

RESOLUTION No. 10-02-2011

**A RESOLUTION REQUESTING THE RECERTIFICATION
OF THE SANTAQUIN JUSTICE COURT**

WHEREAS, the provisions of U.C.A. § 78A-7-103 require that Justice Courts be recertified at the end of each four-year term; and

WHEREAS, the term of the present Court shall expire on or about the 2nd day of February, 2012; and

WHEREAS, the members of the Santaquin City Council have received an opinion letter from Brett B. Rich, City Attorney, which sets forth the requirements for the operation of a Justice Court and feasibility of continuing to maintain the same; and


WHEREAS, the members of the Santaquin City Council have determined that it is to the best interests of Santaquin City to continue to provide for a Justice Court;


BE IT RESOLVED, the SANTAQUIN CITY COUNCIL hereby requests recertification of the Santaquin Justice Court by the Justice Courts Standards Committee and the Utah Judicial Council.

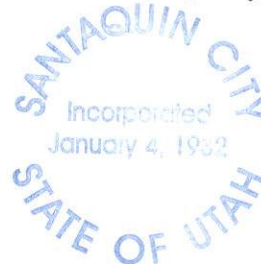
BE IT FURTHER RESOLVED that the COUNCIL of SANTAQUIN CITY hereby affirm their willingness to continue to meet all requirements set forth by the Judicial Council for continued operation of the Santaquin Justice Court for the next four-year term of court, except as to any requirements waived by the Utah Judicial Council.

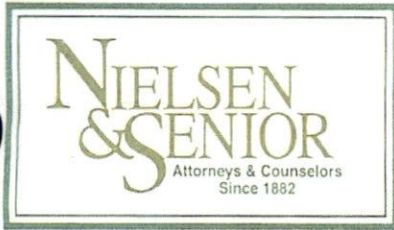
PASSED AND APPROVED this 12th day of October, 2011.

ATTEST:


Susan B. Farnsworth, Recorder


James E. DeGraffenried, Mayor





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BRETT B. RICH
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October 10, 2011

Mayor James E. DeGraffenried
Santaquin City
275 West Main Street
Santaquin, UT 84655

Re: Recertification of the Santaquin Justice Court

Dear Mayor DeGraffenried:

The law firm of Nielsen & Senior is acting as counsel for the City of Santaquin with Brett B. Rich being the attorney primarily responsible for that representation. This letter is provided as the written opinion advising the City of Santaquin of all requirements for the operation of a justice court and the feasibility of maintaining a justice court, which opinion is required by the Justice Court Standards for Recertification.

Santaquin City has provided certain documents for our review as they may affect this opinion. For purposes of this opinion, we have assumed the accuracy, genuineness and authenticity of all documents submitted as originals, and in examining copies, we have assumed the genuineness and authenticity of all submitted documents and know of no reason why we should not rely thereon.

We also understand that the City of Santaquin has appointed the Honorable Sharla Williams as Justice Court Judge for the Santaquin Justice Court, and that Judge Williams' term will expire on or about the first Monday in January, 2017. However, this opinion is limited to the recertification of the Santaquin Justice Court and does not concern any issues that may or may not arise concerning the retention of Judge Williams.

Based on, and subject to, the foregoing and pursuant to the Justice Court standards for recertification, we advise the City of Santaquin of the following requirements for the operation of a justice court. We note that many of these requirements have been summarized in the recertification information sent to the City of Santaquin by the Administrative Office of the Courts, and hereby include those requirements as a part of this opinion by reference.

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Utah Code Ann. § 78A-7-102 authorizes municipalities to create a justice court. The class of the justice court is determined by applying the criteria found in § 78A-7-102(2). Based on our understanding that between 60 and 200 cases are filed each month in the Santaquin Justice Court, the court would be defined as a Class 3 justice court.

Because many of the statutory requirements for the justice court operations have been renumbered and/or amended since the last recertification many, but not all the statutory requirements are set forth below.

Utah Code Ann. § 78A-7-105 (2)&(3)

Territorial jurisdiction.

- (2) The territorial jurisdiction of municipal justice courts extends to the corporate limits of the municipality in which the justice court is created.
- (3) The territorial jurisdiction of county and municipal justice courts functioning as magistrates extends beyond the boundaries in Subsections (1) and (2):
 - (a) as set forth in Section 78A-2-220; and
 - (b) to the extent necessary to carry out magisterial functions under Subsection 77-7-23(2) regarding jailed persons.

Utah Code Ann. § 78A-7-106

Jurisdiction.

- (1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction by a person 18 years of age or older.
- (2) Except those offenses over which the juvenile court has exclusive jurisdiction, justice courts have jurisdiction over the following class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction by a person 16 years of age or older:
 - (a) Title 23, Wildlife Resources Code of Utah;
 - (b) Title 41, Chapter 1a, Motor Vehicle Act;
 - (c) Title 41, Chapter 6a, Traffic Code;
 - (d) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;
 - (e) Title 41, Chapter 22, Off-Highway Vehicles;
 - (f) Title 73, Chapter 18, State Boating Act;
 - (g) Title 73, Chapter 18a, Boating - Litter and Pollution Control;
 - (h) Title 73, Chapter 18b, Water Safety; and
 - (i) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators Act.
- (3) Justice Courts have jurisdiction over class C misdemeanor violations of Title 53, Chapter 3, Part 2, Driver Licensing Act.

(4) As used in this section, "the court's jurisdiction" means the territorial jurisdiction of a justice court.

(5) An offense is committed within the territorial jurisdiction of a justice court if:

(a) conduct constituting an element of the offense or a result constituting an element of the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is itself unlawful;

(b) either a person committing an offense or a victim of an offense is located within the court's jurisdiction at the time the offense is committed;

(c) either a cause of injury occurs within the court's jurisdiction or the injury occurs within the court's jurisdiction;

(d) a person commits any act constituting an element of an inchoate offense within the court's jurisdiction, including an agreement in a conspiracy;

(e) a person solicits, aids, or abets, or attempts to solicit, aid, or abet another person in the planning or commission of an offense within the court's jurisdiction;

(f) the investigation of the offense does not readily indicate in which court's jurisdiction the offense occurred, and:

(i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft passing within the court's jurisdiction;

(ii) (A) the offense is committed on or in any body of water bordering on or within this state if the territorial limits of the justice court are adjacent to the body of water; and

(B) as used in Subsection (5)(f)(ii)(A), "body of water" includes any stream, river, lake, or reservoir, whether natural or man-made;

(iii) a person who commits theft exercises control over the affected property within the court's jurisdiction; or

(iv) the offense is committed on or near the boundary of the court's jurisdiction;

(g) the offense consists of an unlawful communication that was initiated or received within the court's jurisdiction; or

(h) jurisdiction is otherwise specifically provided by law.

(6) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

(7) A justice court judge may transfer a matter in which the defendant is a child to the juvenile court for further proceedings if the justice court judge determines and the juvenile court concurs that the best interests of the child would be served by the continuing jurisdiction of the juvenile court.

(8) The court may issue all extraordinary writs and other writs necessary to carry into effect its orders, judgments, and decrees.

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Utah Code Ann. § 78A-7-108

Justice court judge to collect fees before filing action -- Penalty.

Every justice court judge who files in his office any complaint, or allows a civil action to be commenced in his court, without the fees being paid in advance, except in cases permitted by law, is guilty of a class B misdemeanor.

Utah Code Ann. § 78A-7-109

Process to any part of the state -- Service.

- (1) Process from a justice court may be issued to any place in the state.
- (2) Subpoenas in any action or proceeding of a justice court may be issued to any place in the state.
- (3) All warrants issued by a justice court for violation of any state law or local ordinance within a court's jurisdiction are directed to the sheriff, any constable of the county, or to the marshal or city police of the town or city.

Utah Code Ann. § 78A-7-110

Docket to be kept -- Enumeration of entries required.

Every justice court judge shall keep or cause to be kept a docket. The following information shall be entered in the docket under the title of the action to which it relates:

- (1) the title to every action or proceeding;
- (2) the object of the action or proceeding, and the amount of any money claimed;
- (3) the date of the service of the summons and the time of its return;
- (4) a statement of the fact if an order to arrest the defendant is made or a writ of attachment is issued;
- (5) the time when the parties or any party appears, or a party's nonappearance, if default is made;
- (6) minutes of the pleadings and motions in writing by referring to them, and if not in writing, by a concise statement of the material parts of the pleadings;
- (7) every adjournment, stating on whose application and to what time;
- (8) a demand for a trial by jury, when made, by whom, and the order for the jury;
- (9) the time appointed for the return of the jury and for the trial;
- (10) the names of the jurors who appear and are sworn;
- (11) the names of all witnesses sworn and at whose request;
- (12) the verdict of the jury and when received, or if the jury disagree and are discharged, the disagreement and discharge;
- (13) the judgment of the court including the costs included and when entered;
- (14) an itemized statement of the costs;
- (15) the time of issuing an execution and to whom, and the time of any renewals;
- (16) a statement of any money paid to the court, when, and by whom; and
- (17) the receipt of any notice of appeal, and of any appeal bond filed.

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Utah Code Ann. § 78A-7-111

Docket entries -- Prima facie evidence.

Entries in a justice court judge's docket under Section 78A-7-110, certified by the judge or his successor in office, are prima facie evidence of the facts stated.

Utah Code Ann. § 78A-7-112

Docket index.

A judge shall keep or cause to be kept an alphabetical index to the names of the parties to each judgment in his docket with a reference to the page of entry. The names of the parties shall be entered in the index by the first letter of the family surname.

Utah Code Ann. § 78A-7-113

Delivery of docket and papers to successor.

