



JUDICIAL COUNCIL MEETING AGENDA

Monday, December 17, 2001
Council Room, Matheson Courthouse
450 South State
Salt Lake City, Utah

Chief Justice Richard C. Howe, Presiding

Continental Breakfast and Lunch will be Provided

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|----|------------|--|--|
| 1. | 9:00 a.m. | Welcome/Approval of Minutes
(Tab 1 - Action) | Chief Justice
Richard C. Howe |
| 2. | 9:10 a.m. | Chairman's Report
(Information) | Chief Justice
Richard C. Howe |
| 3. | 9:20 a.m. | Administrator's Report
(Information) | Daniel J. Becker |
| 4. | 9:35 a.m. | Reports: Management Committee
Policy and Planning
Liaison Committee
Bar Commission
(Tab 2 - Information) | Hon. Lyle Anderson
Hon. Scott Johansen
Justice Michael J. Wilkins
Debra Moore, esq. |
| 5. | 10:00 a.m. | Department of Corrections Issues
(Information) | Mike Chabries, <i>Executive
Director, Dept. Of Corrections</i> |
| 6. | 10:45 a.m. | <i>Break</i> | |
| 7. | 11:00 a.m. | Report: Standing Committee on
Information Technology
(Tab 3 - Information) | Justice Matthew B. Durrant |
| 8. | 11:15 a.m. | Report: Judicial Conduct Commission
(Tab 4 - Information) | Steven Stewart |

9. 11:30 a.m. Traffic Offense Adjudication Legislation Hon. John Sandberg
(Tab 5 - Action)
10. 11:45 a.m. Ethics Advisory Informal Opinion # 01-5 Hon. John Sandberg
(Tab 6 - Action)
11. 12:00 p.m. *Lunch* - Presentation of Service Awards to former Active Senior Judges Ronald
O. Hyde, Robert L. Newey, Boyd Bunnell, and Merrill Hermansen
12. 1:00 p.m. Olympic Update Myron K. March
(Information)
13. 1:15 p.m. Reorganization of the Code of Judicial Alicia Davis
Administration
(Tab 7 - Action)
14. 1:45 p.m. Executive Session
15. 2:45 p.m. Adjourn

Consent Calendar

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

1. Reappointment of Judge Ann Boyden, Judge Daniel Betch, Holly Bullen
and Judge Scott Waterfall to the Uniform Fine/Bail Standing Committee
(Tab 8)
2. Appointment of Judge Guy Burningham to the Standing Alicia Davis
Committee on Children and Family Law
(Tab 9)
3. FY 2004 Budget Planning Calendar Fred Jayne
(Tab 10)

PRESS - Tab 11

<p>Next Judicial Council Meeting: Monday, January 28, 2002 Council Room, Matheson Courthouse 450 South State Salt Lake City, Utah</p>
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TAB 1

JUDICIAL COUNCIL MEETING

MINUTES

**Monday, November 26, 2001
Council Room, Matheson Courthouse
450 South State
Salt Lake City, Utah**

MEMBERS PRESENT:

Chief Justice Richard C. Howe
Hon. James Z. Davis
Justice Michael Wilkins
Hon. Ben Hadfield
Hon. Clair Poulson
Hon. Lyle Anderson
Hon. Lee Dever
Hon. Robert Hilder
Hon. Andrew Valdez
Hon. Lynn Davis
Hon. Ronald Hare
Hon. Scott Johansen
Debra Moore, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Sandy Iwasaki

PRESENTING/TOPIC RELATED STAFF:

Ray Wahl
D. Mark Jones
Richard H. Schwermer
Jan Thompson
Joyce Robbins

MEMBER EXCUSED:

Hon. Jerald Jensen

GUESTS PRESENT:

Hon. Russell W. Bench, *Judge, Court of Appeals*

1. WELCOME/APPROVAL OF MINUTES: (Chief Justice Richard C. Howe)

All members and staff were welcomed to the meeting. Chief Justice Richard Howe asked for a motion on the October minutes.

Motion: Judge Clair Poulson moved to approve as written the October Judicial Council meeting minutes. Justice Michael Wilkins seconded the motion. The motion carried unanimously.

2. REPORT FROM CHAIRMAN: (Chief Justice Richard C. Howe)

Chief Justice Richard Howe advised the Judicial Council that the revenue shortfall continues to grow and Mr. Daniel Becker will be reporting on how this will impact the judiciary. Chief Justice Howe also advised the Judicial Council that the Supreme Court Study Committee on the Delivery of Legal Services, which is chaired by Justice Michael Wilkins, has met. Justice Wilkins and Mr. Richard Schwermer will give an update of that meeting.

3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Mr. Daniel J. Becker reported on the following items:

- Chief Justice Howe, Mr. Becker, Mr. Myron March, Mr. Richard Schwermer and Mr. Mark Jones had met with Governor Leavitt, Mr. Dave Walsh and Ms. Camille Anthony on November 6th. They discussed the budgets for FY 2003 which only includes the contract and leases budget which is considered a mandate and the supplemental request for the jury/witness/interpreter budget which is also a mandate. The Governor's staff has recommended that both requests be advanced to the legislature. They advised the Governor of the judiciary's plans to shift resources resulting from the impact of the formation of justice courts in Salt Lake City and West Valley City. They also advised him of the budget cuts the judiciary has found necessary to impose as a result of reacting to the Governor's 4% budget reduction. They reported that the courts have very few options in cutting the budget other than eliminating some of the court personnel. The Governor appeared to be sensitive to the impact the cuts will have on the courts. The Governor has increased his revenue shortfall projection to \$200 million by adding \$23 million to the previous projection of \$177 million. However, he has exempted the courts from the next round of budget reductions, which would have been an additional 2% for the courts.
- The legislature and the Governor disagree on how the reductions should take place. The Governor continues to rely on the use of one-half of the "rainy day" fund to help offset the budget reductions. It is anticipated that there may be a reconsideration of how best to take the reductions once the legislature is in session.
- The State Justice Institute (SJI) funding is in jeopardy. SJI funding has been in effect for approximately 15 years. The funding has been reduced to \$3 million this year, which is essentially enough to shut down SJI operation. Therefore, SJI is not entertaining any new grants and will be laying off staff in April and should be out of business by August. This will impact court programs in Utah as well as nationally.

- An amnesty program for child support is being proposed by the Governor's office. The amnesty would relate to the amount due to the state. The purpose of the amnesty program would be to generate short-term revenue. Mr. Becker will be meeting with the Governor's office today to discuss this proposal.
- The Executive Committee of the Commission on Criminal and Juvenile Justice has approved two Byrne grant concept papers submitted by the courts. The Executive Committee will forward the concept papers to the Commission for final approval. The two approved concept papers are for justice court automation and mental health court funding.
- The report from the Citizen's Committee on Judicial Compensation was distributed. The report recommends a 4% increase in judicial pay for this year.

4. **REPORTS FROM COMMITTEES:**

Management Committee: (Hon. Lyle Anderson)

Judge Anderson briefly reviewed the Management Committee minutes with the Council. The Management Committee approved for the consent calendar the appointments of Judge Glen Dawson to the Standing Committee on Judicial Performance Evaluation, Judge Russell Bench to the Standing Committee on Court Facilities Planning and Judge Judith Billings to the Standing Committee on Education. The survey of presiding judges and TCEs to evaluate senior judges was also approved. The Management Committee approved the recommendation to cancel individual subscriptions to Utah Advance Reports and Annotations, which would result in a savings of at least \$14,274 annually.

Policy and Planning: (Debra Moore, esq.)

