

TCE MEETING

Agenda October 4, 2019 Matheson Courthouse Executive Dining Room 450 South State Street Salt Lake City, Utah 84111

COMBINED JTCE/DTCE

1. 9:00 a.m. Welcome and Approval of Minutes Russ Pearson
(Tab 1 - Action)
2. 9:05 a.m. Administrator's Report Judge Mary T. Noonan
3. 9:25 a.m. Transparency and Communications Recommendations
(Tab 2 - Discussion) Judge Mary T. Noonan
4. 9:55 a.m. Protocols for Informing the Public When Courthouses are Closed
(Tab 3 - Information) Nancy Sylvester
5. 10:05 a.m. Interpreter Program Review and Second Language Stipend Kara Mann
(Tab 4 - Information)
6. 10:20 a.m. Review of Retirement Guidelines Alisha Johnson
(Tab 5 - Information)
- 10:30 a.m. Break
7. 10:40 a.m. Check in Process Review Bart Olsen
(Discussion) Sarah Osmond
8. 10:50 a.m. Twenty-Five Year Employee Recognition Cathy Dupont
(Tab 6 - Discussion) Bart Olsen
9. 11:05 a.m. Job Classifications: Support Services Coordinator and Administrative
Assistant Bart Olsen
(Tab 7 - Discussion) Sarah Osmond
10. 11:20 a.m. FMLA Process Bart Olsen
(Tab 8 - Discussion) Sarah Osmond
11. 11:40 a.m. IT Department Quarterly Report Heidi Anderson
(Information)

- 12:10 p.m. Break (Lunch)
12. 12:20 p.m. Approval of Amendment to Accounting Manual - Cell Phone Reimbursement Cathy Dupont (Tab 9 - Action)
13. 12:35 p.m. Vacancy on Judicial Outreach Committee..... Geoff Fattah (Tab 10 - Action)
14. 12:40 p.m. Access to Justice in Civil Cases.....Justice Deno Himonas (Information)
15. 1:10 p.m. TCE Roundtable Update by District Russ Pearson (Discussion)
16. 1:40 p.m. Combined JTCE/DTCE Old/New Business Russ Pearson (Discussion)
- 2:00 p.m. Break
- DTCE ONLY**
17. 2:10 p.m. E-Record Update..... Meredith Mannebach (Information)
18. 2:20 p.m. Status Update Shane Bahr
- Board of District Court Judges Update
 - Sentencing Guidelines and Supervision Guidelines
- (Tab 11 - Information)
19. 2:50 p.m. Caselaw Ability to Pay Analyses and Procedural Due Process in the Pretrial Context Keisa Williams (Tab 12 - Discussion)
20. 3:05 p.m. DTCE Old/New Business Russ Pearson (Discussion)
21. 3:15 p.m. Adjourn

Consent Calendar

The consent calendar items in this section are approved without discussion unless an objection has been raised with the Administrative Office of the Courts.

1. DCJUST
(Tab 13)

Kristene Laterza

Tab 1

Agenda

Trial Court Executives (TCE)

Minutes
September 6, 2019
Matheson Courthouse
Executive Dining Room
450 S. State St.
Salt Lake City, Utah 84111

9:00 a.m. – 1:30 p.m.

Members:

Russ Pearson, Chair
 Travis Erickson, Vice Chair
 Krista Airam
 Jim Bauer
 Brett Folkman
 Joyce Pace
 Wendell Roberts
 Peyton Smith
 Mark Urry
 Shelly Waite
 Larry Webster

Excused:

Neira Siaperas

AOC Staff:

Hon. Mary T. Noonan
 Cathy Dupont
 Michael Drechsel
 Shane Bahr
 Johnizan Bowers
 Brent Johnson
 Meredith Mannebach
 Chris Palmer
 Jim Peters
 Jeni Wood

Guests:**1. WELCOME AND APPROVAL OF MINUTES: (Russ Pearson)**

Russ Pearson welcomed everyone to the meeting. Shane Bahr introduced Meredith Mannebach as the new District Court Program Administrator. The TCEs introduced themselves and welcomed Ms. Mannebach.

Minutes: After a brief discussion, there were no changes to the minutes.

Motion: Brett Folkman moved to approve the minutes from the August 2, 2019 meeting, as presented. Jim Bauer seconded the motion. The motion passed unanimously.

2. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)

Judge Mary Noonan addressed the recent press coverage regarding the timely signing of warrants. If probable cause is satisfied a warrant can be issued timely. Additionally, defense attorneys are provided opportunities to oppose the warrants.

The Annual Budget meeting was held on August 23. Judge May, Judge Chin, and Judge Pettit will be members of the ad hoc Budget & Finance committee, which will meet for the first time later this month. Larry Webster and Wendell Roberts will attend as TCE representatives. The committee will initially discuss the reallocation of judicial resources between juvenile and district court, the internal reallocation of clerical resources, and converting the one-time funding for the Self-Help Center to ongoing funding.

Judge Noonan thanked the TCEs for their continued support and hospitality with her visits in each district. Krista Airam and Larry Webster noted staff from the Second District appreciated Judge Noonan's visit.

Judge Noonan requested any proposed changes to policies distributed to staff are given a 14-day comment period to allow for responses. Workgroups should document comments received.

The communications matrix comprised of recommendations for better transparency and communication will be discussed at the next TCE meeting.

3. MISSION STATEMENT, VISION, AND GOALS: (Russ Pearson and Johnizan Bowers)

Johnizan Bowers conducted a study to identify barriers and solutions. Mr. Bowers will email the TCEs information discussed at the meeting.

4. ANNUAL LEGISLATIVE MEET & GREETINGS: (Michael Drechsel)

Michael Drechsel said the Liaison Committee believed that the courts should have uniformity when holding legislative meet & greets every other year and is willing to provide a representative from the committee to attend the meet & greets. Cathy Dupont noted having good relationships with legislatures is very important and recommended inviting legislatures to the districts to learn more about the courts.

Mr. Drechsel will discuss the results of the conversation with the Liaison Committee and then report to the TCEs.

5. EVIDENCE STORAGE PROCEDURES FOLLOW-UP: (Mark Urry, Brent Johnson and Chris Palmer)

Chris Palmer is addressing issues identified in the evidence storage audit. Mr. Palmer requested an inventory of evidence currently held by the courts. Mr. Palmer will create a policy for evidence storage and destruction. Brent Johnson provided a description of what is being addressed, including what has been done, what evidence and policy is currently in place, and what to do moving forward. Mr. Palmer requested the TCEs designate, in writing, staff that is authorized to handle evidence.

Mr. Johnson will create a draft memo regarding temporary procedures to follow regarding the collection and storage of evidence. Mr. Johnson confirmed all evidence should follow the same procedures, whether it is paper or physical items.

Judge Noonan summarized that Mr. Johnson will prepare a temporary procedures memo and proposed order; the TCEs will use the Second District procedures in the interim; the TCEs will not destroy any evidence until further instructed; within about a week Mr. Palmer will send a temporary detailed action plan; and the TCEs will conduct a full search of every courthouse for evidence currently stored.

6. LEGAL DEPARTMENT OVERVIEW: (Brent Johnson)

Michael Drechsel was promoted to the Assistant State Court Administrator and is no longer part of the Legal Department, although he assists periodically. Keisa Williams is now staff to Policy & Planning. Nancy Sylvester will take maternity leave in October. Mr. Johnson requested all personnel issues be directed to him. The TCEs thanked Mr. Johnson for his support.

7. COUNCIL, BOARDS AND COMMITTEES WEBSITE: (Jeni Wood)

Jeni Wood provided the TCEs with a variety of website links to the Judicial Council, Boards, committees, TCEs, and Clerks of Court minutes, agendas, and meeting materials. This is an effort to ensure everyone has the right tools to find information needed.

8. DEFENSIVE DRIVER'S TRAINING: (Russ Pearson)

Mr. Pearson reviewed Accounting Manual Section 12-07.00 and asked the TCEs to review the shared Google spreadsheet to ensure their districts are in compliance with the defensive driver training.

9. SUPPORT OF ACTIVE SENIOR JUDGES (RULE 3-113): (Shelly Waite)

Shelly Waite confirmed TCEs should support senior judges who are serving in their district. The Law Library provides senior judges with Code books. Ms. Dupont will request finance provide documentation of senior judges' work history and speak with the senior judges at their annual meeting next week regarding assignments.

10. CLERICAL WEIGHTED CASELOADS: (Russ Pearson)

The Utah clerical weighted caseload model, like those used in other courts, is an aspirational model. It assumes a fully staffed, adequately trained court staff each working at 100% efficiency. It does not account for vacancies and the efficiency challenges of inexperienced staff. This model reflects workload requirements in smaller courts with limited turnover. Courts with regular turnover may perceive the weighted caseload as not fully reflecting their workload.

Revised case processing times (weights) for case types and events in both district and juvenile courts were adopted in 2017. The method of counting case filing and events was not changed. No changes were made to the number of hours available this year. The minimum staffing adjustment was reviewed and no changes were made. The staff available/FTE count is determined by counting DPRs provided by AOC Human Resources. Team managers, case managers and judicial assistants are included in the count. Clerks of court are not counted. The Third District received 2 new judge allocations from the 2019 legislative session and 4 additional clerical staff to be added during FY 2020 that are not accounted for in this study.

Overall, the changes in clerical need were related to decreased referral filings in the juvenile court. The committee noted a substantial shift between the FY19 preliminary and final reports and recognizes referrals counted in the preliminary are still actively being worked on and not reflected in the final report.

The TCEs addressed how part-time employees are calculated in the caseload report. Mr. Pearson noted the 10% deviation was decided many years ago after attempts were conducted at other deviation percentages. Mr. Erickson proposed transferring work electronically between clerks in various districts. If the Council moves judges between districts the clerks be transferred as well. Ms. Dupont recommended the TCEs be prepared to discuss the duties of the clerks as they are often assigned additional duties.

The TCEs will prepare a memo to the Budget & Finance Committee addressing clerical weighted caseloads and their duties.

11. HALLOWEEN COSTUMES AND COSTUME JUDGING CONTEST: (Mark Urry and Shelly Waite)

After brief discussion, the TCEs agreed costumes are allowed as long as employees follow the Professional Appearance Policy.

12. TCE ROUNDTABLE UPDATE BY DISTRICT: (Russ Pearson)

First District: Brett Folkman said Judge Foncesbeck (juvenile court) was nominated to the district court bench.

Second District: Larry Webster converted a clerk of court position to a team manager position earlier this year, they now only have one clerk of court. Their long-standing vacant training coordinator position may be reclassified.

Second Juvenile: Krista Airam stated they hired two probation supervisors. They have two probation officer positions open and will have one more next week open.

Third District: Peyton Smith had to leave the meeting early.

Third Juvenile: Jim Bauer said the West Jordan remodel is complete. Tom Langhorne will attend the mid-management meeting. They hired a new probation supervisor.

Fourth District: Mark Urry noted they recently had issues with DFCM responding and communicating when a flood occurred in the Provo Courthouse basement and a leak on the 8th floor from a broken pipe on the roof.

Fourth Juvenile: Shelly Waite conducted a leadership summit in August.

Fifth District and Juvenile: Joyce Pace is upgrading their security system in the St. George courthouse. Keisa Williams will visit the district to address pretrial release services. They are working on restructuring clerical teams in the Cedar Courthouse. The Fifth District has five specialty courts.

Sixth District and Juvenile: Wendell Roberts said they are starting to demolish the building in Manti where the new courthouse will be.

Seventh District and Juvenile: Travis Erickson is in the process of hiring a new chief probation officer. They have water pressure issues in the Price Courthouse.

Eighth District and Juvenile: Russ Pearson's clerk of court is on FMLA. Judge Peterson has announced his retirement for December.

13. COMBINED JTCE/DTCE OLD/NEW BUSINESS: (Russ Pearson)

Mr. Pearson visited with the Clerks of Court and Chief Probation Officers. The Chief Probation Officers would like to send a representative to the JTCE meetings.

Mr. Pearson reminded the TCEs to complete the Google committee spreadsheet Ms. Wood sent out. Tiffany will assist with completing this. Utah Code § 78A-2-110 does not include supervisor meetings.

The Fourth District is interested in getting a Christmas tree for the courthouse. Accounting Manual Section 07-05.00 Prohibitions section (2) allows for \$50 per courthouse limit of artificial trees, lights, ornaments, and other non-religious decorations.

Law clerks are rejecting case documents in the Fourth District by preparing a written explanation for the filer. Mr. Urry sought forms that could be used for rejection of documents. Mr. Folkman said the clerks in his district send an email stating the document does not meet the filing guidelines.

The State Archives Department sought access to the Fourth District storage center so they can determine when cases are 50 years old. Mr. Urry will discuss this with Brent Johnson.

Mr. Webster stated HR will begin notifying the TCE and Clerk of Court when an employee in their district is put on FMLA.

Ms. Waite has been researching the support service coordinator position's career level.

14. STATUS UPDATE: (Shane Bahr)

Shane Bahr provided information about the JRI audit to the TCEs. Shonna Thomas, the new Court Visitor Volunteer Coordinator, will begin on Monday.

15. DTCE OLD/NEW BUSINESS: (Shane Bahr)

There was no additional business discussed.

16. CONSENT CALENDAR ITEMS

There were no consent calendar items.

17. ADJOURN

The meeting adjourned at 3:00 p.m.

Tab 2

Agenda



Administrative Office of the Courts


Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 4, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Trial Court Executives

FROM: Judge Mary T. Noonan 

RE: Recommendations to Improve Transparency and Communication: Trial Court Executives

In January 2019, the Judicial Council initiated a system review to assess perceptions and needs of the judges and employees in the Utah courts. The first stage of the review was complete in March and resulted in an Interim Report to the Utah Judicial Council Steering Committee, dated March 6, 2019.

The report is a summary of feedback provided by employees and judges with respect to: governance, communication, culture, onboarding and training, recommendations for the state court administrator, sexual harassment policies and procedures and other issues. One common theme is that the courts need to improve communication at every level. We all want timely and clear information, which is critical to understanding and supporting the work of our governing bodies and our many court initiatives.

In the months following the report, we have solicited suggestions from employees and judges regarding ways to improve transparency and communication. Recommendations have poured in from all levels. The following is a summary of the ideas directed to the Judicial Council. (A similar list of suggestions has been compiled for the Judicial Council, AOC managers, boards of judges and clerks of court. Attached.) The Trial Court Executives will review the recommendations at an upcoming meeting (in a discussion led by Cathy Dupont), with the goal of adopting appropriate, practical ideas for improvement.