A justice court judge upon the expiration of his term of office shall deposit with his successor his dockets and all papers filed in his office and also those of his predecessors or any others in his custody. The dockets and papers shall be kept as public records.

Utah Code Ann. § 78A-7-114

Filing and docketing of abstract.

- (1) The judge, on the demand of a party in whose favor judgment is rendered, shall provide the party with an abstract of the judgment in substantially the form approved by the Judicial Council.
- (2) The abstract may be filed in the office of the clerk of the district court of any county in the state but shall be docketed in the judgment docket of that district court.
- (3) The clerk shall note the time of receipt of the abstract on the abstract and on the docket.

Utah Code Ann. § 78A-7-115

All papers issued, except subpoenas, to be filled out without blanks.

Every paper made or issued by a justice court judge except a subpoena is valid only if issued without any blank space to be filled or completed by another person.

Utah Code Ann. § 78A-7-116

Execution on judgment.

From the time of the docketing in the office of the clerk of any district court execution may then be issued within the same time, in the same manner, and with the same effect as if issued on a judgment of the district court.

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Utah Code Ann. § 78A-7-117

Judgment not a lien unless so recorded.

- (1) Except as provided under Subsection (3), a judgment rendered in a justice court does not create a lien upon any real property of the judgment debtor unless the judgment or abstract of the judgment:
- (a) is recorded in the office of the county recorder of the county in which the real property of the judgment debtor is located; and
 - (b) contains the information identifying the judgment debtor as referred to in Subsection 78B-5-201(4) either:
 - (i) in the judgment or abstract of judgment; or
 - (ii) as a separate information statement of the judgment creditor as referred to in Subsection 78B-5-201(5).
- (2) The lien runs for eight years from the date the judgment was entered in the district court under Section 78B-5-202 unless the judgment is earlier satisfied.
- (3) State agencies are exempt from the recording requirement of Subsection (1).

Utah Code Ann. § 78A-7-118

Appeals from justice court -- Trial or hearing de novo in district court.

- (1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:
- (a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting in a finding or verdict of guilt; or
 - (b) a plea of guilty in the justice court that is held in abeyance.
- (2) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.
- (3) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if the defendant files a notice of appeal within 30 days of:
- (a) an order revoking probation;
 - (b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;
 - (c) a sentence entered pursuant to Subsection (3)(b); or
 - (d) an order denying a motion to withdraw a plea.
- (4) The prosecutor is entitled to a hearing de novo in the district court on:
- (a) a final judgment of dismissal;
 - (b) an order arresting judgment;
 - (c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

- (d) a judgment holding invalid any part of a statute or ordinance;
 - (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;
 - (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor; or
 - (g) an order granting a motion to withdraw a plea of guilty or no contest.
- (5) A notice of appeal for a hearing de novo in the district court on a pretrial order excluding evidence under Subsection (4)(e) or (f) shall be filed within 30 days of the order excluding the evidence.
- (6) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:
- (a) the decision results in immediate dismissal of the case;
 - (b) with agreement of the parties, the district court consents to retain jurisdiction; or
 - (c) the defendant enters a plea of guilty in the district court.
- (7) The district court shall retain jurisdiction over the case on trial de novo.
- (8) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Utah Code Ann. § 78A-7-119

Disposition of money received.

Money received or collected on any process or order issued from a justice court shall be paid within seven days to the parties entitled or authorized to receive the money.

Utah Code Ann. § 78A-7-120

Disposition of fines.

- (1) Except as otherwise specified by this section, fines and forfeitures collected by a justice court shall be remitted, ½ to the treasurer of the local government responsible for the court and ½ to the treasurer of the local government which prosecutes or which would prosecute the violation.
- (2) (a) For violation of Title 23, the court shall allocate 85% to the Division of Wildlife Resources and 15% to the general fund of the city or county government responsible for the justice court.
(b) For violation of Title 41, Chapter 22, Off-highway Vehicles, or Title 73, Chapter 18, State Boating Act, the court shall allocate 85% to the Division of Parks and Recreation and 15% to the general fund of the city or county government responsible for the justice court.
- (3) The surcharge established by Section 51-9-401 shall be paid to the state treasurer.
- (4) Fines, fees, court costs, and forfeitures collected by a municipal or county justice court for a violation of Section 72-7-404 or 72-7-406 regarding maximum weight limitations and overweight permits, minus court costs not to exceed the schedule adopted by the Judicial Council, shall be paid to the state treasurer and distributed to the class B and C road account.

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(5) Revenue deposited in the class B and C road account pursuant to Subsection (4) is supplemental to the money appropriated under Section 72-2-107 but shall be expended in the same manner as other class B and C road funds.

(6) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection 72-7-409(8)(b) shall be remitted:

- (i) 60% to the state treasurer to be deposited in the Transportation Fund; and
- (ii) 40% in accordance with Subsection (1).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection 72-7-409(8)(c) shall be remitted:

- (i) 50% to the state treasurer to be deposited in the Transportation Fund; and
- (ii) 50% in accordance with Subsection (1).

Utah Code Ann. § 78A-7-121

Funds collected -- Deposits and reports -- Special account -- Accounting.

(1) (a) Municipal justice courts shall deposit public funds in accordance with Section 51-4-2.

(b) The treasurer shall report to the city recorder the sums collected and deposited. The recorder shall then apportion and remit the collected proceeds as provided in Section 78A-7-120.

(c) The municipality shall retain all small claims filing fees including the governmental filing fee for actions filed by the municipality as provided in Section 78A-8-105.

(2) (a) County justice courts shall deposit public funds in accordance with Section 51-4-2.

(b) The treasurer shall report to the county auditor the sums collected and deposited. The auditor shall then apportion and remit the collected proceeds as provided in Section 78A-7-120.

(c) The county shall retain all small claims filing fees including the governmental filing fee for actions filed by the county as provided in Section 78A-8-105.

(3) Money received or collected on any civil process or order issued from a justice court shall be paid within seven days to the party entitled or authorized to receive it.

(4) (a) With the approval of the governing body a trust or revolving account may be established in the name of the justice court and the treasurer for the deposit of money collected including bail, restitution, unidentified receipts, and other money that requires special accounting.

(b) Disbursements from this account do not require the approval of the auditor, recorder, or governing body.

(c) The account shall be reconciled at least quarterly by the auditor of the governing body.

Utah Code Ann. § 78A-7-122

Security surcharge -- Application -- Deposit in restricted accounts.

(1) In addition to any fine, penalty, forfeiture, or other surcharge, a security surcharge of \$40 shall be assessed on all convictions for offenses listed in the uniform bail schedule adopted by the Judicial Council and moving traffic violations.

- (2) The security surcharge shall be collected and distributed pro rata with any fine collected. A fine that would otherwise have been charged may not be reduced due to the imposition of the security surcharge.
- (3) Eight dollars of the security surcharge shall be remitted to the state treasurer and distributed to the Court Security Account created in Section 78A-2-602.
- (4) Thirty-two dollars of the security surcharge shall be allocated as follows:
- (a) the assessing court shall retain 20% of the amount collected for deposit into the general fund of the governmental entity; and
 - (b) 80% shall be remitted to the state treasurer to be distributed as follows:
 - (i) 62.5% to the treasurer of the county in which the justice court which remitted the amount is located;
 - (ii) 25% to the Court Security Account created in Section 78A-2-602; and
 - (iii) 12.5% to the Justice Court Technology, Security, and Training Account created in Section 78A-7-301.
- (5) The court shall remit money collected in accordance with Title 51, Chapter 7, State Money Management Act.

Utah Code Ann. § 78A-7-123

Dissolution of justice courts.

- (1) (a) The county or municipality shall obtain legislative approval to dissolve a justice court if the caseload from that court would fall to the district court upon dissolution.
- (b) To obtain approval of the Legislature, the governing authority of the municipality or county shall petition the Legislature to adopt a joint resolution to approve the dissolution.
- (c) The municipality or county shall provide notice to the Judicial Council.
- (d) Notice of intent to dissolve a Class I or Class II justice court to the Judicial Council shall be given not later than July 1 two years prior to the general session in which the county or municipality intends to seek legislative approval.
- (e) Notice of intent to dissolve a Class III or Class IV justice court to the Judicial Council shall be given not later than July 1 immediately prior to the general session in which the county or municipality intends to seek legislative approval.
- (2) (a) A county or municipality shall give notice of intent to dissolve a justice court to the Judicial Council if the caseload of that court would fall to the county justice court. A municipality shall also give notice to the county of its intent to dissolve a justice court.
- (b) Notice of intent to dissolve a Class I or Class II court shall be given by July 1 at least two years prior to the effective date of the dissolution.
- (c) Notice of intent to dissolve a Class III or Class IV court shall be given by July 1 at least one year prior to the effective date of the dissolution.

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(3) Upon request from a municipality or county seeking to dissolve a justice court, the Judicial Council may shorten the time required between the city's or county's notice of intent to dissolve a justice court and the effective date of the dissolution.

Utah Code Ann. § 78A-7-202

Justice court judges to be appointed – Procedure – Retention.

(1) As used in this section:

(a) "Local government executive" means:

(i) for a county:

(A) the chair of the county commission in a county operating under the county commission or expanded county commission form of county government;

(B) the county executive in a county operating under the county executive-council form of county government; and

(C) the county manager in a county operating under the council-manager form of county government; and

(ii) for a city or town:

(A) the mayor of the city or town; or

(B) the city manager, in the council-manager form of government described in Subsection 10-3b-103(6).

(b) "Local legislative body" means:

(i) for a county, the county commission or county council; and

(ii) for a city or town, the council of the city or town.