Ms. Moore reported that the Policy and Planning Committee had reviewed a proposed policy on equal opportunity for judicial applications. There was some question regarding the form which requests information on Viet Nam era veterans or disabled veterans, but does not request information for other veterans.

The committee also considered the extraction of rules that are in the exclusive province of the Supreme Court from the Code of Judicial Administration. The committee decided to propose to the Judicial Council that the rules of procedure or practice be extracted from the Code of Judicial Administration and referred to the Supreme Court for further action. The possible outcome of these rules could be that some would be blended into the existing rules of procedure or that separate rules of practice could be created that would correspond to the rules of procedure.

The committee discussed the possibility of rescheduling Judicial Council meetings from Mondays to Fridays because Mondays are typically high-volume days for trial court judges. The proposal to reschedule the Judicial Council meetings would not be implemented this year because the schedule has already been set. Therefore, a decision regarding this issue will not be made until later.

Justice Wilkins pointed out that the equal opportunity form is on the consent calendar and that the memo dated November 9th from Barbara Hanson to the Judicial Council (under Tab 7) indicates that the form was approved for implementation by the Policy and Planning Committee. The Policy and Planning Committee members responded that they had not approved the form.

Motion: Ms. Moore moved to remove the form from the consent calendar since it was the intent of the Policy and Planning Committee to have the form revised and presented to the Policy and Planning Committee for reconsideration. Justice Wilkins seconded the motion. The motion carried unanimously.

Liaison Committee: *(Justice Michael Wilkins)*

Justice Wilkins reported that the Liaison Committee met briefly after the Judicial Council meeting in Vernal. The committee discussed three items of legislation that were being advanced in the interim committees. Judge Lynn Davis reported that the three items of legislation which the Liaison Committee considered were related to the following:

1. Minimum fines for providing tobacco to underage persons - Liaison Committee took the position of not supporting this legislation because the fines were too high.
2. Appointment of a guardian ad litem - Liaison Committee felt that there may have been a misinterpretation of the *Harrison* decision relating to this item.
3. Parent Time amendments - Liaison Committee took no position, but recommended that the "the best interest" language should be retained.

Justice Wilkins reported that the proposed legislation relating to the guardians ad litem was an attempt to recognize language in the Supreme Court's *Harrison* decision and to try to resolve any potential problems which might arise. The Liaison Committee concluded that the effort might have opened up a broader scope of potential responsibility for guardians ad litem. This did not appear to be the intent of the subcommittee drafting the legislation. Justice Wilkins has discussed the proposed legislation with Ms. Kristin Brewer, Guardian ad Litem Director, and the plan is to hold off on the proposed legislation and to wait to see how the *Harrison* decision is treated. Justice Wilkins also indicated that in his discussion with Ms. Brewer the issue of the Council's consideration of the administrative placement of the Guardian ad Litem program was raised.

Bar Commission: (Debra Moore, esq.)

Ms. Moore reported that the Bar Commission discussed the impact of the budget cuts on the courts. The Executive Committee of the Bar Commission will be considering how to encourage judges to attend the bar conferences in light of the budget cuts.

The Bar Commission also discussed the formation of a task force or committee to respond to criticism of judges. This item has been referred to the Courts and Judges Committee to consider. Judge James Davis indicated that he has discussed this issue with the Juvenile Court Board and the board was fairly enthusiastic about proceeding with forming some type of structure to respond to criticism of judges.

5. BUDGET REDUCTION UPDATE: (Daniel J. Becker)

Mr. Becker reported that he and Mr. Myron March have identified two items that need to be brought to the Judicial Council's attention.

When the Judicial Council decided to retain the use of freed up clerk resources to fund the creation of a juvenile court commissioner position, the decision was based on the assumption that it would require five clerk positions to fund the commissioner position (three clerk resources to create the commissioner position and two clerks to accompany the commissioner position). In actuality, it should require only three clerk positions to create the commissioner position since the Ad Hoc Committee on Resources had recommended that deputy clerks should only be considered in the context of the weighted caseload and that deputy clerks should not be assigned to any judicial positions relating to reallocation. As a consequence, the creation of a commissioner position from reallocated clerk resources was overfunded by approximately \$60,000. Therefore, this amount can be put back on the table for reconsideration by the Judicial Council.

The second area identified for reconsideration is the \$60,000 which had been allotted for funding interns. Mr. Becker and Mr. March decided that if court positions are being eliminated, funding for interns should also be put back on the table for reconsideration by the Judicial Council.

After discussion as to what to do with the additional \$120,000 identified as being available, the following motion was made.

Motion: Judge Lynn Davis moved to reinstate funding of two district court law clerk positions. Judge Hadfield seconded the motion. The motion carried with one opposition.

Mr. Becker reminded the Judicial Council that the consideration of every other month meetings for the Judicial Council, Committees, Boards, TCEs, Clerks and CPOs in order to reduce travel costs by \$50,000 had been deferred from the last Judicial Council meeting. Mr. Becker stated that the Judicial Council's position had been that the Judicial Council, its Committees and the

Boards should continue to meet monthly. Mr. Becker has discussed with the TCEs, Clerks and CPOs the recommendation of having them go to an every other month meeting schedule. This would reduce travel costs by approximately \$40,000. Mr. Becker proposed that the additional \$10,000 could be generated by expediting the cancellation of the lease on the probation unit on 53rd South before July 1st.

Motion: Judge Valdez moved to have the TCEs, Clerks and CPOs as well as committees which are non-Council committees go to an every other month meeting schedule. Justice Wilkins seconded the motion. The motion carried unanimously.

6. SPECIAL SESSION UPDATE: (Richard Schwermer)

Mr. Schwermer advised the Council that during the 2001 Special Session there was an attempt to get back some authority for the Bar to pursue people who are engaging in the unauthorized practice of law. Mr. Schwermer reviewed with the Judicial Council the proposed legislation, sponsored by Representative Stephen Urquhart, entitled Unauthorized Practice of Law Amendments. The legislation creates legislative findings on the accessibility of legal services and charges the judiciary to study the issue and suggest changes. Justice Wilkins has been made Chair of the Supreme Court Study Committee on Delivery of Legal Services which will study this issue.

Justice Wilkins reported that the committee is comprised of: five legislators (Representative Greg Curtis, Representative Stephen Urquhart, Representative Patrice Arent, Senator Karen Hale and Senator Michael Waddoups), two Supreme Court Justices (Justice Michael Wilkins and Justice Leonard Russon), one District Court Judge (Judge Rodney Page) and two representatives of the State Bar (Mr. John Adams and Mr. John Baldwin). The first meeting of the committee was spent discussing what the committee should be studying. Justice Wilkins stated that no final conclusions were made as to what will be studied. The committee will meet monthly except during the legislative session.

Mr. Schwermer reported on three proposed bill requests which he wanted the Judicial Council to be aware of.

1. Senator Beverly Evans has a bill request which would eliminate the unopposed judicial retention election process for county justice court judges. Currently, county justice court judges (approximately 44 judges) go through the same type of retention election process as other judges do. However, municipal justice court judges are reappointed every four years. This bill would require county justice court judges to be reappointed by the county commissions rather than standing for unopposed retention election.

2. Representative Katherine Bryson has a bill request regarding the amount of Judicial Conduct Commission complaint information which is made public. She would like the facts of a complaint made known to the public and earlier in the process.
3. Senator Terry Spencer, during an Interim Judiciary Committee meeting, proposed an amendment to the Parent Time (formerly known as Visitation) bill which would eliminate the mandatory requirement for the Parent Time Mediation Program. The mediation program operates primarily in the Third District. It also does some work in the Second and Fourth Districts. The Interim Judiciary Committee approved the amendment and it will proceed to the legislative session. If the requirement is not restored, the Parent Time Mediation Program will be in jeopardy which could result in additional judicial time being used for parent time issues.