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

Trial Court Executives

Item	Recommendation	Date	Response *
INVITATIONS/ATTENDANCE			
1	Invite Clerks and Board members to TCE meetings and invite them to report at least annually.		
2	Consider inviting a Clerk and a Board member to serve as a resource to the TCEs, to attend meetings, and otherwise provide input as needed.		
3	Invite Clerks and administrative staff to meetings when an agenda item is related to their work.		Currently, AOC staff attends when they have an agenda item related to their work.
4	Hold some monthly meetings outside of Salt Lake City.		
COMMUNICATION			
5	Assign a TCE to prepare a summary for immediate distribution to the bench and the administration following the meeting along with draft minutes.		
6	TCEs should engage with presenters and seek to more fully understand the issues being raised.		
7	Consider using video technology (possibly ZOOM) for meetings to allow for more employees to attend.		

* Response may include, but is not limited to, actions taken to date, planned action, decision to defer action or other comments.

Trial Court Executives

Item	Recommendation	Date	Response *
	WEBSITE		
8	Publish the TCE agendas and minutes on the Intranet.		The agenda and approved minutes are published on the intranet.
	SETTING GOALS - PUBLICIZING		
9	Adopt annual goals, publish the goals, and report TCE progress to the Council, Boards, judges, and employees.		
10	Consider adopting an annual TCE plan or goals. Publish the goals and report on progress to the Council, Boards, judges and employees.		

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Judicial Council

Item	Recommendation	Date	Response *
	MEMBERSHIP		
1	Consider adding a representative from court administration as a member of the Council.		
	INVITATIONS/ATTENDANCE		
2	Invite Board chairs or designees to attend Council meetings either in person or remotely.		
3	Invite the Appellate Board to report to the Council.	8/5/2019	Scheduled in September
4	Invite a representative TCE and Clerk to each meeting either in person or remotely .		
5	Invite Clerks of Court to report annually, perhaps when the TCEs report.		
6	When the Council or its Executive Committees deliberate a policy proposal, invite representatives of the policy working group to the meeting.		
7	Council members should occasionally attend Board, TCE, Clerks of Court, and AOC Managers meetings to report and to receive feedback.		

* Response may include, but is not limited to, actions taken to date, planned action, decision to defer action or other comments.

Judicial Council

Item	Recommendation	Date	Response *
COMMUNICATION			
8	Have a Council member prepare a bulletin or meeting notes for immediate distribution to the bench and the administration following the meeting and pending approval of the minutes.	6/24/2019	Council will review draft minutes and approve them electronically.
9	Consider allowing Standing Committee Chairs to report remotely, rather than in person.		
10	Clarify communication expectations and protocols between the Council and the TCEs and Clerks of Court.		
ENGAGEMENT			
11	When receiving Standing Committee or Board reports, Council members should engage in more discussion, give fewer “blank stares,” and should put down their tablets and screens.		
12	Chief, keep visiting the districts.		

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Judicial Council

Item	Recommendation	Date	Response *
	WEBSITE		
13	Publish the Council and Executive Committee agendas and minutes on the Intranet.		Already available on internet, we need to take steps to increase awareness.
14	Post a governance organization chart on the Intranet and Internet, including purpose, membership, agendas, and minutes: <ul style="list-style-type: none"> ○ Executive Committees ○ Standing committees ○ Ad hoc committees 		
	SETTING GOALS - PUBLICIZING		
15	Consider adopting an annual Judicial Council plan or goals, publish the plan, and report the Council's progress to the Boards, judges and employees.		

* Response may include, but is not limited to, actions taken to date, planned action, decision to defer action or other comments.

Boards of Judges

Item	Recommendation	Date	Response *
	INVITATIONS/ATTENDANCE		
1	Invite TCEs and Clerks to Board meetings and have them report at least annually.		
2	Consider having a TCE or Clerk serve on the Board or at least serve as a resource.		
3	Invite TCEs and Clerks to meetings when an agenda item is related to their work.		
4	Have the Board chair or a designee attend Judicial Council meetings as needed.		
	COMMUNICATION		
5	Have a Board member prepare a bulletin or meeting notes for immediate distribution to the bench and the administration following the meeting, and pending approval of the minutes.		
6	Seek agenda items from the bench and administration, not just from Board members.		
7	Have the Board chair communicate issues as needed directly with the Council.		

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Boards of Judges

Item	Recommendation	Date	Response *
8	Seek ideas from the bench for annual Board goals.		
9	Frequent updates/presentations from the Boards to the Council.		Currently, the Boards report to the Council semi-annually.
10	Consider using video technology for meetings to allow for more employees to attend.		
11	Board members should engage with presenters and seek to more fully understand the issues being raised.		
	WEBSITE		
12	Post each Board’s purpose, membership, agendas, and minutes on the Intranet and Internet.		
	SETTING GOALS - PUBLICIZING		
13	Adopt annual goals, publish the goals, and report the Boards’ progress to the Council, judges, and staff.		
14	Consider adopting an annual Board plan or goals. Publish the goals and report progress to the Council, judges, and employees.		

* Response may include, but is not limited to, actions taken to date, planned action, decision to defer action or other comments.

Clerks of Court

Item	Recommendation	Date	Response *
INVITATIONS/ATTENDANCE			
1	Invite TCEs and Board members to meetings and have them report at least annually.		Currently, TCEs report to the Council annually and Boards report to the Council semi-annually. (Not sure if they are saying report to the Council or report to the Clerks of Court meeting)
2	Invite TCEs and Judicial Assistants to meetings when an agenda item is related to their work.		
3	Hold some monthly meetings outside of Salt Lake City.		
INTRABODY COMMUNICATIONS			
4	Consider having a TCE and Board member serve as a resource to the Clerks of Court.		
5	Select a member to prepare a summary of the meeting for immediate distribution to administration and the bench along with draft meeting minutes.		
6	Consider using video technology (possibly ZOOM) for meetings to allow for more employees to attend.		

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Clerks of Court

Item	Recommendation	Date	Response *
	ENGAGEMENT		
7	Clerks should engage with presenters and seek to more fully understand the issues being raised.		
	WEBSITE		
8	Publish the Clerks agendas and minutes on the Intranet.		
	SETTING GOALS - PUBLICIZING		
9	Adopt annual goals. Publish the goals and report progress to the Council, Boards, TCEs, the bench, and employees.		
10	Clerks should seek input from judicial assistants and case managers on recommended goals.		

* Response may include, but is not limited to, actions taken to date, planned action, decision to defer action or other comments.

Administrative Office of the Courts

Item	Recommendation	Date	Response *
	COMMUNICATION		
1	Continue and/or implement statewide emails from the State Court Administrator, Juvenile Court Administrator, and other administrators.		
2	Draft minutes of the bi-weekly AOC manager meeting should be edited and distributed to AOC employees, TCEs and Clerks shortly after the meeting.		
3	Consider using video technology (possibly ZOOM) for meetings to allow for more employees to attend.		
4	Managers should discuss with employees current topics being vetted (as appropriate) at the Judicial Council, managers meetings, Boards, TCEs, and Clerks of Court.		
5	Employees should be encouraged to report their concerns and ideas for improving current processes to their managers and upper management as appropriate. With respect to concerns, employees should not be made to feel that they will not be believed or that ideas will be heard.		

* Response may include, but is not limited to, actions taken to date, planned action, decision to defer action or other comments.

Administrative Office of the Courts

Item	Recommendation	Date	Response *
	ORGANIZATION STRUCTURE		
6	Create a flow chart of the boards and committees, including membership, staffing, meeting schedules, reporting structures, and responsibilities. Share the initiatives and actions that the committees are working on.		
7	Create an administrative organization chart.		
8	Create a survey for district employees and internal AOC employees to provide feedback about the various AOC managers, departments and administrators.		
	TRAINING		
9	Increase the number of training opportunities available outside of Salt Lake City.		
10	Managers should train employees on where to find information about the various organizations and administrative bodies throughout the Judiciary.		

* Response may include, but is not limited to, actions taken to date, planned action, decision to defer action or other comments.

Administrative Office of the Courts

Item	Recommendation	Date	Response *
	PARTICIPATION		
11	Managers should create opportunities for lower level employees to participate in and present to the AOC managers meetings.		
12	Managers should encourage the exchange of ideas between AOC staff and those outside the AOC.		
13	Managers should encourage employees to attend meetings or other court proceedings to learn about the different functions of the Judiciary (time permitting). Participation in meetings through Zoom technology should be considered.		

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Tab 3

1 Rule 4-410. Courthouse closure.

2 Intent:

3 To establish protocols surrounding the closure of a court's physical building in the event that
4 extreme weather or other emergency situation prevents the safe arrival to, or the ability to safely
5 conduct business in, the courthouse.

6 Applicability:

7 This rule applies to courts of record and not of record.

8 Statement of the Rule:

9 (1) Definitions.

10 (1)(A) In courts of record:

11 (1)(A)(i) "Presiding judge" refers to the judge who presides over the district or
12 court level.

13 (1)(A)(ii) "Court executive" refers to the trial court executive in the district and
14 juvenile courts and the Appellate Court Administrator in the appellate
15 courts.

16 (1)(B) In courts not of record:

17 (1)(B)(i) "Presiding judge" refers to the local justice court presiding judge, not
18 the district level presiding judge.

19 (1)(B)(ii) "Court executive" refers to the local justice court administrator.

20 (2) In the event the presiding judge determines that a courthouse is not safe or is not capable
21 of supporting the core mission of the court due to extreme weather conditions or other
22 emergency situation, the presiding judge has the discretion to determine, in consultation
23 with the court executive, court security, and authority responsible for the building's
24 operation and maintenance, how to continue supporting the core mission of the court.

25 (3) The presiding judge(s) may order:

26 (3)(A) the time-limited partial closure of the courthouse;

27 (3)(B) the time-limited complete closure of the courthouse; or

28 (3)(C) the indefinite complete closure of the courthouse.

29 (4) If the presiding judge orders a complete or partial building closure that in any way affects
30 the public's ability to conduct court business in that location,

- 31 (4)(A) the presiding judge may order that operations resume in an alternate location;
32 and
- 33 (4)(B) the presiding judge shall ensure that notice is posted in at least two conspicuous
34 places informing the public of:
- 35 (4)(B)(i) the building's physical closure;
36 (4)(B)(ii) the anticipated length of time the building will be closed; and
37 (4)(B)(iii) the procedures for conducting court business, including where cases
38 will be heard and how to file court documents.
- 39 (5) Communication of decision to close the courthouse.
- 40 (5)(A) In courts of record, the presiding judge shall as soon as possible inform the State
41 Court Administrator, the Chief Justice, the Court Communications Director, the
42 Court Security Director, the Court Facilities Director, the Sheriff whose
43 jurisdiction covers the affected courthouse, and the other organizations or
44 lessees occupying the building of the presiding judge's decision to close the
45 courthouse.
- 46 (5)(B) In courts not of record, the presiding judge shall as soon as possible inform the
47 court executive, the Justice Court Administrator, the Court Communications
48 Director, the Court Security Director, the law enforcement agency whose
49 jurisdiction covers the affected courthouse, and the other building occupants of
50 the presiding judge's decision to close the courthouse.
- 51 (6) The Court Communications Director shall immediately inform the media and public of the
52 closure.
- 53 (7) If the presiding judge determines that there is a need to extend a court closure order, the
54 presiding judge shall so order and the steps of paragraphs (1) through (4) shall repeat.
- 55 (8) For all courthouses that house more than one level of court, the presiding judges of each
56 court level shall confer and come to a consensus decision regarding action pursuant to
57 subsection (3) above.
- 58 (8)(A) In the event that a closure is ordered by consensus, the presiding judges of the
59 closed courthouse shall all sign the closure order.
- 60 (8)(B) In the event there is not consensus among the presiding judges, the Chief
61 Justice shall determine whether to issue and sign the closure order.

Tab 4

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Human Resources Policy

SECOND LANGUAGE STIPENDS 570

SCOPE

This policy applies to all court employees.

POLICY AND PROCEDURE

1. Minimum Qualifications.

1.1 The employee must have completed the New Employee Orientation prior to applying for a Second Language Stipend.

1.2 The employee must demonstrate the required level of proficiency on the Oral Language Proficiency Exam.

1.3 An employee receiving a Second Language Stipend will be subject to recertification on a periodic basis not to exceed three (3) years.

2. Application Process.

2.1 All employees applying for a Second Language Stipend shall complete the following process:

- Complete the Second Language Stipend application and Agreement with the appropriate information and approving signatures and submit to the Court Interpreter Program Coordinator; and
- Complete and pass the Oral Proficiency Exam.

2.2 If an employee internally transfers from one District to another, the Second Language Stipend will not transfer with the employee. As outlined in Section 2.1, the employee must reapply for a Second Language Stipend within the new District.

3. Availability and Removal.

3.1 The Second Language Stipend is an extra benefit requested by the employee and the Court Executive based on need and it is not considered part of an employee's base salary.

3.2 An employee's Second Language Stipend can be reassigned, reduced or removed at any time and for any reason.

3.3 A request for a Second Language Stipend can be approved or denied based on the availability of funds and/or slots.

4. Usage

4.1 The Court Executive or designee shall approve and monitor all employee recipients of the Second Language Stipend.

4.2 The Second Language Stipend is subject to the following usage guidelines:

- The employee must be reasonably available and use the second language skills on a regular basis.
- The employee shall provide interpreting in a Court proceeding only as outlined in Rule 3-306(11).

5. Administration.

5.1 The Court Interpreter Program Coordinator is responsible for making available the appropriate forms, managing the Oral Proficiency Exam contract, and arranging for the test taking of the Oral Proficiency Exam.

5.2 The Human Resources Department is responsible for the electronic tracking of stipend recipients, positions, locations, and employment status (full time or part-time).

5.3 The application, agreement, test and test results shall be kept in the official employee personnel file housed with the Human Resources Department as well as in electronic form. 000034

5.4 The Second Language Stipend is dispersed in each recipient's bi-weekly paycheck, with the amount based on their employment status of full time or part-time and pro-rated accordingly.

Page Last Modified: 1/6/2016

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Rule 3-306.04. Interpreter appointment, payment, and fees.**Intent:**

To state the policy of the Utah courts to secure the rights of people under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. in legal proceedings who are unable to understand or communicate adequately in the English language.

To outline the procedures for appointment and payment of interpreters for legal proceedings.

To provide certified interpreters in legal proceedings in those languages for which a certification program has been established.

Applicability:

This rule shall apply to legal proceedings in the courts of record and not of record. This rule shall apply to interpretation for non-English speaking people and not to interpretation for persons with a hearing impairment, which is governed by Utah and federal statutes.