(2) There is created in each county a county justice court nominating commission to review applicants and make recommendations to the appointing authority for a justice court position. The commission shall be convened when a new justice court judge position is created or when a vacancy in an existing court occurs for a justice court located within the county.

(a) Membership of the justice court nominating commission shall be as follows:

(i) one member appointed by:

(A) the county commission if the county has a county commission form of government; or

(B) the county executive if the county has an executive-council form of government;

(ii) one member appointed by the municipalities in the counties as follows:

(A) if the county has only one municipality, appointment shall be made by the governing authority of that municipality; or

(B) if the county has more than one municipality, appointment shall be made by a municipal selection committee composed of the mayors of each municipality in the county;

(iii) one member appointed by the county bar association; and

(iv) two members appointed by the governing authority of the jurisdiction where the judicial office is located.

- (b) If there is no county bar association, the member in Subsection (2)(a)(iii) shall be appointed by the regional bar association. If no regional bar association exists, the state bar association shall make the appointment.
- (c) Members appointed under Subsections (2)(a)(i) and (ii) may not be an elected official of the county or municipality.
- (d) The nominating commission shall submit at least two names to the appointing authority of the jurisdiction expected to be served by the judge. The local government executive shall appoint a judge from the list submitted and the appointment ratified by the local legislative body.
- (e) The state court administrator shall provide staff to the commission. The Judicial Council shall establish rules and procedures for the conduct of the commission.
- (3) Judicial vacancies shall be advertised in a newspaper of general circulation, through the Utah State Bar, and other appropriate means.
- (4) Selection of candidates shall be based on compliance with the requirements for office and competence to serve as a judge.
- (5) Once selected, the Judicial Council shall certify the judge as qualified to hold office upon successful completion of the orientation program.
- (6) The selection of a person to fill the office of justice court judge is effective upon certification of the judge by the Judicial Council. A justice court judge may not perform judicial duties until certified by the Judicial Council.
- (7) Upon the expiration of a justice court judge's term of office, the judge shall be subject to an unopposed retention election in accordance with the procedures set forth in Section 20A-12-201:
- (a) in the county or counties in which the court to which the judge is appointed is located if the judge is a county justice court judge or a municipal justice court judge in a town or city of the fourth or fifth class; or
- (b) in the municipality in which the court to which the judge is appointed is located if the judge is a municipal justice court judge and Subsection (7)(a) does not apply.
- (8) Before each retention election, each justice court judge shall be evaluated in accordance with the performance evaluation program established in Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act.
- (9) Notwithstanding Subsection (8), each justice court judge who is subject to a retention election in 2012, 2014, and 2016, and who is not a full-time justice court judge on July 1, 2012, shall be evaluated by the Judicial Performance Evaluation Commission according to the following performance standards:
- (a) have no less than 30 annual hours of continuing legal education for each year of the justice court judge's current term;

- (b) have no more than one public reprimand issued by the Judicial Conduct Commission or the Supreme Court during the justice court judge's current term; and
- (c) have no cases under advisement for more than two months.

Utah Code Ann. § 78A-7-203

Term of office for justice court judge.

- (1) The term of a justice court judge is six years beginning the first Monday in January following the date of election.
- (2) Notwithstanding Section 20A-12-201, justice court judges holding office or appointed to fill any vacancy before January 1, 2009 will stand for election in the 2010 general election, unless a municipal justice court judge chooses not to stand for election.
- (3) (a) Notwithstanding Section 20A-12-201, any municipal justice court judge holding office on January 1, 2009 may serve out their current term if the judge:
 - (i) stands for retention election in 2010, and is not retained in that election; or
 - (ii) chooses not to stand for election in 2010.
- (b) A vacancy shall then exist in the office on the first Monday in February 2012.

Utah Code Ann. § 78A-7-204

Offices of justice court judges.

- (1) Justice court judges holding office in:
 - (a) county precincts are county justice court judges; and
 - (b) cities or towns are municipal justice court judges.
- (2) The county legislative body may establish a single precinct or divide the county into multiple precincts to create county justice courts for public convenience.
- (3) (a) The governing body may assign as many justice court judges to a court as required for efficient judicial administration.
 - (b) If more than one judge is assigned to a court, any citations, informations, or complaints within that court shall be assigned to the judges at random.
- (4) A municipality or county may contract with any other municipality or municipalities within the county under Title 11, Chapter 13, Interlocal Cooperation Act, to establish a justice court. A justice court established under Title 11, Chapter 13, shall meet the requirements for certification under Section 78A-7-103. A justice court established under Title 11, Chapter 13, shall have territorial jurisdiction as if established separately.

Utah Code Ann. § 78A-7-205

Required annual training -- Expenses -- Failure to attend.

- (1) Prior to assuming office all justice court judges shall attend an orientation seminar conducted under the direction of the Judicial Council.

(2) All justice court judges shall attend the continuing education conducted under the supervision of the Judicial Council each calendar year.

(a) Successful completion of the continuing education requirement includes instruction regarding competency and understanding of constitutional provisions and laws relating to the jurisdiction of the court, rules of evidence, and rules of civil and criminal procedure as indicated by a certificate awarded by the Judicial Council.

(b) The county or municipality creating and maintaining a justice court shall assume the expenses of travel, meals, and lodging for the judge to attend education and training seminars conducted by the Judicial Council.

(3) Any judge not obtaining a certificate for two consecutive years may be removed from office for cause under this section.

(4) The Judicial Council shall inform the Judicial Conduct Commission of the names of justice court judges failing to comply with this section.

Utah Code Ann. § 78A-7-206

Determination of compensation and limits - Salary survey - Limits on secondary employment.

(1) Every justice court judge shall be paid a fixed compensation determined by the governing body of the respective municipality or county.

(a) The governing body of the municipality or county may not set a full-time justice court judge's salary at less than 50% nor more than 90% of a district court judge's salary.

(b) The governing body of the municipality or county shall set a part-time justice court judge's salary as follows:

(i) The governing body shall first determine the full-time salary range outlined in Subsection (1)(a).

(ii) The caseload of a part-time judge shall be determined by the office of the state court administrator and expressed as a percentage of the caseload of a full-time judge.

(iii) The judge's salary shall then be determined by applying the percentage determined in Subsection (1)(b)(ii) against the salary range determined in Subsection (1)(a).

(c) A justice court judge shall receive an annual salary adjustment at least equal to the average salary adjustment for all county or municipal employees for the jurisdiction served by the judge.

(d) Notwithstanding Subsection (1)(c), a justice court judge may not receive a salary greater than 90% of the salary of a district court judge.

(e) A justice court judge employed by more than one entity as a justice court judge, may not receive a total salary for service as a justice court judge greater than the salary of a district court judge.

(2) A justice court judge may not appear as an attorney in any criminal matter in a federal, state, or justice court or appear as an attorney in any justice court or in any juvenile court case involving conduct which would be criminal if committed by an adult.

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- (3) A justice court judge may not hold any office or employment including contracting for services in any justice agency of state government or any political subdivision of the state including law enforcement, prosecution, criminal defense, corrections, or court employment.
- (4) A justice court judge may not hold any office in any political party or organization engaged in any political activity or serve as an elected official in state government or any political subdivision of the state.
- (5) A justice court judge may not own or be employed by any business entity which regularly litigates in small claims court.
- (6) Any judge who violates this section is subject to removal by the Judicial Conduct Commission under Title 78A, Chapter 11, Judicial Conduct Commission.

Utah Code Ann. § 78A-7-207

Compensation -- Annual review and adjustment.

- (1) The governing body of each municipality or county shall annually review and may adjust the compensation paid.
- (2) The salary fixed for a justice court judge may not be diminished during the term for which the judge has been appointed or elected.
- (3) A copy of the resolution, ordinance, or other document fixing the salary of the justice court judge and any adjustments to the document shall be furnished to the state court administrator by the governing body of the municipality or county.

Utah Code Ann. § 78A-7-208

Temporary justice court judge.

If a justice court judge is absent or disqualified, the appointing authority may appoint another justice court judge currently holding office within the judicial district to serve as a temporary justice court judge. A retired justice court judge may also be appointed as a temporary justice court judge under rule of the Supreme Court.

Utah Code Ann. § 78A-7-209

Justice court staff to be provided.

- (1) Each county, city, or town creating and maintaining a justice court shall provide:
- (a) sufficient staff public prosecutors to attend the court and perform the duties of prosecution before the justice court;
 - (b) adequate funding for the costs of defense for persons charged with a public offense who are determined by the court to be indigent under Title 77, Chapter 32; and
 - (c) sufficient local peace officers to attend the justice court when required and provide security for the court.

(2) The county attorney or district attorney may appoint city prosecutors as deputies to prosecute state offenses in municipal justice courts.

Utah Code Ann. § 78A-7-210

Justice court judge administrative responsibilities.

- (1) Justice court judges shall comply with and ensure that court personnel comply with applicable county or municipal rules and regulations related to personnel, budgets, and other administrative functions.
- (2) Failure by the judge to comply with applicable administrative county or municipal rules and regulations may be referred, by the county executive or municipal legislative body, to the state Justice Court Administrator.
- (3) Compliance with appropriate administrative requirements shall be considered as part of the Judicial Council's judicial performance evaluation program for justice court judges.
- (4) Repeated or willful noncompliance may be referred, by the county executive or municipal legislative body, to the Judicial Conduct Commission.

Utah Code Ann. § 78A-7-211

Compensation and expenses -- Clerical personnel.

- (1) The county, city, or town creating or maintaining a justice court shall provide and compensate clerical personnel to conduct the business of the court.
- (2) The selection, supervision, and discipline of court clerical personnel shall be in accordance with local government personnel policies.
- (3) Clerical personnel are governed by Title 52, Chapter 3, regarding employment of relatives.
- (4) The county, city, or town assumes the cost of travel and training expenses of clerical personnel at training sessions conducted by the Judicial Council.