7. GOVERNOR'S DUI TASK FORCE: (Richard Schwermer)

Mr. Schwermer distributed copies of the draft report from the Governor's Council on Driving Under the Influence. He has been serving on the Governor's Council on DUI for the last two years. He briefly reviewed the items from the draft report which affect the courts.

- DUI Case Records Study - requests access to the courts DUI records so that the University of Utah Social Research Institute can do a study on DUIs. This item is on hold until it is determined what information is needed.
- House Bill Relating to Court Records of DUI Cases - directs state courts to collect and maintain data necessary to allow sentencing and enhancement decisions in DUI and reckless driving offenses.
- Better Informed DUI Sentencing and Post-Sentencing Accountability - requires courts to have on-line access to BCI and DLD records and requires courts to use defendant-signed enhancement forms. Provides prosecutors and judges with an updated statutory sentencing matrix for DUI offenders.
- Senate Bill Amendments to DUI - increases the required hours in a compensatory-service work program.

Mr. Schwermer informed the Judicial Council that some people are encouraging the notion of separate DUI courts either in district courts or justice courts. The University of Utah is looking at the Substance Abuse Court that Justice Court Judge Michael Kwan has implemented in his Taylorsville Justice Court.

8. RETIREMENT BENEFITS FOR COURT COMMISSIONERS: (Tim Shea)

Mr. Shea joined the Judicial Council to present his memo outlining the recommendations from the Policy and Planning Committee regarding the issue of supplementing the court commissioner's retirement benefits. He indicated that the Policy and Planning Committee had considered two alternatives:

1. Opt out of state retirement system and deposit equivalent amount in an alternative qualified plan. The committee does not recommend this option because the existing statute that recognizes this plan for other state officials is limited to people of short-term employment. This option could not be done without legislation.
2. Years of service bonus deposited in 401(k) account. The committee considered several implementation plans. It appears that Prospective (c) is the fairest application. Prospective (c) would provide an award bonus this year to all commissioners with at least five years of service, a second bonus on their next 5-year anniversary and every five years thereafter. It would provide an award bonus to commissioners with less than five years upon their fifth anniversary and every five years thereafter. Prospective (c) treats the six commissioners receiving a bonus this year equally, although years of service range from 5 to 12 years. One commissioner would receive a second bonus (in 2006) before or at the same time a three more senior commissioners.

Motion: Justice Wilkins moved to refer the recommendations to the Board of District Court Judges, the Board of Juvenile Court Judges and the Court Commissioners for their review and comment. Judge James Davis seconded the motion. The motion carried unanimously.

9. "CHOOSE FREEDOM: KIDS AND THE LAW": (Jan Thompson)

Ms. Thompson informed the Judicial Council that a new video has been produced to be shown in schools. Most of the video is excerpted from the "Parent to Parent" video. Judge Ric Oddone, Third District Juvenile Court Judge, speaks directly to the juveniles in the new video. The video has been enthusiastically reviewed by the Jordan School District and the Granite School District. It will be sent to the Utah State Board of Education to be part of the curriculum to be used on a statewide basis. The production of the video was funded by grant money provided by the Commission on Criminal and Juvenile Justice. The total funding was \$5,000. The Judicial Council viewed the video and Ms. Thompson distributed copies of the video to all Judicial Council members.

10. LUNCH - PRESENTATION OF SERVICE AWARD:

Judge Russell Bench, former Judicial Council member, joined the Judicial Council for lunch. Chief Justice Howe presented an award to Judge Bench for recognition of his three-year service on the Judicial Council.

11. EXECUTIVE SESSION:

There was no Executive Session held.

12. NEXT MEETING:

Monday - December 17, 2001

There being no further business to discuss, the meeting adjourned at 12:20 p.m.

TAB 2

TAB 3



Supreme Court of Utah

450 South State Street

P.O. Box 140210

Salt Lake City, Utah 84114-0210

Telephone (801) 238-7937

Fax (801) 238-7980

Chambers of
Justice Matthew B. Barrant

November 16, 2001

The Honorable Richard C. Howe
Chairman, Utah Judicial Council

Dear Chief Justice Howe:

As computerized information systems become more sophisticated and more connected, we face the anomalous result that we routinely provide more electronic information to the public than we do to our own court officers and employees. The Information Technology Department of the Administrative Office of the Courts has developed a tool as part of CORIS that will permit any district court personnel to search the names of district court criminal defendants throughout the state. The report provides summary information only, for a detailed case history the judge or clerk will have to log on to each court location, but no longer will court personnel be limited to the records contained in the courthouse. The logical next steps are to provide the same capability for civil cases, to provide appellate and juvenile court personnel with access to district court civil and criminal data, and to provide reciprocal capability for access to the records of those other court levels. With this connectivity, the court community encompasses the entire judicial branch of government, not merely the community court.

The Technology Committee sees this as a powerful tool to enable courts:

- To be of greater assistance to the public and other court personnel. Clerks will be able to assist the public in identifying cases from other courthouses and to check on the status of other cases, such as appeals.
- To build a quick, if somewhat abbreviated, criminal history. In misdemeanors and other cases without a presentence investigation report, judges should at least have a summary report of other convictions, which may influence the sentence in the case at hand. Judges should have criminal history to help set bail. Probation officers should be able to research court cases in order to prepare a PSI or social report. Court officials can then decide whether further investigation of the cases is warranted.
- To identify related family law matters. The Committee on Children and Family Law has recommended a procedure to require the parties to notify the judge of related matters before other judges. With this tool courts could quickly check court records without relying exclusively on others to volunteer the information. The Committee on Children and

Family Law has also recommended that the CORIS and CARE computer systems be able to link to each other to enable this type of search.

Not all of the information in the summary report is public information. Even in the district court criminal information available today, some of the information, such as social security number, is private. The amount of confidential information is even greater when we tap the juvenile court records. This warrants attention, but not concern. Court personnel routinely handle confidential information, such as adoptions, presentence investigation reports, child protection cases, and financial statements. Not all of the information is appropriately considered by the judge in determining the merits of the case at hand. This also warrants our attention, but judges routinely consider prior convictions at sentencing and not at trial.

Currently, we have a smaller community of court personnel with access to the records who have a working understanding of what the restrictions are. Sharing records with the larger court community means some may not fully understand those restrictions. The Technology Committee believes these are issues of education, not policy. Content of the statewide summary reports should be carefully considered, particularly regarding confidential information. Beyond that, electronic systems should be designed to restrict records access to those with the need to know. But once education, content and the need to know are established, the system should make access to the information as quick and as simple as possible.

Trial court executives should determine who has a need to know and thus who should have access to statewide summary records. That determination should be communicated to the IT department, which will build the search capability into the designated person's workstation.

The courts already share their records, including confidential records, with others such as law enforcement, BCI, AP&P, DYCS, and DCFS. These agencies have a legitimate purpose in using the records. It seems time to apply the principle of controlled record sharing within the courts to improve justice and public safety. The Seventh Judicial District has appointed its clerks without strict regard to juvenile or district court operations. All or nearly all clerks routinely work in both environments and so have access to the public and confidential records of both courts. It seems time to expand this practice to the benefit of all state courts. Until the larger question of the AOC's responsibility for justice court technology is resolved, we believe it prudent to limit the project to the state courts.