Statement of the Rule:

(1) Appointment.

(1)(A) Except as provided in paragraphs (1)(B), (1)(C) and (1)(D), if the appointing authority determines that a party, witness, victim or person who will be bound by the legal proceeding has a primary language other than English and limited English proficiency, the appointing authority shall appoint a certified interpreter in all legal proceedings. A person requesting an interpreter is presumed to be a person of limited English proficiency.

(1)(B) An approved interpreter may be appointed if no certified interpreter is reasonably available.

(1)(C) A registered interpreter may be appointed if no certified or approved interpreter is reasonably available.

(1)(D) A conditionally-approved interpreter may be appointed if the appointing authority, after evaluating the totality of the circumstances, finds that:

(1)(D)(i) the prospective interpreter has language skills, knowledge of interpreting techniques and familiarity with interpreting sufficient to interpret the legal proceeding; and

(1)(D)(ii) appointment of the prospective interpreter does not present a real or perceived conflict of interest or appearance of bias; and

(1)(D)(iii) a certified, approved, or registered interpreter is not reasonably available or the gravity of the legal proceeding and the potential consequence to the person are so minor that delays in obtaining a certified or approved interpreter are not justified.

(1)(E) The appointing authority may appoint an interpreter with certified or approved or equivalent credentials from another state if the appointing authority finds that the approved, registered or conditionally approved interpreters who are reasonably available do not have the language skills, knowledge of interpreting techniques, or familiarity with interpreting sufficient to interpret the legal proceeding. The appointing authority may consider the totality of the circumstances, including the complexity or gravity of the legal proceeding, the potential consequences to the person of limited English proficiency, and any other relevant factor.

(1)(F) No interpreter is needed for a direct verbal exchange between the person and court staff if the court staff can fluently speak the language understood by the person and the state court employee is acting within guidelines established in the Human Resources Policies and Procedures. An approved, registered or conditionally approved interpreter may be appointed if the court staff does not speak the language understood by the person.

(1)(G) The appointing authority will appoint one interpreter for all participants with limited English proficiency, unless the judge determines that the participants have adverse interests, or that due process, confidentiality, the length of the legal proceeding or other circumstances require that there be additional interpreters.

(2) Court employees as interpreters. A court employee may not interpret legal proceedings except as follows.

(2)(A) A court may hire an employee interpreter. The employee will be paid the wages and benefits of the employee's grade and not the fee established by this rule. If the language is a language for which certification in Utah is available, the employee must be a certified interpreter. If the language is a language for which certification in Utah is not available, the employee must be an approved interpreter. The employee must meet the continuing education requirements of an employee, but at least half of the minimum requirement must be in improving interpreting skills. The employee is subject to the discipline process for court personnel, but the grounds for discipline include those listed in rule 3-306.05.

(2)(B) A state court employee employed as an interpreter has the rights and responsibilities provided in the Utah state court human resource policies, including the Code of Personal Conduct, and the Court Interpreters' Code of Professional Responsibility also applies. A justice court employee employed as an interpreter has the rights and responsibilities provided in the

county or municipal human resource policies, including any code of conduct, and the Court Interpreters' Code of Professional Responsibility also applies.

(2)(C) A court may use an employee as a conditionally-approved interpreter under paragraph (1)(D). The employee will be paid the wage and benefits of the employee's grade and not the fee established by this rule.

(3) Review of denial of request for interpreter. A person whose request for an interpreter has been denied may apply for review of the denial. The application shall be decided by the presiding judge. If there is no presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer the application to any judge of the court or any judge of a court of equal jurisdiction. The application must be filed within 20 days after the denial.

(4) Waiver. A person may waive an interpreter if the appointing authority approves the waiver after determining that the waiver has been made knowingly and voluntarily. A person may retract a waiver and request an interpreter at any time. An interpreter is for the benefit of the court as well as for the non-English speaking person, so the appointing authority may reject a waiver.

(5) Translation of court forms. Forms must be translated by a team of at least two people who are interpreters certified under this rule or translators accredited by the American Translators Association.

(6) Payment.

(6)(A) The fees and expenses for language access shall be paid by the administrative office of the courts in courts of record and by the government that funds the court in courts not of record. The court may assess the fees and expenses as costs to a party as otherwise provided by law. (Utah Constitution, Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1, 77-32a-2, 77-32a-3, 78B-1-146(3), URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and regulations and guidance adopted under that title.)

(6)(B) A person who has been ordered to pay fees and expenses for language access may apply to the presiding judge to review the order. If there is no presiding judge, the person may apply to any judge of the court or any judge of a court of equal jurisdiction. The application must be filed within 20 days after the order.

(7) Fees.

(7)(A) Every three years, the Judicial Council shall review a market survey conducted by the Language Access Program Manager and shall set the fees and expenses to be paid to interpreters during the following three fiscal years by the courts of record. Payment of fees and expenses shall be made in accordance with the Courts Accounting Manual.

(7)(B) The local government that funds a court not of record shall set the fees and expenses to be paid to interpreters by that court.

Effective May 1, 2016

Tab 5

Agenda

Employee Recognition

Awards including other Authorized Court Functions

Resources:

- State Finance [Policies and Procedures](#) 05-03.06, 05-03.07 and 05-03.08 DAS
- Section 07-03.04 Forms and Instructions for FI48 Employee Reimbursement/Earnings examples
- Courts Human Resources [Incentive Awards 320 Policy](#)
- See [Section 01-01.00 Records Retention](#)
- See 07-03.04 Forms and Instructions for Non-cash and Cash Equivalent Logs; as well as instructions for [SAP Reconciliation](#).
- [Section 07-04.00 Purchasing Card](#), [Section 07-04.01 Store Account/Cards](#), and [Section 12-01.00 Per Diem Rates](#)
- See also [Section 07-03.00 Group Gatherings](#)
- See also [Section 07-00.00 Purchasing](#)

Purpose:

This policy explains the annual budgeting and allocation of incentive award funds, the purchase of employee non-cash incentive awards and describes authorized court functions other than retirement where court funds may be used to provide per diem meals to employees.

Policy:

1. Incentive award funding is determined by the Judicial Council as a portion of each fiscal year’s beginning carry-forward balance. Incentive awards may be monetary or non-monetary. Monetary awards may be given to employees based upon the annual availability of funds and expire at the end of the fiscal year. Refer to Human Resources Incentive Awards 320 policy.
2. Each court district receives an allocation based on the number of FTEs. A spreadsheet with the allocation amount and a calculation of estimated taxes is provided to the trial court executives early each fiscal year.
3. When a cash equivalent award is given to an employee, management must ensure an FI48 Employee Reimbursement/Earnings Request form is

completed and submitted to the payroll clerk for immediate entry into the payroll system.

4. An amount equal to 30% of the value of the award will be added to cover the estimated taxes to be withheld.
5. Up to three times each year a group gathering may be held for the purpose of recognizing court employees' years of service. These group gatherings may also include group training opportunities and may include a meal at prevailing per diem meal rates. As required of other court sponsored meetings that include meals, functions should include an agenda and list of court employees who are in attendance. (Refer to Section 07-03.00 Group Gathering)
 - a. Incentive funds should not be used to pay for these meetings.

Procedure:

Cash Awards

1. Recipients of cash awards should be notified prior to the date the funds are added to their payroll.
2. Payroll data entry for cash awards must be completed by the pay period entry cutoff date (typically the Friday before a payday).
3. Enter the recipient's name and employee identification number on Finance form FI48 and give the form to the payroll clerk along with the amount of the cash award.

Payroll entry

1. The amount of the cash award is to be increased by 30% to cover estimated taxes the recipient will pay on the award.
2. Enter the value of the cash award including estimated taxes using wage type 1139. Refer to Form [FI48: Incentive Award-Cash example](#)

Cash Equivalent Awards

Purchasing Requirements for cash equivalent awards:

1. Cash equivalent awards (typically gift cards or other non-monetary items) are to be purchased using a state warrant (FINET check) and never with a purchasing card. A memo stating the reason for purchase of gifts or gift cards shall be retained in the FINET document header.
2. Use FINET object code 5150 for all purchases of cash equivalent incentive awards.
3. Courts are strongly discouraged from purchasing gift certificates or gift cards that require an activation fee (cards that reflect a credit card logo).

Distribution of cash equivalent awards

1. Enter the recipient's name and employee identification number on Finance form FI48 and give the form to the payroll clerk along with the amount of the cash equivalent award.
2. Present the award to the employee

Payroll entry

3. The amount of the cash equivalent award is to be increased by 30% to cover estimated taxes the recipient will pay on the award. Use this spreadsheet to calculate the estimated tax amount.
4. Enter the value of the cash equivalent award using wage type 1128 and the 30% estimated tax amount using wage type 1139. Refer to Form FI48: [Incentive Award-Cash equivalent example](#)

Record keeping:

1. AOC management and court executives will designate an employee to maintain a log of cash equivalent incentive awards. The log must include:
 - a. all purchases of cash equivalent cards or gifts
 - b. each recipient of a cash equivalent award issued
 - c. the amount of each cash equivalent award issued
2. A second employee (custodian) will be provided a copy of the log and is responsible to secure the inventory of cash equivalent awards in a locked device.
3. The custodian will keep the key to the locked device in his/her possession at all times. A duplicate key to the locked device will be secured in a dual control key box to provide access in the custodian's absence.

Non-cash Awards

1. Non-cash incentive awards (candy, ham turkey, etc.) may not exceed \$50 in value.
2. Use FINET object code 6270 for purchases of non-cash incentive awards.
2. AOC management and court executives will designate an employee to maintain a log of non-cash equivalent incentive awards. The log must include:
 - a. all purchases of non-cash awards or gifts
 - b. each recipient of a non-cash award issued
 - c. a description the non-cash item distributed
 - d. the name of the employee making the request
3. A second employee (custodian) will be provided a copy of the log and is responsible to secure the inventory of non-cash items.
4. There is no payroll entry required for non-cash award items.

5. Retain records according to the current record retention schedule.

Quarterly Reconciliation of Cash and Non-cash Equivalent Incentive Awards

1. The employee designated to maintain the logs referenced in this section is responsible to reconcile the cash equivalent and non-cash incentive awards quarterly. The reconciler must:
 - a. compare the items purchased to the custodian's log,
 - b. verify the items in inventory
 - c. verify the items distributed for the past quarter.
 - d. for cash equivalent awards, reconcile the log to the payroll [SAP Report](#) to ensure an FI 48 form was processed taxing each award.
2. Supporting accounting documentation for the purchase, inventory, and distribution of cash and non-cash equivalent incentive awards must be retained in addition to logs used to complete the quarterly reconciliation based on the courts retention schedule. Any discrepancies must be reported to management for resolution.

Retirement

Resources:

- [State Finance Policies and Procedures, 05-03.06](#), 05-03.07 and 05-03.08.
Important note: Linking to the State Accounting Policy and Procedure Manual may open a new tab.
- Section 07-03.04 Forms and Instructions for FI48 Employee Reimbursement/Earnings examples
- See also Section [07-03.02 Employee Recognition](#)

Policy:

Court employees who retire may receive a retirement gift or cash up to \$200 in value. For the purposes of this policy, gift certificates or gift cards are considered to be cash awards. It is not the intention of this policy to combine gifts and cash in order to reach the maximum value of a retirement gift. Employees leaving court retirement for any reason other than retirement are not entitled to this benefit.

Cash Retirement Award Procedure:

1. A cash award (up to \$200) must be distributed to retiring employees through payroll.
2. A cash award must be paid out **at least one pay period prior** to the retiring employee’s final paycheck.
3. All cash awards are taxable to the employee. To mitigate the impact of taxes on cash awards, an amount equivalent to 30% of the cash award may be included with the award.
 - a. Cash retirement awards are entered into payroll using form FI 48
 - b. The cash award amount (usually \$200) is entered as wage type 1153
 - c. The 30% tax equivalent is entered as wage type 153
4. A retirement award ***purchased by the awarded employee and reimbursed*** by the Courts is considered a cash award and is taxable.
5. Refer to the Form FI 48: [Retirement Service Award-Cash example](#)

Cash Equivalent Retirement Award Procedure:

1. Cash equivalent awards (gift certificates or gift cards) valued up to \$200 are entered into payroll using wage type 1128 and the 30% equivalent taxes entered using wage type 1139.
2. Refer to the Form FI 48: [Retirement Service Award-Cash Equivalent example](#)

Non-cash Retirement Award Procedure:

1. Non-cash awards such as pins, jewelry, watches, etc. valued up to \$200 may be given as retirement gifts in lieu of a cash or cash equivalent award.
2. Awards in this category are not taxable to the retiring employee.

Retirement group gatherings

1. A group gathering may be held for employees retiring from court service.
2. The cost of refreshments for a retirement group gathering should not exceed \$5.00 per person based on estimated attendance. Court executives may approve up to \$150 for refreshments if the expected attendance is small and the \$5.00 per person limit will be inadequate.
3. If the estimated costs exceed \$1,000, purchasing rules (obtain bids prior to obligating court funds) must be followed.
4. Employees leaving court employment for any reason other than retirement do not qualify for group gathering refreshments at court expense.

Other items

1. Plaques may be presented to retiring employees. The cost of a plaque and any engraving should not exceed \$50.
2. The value of a plaque is not considered as part of a retirement award.
3. Employees leaving court employment but not retiring are not eligible for any of the awards or gifts described in this section. Going away parties for non-retiring employees may not be paid with court funds.
4. No court funds may be used to purchase floral arrangements (live or artificial), professionally printed invitations, postage, etc. for a retirement function. The use of court letterhead, email or flyers to announce retirement functions is allowed.
5. Use FINET object code 6276 to record the costs for retirement functions. All purchasing and finance policies must be followed.

6. Personal expenses for retirement functions may be reimbursed using form FI 48 or through the regular FINET payment payables process.