Utah Code Ann. § 78A-7-212

Place of holding court.

- (1) (a) County justice court judges may hold court in any municipality within the precinct but may exercise only the jurisdiction provided by law for county justice courts.
(b) County justice court judges may also, at the direction of the county legislative body, hold court anywhere in the county as needed but may only hear cases arising within the precinct.
- (2) A municipal justice court judge shall hold court in the municipality where the court is located and, as directed by the municipal governing body, at the county jail or municipal prison.

Utah Code Ann. § 78A-7-213

Trial facilities -- Hours of business.

- (1) A justice court judge shall conduct all official court business in a courtroom or office located in a public facility which is conducive and appropriate to the administration of justice.

- (2) Each county, city, or town shall provide adequate courtroom and auxiliary space for the justice court. The facility need not be specifically constructed for or allocated solely for the justice court if existing facilities adequately serve the purposes of the justice court.
- (3) Justice courts shall be open and judicial business shall be transacted:
 - (a) five days per week; or
 - (b) no less than four days per week for at least 11 hours per day.
- (4) The legislative body of the county, city, or town shall establish operating hours for the justice courts within the requirements of Subsection (3) and the code of judicial administration.
- (5) The hours the courts are open shall be posted conspicuously at the courts and in local public buildings.
- (6) The clerk of the court and judges of justice courts shall attend the court at regularly scheduled times.
- (7) By July 1, 2011, all justice courts shall use a common case management system and disposition reporting system as specified by the Judicial Council.

Utah Code Ann. § 78A-7-214

Laws, ordinances, and reference materials provided by counties, cities, and towns.

Each county, city, or town shall provide and keep current for each justice court in its jurisdiction a copy of the motor vehicle laws of Utah, appropriate copies of the Utah code, the justice court manual published by the state court administrator, state laws affecting local government, the county, city, or town ordinances, and other legal reference materials as determined to be necessary by the judge.

Utah Code Ann. § 78A-7-215

Monthly reports to court administrator and governing body.

- (1) Every justice court judge shall file monthly with the state court administrator a report of the judicial business of the judge. The report shall be on forms supplied by the state court administrator.
- (2) The report shall state the number of criminal and small claims actions filed, the dispositions entered, and other information as specified in the forms.
- (3) A copy of the report shall be furnished by the justice court judge to the governing body in the municipality or county, or to the person or office in the county, city, or town designated by the governing body.

Utah Code Ann. § 78A-8-102

Small claims -- Defined -- Counsel not necessary -- Removal from district court -- Deferring multiple claims of one plaintiff -- Supreme Court to govern procedures.

- (1) A small claims action is a civil action:
 - (a) for the recovery of money where:
 - (i) the amount claimed does not exceed \$10,000 including attorney fees but exclusive of court costs and interest; and

- (ii) the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or
- (b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed \$10,000 including attorney fees but exclusive of court costs and interest.
- (2) (a) A defendant in an action filed in the district court that meets the requirement of Subsection (1)(a)(i) may remove, if agreed to by the plaintiff, the action to a small claims court within the same district by:
 - (i) giving notice, including the small claims filing number, to the district court of removal during the time afforded for a responsive pleading; and
 - (ii) paying the applicable small claims filing fee.
- (b) No filing fee may be charged to a plaintiff to appeal a judgment on an action removed under Subsection (2)(a) to the district court where the action was originally filed.
- (3) The judgment in a small claims action may not exceed \$10,000 including attorney fees but exclusive of court costs and interest.
- (4) Counter claims may be maintained in small claims actions if the counter claim arises out of the transaction or occurrence which is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.
- (5) (a) With or without counsel, persons or corporations may litigate actions on behalf of themselves:
 - (i) in person; or
 - (ii) through authorized employees.
- (b) A person or corporation may be represented in an action by an individual who is not an employee of the person or corporation and is not licensed to practice law only in accordance with the Utah rules of small claims procedure as promulgated by the Supreme Court.
- (6) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. Claims so removed shall be rescheduled as permitted by the court's calendar.
- (7) Small claims matters shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

Utah Code Ann. § 78A-8-103

Assignee may not file claim.

A claim may not be filed or prosecuted in small claims court by any assignee of a claim.

Utah Code Ann. § 78A-8-104

Object of small claims -- Attachment, garnishment, and execution.

- (1) The hearing in a small claims action has the sole object of dispensing speedy justice between the parties. The record of small claims proceedings shall be as provided by rule of the Judicial Council.

(2) Attachment, garnishment, and execution may issue after judgment as prescribed by law, upon the payment of the fees required for those services.

Utah Code Ann. § 78A-8-105

Civil filing fees.

(1) Except as provided in this section, the fees for a small claims action in justice court shall be the same as provided in Section 78A-2-301.

(2) Fees collected in small claims actions filed in municipal justice court are remitted to the municipal treasurer. Fees collected in small claims actions filed in a county justice court are remitted to the county treasurer.

(3) The fee in the justice court for filing a notice of appeal for trial de novo in a court of record is \$10. The fee covers all services of the justice court on appeal but does not satisfy the trial de novo filing fee in the court of record.

Utah Code Ann. § 78A-8-106

Appeals -- Who may take and jurisdiction.

(1) Either party may appeal the judgment in a small claims action to the district court of the county by filing a notice of appeal in the original trial court within 30 days of entry of the judgment. If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.

(2) The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions. A record of the trial shall be maintained. The trial de novo may not be heard by a judge pro tempore appointed under Section 78A-8-108. The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

Utah Code Ann. § 78A-8-107

Costs.

The prevailing party in any small claims action is entitled to costs of the action and also the costs of execution upon a judgment rendered therein.

Utah Code Ann. § 78A-8-108

Evening hours -- Judges pro tempore.

(1) The district or justice court may request that the Supreme Court appoint a member of the Utah State Bar in good standing, with the member's consent, as judge pro tempore to hear and determine small claims at times, including evening sessions, to be set by the court.

(2) After being duly sworn, judges pro tempore shall:

(a) serve voluntarily and without compensation at the request of the court; and

(b) be extended the same immunities, and have the same powers with respect to matters within the jurisdiction of the small claims court as exercised by a regular judge.

Utah Code Ann. § 78A-8-109

Report to Judiciary Interim Committee.

The Judicial Council shall present to the Judiciary Interim Committee, if requested by the committee, a report and recommendation concerning the maximum amount of small claims actions.

Utah Code Ann. § 78B-1-103

Jurors selected from random cross section – Opportunity and obligation to serve.

(1) It is the policy of this state that:

(a) persons selected for jury service be selected at random from a fair cross section of the population of the county,

(b) all qualified citizens have the opportunity in accordance with this chapter to be considered for service; and

(c) all qualified citizens are qualified to serve when summoned, unless excused.

(2) A qualified citizen may not be disqualified for jury service on account of race, color, religion, sex, national origin, age, occupation, disability or economic status.

Utah Code Ann. § 78B-1-104

Jury composition.

(1) A trial jury consists of:

(a) 12 persons in a capital case;

(b) eight persons in a noncapital first degree felony aggravated murder or other criminal case which carries a term of incarceration of more than one year as a possible sentence for the most serious offense charged;

(c) six persons in a criminal case which carries a term of incarceration of more than six months but not more than one year as a possible sentence for the most serious offense charged;

(d) four persons in a criminal case which carries a term of incarceration of six months or less as a possible sentence for the most serious offense charged; and

(e) eight persons in a civil case at law except that the jury shall be four persons in a civil case for damages of less than \$20,000, exclusive of costs, interest, and attorney fees.

(2) Except in the trial of a capital felony, the parties may stipulate upon the record to a jury of a lesser number than established by this section.

(3) (a) The verdict in a criminal case shall be unanimous.

(b) The verdict in a civil case shall be by not less than three-fourths of the jurors.

(4) There is no jury in the trial of small claims cases.

(5) There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

Utah Code Ann. § 78B-1-105

Jurors -- Competency to serve -- Persons not competent to serve as jurors -- Court to determine disqualification.

(1) A person is competent to serve as a juror if the person is:

- (a) a citizen of the United States;
- (b) 18 years of age or older;
- (c) a resident of the county; and
- (d) able to read, speak, and understand the English language.

(2) A person who has been convicted of a felony which has not been expunged is not competent to serve as a juror.

(3) The court, on its own initiative or when requested by a prospective juror, shall determine whether the prospective juror is disqualified from jury service. The court shall base its decision on:

- (a) information provided on the juror qualification form;
- (b) an interview with the prospective juror; or
- (c) other competent evidence.

(4) The clerk shall enter the court's determination in the records of the court.

Utah Code Ann. § 78B-1-106

Master jury list -- Inclusive -- Review -- Renewal -- Public examination.

(1) The Judicial Council shall designate one or more regularly maintained lists of persons residing in each county as the source lists for the master jury list for that county. The master jury list shall be as inclusive of the adult population of the county as is reasonably practicable.

(2) The Judicial Council shall by rule provide for the biannual review of the master jury list to evaluate its inclusiveness of the adult population of the county.

(3) Not less than once every six months the Administrative Office of the Courts shall renew the master jury list for a county by incorporating any additions, deletions, or amendments to the source lists. The Administrative Office of the Courts shall include any additional source lists designated by the Judicial Council upon the next renewal of the master jury list for a county.

(4) The person having custody, possession, or control of any list used in compiling the master jury list shall make the list available to the Administrative Office of the Courts at all reasonable times without charge.