The Committee could find no statutes regulating court access to court records. Of the many rules regulating access to court records, only one is relevant. Rules (and statutes) that direct a court record be sealed have the practical effect of denying the record to the court itself. Sealed and expunged records would not be included unless the case history would nevertheless be available to court personnel in the normal course. Rule 4-202.12 regulates access to electronic court records by the public, but not by court personnel. Only Rule 4-202.03(9) and (10) may need to be amended. Those subsections restrict access to the juvenile court legal file and social file to, among others, "juvenile court personnel." This should be changed to "court of record personnel."

The Committee is ready to provide statewide search capabilities to district court personnel of district court criminal cases and plans to build the same capability for civil cases. With the Council's approval, we will pursue the next steps of expanding access to personnel from other courts with a need to know. With an appropriate rule change we will design and build reciprocal capabilities to juvenile records for those with a need to know. We have as yet no time line for these tasks, but we want to resolve any policy issues at the start.

I would like the opportunity to present these recommendation to the Judicial Council.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Matthew B. Durrant', with a long horizontal flourish extending to the right.

Matthew B. Durrant
Committee Chair

TAB 4

TAB 5

TRAFFIC OFFENSE ADJUDICATION

2002 GENERAL SESSION

STATE OF UTAH

This act modifies the Judicial Code by allowing justice court judges to conduct administrative proceedings. This act allows certain counties and municipalities to impose a civil penalty for minor traffic offenses and to provide administrative traffic proceedings. The act gives a defendant certain rights and subjects an administrative law judge to a complaint and disciplinary process. This act takes effect July 1, 2002.

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

AMENDS:

10-3-703, as last amended by Chapter 323, Laws of Utah 2000

10-3-703.5, as last amended by Chapter 46, Laws of Utah 2001

10-3-703.7, as enacted by Chapter 323, Laws of Utah 2000

10-8-84, as last amended by Chapter 323, Laws of Utah 2000

17-53-223, as renumbered and amended by Chapter 133 and last amended by Chapter 323, Laws of Utah 2000

53-3-218, as last amended by Chapter 85, Laws of Utah 2001

63-63a-1, as last amended by Chapter 323, Laws of Utah 2000

78-3-4, as last amended by Chapter 323, Laws of Utah 2000

78-3a-117, as last amended by Chapter 113, Laws of Utah 2000

78-5-106, as enacted by Chapter 157, Laws of Utah 1989

78-7-35, as renumbered and amended by Chapter 46, Laws of Utah 2001

ENACTS:

17-53-223.5, Utah Code Annotated 1953

17-53-223.7, Utah Code Annotated 1953

REPEALS:

63-55-210, as enacted by Chapter 323, Laws of Utah 2000

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

Section 1. Section **10-3-703** is amended to read:

10-3-703. Penalties for violation of ordinance.

(1) The governing body of each municipality may impose a minimum criminal penalty for

63 of a single criminal episode that will be prosecuted in a criminal proceeding.

64 ~~[(4) If]~~ (3) The civil penalty from a final administrative determination in an administrative
65 traffic proceeding ~~[is for a violation: (a) the civil penalty]~~ is subject to the fees or surcharges
66 established in Subsections 78-7-35(2)(d)(ii) and 63-63a-1(1)(b)(ii)[;].

67 ~~[(b) the]~~ (4) The final administrative determination in an administrative traffic proceeding:

68 (a) constitutes a conviction as defined in Section 53-3-102; and

69 ~~[(c)]~~ (b) ~~[the final administrative determination]~~ may be appealed by a party in accordance
70 with Section 10-3-703.7.

71 ~~[(5) (a) A municipality that has a population greater than 150,000, according to the last~~
72 ~~official federal census, shall remit to the state by June 30 of each fiscal year:]~~

73 ~~[(i) \$504,700 for fiscal year 2000-01; and]~~

74 ~~[(ii) \$580,400 for fiscal year 2001-02:]~~

75 ~~[(b) A municipality that has a population less than 150,000, according to the last official~~
76 ~~federal census, shall remit to the state by June 30 of each fiscal year:]~~

77 ~~[(i) \$388,600 for fiscal year 2000-01; and]~~

78 ~~[(ii) \$446,900 for fiscal year 2001-02:]~~

79 ~~[(c) If a municipality repeals the ordinance described in Subsection (2)(a) prior to the end~~
80 ~~of a fiscal year, the municipality shall remit to the state the amount described in Subsection (5)(a)~~
81 ~~or (b) prorated according to the date the ordinance is repealed:]~~

82 ~~[(d) Monies remitted to the state under this Subsection (5) shall be remitted to the state~~
83 ~~treasurer and deposited in the state General Fund:]~~

84 Section 3. Section 10-3-703.7 is amended to read:

85 **10-3-703.7. Administrative proceedings -- Procedures -- Appeals.**

86 (1) As used in this section, "administrative proceeding" means an adjudicative hearing for
87 a violation of a civil municipal ordinance, including an administrative traffic proceeding
88 authorized in Section 10-3-703.5.

89 (2) An administrative proceeding:

90 (a) shall be a public meeting with business transacted during regularly scheduled hours;

91 (b) shall be conducted by a justice court judge or by an administrative law judge;

92 (c) shall provide due process for the parties;

93 (d) shall be recorded ~~[or otherwise]~~ and documented so that a true and correct transcript

125 ~~[(5)]~~ (6) (a) (i) Any person adversely affected by an administrative proceeding may petition
126 a district court for review of the administrative determination.

127 (ii) In the petition, the petitioner may only allege that the administrative proceeding's
128 decision was arbitrary, capricious, or illegal.

129 (iii) The petition is barred unless it is filed within 30 days after the administrative
130 determination is final.

131 (b) (i) The administrative proceeding shall transmit to the reviewing district court the
132 record of its proceedings, including its findings, orders, and a true and correct transcript of its
133 proceedings.

134 (ii) The district court may not accept or consider any evidence that is not included in the
135 administrative proceeding's record unless the evidence was offered to the administrative
136 proceeding and the district court determines that the evidence was improperly excluded by the
137 administrative proceeding.

138 Section 4. Section **10-8-84** is amended to read:

139 **10-8-84. Ordinances, rules, and regulations -- Passage -- Penalties.**

140 (1) The municipal legislative body may pass all ordinances and rules, and make all
141 regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and
142 duties conferred by this chapter, and as are necessary and proper to provide for the safety and
143 preserve the health, and promote the prosperity, improve the morals, peace and good order,
144 comfort, and convenience of the city and its inhabitants, and for the protection of property in the
145 city.

146 (2) The municipal legislative body may enforce obedience to the ordinances with fines or
147 penalties in accordance with ~~[Section]~~ Sections 10-3-703 and 10-3-703.5.

148 Section 5. Section **17-53-223** is amended to read:

149 **17-53-223. Ordinances -- Power to enact -- Penalty for violation.**

150 (1) A county legislative body may:

151 (a) pass all ordinances and rules and make all regulations, not repugnant to law, necessary
152 for carrying into effect or discharging the powers and duties conferred by this title, and as are
153 necessary and proper to provide for the safety, and preserve the health, promote the prosperity,
154 improve the morals, peace, and good order, comfort, and convenience of the county and its
155 inhabitants, and for the protection of property in the county;

proceeding is subject to the fees or surcharges established in Subsections 78-7-35(2)(d)(ii) and 63-63a-1(1)(b)(ii).

(4) The final administrative determination in an administrative traffic proceeding:

(a) constitutes a conviction as defined in Section 53-3-102; and

(b) may be appealed by a party in accordance with Section 17-53-223.7.

Section 7. Section 17-53-223.7 is enacted to read:

17-53-223.7. Administrative proceedings -- Procedures -- Appeals.

(1) As used in this section, "administrative proceeding" means an adjudicative hearing for a violation of a civil county ordinance, including an administrative traffic proceeding authorized in Section 17-53-223.5.