****Submitted Date** _____ ***Employee Identification Number** _____

****Form Control Number** _____ ****Employee Name** _____ ****Dept / Unit** _____

Transaction I.D.		
Type	Department	Document Number

Acct. Period (MM) _____ Fiscal Year (YY) _____ Street Address _____
 City _____
 UT _____
 State _____ Zip Code _____

Department Control #: _____
 *Dept. Name _____
 *Division _____

****Read Only Fields. *Fields Required to save form.**

EMPLOYEE REIMBURSEMENT/EARNINGS REQUEST

Wage Type	Reimbursement/Earning Type	\$ Amount	Fund	Dept	Unit	Approp	Object	Act	Func	Program	Phase	Documentation to attach, etc.
Paid Thru FINET	Cell/Telephone						6126					Cell/Telephone Bills
	In-State Travel Advance						6048					See Travel Rules, Attach Schedule Showing Destination, Calculations, and Dates. Out of State-include copy of FI 5.
	Out-of-State Travel Advance						6098					
	Registration						6276					Registration Receipt
	Education Non-Tax						6282					Tuition Receipt/Report Card/Contract Agreement
	Parking / Bus Pass						6166					Mass Transit Receipts
Paid Thru Payroll	1125 \$3 Commute Fringe (a)											Record Date(s) in Comments Box Below
	1194 Taxable Overtime Meal Allowance (b)											Record Date(s) in Comments Box Below
	1154 Education Non-Tax											Tuition Receipt/Report Card/Contract Agreement
	1145 Relocation Taxable											Include required documentation per Reimbursements Policy
	1135 Service Award Check											
	1139 Incentive Award	\$60.00	1000	020	XXXX	XXX						Use these codes when payment is included on a paycheck
	1153 Retirement Service Award Check	\$200.00	1000	020	XXXX	XXX						Use this code when awarded savings bonds or gift certificates
1128 Service/Retirement Award Cash Equivalent												
*												
Total		\$260.00	*Use the line above for payroll items not listed									

(a) \$3 per day per round trip commute is taxable (FIACCT 10-01.00)
 (b) For Overtime Meal Allowance, a maximum of \$10 per day is allowed (FIACCT 05-03.05)

I hereby certify that all items of expense included in this statement were incurred in the discharge of authorized official business and that the amounts are correct and proper charges.

***Employee Signature** Title Phone

***Authorized Approval** Title

Comments/Explanations
 Example of a \$200 cash retirement award. Record the \$200 using wage type 1153 and value added amount for taxes to wage type 1139. Typically 30% of the award amount.
 Please remember to use your unit and approp.

****Read Only Fields. *Fields Required to save form.**

Tab 6

Agenda

25 Years of Service - 2018

Dist/Dept/Prog	Emp ID	First Name	Last Name	Ct yrs	Conference
AOC	800304	Brent	Johnson		
4th Juv	800999	Lynnette	Carter		
5th Dist	800996	Michelle	Pollock		
4th Dist	801313	Cora	Gant		
4th Dist	800013	Jamila	Rahman-McNeeley		
3rd Dist	800151	Cathie	Montes		
7th Dist	800726	Ginger	Hills		
AOC	800125	Maria	Barrientez		
6th Dist	800813	Tamara	Carter		
AOC	800717	Diane	Williams		
3rd Dist	145403	Debbie	Foust		

25 Years of Service - 2017

Dist/Dept/Prog	Emp ID	First Name	Last Name	Ct yrs
2nd Dist	801124	GLEND A	PITTMAN	25
2nd Dist	800263	PAM	CAMPBELL	25
AOC-IT	801152	JULIE	POULSON	25
4th Juv	800771	SHELLY	WAITE	25
4th Dist	801201	SHARON	JONES	25
4th Juv	800692	JAY	HUGHES	25
2nd Dist	800743	MARY KAYE	DIXON	25
3rd Dist	800700	VANESSA	BENEDICT	25

25 Years of Service - 2018

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25 Years of Service - 2017

Dist/Dept/Prog	Emp ID	First Name	Last Name	Ct yrs
2nd Dist	801124	GLEND A	PITTMAN	25
2nd Dist	800263	PAM	CAMPBELL	25
AOC-IT	801152	JULIE	POULSON	25
4th Juv	800771	SHELLY	WAITE	25
4th Dist	801201	SHARON	JONES	25
4th Juv	800692	JAY	HUGHES	25
2nd Dist	800743	MARY KAYE	DIXON	25
3rd Dist	800700	VANESSA	BENEDICT	25

25 Years of Service - 2018

Dist/Dept/Prog	Emp ID	First Name	Last Name	Ct yrs	Conference
AOC	800304	Brent	Johnson		
4th Juv	800999	Lynnette	Carter		
5th Dist	800996	Michelle	Pollock		
4th Dist	801313	Cora	Gant		
4th Dist	800013	Jamila	Rahman-McNeeley		
3rd Dist	800151	Cathie	Montes		
7th Dist	800726	Ginger	Hills		
AOC	800125	Maria	Barrientez		
6th Dist	800813	Tamara	Carter		
AOC	800717	Diane	Williams		
3rd Dist	145403	Debbie	Foust		

25 Years of Service - 2017

Dist/Dept/Prog	Emp ID	First Name	Last Name	Ct yrs
2nd Dist	801124	GLENDIA	PITTMAN	25
2nd Dist	800263	PAM	CAMPBELL	25
AOC-IT	801152	JULIE	POULSON	25
4th Juv	800771	SHELLY	WAITE	25
4th Dist	801201	SHARON	JONES	25
4th Juv	800692	JAY	HUGHES	25
2nd Dist	800743	MARY KAYE	DIXON	25
3rd Dist	800700	VANESSA	BENEDICT	25

25 Years of Service - 2018

Dist/Dept/Prog	Emp ID	First Name	Last Name	Ct yrs	Conference
AOC	800304	Brent	Johnson		
4th Juv	800999	Lynnette	Carter		
5th Dist	800996	Michelle	Pollock		
4th Dist	801313	Cora	Gant		
4th Dist	800013	Jamila	Rahman-McNeeley		
3rd Dist	800151	Cathie	Montes		
7th Dist	800726	Ginger	Hills		
AOC	800125	Maria	Barrientez		
6th Dist	800813	Tamara	Carter		
AOC	800717	Diane	Williams		
3rd Dist	145403	Debbie	Foust		

25 Years of Service - 2017

Dist/Dept/Prog	Emp ID	First Name	Last Name	Ct yrs
2nd Dist	801124	GLEND A	PITTMAN	25
2nd Dist	800263	PAM	CAMPBELL	25
AOC-IT	801152	JULIE	POULSON	25
4th Juv	800771	SHELLY	WAITE	25
4th Dist	801201	SHARON	JONES	25
4th Juv	800692	JAY	HUGHES	25
2nd Dist	800743	MARY KAYE	DIXON	25
3rd Dist	800700	VANESSA	BENEDICT	25

Tab 7

Human Resources Policy

CLASSIFICATION 330

PURPOSE

The purpose of this policy is to establish guidelines for classifying positions within the court system.

SCOPE

This policy establishes the job classification plan, defines the content of the plan, and sets forth guidelines for assuring that positions are assigned to appropriate job classifications. In addition, the policy provides a process for employees to request review of their job classification designation.

This policy applies to all court employees.

CROSS REFERENCES

[Compensation, Policy 310](#)

[Grievance and Appeal, Policy 620](#)

POLICY AND PROCEDURE

1. Classification Plan Established.

1.1 The director shall establish and maintain a classification plan.

1.2 All court positions shall be classified and supported by written specifications. The director shall review the specifications at intervals not to exceed five years.

1.3 A [job specification](#) shall describe the more typical responsibilities which may be allocated to a classification, but shall not be construed to restrict the assignment of other duties related to the classification.

2. Administration of the Classification Plan.

2.1 When a new position is proposed, management shall send the [director](#) a request for classification of the position, along with the position's proposed duties and responsibilities.

2.2 The director shall assign a new position to the proper classification after evaluating the required duties, responsibilities, skills, education, and experience without regard to the personal characteristics, abilities, or qualifications of a prospective incumbent.

3. Request for Classification Review.

3.1 The director may conduct a classification review of an existing position as part of a classification study, upon request from management, or as job functions are reorganized or pay equity issues are generated.

3.2 A request for classification review must be made in writing and must include an explanation of the reason for the request.

3.3 An employee requesting a classification review shall submit the request to management who shall determine if the request is meritorious. If management finds the request to be meritorious, management shall justify in writing the necessity for the review. This justification, along with the original employee request, shall be forwarded to the [director](#) who shall determine whether a classification review shall be conducted.

3.3.1 Factors to be considered in whether a review shall be conducted include, but are not limited to, the following:

3.3.1.1 length of time since position was last reviewed;

3.3.1.2 presence or absence of significant changes in job responsibilities since position was last reviewed; and

3.3.1.3 priorities for use of human resource division time and resources.

3.4 If a classification review is to be conducted, the director shall classify a position after evaluating the required duties, responsibilities, skills, education, and experience without regard to the personal characteristics, abilities, or qualifications of a prospective incumbent.

3.4.1 After reviewing or establishing a class of positions, the director shall perform the evaluation and make recommendations to the State Court Administrator, who shall make the final decision.

3.4.2 Implementation of reclassifications will be subject to budgetary limitations.

3.5 If the director determines that a classification review shall not be conducted, the director shall outline the reason(s) for this decision in writing for the requesting employee within ten working days of receipt of the request.

3.5.1 Denied requests for classification reviews may be resubmitted at a later date for reconsideration.

3.5.2 The decision to deny a request for classification review shall not be grievable to the [Career Service Review Board](#).

4. Procedure for Submitting Classification Review Appeal.

4.1 If the employee is dissatisfied with the director's decision, the employee may, within 15 days of receipt of the written decision, request review by the State Court Administrator.

4.1.1 The employee shall submit the request for review in writing to the director.

4.2 Within 60 days of receipt of a written appeal, the State Court Administrator shall make a written decision and forward a copy to the employee and the director.

State of Utah

Department of Human Resource Management

Job Description

TITLE: SUPPORT SERVICES COORDINATOR I	
JOB ID: 10730	STATUS: Active
AGENCY: 020 - Judicial Branch	EFFECTIVE DATE: 11/19/2016
BENCHMARKED TO: EXEMPT	
HIGHLY SENSITIVE: [None]	
WORKING LEVEL: N/A	CLASSIFIED: No
SUPERVISORY LEVEL: [None]	FLSA EXEMPT: No
PAY RANGE: \$17.43 - \$26.17	
EEO ID & PROBATIONARY PERIOD: Paraprofessional - 12 months	
WORKING CONDITIONS: Everyday Risks	PHYSICAL REQUIREMENTS: Sedentary

Purpose and Distinguishing Characteristics

(Description of the job which distinguishes it from other job(s) in a series or family)
In consultation with the audit and finance departments and the Court Executive, performs accounting and auditing of revenue and trust accounts for multiple court sites within a multi-district region. Serves as a regional liaison for the finance and auditing divisions. Under the direction of a Court Executive, incumbents in this class perform a variety of management support services for a judicial district such as budgeting, cost studies, lease and contract management, records management and related administrative functions

Examples Of Tasks

(More specific information about the job can be found in the Purpose and Distinguishing Characteristics. This list contains tasks that are typically associated with the job. It is not all-inclusive and may vary from position to position. Hiring agencies may, depending on the specific nature of the position, modify these tasks and/or identify additional tasks, based on a current position analysis.)
1.) This position has three career levels where additional skills and responsibilities may be required
2.) Performs accounting and auditing of revenue and trust accounts for multiple court sites, including evaluation of existing procedures, consulting, and training local staff. Serves as consultant to assist staff with accounting related problems
3.) Serves as a regional liaison for the finance and auditing divisions in order to monitor local compliance with accounting procedures and court policies.
4.) Coordinates maintenance of accounting records; performs quality control audits in order to ensure the accuracy of financial records
5.) Participates on statewide budget and accounting policy development committees.
6.) Participates in evaluating and adapting application software for use in performing accounting procedures. Performs training and consulting regarding use of accounting software for multiple court sites
7.) Assists with identifying and composing the justification for supplemental items in budget requests on a district level
8.) Gathers data on historical trends, current and special circumstances, funding sources; assesses trends and identifies anticipated expenditures; assists management with developing rationale for work program requests
9.) Performs cost studies regarding various management proposals; assists the Court Executive with planning expenditures
10.) Assists with monitoring of district budgets; compiles historical and projected information regarding expenditures; prepares reports, spreadsheets, graphs, and tables to detail fiscal matters; compares expenditures against available revenues
11.) Assists the Court Executive by recommending adjustments to achieve compliance with budget.
12.) Performs caseload studies on a district level
13.) Reviews and approves billings; troubleshoots billing problems; processes lease agreements
14.) Processes contracts according to established policies; prepares contracts and contract amendments; may assist in preparation and submission of grant applications
15.) Maintains inventory records for district's fixed assets; accounts for acquisitions; may conduct on-sight reviews to validate inventory accounting; provides consultation to staff regarding inventory control mechanisms

16.) Coordinates motor pool activities; maintains records of allocation, use, maintenance and requisition of vehicles; prepares accounting reports regarding vehicle use
17.) Coordinates district personnel practices according to established procedures; processes personnel and payroll actions consistent with policies; maintains personnel records.
18.) Serves as district liaison with the personnel division in the administrative office
19.) Monitors and coordinates district record keeping systems; serves as liaison with the data processing function in the administrative office
20.) Gathers, organizes, and analyzes statistical data in order to provide management with information needed to evaluate and develop special programs
21.) Performs other related duties as assigned

Knowledge, Skills, And Abilities

(This list contains KSAs that are typically associated with the job. It is not all-inclusive and may vary from position to position. Hiring agencies may, depending on the specific nature of the position, modify these KSAs and/or identify additional KSAs, based on a current position analysis.)

- 1.) Knowledge of: practices and procedures related to court processes, accounting, purchasing, lease management, contract management, inventory control, motor pool coordination, and data processing.
- 2.) Skills include: electronic spreadsheet functions, word processing and power point presentations
- 3.) Ability to: communicate effectively verbally and in writing; establish and maintain effective working relationships with employees, representatives of allied organizations and members of the public
- 4.) Apply general management principals to specific organizational and operational problems; and perform mathematical calculations

Other Requirements

Description	Comments
Bachelor's degree in public or business administration, accounting or related field plus one year of full time paid professional related employment or	
substitutions on a year for year basis as follows: related graduate level education for the required employment or full time paid professional related employment for the required education	

Categories

ADMINISTRATION / MANAGEMENT
 CLERICAL / OFFICE SUPPORT
 COURTS
 FISCAL / BUDGET / PURCHASING

Created By: SARAH OSMUND	Created On: 12/29/2016
Approved By: SARAH OSMUND	Approved On: 12/29/2016
	End Date:

State of Utah

Department of Human Resource Management

Job Description

TITLE: SUPPORT SERVICES COORD II	
JOB ID: 10732	STATUS: Active
AGENCY: 020 - Judicial Branch	EFFECTIVE DATE: 06/06/2015
BENCHMARKED TO: EXEMPT	
HIGHLY SENSITIVE: [None]	
WORKING LEVEL: N/A	CLASSIFIED: No
SUPERVISORY LEVEL: [None]	FLSA EXEMPT: No
PAY RANGE: \$19.39 - \$29.44	
EEO ID & PROBATIONARY PERIOD: Paraprofessional - 12 months	
WORKING CONDITIONS: Everyday Risks	PHYSICAL REQUIREMENTS: Sedentary

Purpose and Distinguishing Characteristics

(Description of the job which distinguishes it from other job(s) in a series or family)

In consultation with the audit and finance departments and the Court Executive, performs complex accounting and auditing of revenue and trust accounts for multiple court sites within a multi-district region. Serves as a regional liaison for the finance and auditing divisions. Under the direction of a Court Executive, incumbents in this class perform a variety of management support services for a judicial district such as budgeting, cost studies, lease and contract management, records management and related administrative functions.