Utah Code Ann. § 78B-1-107

Qualified jury list -- Term of availability -- Juror qualification form -- Content -- Joint jury list for court authorized.

(1) Prospective jurors shall be selected at random from the master jury list and, if qualified, placed on the qualified jury list. A prospective juror shall remain on the qualified jury list for no longer than six months or for such shorter period established by rule of the Judicial Council. The qualified jury list may be used by all courts within the county, but no person shall be summoned to serve as a juror in more than one court.

(2) The Judicial Council shall by rule govern the process for the qualification of jurors and the selection of qualified jurors for voir dire.

(3) The state court administrator shall develop a standard form for the qualification of jurors. The form shall include:

(a) the name, address, and daytime telephone number of the prospective juror;

(b) questions suitable for determining whether the prospective juror is competent under statute to serve as a juror; and

(c) the person's declaration that the responses to questions on the qualification form are true to the best of the person's knowledge.

Utah Code Ann. § 78B-1-108

Qualified prospective jurors not exempt from jury service.

No qualified prospective juror is exempt from jury service.

Utah Code Ann. § 78B-1-109

Excuse from jury service -- Postponement.

(1) A person may be excused from jury service by the court upon a showing of undue hardship, public necessity, or that the person is incapable of jury service. The excused period may be for any period for which the grounds exist.

(2) The grounds for excusal from jury service shall be shown by affidavit, sworn testimony, or other competent evidence.

(3) The court may postpone jury service upon a showing of good cause.

Utah Code Ann. § 78B-1-110

Limitations on jury service.

In any two-year period, a person may not be required:

(1) to serve on more than one grand jury;

(2) to serve as both a grand and trial juror; or

(3) to attend court for prospective jury service as a trial juror more than one court day, except if necessary to complete service in a particular case.

Utah Code Ann. § 78B-1-111

Food allowance for jurors -- Sequestration costs.

- (1) Jurors may be provided with a reasonable food allowance under the rules of the Judicial Council.
- (2) When a jury has been placed in sequestration by order of the court, the necessary expenses for food and lodging shall be provided in accordance with the rules of the Judicial Council.

Utah Code Ann. § 78B-1-112

Jurors -- Preservation of records.

All records and papers compiled in connection with the selection and service of jurors shall be preserved by the clerk for four years, or for any longer period ordered by the court.

Utah Code Ann. § 78B-1-113

Jury not selected in conformity with chapter -- Procedure to challenge -- Relief available -- Exclusive remedy.

- (1) Within seven days after the moving party discovered, or by the exercise of diligence could have discovered the grounds therefore, and in any event before the trial jury is sworn to try the case, a party may move to stay the proceedings or to quash an indictment, or for other appropriate relief, on the ground of substantial failure to comply with this act in selecting a grand or trial jury.
- (2) Upon motion filed under this section containing a sworn statement of acts which if true would constitute a substantial failure to comply with this act, the moving party may present testimony of the county clerk, the clerk of the court, any relevant records and papers not public or otherwise available used by the jury commission or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand or a trial jury there has been a substantial failure to comply with this act and it appears that actual and substantial injustice and prejudice has resulted or will result to a party in consequence of the failure, the court shall stay the proceedings pending the selection of the jury in conformity with this act, quash an indictment, or grant other appropriate relief.
- (3) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this act.

Utah Code Ann. § 78B-1-114

Jury fee assessments -- Payment.

- (1) The court has discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day's juror fees against either the plaintiff or defendant or their counsel, or to divide the cost and assess them against both plaintiff and defendant or their counsel, or additional parties plaintiff or defendant, if:

- (a) a jury demand has been made and is later withdrawn within the 48 hours preceding the commencement of the trial; or
 - (b) the case is settled or continued within 48 hours of trial without just cause for not having settled or continued the case prior to the 48-hour period.
- (2) The party assessed shall make payment to the clerk of the court within a prescribed period. Payment shall be enforced by contempt proceedings.
- (3) The court clerk shall transfer the assessment to the state treasury, or the auditor of the city or county incurring the juror expenses.

Utah Code Ann. § 78B-1-115

Jurors -- Penalties.

- (1) A person who fails to respond timely to questions regarding qualification for jury service shall be in contempt of court and subject to penalties under Title 78B, Chapter 6, Part 3, Contempt.
- (2) A person summoned for jury service who fails to appear or to complete jury service as directed shall be in contempt of court and subject to penalties under Title 78B, Chapter 6, Part 3, Contempt.
- (3) Any person who willfully misrepresents a material fact regarding qualification for, excuse from, or postponement of jury service is guilty of a class C misdemeanor.

Utah Code Ann. § 78B-1-116

Jurors -- Employer not to discharge or threaten employee for jury service -- Criminal penalty -- Civil action by employee.

- (1) An employer may not deprive an employee of employment, threaten or take any adverse employment action, or otherwise coerce the employee regarding employment because the employee receives a summons, responds to it, serves as a juror, or a grand juror, or attends court for prospective jury or grand jury service.
- (2) An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or for time spent actually serving on a jury. Nothing in this provision shall be construed to require an employer to provide annual, vacation, or sick leave to employees under the provisions of this statute who otherwise are not entitled to those benefits under company policies.
- (3) Any employer who violates this section is guilty of criminal contempt and upon conviction may be fined not more than \$500 or imprisoned not more than six months, or both.
- (4) If any employer discharges an employee in violation of this section, the employee within 30 days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable may not exceed lost wages for six weeks. If the employee prevails, the employee shall be allowed reasonable attorney fees fixed by the court.

Utah Code Ann. § 78B-1-117(3)

State payment for jurors and subpoenaed persons -- Appropriations and costs -- Expenses in justice court.

(3) In the justice courts, the fees, mileage, and other expenses authorized by law for jurors, prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs shall be paid by the municipality if the action is prosecuted by the city attorney

Utah Code Ann. § 78B-1-119

Fees and mileage.

(1) Every juror and witness legally required or in good faith requested to attend a trial court of record or not of record or a grand jury is entitled to:

(a) \$18.50 for the first day of attendance and \$49 per day for each subsequent day of attendance; and

(b) if traveling more than 50 miles, \$1 for each four miles in excess of 50 miles actually and necessarily traveled in going only, regardless of county lines.

(2) Persons in the custody of a penal institution upon conviction of a criminal offense are not entitled to a witness fee.

(3) A witness attending from outside the state in a civil case is allowed mileage at the rate of 25 cents per mile and is taxed for the distance actually and necessarily traveled inside the state in going only.

(4) If the witness is attending from outside the state in a criminal case, the state shall reimburse the witness under Section 77-21-3.

(5) A prosecution witness or a witness subpoenaed by an indigent defendant attending from outside the county but within the state may receive reimbursement for necessary lodging and meal expenses under rule of the Judicial Council.

(6) There is created within the General Fund, a restricted account known as the CASA Volunteer Account. A juror may donate the juror's fee to the CASA Volunteer Account in \$18.50 or \$49 increments. The Legislature shall annually appropriate money from the CASA Volunteer Account to the Administrative Office of the Courts for the purpose of recruiting, training, and supervising volunteers for the Court Appointed Special Advocate program established pursuant to Section 78A-6-902.

Utah Code Ann. § 78B-1-120

Jurors and witnesses -- Fees in criminal cases -- Daily report of attendance.

Every witness in a criminal case subpoenaed for the state, or for a defendant by order of the court at the expense of the state, and every juror, whether grand or trial, shall, unless temporarily excused, in person report daily to the clerk. No per diem shall be allowed for any day upon which attendance is not so reported.

Utah Code Ann. § 78B-1-122

Jurors and witnesses -- Justice court judge -- Certificate of attendance -- Records and reporting.

(1) Every justice court judge shall give to each person who has served before him as a juror or as a witness in a criminal cause when summoned for the prosecution by the county or city attorney, or for the defense by order of the court, a numbered certificate, in which must be stated:

- (a) the name of the juror or witness;
- (b) the title of the proceeding;
- (c) the number of days in attendance;
- (d) the number of miles traveled if the witness has traveled more than 50 miles in going only; and
- (e) the amount due.

(2) The certificate shall be presented to the county or city attorney. When certified as being correct, it shall be presented to the county or city auditor and when allowed by the county executive or town council, the auditor shall draw a warrant for it on the treasurer.

(3) Every justice court judge shall keep a record of all certificates issued. The record shall show all of the facts stated in each certificate. On the first Monday of each month a detailed statement of all certificates issued shall be filed with the treasurer.

Utah Code Ann. § 78B-1-125

Jurors and witnesses -- Certifying excessive fees a felony.

Any clerk or judge of any court, county attorney, district attorney, or other officer who certifies false information as a fact, whereby any witness or juror shall be allowed a greater sum than otherwise entitled to under the provisions of this title, is guilty of a felony.

Utah Code Ann. § 78B-1-127

Witnesses -- Competency.

Every person is competent to be a witness except as otherwise provided in the Utah Rules of Evidence.

Utah Code Ann. § 78B-1-128

Who may be witnesses -- Jury to judge credibility.

(1) All persons, without exception, otherwise than as specified in this part, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses.

(2) Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief.

(3) The credibility of a witness may be questioned by:

- (a) the manner in which the witness testifies;

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to order the trial to be postponed, suspended, or take place before another judge or jury.

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- (b) the character of the witness testimony;
 - (c) evidence affecting the witness' character for truth, honesty, or integrity;
 - (d) the witness' motives; or
 - (e) contradictory evidence.
- (4) The jury is the exclusive judge of credibility.

Utah Code Ann. § 78B-1-129

Witnesses -- Subpoena defined.

