

# JUDICIAL COUNCIL MEETING

## AGENDA

Monday, October 30<sup>th</sup>, 2006

Matheson Courthouse

Council Room

Salt Lake City, Utah

*Chief Justice Christine M. Durham, Presiding*

1. 9:00 a.m. Welcome & Approval of Minutes . . . . . Chief Justice Christine  
(Tab 1 - Action) M. Durham
2. 9:05 a.m. Chair's Report. . . . . Chief Justice Christine  
M. Durham
3. 9:15 a.m. Administrator's Report. . . . . Daniel J. Becker
4. 9:25 a.m. Reports: Management Committee. . . . . Chief Justice Christine  
M. Durham  
Policy and Planning . . . . . Judge Gary D. Stott  
Bar Commission. . . . . Scott Sabey, Esq.  
(Tab 2 - Information)
5. 9:40 a.m. Report on Pro-tem Judges. . . . . Tim Shea  
(Tab 3 - Action)
6. 10:10 a.m. Presiding Judge Rule Changes . . . . . Rick Schwermer  
(Tab 4 - Action)
7. 10:30 a.m. Interim Committee Report . . . . . Rick Schwermer  
(Information) Mark Jones
8. 10:45 a.m. Approval of 2007 Judicial Council Schedule . . . . . Daniel J. Becker  
(Tab 5 - Action)
9. 10:50 a.m. Break
10. 11:05 a.m. Access to Fairness, Survey Results . . . . . Tim Shea  
(Information) Mary Boudreau

- 11. 11:30 a.m. Employee Survey Results . . . . . Rob Parkes  
(Information)
- 12. 12:00 Lunch
- 13. 12:30 p.m. Interpreter Committee Report . . . . . Judge Lynn Davis  
(Tab 6 - Action) Mary Boudreau
- 14. 12:50 p.m. Sr. Judge Certification . . . . . Tim Shea  
(Tab 7 - Action)
- 15. 1:00 p.m. Executive Session
- 16. 1:15 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. Grant Applications . . . . . Ray Wahl  
(Tab 8)
- 2. Committee Appointments . . . . . Tim Shea  
(Tab 9)
- 3. Approval of Rules for Comment . . . . . Tim Shea  
(Tab 10)
- 4. Rule Change on Posting Blanket Bonds, Third District . . . . . Peggy Gentles  
(Tab 11)
- 5. Ogden Justice Court Judge Certification . . . . . Rick Schwermer  
(Tab 12)

TAB 3

**REPORT FROM THE POLICY AND PLANNING COMMITTEE ON JUDGES PRO TEMPORE  
OCTOBER 30, 2006**

The Judicial Council referred to the Policy and Planning Committee a request by the Supreme Court and the Judicial Conduct Commission to consider the minimum qualifications and discipline of small claims judges pro tempore.

**Judges Pro Tempore in Utah**

Except in defined circumstances, judges pro tempore are assigned to hear and decide small claims cases. Except for the final section, this report is limited to small claims judges pro tempore. Small claims jurisdiction is \$7,500. Judges pro tempore hear all or nearly all small claims cases in the district courts in districts 2, 3, and 4 and in the justice courts in Salt Lake City, Murray City and Washington County. The number of judges pro tempore fluctuates. Currently there are 127.

Article VIII, Section 4 states that “the Supreme Court by rule may authorize ... judges pro tempore to perform any judicial duties.” Under that section, judges pro tempore must be “citizens of the United States, Utah residents, and admitted to practice law in Utah.” Under CJA 11-202, judges pro tempore must be admitted to the Bar for a minimum of one year, must possess ability in the types of cases to be assigned, and must be of good character. In practice, the Supreme Court considers only attorneys who have been admitted for at least two years.

A lawyer may submit a solicited or an unsolicited application for appointment. Under Rule 11-202, the application must “make appropriate inquiry concerning an applicant's professional qualifications, physical and mental health, character, and potential areas of conflict of interest.” The presiding judge reviews the applicant's qualifications and must certify to the chief justice that:

- (a) the applicant is qualified;
- (b) there is an extraordinary need for the appointment;
- (c) all other options to accommodate the need have been exhausted; and
- (d) the matters to be assigned are suitable for consideration by a judge pro tempore.

Upon receiving the certification from the presiding judge, the AOC conducts a background check of Utah State Bar records for attorney discipline, Bureau of Criminal Identification records for arrests and convictions in Utah and other states, and district court records for civil and criminal cases and protective orders. The application, the presiding judge's letter and the results of the background check are submitted to the chief justice. The Supreme Court has delegated the appointment discretion to the chief justice. A judge pro tempore signs an oath of office upon the initial appointment but not after reappointment.

The appointment is for two years, which the AOC monitors. Near the end of the term, the AOC inquires of the trial court executive or clerk whether the presiding judge

wishes to have the attorney reappointed. If the presiding judge submits the certification required by Rule 11-202, the AOC sends the attorney an application for reappointment and conducts a new background check. If the attorney is not reappointed, the AOC notifies the judge pro tempore. If the attorney does not apply for reappointment, the AOC notifies the trial court executive or clerk to discontinue case assignments.

Small claims judges pro tempore draw no salary or reimbursement for expenses. The appointment has no geographic limitation, but, because they are volunteers, judges pro tempore select the courthouses in which they are willing to take assignments. The method for assigning cases to the judges is left to local discretion.

There is no mandatory continuing education. In 2002, the AOC began offering a half-day introductory class that includes judicial ethics and demeanor, small claims process and the law of topics common in small claims cases. The course is offered annually in Ogden, Salt Lake City, Provo, and St. George. Many judges pro tempore have attended more than once. Thirty-seven have never attended.

In 2005, the AOC built a web page for small claims judges. The web page includes a bulletin board, seldom used, by which judges pro tempore and justice court judges can communicate on small claims issues. Among other items, the web page contains links to:

- (a) Utah State Code;
- (b) Supreme Court and Judicial Council rules;
- (c) Supreme Court and Court of Appeals opinions;
- (d) Opinions of the Ethics Advisory Committee;
- (e) Small claims benchbook, including statutes, rules and forms; and
- (f) Small claims training schedule.

The presiding judge or trial court executive field complaints about judges pro tempore, but there is no express policy or process for doing so. The Judicial Conduct Commission is the official body for investigating complaints against judges pro tempore.

### **Judge Pro Tempore Discipline**

Section 78-8-101(4) gives the Judicial Conduct Commission exclusive authority to recommend discipline for judges pro tempore. Although the Commission's constitutional authority does not expressly include judges pro tempore, neither is the authority mentioned elsewhere in the Constitution. Article VIII, Section 4 states that "the Supreme Court by rule may authorize ... judges pro tempore to perform any judicial duties", but says nothing about disciplining judges pro tempore in any manner different from duly appointed judges.

The Commission believes that it does not have available an appropriate sanction for judges pro tempore. After *In re Anderson*, 2004 UT 7, the Judicial Conduct Commission can no longer issue private reprimands; the Commission may dismiss the complaint

with a warning or recommend a public sanction. The latter automatically is reviewed by the Supreme Court, which has the ultimate discipline authority. Colin Winchester, the executive director for the Judicial Conduct Commission, reports that nearly all complaints about judges pro tempore fall into one of two categories: minor breaches of the Code of Judicial Conduct; or, regardless of the person's qualifications as a lawyer, lack of competence to sit in judgment on cases. In the former circumstance, a private admonition or reprimand may be in order, but the Commission lacks the authority to pursue this course. In the latter circumstance, withdrawing the appointment order may be justified, but the Commission cannot accomplish this without a public order dismissing the volunteer judge, which seems unnecessarily harsh.

The Policy and Planning Committee researched the laws of other states to identify any alternative procedures for judge pro tempore discipline. Mr. Winchester, who was involved in all of our discussions, assisted by requesting this same information of his counterparts in all of the states. Only two states responded to Mr. Winchester's inquiry, which confirmed that in those states judge pro tempore discipline is handled through the conduct commission or its equivalent in the same way as discipline of regular judges.

Statutes and rules revealed only one state, California, with an alternative model. In the following states the body equivalent to the Judicial Conduct Commission handles discipline of judges pro tempore.

Alaska	Alaska Stat. § 22.30.080(2)
Arizona	Rules for Arizona Code of Judicial Conduct Commission. Terminology
Arkansas	Response through American Judicature Society
Minnesota	Minn. Stat. § 490.18
Mississippi	Mississippi Judicial Performance Com. v. Thomas, 549 So. 2d 962
Nevada	Nevada Revised Statutes 1.428
Washington	Rev. Code Wash. § 2.64.010
Wyoming	Wyo. Comm. Judic. Con. & Ethics, Part II, Rule 2

In Colorado and New Mexico, a conduct commission appears not to handle discipline of judges pro tempore, but the research could not turn up any statutes or rules describing the discipline process. In Idaho, Montana and Oregon, the statutes and rules simply are silent on whether a conduct commission handles judge pro tempore discipline.

In California, a complaint is made to the presiding judge. The presiding judge can handle the complaint personally or can refer the complaint to the conduct commission with the request that the commission investigate and decide the matter or investigate and return the results to the presiding judge, who then decides. Cal Rules of Court R 6.655.

In discussing the California model, the Committee agreed that vesting discipline authority in the presiding judge is not inappropriate, since complaints in most settings are made to one's immediate supervisor. However, the impartiality of the presiding

judge might be called into question, especially if a complaint is dismissed or if a complainant perceives that the sanction or corrective action is less than what it should be. Further, the presiding judge does not have the resources to investigate complaints. Like the California model, the Conduct Commission would have to remain involved, at least as an investigatory body. This model would require legislation. The constitutionality of the legislation might be called into question because it would direct public complaints away from the Judicial Conduct Commission.

The Committee believes that the best resolution of the issue is found in CJA 2-211. Rule 2-211(1) provides: "Allegations of failure to comply with the provisions of ... the Code of Judicial Conduct may be submitted to the presiding officer of the Council by ... the Judicial Conduct Commission."

Under this rule, if the Commission's investigation of a complaint shows evidence of serious misconduct, the Commission would use its discretion and procedures to decide the case and recommend an appropriate public sanction to the Supreme Court. If, on the other hand, the Commission's investigation shows a minor infraction or behavior that warrants corrective action but does not rise to the level of a public sanction, the Commission could dismiss the case, perhaps with a warning, and refer the allegations to the chief justice under Rule 2-211. The Management Committee or the Judicial Council might take corrective action, such as steps to try to change behavior, or might recommend that the Supreme Court withdraw the appointment order. Because the Supreme Court holds the appointment authority, any action taken by the Management Committee or the Council should be reported to the Supreme Court.

Rule 2-211 takes nothing away from the Judicial Conduct Commission. The public continues to make its complaints to the Commission, and the Commission continues to exercise its discretion to order a public sanction or to dismiss the allegations with or without referring them to the chief justice. Rule 2-211 simply preserves the right of the judiciary to govern its own. It offers a considered and appropriate process for addressing performance and competence issues that do not rise to the level of a public sanction by the Supreme Court. The Judicial Conduct Commission endorses the idea of such a referral and is willing to adopt an internal rule to limit its referrals to complaints against judges pro tempore. The Commission would not refer complaints against regular judges.

Otherwise, no legislation or rules are needed to adopt this course of action.

### **Judge Pro Tempore Minimum Qualifications**

**Experience.** Currently, Rule 11-202 requires that judges pro tempore be admitted to practice law in Utah for a minimum of one year, and the Supreme Court does not consider anyone with less than two years of experience. The Committee believes that five years of experience represents a better minimum qualification.