Examples Of Tasks

(More specific information about the job can be found in the Purpose and Distinguishing Characteristics. This list contains tasks that are typically associated with the job. It is not all-inclusive and may vary from position to position. Hiring agencies may, depending on the specific nature of the position, modify these tasks and/or identify additional tasks, based on a current position analysis.)

- 1.) Performs accounting and auditing of revenue and trust accounts for multiple court sites, including evaluation of existing procedures, consulting, and training local staff. Serves as consultant to assist staff with accounting related problems.
- 2.) Serves as a regional liaison for the finance and auditing divisions in order to monitor local compliance with accounting procedures and court policies.
- 3.) Coordinates maintenance of accounting records; performs quality control audits in order to ensure the accuracy of financial records. Participates on statewide budget and accounting policy development committees.
- 4.) Participates in evaluating and adapting application software for use in performing accounting procedures. Performs training and consulting regarding use of accounting software for multiple court sites.
- 5.) Assists with identifying and composing the justification for supplemental items in budget requests on a district level.
- 6.) Gathers data on historical trends, current and special circumstances, funding sources; assesses trends and identifies anticipated expenditures; assists management with developing rationale for work program requests.
- 7.) Performs cost studies regarding various management proposals; assists the Court Executive with planning expenditures.
- 8.) Assists in monitoring of district budgets; compiles historical and projected information regarding expenditures; prepares reports, spreadsheets, graphs, and tables to detail fiscal matters.
- 9.) Compares expenditures against available revenues; assists the Court Executive by recommending adjustments to achieve compliance with budget.
- 10.) Performs caseload studies on a district level.
- 11.) Reviews and approves billings; troubleshoots billing problems; processes lease agreements.
- 12.) Processes contracts according to established policies; prepares contracts and contract amendments; may assist in preparation and submission of grant applications.
- 13.) Maintains inventory records for district's fixed assets; accounts for acquisitions; may conduct on-sight reviews to validate inventory accounting; provides consultation to staff regarding inventory control mechanisms.
- 14.) Coordinates motor pool activities; maintains records of allocation, use, maintenance and requisition of vehicles; prepares accounting reports regarding vehicle use.

15.) Coordinates district personnel practices according to established procedures; processes personnel & payroll actions consistent with policies; maintains personnel records. Serves as district liaison with the personnel division in the administrative office
16.) Monitors and coordinates district record keeping systems; serves as liaison with the data processing function in the administrative office.
17.) Gathers, organizes, and analyzes statistical data in order to provide management with information needed to evaluate and develop special programs.
18.) Performs other related duties as assigned.

Knowledge, Skills, And Abilities

(This list contains KSAs that are typically associated with the job. It is not all-inclusive and may vary from position to position. Hiring agencies may, depending on the specific nature of the position, modify these KSAs and/or identify additional KSAs, based on a current position analysis.)

- 1.) Knowledge of: practices and procedures related to court processes, accounting, purchasing, lease management, contract management, inventory control, motor pool coordination, and data processing.
- 2.) Communicate effectively verbally & in writing; establish & maintain effective working relationships with employees, representatives of allied organizations & members of the public.
- 3.) Apply general management principals to specific organizational & operational problems; & perform mathematical calculations.

Other Requirements

No Other Requirements

Categories

CLERICAL / OFFICE SUPPORT

COURTS

FISCAL / BUDGET / PURCHASING

Created By: SARAH OSMUND	Created On: 06/18/2015
Approved By: SARAH OSMUND	Approved On: 06/18/2015
	End Date:

State of Utah

Department of Human Resource Management

Job Description

TITLE: SUPPORT SERVICES COORD III	
JOB ID: 10734	STATUS: Active
AGENCY: 020 - Judicial Branch	EFFECTIVE DATE: 06/06/2015
BENCHMARKED TO: EXEMPT	
HIGHLY SENSITIVE: [None]	
WORKING LEVEL: N/A	CLASSIFIED: No
SUPERVISORY LEVEL: [None]	FLSA EXEMPT: No
PAY RANGE: \$21.65 - \$32.52	
EEO ID & PROBATIONARY PERIOD: Professionals - 12 months	
WORKING CONDITIONS: Everyday Risks	PHYSICAL REQUIREMENTS: Sedentary

Purpose and Distinguishing Characteristics

(Description of the job which distinguishes it from other job(s) in a series or family)

In consultation with the audit and finance departments and the Court Executive, performs accounting and auditing of revenue and trust accounts for multiple court sites within a large, urban region. Serves as a regional liaison for the finance and auditing divisions. Under the direction of a Court Executive, incumbents in this class perform a variety of management support services for a judicial district such as budgeting, cost studies, lease and contract management, records management, troubleshooting, administering and maintaining support functions.

Examples Of Tasks

(More specific information about the job can be found in the Purpose and Distinguishing Characteristics. This list contains tasks that are typically associated with the job. It is not all-inclusive and may vary from position to position. Hiring agencies may, depending on the specific nature of the position, modify these tasks and/or identify additional tasks, based on a current position analysis.)

- 1.) Manages accounting and auditing of revenue and trust accounts for multiple court sites, including evaluation of existing procedures, consulting, and training local staff. Serves as consultant to assist staff with accounting related problems.
- 2.) Serves as a regional liaison for the finance and auditing divisions in order to monitor local compliance with accounting procedures and court policies. Coordinates maintenance of accounting records;
- 3.) Performs quality control audits in order to ensure the accuracy of financial records; provides written audit report to management and staff. Participates on statewide budget and accounting policy development committees.
- 4.) Performs quality control audits in order to ensure the accuracy of financial records; provides written audit report to management and staff. Participates on statewide budget and accounting policy development committees.
- 5.) Participates in evaluating and adapting application software for use in performing accounting procedures. Performs training and consulting regarding use of accounting software for multiple court sites.
- 6.) Acting under the general direction of the Court Executive, composes the justification for supplemental items in budget requests on a district level.
- 7.) Gathers data on historical trends, current and special circumstances, funding sources; assesses trends and identifies anticipated expenditures; develops rationale for work program requests.
- 8.) Monitors & manages district budgets, in excess of \$10 million per year; ensures conformity to goals & budget constraints; identifies items not in compliance.
- 9.) Monitors & manages district budgets, in excess of \$10 million per year; ensures conformity to goals & budget constraints; identifies items not in compliance.
- 10.) Analyzes multiple accounts & multiple funding sources & recommends adjustment to achieve compliance.
- 11.) Conducts studies; compiles historical and projected information regarding expenditures; prepares reports, spreadsheets, graphs, and tables to detail fiscal matters; compares expenditures against available revenues.
- 12.) Performs caseload studies on a district level.
- 13.) Reviews and approves billings; troubleshoots billing problems. Coordinates all large purchases between the district and AOC purchasing agent; ensures purchases fall within budget guidelines; approves purchases for district.
- 14.) Processes contracts according to established policies; prepares contracts and contract amendments; may assist in preparation and submission of grant applications.

15.) Maintains inventory records for district's fixed assets; accounts for acquisitions; may conduct on-sight reviews to validate inventory accounting; provides consultation to staff regarding inventory control mechanisms.
16.) Manages debt collection division; supervises Collection Manager; advises debt collection personnel on state accounting procedures, revenue collections processes and court processes.
17.) Gathers data regarding payments, arrest warrants, delinquent fines and related matters; evaluates program impact on district.
18.) Coordinates motor pool activities; maintains records of allocation, use, maintenance and requisition of vehicles; prepares accounting reports regarding vehicle use.
19.) Processes lease agreements.
20.) Coordinates district personnel practices according to established procedures; processes personnel and payroll actions consistent with policies; maintains personnel records.
21.) Serves as district liaison with the personnel division in the administrative office. Monitors and coordinates district record keeping systems; serves as liaison with the data processing function in the administrative office.
22.) Gathers, organizes, and analyzes statistical data in order to provide management with information needed to evaluate and develop special programs.
23.) Performs other related duties as assigned.

Knowledge, Skills, And Abilities

(This list contains KSAs that are typically associated with the job. It is not all-inclusive and may vary from position to position. Hiring agencies may, depending on the specific nature of the position, modify these KSAs and/or identify additional KSAs, based on a current position analysis.)

- 1.) Communicate effectively verbally and in writing; establish and maintain effective working relationships with employees, representatives of allied organizations and members of the public.
- 2.) Apply general management principals to specific organizational and operational problems; and perform mathematical calculations.
- 3.) Knowledge of: practices and procedures related to court processes, accounting, purchasing, lease management, contract management, inventory control, motor pool coordination, and data processing.

Other Requirements

Description	Comments
Bachelor's degree in public or business administration, accounting or related fields plus five years of full time paid professional related employment or substitutions on a year for year basis as follows:	related graduate level education for the required employment or full time paid professional related employment for the required education.
Incumbents in this class are responsible for support services in a large urban district where operations encompass in excess of 150 employees and a budget in excess of \$6 million.	

Categories

CLERICAL / OFFICE SUPPORT

COURTS

FISCAL / BUDGET / PURCHASING

Created By: SARAH OSMUND	Created On: 06/18/2015
Approved By: SARAH OSMUND	Approved On: 06/18/2015
	End Date:

Tab 8

Human Resource Policy

LEAVE 400

PURPOSE

The purpose of this policy is to inform all Court employees about the leave benefits provided by the Courts. Court employees should consistently and conscientiously account for their use of leave hours. This policy should be construed and applied to further that objective.

SCOPE

This policy applies to all Court employees except Law Clerks, as noted in Section 1.2. This policy provides guidelines governing the accumulation and use of leave benefits.

This policy applies to all court employees except judicial law clerks.

CROSS REFERENCES

[Appendix C, Leave Accrual](#)

POLICY AND PROCEDURE

1. Conditions of Leave.

1.1 An employee shall be eligible for leave benefits when in a position designated by the agency as eligible to accrue leave.

1.2 Law Clerks do not accrue leave, but are entitled to 13 days of paid annual leave and 13 days of paid sick leave per calendar year. On January 1st of each year, Law Clerks shall be granted thirteen (13) days of annual leave and thirteen (13) days of sick leave. Law Clerks hired after January 1st will receive annual and sick leave on a pro-rated basis. Annual and sick leave is not cumulative and must be used during the calendar year in which it is granted. Upon termination, a Law Clerk shall not be compensated for unused annual and sick leave hours.

1.3 An employee may not use annual, sick, or holiday leave before it is accrued. Leave accrued during a pay period may not be used until the following pay period.

1.4 An employee shall not use leave in less than quarter hour increments.

1.5 Management shall not change the status of an employee from full time to part-time for the purpose of extending benefits.

1.6 No paid leave shall accrue or be granted to a temporary employee. An employee in a position of less than 20 hours per pay period shall not accrue leave.

1.7 An eligible employee shall accrue annual and sick leave in proportion to the number of hours paid within the pay period. [Leave Accrual Table](#)

1.8 An employee on furlough or in any paid leave status shall continue to accrue annual and sick leave at the regular rate.

1.9 An employee may not use any type of leave except holiday and jury leave to accrue excess hours.

1.10 A non-exempt employee transferring from one State agency to another is entitled to transfer all uncompensated annual, sick, and converted sick leave to the new State agency. Prior to transferring to a new State agency, a non-exempt employee shall be paid in a lump sum for all uncompensated compensatory time and excess time.

1.11 An employee terminating from Court employment for reasons other than Retirement shall be paid in a lump sum for all uncompensated annual leave, converted sick leave, compensatory time and excess time on the employee's final check.

1.12 Annual, sick and holiday leave may not be used or accrued after an employee's last day worked, except for:

- leave without pay;
- administrative leave, coded as OP (Other-Protected), specifically approved by management to be used after the last day worked;
- leave granted under FMLA; or
- leave granted for other medical reasons that was approved prior to the commencement of the leave period.

2. Annual Leave.

2.1 An eligible employee shall accrue leave based on all eligible years of State service:

- Less than 5 years - four hours per pay period.
- At least 5 and less than 10 years - five hours per pay period.
- At least 10 and less than 20 years - six hours per pay period.
- 20 years or more - seven hours per pay period.

2.2 An eligible employee's leave accrual date shall be based on all eligible State employment in which the employee was eligible to accrue leave. An employee's leave accrual date shall be adjusted if the employee experienced a period of State employment in which the employee was ineligible to accrue leave, or if the employee has experienced any breaks in State service.

2.3 An eligible employee's leave accrual rate shall increase when the employee's leave accrual date reaches 5, 10 or 20 years of State service. 000073

2.4 A permanent, full time employee shall accrue annual leave on a pro-rated basis, based on the number of hours paid within the pay period. [Annual Leave Accrual Table](#).

2.5 A permanent, part-time employee working at least 40 hours per pay period shall accrue annual leave on a pro-rated basis, based on the number of hours paid within the pay period. [Annual Leave Accrual Table](#).

2.6 An employee may use accrued annual leave after completing at least two full pay periods of employment with the Courts.

2.7 The annual leave accrual rate for a Career Service Exempt employee may be negotiated at the time of hire by the hiring authority but shall not exceed six hours per pay period.

2.8 An employee who is exempt from overtime pay under the Fair Labor Standards Act (FLSA) is not required to report absences of 4 hours or less, however, it is expected that these absences will be occasional. An FLSA exempt employee shall not be subject to pay deductions for an absence of 4 hours or less. If an FLSA exempt employee is absent for a continuous period of more than 4 hours, and the employee does not have sufficient accrued leave to cover the absence, then the absence shall be accounted as leave without pay.

2.9 An employee who is non-exempt from overtime pay under the Fair Labor Standards Act (FLSA) shall report all leave taken.

2.10 Management must provide opportunities for an employee to use annual leave each year for at least the amount accrued within the year.

2.11 Unused, accrued annual leave hours in excess of 320 hours shall be forfeited during year-end processing for each calendar year.

2.12 Upon termination, an employee shall be paid in a lump sum for all uncompensated annual leave hours on the employee's final check.