The process by which the attendance of a witness is required is a subpoena. It is a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. The person may also be required to bring any books, documents, or other things under the person's control which is required to be produced in evidence.

Utah Code Ann. § 78B-1-130

Witnesses -- Duty when served with subpoena.

A witness served with a subpoena shall:

- (1) attend at the time appointed with any papers required by the subpoena;
- (2) answer all pertinent and legal questions; and
- (3) unless sooner discharged, remain until the testimony is closed.

Utah Code Ann. § 78B-1-131

Witnesses -- Liability to forfeiture and damages.

A witness who disobeys a subpoena shall, in addition to any penalty imposed for contempt, be liable to the party aggrieved in the sum of \$100, and all damages sustained by the failure of the witness to attend. Forfeiture and damages may be recovered in a civil action.

Utah Code Ann. § 78B-1-131

Witnesses -- Liability to forfeiture and damages.

A witness who disobeys a subpoena shall, in addition to any penalty imposed for contempt, be liable to the party aggrieved in the sum of \$100, and all damages sustained by the failure of the witness to attend. Forfeiture and damages may be recovered in a civil action.

Utah Code Ann. § 78B-1-133

Witnesses -- Judge or juror may be witness -- Procedure.

The judge or any juror may be called as a witness by either party. It is in the discretion of the court to order the trial to be postponed, suspended, or take place before another judge or jury.

Utah Code Ann. § 78B-1-136

Witnesses -- Rights.

It is the right of a witness to be protected from irrelevant, improper or insulting questions, and from harsh or insulting demeanor, to be detained only so long as the interests of justice require it, and to be examined only as to matters legal and pertinent to the issue.

Utah Code Ann. § 78B-1-142

Witnesses -- Oaths -- Who may administer.

Every court, every judge, clerk and deputy clerk of any court, every justice, every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations.

Utah Code Ann. § 78B-1-143

Witnesses -- Form of oath.

(1) An oath or affirmation in an action or proceeding may be administered in the following form: You do solemnly swear (or affirm) that the evidence you shall give in this issue (or matter) pending between ___ and ___ shall be the truth, the whole truth and nothing but the truth, so help you God (or, under the pains and penalties of perjury).

(2) The person swearing or affirming shall express assent when addressed.

Utah Code Ann. § 78B-1-144

Witnesses -- Affirmation or declaration instead of oath allowed.

Any person may, instead of taking an oath, opt to make a solemn affirmation or declaration, by assenting, when addressed in the following form:

"You do solemnly affirm (or declare) that... ." etc., as in Section 78B-1-143.

Utah Code Ann. § 78B-1-145

Witnesses -- Variance in form of swearing to suit beliefs.

(1) Whenever the court before which a person is offered as a witness is satisfied that the person has a peculiar mode of swearing, connected with or in addition to the usual form, which in the person's opinion is more solemn or obligatory, the court may in its discretion adopt that mode.

(2) A person who believes in a religion other than the Christian religion may be sworn according to the particular ceremonies of the person's religion, if there are any.

Utah Code Ann. § 78B-1-146

Witnesses -- Interpreters -- Subpoena -- Contempt -- Costs.

(1) When a witness does not understand and speak the English language, an interpreter shall be sworn in to interpret. Any person may be subpoenaed by any court or judge to appear before the

court or judge to act as an interpreter in any action or proceeding. Any person so subpoenaed who fails to attend at the time and place named is guilty of a contempt.

(2) The Judicial Council may establish a fee for the issuance and renewal of a license of a certified court interpreter. Any fee established under this section shall be deposited as a dedicated credit to the Judicial Council.

(3) If the court appoints an interpreter, the court may assess all or part of the fees and costs of the interpreter against the person for whom the service is provided. The court may not assess interpreter fees or costs against a person found to be impecunious.

Utah Code Ann. § 78B-1-148

Witnesses – Only one fee per day allowed.

No witness shall receive fees in more than one criminal cause on the same day.

Utah Code Ann. § 78B-1-149

Witnesses – Officials subpoenaed not entitled to fee or per diem -- Exception.

No officer of the United States, or the state, or of any county, incorporated city or town within the state, may receive any witness fee or per diem when testifying in a criminal proceeding unless the officer is required to testify at a time other than during normal working hours.

Utah Code Ann. § 78B-1-150

Witnesses -- When criminal defense witness may be called at expense of state.

A witness for a defendant in a criminal cause may not be subpoenaed at the expense of the state, county, or city, except upon order of the court. The order shall be made only upon affidavit of the defendant, showing:

- (1) the defendant is impecunious and unable to pay the per diems of the witness;
- (2) the evidence of the witness is material for defendant's defense as advised by counsel, if counsel is in place; and
- (3) the defendant cannot safely proceed to trial without the witness.

Utah Code Ann. § 78B-1-201

Definitions.

As used in this part:

- (1) "Appointing authority" means the presiding officer or similar official of any court, board, commission, authority, department, agency, legislative body, or of any proceeding of any nature where a qualified interpreter is required under this part.
- (2) "Hearing-impaired person" and "hearing-impaired parent" means a deaf or hard of hearing person who, because of sensory or environmental conditions, requires the assistance of a qualified interpreter or other special assistance for communicative purposes.

- (3) "Necessary steps" or "necessary services" include provisions of qualified interpreters, lip reading, pen and paper, typewriters, closed-circuit television with closed-caption translations, computers with print-out capability, and telecommunications devices for the deaf or similar devices.
- (4) "Qualified interpreter" means a sign language or oral interpreter as provided in Sections 78B-1-203 and 78B-1-206 of this part.

Utah Code Ann. § 78B-1-202

Proceedings at which interpreter is to be provided for hearing impaired.

- (1) If a hearing-impaired person is a party or witness at any stage of any judicial or quasi-judicial proceeding in this state or in its political subdivisions, including civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing-impaired person may be subjected to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings to the hearing-impaired person and to interpret the hearing-impaired person's testimony. If the hearing-impaired person does not understand sign language, the appointing authority shall take necessary steps to ensure that the hearing-impaired person may effectively and accurately communicate in the proceeding.
- (2) If a juvenile whose parent or parents are hearing-impaired is brought before a court for any reason whatsoever, the court shall appoint and pay for a qualified interpreter to interpret the proceedings to the hearing-impaired parent and to interpret the hearing-impaired parent's testimony. If the hearing-impaired parent or parents do not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that the hearing-impaired person may effectively and accurately communicate in the proceeding.
- (3) In any hearing, proceeding, or other program or activity of any department, board, licensing authority, commission, or administrative agency of the state or of its political subdivisions, the appointing authority shall appoint and pay for a qualified interpreter for the hearing-impaired participants if the interpreter is not otherwise compensated for those services. If the hearing-impaired participants do not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that hearing-impaired persons may effectively and accurately communicate in the proceeding.
- (4) If a hearing-impaired person is a witness before any legislative committee or subcommittee, or legislative research or interim committee or subcommittee or commission authorized by the state Legislature or by the legislative body of any political subdivision of the state, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings to the hearing-impaired person and to interpret the hearing-impaired person's testimony. If the hearing-impaired witness does not understand sign language, the appointing authority shall take any

reasonable, necessary steps to ensure that hearing-impaired witness may effectively and accurately communicate in the proceeding.

(5) If it is the policy and practice of a court of this state or of its political subdivisions to appoint counsel for indigent people, the appointing authority shall appoint and pay for a qualified interpreter or other necessary services for hearing-impaired, indigent people to assist in communication with counsel in all phases of the preparation and presentation of the case.

(6) If a hearing-impaired person is involved in administrative, legislative, or judicial proceedings, the appointing authority shall recognize that family relationship between the particular hearing-impaired person and an interpreter may constitute a possible conflict of interest and select a qualified interpreter who will be impartial in the proceedings.

Utah Code Ann. § 78B-1-203

Effectiveness of interpreter determined.

Before appointing an interpreter, the appointing authority shall make a preliminary determination, on the basis of the proficiency level established by the Utah division of rehabilitation services and on the basis of the hearing-impaired person's testimony, that the interpreter is able to accurately communicate with and translate information to and from the hearing-impaired person involved. If the interpreter is not able to provide effective communication with the hearing-impaired person, the appointing authority shall appoint another qualified interpreter.

Utah Code Ann. § 78B-1-204

Appointment of more qualified interpreter.

If a qualified interpreter is unable to render a satisfactory interpretation, the appointing authority shall appoint a more qualified interpreter.

Utah Code Ann. § 78B-1-205

Readiness of interpreter prerequisite to commencement of proceeding.

If an interpreter is required to be appointed under this part, the appointing authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure effective communication with the hearing-impaired participants.

Utah Code Ann. § 78B-1-206

List of qualified interpreters -- Use -- Appointment of another.

(1) The Utah division of rehabilitation services shall establish, maintain, update, and distribute a list of qualified interpreters.

(2) When an interpreter is required under this part, the appointing authority shall use one of the interpreters on the list provided by the Utah division of rehabilitation services. If none of the listed interpreters are available or are able to provide effective interpreting with the particular hearing-

impaired person, then the appointing authority shall appoint another qualified interpreter who is able to accurately and simultaneously communicate with and translate information to and from the particular hearing-impaired person involved.

Utah Code Ann. § 78B-1-207

Oath of interpreter.

Before he or she begins to interpret, every interpreter appointed under this part shall take an oath that he or she will make a true interpretation in an understandable manner to the best of his or her skills and judgment.

Utah Code Ann. § 78B-1-208

Compensation of interpreter.

