

Suliana's Polynesian Spectacular, Salt Lake City, Utah (1972-1978); Suliana's Polynesian Dance Studio Productions, Nuku'alofa, Tonga Islands (1980-1996); Suliana's Polynesian Dance Studio Annual Recitals, Tonga (1982-1995); Vava'u Cultural Festival, Tonga (1987); National Tongan Heilala Festival -Polynesian Night Production (1988-1995); Polynesian Airlines Tonga Promotions Tour to Australia (1992); Suliana's Polynesian Dance Studio and Productions Tour to Australia (1993); Ha'apai Cultural Festival (1995); Royal Tongan Airlines Tonga Promotions Tour to Australia (1995); Faith in Every Footstep-Polynesian Legacy : A Trial of Faith in the South Pacific (LDS Salt Lake Utah Tongan Stake) 1997 .

## ***PUBLICATIONS***

Editor, Rules and Standing Orders for Legislative Assembly 1991;  
Review Team Reviewing Tongan Book of Mormon, since 1995-1997

# **WILLIAM P. AFEAKI**

*225 East 7TH Avenue  
Salt Lake City, Utah 84103  
Home : (801)322-5513  
(801) 322-1277  
Work : (801)538-8691*

## **RELEVANT EXPERIENCE**

### **DIRECTOR, STATE OFFICE OF POLYNESIAN AFFAIRS**

Utah State Office of Polynesian Affairs 1996 - present  
Division of Business and Economic Development  
Department of Community and Economic Development

### **MEMBER OF PARLIAMENT**

Legislative Assembly of *The Kingdom of Tonga* 1987-1989, 1990-1992

- \* Chairman Sub-Committee on Royal Addresses 1987-1992
- \* Member of Committee on Bills 1987-1992
- \* Secretary General, Asian Pacific Parliamentarians Union 1988-1992

### **LAW PRACTITIONER (Licensed Private Practice in Tonga)**

- \* Supreme Court and Magistrate Courts of Tonga 1988-1996
- \* Commissioner of Oath for Ha'apai District 1994-1996
- \* Member of Tongan Law Society 1988-1996

### **CHURCH EDUCATIONAL SYSTEM, The Church of Jesus Christ of Latter Day Saints**

- \* Deputy Principal, Liahona High School 1984-1985
- \* Director of Support Services for Church Schools of Tonga 1982-1984
- \* Seminary Teacher, East High & South High School SLC, UT. 1980-1982
- \* Student Leadership Advisor, Liahona High School, Tonga 1978-1980
- \* Social Science, Geography & History Teacher, Liahona High School, Tonga 1978-1980

### **HOTEL MANAGEMENT**

- \* Ramada Inns SLC, UT. Front Office Manager 1976-1978
- \* Sheraton Hotels 1972-1976:
  - Account Executive, Sheraton Hawaii, Honolulu, HI.
  - Assistant Manager, Sheraton Airport L.A., CA.
- \* Americana Flagstaff Hotels 1970-1972 :
  - Management Trainee, Ala Moana Hotel, Honolulu, HI.
  - Assistant Front Office Manager, Ala Moana Hotel, Honolulu, HI.
  - Assistant General Manager, Pagopago Americana Hotel, American Samoa

### **ACCOUNTANT**

- \* E.M. Jones Ltd. Nuku'alofa, Tonga 1967-1970

# **WILLIAM P. AFEAKI**

*225 East 7TH Avenue  
Salt Lake City, Utah 84103  
Home : (801)322-5513  
(801) 322-1277  
Work : (801)538-8691*

## ***RELEVANT EXPERIENCE***

### **DIRECTOR, STATE OFFICE OF POLYNESIAN AFFAIRS**

Utah State Office of Polynesian Affairs 1996 - present  
Division of Business and Economic Development  
Department of Community and Economic Development

### **MEMBER OF PARLIAMENT**

Legislative Assembly of *The Kingdom of Tonga* 1987-1989, 1990-1992

- \* Chairman Sub-Committee on Royal Addresses 1987-1992
- \* Member of Committee on Bills 1987-1992
- \* Secretary General, Asian Pacific Parliamentarians Union 1988-1992