(2) An administrative proceeding:

(a) shall be a public meeting with business transacted during regularly scheduled hours;

(b) shall be conducted by a justice court judge or by an administrative law judge;

(c) shall provide due process for the parties;

(d) shall be recorded and documented so that a true and correct transcript may be made of its proceedings;

(e) shall allow a defendant to:

(i) have access to evidence that will be used against the defendant prior to the time of the hearing;

(ii) have an attorney present, if desired;

(iii) confront the defendant's accuser;

(iv) testify on his or her own behalf, if he or she so chooses; and

(v) present and refute evidence on the charges in the proceeding;

(f) shall require witnesses to appear and testify under oath;

(g) shall provide for cross-examination of witnesses; and

(h) may not be held for a civil violation that occurs in conjunction with another criminal violation as part of a single criminal episode that will be prosecuted in a criminal proceeding.

(3) An administrative law judge who conducts an administrative proceeding under this section:

(a) shall be appointed by the county to conduct administrative proceedings;

(b) may be an employee of the county;

249 determination in an administrative traffic proceeding; and

250 (b) "court" includes an administrative traffic proceeding in accordance with Section
251 10-3-703.5 or 17-53-223.5.

252 (2) A court having jurisdiction over offenses committed under this chapter or any other
253 law of this state, or under any county or municipal ordinance regulating driving motor vehicles on
254 highways, shall forward to the division within ten days, an abstract of the court record of the
255 conviction or plea held in abeyance of any person in the court for a reportable traffic violation of
256 any laws or ordinances, and may recommend the suspension of the license of the person convicted.

257 (3) The abstract shall be made in the form prescribed by the division and shall include:

258 (a) the name and address of the party charged;

259 (b) the number of his license certificate, if any;

260 (c) the registration number of the motor vehicle involved;

261 (d) whether the motor vehicle was a commercial motor vehicle;

262 (e) whether the motor vehicle carried hazardous materials;

263 (f) the nature of the offense;

264 (g) the date of the hearing;

265 (h) the plea;

266 (i) the judgment or whether bail was forfeited; and

267 (j) the severity of the violation, which shall be graded by the court as "minimum,"
268 "intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

269 (4) When a convicted person secures a judgment of acquittal or reversal in any appellate
270 court after conviction in the court of first impression, the division shall reinstate his license
271 immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

272 Section 9. Section **63-63a-1** is amended to read:

273 **63-63a-1. Surcharge -- Application and exemptions.**

274 (1) (a) A surcharge shall be paid on:

275 (i) all criminal fines, penalties, and forfeitures imposed by the courts; and

276 (ii) a civil fine imposed by an administrative traffic proceeding in accordance with Section
277 10-3-703.5 or 17-53-223.5.

278 (b) The surcharge shall be:

279 (i) 85% upon conviction of a:

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

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

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

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

319 (7) The district court has jurisdiction to review:

320 (a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative
321 Procedures Act, and shall comply with the requirements of that chapter, in its review of agency
322 adjudicative proceedings; and

323 (b) county or municipal administrative proceedings in accordance with Section 10-3-703.7
324 or 17-53-223.7.

325 (8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in
326 class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

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

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

329 (c) the offense occurred within the boundaries of the municipality in which the district
330 courthouse is located and that municipality has not formed a justice court; or

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

333 Section 11. Section 78-3a-117 is amended to read:

334 **78-3a-117. Minor's cases considered civil proceedings -- Adjudication of jurisdiction**
335 **by juvenile court not conviction of crime, exceptions -- Minor not to be charged with crime,**
336 **exception -- Traffic violation cases, abstracts to Department of Public Safety.**

337 (1) Except as provided in Sections 78-3a-602 and 78-3a-603, proceedings in minor's cases
338 shall be regarded as civil proceedings with the court exercising equitable powers.

339 (2) An adjudication by a juvenile court that a minor is within its jurisdiction under Section
340 78-3a-104 is not considered a conviction of a crime, except in cases involving traffic violations.

341 An adjudication may not operate to impose any civil disabilities upon the minor nor to disqualify

(i) \$37 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$80 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$120 if the claim for damages or amount in interpleader is \$10,000 or more; and

(iv) \$80 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(c) The fee for filing a small claims affidavit is:

(i) \$37 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less; and

(ii) \$60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) \$45 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$60 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$90 if the original petition is filed under Subsection (1)(a), the claim for relief is \$10,000 or more, or the party seeks relief other than monetary damages; and

(iv) \$60 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

(i) \$35 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less; and

(ii) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000.

(f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.

(g) The fee for filing a petition is:

435 \$25.

436 (p) The fee for filing a petition or counter-petition to modify a decree of divorce is \$30.

437 (q) The fee for filing any accounting required by law is:

438 (i) \$10 for an estate valued at \$50,000 or less;

439 (ii) \$20 for an estate valued at \$75,000 or less but more than \$50,000;

440 (iii) \$40 for an estate valued at \$112,000 or less but more than \$75,000;

441 (iv) \$80 for an estate valued at \$168,000 or less but more than \$112,000; and

442 (v) \$150 for an estate valued at more than \$168,000.

443 (r) The fee for filing a demand for a civil jury is \$50.

444 (s) The fee for filing a notice of deposition in this state concerning an action pending in
445 another state under Utah Rule of Civil Procedure 26 is \$25.

446 (t) The fee for filing documents that require judicial approval but are not part of an action
447 before the court is \$25.

448 (u) The fee for a petition to open a sealed record is \$25.

449 (v) The fee for a writ of replevin, attachment, execution, or garnishment is \$20 in addition
450 to any fee for a complaint or petition.

451 (w) The fee for a petition for authorization for a minor to marry required by Section 30-1-9
452 is \$5.

453 (x) The fee for a certificate issued under Section 26-2-25 is \$2.

454 (y) The fee for a certified copy of a document is \$2 per document plus 50 cents per page.

455 (z) The fee for an exemplified copy of a document is \$4 per document plus 50 cents per
456 page.

457 (aa) The Judicial Council shall by rule establish a schedule of fees for copies of documents
458 and forms and for the search and retrieval of records under Title 63, Chapter 2, Government
459 Records Access and Management Act. Fees under this subsection shall be credited to the court
460 as a reimbursement of expenditures.

461 (bb) There is no fee for services or the filing of documents not listed in this section or
462 otherwise provided by law.

463 (cc) Except as provided in this section, all fees collected under this section are paid to the
464 General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts
465 the pleading for filing or performs the requested service.

497 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
498 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
499 account.

500 (c) The Division of Finance shall deposit all revenues received from the court
501 administrator into the restricted account created by this section.

502 (d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall transfer
503 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a
504 court of record to the Division of Facilities Construction and Management Capital Projects Fund.
505 The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine
506 or bail forfeiture paid.

507 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer \$7
508 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court
509 of record or an administrative traffic proceeding in accordance with Section 10-3-703.5 or
510 17-53-223.5 to the Division of Finance for deposit in the restricted account created by this section.
511 The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine
512 or bail forfeiture paid.

513 (3) (a) There is created within the General Fund a restricted account known as the State
514 Courts Complex Account.

515 (b) The Legislature may appropriate monies from the restricted account to the
516 administrator of the courts for the following purposes only:

517 (i) to repay costs associated with the construction of the court complex that were funded
518 from sources other than revenues provided for under this Subsection (3)(b)(i); and

519 (ii) to cover operations and maintenance costs on the court complex.