An interpreter appointed under this part is entitled to a reasonable fee for his or her services, including waiting time and reimbursement for necessary travel and subsistence expenses. The fee shall be based on a fee schedule for interpreters recommended by the division of rehabilitation services or on prevailing market rates. Reimbursement for necessary travel and subsistence expenses shall be at rates provided by law for state employees generally. Compensation for interpreter services shall be paid by the appointing authority if the interpreter is not otherwise compensated for those services.

Utah Code Ann. § 78B-1-209

Waiver of right to interpreter.

The right of a hearing-impaired person to an interpreter may not be waived, except by a hearing-impaired person who requests a waiver in writing. The waiver is subject to the approval of counsel to the hearing-impaired person, if existent, and is subject to the approval of the appointing authority. In no event may the failure of the hearing-impaired person to request an interpreter be considered a waiver of that right.

Utah Code Ann. § 78B-1-210

Privileged communications.

If a hearing-impaired person communicates through an interpreter to any person under such circumstances that the communication would be privileged and the person could not be compelled to testify as to the communications, this privilege shall apply to the interpreter as well.

Utah Code Ann. § 78B-1-211

Video recording of testimony of hearing-impaired person.

The appointing authority, on his or her own motion or on the motion of a party to the proceedings, may order that the testimony of the hearing-impaired person and its interpretation be electronically

EXHIBIT A

Rule 9-102. Caseload report requirements.

Intent:

To establish the caseload reporting requirements for Justice Courts.

Applicability:

This rule shall apply to all Justice Courts.

Statement of the Rule:

- (1) Every Justice Court judge shall direct the clerk to prepare a Monthly Report of Court Caseload or complete the form personally if there is no court clerk.
- (2) This report shall be submitted by the tenth day of the month following the report period.
- (3) A separate form shall be prepared for each court in which a judge sits.
- (4) If the court has had no cases to report during the preceding month, a form shall be submitted to document that no cases were filed or disposed of during the month.

Rule 9-103. Certification of educational requirements.

Intent:

To establish the process for measuring compliance with the certification requirements of Utah statutes.

Applicability:

This rule shall apply to all Justice Court judges.

Statement of the Rule:

(1) Notification shall be sent to each Justice Court judge of the date and place of the annual Justice Court Conference.

(2) Each Justice Court judge shall enter his or her name on a roll to be kept at the annual Justice Court Conference.

(3) No later than February 1, the Justice Court Administrator shall report to the Judicial Conduct Commission the names of Justice Court judges who have failed during the previous calendar year:

(3)(A) to attend or be excused from a mandatory conference; or

(3)(B) to obtain 30 hours of judicial education.

Rule 9-104. Salary recommendations.

Intent:

To establish the process for determining recommended salary levels for Justice Court judges.

Applicability:

This rule shall apply to the Board of Justice Court Judges and the Administrative Office of the Courts.

Statement of the Rule:

(1) The Personnel Manager for the courts shall develop a salary plan for Justice Court judges. A weighted caseload formula, which has been reviewed and approved by the Board, shall serve as a basis for determining relative pay ranges.

(2) A revision of the recommended salary scale shall be done whenever the compensation of district court judges has been increased by the legislature. The scale shall then be sent to the local governmental unit responsible for setting the salary of the judge.

(3) Upon request of a Justice Court judge, a reevaluation of the salary recommendation may be made, based upon a change in his or her workload. No recommendation shall be made, however, which reduces the judge's salary during a term of office.

Rule 9-105. Justice Court hours.

Intent:

To establish minimum court hours for Justice Courts.

Applicability:

This rule shall apply to all Justice Courts.

Statement of the Rule:

(1) Every Justice Court shall establish a regular schedule of court hours to be posted in a conspicuous location at the court site.

(2) Justice Courts shall be open and available to transact judicial business every business day, Monday through Friday, excluding holidays as defined in Utah Code Section 63-13-2, and unless specifically waived by the Judicial Council. The Justice Court judge shall be available during the scheduled hours of court operation and the Justice Court judge or clerk shall be in attendance at the court during the regularly scheduled hours of operation.

(3) Justice Courts shall provide, at a minimum, the following hours of operation:

Number of Average Monthly Filings	Hours Per Day
0-60	1
61-150	2
151-200	3
201-300	4
301-400	5
401-500	6
501 or more	8

(4) The Justice Court judge may schedule the court hours to meet the needs of the litigants and the availability of bailiff and clerk services.

(5) Court hours shall be set at least quarterly and the Justice Court judge shall annually send notice to the Administrative Office of the Courts of the hours which have been set for court operation.

Rule 9-106. New judge certification procedure.

Intent:

To establish the orientation and testing procedure to be followed in determining certification of proposed justice court judges.

Applicability:

This rule shall apply to all newly appointed justice court judges who are not already certified judges in other justice courts in Utah. This rule shall not apply to active senior justice court judges.

Statement of the Rule:

(1) The Council shall schedule three orientations each year. Upon receipt of written notification of the name of a proposed judge, both the proposed judge and the appointing authority shall be notified in writing of the date of the next orientation, and such notification shall include a copy of this rule.

(2) At least 10 days prior to the orientation, the proposed judge shall be sent a copy of the current Manual for Justice Court Judges.

(3) Prior to the orientation, the appointing authority shall assure, and shall notify the Council, that the proposed judge meets the statutory qualifications for office.

(4) The orientation shall cover substantive and procedural issues pertinent to justice courts as outlined in the Manual for Justice Court Judges.

(5) Upon completion of the orientation session, an examination shall be administered. In order to be certified, each proposed judge must attend all parts of the orientation and must answer at least 80% of the examination questions correctly.

(6) If a proposed judge fails to answer 80% of the questions correctly, that proposed judge shall have the opportunity to take another examination not sooner than 15 days after the orientation. The second examination shall be preceded by a substantive review of the first examination and an opportunity for additional instruction.

(7) A proposed judge who fails to answer 80% of the questions on the second examination correctly must wait until the next scheduled full orientation in order to be retested. The appointing authority shall be notified of the status of the proposed judge, and the provisions of paragraphs (5) and (6) above shall once again apply.

(8) Upon completion of the orientation process, the Justice Court Administrator shall make a recommendation to the Council respecting certification. The Council shall either certify that the proposed judge has attended the orientation and successfully passed the examination, or decline to certify the same. The Council shall notify the proposed judge and the appointing authority of its decision in writing.

(9) The Council may waive any of the non-statutory requirements above for good cause shown.

Rule 9-107. Justice court technology, security, and training account.

Intent:

To establish the process for allocation of funds from the Justice Court Technology, Security, and Training restricted account.

Applicability:

This rule shall apply to all applications for and allocations from the account.

Statement of the Rule:

(1) Any governmental entity that operates or has applied to operate a justice court may apply for funds from the account for qualifying projects. Local governmental entities may only use the funds for one-time purposes, and preference will be given to applications that propose to use the funds for new initiatives rather than for supplanting existing efforts.

(2) The Board of Justice Court Judges, through the Administrative Office of the Courts, may apply for funds from the account for qualifying projects.

(3) The Administrative Office of the Courts may apply for funds from the account for qualifying projects, and may use the funds for ongoing support of those projects.

(4) Qualifying projects are those that meet the statutory requirements for the use of the account funds.

(5) Funds will be distributed on or about July 1 of each year in which funds are available, and applications for those funds must be made by April 15 of the same year on forms available from the Administrative Office of the Courts. All applications for funds shall be first reviewed and prioritized by the Board of Justice Court Judges, and that recommendation, along with all timely applications shall then be forwarded to the Management Committee of the Judicial Council. The Management Committee will then make the final awards.

(6) An entity receiving funds shall file with the Board of Justice Court Judges an accounting, including proof of acquisition of the goods or services for which the award was granted. The accounting shall be filed no later than July 15 for activity during the previous fiscal year.

Rule 9-301. Record of arraignment and conviction.**Intent:**

To establish a procedure for justice courts to follow in making a record at the time of arraignment and conviction in those cases where the defendant may be subject to an enhanced penalty if convicted of the same offense in the future.

Applicability:

This rule shall apply to the justice courts in those cases where the defendant may be subject to an enhanced penalty if convicted of the same offense in the future.

Statement of the Rule:

- (1) At the time of arraignment, the justice court judge shall determine whether the defendant would be subject to an enhanced penalty if convicted of the same offense in the future.
- (2) If the defendant would be subject to an enhanced penalty, upon the entry of a plea of guilty, the justice court judge shall:
 - (A) Advise the defendant, orally and in writing of the defendant's rights, the elements of the charged offense, the penalties for the charged offense, and the enhancement penalty which may be imposed in the event the defendant is convicted of the same offense in the future; and
 - (B) Require the defendant to sign a statement acknowledging that the defendant understands his rights and that he knowingly, intelligently and voluntarily waives those rights.
- (3) Upon the entry of a guilty plea or receipt of a conviction, the justice court judge shall execute a written and signed judgment of conviction and forward the appropriate information and/or fingerprints to the state agencies responsible for maintaining criminal records.

Rule 3-414. Court security.

Intent:

To promote the safety and well being of judicial personnel, members of the bar and citizens utilizing the courts.

To establish uniform policies for court security.

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

Applicability:

This rule shall apply to all courts.

Section (7) on weapons shall not apply to trial exhibits.

Statement of the Rule:

(1) Definitions.

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

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

(2) Responsibilities of the Council.

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

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

(2)(B)(i) All persons in custody shall be kept in a holding cell, restrained by restraining devices, or supervised at all times while in court unless otherwise specifically ordered by the judge in whose courtroom the individual appears.

(2)(B)(ii) Reserve parking near the entrance to the court facility shall be provided for court officials. Reserved parking shall not be identified by the name or title of the individual assigned to the space.

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

(2)(B)(iv) Holding cells shall be adjacent to courtrooms.