### **LAW PRACTITIONER (Licensed Private Practice in Tonga)**

- \* Supreme Court and Magistrate Courts of Tonga 1988-1996
- \* Commissioner of Oath for Ha'apai District 1994-1996
- \* Member of Tongan Law Society 1988-1996

### **CHURCH EDUCATIONAL SYSTEM, The Church of Jesus Christ of Latter Day Saints**

- \* Deputy Principal, Liahona High School 1984-1985
- \* Director of Support Services for Church Schools of Tonga 1982-1984
- \* Seminary Teacher, East High & South High School SLC, UT. 1980-1982
- \* Student Leadership Advisor, Liahona High School, Tonga 1978-1980
- \* Social Science, Geography & History Teacher, Liahona High School, Tonga 1978-1980

### **HOTEL MANAGEMENT**

- \* Ramada Inns SLC, UT. Front Office Manager 1976-1978
- \* Sheraton Hotels 1972-1976:
  - Account Executive, Sheraton Hawaii, Honolulu, HI.
  - Assistant Manager, Sheraton Airport L.A., CA.
- \* Americana Flagstaff Hotels 1970-1972 :
  - Management Trainee, Ala Moana Hotel, Honolulu, HI.
  - Assistant Front Office Manager, Ala Moana Hotel, Honolulu, HI.
  - Assistant General Manager, Pagopago Americana Hotel, American Samoa

### **ACCOUNTANT**

- \* E.M. Jones Ltd. Nuku'alofa, Tonga 1967-1970



## ***EDUCATION***

TONGA HIGH SCHOOL Nuku'alofa, Tonga  
ST. JOHN HIGH SCHOOL Ma'ufanga, Tonga (DUX/VALEDICTORIAN-1962)  
POST HIGH SCHOOL:

Auckland Boys Grammar School, Auckland, New Zealand

TERTIARY:

University of Auckland, Auckland, New Zealand;

Long Beach State College, Long Beach, CA.;

Brigham Young University Provo, UT.

## ***BOARDS/COMMITTEES***

Utah Adult Education Advisory Board (1996-); Granite School District Adult Education Advisory Committee (1997-); Utah Center for Families in Education, Advisory Board (1998-); GIFT (Governor's Initiative on Families Today) Advisory Board (1997-); FACT [Families, Agencies, and Communities Together] Steering Committee (1998-); Coalition for Utah Families, Advisory Board (1998-); Utah Ethnic Health Advisory Committee (1996-); Ethnic Coalition on HIV/AIDS Board (1996-); Community Resource Committee, Utah Task Force for Racial and Ethnic Fairness in the Legal System); Wasatch Youth Center Citizen's Advisory Board (1997-); West High PTSA Board (1997-); West High Community Council (1997-); Salt Lake Community Development Committee (1998-); Pacific Resource Center (1997-); Utah Folk Arts Advisory Panel (1998-).

## ***LEADERSHIP/HONORS***

Chairman Administrative Committee of Asian Pacific Parliamentarians Union 1989-1992;  
Asian Pacific Expert Conference on Development, Okinawa, Japan 1987; Secretary General of Asian Pacific Parliamentarians Union (APPU) 49th Council meetings 1990; Delegate APPU Council Meetings: Papua New Guinea 1989; Seoul, Korea 1990; Tokyo, Japan 1991; Taipei, Republic of China 1992; Tonga National Tourist Advisory Board 1991-1996 (Guest Observer of Sabbath Law in Jerusalem, Israel 1992); Member of Cultural Convention, Tokyo, Japan 1992; Director of Ha'alata Fisheries (Tonga) Ltd 1984-1988; Director of Kolotau Development Project 1980-1984.