California recently modified its judge pro tempore program to require a minimum of ten years of experience, but the presiding judge, who is the appointing authority in California, may reduce this to five years.

Some of our judges pro tempore have ten years of experience as lawyers. Indeed, some have ten years of experience as judges pro tempore. But even California seems to recognize that requiring that level of experience may be excessive. On the hand, with the jurisdictional limit of small claims at \$7,500 and likely to continue to rise, the complexity of small claims cases also is sure to increase. The Committee concludes that lawyers sitting in judgment on such cases should accumulate more experience than is now the case. Assigning such cases to attorneys only a few years out of law school does not serve justice.

Currently, three judges pro tempore have been admitted to practice in Utah for four years. All others have been admitted for at least five years, and the three exceptions will have five years experience by the time an amended rule is in effect. The Committee recommends that in the interim the Supreme Court not consider appointing lawyers who have been admitted for less than five years.

**Continuing Education.** The Committee believes that judges pro tempore should be required to complete a continuing education program. As is now the case with the introductory class, the education hours would qualify for MCLE credit with the Utah State Bar.

California requires nine hours of training in specified topics within the three years before appointment and an additional nine hours every three years thereafter. Although judges pro tempore in California hear small claims cases, they also are assigned to many other case types. The initial California education requirement seems excessive for Utah, but the continuing education requirement is appropriate.

Expecting too much of volunteers could deplete the ranks of the judges pro tempore, but continuing education is needed. The existing introductory course should be required within one year after appointment. Those who have never attended the course should be required to do so within one year of the new requirement. Further, judges pro tempore should be required to obtain three hours of continuing education annually. The requirement is modest and should not tax the time of lawyers, especially because the mandatory court education will count towards the Bar's MCLE hours, which must be obtained in any event.

The requirement may test the ability of the AOC to develop an appropriate curriculum. The AOC should offer courses sufficiently often in the four cities already mentioned that attendance is reasonably convenient. Requiring three hours of credit may mean six to nine hours of offerings.

Repeatedly taking the introductory course does not meet continuing education needs, but, currently, there are no alternatives. The AOC periodically should inquire of

judges pro tempore about their needs. Appropriate topics might include further detail in the law of topics common in small claims cases, judicial ethics and demeanor, evidence and constructive proffers of evidence, and proper questioning of witnesses. Topic variety is almost as important as topic relevance.

The AOC should pursue including small claims judge training at the Mid-year and Annual Bar Conferences and at the Fall Forum. Live presentations should be taped and lawyers permitted to obtain credit for self-certifying that they have viewed the tape. The AOC should investigate the feasibility of long-distance learning opportunities. The judges pro tempore might themselves teach some of the classes. And district and justice court judges also might teach classes.

### **Application Process**

The current application process necessarily is streamlined, because there are so many applications. Comparing the judge pro tempore application form with the application form for a gubernatorial appointment to the bench, the pro tempore form establishes the information necessary to satisfy the minimum requirements, and it establishes the information that might reflect negatively on the candidate. But it does not inquire about information that tends to show that one candidate is superior to another because the candidates are not being compared with each other.

The Committee recommends adding to the current background check a check of Judicial Conduct Commission records. We recommend adding to the application form a waiver for the Conduct Commission's records. This should include waiving confidentiality for the purpose of the background check and for the purpose of referring a future complaint to the chief justice under Rule 2-211. Incumbents should be sent a letter asking for their waiver for the purpose of referring a future complaint to the chief justice.

### **Pro Tempore Appointments of Commissioners and Justice Court Judges**

Independent of the issues referred to the Committee by the Judicial Council, a trial court executive has observed that judge pro tempore appointments of a court commissioner or of a justice court judge for two to three days to hear routine calendars while judges attend a conference are being made under Rule 11-202(3)(A), appointment on a case-by-case basis. This authority does not fit the circumstances of the appointment because the appointments are for all cases during a short period of time rather than to a particular case. The Committee concludes that amending Rule 11-202, rather than one of the other rules regulating judicial assistance, is the best course.

Several rules skirt the issue but do not resolve it. Rule 3-108, which regulates the assignment of judges to different courts, applies only to judges of courts of record. That rule can go no further because §78-3-21(9) and §78-3-24(10) restrict the Council's authority to reassign judges to judges of courts of record.

Rule 4-610, which permits a justice court judge to conduct felony arraignments, limits the judge's authority to not guilty pleas. Rule 4-610 could be amended within the scope of the §78-7-17.5 to allow a justice court judge greater discretion in arraignments, but if the calendars to be covered require judicial authority – rather than magisterial authority – even an expanded Rule 4-610 would not serve.

Under §77-1-3(4), the Council might expand the court commissioner's magisterial authority in Rule 6-310. This course contains the same limitations as amending Rule 4-610, regarding justice court judges. In addition, amending Rule 6-301 raises the issue of too much judicial authority in someone who is not a judge. *Salt Lake City v. Ohms*, 881 P.2d 844 (Utah 1994).

Appointing a commissioner or a justice court judge as a judge pro tempore will give the appointee full judicial authority in any cases that are assigned. CJA 11-202(4)(C). Amending the rule to do so for a short period of time conforms to the current practice. The Committee recommends that the appointment be of limited duration, five days. The Committee also recommends that, because the only officials who might be appointed are court commissioners and justice court judges, the Supreme Court dispense with the application process. The presiding judge should continue to look to judges and to senior judges under Rule 3-108 to meet the need for judicial assistance, but if the circumstances warrant, should be able to request this special pro tempore appointment.

Rule 2-211. Compliance with the Code of Judicial Administration and the Code of Judicial Conduct.

Intent:

To establish the authority of the presiding officer, the Management Committee and the Council to take corrective action in the event of non-compliance with this Code or the Code of Judicial Conduct.

Applicability:

This rule shall apply to judicial and quasi-judicial officers.

Statement of the Rule:

(1) Allegations of failure to comply with the provisions of this Code and the Code of Judicial Conduct may be submitted to the presiding officer of the Council by Council members, the chairs of the Boards, presiding judges, the court administrator or the Judicial Conduct Commission.

(2) The presiding officer of the Council, in consultation with the Management Committee, has the discretion to dismiss the allegations, investigate the allegations, take appropriate corrective action or submit the matter to the Council for consideration. Where corrective action is taken, the presiding officer shall report to the Council in executive session the nature of the problem and the corrective action taken. Information which identifies the individual against whom corrective action is taken may be omitted from the report.

(3) The Council shall convene in executive session to review those allegations of non-compliance submitted by the presiding officer pursuant to paragraph (2) and, upon a majority vote, direct dismissal of the allegations, investigation of the allegations, corrective action or referral to the Judicial Conduct Commission. Allegations of non-compliance shall be referred to the Conduct Commission only after consideration by the Council and upon a majority vote of its members.

(4) The presiding officer of the Council is empowered to implement any corrective action recommended by the executive management committee or the Council.

1 Rule 11-202. Judges pro tempore.

2 Intent:

3 To establish guidelines for the qualifications and authority and a procedure for the  
4 appointment of judges pro tempore.

5 Applicability:

6 This rule shall apply to the judiciary and the members of the Utah State Bar.

7 Statement of the Rule:

8 (1) Qualifications.

9 (1)(A) Judges pro tempore shall be citizens of the United States, residents of the  
10 State of Utah, and shall have been admitted to the practice of law in Utah for a minimum  
11 of ~~one year~~ five years.

12 (1)(B) Judges pro tempore must possess ability in the types of cases to be assigned  
13 and good character.

14 (1)(C) A judge pro tempore assigned small claims cases shall complete a small  
15 claims orientation program within one year after appointment and thereafter complete at  
16 least three hours of small claims education annually. The administrative office of the  
17 courts shall offer appropriate education opportunities.

18 (2) Application.

19 (2)(A) Appointments under sections (3)(A) and (3)(B).

20 (2)(A)(i) The Administrative Office shall distribute applications for judges pro tempore  
21 to all court executives. The application shall make appropriate inquiry concerning an  
22 applicant's professional qualifications, physical and mental health, character, and  
23 potential areas of conflict of interest.

24 (2)(A)(ii) A person interested in an appointment as a judge pro tempore shall  
25 complete the application and submit it with a resume to the presiding judge.

26 (2)(A)(iii) Upon receipt of an application, the presiding judge shall file the application  
27 and resume with the Administrative Office and certify that:

28 (2)(A)(iii)(a) the applicant is qualified;

29 (2)(A)(iii)(b) there is an extraordinary need for the appointment;

30 (2)(A)(iii)(c) all other options to accommodate the need have been exhausted; and

31 (2)(A)(iii)(d) the matters to be assigned are suitable for consideration by a judge pro  
32 tempore.

33 (2)(B) Appointments under section (3)(C).

34 (2)(B)(i) The Administrative Office shall prepare a press release similar in content  
35 and format to a press release for a judicial vacancy. The Administrative Office shall  
36 provide the press release to the Salt Lake Tribune, the Deseret News, local newspapers  
37 with circulation within the geographic venue of the court and the Utah Bar Journal, if the  
38 timing of the announcement is such that publication in the Journal would be effective.  
39 The Administrative Office of the Courts shall also provide the press release to any local  
40 bar associations within the geographic venue of the court. The Administrative Office  
41 may provide the press release to any other organization or individual capable of  
42 notifying persons qualified for the office.

43 (2)(B)(ii) A person interested in an appointment as a judge pro tempore shall  
44 complete the application and submit it with a resume to the Administrative Office.

45 (2)(B)(iii) The presiding judge of the court to be served by the judge pro tempore  
46 shall appoint a selection committee to make recommendations regarding appointment.

47 (2)(B)(iv) The presiding judge shall submit to the Supreme Court the name of the  
48 applicant recommended for appointment and the application, resume and results of the  
49 records check for the applicant. The presiding judge shall certify that:

50 (2)(B)(iv)(a) the applicant is the most qualified;

51 (2)(B)(iv)(b) there is an extraordinary need for the appointment;

52 (2)(B)(iv)(c) all other options to accommodate the need have been exhausted; and

53 (2)(B)(iv)(d) the matters to be assigned are suitable for consideration by a judge pro  
54 tempore.

55 (2)(C)(i) Upon receipt of the application and resume, the Administrative Office shall  
56 conduct a check of Utah records to determine whether the applicant has been:

57 (2)(C)(i)(a) a defendant in any bar or judicial disciplinary proceeding;

58 (2)(C)(i)(b) arrested;

59 (2)(C)(i)(c) a defendant in any misdemeanor or felony complaint; or

60 (2)(C)(i)(d) a party in any civil case.

61 (2)(C)(ii) For appointments under sections (3)(A) and (3)(B), the Administrative  
62 Office shall deliver the application and resume, certification by the presiding judge, and  
63 the results of the records check to the Supreme Court. For appointments under section  
64 (3)(C), the Administrative Office shall deliver the application and resume and the results  
65 of the records check to the presiding judge.

66 (3) Appointment. The Supreme Court, through the Chief Justice, may appoint judges  
67 pro tempore to serve on any trial court:

68 (3)(A) on a case by case basis;

69 (3)(B) for a period of time not to exceed two years for small claims cases or petitions  
70 against minors for possession or use of tobacco; or

71 (3)(C) for a period of time not to exceed six months for other cases.

72 (4) Upon the request of the presiding judge, the Supreme Court, through the Chief  
73 Justice, may appoint a justice court judge or a court commissioner as a judge pro  
74 tempore for a period of time not to exceed five days. Subsection (2) does not apply to  
75 appointments under this subsection.