2.13 Upon Retirement, an employee shall be paid in a lump sum or may elect to convert unused annual leave into a URS eligible 401(k) or 457 savings plan.

3. Sick Leave.

3.1 An eligible employee shall accrue sick leave, not to exceed 4 hours per pay period. Sick leave shall accrue without limit.

3.2 A permanent, full time employee shall accrue sick leave on a pro-rated basis, based on the number of hours paid within the pay period. [Sick Leave Accrual Table](#).

3.3 A permanent, part-time employee working at least 40 hours per pay period shall accrue sick leave on a pro-rated basis, based on the number of hours paid within the pay period. [Sick Leave Accrual Table](#).

3.4 An employee may use accrued sick leave after completing at least one full pay period of employment with the Courts.

3.5 An employee shall contact management at or before the beginning of the scheduled workday if the employee is absent due to an illness or injury.

3.6 Management may require the employee to submit a medical certificate to support a sick leave request.

3.7 Sick leave is a contingent benefit subject to bona fide need. Agency management may grant sick leave to an employee who is absent from duty for preventive health and dental care or because of illness, injury or temporary disability of the employee, a spouse, child, or parent; or for qualifying FMLA purposes. Such leave shall also be granted for care of other persons who live in the home of the employee or are dependent on the employee for majority of their financial support. Management may grant exceptions with the prior approval of the Director.

3.8 An employee who is non-exempt from overtime pay under the Fair Labor Standards Act shall report all leave taken.

3.9 An employee who is exempt from overtime pay under the Fair Labor Standards Act is not required to report absences of 4 hours or less, however, it is expected that these absences will be occasional. An FLSA exempt employee shall not be subject to pay deductions for an absence of 4 hours or less. If an FLSA exempt employee is absent for a continuous period of more than 4 hours, and the employee does not have sufficient accrued leave to cover the absence, then the absence shall be accounted as leave without pay.

3.10 Management shall not grant sick leave to any terminating employee who becomes sick after the last day worked.

3.11 A terminating employee shall not use sick leave on their last day worked.

3.12 An employee may not accrue converted sick leave hours on or after January 3, 2014.

3.12.1 An employee may use converted sick leave as annual leave or as regular sick leave.

3.12.2 Converted sick leave hours accrued before January 3, 2014 may be used for retirement.

3.12.3 An employee terminating before retirement shall be compensated in cash for any unused converted sick leave.

3.13 Unless retiring, an employee separating from State employment shall forfeit any unused sick leave without compensation.

Program I: Pre-2006 Sick and Converted Sick leave accrued prior to January 1, 2006. Program I has value upon retirement.

Program II: Pre-2014 Sick and Converted Sick leave accrued prior to January 1, 2014. Program II has value upon retirement.

Program III: Sick leave hours accrued on or after January 1, 2014. Program III has no value upon retirement.

3.14 An employee rehired with benefits within one year of separation for reasons other than reduction in force shall have forfeited Program I and Program II sick leave balance(s) reinstated and placed into the Program III sick leave category.

3.15 An employee who retires from State employment and is rehired may not reinstate forfeited Program III sick leave.

4. Family and Medical Leave (FMLA).

4.1 An eligible employee is allowed up to 12 weeks of Family and Medical Leave in a 12 month period for any of the following reasons:

- birth of a child; adoption of a child; placement of a foster child;
- a serious health condition of the employee; or care of a spouse, dependent child, adult child, or parent with a serious medical condition; or
- a qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

4.2 To qualify for Family and Medical Leave, an employee shall be employed by the State for a minimum of 12 months and a minimum 1,250 hours worked during the most recent 12 months of employment. Employees must contact their HR Representative to determine eligibility.

4.3 Leave taken for purposes of childbirth, adoption, and placement for adoption or foster care shall be completed no later than 12 months after the birth, adoption or the initial placement. Such leave may not be taken intermittently or on a reduced leave schedule unless specifically approved by management.

4.4 An employee is allowed up to 26 workweeks of Family and Medical Leave during a 12 month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

4.5 To request FMLA leave for a foreseeable serious health condition, the employee shall submit an FMLA application as well as a Medical Certificate to verify the need for such leave.

4.5.1 Leave for a serious health condition may be taken intermittently, if medically necessary. Management may temporarily transfer an employee to another position to better accommodate the intermittent use of recurring leave.

4.5.2 Prior to an employee's return to work, the employee must submit a Medical Release when FMLA leave is used for a serious health condition.

4.6 An employee must use all eligible accumulated compensatory time, excess time, all sick, annual, converted sick and donated leave prior to entering into a leave without pay status under these provisions and shall be counted within the 12 weeks.

4.7 An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the beginning of the FMLA leave provided the employee continues to pay the employee's share of the premiums.

4.7.1 An employee may elect to suspend health insurance coverage for themselves in whole or for their dependents; coverage may be reinstated within 60 days of returning to work. If payment for coverage is not received by the date it is due or during the allowed grace period, coverage will be cancelled.

4.7.2 If, after returning to work, an employee fails to remain employed with the State for at least 30 days following leave without pay under these provisions, the employee shall reimburse the Courts for the employer's portion of health insurance premiums paid while in a leave without pay status. Management may grant exceptions only with the prior approval of the Director.

4.7.3 If an employee accrues and is paid for leave that accrued while on leave under these provisions and fails to remain employed with the State for at least 30 days following that leave, the employee shall reimburse the Courts for that accrued leave. Management may grant exceptions only with the prior approval of the Director.

4.8 An employee shall receive full service credit if the employee uses 40 hours or more of paid leave within the pay period. If an employee uses less than 40 hours, the employee may get service credit only for those hours. This loss of time may result in lower retirement benefits.

4.8.1 No service credit is given during an FMLA leave of absence without pay. An employee's retirement eligibility dates will be delayed by the amount of time the employee is on an FMLA leave of absence without pay.

4.9 When the need for FMLA leave is foreseeable, such as childbirth, adoption, elective surgery, etc., an employee shall request such leave 30 days in advance.

4.10 For any unforeseen serious health conditions, an employee shall submit a Medical Certificate verifying the need for leave within two weeks prior to beginning FMLA leave. ~~000075~~

4.11 All other requests for FMLA leave shall be submitted as soon as practical under the circumstances.

4.12 Upon returning from FMLA leave, management shall return the employee to the employee's original or an equivalent position.

5. Funeral Leave.

5.1 An employee may receive up to 24 hours of paid funeral leave per occurrence, at management's discretion, following the death of a member of the employee's immediate family. For part-time employees, funeral leave shall be pro-rated based upon the number of hours worked within a pay period. Funeral leave may not be charged against accrued sick or annual leave. Funeral leave hours shall be coded as OE (Other-Emergency).

Immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

- spouse;
- parents;
- siblings;
- children;
- all levels of grandparents; or
- all levels of grandchildren

6. Military Leave.

6.1 An employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours, including travel time, per Federal fiscal year (October 1st - September 30th).

6.2 An employee shall be granted military leave of absence without pay for the period of active service, including travel time.

6.3 An employee may not claim salary for nonworking days spent in military training or for traditional weekend training.

6.4 If a holiday occurs during an employee's military leave of absence, the day will be counted as military leave. The employee shall be entitled to holiday pay for each holiday missed during the employee's military leave of absence. Holiday hours may be utilized or paid as follows:

- Paid Time Off - The employee may receive paid time off for all holidays missed during his/her military service. All paid time off may be used intermittently or consecutively, however, it must be taken during the employee's USERRA re-employment window based on the length of service.
- Lump Sum Payment - Upon physical return to work, the employee may receive a lump sum payment for all holidays missed during his/her military service. The lump sum payment will be taxed at a flat rate of 25%.
- Annual Leave - The employee may add all holiday hours missed during his/her military service to his/her annual leave bank. The employee may use the hours after he/she has returned to work.

6.5 Accrued sick leave may only be used if the reason for leave meets the conditions in Section 400.3.

6.6 When an employee is called into active duty by State or Federal government to serve during times of crisis and/or conflict, the employee may elect to continue or suspend health insurance coverage for the duration of military service. If the employee elects to continue health insurance coverage, the employee is responsible to pay the employee's portion of health insurance premiums. If the employee elects to suspend health insurance coverage for themselves in whole or for their dependents, coverage may be reinstated within 90 days of discharge from military service. If payment for coverage is not received by the date it is due or during the allowed grace period, coverage will be cancelled.

6.6.1 When an employee is called to active duty during peace times, the employee shall receive health/dental insurance coverage for the first 30 days. After the first 30 days, the employee may use leave to continue health insurance coverage as long as enough leave is used to cover the employee's portion of health insurance premiums. If an employee does not have enough leave, the employee must pay the employer's portion as well as the employee's portion of health insurance premiums. If payment for coverage is not received by the date it is due or during the allowed grace period, coverage will be cancelled. Life insurance continues during leave.

6.7 The employee will receive full service credit for the length of military leave.

6.8 An employee on military leave is eligible for any service awards or non-performance administrative leave that the employee would otherwise be eligible to receive had the employee not been absent due to military service.

6.9 An employee shall give notice of official military orders as soon as possible.

6.10 The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

6.11 An employee entitled to reemployment rights and benefits including increased pension and leave accrual rate to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

6.12 In order to be reemployed, an employee shall present evidence of military service, and:

- for service less than 31 days, return at the beginning of the first regularly scheduled work period after the 00076 of the calendar day of duty, plus time required to return home safely and an eight hour rest period, unless impossible or unreasonable through no fault of the employee;
- for service of 31 to 180 days, the employee must submit a request for reemployment no later than 14 days after completion of military service, unless impossible or unreasonable through no fault of the employee; or
- for service of 181 days or more, the employee must submit a request for reemployment no later than 90 days after completion of military service.

7. Witness and Jury Leave.

7.1 An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

- serve as a witness in a court of law or before an administrative adjudicatory board; or
- serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or
- serve on a jury

7.2 An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

7.3 An employee who is absent to testify as a private individual shall use annual leave or leave without pay.

7.4 An employee who receives witness or juror fees for service while on Court leave shall deposit the fees with the Courts' Division of Finance.

8. Court Years of Service Leave.

8.1 In recognition that long term employees provide stability and valuable service, an employee who has worked in the Courts for a significant period of time and who has received at least a successful performance rating for the previous two years is eligible for Court Years of Service leave.

8.2 A full time employee is eligible for Court Years of Service once every five years. Court Years of Service leave is based on the years of continuous Court service:

- 5 years of Court service - 8 hours
- 10 and 15 years of Court service - 24 hours
- 20, 25, and 30 years of Court service - 40 hours

8.3 A part-time employee is eligible for Court Years of Service once every five years. Court Years of Service leave shall be proportional to the percent of a full time schedule worked (i.e., 50% permits 4 hours for completion of 5 years of continuous Court service respectively).

8.4 Court Years of Service leave is not cumulative and must be used during the calendar year in which it is granted.

8.5 Management shall document Court Years of Service leave in the employee's file.

8.6 Employees shall record awarded Court Years of Service leave using the appropriate leave code, OR (Other-Reward).

8.7 Upon termination, an employee shall not be compensated for unused Court Years of Service leave hours.

9. Leave Without Pay.

9.1 An employee shall apply in writing to management and be approved before taking a leave of absence without pay. An employee may be granted continuous leave of absence without pay for a period not to exceed 12 months.

9.2 Leave without pay may be granted only when there is an expectation that the employee will return to work.

9.3 Management shall consider the following factors when determining whether to grant an employee leave without pay:

- A negative impact resulting in the inability of other employees to absorb the increased workload;
- Whether the position is one which is critical to the operation of the Courts, and for which temporary replacement is impractical;
- Willingness to fill the position on a temporary basis and time and cost of training a replacement;
- Whether the employee's performance has been rated less than successful; and
- The length and frequency of prior leave without pay absences.

9.4 Leave without pay which is granted for the purpose of enriching or developing employee skills is the most valid reason for approving the request.

9.5 Leave without pay shall not ordinarily be granted within the first year of employment. Longevity, however, does not automatically qualify an employee for a leave of absence without pay.

9.6 Subject to provisions in Sections 400.4 (Family and Medical Leave) and 400.6 (Military Leave), management shall not intersperse leave without pay with paid leave.

9.6.1 Leave without pay shall not be interspersed with paid leave in order to allow continuation of benefits paid by the State or to extend paid leave over a longer period of time.

9.7 As warranted by unusual circumstances, and subject to management approval, an employee may be allowed to take up to ten (10) days of leave without pay, in lieu of paid leave, even where annual and sick leave balances continue to exist.

9.8 Subject to provisions in Sections 400.4 (Family and Medical Leave) and 400.6 (Military Leave), insurance benefits will be discontinued during a leave of absence without pay unless the employee pays the employer's portion as well as the employee's portion of health insurance premiums. 000077

9.9 With the exception noted in Section 400.6 (Military Leave), Policy 450 (Long Term Disability) and Policy 460 (Workers' Compensation), no service credit is given during a leave of absence without pay. An employee's retirement eligibility dates will be delayed by the amount of time the employee is on a leave of absence without pay.

9.10 An employee who returns to work on or before the expiration of leave is entitled to a position in the same class, pay rate, seniority status, and leave accrual rate as the employee held at the commencement of leave.

10. Administrative Leave.

10.1 For the benefit of the organization, management may grant an employee administrative leave without deducting the time from other accumulated leave banks.

10.2 An employee's salary and benefits shall not be reduced during the period of leave in which administrative leave is used.

10.3 Management may grant an employee administrative leave for a period not to exceed ten (10) consecutive working days.

10.4 Administrative leave in excess of ten (10) consecutive working days requires the written approval of the Court level administrator.

10.5 Administrative leave taken shall be documented in the employee's leave record.

10.6 In accordance with Policy 320 (Incentive Awards), management may grant administrative leave not to exceed three (3) working days as part of an employee incentive program. All administrative leave that is awarded to an employee shall use the appropriate leave code, OR (Other-Reward).

10.7 Management may impose administrative leave pending the investigation of employee misconduct. In this instance, administrative leave shall use the appropriate leave code, OP (Other-Protected).

10.7.1 Administrative leave or transfer under this paragraph is not a disciplinary measure.

10.7.2 The period of administrative leave shall not be longer than is reasonably necessary to complete the investigation into the alleged misconduct.

10.7.3 Management may impose administrative leave if the conduct of the employee, at the sole discretion of management, endangers the peace and safety of others, or poses a threat to the public interest.

10.8 Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a Military Leave if the leave would have been given had the employee been in a working status.

11. Inclement Weather Policy.

11.1 It is the policy of the State Courts to remain open and accessible to the public during regular working hours. During inclement weather, an employee is expected to make a reasonable effort to come to work.