## ***COMPERE/BROADCASTER***

Announcer, Radio Tonga, Tonga Broadcasting Commission 1984-1988; Commentator, Tonga National Inter-Collegiate Athletic Meet 1983-1986; Master of Ceremony, Tonga National Heilala Festival 1980-1993; Master of Ceremony, Miss Heilala Pageant 1983-1993; Announcer, Mini South Pacific Games 1991; Master of Ceremony, Annual Ha'apai Festival 1989-1995

## ***ETHNIC/CULTURAL PRODUCTIONS***

Suliana's Polynesian Spectacular, Salt Lake City, Utah (1972-1978); Suliana's Polynesian Dance Studio Productions, Nuku'alofa, Tonga Islands (1980-1996); Suliana's Polynesian Dance Studio Annual Recitals, Tonga (1982-1995); Vava'u Cultural Festival, Tonga (1987); National Tongan Heilala Festival -Polynesian Night Production (1988-1995); Polynesian Airlines Tonga Promotions Tour to Australia (1992); Suliana's Polynesian Dance Studio and Productions Tour to Australia (1993); Ha'apai Cultural Festival (1995); Royal Tongan Airlines Tonga Promotions Tour to Australia (1995); Faith in Every Footstep-Polynesian Legacy : A Trial of Faith in the South Pacific (LDS Salt Lake Utah Tongan Stake) 1997.

## ***PUBLICATIONS***


Editor, Rules and Standing Orders for Legislative Assembly 1991;  
Review Team Reviewing Tongan Book of Mormon, since 1995-1997

# Administrative Office of the Court

Chief Justice Richard C Howe  
Chair Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator  
450 So. State St.  
P.O.Box 140241  
Salt Lake City, Utah 84114-0241  
Phone: (801) 578-3800  
Fax: (801) 578-3843

## MEMORANDUM

 TO: Judicial Council Management Committee  
FROM: Holly M. Bullen  
Assistant State Court Administrator  
DATE: October 8, 1998  
RE: Uniform Fine/Bail Schedule Standing Committee

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Rule 1-205, CJA, requires that vacancies on the Judicial Council standing committees be announced to those who are eligible to apply for membership. Accordingly, the Administrative Office sent a memorandum to District Judges and Justice Court Judges advising them of several upcoming vacancies on the Uniform Fine/Bail Standing Committee: one for a District Judge who has experience with a misdemeanor docket, and two for Justice Court Judges.

One District Judge and thirteen Justice Court Judges responded, indicating an interest in serving on this committee, as follows:

District Judge Lyle R. Anderson

Justice Court Judges: Richard M. Dobson, Shadrach C. Bradshaw, Dennis J. Barker, Kent Nielsen, Kim T. Adamson, Pat McRae, Richard L. Halliday, W. Brent Bullock, Joseph M. Bean, Daniel Bertch, R. Scott Waterfall, Debra L. David, and G. A. "Jody" Petry.

Attached are the forms indicating their present and past committee assignments.

The names of the Justice Court Judges were submitted to the Board of Justice Court Judges. The Board recommended Judges Daniel Bertch (Draper City) and R. Scott Waterfall (South Ogden City).

Judicial Council | Management Committee  
October 8, 1998  
Page Two

If Management Committee agrees with appointing Judges Anderson, Bertsch and Waterfall to fill the vacancies, I request that the appointments be placed on the consent calendar of the Judicial Council meeting on October 27, 1998.

Thank you for your consideration of this matter.

**Enclosures**

c: Mark Jones  
Richard Schwermer

jccomm/finebail pp29-30

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

None

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

Court Security 1997

DATE:

8/13/98

NAME:

Lyle R. Anderson  
(Please print or type)

Please return by **September 4, 1998** to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

Standing Committee for Building Facilities over 1 year

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

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DATE: 9.4.98  
NAME: RICHARD M. DEBSON  
(Please print or type)

Please return by **September 4, 1998** to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

Received  
Sept. 10  
HMB

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

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

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DATE:

Aug 19, 1998

NAME:

Judge SHADRACH C BRADSHAW

(Please print or type)

Please return by **September 4, 1998** to:

Holly M. Bullen

Administrative Office of the Courts

P.O. Box 140241

Salt Lake City, Utah 84114-0241

Beaver Co.