76 ~~(4)(5)~~ Removal - Oath - Authority.

77 ~~(4)(A)(5)(A)~~ Regardless of the stated period of appointment or appointment on a  
78 case by case basis under subpart (3), the office of judge pro tempore is held at the will  
79 of the Supreme Court. The Supreme Court may withdraw an order of appointment with  
80 or without cause by providing notice of the order of withdrawal to the appointee.

81 ~~(4)(B)(5)(B)~~ A person appointed to the position of a judge pro tempore shall take  
82 and subscribe to an oath of office upon the first appointment in that court.

83 ~~(4)(C)(5)(C)~~ Judges pro tempore shall have all the power and authority of the judges  
84 of that court during the period of appointment except that they shall not exercise judicial  
85 authority beyond the case to which they are assigned such as the performance of  
86 marriages. A judge pro tempore shall have all of the privileges and immunities of a  
87 judge with respect to the case or cases to which the judge pro tempore is assigned.

88 ~~(5)(6)~~ Limit on reappointment. Any appointment made under subpart (3)(C) may be  
89 renewed only once.

90 ~~(6)(7)~~ Compensation.

91 ~~(6)(A)~~ (7)(A) Except as provided in this subpart, judges pro tempore shall serve  
92 without compensation.

93 ~~(6)(B)~~ (7)(B) Judges pro tempore may receive reimbursement for necessary travel  
94 expenses actually incurred in the performance of their duties.

95 ~~(6)(C)~~ (7)(C) Judges pro tempore employed by the courts in another capacity shall  
96 not receive additional compensation.

97 ~~(6)(D)~~ (7)(D) Judges pro tempore appointed under subpart (3)(C) may be  
98 compensated upon the written request of the presiding judge(s) and with the  
99 concurrence of the Chief Justice and the State Court Administrator.

100

**APPLICATION FOR APPOINTMENT AS SMALL CLAIMS JUDGE PRO TEMPORE**

A current resume must accompany this application. Answer all questions completely. Attach additional sheets of paper as necessary to complete answers. Your responses are classified as private under Rule 4-202.02. If information contained in your responses changes, before or after appointment, notify the senior staff attorney at the Administrative Office of the Courts at the address below. The office of judge pro tempore is governed by Rule 11-202. Canons 1, 2A, 3B, 3E, and 3F of the Code of Judicial Conduct apply to judges pro tempore. The Code of Judicial Conduct prohibits a small claims judge pro tempore from sitting in the same small claims division in which the judge, as a lawyer, represents clients.

**1) Identification**

Name	
Business mailing address	
Business email	
Business phone	Date of birth
Bar identification number	Social Security Number
Court locations in which you are willing to serve:	

**2) Minimum qualifications**

Are you a citizen of the United States?	
Are you a resident of Utah?	
Are you an active member of the Utah State Bar?	
Have you been admitted to the practice of law in Utah for at least two years?	

**3) Professional discipline**

Have you ever been denied admission to practice law?	
Have you ever been disciplined as an attorney or as a judge?	
Are you aware of any disciplinary proceedings pending against you as an attorney or as a judge?	
Have you ever been held in contempt or sanctioned by a court or other tribunal?	

If you answered “yes” to any question in this section, state fully the facts concerning the matter, including the jurisdiction in which the matter occurred, relevant dates, the case number, the facts of the case, and the disposition of the matter.

**4) Civil and criminal actions**

Do you have any outstanding judgments against you?	
Other than minor traffic offenses, have you been convicted of any criminal charge that has not been expunged or is any criminal charge pending against you?	
Have you ever had a protective order entered against you?	
Are you aware of any circumstance that would create a conflict of interest, create the appearance of impropriety or bring the judiciary into disrepute?	

If you answered "yes" to any question in this section, state fully the facts concerning the matter, including the jurisdiction in which the matter occurred, relevant dates, the name and location of the court, the case number, the names of the parties, the name and location of the law enforcement agency, the facts of the case, the disposition of the matter, including any civil judgment or criminal sentence, whether an appeal was taken, and the results of the appeal.

**5) Mental and physical health**

Are you aware of any condition that would impair your ability to serve effectively as a judge pro tempore? \_\_\_\_\_ If “yes,” please offer details as necessary.

**6) Consent, certification and acknowledgment**

I certify that the information contained in this application and resume is true to the best of my knowledge.

I understand that providing false information may subject me to removal from office.

I consent to the release of records necessary to verify the information contained in this application and resume.

Pursuant to Rule 14-515(a)(1) of the Rules Governing the Utah State Bar, I expressly waive confidentiality and request a copy of any and all complaints and informations submitted to the Office of Professional Conduct against me be mailed to the person and address shown below.

I waive confidentiality and request a copy of any complaint against me submitted to the Judicial Conduct Commission be mailed to the person and address shown below.

I permit the Judicial Conduct Commission to refer to the presiding officer of the Judicial Council, pursuant to CJA 2-211, any complaint that in their discretion they choose to refer, and I permit the Judicial Conduct Commission to include any information pertaining thereto.

Date	Signature

\_\_\_\_\_ is personally known to me or presented satisfactory proof of identity to me. After being sworn and while under oath, \_\_\_\_\_ stated that s/he was acting voluntarily, had read and understood the preceding document, and that the contents were true. \_\_\_\_\_ then signed the document in my presence.

Date	Notary Signature Seal

Please send completed application and resume to:	Timothy M. Shea Administrative Office of the Courts P.O. Box 140241 Salt Lake City, Utah 84114-0241
--------------------------------------------------	--------------------------------------------------------------------------------------------------------------

TAB 4

## MEMORANDUM

**To:** Utah Judicial Council

**From:** Richard Schwermer

**Date:** October 17, 2006

**Re:** Proposed Changes to Rules Related to Presiding Judges

---

Below are the proposed changes to rules relating to the role of presiding judges. A group comprised of all of the district and juvenile court presiding judges has reviewed and revised these proposals over the course on the last year. The intent is to increase both the authority and responsibility of PJs in an effort to better manage the resources of the judiciary, and to better define the role presiding judges have in the operation of the courts.

**1. Rule 1-304. General authority and duties.**

Intent:

To delegate to the Boards appropriate authority for administration of the courts.

To identify the responsibility of the Boards:

(1) to adopt administrative rules in accordance with the standards and guidelines of the Council and subject to ratification by the Council;

(2) to propose rules of procedure and evidence to Supreme Court Advisory Committees;

(3) to coordinate the adoption of local supplemental rules;

(4) to advise the Council;

(5) to supervise the implementation of Council policies;

(6) to serve as liaison between the local courts and judges and the Council; and

(7) to develop state-wide master plans for budget and legislative priorities.

To assure that the Council, as the ultimate authority for the administration of the judiciary, controls the direction of policy development by ratification of the rules of the Boards.

**Applicability:**

This rule shall apply to all Boards, except the Board of Senior Judges. This rule may be supplemented by a specific grant of authority to a particular Board.

**Statement of the Rule:**

(1) All rules of the Boards shall be subject to ratification by the Council. The Council may ratify a rule of a Board without a 45-day comment period. Rules of the Boards shall not be inconsistent with the rules, standards, and goals established by the Council or the rules of the Supreme Court and shall not be inconsistent with law.

(2) Each Board shall develop uniform rules for the operation of its respective court in accordance with standards and goals established by the Council.

(3) Each Board shall distribute its proposed rules to affected agencies and individuals for comment prior to adoption.

(4) Each Board shall present its adopted rules to the Council for ratification. The rules of the Boards shall be printed in this Code, shall be in a format identical to that prescribed by this Code and shall be numbered sequentially to facilitate publication and reference.

(5) Each Board may submit to the Council recommendations for legislation or rules.

(6) Each Board shall study and make recommendations concerning issues referred by the Council.

(7) Each Board shall develop and recommend to the Council budget and legislative priorities for its courts.

(8) The Board of District Court Judges and the Board of Juvenile Court Judges shall meet with the presiding judges of the districts at least annually.

(9) In accordance with Utah Code Ann. Section 78-3-25, the state court administrator shall submit for approval to the Board the name of the appointee to the position of state level administrator for that court.

(10) Each Board shall be responsible for informing the judges of its respective court of an invitation by the Council to comment upon a proposed Council rule or any other action by the Council.

(11) The Boards shall have such other authority and responsibility as delegated by the Council.

**2. Rule 2-106.04. Self improvement process. (Excerpt)**

(B) The presiding judge and other reviewing judge shall review the evaluation material and may meet with the subject judge at the request of the presiding judge or other reviewing judge or of the subject judge. However, when the subject judge receives a score of less than 70% on one or more survey question, the presiding judge or other reviewing judge shall meet with the subject judge. The purpose of the meeting is to identify steps towards self improvement.

**3. Rule 3-104. Presiding judges.**

Intent:

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

Applicability:

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

Statement of the Rule:

(1) Election and term of office.

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

(1)(B) Associate presiding judge.

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

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

(2) Court organization.

(2)(A) Court en banc.

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

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

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

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

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

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

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

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

(3) Administrative responsibilities and authority of presiding judge.

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

judge  
judicial  
provide the  
management and  
extent of [any] the caseload reduction  
district.

(3)(A)(ii) Caseload. ~~[To the extent possible,]~~ Unless the presiding determines it to be impractical, there is a presumption that the caseload of the presiding judge ~~[should]~~ shall be adjusted to presiding judge sufficient time to devote to the administrative duties of the office. The shall be determined by each

(3)(B) Coordination of judicial schedules.

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

(3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge consistent with Rule 3-103(4).

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

(3)(D) Outside agencies and the media.

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

(3)(D)(ii) Generally, the presiding judge or court executive shall represent the court and make statements to the media on matters pertaining to the total court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(3)(E) Docket management and case and judge assignments.

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

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

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

judges or other appropriate resources when needed to handle the workload of the court.

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

~~(3)(F) Local supplemental rules.~~

~~(3)(F)(i) Prior to submission of a local supplemental rule to the Board, the presiding judge shall submit the rule to a vote of the judges of that jurisdiction. Upon a majority vote, the rule shall be submitted to the Board and the Council for review, adoption and ratification as provided in this Code.~~

~~[(3)(F)(ii) The presiding judge shall ensure that copies of local supplemental rules are available and disseminated interested persons.]~~

(3)(G) Court executives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(3)(K)(ii) Reevaluate the position.~~

~~(3)(K)(iii) If the problem persists, determine the available alternatives. Discuss and evaluate the alternatives with the judge.]~~

(3)(K)(ii) Discuss the position with other judges and reevaluate the position.

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

(3)(K)(iv) Require the judge or commissioner to participate in

location (3)(K)(v) Reassign the judge or commissioner to a different within the district or to a different case assignment.

(3)(K)(vi) Refer the problem to [~~a higher authority such as~~] the appropriate Board or to the Chief Justice.

(3)(K)(vii) In the event that the options listed above in subsections (i) through (vi) do not resolve the problem, and where the refusal or conduct is willful, [~~and~~] continual, and constitutes a violation of the Code of Judicial Conduct, the presiding judge shall refer the problem to the Council or the Judicial Conduct Commission.

(3)(L) Cases under advisement.

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

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

(3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than two months to the [~~60 days to the Chair of the appropriate Board and~~] appropriate state level administrator and indicate the reasons why the case or issue continues to be held under advisement.

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

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

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

5. Rule 3-301. Court administrators. (Excerpt)

(5) Court executives.