520 **Section 14. Repealer.**

521 This act repeals:

522 **Section 63-55-210, Repeal dates, Title 10.**

523 **Section 15. Effective date.**

524 This act takes effect on July 1, 2002.

TAB 6

Informal Opinion 01-5
November 26, 2001

Question: The Board of Justice Court Judges has asked the Ethics Advisory Committee whether a justice court judge may serve concurrently as an administrative law judge hearing officer in administrative traffic cases.

Answer: Because the types of cases would be similar, a judge could not simultaneously serve in both positions.

Discussion: Justice Courts have subject matter jurisdiction over class B and C misdemeanors and infractions within their territorial jurisdiction. In some jurisdictions, local authorities are electing to decriminalize certain matters, and to prosecute such as civil, administrative cases, rather than treating them as crimes.¹ The jurisdictions that establish these administrative proceedings will hire administrative law judges or hearing officers to resolve these matters. The question has been asked as to whether a justice court judge may accept an appointment to become an administrative law judge or hearing officer, and to preside over the administrative cases.

The administrative proceedings established by certain jurisdictions are within the executive branch. A judge's participation in these proceedings is therefore considered "extrajudicial," for purposes of the Code of Judicial Conduct. Canon 4A requires a judge to "conduct the judge's extrajudicial activities so that they do not . . . cast reasonable doubt on the judge's capacity to act impartiality as a judge . . . [or] interfere with the proper performance of judicial duties."

A judge is required to avoid extrajudicial activities which may create doubt as to the judge's capacity to act impartially as a judge. The fact situation in this opinion is similar to the situation addressed in Informal Opinion 97-1. In that opinion, an active senior judge was asked to act as a hearing officer for the Board of Pardons and Parole. The Ethics Advisory Committee determined that the judge could accept the appointment as long as the judge did not hear the same types of cases as both a judge and a hearing officer. The Committee noted that, as both a judge and a hearing officer, the judge would be a key component of the criminal justice system in both the judicial and executive branches. The Committee noted that the executive branch's focus on the criminal justice system is different from the judicial branch's focus and therefore the judge could not be simultaneously tied to these different objectives. The judge could therefore only preside in civil matters when also serving as a Board of Pardon and Parole hearing officer.

As an administrative officer, a judge would be presiding over matters which have been decriminalized and therefore are deemed civil. However, the distinction between civil and criminal, as noted in Informal Opinion 97-1, is not as important as the type of cases. The perceived ability to act impartially is the most important consideration. A judge would be hearing the same types of cases in both settings. However, in one setting the judge would be focused on judicial branch

¹Utah Code Ann. § 10-3-703.5

TAB 7



Chief Justice Richard C. Howe
Chairman, Utah Judicial Council

MEMORANDUM

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

To: Judicial Council
From: Alicia Davis, Staff Attorney *AD*
Date: November 14, 2001
Re: Reorganization of the Code of Judicial Administration

The Policy and Planning Committee has undertaken the reorganization of the Code of Judicial Administration. This reorganization began in response to a comment by a practitioner that the Code would be better organized according to subject matter. Many of the rules are procedural, and thus within the constitutional authority of the Supreme Court. The Rules of Judicial Administration are exclusively for the administration of the judiciary, which is the constitutional responsibility of the Judicial Council.

The Policy and Planning Committee has evaluated the attached list of rules, and determined that they appear to be less administrative than they are procedural. The Policy and Planning Committee now recommends that these rules be repealed from the Code of Judicial Administration, and reinstated into whatever body of rules the Supreme Court chooses.

In considering whether the rules were administrative or procedural, the Committee used two tests: 1) whether the rule affected the progress of the case, or 2) whether the rule imposed requirements primarily on the practitioner or on the judge. The Committee did not consider whether or not the rules at issue constituted sound policy, nor where the rules could be repositioned. The Policy and Planning Committee further proposes that the rules either 1) be blended into existing rules of procedure, or 2) that a "Rules of Practice" be created to parallel related rules of procedure. Where no parallel rules existed, the rules would be grouped according to categories (Domestic, Probate, Civil, Criminal, etc.).

Please find attached the rules proposed for repeal/re-instatement, listed with the intent of the rule along with any other rules or bodies of law that deal with similar issues. The Rules of Judicial Administration are much more detailed than other rules. For example, Rule of Judicial Administration 4-501 establishes motion practice in all trial courts of record, providing for specific page-length requirements, and deadlines. A similar provision, Utah Rule of Civil Procedure 7, also deals with motion practice, but with much less particularity.

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.

Procedural Rules

Rule 4-501. Motions.

This rule establishes the procedure for filing motions and documents with the court as well as requesting and scheduling hearings. It applies to motion practice in all trial courts of record except proceedings before the court commissioners and small claims cases.

4-501. Motions	Related or Similar Provisions
Format and page-length requirements.	URCP 7. Pleadings allowed; form of motions.
Filing deadlines for motions and memoranda in response.	
Notice to submit for decision.	
Requirements of a motion for summary judgment.	URCP 56(c). Motion and proceedings thereon.
When and how hearings are granted and scheduled. Telephone conferences.	URCP 7(b)(3). Hearings on motions or orders to show cause.

Rule 4-503. Requests for jury instructions.

Establishes procedure by which practitioner submits and requests jury instructions. Applies in District and Justice Courts.

Deadline for submission for jury instruction requests and format requirements.	URCP 51. Instructions to the jury; objections.
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Rule 4-504. Written orders, judgments and decrees.

Establishes procedure by which practitioners submit written orders, judgments, and decrees to the court. Applies to all civil proceedings in courts of record except small claims.

Who must file proposed order.	
Service upon opposing counsel; Notice of objections.	URCP 5. Service and filing of pleadings and other papers.
Stipulated settlements and dismissals reduced to writing and presented to the court for signature.	URCP 16(c). Final pretrial or settlement conferences. URCrP 11. Pleas. URJP 25. Pleas.
Format requirements; what information needs to be included.	URCP 7(2). Pleadings allowed; form of motions. Orders. URCrP 3. Service and filing of papers.

Rule 4-505. Attorney fees affidavits.

Establishes criteria and format for affidavits in support of attorney fees in the trial courts.

Information to be supplied by attorney fees affidavit. Affidavit shall also state that the attorney is not sharing the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.	RPC 5.4
Provision for collections costs.	URCP 69. Execution and proceedings supplemental thereto.

Rule 4-505.01. Awards of attorney fees in civil default judgments with a principal amount of \$5,000/less.

Provides calculation of attorney fees in civil default judgments with a principal amount of \$5,000 or less; provides notice of the amount of attorney fees that may be awarded in the event of default.

Computation of fees when provided for by contract or statute.	
Complaint must claim fees with particularity, and refer to the authority for their collection (statute, contract, or other document).	URCP 8. General rules of pleadings.
Clerks may enter civil default judgments that award attorney fees.	URCP 55. Defaults.
Attorney fees awarded may be augmented after judgment pursuant to Rule 4-505.	
No attorney fees may be shared in violation of Rule of Professional Conduct 5.4.	Rule of Professional Conduct 5.4.

Rule 4-506. Withdrawal of counsel in civil cases.

Establishes procedure and criteria for withdrawal of counsel in civil cases. Applies to all counsel in civil proceedings in trial courts of record except guardians ad litem and court-appointed counsel.

When withdrawal requires court approval.	URAP 38A. Withdrawal of counsel.
Notice requirements to court and client when withdrawal does not require court approval.	URAP 38A. Withdrawal of counsel. RPC 1.16, Withdrawal of counsel.
Substitution of counsel. Notice and approval requirements.	URAP 38. Substitution of parties.

Rule 4-507. Disposition of funds on trustee's sale.