(2)(B)(v) Courtroom windows shall be draped or otherwise treated to restrict vision from outside the courtroom and securely fastened.

(2)(B)(vi) Physical barriers shall be provided between the public seating area of the courtroom and the participants' area.

(2)(B)(vii) Weapons and miscellaneous items which can be used as weapons shall be regulated as provided in this rule.

(2)(B)(viii) An emergency power system shall be provided for lighting and electrically operated doors.

(2)(B)(ix) Separate waiting areas shall be provided for defense witnesses, plaintiff or prosecution witnesses, and jurors.

(2)(B)(x) The bailiff shall maintain a clear line of sight of all courtroom participants and shall be between individuals who are in custody and courtroom exits.

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

(3) Responsibilities of the Administrative Office.

(3)(A) The state court administrator shall appoint a statewide security coordinator who shall:

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

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

(3)(B) The state court administrator shall appoint a court executive in each judicial district to serve as a local security coordinator.

(3)(C) The director of human resources shall maintain as part of each official personnel file information on each employee of the judiciary and his or her family necessary to ensure that adequate information is available to law enforcement agencies to respond to an emergency.

(4) Responsibilities of the court executive.

(4)(A) The court executive designated as the local security coordinator shall:

(4)(A)(i) in consultation with the law enforcement administrator responsible for security and with the judges responsible for the security plan, develop and implement a local security plan for each court of record facility within the district;

(4)(A)(ii) annually review the local security plan with the presiding judge and the law enforcement administrator to identify deficiencies in the plan and problems with implementation;

(4)(A)(iii) file an acceptable local security plan with the statewide security coordinator; and

(4)(A)(iv) file amendments to the plan with the statewide security coordinator as amendments are made.

(4)(B) The local security plan for a courthouse and any amendments to it shall be approved by a majority of the judges of the district of any court level occupying the courthouse. Voting shall be without regard to court level. As used in this subsection the term "judges of the district of any court level occupying the courthouse" shall include all judges of the district court of the district and all judges of the juvenile court of the district regardless of whether a particular judge occupies the courthouse so long as at least one judge of that court level occupies the courthouse. The term also includes the justices of the Supreme Court, the judges of the Court of Appeals and any justice court judge who actually occupy the courthouse.

(4)(C) The court executive shall conduct an annual survey of all court facilities to identify steps necessary to meet security guidelines established by the Council.

(4)(D) The court executive shall provide a copy of the current local security plan and annual training on the plan to all employees, volunteers and security personnel.

(4)(E) The local plan shall clearly delineate the responsibilities between court personnel and law enforcement personnel for all areas and activities in and about the courthouse.

(4)(F) The court clerk or probation officer, under the supervision of the court executive, shall provide timely notice to transportation officers of required court appearances and cancellation of appearances for individuals in custody. The court shall consolidate scheduled appearances whenever practicable and otherwise cooperate with transportation officers to avoid unnecessary court appearances.

(4)(G) To the extent possible, the clerk of the court shall establish certain days of the week and times of day for court appearances of persons in custody in order to permit transportation officers reasonable preparation and planning time. The court shall give priority to cases in which a person in custody appears in order to prevent increased security risks resulting from lengthy waiting periods.

(5) Responsibilities of law enforcement agencies.

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

(5)(A)(i) coordinate all law enforcement activities within the courthouse necessary for implementation of the security plan and for response to emergencies;

(5)(A)(ii) cooperate with the court executive in the development and implementation of a local security plan;

(5)(A)(iii) provide local law enforcement personnel with training as provided in this rule;

(5)(A)(iv) appoint court bailiffs; and

(5)(A)(v) provide building and perimeter security.

(5)(B) The law enforcement agency responsible for court security shall be as follows:

(5)(B)(i) The Department of Public Safety for the Supreme Court and the Court of Appeals when they are in session in Salt Lake County. When convening outside of Salt Lake County, security shall be provided by the county sheriff. The Department of Public Safety may call upon the Salt Lake County Sheriff for additional assistance as necessary when the appellate courts are convening in Salt Lake County.

(5)(B)(ii) The county sheriff for district courts and juvenile courts within the county.

(5)(B)(iii) The county sheriff for a county justice court and the municipal police for a municipal justice court. The county or municipality may appoint a constable to provide security services to the justice court. If a municipality has no police department or constable, then the law enforcement agency with which the municipality contracts shall provide security services to the justice court.

(6) Court bailiffs.

(6)(A) Qualifications. Bailiffs shall be "law enforcement officers" as defined in Section 53-13-103. At the discretion of the law enforcement administrator and with the consent of the presiding judge, bailiffs may be "special function officers" as defined by Section 53-13-105.

(6)(B) Training. Prior to exercising the authority of their office, bailiffs shall satisfactorily complete the basic course at a certified peace officer training academy or pass a waiver examination and be certified. Bailiffs shall complete 40 hours of annual training as established by the Division of Peace Officer Standards and Training. Bailiffs shall receive annual training on the elements of the court security plan, emergency medical assistance and the use of firearms.

(6)(C) Physical and mental condition. Court bailiffs shall be of suitable physical and mental condition to ensure that they are capable of providing a high level of security for the court and to ensure the safety and welfare of individuals participating in court proceedings. Bailiffs shall be capable of responding appropriately to any potential or actual breach of security.

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

(6)(E) Supervision. The court bailiff shall be supervised by the appointing authority and perform duties in compliance with directives of the appointing authority.

(6)(F) Responsibilities. Court bailiff responsibilities shall include but are not limited to the following.

(6)(F)(i) The bailiff shall prevent persons in custody from having physical contact with anyone other than the members of the defense counsel's team. Visitation shall be in accordance with jail and prison policies and be restricted to those facilities.

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

(6)(F)(iii) The bailiff shall search the interior of the courtroom and restricted areas prior to the arrival of any other court participants. Similar searches shall be conducted following recesses to ensure the room is clear of weapons, explosives, or contraband.

(6)(F)(iv) Bailiffs shall wear the official uniform of the law enforcement agency by whom they are employed.

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

(6)(F)(vi) Bailiffs shall perform responsibilities provided for in the local court security plan.

(7) Weapons.

(7)(A) Weapons generally.

(7)(A)(i) A courthouse is presumed to be free of all weapons and firearms unless a local security plan provides otherwise in accordance with this rule. No person may possess an explosive device in a courthouse. Except as permitted by this rule, no person may possess a firearm, ammunition, or dangerous weapon in a courthouse.

(7)(A)(ii) All firearms permitted under this rule and a local security plan:

(7)(A)(ii)(a) and carried upon the person shall be concealed unless worn as part of a public law enforcement agency uniform;

(7)(A)(ii)(b) shall remain in the physical possession of the person authorized to possess it and shall not be placed in a drawer, cabinet, briefcase or purse unless the person has physical possession of the briefcase or purse or immediate control of the drawer or cabinet or the drawer or cabinet is locked; and

(7)(A)(ii)(c) shall be secured in a holster with a restraining device.

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

(7)(B)(i) The following officers may possess a firearm and ammunition in a courthouse if the firearm is issued by or approved by the officer's appointing authority, if possession is required or permitted by the officer's appointing authority and the local security plan, and if the officer presents valid picture identification:

(7)(B)(i)(a) "law enforcement officer" as defined in Section 53-13-103;

(7)(B)(i)(b) "correctional officer" as defined in Section 53-13-104;

(7)(B)(i)(c) "special function officer" as defined in Section 53-13-105;

(7)(B)(i)(d) "federal officer" as defined in Section 53-13-106; and

(7)(B)(i)(e) a private security officer, licensed under Utah Code Title 58, Chapter 63, Security Personnel Licensing Act, hired by the court or the court's banker to transport money.

(7)(B)(ii) A judge or law enforcement official as defined in Section 53-5-711 may possess in a courthouse a firearm and ammunition for which the judge or law enforcement official has a valid certificate of qualification issued under Section 53-5-711 if possession is permitted by the local security plan.

(7)(B)(iii) A court commissioner may possess in a courthouse a firearm and ammunition for which the court commissioner has a concealed weapons permit, but only if the court commissioner has obtained the training and annual retraining necessary to qualify for a certificate issued under Section 53-5-711 and if possession is permitted by the local security plan.

(7)(B)(iv) A person permitted under subsections (i), (ii) or (iii) to possess a firearm nevertheless shall not possess a firearm in a courthouse if the person is appearing at the courthouse as a party to litigation. A person possessing a firearm in a courtroom shall notify the bailiff or the judge.

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

(7)(C) Firearm training requirements.

(7)(C)(i) To requalify for a certificate issued under Section 53-5-711 a judge shall annually complete with a passing score a range qualification course for judges and law enforcement officials established by the Department of Public Safety or a course established by any law enforcement agency of the state of Utah or its political subdivision for the requalification of its officers.

(7)(C)(ii) The cost of firearms, ammunition, initial qualification, requalification and any other equipment, supplies or fees associated with a certificate of qualification issued under Section 53-5-711 shall be the responsibility of the judge or court commissioner and shall not be paid from state funds.

(8) Security devices and procedures.

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

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

posted in a conspicuous place at the entrance to all court facilities.

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

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

(9) **Transportation of persons in custody.**

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

(9)(B) The transportation officer shall:

(9)(B)(i) remain present at all times during court appearances;

(9)(B)(ii) be responsible for the custody of such persons;

(9)(B)(iii) support the court bailiff in the preservation of peace in the courthouse and courtroom;

(9)(B)(iv) provide advance notice of the transportation and of any extraordinary security requirements to the law enforcement agency responsible for court security, to the judge, and to the bailiff;

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

(9)(B)(vi) return the person in custody to the proper place of confinement.

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