(A) Appointment, supervision and evaluation.

(i) The court executives shall be appointed by the state court administrator after consultation with the state level administrator and with the concurrence of the presiding judge. The court executives shall serve at the pleasure of the state court administrator.

(ii) Under the direction of the state court administrator, the state level administrators, with the local presiding judge, shall develop annually a performance plan for the court executives. At the conclusion of each year, the state level administrator shall consult with the presiding judge in the preparation of a performance evaluation of the court executive.

(iii) The court executive shall coordinate with the presiding judge(s) and the Administrative Office the use of annual leave.

(iv) The court executive shall participate in special projects, attend staff meetings, submit reports, and fulfill other responsibilities as necessary for the administration of the courts as directed by the state level administrator.

(B) Duties and responsibilities. Pursuant to this Code and under the direction of the state level administrator and the presiding judge, the court executive is responsible for the day-to-day supervision of the non-judicial administration of the courts. Such duties include but are not limited to:

(i) hiring and supervision of staff other than judges or court commissioners;

(ii) development and management of budget;

(iii) planning and management of facilities;

(iv) development, maintenance and coordination of intergovernmental relations;

(v) transmission of information to the Boards and the Administrative Office and the distribution of minutes from the Council and Board meetings to individual judges;

(vi) implementation and management of the court calendar as directed by this Code and local rule;

(vii) development and management of court security plans;

(viii) service as secretariat for local administrative court meetings;

(ix) development and implementation of records management systems;

(x) local public information; and

(xi) other duties as assigned by the presiding judge and the state level administrator.

TAB 5

**JUDICIAL COUNCIL  
2007 MEETING DATES**

**Meetings are generally scheduled on the 4<sup>th</sup> Monday of the month, beginning at 9:00 a.m. Meetings will be held in the Council Room of the Matheson Courthouse unless otherwise noted.**

Monday, January 29<sup>th</sup>, 2007

Monday, February 26<sup>th</sup>, 2007

Thursday, March 8<sup>th</sup>, 2007 (*held in conjunction with the Mid-Year Bar Conference, March 8-10th, Holiday Inn, St. George Utah*)

Monday, April 23<sup>rd</sup>, 2007 (*Tooele Courthouse*)

Tuesday, May 29<sup>th</sup>, 2007 (*Ogden Juvenile Court*)

Monday, June 25<sup>th</sup>, 2007

Wednesday, July 18<sup>th</sup>, 2007 (*Held in conjunction with the Bar Convention, July 18-21st, Sun Valley Resort, Idaho*)

Wednesday, August 29<sup>th</sup> – 30<sup>th</sup>, 2007 (*Council Budget Planning Meeting - Location Matheson Courthouse*)

Tuesday, September 25<sup>th</sup>, 2007 (*held in conjunction with the Annual Judicial Conference, September 26-28th, at Homestead Resort, Midway, Utah*)

Monday, October 29<sup>th</sup>, 2007

Monday, November 26<sup>th</sup>, 2007

Monday, December 17<sup>th</sup>, 2007

# TAB 6

**Court Interpreter Standing Committee  
Strategic Planning Initiative  
Report to the Judicial Council  
October 30, 2006**

**Introduction.**

1. Language should not be a barrier to justice. Utah, like the rest of the nation, is home to increasingly diverse cultures with increasingly diverse languages, as well as simply growing numbers of people who are not fluent in English. A different language does not make the person who speaks it any less a resident, any less a taxpayer, any less a citizen, any less deserving of the benefits of our judicial process. By providing qualified court interpreters, we bridge the communication gap and improve access to justice.

**Purpose of the Court Interpreter Program.**

2. Our purpose is to provide qualified court interpreters. To that end, we look to improve recruitment, training, accountability, availability, and services. Language differences create difficulties on both sides of the barrier. Improvements will assist the client, to be sure, and also judges and court staff.

**Summary Outline of the Court Interpreter Program.**

3. In 1995, Utah was one of the first eight states to join the National Center for State Courts' Consortium for State Court Interpreters. The Judicial Council established the Court Interpreter Committee as an advisory panel in 1996. In February 2005 the Council recognized the panel as a standing committee. In the interim, the policies recommended by the committee and adopted by the Council have built a strong program dedicated to securing the rights of people who are unable to communicate in English. The committee meets bi-monthly and many court interpreters who are not members regularly attend, showing their interest and support for the program.

4. The Utah court interpreter program has three levels of qualification. From highest qualified to lowest, they are certified, approved, and conditionally approved. An interpreter can be certified in Spanish and, within the last year, Vietnamese. A Consortium of states organized through the National Center for State Courts has established minimum certification standards. Utah recognizes certifications issued by other Consortium states and the federal courts. For all other languages, as well as for Spanish and Vietnamese, an interpreter can be approved. Once certified or approved, the interpreter can interpret in any court. Conditional approval is a status decided by the judge when neither a certified nor an approved interpreter is available. The decision extends only to the hearing for which it is made.

5. All interpreters are independent contractors paid for their time and mileage under a formula in the court accounting manual. Interpreters are scheduled locally. Interpreters in the district and juvenile courts are paid through the AOC from a separate line item appropriated for that purpose at the rate set by the Judicial Council. Justice courts pay for interpreters from local funds at a rate of their choosing. Court employees may not be used as interpreters, except in limited circumstances.

6. The program is governed by Rule 3-306.

## **Goals and Tasks.**

### **Goal 1. Improve recruitment of qualified interpreters.**

7. Issue: Currently, Utah has 32 interpreters certified in Spanish, one certified in Vietnamese, one federally certified in Navajo, and 84 approved interpreters in 39 languages. On the demand side, in 2005 there were 6,400 reported hearings with interpreters in the state courts. This does not include justice court hearings nor the many unreported state court hearings. Further, the courts compete for the interpreters' time with attorneys, medical practitioners, the federal courts, federal and state agencies and other individuals and organizations.

8. Judges report that interpreters in Spanish, which is by far the most common need, are usually available but that we still have need for more. Availability in less-common languages is problematic. Interpreters, even in Spanish, can be difficult to schedule in remote courts. The relative frequency of languages is a moving target. A language seldom spoken in Utah a few years ago may be more common today.

#### Tasks:

- (A) Develop partnerships with public and private universities to encourage interpreting as a career.
- (B) Re-examine minimum qualifications for approved interpreters.
- (C) Develop and maintain multi-language testing and non-specific language skills classes.
- (D) Support local and state recruiting efforts.
- (E) Improve recruitment in less common languages.
- (F) Re-examine the employment/contract relationship between the interpreter and the courts.
- (G) Re-examine the structure for interpreter fees.
- (H) Consider assessing interpreter fees as costs to a convicted defendant in criminal cases, subject to the ability to pay, similar to costs of representation.
- (I) Research trends in immigration and languages used in the courtroom to anticipate need.

### **Goal 2. Improve interpreter training.**

9. Issue: The interpreter program has sufficient initial education and testing for interpreters certified in Spanish but only a few continuing education opportunities. The program has modest initial education for approved interpreters, no tests except for Spanish interpreters and no continuing education requirements.

10. To be certified, one must attend a two-day class, pass a three-part skills examination and an ethics exam, and attend ten hours of in-court observation. The skills exam uses a nationally approved test and nationally approved standards to test English skills, Spanish skills, and interpreting skills. In addition to these requirements, the AOC offers a five-day class to prepare for the examinations, but the class is not required.

11. Certified interpreters must obtain 16 hours of continuing education every two years. There are opportunities in the community to meet this requirement, but in the 2004 – 2005 biennium the courts offered only one skills-building class and one ethics class. Although the 16-hour requirement is less than half that of court employees and only one-quarter that of judges, four certified interpreters did not meet the requirement within the deadline.

12. The second level of qualification, approved, has a one-day orientation class that includes an introduction to court interpreting, the interpreters' code of ethics and court procedure. Approved interpreters also must observe ten hours of court interpreting. For approved Spanish interpreters, we briefly assess English and Spanish skills, but for other languages we do not. We have a pilot mentoring prerequisite for certified and approved interpreters, but it has not moved beyond a pilot program in the Third District. There is no continuing education requirement for approved interpreters. Judges report that certified interpreters are highly skilled, but that the quality of interpretation falls off dramatically among approved interpreters.

13. Interpreting is a skill much more complex than just speaking the language. Carrying on a conversation in Spanish does not qualify one for interpreting in Spanish. Consider that most English-speakers become horribly lost merely trying to repeat, simultaneously or consecutively, the words of another English-speaker.

14. A special part of education is familiarity with and application of the interpreters' code of ethics. The interpreter is bound by a code of ethics just like the judge, just like the lawyers, just like the clerk. Yet even if the interpreter understands the ethical responsibilities of a situation, which may not always be the case, others often do not. Often the interpreter is directed to serve in a capacity outside the scope of his or her responsibilities – to serve in a capacity that is prohibited, or at least limited, by the code of ethics. The professional presence of the interpreter in the courtroom is of recent vintage. We struggle with issues that result simply from unfamiliarity.

#### Tasks:

- (A) Develop partnerships with public and private universities to provide initial and continuing education opportunities.

- (B) Require initial skills training for certified interpreters.
- (C) Develop and require initial skills training and testing for approved interpreters.
- (D) Develop continuing skills training opportunities for certified interpreters.
- (E) Study continuing skills training requirements and opportunities for approved interpreters.
- (F) Expand initial and continuing training in ethics.
- (G) Develop a summary description of the interpreter's role for use in the courtroom.
- (H) Develop classes for judges and staff in the ethics and role of interpreters.
- (I) Develop classes for interpreter coordinators in the availability of American Sign Language interpreters.
- (J) Integrate cultural training, especially English and Spanish legal and social cultures, as part of training opportunities.
- (K) Develop local training opportunities.
- (L) Develop orientation class for new interpreters.
- (M) Improve continuing education monitoring and recordkeeping.

**Goal 3. Improve interpreter availability.**

15. Issue: Court calendars are fluid. Hearings are scheduled and rescheduled on short notice. Short hearings go overtime. Long hearings conclude quickly. The time between hearings can be a few minutes or a few hours. Some courts use a rotation system for scheduling interpreters; others have their favorite person; others take whomever is available. Ensuring the simultaneous presence of the judge, prosecutor, defense counsel, defendant and interpreter is difficult. The long distances separating courthouses make a difficult situation even worse. If the hurdles to scheduling an interpreter are too high, courts may sometimes try to muddle through rather than postpone a hearing. Interpreters and court personnel alike suffer the consequences of scheduling problems. Given the dynamic nature of the process, scheduling an interpreter will always be difficult, but we should be able to improve.

Tasks:

- (A) Investigate the costs and benefits of centralized interpreter scheduling.
- (B) Investigate local interpreter scheduling using a centralized calendar.
- (C) Investigate best practices for interpreter scheduling.
- (D) Develop incentives against cancellations by interpreters.
- (E) Research technological solutions.
- (F) Research the needs of district, juvenile, and justice courts. Serve those different needs.
- (G) Research the needs of urban and rural courts. Serve those different needs.

**Goal 4. Improve interpreter accountability.**

16. Issue: Currently, there is no recognized process for evaluating an interpreter. Presumably, a court declines to schedule an interpreter whose performance is

particularly poor. Aside from not scheduling an interpreter and removing him or her from the list, there are few discipline options.

- (A) Develop a process for evaluating interpreters.
- (B) Develop a process for issuing ethics opinions.
- (C) Develop a process for making a complaint about an interpreter.
- (D) Evaluate the adequacy of the current discipline process.
- (E) Improve interpreter performance and discipline recordkeeping.