11.2 If an employee decides to stay at home during a regularly scheduled work day due to inclement weather, the employee will be required to use annual, compensatory, excess, or converted sick leave.

11.3 Management will use discretion in addressing employees who come to work later than their regularly scheduled time due to inclement weather.

12. Disaster Service Volunteer Leave.

12.1 An employee of the Courts who is a certified disaster service volunteer may be granted leave from work with pay for up to 15 working days, consecutively or non-consecutively, in any 12-month period to participate in disaster relief services for a disaster relief organization in connection with any disaster, upon the request of the disaster relief organization for such employee's services.

12.1 An employee may be granted leave from work with pay for up to 15 working days in any 12 month period to participate in disaster relief services for a disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer and must file a written request with the employee's Court Executive. This request shall include:

- a copy of a written request for the employee's services from an official of the disaster relief organization;
- the anticipated duration of the absence;
- the type of service the employee is to provide; and
- the nature and location of the disaster where the employee's services will be provided.

12.2 Nothing contained in this policy shall be construed to require any Court Executive to grant the employee's request for voluntary disaster relief if management determines that the leave would pose a hardship on the Courts.

13. Organ Donor Leave.

13.1 An employee who serves as a bone marrow donor shall be granted a paid leave of absence for up to 7 days as necessary for the donation and recovery from the donation.

13.2 An employee who serves as a human organ donor shall be granted a paid leave of absence for up to 30 days as necessary for the donation and recovery from the donation.

Tab 9

Agenda



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 26, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

Personal Cell Phone Allowance Agreement

The Administrative Office of the Courts (AOC) has determined that _____ must have cell phone service for the following business reasons:

- The AOC needs to be able to contact the employee at all times for business emergencies, and/or
- The AOC requires that the employee be available to communicate with customers and management and respond to important email when the employee is away from the office or off work.

The AOC had determined that the most cost effective means of providing cell phone service to the employee is for the employee to use his personal cell phone service for business purposes and provide the employee an ongoing allowance to cover the business use. This allowance is NOT taxable to the employee because the allowance is provided to the employee for valid business reasons.

The allowance is calculated on the services needed for business purposes; does not include extra services only needed for personal reasons; and the allowance does not exceed the employee's cost of the service. The employee is not required to keep track of the number of minutes used for personal vs. business reasons.

Allowance Reimbursement Calculation: (Example)

The employee's monthly cell phone bill is as follows:

Monthly data plan, \$80.00;

Monthly line Access (4 phones on plan), \$160.00;

Taxes and fees \$34.28.

Total monthly cost: $\$274.28/4 = \68.57 per line.

The employee's monthly reimbursement is determined as follows: $\$68.57 * 12 \text{ months} / 26$ pay periods for a reimbursement of \$31.65 per pay period.

The following conditions apply:

- The employee agrees to use his cell phone for the business purposes stated above.
- The employee will notify the employer if the cell phone service drops below the monthly reimbursement.
- Allowances paid under this agreement will be discontinued when the business need for cell phone service is no longer justified or the employee is no longer employed by the AOC.
- The employee acknowledges that the loss of or damages to a personal cell phone (even while performing AOC business) is not eligible for any reimbursement or replacement under any section of this agreement.

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

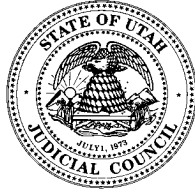
- The employee understands that personal data on the phone may be reviewed by management or a court due to a GRAMA request.
- Employee has read, understands, and will abide by Administrative Rule R895-7, Acceptable Use of Information Technology Resources.
- This agreement shall be annually reviewed by the employee and the AOC and updated as necessary.

Employee Signature: _____ Date: _____

Manager Signature: _____ Date: _____

Tab 10

Agenda



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 23, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: TCEs – Russ Pearson, Chair

FROM: Standing Committee on Judicial Outreach

RE: TCE Representative Vacancy and Request for Nomination

On behalf of the Standing Committee on Judicial Outreach and its Chair, Judge Elizabeth Hruby-Mills, we would like to request a nominee to fill the TCE representative vacancy on the committee.

The Standing Committee on Judicial Outreach is charged by the Judicial Council with conducting public education and outreach initiatives. This includes schools, civic groups, and government organizations.

The term is a three-year term. We meet quarterly.

Thank you,

Geoffrey Fattah
Communication Director
Utah State Courts

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

Judicial District	TCE	State Level Committee	Original Appt.	Current Appt.	Term Date
First District/Juvenile	Brett Folkman	CARE Core Team			
		Divorce Ed for Children Subcommittee			
		HR Policies Committee			
Second District	Larry Webster	PSA Committee			
		ODR Committee			
		Technology Committee	04/12/17	04/12/17	04/12/20
		Budget & Finance Committee (non-member)	09/01/19		
Second Juvenile	Krista Airam	HR Policies Committee			
Third District	Peyton Smith				
Third Juvenile	Jim Bauer	Technology Committee	04/12/17	04/12/17	04/12/20
		Accounting Manual Committee			
Fourth District	Mark Urry	Divorce Ed For Children Subcommittee			
		Court Facility Standing Committee	12/17/18	12/17/18	12/17/21
		HR Policies Committee			
Fourth Juvenile	Shelly Waite	PO Workload Statewide Committee	09/16/19	09/16/19	
Fifth District/Juvenile	Joyce Pace	Education Committee	11/01/17	11/01/17	11/01/20
Sixth District/Juvenile	Wendell Roberts	Private Probation Provider Licensing Board	07/01/12	07/01/16	07/01/20
		Budget & Finance Committee (non-member)	09/01/19		

Seventh District/Juvenile	Travis Erickson	Probation Policy Work Group (JV)			
		Clerical Weighted Caseload			
Eighth District/Juvenile	Russell Pearson	Clerical Weighted Caseload			
		EFCC			
		Language Access	04/01/16	04/01/16	04/01/19

Tab 11

Agenda



Administrative Office of the Courts


Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 5, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Board of District Court Judges

FROM:  Brent M. Johnson

RE: Interplay between commissioner and judge authority

This memorandum is in response to the Board's request for an opinion on the types of orders a judge must sign when an issue has been heard by a commissioner. The case law has language that can be construed in different ways, but there is language supporting the Board's objective – i.e. judges signing only final orders.

The analysis begins with *Salt Lake City v. Ohms*, 881 P.2d 844 (Utah 1994). At the time of *Ohms*, court commissioners were presiding over misdemeanor cases. The court commissioner in *Ohms* had presided over the trial and sentencing of Mr. Ohms. Mr. Ohms challenged the conviction and sentence, arguing it was a violation of the Utah Constitution to vest this type of decision-making authority in court commissioners. The Utah Supreme Court sided with Mr. Ohms. The court determined that “[p]ermitting court commissioners to perform core judicial functions . . . violates article VIII, section 8’s provision that all article VIII judges of courts of record must be certified by a judicial nominating commission to the governor.” *Id.* at 851. The Supreme Court’s constitutionality concern was that final decisions were being made by individuals who had not gone through the rigorous appointment process and who are not directly accountable to the public. The court stated that while “commissioners, as ‘quasi-judicial officers,’ . . . may perform many important functions in assistance to the courts of record, they are not duly appointed judges and thus may not exercise core judicial functions without violating article VIII of the Utah Constitution.” *Id.* *Ohms* thus established the precedent that court commissioners cannot perform core judicial functions. Subsequent cases have clarified what that means.

The decision in *Ohms* of course led to other challenges to actions by court commissioners. In *State v. Thomas*, 961 P.2d 299 (Utah 1998), Mr. Thomas challenged a court commissioner’s authority to issue a search warrant. The Utah Supreme Court sided with Mr.

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

Thomas, determining that issuing a search warrant is a core judicial function. In making the decision, the court summarized the holding in *Ohms*. The court stated that core judicial functions “include (1) the power to hear and determine controversies between adverse parties and questions in litigation, (2) the authority to hear and determine justiciable controversies, (3) the authority to enforce any valid judgment, decree, or order, and (4) all powers that are necessary to protect the fundamental integrity of the judicial branch.” *Id.* at 302. Court commissioners may “perform many important functions in assisting the court such as conducting fact finding hearings, holding pretrial conferences, and making recommendations to judges.” *Id.*

After *Thomas*, it appeared court commissioner authority would be limited to conducting fact finding hearings and making recommendations, with judges deciding whether to accept the recommendations. Judges had the responsibility and authority to resolve disputes. The Supreme Court did not draw a line that would have allowed court commissioners to make preliminary decisions prior to final orders. But of course up to that point the Supreme Court had addressed only two limited situations.

As additional challenges to court commissioner authority followed, the appellate courts issued decisions that included language supporting the apparent limitations announced in *Ohms* and *Thomas*, but also included language that arguably recognized expanded roles for court commissioners. In *In re Young*, 976 P.2d 581, 591 (Utah 1999), the court stated, “we have indicated that there is no usurpation of an exclusive judicial function for a domestic relations commissioner, who lacks any constitutional status, to handle a proceeding right up to sending a proposed order to a judge.” This language seemingly confirms prior holdings that commissioners are limited to making recommendations and that judges must sign all orders. The Supreme Court suggested that a court commissioner’s authority ends when a proposed order is submitted. The language does not distinguish between preliminary orders and final orders. The language seems to draw a distinct line between where court commissioner authority ends and judge authority begins. But the language in *Young* is dicta and did not conclusively decide anything about core judicial functions.

In *In re E.H.*, 2006 UT 36, ¶ 25, 137 P.3d 809, the Supreme Court began to expand the potential for delegating judicial authority, stating:

As a general proposition, those cases that are most amenable to a free-wheeling display of the adversarial system are likewise cases that will accommodate the most expansive acts of judicial delegation without trespassing into core judicial functions. Most torts and commercial litigation would fall within this category. By contrast, where considerations of public policy or fundamental constitutional rights permeate a case, more acute judicial oversight is warranted and often required.

The court recognized that *Ohms* involved a criminal case, and criminal cases require strict oversight while many civil cases are amenable to broader oversight by judges.

The parties in *In re E.H.* were challenging an agreement they made to comply with decisions made by a psychologist. The argument was that decision-making authority had

inappropriately been delegated to the psychologist. The Supreme Court determined that core judicial authority had not been delegated to the psychologist because the parties still had an opportunity to object to the psychologist's decisions and obtain judicial review. *Id.* at 816 (“[U]nder the terms of the stipulation the district court held ultimate authority over the proceedings, to satisfy itself that [the psychologist’s] recommendations were properly arrived at, and to enter a final order.”)

In *Ford v. State*, 2008 UT 66, 199 P.3d 892 (1992), the Utah Supreme Court addressed a challenge to a court commissioner’s authority to preside over a preliminary hearing and issue a bindover order. In determining that a court commissioner could exercise such authority, the court stated that “whether an action is a core judicial function is based on whether the commissioner’s actions are reviewable by a judge and ultimate judicial power remains with the judge.” *Id.* ¶ 10.

The Supreme Court thus moved away from strictly interpreting the court’s prior statements that court commissioners could only make recommendations. The court instead focused on whether court commissioner’s actions are reviewable by a judge. The court stated that a court commissioner is not exercising a core judicial function when the court commissioner’s actions are reviewable. Comparing this case to *Thomas*, the reason a commissioner could not issue a search warrant is because it is an order that is immediately executed without the opportunity for review by a judge. But the reason a court commissioner could preside over a preliminary hearing and issue a bindover order is because a judge can subsequently review a bindover decision through a motion to quash.¹

The Utah Court of Appeals addressed court commissioner authority in protective order cases in *Buck v. Robinson*, 2008 UT App 28, 177 P.3d 648. The court did not expand the power of court commissioners. The Court of Appeals found it important that the protective order included language stating the order was “recommended by” the court commissioner, and the judge signed the protective order the same day. There was not an issue because the protective order was treated as a recommendation, with the judge exercising final authority. A protective order is final and appealable and therefore the judge’s signature was very important.

The above cases constitute the relevant Utah authority discussing court commissioner authority as far as it relates to this issue. One state has cited *Ohms*. The Wisconsin Supreme Court, in *State v. Circuit Court of Milwaukee County*, 2017 WI 26, 892 N.W. 2d 267, addressed a situation in which the trial court appointed an individual to serve as a referee to hear “all motions, whether discovery or dispositive.” *Id.* at ¶ 19. The referee’s “written rulings would be adopted and entered as rulings of the court, . . . unless a party filed an exception within five days.” *Id.* The court retained the power to modify or set aside the referee’s ruling, but “the circuit court could only do so if the ruling were based on an erroneous exercise of discretion.” *Id.* The Wisconsin Supreme Court determined that this latter provision created problems. The court struck down most of the delegation of authority because the trial court would review objections based only on an abuse of discretion standard. The court determined that this created an improper delegation of judicial authority. The court did not answer the question of whether the order

¹ The *Ford* decision did not directly address the issue that arises if a magistrate finds there is no probable cause. Such a decision is an appealable order. The question of whether a court commissioner is performing a core judicial action thus might be tied to the result of a proceeding, in addition to the specific act that is performed.

would have been upheld if the court had retained authority to review decisions de novo, but there was some suggestion the court would have upheld such an order if the referee was limited to hearing interlocutory matters. The Wisconsin Supreme Court did not have issues with granting the referee authority to resolve discovery disputes. If the parties did not object to the referee's decision, the decision would stand. If a party objected, the decision would be automatically vacated. The Wisconsin court's conclusion was thus essentially that a non-judge could not resolve a dispositive motion, but a non-judge could resolve an interlocutory dispute and the resolution would be the order of the court unless a party objected.

Understanding that the Utah Supreme Court has not directly addressed the types of actions being done by court commissioners in domestic cases, *Ford* and *In re E. H.* provide support for what the Board hopes to accomplish. As long as a court commissioner's actions are reviewable by a judge, a court commissioner can make decisions on the various interlocutory issues that are contested. The distinction between a search warrant and a bindover decision shows the difference. A court commissioner cannot issue an order that is to be executed immediately, such as a search warrant, because there is no opportunity for adequate review by a judge. But a commissioner can issue an order that a party may ask a judge to review, such as a bindover order.

This conclusion would seemingly allow a court commissioner to conduct a trial and make a decision as long as a person had an opportunity to ask a judge to review the decision. The court in *Ohms* seemingly rejected that proposition because the court commissioner presided over a trial. But the court was not faced with the question of whether the court commissioner's actions would have been valid if the defendant had an opportunity to ask a judge to review the court commissioner's determination that the defendant was guilty. There is at least an argument a court commissioner could preside over a criminal case as long as the consequences of a conviction are not immediately executed, such as would occur if a defendant is not immediately committed to a penal facility or required to pay a penalty. From a policy standpoint, it is not a good idea to have court commissioners make these types of final decisions even with the availability of review by a judge. In any event, rule 6-401 of the Utah Rules of Judicial Administration prohibits court commissioners from making final adjudications.