Establishes procedure for filing trustee affidavits of deposit and claimant petitions for adjudication of priority in trustee's sales. Establishes procedure in determining the disposition of funds on trustee's sales. Applies to trustees and claimants in all courts of record.

Information to be included in trustee's affidavit. The clerk shall notify the listed claimants within 10 days of receiving the affidavit of deposit.	
Any claimant may request a hearing to determine priority.	
Court will establish the priorities of the parties to the trustee's sale proceeds and enter an order with the clerk of the court or county treasurer directing the disbursement of funds as determined.	URCP Part VIII, Provisional and Final Remedies and Special Proceedings.

Rule 4-508. Unpublished opinions.

Establishes standards for the use of unpublished opinions. Applies to property owners/counsel in all courts.

Unpublished opinions, orders and judgments have no precedential value.	
An opinion in a case involving taxation published under CJA 6-103 may be cited.	CJA 6-103. District court tax judges.
Anything designated "not for official publication" shall be regarded as an unpublished opinion.	

Rule 4-509. Property bonds.

Establishes criteria for real property bonds posted in civil proceedings. Applies to the district court.

Property bond posting requirements.	URCP Part VIII, Provisional and Final Remedies and Special Proceedings.
Each property bond accepted by the court shall be recorded with the county recorder of the county or counties where the property is located.	
Upon exoneration of the bond, the property owner shall present a release of property bond to the court.	

Rule 4-601. Victims and witnesses.

Rule to implement Victims Rights. Establishes procedures for child victims and child witnesses of crime. Applies to the judiciary, prosecutors, defense counsel, and law enforcement and corrections personnel.

Prosecutor shall verify that all victims and subpoenaed witnesses have been informed of their rights and responsibilities.	Utah Code Ann. § 77-37-1 et seq; Utah Code Ann. § 77-38-1 et seq.
Prosecutor shall file verification with the magistrate. Verification follows file when bound over to the District Court for trial.	
Prosecutor shall explain plea agreements to the victim.	Utah Code Ann. § 77-37-3 “right to clear explanations regarding relevant legal proceedings”
The court shall not require victims and witnesses to state their addresses and telephone numbers in open court.	Utah Code Ann. § 77-38-6, Victim’s right to privacy.
Scheduling priorities for cases involving minor victims or witnesses.	

Rule 4-603. Motions for reduction of offense at sentencing.

Notice requirements to court and the prosecutor prior notice of the filing of a motion to reduce a criminal offense pursuant to Utah Code Ann. Section 76-3-402. Applies to all trial courts.

Format and deadlines for motions for a reduction of criminal offense.	URCrP 22, Sentence, judgment and commitment.
Notice to prosecutor and opportunity to respond.	Utah Code Ann. Section 76-3-402

Rule 4-604. Withdrawal of counsel in criminal and delinquency cases.

Establishes procedure for withdrawal of counsel in criminal cases. Applies to all courts.

Withdrawal of counsel prior to entry of judgment. A motion to withdraw shall be made in open court with the defendant present unless otherwise ordered by the court.	
Withdrawal of counsel after entry of judgment. Requirements of written statement.	

Rule 4-605. Use of unpublished opinions in criminal cases.

*Establishes a uniform standard for the practitioner in the use of unpublished opinions.
Applies to all courts.*

Unpublished opinions, orders and judgments have no precedential value.	
Anything designated "not for official publication" shall be regarded as an unpublished opinion.	

Rule 4-608. Trials de novo of justice court proceedings in criminal cases.

*Establishes when and where a trial de novo may be had of a justice court adjudication.
Applies to district and justice courts.*

Right to trial de novo.	URCrP 24. Motions for new trial.
Venue.	CJA 4-803. Trials de novo in small claims cases.
Criminal appeals. Communication between the justice and district court.	CJA 9-301. Record of arraignment and conviction. CJA 4-803. Trials de novo in small claims cases.
Stay of judgment.	CJA 4-803. Trials de novo in small claims cases.
Appeal from de novo review.	CJA 9-301. Record of arraignment and conviction. CJA 4-803. Trials de novo in small claims cases.
Traffic convictions.	CJA Chapter 4, Article 7. Parking, Traffic, and Infraction Cases.

Rule 4-611. Probable cause determinations for purposes of detention.

Establishes procedure for conducting probable cause determinations for the purpose of determining whether a person arrested without a warrant is to be detained. Applies to all trial courts except the Juvenile Court.

Probable cause determination.	URCrP 7. Proceedings before magistrate.
Requirements for communication of probable cause statement to magistrate (written, verbal, telefax, or other.)	
The magistrate shall review the probable cause statement and release or set bail.	URCrP 7. Proceedings before magistrate.
Rotation schedule of magistrates.	

Rule 4-612. Property bonds.

Establishes criteria for real property bonds posted in lieu of bail. Applies to all trial courts.

Criteria, format.	
To be recorded with the county recorder.	
Release upon exoneration.	

Rule 4-802. Motion to reinstate small claims proceedings.

Establishes procedure by which a party who fails to appear may request reinstatement of the case. Applies to all small claims actions.

A party who failed to appear may request reinstatement of the case by motion and affidavit. The movant shall send a copy to the opposing party.	
The clerk of the court shall schedule the motion for hearing and notify the parties of the hearing date.	

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

Establishes procedures governing trials de novo of small claims actions. Applies to the trial de novo of small claims actions.

Right to trial de novo. Venue.	
Requirements to file notice of appeal.	
Stay of judgment.	
Justice court record-keeping requirements. Orders and disposition governing trials de novo.	

Rule 4-901. Notice requirements for cases pending in district court and juvenile court.

Establishes the requirements for filing notice of cases which are pending in two or more courts simultaneously. Applies to all attorneys who practice in district and juvenile courts.

Criminal actions. Prosecutor to file written notice of any related matter pending in the juvenile court.	
Civil/domestic matters. Complaint or petition shall state if proceedings involving the custody of the child(ren) have been filed in juvenile court. Notice requirements for subsequent juvenile court filing.	

Juvenile court filing. 1) Prosecutor to file written notice of any related matter pending in the juvenile court. 2) Civil. (same as above).	
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Rule 4-903. Uniform custody evaluations.

Establishes guidelines for the preparation of custody evaluations. Applies to district and juvenile courts.

Qualifications for custody evaluators.	
Evaluators' duties in divorce cases.	
Evaluators' Considerations	

Rule 4-911. Motion and order for payment of costs and fees.

Establishes the process by which the court may order the payment by one party of the costs and fees of another party in a domestic relations or domestic violence action. Applies to the district court.

Motion and affidavit, format and time requirements.	URCP 11, Signing of pleadings, motions, and other papers; representations to the court; sanctions.
Court's factual determination.	
The findings and conclusions of law to be set forth by the court.	U.C.A. § 30-3-3(1)

Rule 4-913. Divorce decree upon affidavit.

Authorizes the use of an affidavit for the entry of a default divorce decree as permitted by § 30-3-4. Establishes minimum requirements for the affidavit and accompanying documents.

The conditions in which a party in a divorce case may apply for a default judgment	URCP 55. Default.
Applicable statutory requirements shall be met, and referenced in the supporting affidavit.	Utah Code Ann. § 30-3-1 et seq., § 78-45-7 et seq., § 62A-11-501 et seq.
The movant shall file with the affidavit and accompanying documents a "notice to submit" The Administrative Office of the Courts shall develop a notice to submit form that may be used.	

Rule 5-201. Requests for enlargement of time by court reporters and court transcribers.

Process to expedite the preparation of transcripts and to facilitate the disposition of appeals. Applies to the appellate courts.