**Goal 5. Improve translation services.**

17. Issue: The most common service of interpreters is, of course, interpreting in court. However, the people who cannot speak English in their courtroom appearance also will not be able to read the many pamphlets and forms produced by the courts. Translating documents has never been the primary role of the interpreter program, but it is an important role.

- (A) Develop multi-language pamphlets about the interpreter program.
- (B) Translate pamphlets and forms into Spanish.

**Goal 6. Establish the role of the committee.**

18. Issue: During the planning meeting divergent views were expressed about the proper role of the committee. Some favored a more hands-on approach to the day-to-day issues facing interpreters, judges, staff and others. Others argued for a more policy-oriented approach, leaving operations to the people on the ground. By pursuing the goals and tasks in this strategic plan, the committee will have no choice but to assume a policy level role – not setting policies, but recommending them to the Judicial Council. In recommending a policy, part of the committee’s responsibility will be to recommend its own continuing role and that of the judges, coordinators, clerks, and the AOC.

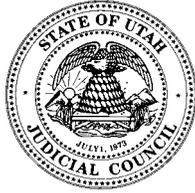
Tasks: Consider, as part of its discussions, the role of the committee and others in:

- (A) Recommending policy.
- (B) Developing programs.
- (C) Evaluations.
- (D) Ethics opinions.
- (E) Discipline.
- (F) Solving problems: with interpreters; with judges; with staff; with lawyers; with clients; with process.

## **Committee Interpreter Committee**

Lynn W. Davis, District Court, Chair  
Carlos A. Esqueda, Prosecutor  
Luther Gaylord, Certified Interpreter  
Peggy Gentles, Trial Court Executive  
Daryl R. Hague, Professor of Linguistics  
Peggy Johnson, Clerk of Court  
Deborah Kreeck Mendez, Defense Attorney  
Brendan McCullagh, Justice Court  
Jane Miner Pham, Approved Interpreter  
Jody Meyer, Interpreter Coordinator  
Frederic M. Oddone, Juvenile Court  
Branden Putnam, Probation Officer  
Mayra Villamar, Certified Interpreter  
Mary Boudreau, Staff  
Rosa Oakes, Staff

TAB 7



# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

## MEMORANDUM

---

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

**To:** Judicial Council  
**From:** Tim Shea *TS*  
**Date:** October 2, 2006  
**Re:** Certification of Judge Leslie D. Brown as an active senior judge

---

Judge Leslie D. Brown has applied to be appointed as an active senior judge. Judge Brown's application form, which shows compliance with the minimum qualifications for office and with judicial performance standards, is attached, as are the results of Judge Brown's most recent survey results.

An active senior judge may hear and determine cases.

The Council's certification decision will be forwarded to the Supreme Court for their consideration in the appointment process.

**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.**

## ACTIVE SENIOR JUDGE

### APPLICATION FOR OFFICE

I, Leslie D. Brown, hereby apply for the office of active senior judge and declare as follows:

1. I was retained in the last election in which I stood for election.
2. I voluntarily resigned from judicial office, OR I involuntarily retired from judicial office due to disability from which I have recovered or which can be accommodated.
3. I am physically and mentally able to perform the duties of judicial office.
4. I demonstrate appropriate ability and character.
5. I am admitted to the practice of law in Utah, but I do not practice law.
6. I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
7. I am familiar with current statutes, rules and case law.
8. I will satisfy the education requirements of an active judge.
9. I will attend the annual judicial conference.
10. I will accept assignments within the limits established by Rule 11-201.
11. I will conform to the Code of Judicial Conduct, the Code of Judicial Administration and rules of the Supreme Court.
12. I obtained attorney survey results on the final judicial performance evaluation survey conducted prior to termination of service sufficient to have been certified for retention election.
13. I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
14. I was not removed from office or involuntarily retired on grounds other than disability.
15. I was not suspended during my final term of office or final six years in office, whichever is greater.
16. I did not resign from office as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
17. My date of birth is 6/4/1945.
18. I will submit relevant information as requested by the Judicial Council.
19. I have not been subject to any order of discipline for conduct as a senior judge.

20. There ~~is~~ [is not] a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.

21. During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each.

22. The address at which I can be contacted after retirement is:

54 West 4600 North, Provo, Utah 84604

**JUDICIAL PERFORMANCE EVALUATION INFORMATION**

I further declare as follows:

23. I have not had more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

24. I have had no cases under advisement more than six months after submission.

25. I am in substantial compliance with the Code of Judicial Conduct.

26. I am physically and mentally fit for office.

27. I have obtained the following judicial education hours for the years indicated.

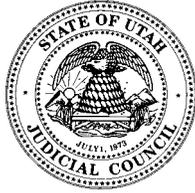
2002	2003	2004	2005
49.6	31.4	44.2	34.2

September 27, 2006  
Date

Leslie D. Brown  
Leslie D. Brown

### Survey Responses for The Honorable Leslie D. Brown

Question:	Certification Score	Excellent		More than Adequate		Adequate		Less than Adequate		Inadequate		# of Valid Responses		No Personal Knowledge	
	Passing Score 70%+	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group
	%	%	%	%	%	%	%	%	%	%	%	Count		Count	
1) Behavior is free from impropriety and the appearance of impropriety.	98%	66%	53%	26%	30%	6%	12%	2%	3%	0%	2%	47	149	1	3
2) Behavior is free from bias and favoritism.	94%	62%	47%	26%	29%	6%	15%	4%	3%	2%	5%	47	150	1	2
3) Avoids ex parte communications.	95%	55%	44%	25%	31%	16%	20%	0%	1%	5%	3%	44	143	4	9
4) Understands the rules of procedure and evidence.	98%	64%	49%	26%	27%	9%	20%	2%	4%	0%	1%	47	150	1	2
5) Properly applies the law to the facts of the case.	94%	66%	46%	19%	27%	9%	19%	6%	7%	0%	2%	47	150	1	2
6) Is prepared for hearings and trials.	96%	65%	52%	21%	24%	10%	21%	4%	3%	0%	1%	48	151	0	1
7) Demonstrates appropriate demeanor.	96%	69%	51%	21%	30%	6%	13%	4%	3%	0%	3%	48	151	0	1
8) Maintains order in the courtroom.	98%	71%	59%	23%	26%	4%	13%	2%	1%	0%	1%	48	150	0	2
9) Allows sufficient time to present case.	100%	66%	57%	23%	24%	11%	17%	0%	1%	0%	2%	47	150	1	2
10) Weighs all evidence fairly and impartiality before rendering a decision.	92%	58%	52%	27%	25%	6%	13%	6%	7%	2%	3%	48	152	0	0
11) Clearly explains oral decisions.	94%	58%	47%	31%	31%	4%	18%	6%	3%	0%	1%	48	150	0	2
12) Opinions, memorandum decisions and orders are well written.	94%	51%	42%	37%	34%	6%	20%	3%	3%	3%	2%	35	113	13	39
13) Issues orders and opinions without unnecessary delay.	100%	61%	51%	23%	27%	16%	21%	0%	0%	0%	1%	44	140	4	12
14) Effectively uses pretrial procedures to narrow and define the issues.	96%	62%	51%	23%	28%	11%	15%	2%	3%	2%	2%	47	144	1	8
15) Overall, the performance of this judge or commissioner is...	96%	60%	53%	25%	26%	10%	16%	4%	4%	0%	1%	48	152	0	0



# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

## MEMORANDUM

---

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

**To:** Judicial Council  
**From:** Tim Shea *TS*  
**Date:** September 28, 2006  
**Re:** Certification of Judge Dennis M. Fuchs as an active senior judge

---

Judge Dennis M. Fuchs has applied to be appointed as an active senior judge. Judge Fuchs's application form, which shows compliance with the minimum qualifications for office and with judicial performance standards, is attached, as are the results of Judge Fuchs's most recent survey results.

An active senior judge may hear and determine cases.

The Council's certification decision will be forwarded to the Supreme Court for their consideration in the appointment process.

**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.**

## ACTIVE SENIOR JUDGE

### APPLICATION FOR OFFICE

I, Dennis M. Fuchs, hereby apply for the office of active senior judge and declare as follows:

1. I was retained in the last election in which I stood for election.
2. I voluntarily resigned from judicial office, OR I involuntarily retired from judicial office due to disability from which I have recovered or which can be accommodated.
3. I am physically and mentally able to perform the duties of judicial office.
4. I demonstrate appropriate ability and character.
5. I am admitted to the practice of law in Utah, but I do not practice law.
6. I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
7. I am familiar with current statutes, rules and case law.
8. I will satisfy the education requirements of an active judge.
9. I will attend the annual judicial conference.
10. I will accept assignments within the limits established by Rule 11-201.
11. I will conform to the Code of Judicial Conduct, the Code of Judicial Administration and rules of the Supreme Court.
12. I obtained attorney survey results on the final judicial performance evaluation survey conducted prior to termination of service sufficient to have been certified for retention election.
13. I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
14. I was not removed from office or involuntarily retired on grounds other than disability.
15. I was not suspended during my final term of office or final six years in office, whichever is greater.
16. I did not resign from office as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
17. My date of birth is 3/31/1947.
18. I will submit relevant information as requested by the Judicial Council.
19. I have not been subject to any order of discipline for conduct as a senior judge.

20. There ~~is~~ [is not] a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
21. During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each.

**JUDICIAL PERFORMANCE EVALUATION INFORMATION**

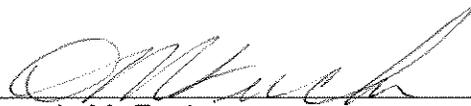
I further declare as follows:

22. I have not had more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and
23. I have had no cases under advisement more than six months after submission.
24. I am in substantial compliance with the Code of Judicial Conduct.
25. I am physically and mentally fit for office.
26. I have obtained the following judicial education hours for the years indicated.