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

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

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DATE:

8-19-98

NAME:

TENNIS J. BARKER  
(Please print or type)

Newton Town

Please return by **September 4, 1998** to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

Judicial Council 6 years term ends 9-11-98

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

6th District Regional Director mid 1980's  
Member of Bd. of Justice Court Judges late 1980's  
Chair of Bd. of Justice Court Judges early 1990's

DATE: 8-18-98

NAME: Kent Nielsen Sevier County  
(Please print or type)

Please return by September 4, 1998 to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241



I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

- (1) STANDING COMMITTEE ON JUDICIAL BRANCH EDUCATION  
(~ Oct 97 to present)
- (2) 1999 JUSTICE COURT JUDGES' CONFERENCE CHAIRPERSON  
(Appt'd July 97)
- (3) Legal Institute Committee  
(April 1997 to present)
- (4) SL County Criminal Justice Advisory Council  
(Dec 1997 to present)

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

NONE

DATE: 18 AUGUST 1998  
NAME: KIM T. ADAMSON  
(Please print or type)

Please return by **September 4, 1998** to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

NOTE: Please consider my appt to this committee only if no one else is interested.

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

JUSTICE COURT STANDARDS (1997-2 years)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

AD HOC COMMITTEE ON COLLECTIONS/WARRANTS  
(1996)  
\_\_\_\_\_  
EDUCATION COMMITTEE (1996-1997)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE:

August 07, 1998

NAME:

Pat McAfee Pat McAfee

(Please print or type)

Please return by **September 4, 1998** to:

Holly M. Bullen

Administrative Office of the Courts

P.O. Box 140241

Salt Lake City, Utah 84114-0241

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

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

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DATE:

8/17/98

NAME:

Richard L. Halliday - So. SLCC  
(Please print or type)

Please return by **September 4, 1998** to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

NONE

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

NONE

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DATE: August 18, 1998

NAME: W Brent Bullock - Pleasant Grove Justice Court  
(Please print or type)

Please return by **September 4, 1998** to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

NONE

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

NONE

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DATE:

8-17-98

NAME:

Joseph M. Bean

(Please print or type)

Please return by **September 4, 1998** to:

Holly M. Bullen

Administrative Office of the Courts

P.O. Box 140241

Salt Lake City, Utah 84114-0241

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

NONE

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

NONE

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DATE:

8/14/98

NAME:

DANIEL BERTCH - DRAPER CITY  
(Please print or type)

Please return by **September 4, 1998** to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

*Serving 2 years as 2<sup>nd</sup> District Director  
for Justice Court Judges.*

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

DATE:

8/17/98

NAME:

R. SCOTT WATERFALL - South Ogden City  
(Please print or type)

Please return by September 4, 1998 to:

Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

*please  
mail*

I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

NONE

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

NONE

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DATE:

8-14-98

NAME:

Debra L. David

(Please print or type)

Please return by September 4, 1998 to:

Holly M. Bullen

Administrative Office of the Courts

P.O. Box 140241

Salt Lake City, Utah 84114-0241



I am interested in serving on the Uniform Fine/Bail Standing Committee.

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

Task Force on Racial + Ethnic Bias 7/97 -  
present

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

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DATE:

8/13/98

NAME:

G.A. "Jody" Petry Uintah County  
(Please print or type)

Please return by **September 4, 1998** to:  
Holly M. Bullen  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

# Administrative Office of the Court

Chief Justice Richard C Howe  
Chair Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator  
450 So. State St.  
P.O.Box 140241  
Salt Lake City, Utah 84114-0241  
Phone: (801) 578-3800  
Fax: (801) 578-3843

## MEMORANDUM

*HMB*  
TO: Judicial Council Management Committee  
FROM: Holly M. Bullen  
DATE: October 7, 1998  
RE: Recertification of Senior Judges

The three-year appointments of several Active Senior Judges will expire during November, December and January. I sent out a reminder of that fact to the judges along with an application form for recertification. I have received application forms from the following:

Boyd Bunnell  
Robert W. Daines  
Merrill L. Hermansen  
Ronald O. Hyde  
Robert L. Newey  
A. John Ruggeri  
Raymond S. Uno

I am enclosing the application forms for recertification for your review. If you find these to be satisfactory, I will place them on the consent calendar of the Judicial Council on October 27, 1998. (They have been dated with the appropriate date on which the current certification will expire and the new term should begin.)

Thank you for your attention to this matter.

Enclosures