Request of enlargement of time on Rule 12(a) of the Rules of Appellate Procedure.	URAP 11. The record on appeal URAP 12. Transmission of the record.
Deadline for filing request.	
If a reporter or transcriber fails to file a transcript in accordance with URAP 12(a), he shall be subject to disciplinary action pursuant to CJA 3-304(5)(C).	URAP 12(a). Transmission of the record. CJA 3-304(5)(C) Supervision and discipline of official court reporters.

Rule 6-302. Restitution.

The restitution process in the sentencing of felony defendants. Applies to all District Courts and the Department of Corrections.

The Department of Corrections shall include a specific statement of pecuniary damages as provided in Utah Code Ann. Section 77-18-1(4) in the presentence investigation report.	Utah Code Ann. Section 77-18-1(4)
Where amount is not certain, defense counsel/defendant and the prosecutor shall agree as to how restitution shall be determined. If the parties disagree about the restitution amount, a restitution hearing shall be scheduled.	

Rule 6-403. Shortening 90-day waiting period in domestic matters.

Establishes procedure for shortening or waiving the 90-day waiting period in domestic cases. Applies to the district courts.

Required service and format of application and accompanying affidavit.	
The facts constituting such cause shall be included in the findings of fact and presented to the Court for signature.	

Rule 6-404. Modification of divorce decrees.

Establishes procedures for modification of existing divorce decrees. Applies to all district courts.

Required service and format of application and accompanying affidavit. Reply within twenty days after service of the petition.	URCP 4. Process. URCP 5. Service and filings of pleadings and other papers. URCP 8. General rules of pleadings.
No request for a modification of an existing decree shall be raised by way of an order to show cause.	
Matter referred to commissioner or placed on the trial calendar.	

Rule 6-406. Opening sealed adoption files.

Procedures for opening sealed adoption files and providing identifying information to adoptees and/or birth parents. Applies to all district and juvenile courts.

Formal petition to be filed. Petition assigned to the judge who presided in the adoption case.	
How an adoptive parent or adoptee may obtain a certified copy of the decree of adoption. When Petitioner must contact the Bureau of Vital Statistics. When petitioner must register with the Voluntary Adoption Registry in accordance with Utah Code Ann. § 78-30-18.	
Hearing. Court to notify placement agency or the attorney who handled the private placement. Findings of fact. Release of adoption records	

Rule 6-407. Adoptions.

Procedure for requesting or waiving an adoption investigation. Applies to the District Courts.

Requirements of petition to request or waive investigation.	
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Rule 6-501. Attorney's fees.

Factors for the probate division to consider in awarding reasonable attorneys fees. Applicable to any proceeding where the probate court is asked to approve the award of attorneys fee. CJA 4-505 does not govern where this rule is applicable.

Factors of a "reasonable fee."	
Attorney's affidavit requesting fees.	
Secretarial/Paralegal work compensation.	

Rule 6-502. Attorney's fees in conservatorships.

Factors for the probate division to consider in awarding reasonable attorneys fees.

Applicable to any proceeding where the probate court is asked to approve the award of attorneys fee. CJA 4-505 does not govern where this rule is applicable.

Factors of a "reasonable fee."	
Attorney's affidavit requesting fees.	
Secretarial/Paralegal work compensation.	

Rule 6-503. Annual report of guardian.

To assist the probate division of the district court in administering annual reports filed by guardians.

This rule applies to the filing of annual reports by the guardians except where the guardian is the parent or ward.

Individual reporting and accounting requirements.	
Court review. Hearings.	
Corporate guardian requirements.	

Rule 6-504. Annual accounting of conservator.

Assists the probate division in administering annual accountings filed by conservators.

This rule applies to the filing of annual accountings by conservators except where the conservator is the parent or ward.

Individual reporting and accounting requirements.	
Court review. Hearings.	
Corporate conservator requirements.	

Rule 6-505. Fiduciary accountings.

Procedure for standard accounting publications and forms as sufficient to meet the requirements of fiduciary accountings. Applies to an accounting filed by a fiduciary in district court.

Requirements of a fiduciary accounting.	
Acceptable accounting methods.	URCP 52(3). Masters. Statement of accounts.


TAB 8

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

 TO: Utah Judicial Council
FROM: Holly M. Bullen, Assistant State Court Administrator
DATE: November 29, 2001
RE: Uniform Fine/Bail Schedule Standing Committee

In December, the terms of three members on the Uniform Fine/Bail Schedule Standing Committee will expire.

<u>Name</u>	<u>Representing</u>	<u>Term Expires</u>
Judge Ann Boyden	District Court (Misdemeanor)	12/01 (completing unexpired term of Judge Lyle Anderson)
Judge Daniel Bertch	Justice Court	12/01
Judge Scott Waterfall	Justice Court	12/01

This is the first term for each member. Each member has indicated a desire to serve a second term, if so appointed by the Council, and has had good attendance and participation at committee meetings. Therefore, I submit the three names for reappointment and request that this matter be placed on the consent calendar of the December Judicial Council meeting.

Thank you.

c: Mark Jones, District Court Administrator
Rick Schwermer, Justice Court Administrator

**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.**


TAB 9

Administrative Office of the Courts

Chief Justice Richard C. Howe
Chairman, Utah Judicial Council

MEMORANDUM

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

 TO: Judicial Council Management Committee
FROM: Holly M. Bullen, Assistant State Court Administrator
DATE: December 10, 2001
RE: Standing Committee on Children and Family Law

Judge James Taylor has recently resigned from the Standing Committee on Children and Family Law. The Board of District Judges has recommended that Judge Guy Burningham be appointed to fill the vacant position.

I therefore submit to you the proposed appointment of Judge Burningham. If you are in agreement with this appointment, I request that this matter be placed on the consent calendar of the next Judicial Council meeting. Thank you.

c: Alicia Davis

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efficient, and independent system for the advancement of justice under the law.**

TAB 10

FY 2004 BUDGET PLANNING CALENDAR

2001

December 11

FY 2004 Budget Planning Calendar approved by Judicial Council Mgmt Committee.

2002

January 4

FY 2004 Building Block instructions mailed to Court Executives.

April 3-4

FY 2003 Budget Distribution by Executive Committee

April 9

FY 2003 Work Program Packet distributed to Court Executives.

April 25-26

FY 2003 Work Program Hearings.

May 15

FY 2004 Budget Request due from Court Executives and submitted to Program Directors.

May 30-31

FY 2004 Final Budget Request development meeting: Program Directors, Finance Manager, and Court Executives.

July 1-6

FY 2004 Standard Budget Request and Building Block priorities presented to Boards of Judges for their approval.

July 7-16

FY 2004 Budget Request as approved by Boards of Judges submitted to AOC Finance by Program Directors.

July 22

Executive Budget Review, FY 2004 Request

July 23-August 10

FY 2004 Budget Request prepared for submission to the Judicial Council.

August 14-16

FY 2004 Budget Request and Building Blocks determined by the Judicial Council.

September 9

FY 2004 Budget Request summary distributed to Court Executives by Program Directors.

September

FY 2004 Budget Request prepared for submission to the Governor and Legislature by AOC Finance.

September

FY 2004 Budget Request preliminary hearing with State Budget Director on Building Blocks and Continuation Costs.

October/
November

FY 2004 Budget Request Review and Discussions: AOC Finance, Program Directors, Legislative Fiscal Analyst and Governor's Analyst.

November

FY 2004 Budget Request presented to Governor.

December

FY 2004 Budget Recommendations released by Governor.

2003

January 20

Legislative Session Begins.

January/
February

Legislative Budget Hearings.

- 1) Appropriations Subcommittee recommendations
- 2) Executive Appropriations Committee Action
- 3) Bill voted on