2002	2003	2004	2005
39	34.5	50	36.3

Date

9/25/06

  
Dennis M. Fuchs

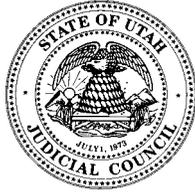
### Survey Responses for The Honorable Dennis M. Fuchs

Question:	Certification Score	Excellent		More than Adequate		Adequate		Less than Adequate		Inadequate		# of Valid Responses		No Personal Knowledge	
	Passing Score 70%+	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group
	%	%	%	%	%	%	%	%	%	%	%	Count		Count	
1) Behavior is free from impropriety and the appearance of impropriety.	93%	35%	45%	34%	27%	25%	19%	3%	5%	3%	4%	119	1,840	0	5
2) Behavior is free from bias and favoritism.	92%	33%	42%	37%	27%	23%	18%	4%	8%	4%	6%	120	1,840	0	5
3) Avoids ex parte communications.	95%	32%	44%	38%	31%	25%	21%	3%	2%	2%	2%	107	1,661	11	172
4) Understands the rules of procedure and evidence.	94%	33%	39%	36%	28%	25%	23%	5%	6%	1%	4%	118	1,830	1	12
5) Perceives legal and factual issues.	94%	38%	39%	29%	28%	28%	22%	5%	8%	1%	4%	119	1,838	1	10
6) Is prepared for hearings and trials.	95%	35%	41%	30%	28%	30%	24%	1%	4%	4%	3%	119	1,835	1	12
7) Demonstrates appropriate demeanor.	93%	38%	42%	29%	25%	26%	20%	4%	8%	3%	7%	120	1,843	0	1
8) Maintains order in the courtroom.	98%	38%	45%	34%	30%	25%	22%	3%	2%	0%	1%	120	1,842	0	2
9) Gives parties a fair opportunity to present the case.	93%	34%	41%	38%	28%	21%	20%	4%	7%	3%	5%	120	1,845	0	1
10) Oral and written decisions and orders are clear and well reasoned.	94%	27%	36%	39%	29%	28%	23%	6%	8%	1%	4%	108	1,737	12	107
11) Issues orders and opinions without unnecessary delay.	97%	32%	38%	36%	31%	30%	26%	1%	3%	2%	2%	111	1,741	9	105
12) Effectively uses pretrial procedures to narrow and define the issues.	97%	28%	35%	43%	31%	26%	28%	1%	4%	3%	3%	112	1,694	8	142
13) Overall, the performance of this judge or commissioner is:	96%	34%	39%	37%	29%	25%	21%	3%	6%	2%	5%	120	1,842	0	1

### Juror Survey Responses for The Honorable Dennis M. Fuchs

Question:	Yes		No		# of Valid Responses		No Personal Knowledge		No Opportunity to Observe	
	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group	Judge	Peer Group
	%	%	%	%	Count		Count		Count	
1) Did this judge avoid playing favorites?	100%	98%	0%	2%	63	1142	0	6	0	1
2) Did this judge's behavior appear to be free of bias?	100%	99%	0%	1%	63	1148	0	2	0	0
3) Did this judge conduct proceedings in a fair and impartial manner?	100%	100%	0%	0%	63	1145	0	3	0	0
4) Did this judge clearly explain court procedures?	100%	99%	0%	1%	63	1148	0	0	0	1
5) Did this judge appreciate your patience during necessary delays?	100%	100%	0%	0%	63	1106	0	8	0	31
6) Did this judge clearly explain responsibilities of the jury?	100%	100%	0%	0%	63	1148	0	1	0	0
7) Did this judge behave in a dignified manner?	100%	100%	0%	0%	63	1150	0	0	0	0
8) Did this judge behave in a courteous manner?	100%	100%	0%	0%	63	1148	0	0	0	1
9) Did this judge avoid arrogance?	100%	99%	0%	1%	63	1143	0	4	0	2
10) Did this judge display patience?	100%	100%	0%	0%	63	1146	0	1	0	3
11) Did this judge display attentiveness	100%	99%	0%	1%	63	1141	0	3	0	5
12) Did this judge treat people with respect?	100%	100%	0%	0%	63	1149	0	0	0	0
13) Did this judge convene court without undue delay?	100%	97%	0%	3%	62	1138	1	7	0	2
14) Did you find the recesses to be frequent enough and long enough to attend to your personal needs?	100%	99%	0%	1%	63	1144	0	1	0	1
15) Would you be comfortable having your case tried before this judge?	100%	99%	0%	1%	62	1135	0	8	0	1

TAB 9



# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

## MEMORANDUM

---

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

**To:** Judicial Council  
**From:** Tim Shea *TS*  
**Date:** October 10, 2006  
**Re:** Standing Committee Appointments

---

The Management Committee recommends the following committee appointments:

### **Committee on Children and Family Law**

The Committee on Children and Family Law identifies and develops solutions to problems in the administration of justice in family law, such as programmatic and geographic voids in services, procedural reforms, and the unmet legal needs of families. The committee provides a forum for debate on political and policy issues facing public and private institutions in their effort to deliver services to families.

Mark May and Commissioner David Dillon are completing their first term on the committee, and the chairs recommend that they be reappointed. Both are willing to serve.

### **Ethics Advisory Committee**

The Ethics Advisory Committee prepares and publishes written opinions concerning the ethical propriety of professional or personal conduct. The Committee develops educational programs to assist judicial officers and employees to understand the Code of Judicial Conduct and the roles of the Judicial Conduct Commission, the Judicial Council and the Supreme Court in issues of professional conduct.

Judge Dane Nolan, who is the committee chair, is completing his first term on the committee and is willing to serve another.

### **Education Committee**

The Judicial Branch Education Committee submits to the Council proposed policies, standards, guidelines, and procedures for all judicial branch education activities. It evaluates and monitors the quality of educational programs. The committee proposes policies and procedures for developing, implementing, and evaluating education

**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.**

opportunities for judges and court employees; formulates an annual education plan; and serves as advocate for judicial branch education.

The Education Committee has several vacancies.

Judge William Thorne is completing his first term. The committee chair recommends that he be appointed to a second term. He is willing to serve.

William Russell needs to be replaced on the committee. After announcing the vacancy among the court commissioners, Commissioner Thomas Arnett of the Third District Court is the only one to apply.

Chris Wilson, probation officer in the Second Judicial District, is stepping down after his first term. After announcing the vacancy among the probation officers, several applied. The trial court executives recommended three from which the Management Committee recommends Bill Patrick, of the Fifth District.

The other probation officers to apply are: Jeff Mason, Shelly Waite, Shawn Williamson, Yolanda Reyes, Kimberly Nordgran, Ray Richards, Shauna Sanders, Tina Dickinson, Lisa Carter, and Cheryl Cummings.

Janet Busk, district court clerk from the Sixth District is stepping down after her first term. After announcing the vacancy among the district clerks, several applied. The trial court executives recommended two from which the Management Committee recommends Jana O'Hearon of the Seventh District.

The other clerks to apply are: Janice Weber, David Ward, Candice Smart, Dennis Grant Dickenson, Phyllis Dutson, Kim Ostler, Wendy Purnell-Gunderson, Leona Kirk, Daleen Garner, Kelly Lin Hansen, and Debbie Cook.

### **Facility Planning Committee**

The Court Facility Planning Committee reviews trends and projections in population, caseload, and other growth indicators to anticipate courthouse construction needs; recommends a facilities master plan, including the prioritization of courthouse construction and design and space guidelines; and makes recommendations to the Council regarding construction requests.

Rick Davis is completing his first term on the committee, and the chair recommends that he be reappointed. Mr. Davis is willing to serve.

Judge Sheila McCleve of the Third District Court is completing her third and final term on the committee. She serves as chair of the committee. Traditionally, the Council has appointed a judge to serve as chair. The next two most senior judges on the committee also are also closing out their terms. Because of these special

circumstances, the Management Committee recommends that Dan Becker, who is a member of the committee, serve as temporary chair until the district court judge appointed to replace Judge McCleve has gained about a year of experience.

### **Court Interpreter Committee**

The Court Interpreter Committee recommends to the Judicial Council policies and procedures governing the qualification, training, and appointment of court interpreters.

Carlos Esqueda, who represents prosecutors, is completing his final term. After announcing the vacancy among prosecutors, several applied. The Court Interpreter Committee recommended two from which the Management Committee recommends Craig Johnson, from the Weber County Attorney's Office, whose resume is attached.

The other applicants are:

Paul Amann of the Attorney General's Office

Chou Chou Collins of the Salt Lake District Attorney's Office

Jared Eldridge, from the Juab County Attorney's Office

Thomas Low of the Wasatch County Attorney's Office

Rick Romney of the Provo City Attorney's Office

Padma Veeru-Collings of the Salt Lake City Attorney's Office

August 31, 2006

Mary E. Boudreau, Program Manager  
Public Access to the Courts  
Administrative Office of the Courts  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241

Dear Mary,

I am honored to be considered for the prosecutor position on the prestigious Standing Committee on Court Interpreters. During the 16 memorable months I clerked for Judge Lynn Davis, I developed a great interest and affection for the Committee's efforts and goals.

Growing up with bilingual parents in Southern California, I have always been sensitive to the special needs that non-English speakers have in the United States. That sensitivity has only been heightened since I have entered the criminal justice setting, first as a clerk, and now as a prosecutor. Working primarily in the juvenile court, I have noted additional complexities and accommodations that need to be made to ensure non-English speakers' due process rights in communicating effectively during legal proceedings.

I look forward to joining your elite ranks and plan on being an active, vocal participant in the Committee's decisions. Please contact me for any additional information or questions you might have. Thank you for the kind invitation.

With warmest regards,

Craig Johnson  
Deputy Weber County Attorney

cc: "The Most" Hon. Lynn W. Davis, Chair/Court Interpreter Committee  
Luther Gaylord, Certified Court Interpreter

# CRAIG JOHNSON

4088 S 950 W · Riverdale, Utah 84405 · 801.458.2285 · craig@byu.edu

---

## EDUCATION

### JURIS DOCTOR

APRIL 2004

*J. Reuben Clark Law School, Brigham Young University*

*Provo, Utah*

- Passed Utah State Bar July 2004, Active Status
- Woody Deem Trial Advocacy Traveling Team
- J. Reuben Clark Moot Court Competition

### BACHELOR OF SCIENCE - BUSINESS FINANCE

AUGUST 2000

*Marriott School, Brigham Young University*

*Provo, Utah*

- Dean's List—3.6 Overall GPA; Academic Scholarship 1996

## EXPERIENCE

### DEPUTY COUNTY ATTORNEY

SEPTEMBER 2005 - PRESENT

*Weber County Attorney – Criminal Division*

*Ogden, Utah*

- Prosecuted five adult felony jury trials.
- Tried 12 Juvenile Court felony and misdemeanor trials, including certification hearings.
- Manage daily caseload of all county juvenile matters with one other prosecutor.
- Train Riverdale Police Department officers and detectives on criminal procedure and office policy.

### LAW CLERK BAILIFF – FOURTH DISTRICT COURT

JUNE 2004 - SEPTEMBER 2005

*Judges Lynn Davis, Samuel McVey, Steven Hansen & Howard Maetani*

*Provo, Utah*

- Advised judges on cases' status and proposed resolutions.
- Drafted and edited myriad orders, rulings, briefs, memos, and letters.
- Researched and prepared bi-monthly national courtroom interpreter case law updates.
- Edited and updated Judge Davis' "Courtroom Interpreter Brochure"
- Organized and oversaw 20-100 jurors at a time for several criminal felony trials.
- Provided courtroom security for criminal, civil, & municipal hearings and trials. (P.O.S.T.-Certified)

### LAW CLERK

SEPTEMBER 2003 - APRIL 2004

*Utah County Attorney – Criminal & Civil Divisions*

*Provo, Utah*

- Conducted misdemeanor trials, pre-trials, and arraignments with pro se defendants in Justice Court.
- Drafted motions and researched evidentiary matters in Broomhead, Hatch, & Hernandez murder trials.
- Screened felony drug, weapon, and fraud cases before filing informations.

### CERTIFIED LAW CLERK

APRIL 2003 - AUGUST 2003

*Riverside County District Attorney*

*Indio, California*

- Prosecuted misdemeanor jury trials.
- Conducted felony preliminary hearings and bail hearings.
- Prepared and argued felony and misdemeanor motions.
- Reviewed and filed felony and misdemeanor complaints.

### LAW CLERK

MAY 2002 - AUGUST 2002

*Morris York Williams Surlis & Barringer, L.L.P.*

*Charlotte, North Carolina*

- Attended and assisted in liability trials and workers' compensation hearings.
- Drafted pleadings, motions, and affidavits, including answers and summary judgment memos.

## SERVICE

### MISSIONARY

JULY 1996 - JULY 1998

*The Church of Jesus Christ of Latter-day Saints*

*Billings, Montana*

- Led and trained over 30 colleagues in developing interpersonal, planning, and organizational skills.

### EAGLE SCOUT – Boy Scouts of America 1993

## SKILLS/INTERESTS

Carter Crossing Homeowners' Association President 2003-2004

Participate in city league basketball, softball, and tennis tournaments

Read, write, and speak Spanish

# TAB 10



# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

## MEMORANDUM

---

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

**To:** Judicial Council  
**From:** Tim Shea *TS*  
**Date:** October 6, 2006  
**Re:** Rule amendments for comment

---

The Policy and Planning Committee recommends that the following rule amendments be published for comment:

CJA 4-510. Alternative dispute resolution. The amendments will modify the training and experience necessary to qualify for the Utah State Roster of ADR Providers and to serve as a provider in divorce mediation. The amendments will provide for sanctions other than removal from the roster. The Uniform Mediation Act is added to the required reading for qualified training programs.

CJA 4-704. Authority of court clerks to extend payment schedule and dismiss citations. Amend. Changes from 14 days to 20 the time in which a clerk may dismiss charges for an automotive mechanical deficiency after the deficiency has been corrected.

Encl. CJA 4-510  
CJA 4-704

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.

1 Rule 4-510. Alternative dispute resolution.

2 Intent:

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

5 Applicability:

6 These rules shall apply to cases filed in the District Court in the Second, Third and  
7 Fourth Judicial Districts. The rules do not apply to: actions brought by or through the  
8 Office of Recovery Services under Title 26, Chapter 19, Medical Benefits Recovery Act,  
9 Title 62A, Chapter 11, Recovery Services, Title 78, Chapter 45, Uniform Civil Liability for  
10 Support Act, and Title 78, Chapter 45a, Uniform Act on Paternity, or to; actions brought  
11 under Chapters 3a, 6, 36, and 45c of Title 78, Chapter 6 of Title 30, Chapter 12 of Title  
12 62A, Chapter 20a of Title 77, Rules 64 and 65 of the Utah Rules of Civil Procedure,  
13 temporary orders requested under Title 30, or to; uncontested matters brought under  
14 Chapter 1 of Title 42, Title 75, and Chapters 22a, 30 and 41 of Title 78; or actions  
15 pursued by an assignee of a claim.

16 Statement of the Rule:

17 (1) Definitions.

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

21 (1)(B) "ADR program" means the alternative dispute resolution program described in  
22 Chapter 31b, Title 78.

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

27 (1)(D) "Collaborative Law" is a process in which the parties and their counsel agree  
28 in writing to use their best efforts and make a good faith effort to resolve their divorce,  
29 paternity, or annulment action by agreement without resorting to judicial intervention  
30 except to have the court approve the settlement agreement and sign orders required by  
31 law to effectuate the agreement of the parties. The parties' counsel may not serve

32 thereafter as litigation counsel except to obtain court approval of the settlement  
33 agreement.

34 (1)(E) "Court Qualified Mediator" means a mediator who is currently on the Utah  
35 Court Approved ADR Roster or who for some reason cannot join the roster due to a  
36 conflict of interest but meets all of the requirements to be on the Utah Court Approved  
37 ADR Roster.

38 ~~(1)(E)-(1)(F)~~ "Director" means the Director of Dispute Resolution Programs;

39 (1)(G) "Domestic Mentor" means a mediator who has completed 300 hours in  
40 conducting mediation in domestic cases and completed a domestic mentor orientation.

41 ~~(1)(F)~~(1)(H) "Master Mediator" means a provider who has completed 300 hours in  
42 conducting mediation sessions documented as required by the director. A master  
43 mediator may also act as a "Primary Trainer."

44 ~~(1)(G)-(1)(I)~~ "Nonbinding arbitration" means an ADR proceeding in which the award is  
45 subject to a trial de novo as provided in Utah Code Ann. § 78-31b-6(2);

46 ~~(1)(H)-(1)(J)~~ "Primary Trainer" means a provider who qualifies as a "Master  
47 Mediator" on the court roster or a person with equivalent experience researching and  
48 teaching the theory and practice of alternative dispute resolution and may oversee  
49 mediation training that fulfills the court's ~~30-40~~-hour mediator training requirement for  
50 the roster.

51 ~~(1)(I)-(1)(K)~~ "Roster" means the list of those persons qualified to provide services  
52 under the ADR program, and includes the information supplied by such persons  
53 pursuant to paragraph (3)(A)(i) of this rule;

54 ~~(1)(J)-(1)(L)~~ "URCADR" or "Utah Rules of Court-Annexed Alternative Dispute  
55 Resolution" means the rules adopted by the Utah Supreme Court which govern the  
56 ADR program.

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

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

59 (2)(B) annually prepare and submit the report required by Utah Code Ann. § 78-31b-  
60 4(5);

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

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

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

67 (3) Qualification of providers.

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

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

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

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

78 (3)(A)(i)(c) the maximum fees the applicant will charge for service as a provider  
79 under the ADR program; and

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

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

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

87 (3)(A)(iv) be recertified annually.

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

89 (3)(B)(i) all new applicants to the court roster must also have successfully completed  
90 at least ~~30~~ 40 hours of court-approved basic formal mediation training in the last three  
91 years. This training shall be under a single training course from a single, court-approved  
92 training provider. The applicant must also complete ~~and~~ 10 hours of experience in  
93 observing a court qualified mediator conduct mediation, and 10 hours in either

94 conducting mediations singly or co-mediating with a court qualified mediator, observing  
95 a qualified mediator conduct mediations, or meet such other education, training and  
96 experience requirements as the Council finds will promote the effective administration of  
97 the ADR program;

98 (3)(B)(ii) successfully pass an examination on the Code of Ethics for ADR providers;

99 (3)(B)(iii) agree to conduct at least three pro bono mediations each year as referred  
100 by the Director; and

101 (3)(B)(iv) be of good moral character in that the provider has not been convicted of a  
102 felony, a misdemeanor involving moral turpitude, or any other serious crime, and has  
103 not received professional sanctions that, when considered in light of the duties and  
104 responsibilities of an ADR provider, are determined by the Director to indicate that the  
105 best interests of the public are not served by including the provider on the roster.

106 (3)(C) To be included on the court roster for qualified divorce mediators:

107 (3)(C)(i) All new applicants to the roster of divorce mediators must also have an  
108 additional 32 hours of court-approved training specific to the skills, Utah laws, and  
109 information needed to conduct divorce mediation. This training shall be under a single  
110 training course from a single, court-approved provider.

111 (3)(C)(ii) All applicants must have a minimum of 6 hours of training specific to  
112 domestic violence and screening for domestic violence which may be included in the  
113 court approved 32 hour training referred to above.

114 (3)(C)(iii) New applicants to the court roster of divorce mediators are required to  
115 have acquired experience specific to divorce mediation. This is in addition to the 20  
116 hours of experience required for the court roster of basic mediators. The additional  
117 experience includes having observed a minimum of two divorce mediations, co-  
118 mediating two divorce mediations and having been observed conducting two divorce  
119 mediations. Each of these includes debriefing and analysis afterward with a mediator  
120 who has Domestic Mentor status. The Domestic Mentor may charge a fee for this  
121 service.

122 (3)(C)(iv) The Director will maintain and make available a list of those mediators  
123 who have Domestic Mentor status.

124 ~~(3)(C)~~ ~~(3)(D)~~ To be included on the roster as a Master Mediator, the provider must  
125 also have completed 300 hours in conducting mediation sessions.

126 (3)(E) To be included on the roster as a Domestic Mentor, the provider must also  
127 have completed 300 hours in conducting mediation in domestic cases and completed a  
128 domestic mentor orientation.

129 ~~(3)(D)~~ ~~(3)(F)~~ To be included on the roster as an arbitrator, the provider must also:

130 ~~(3)(D)(i)~~ ~~(3)(F)(i)~~ have been a member in good standing of the Utah State Bar for at  
131 least ten years, or meet such other education, training and experience requirements as  
132 the Council finds will promote the effective administration of the ADR program;

133 ~~(3)(D)(ii)~~ ~~(3)(F)(ii)~~ be of good moral character in that the provider has not been  
134 convicted of a felony, a misdemeanor involving moral turpitude, or any other serious  
135 crime, and has not received professional sanctions that, when considered with the  
136 duties and responsibilities of an ADR provider are determined by the Director to indicate  
137 that the best interests of the public are not served by including the provider on the  
138 roster; and

139 ~~(3)(D)(iii)~~ ~~(3)(F)(iii)~~ agree to conduct at least one pro bono arbitration each year as  
140 referred by the Director.

141 ~~(3)(E)~~ ~~(3)(G)~~ To be recertified as a mediator, the provider must, unless waived by the  
142 Director for good cause, demonstrate that the provider has conducted at least six  
143 mediation sessions or conducted 24 hours of mediation during the previous year.

144 ~~(3)(F)~~ ~~(3)(H)~~ To be recertified as an arbitrator, the provider must, unless waived by  
145 the Director for good cause, demonstrate that the provider has conducted at least three  
146 arbitration sessions or conducted 12 hours of arbitration during the previous year.

147 ~~(3)(G)~~ ~~(3)(I)~~ A provider may be ~~removed from the roster by the director~~ sanctioned  
148 for failure to comply with the code of ethics for ADR providers as adopted by the  
149 Supreme Court or for failure to meet the requirements of this rule or state statute. The  
150 committee shall inform the public of public sanctions against a provider promptly after  
151 imposing the sanction. Private sanctions may include singly or with other sanctions:

152 (3)(I)(i) admonition;

153 (3)(I)(ii) re-take and successfully pass the ADR ethical exam.

154 Public sanctions may include singly or with other sanctions:

155 (3)(I)(iii) a written warning and requirement to attend additional training;

156 (3)(I)(iv) require the mediator to allow the Director or designee to observe a set

157 number of mediation sessions conducted by the mediator;

158 (3)(I)(v) suspension for a period of time from the court roster;

159 (3)(I)(vi) removal from the court roster.

160 (3)(J) The committee shall approve and publish procedures consistent with this rule

161 to be used in imposing the sanction. The complainant shall file a written and signed

162 complaint with the director. The director shall notify the provider in writing of the

163 director's intent to remove the provider from the roster of the complaint and provide an

164 opportunity to respond. The director may interview the complainant, the provider and

165 any parties involved. Upon consideration of all factors, the director may impose a

166 sanction and notify the complainant and the provider. If the provider seeks to challenge

167 the removal sanction, the provider must notify the director within 10 days of receipt of

168 the notification. The provider may request reconsideration by the director or a hearing

169 by the Judicial Council's ad hoc committee on ADR. The decision of the committee is

170 final.

171 (4) Responsibilities of the Administrative Office of the Courts.

172 (4)(A) The Administrative Office shall establish or qualify programs for the education

173 and training of ADR providers, attorneys, and judges in the applicable judicial districts of

174 this State as to the purposes and operation of, and the rules governing, the ADR

175 program. Any trainer or training program seeking to offer a mediator training program

176 that fulfills the Court's 30-40-hour mediator training requirement must abide by the

177 following:

178 (4)(A)(i) Course content requirements:

179 (4)(A)(i)(a) Submission of training materials. When applying for certification and

180 renewal, training programs shall provide the ADR Office at the AOC with all training

181 materials which will be used in the training program. These materials shall include, but

182 are not limited to, the following: the training manual that is given to the participants

183 including the required readings; all exercises and handouts. Revisions, deletions and/or

184 additions to the previously approved training materials must be reported to the Office

185 prior to conducting any course.

186 (4)(A)(i)(b) ADR syllabus approval. In addition to submission of training materials,  
187 each training program must seek approval of its syllabus from the Office 20 working  
188 days in advance of each offering of a certified mediation training program. The syllabus  
189 shall be reviewed by the Office for compliance with the training standards. The syllabus  
190 must be ~~to~~ submitted in a format that easily identifies the presentation topic, the  
191 trainer(s) for each topic, the time allotted to each topic, any training activities, and the  
192 inclusion of the break times. The Office shall notify the trainer or training program of any  
193 deficiencies no later than 10 working days before the program is to be offered. Any  
194 deficiencies in the program syllabus shall be corrected prior to the commencement of  
195 the training program.

196 (4)(A)(i)(c) Readings. All training programs must provide the participants with copies  
197 of Rule 4-510 UCJA, Rule 104 (the ethical code), ~~and UCA 78-31b-1 et seq. Title 78,~~  
198 Chapter 31b, Alternative Dispute Resolution Act, and Title 78 Chapter 31c, Utah  
199 Uniform Mediation Act. Time spent reading the required materials may not count  
200 towards the required number of hours of training and can be completed by participants  
201 at times when the training program is not being conducted. Trainers shall incorporate in  
202 this program some method of ensuring that the required readings are completed.

203 (4)(A)(i)(d) Ethics Training. Training programs shall review with participants Rule 104  
204 Code of Ethics for ADR Providers. In addition, ethics shall be woven throughout the  
205 program.

206 (4)(A)(ii) Training Methodology:

207 (4)(A)(ii)(a) Pedagogy. The program shall include, but is not limited to, the following:  
208 lecture, group discussion, written exercises, mediation simulations and role plays. In  
209 addition, outside readings should be provided by the trainer to supplement the training.

210 (4)(A)(ii)(b) Mediation Demonstration. All training programs shall present a role play  
211 mediation simulation (either live or by video) prior to the participant's role play  
212 experience as the mediator.

213 (4)(A)(iii) Trainer Qualifications. Training programs shall employ a primary trainer  
214 who meets the applicable qualifications of a primary trainer and who have been  
215 approved by the Office. In order to be approved as a primary trainer, a trainer must  
216 demonstrate the following qualifications:

217 (4)(A)(iii)(a) Successful completion of a minimum of ~~30~~40 hours of mediation  
218 training.

219 (4)(A)(iii)(b) Participation in a minimum of ~~200~~300 hours of mediation acting as the  
220 mediator.

221 (4)(A)(iii)(c) Completion of 6 hours of continuing mediator education in the last year.

222 (4)(A)(iii)(d) Primary trainers are approved for a three (3) year period.

223 (4)(A)(iii)(e) A primary trainer must be in attendance during the entire training  
224 program. It is preferable that a single primary trainer fulfill this obligation, but it is  
225 permissible that this be accomplished by more than one primary trainer.

226 (4)(A)(iv) Participant attendance: Participants must complete their training  
227 requirement by attending one entire program. The primary trainer is responsible for  
228 ensuring that the approved syllabus is complied with. Under no circumstances may a  
229 participant be excused from attending portions of the training; any portion of training  
230 missed shall be made up as directed by the primary trainer.

231 (4)(B) The Administrative Office shall prepare a videotape demonstrating the use of  
232 ADR and the application of this rule and the URCADR to the ADR program. The  
233 videotape shall include information as to the differences between mediation and  
234 arbitration, and the different procedures and the different effects of an award between  
235 nonbinding and binding arbitration. Sufficient copies of the videotape shall be available  
236 for use as required by paragraph (6)(A)(i) of this rule, and for the purchase or rental by  
237 members of the Bar and other persons interested in the ADR program.

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

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

242 (6)(A) All cases subject to this rule shall be referred to the ADR program, pursuant to  
243 this rule and URCADR, upon the filing of a responsive pleading unless the parties have  
244 participated in a collaborative law process. The matter will proceed to mediation 30 days  
245 after the filing of the responsive pleading unless one of the following occurs:

246 (6)(A)(i) One or more parties file with the clerk a statement asking the court to defer  
247 ADR consideration until a later date. The statement shall be signed by both counsel and

248 the party and shall state that counsel and the party have reviewed the ADR videotape  
249 and have discussed proceeding under the ADR program, but have determined that  
250 participation in ADR should be deferred. If participation in the ADR program is deferred  
251 in a divorce, paternity or annulment action, the case shall proceed to mediation within  
252 90 days of the filing of an answer unless good cause is shown why mediation should not  
253 occur. If participation in the ADR program is deferred in other cases, the court and  
254 parties are required to address the usefulness of mediation or arbitration in resolving the  
255 case no later than the first pretrial conference. In no event shall this superseded a trial  
256 judge's ability to proceed with a trial on a date certain.

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

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

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

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

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

277 (7) At any time:

278 (7)(A) the court, on its own motion, may refer the action or any issues therein to the  
279 ADR program.

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

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

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

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

291 (10) Notice requirements.

292 (10)(A) Any time the parties determine to use mediation or arbitration in the  
293 resolution of the case, the plaintiff shall notify the court and specify the expected date  
294 for completion of the ADR process.

295 (10)(B) Upon conclusion of an ADR process, the plaintiff shall notify the court of the  
296 outcome of the ADR process on a form provided by the court.

297 (11) Selection of ADR provider(s).

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

305 (11)(B) The parties may select:

306 (11)(B)(i) An ADR provider from the roster; or

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

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

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

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

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

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

336 (14) No ADR provider may be required to testify as to any aspect of an ADR  
337 proceeding except as to any claim of violation of URCADR Rule 104 which raises a

338 substantial question as to the impartiality of the ADR provider and the conduct of the  
339 ADR proceeding involved.

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

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

345

1 Rule 4-704. Authority of court clerks to extend payment schedule and dismiss  
2 citations.

3 Intent:

4 To establish the authority of court clerks to extend the time for payment of bail.

5 To establish the authority of court clerks to dismiss citations issued for certain  
6 offenses.

7 To establish a uniform procedure for court clerks to extend time for payment of bail  
8 and to dismiss citations.

9 Applicability:

10 This rule shall apply to all courts of record and courts not of record.

11 Statement of the Rule:

12 (1) Unless otherwise ordered by the judge, the clerk of the court, for reasonable  
13 cause, is authorized to allow a defendant an extension of time to post bail.

14 (2) Unless otherwise ordered by the judge, the clerk of the court is authorized to  
15 dismiss traffic citations for violation of Section 53-3-217 if the defendant presents proof  
16 that the defendant possessed a valid driver's license at the time the citation was issued.

17 (3) Unless otherwise ordered by the judge, the clerk of the court is authorized to  
18 dismiss citations for violation of Section 41-1a-214 if the defendant presents proof that  
19 the defendant possessed a valid registration at the time the citation was issued.

20 (4) Unless otherwise ordered by the judge, the clerk of the court is authorized to  
21 dismiss citations for violation of Section 41-12a-303.2 if the defendant presents proof  
22 that valid insurance was in effect for the vehicle at the time the citation was issued.

23 (5) Unless otherwise ordered by the judge, the clerk of the court is authorized to  
24 dismiss citations for violation of Section 41-12a-302 if the defendant presents proof that  
25 valid insurance was in effect for the vehicle at the time the citation was issued.

26 (6) Unless otherwise ordered by the judge, the clerk of the court is authorized to  
27 dismiss citations for violation of Section 53-3-227 if the defendant presents proof that  
28 the defendant possessed a valid driver's license at the time the citation was issued.

29 (7) Unless otherwise ordered by the judge, the clerk of the court is authorized to  
30 dismiss citations for violation of Title 41, Chapter 6, Article 16, Equipment, if the

31 defendant presents proof that the defendant has repaired the mechanical deficiency  
32 within ~~44~~ 20 days after the citation was issued.

33

**TAB 11**

Pursuant to Code of Judicial Administration 2-204, the judges of the Third District Court adopt the following local supplemental rule effective September 1, 2006.

Rule 10-1-\_\_\_\_\_

**Intent:**

To establish policy regarding posting of “blanket bonds” in unlawful detainer cases.

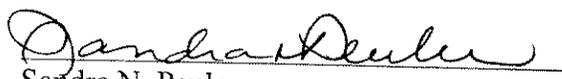
**Applicability:**

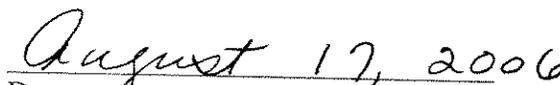
This rule shall apply to the Third District Court.

**Statement of the Rule:**

A plaintiff or plaintiff’s attorney may post funds with a court location to satisfy any obligation to post a possession bond under Utah Code § 78-36-8.5 upon entry of an order by the Presiding Judge. With each request to post a possession bond using funds posted with the court, the attorney or plaintiff shall provide a statement of amount posted with the court minus the amount obligated to bonds on other cases. The amount of the bond must always be equal to or greater than the total amount for which the bond is pledged as security on all cases.

Approved under the “emergency circumstance” provision of Code of Judicial Administration 2-204(3).

  
Sandra N. Peuler  
Presiding Judge

  
Date

TAB 12

**JUSTICE COURT JUDGES' ORIENTATION**

Orientation Dates: SEPT 25-28, 2006

1. Full Name: Andrea W. Lockwood
2. Home Address: [REDACTED]  
Ogden, UT 84401
3. Home Phone Number: [REDACTED]
4. Date of Birth: 6-10-1951
5. Current Occupation: attorney - Chief Deputy City Attorney, Ogden City
6. Expected Part-Time Employment While Serving as Judge: none
7. Past Educational Background: B.A. History/Political Science  
Weber State University; JD Brigham Young Univ.
8. Previous Employment History: Ogden City Attorneys Office - 26 1/2 yrs.;  
Mattheson for Governor Committee; Public Health Service, San Francisco;  
IRS, Oakland; IRS, Ogden

SCORE:	95%
BCI:	OK.
CERT:	489

NO RECORD FOUND  
REQUESTED BY: DT  
SIGNED/DATE: 9/29/06

# JUSTICE COURT JUDGES

## Orientation Exam

Name: Andrea Lockwood Orientation Dates: 9/25-28/06

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

*\$500 fine and 5 days in jail*

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

*Subject matter:*

*Criminal - CLASS B and C misdemeanors*

*(If committed by person over 15 except traffic offense of 16-17 year old)*

*infractions*

*City ordinances (County ordinances if they are only effective within the city)*

*Civil - Small Claims, money claims not exceeding \$750 including att. fees but exclusive of court cost and interest; where defendant resides or indebtedness incurred within Ogden City*

*Territorial - Criminal offenses occurring within Ogden City, except for general limits*

*Small Claims where defendant resides or indebtedness incurred in Ogden City*

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

*Beyond a reasonable doubt*

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

*Under no circumstances*

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

*4*

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

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

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

Yes

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

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

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

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

Domestic Violence

Retail Theft

DUI

Alcohol drug related reckless driving

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

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

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

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

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

Yes  No

13. Can justice court judges appoint public defenders?

Yes  No

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

Yes  No

15.

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

Yes  No

16. The standard for issuing a search warrant is:

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

17. A "no bail" warrant can:

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

18. The maximum sentences for the following are:

- |    |                     |                    |                      |
|----|---------------------|--------------------|----------------------|
| a. | Class B misdemeanor | Fine <u>\$1000</u> | Jail <u>6 months</u> |
| b. | Class C misdemeanor | Fine <u>\$ 750</u> | Jail <u>90 days</u>  |
| c. | Infractions         | Fine <u>\$ 750</u> | Jail <u>0</u>        |

TRUE OR FALSE

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