There is one other issue that should be mentioned. In *Ohms* the defendant had signed a waiver agreeing to have the case heard by a commissioner. The Supreme Court determined the waiver was not valid because the issue involved subject matter jurisdiction. A commissioner's authority is therefore not dependent on whether parties choose to object. The issue is whether a commissioner is performing a core judicial function. If a commissioner's order is reviewable by a judge, the commissioner is not performing a core judicial function.

These conclusions are consistent with rule 6-401, which allows court commissioners to issue temporary orders, and it is consistent with rule 108 of the Utah Rules of Civil Procedure which states that a commissioner's recommendation "is the order of the court until modified by the court." A court commissioner's decision is referred to as a recommendation, but the recommendation immediately becomes an order, meaning the commissioner has at least made a temporary decision that becomes binding through inaction. The rule creates a process for a party

to object and have the objection reviewed by a judge. Because the conclusions in this memorandum are consistent with existing rules, changes are not necessary.²

The final conclusion is that court commissioners can issue interlocutory orders throughout a case as long as those orders are reviewable by a judge. A judge is not required to review all orders. A judge is only required to review an order when an objection is filed. The courts must ensure the review is not illusory. Orders that can be executed immediately, with the parties' positions being impacted, should either be issued by a judge or reviewed immediately by a judge before the order is executed. Although not expressly stated by the appellate courts, there must be an opportunity for meaningful review. And the review will also always be an independent de novo review. *See Day v. Barnes*, 2018 UT App 143, 427 P.3d 1272.

Attached to this memorandum is the proposed signature block for court forms. The signature block will require either a judge's signature or a court commissioner's signature, but not both. If there are any forms that should include signatures by both a commissioner and a judge, they should be evaluated on a form-by-form basis.

² The one area of concern would be contempt determinations. The courts can avoid the concerns by having judges immediately review contempt orders.

Current

Commissioner's or Judge's signature may instead appear at the top of the first page of this document.

_____	Signature ▶	_____
Date	Commissioner	_____
_____	Signature ▶	_____
Date	Judge	_____

Proposed

Commissioner's or Judge's signature may instead appear at the top of the first page of this document.

_____	Signature ▶	_____
Date	Commissioner or Judge	_____



Administrative Office of the Courts


Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

August 30, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Board of District Court Judges

FROM:  Brent M. Johnson

RE: Signing Military Service Orders

This memorandum is in response to the Board of District Court Judges' request for an opinion on whether judges must sign military service orders in every case involving a default judgment. My opinion is that judges do not need to sign an order in every case.

There is currently a form called "Military Service Order" that includes findings and orders a judge makes whenever there is a request for a default judgment. The potential findings include a determination that the defaulting party is not in military service, or that the defaulting party is in military service, or that the defendant's military status cannot be determined. The potential orders include a directive that the case may proceed, or that an attorney is appointed, or that the party seeking judgment must post a bond. My understanding is that in the vast majority of cases the defaulting party is not in military service and therefore eliminating the requirement that a judge make such a finding and issue an order allowing the case to proceed will save considerable time.

Under 50 U.S.C. § 3931, when a defendant fails to appear, before a court may enter a default judgment the plaintiff must file an affidavit stating whether the defendant is in military service. With a couple of exceptions, the filing of the affidavit allows the court to proceed. The court is required to review the affidavit to determine whether one of the exceptions applies, but the statute does not require a finding that the defendant is not in military service.

If the affidavit indicates the defendant is in military service, the law states that a court may not enter a default judgment unless the court appoints an attorney. 50 U.S.C. § 3931(b)(2). The court must also stay the case for 90 days. 50 U.S.C. § 3931(d). If a court is unable to determine whether a defendant is in military service, the federal law states that the court may require the plaintiff to post a bond as a condition of obtaining a default judgment. 50 U.S.C. § 3931(3). The court is not required to order a bond. It is simply an option. The court may thus

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

also enter a default judgment without requiring a bond. If the affidavit indicates the defendant is not in military service the court may enter judgment. The court may enter the default judgment without a finding that the defendant is not in military service and an accompanying order allowing the court to enter a default judgment.

The court thus has four potential paths when presented with a military service affidavit:

- 1) order the appointment of an attorney and stay the case if the defendant is in military service;
- 2) order the plaintiff to post a bond if it is not clear whether the defendant is in military service;
- 3) allow the case to proceed without bond despite military service being unclear; or
- 4) enter the default judgment as requested if the affidavit states the defendant is not in military service or the affidavit does not raise a question about whether the defendant is in military service.

Because the court is not required to make a finding that the defendant is not in the military service, the current form could be changed to reflect the three other options, eliminating the requirement that the form be signed when a defendant is not in military service. I am attaching proposed forms for the Board's consideration. Although the court does not need to issue an order allowing a case to proceed without bond, I think it is best to keep that option when it is not clear whether the defendant is in military service. This will show that courts are reviewing affidavits and making deliberate decisions when affidavits are inconclusive. But eliminating that option would not be contrary to federal law.

In the [] District [] Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>v.</p> <p>_____ Defendant/Respondent</p>	<p>Military Service Order Appointing Attorney</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner (domestic cases)</p>
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The court finds

- Based on the statements made in the Military Service Declaration, the court finds the non-appearing party is in military service.

The court orders

- The court appoints an attorney to represent the non-appearing party. The action is stayed for 120 (90 ?) days from this date.

Judge's signature may instead appear at the top of the first page of this document.

Date

Signature ► _____
Judge _____

Certificate of Service

I certify that I filed with the court and am serving a copy of this Military Service Order on the following people.

Person's Name	Service Method	Service Address	Service Date
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

_____ Signature ► _____
 Date Printed Name _____

In the [] District [] Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Military Service Order on Bond Requirement

Plaintiff/Petitioner

v.

Defendant/Respondent

Case Number

Judge

Commissioner (domestic cases)

The court finds

- 1. Based on the statements made in the Military Service Declaration, the court finds the military service status of the defaulting party is unknown.

The court orders

- 2. [] The case may proceed without a bond being filed.
- 3. [] The case may proceed once the [] plaintiff/petitioner [] defendant/respondent files a bond in the amount of \$_____.

Judge's signature may instead appear at the top of the first page of this document.

Date

Signature ► _____

Judge _____

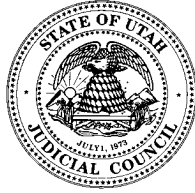
Certificate of Service

I certify that I filed with the court and am serving a copy of this Military Service Order on the following people.

Person's Name	Service Method	Service Address	Service Date
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

_____ Signature ► _____
 Date Printed Name _____

Tab 12



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 23, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Trial Court Executives (District Court)

FROM: Keisa Williams

RE: National Caselaw re: Ability to Pay Analyses and Procedural Due Process in the Pretrial Context

Over the last several years, in both state and federal cases across the country, courts are consistently holding that it is an unconstitutional deprivation of due process and equal protection rights under the 14th Amendment to set monetary conditions of pretrial release without first considering, among other things, an arrestee's ability to pay the amount set.

Most of the cases are requiring that courts hold a hearing, with full due process protections, to make those determinations within 24-48 hrs of arrest. As you can imagine, that would significantly alter the way our courts do business, and we do not currently have the funding or infrastructure in place to accomplish it.

While none of the cases discussed below are precedential, I believe several are persuasive and I have become increasingly concerned that some Utah courts' (and other criminal justice stakeholders') application of the state's pretrial release laws and court rules may not be constitutionally upheld if challenged in court. As of today, I am aware of at least 24 cases across fourteen states and four federal circuit courts in which pretrial ability to pay analyses are at issue. Many more cases address the related issue of determining an individual's ability to pay when setting court fines and fees. While different, the legal analysis is very similar.

The purpose of this memo is to provide a brief overview of two of the cases I believe to be most representative of the overarching legal analysis and findings in the majority of the cases I identify below, and to begin a conversation about whether urgent reforms are needed – particularly the development and implementation of procedures surrounding ability to pay analyses in the pretrial context.

The Judicial Council's Standing Committee on Pretrial Release and Supervision has identified this issue as critical, and plans to conduct a deep-dive into the caselaw and any potential impacts in Utah.

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

Below are some, but not all, of the cases I have identified which address ability to pay analyses in bail sets. *Some citations may be outdated.

State:

- *In re Kenneth Humphrey*, 19 Cal. App. 55th 1006 (2018) (Court of Appeal of the State of California, First Appellate Division, Division Two)
- *Robinson et al., v. Martin, et al.*, Case no. 2016 CH 13587 (Circuit Court of Cook County, IL, County Department, Chancery Division)
- *Brangan v. Commonwealth*, 80 N.E.3d 949 (Mass. 2017)(Supreme Judicial Court of Massachusetts)
- *Scione v. Commonwealth*, Case no. SJC-12536 and *Commonwealth, v. David W. Barnes*, Case no: SJC-12540 (Supreme Judicial Court of Massachusetts)
- *State v. Brown*, 338 P.3d 1276 (2014)(Supreme Court of New Mexico)
- *People ex rel. Desgranges, Esq. on behalf of Kunkeli v. Anderson*, Case no. 90/2018 (Supreme Court of the State of New York, County of Dutchess)
- *Philadelphia Community Bail Fund v. Magistrate Bernard, et al.*, Case no. 21 EM 2019 (Supreme Court of Pennsylvania, Eastern District)

Federal:

- *Buffin v. City and County of San Francisco, et al.*, Case no. 4:15-cv-04959-YGR (U.S. District Court for the Northern District of California)
- *Kandace Kay Edwards v. David Cofield, et al.*, Case no. 3:17-cv-321-WKW (U.S. District Court for Middle District of Alabama, Eastern Division)
- *Schultz, et al. v. State of Alabama, et al.*, Case no. 5:17-cv-00270-MHH (U.S. District Court for the Northern District of Alabama, Northeastern Division)
- *Walker v. City of Calhoun, GA* (“Walker I”), 2016 WL 361612 (N.D. Ga. Jan. 28, 2016)
- *Walker v. City of Calhoun, GA* (“Walker II”), 682 F. App’x 721, 724-25 (11th Cir. 2017)
- *Walker v. City of Calhoun, GA* (“Walker III”), 2017 WL 2794064 (N.D. Ga. June 16, 2017)
- *Caliste v. Cantrell*, Case no. 2:17-cv-06197-EEF-MBN (U.S. District Court, Eastern District of Louisiana)
- *United States v. Mantecon-Zayas*, 949 F.2d 548 (1st Cir. 1991)
- *Ross v. Blount*, Case no. 2:19-cv-11076-LJM-EAS (U.S. District Court for the Eastern District of Michigan, Southern Division)
- *Dixon v. St. Louis*, Case no. 4:19-cv-00112-AGF (U.S. District Court, Eastern District of Missouri, Eastern Division)
- *Collins v. Daniels*, Case no. 1:17-cv-00776-RJ-KK (U.S. District Court for the District of New Mexico)
- *Collins v. Daniels*, Case no. 17-2217 and 18-2045 (U.S. Court of Appeals for the 10th Circuit)
- *ODonnell v. Harris County, Texas, et al.*, Case no. 4:16-cv-01414 (U.S. District Court for the Southern District of Texas, Houston Division)
- *ODonnell v. Harris County, Texas, et al. (ODonnell I)*, 892 F.3d 147 (5th Cir. 2018)
- *ODonnell v. Goodhart. (ODonnell II)*, 900 F.3d 220 (5th Cir. 2018)
- *Daves, et al., v. Dallas County, Texas, et al.*, Case no. 3:18-CV-0154-N (U.S. District Court for the Northern District of Texas, Dallas Division)

Buffin, et al., v. City and County of San Francisco, et al., 2018 WL 424362 (U.S. District Court, N.D. California)

Issues: (**Excluded issue related to CBAA's intervenor status*)

1. Whether the use of San Francisco's Felony and Misdemeanor Bail Schedule as a basis for defendant Sheriff to release detainees prior to arraignment, where those detainees do not have the means to afford the amounts set forth therein, significantly deprives detainees of their fundamental right to liberty?
2. Whether plausible alternatives exist which would allow for their release?
3. Whether the continued use of such a schedule violates the Due Process and Equal Protection clauses of the United States Constitution?

Holding: "Plaintiff's motion for summary judgement is granted..." "The evidence demonstrates that the Sheriff's use of the Bail Schedule significantly deprives plaintiffs of their fundamental right to liberty, and a plausible alternative exists which is at least as effective and less restrictive for achieving the government's compelling interests in protecting public safety and assuring future court appearances. Operational efficiency based upon a bail schedule which arbitrarily assigns bail amounts to a list of offenses without regard to any risk factors or the governmental goal of ensuring future court appearances is insufficient to justify a significant deprivation of liberty."

"...the Court will issue an injunction enjoining the Sheriff from using the Bail Schedule as a means of releasing a detainee who cannot afford the amount but will delay issuing the injunction pending briefing."

Certified Class: All pre-arraignment arrestees (1) who are, or will be, in the custody of the sheriff, (2) whose bail amount was set by the bail schedule, (3) whose terms of pretrial release have not received an individualized determination by a judicial officer, and (4) who remain in custody for any amount of time because they can't afford to pay.

Facts: Plaintiff #1 was 19 yrs old and was arrested for grand theft of personal property. Bail amount set at \$30,000 (\$15,000 for each booking charge) pursuant to the bail schedule. She couldn't afford to pay. DA's office decided not to file charges and she was released. Despite having been detained on a Mon. night, she was never taken to court on Tues. or Wed. for an initial appearance. She was released Wed. night after spending 46 hrs in custody. She lost her job.

Plaintiff #2 was 29 yrs old and was arrested for assault with force likely to cause great bodily injury. Bail was set at \$150,000 (\$75,000 each for 2 counts). She couldn't afford to pay. After 29 hrs in jail and prior to her initial appearance, she was released after her uncle paid an initial down payment to a bondsman of \$1,500 on a \$15,000 non-refundable premium. Her sister and grandmother co-signed. DA's office did not file formal charges. Her family members were still obligated to pay the \$15,000 premium.

The San Francisco superior court established the bail schedule, which is comprised principally of a three-columned table that identifies an "offense" or penal code section, a short "description" thereof, and a fixed "bail" amount. The Sheriff consults the bail schedule to determine an arrestee's bail amount. The Sheriff locates each "booking charge," tabulates the amounts designated per charge, and releases the

detainee upon payment of that sum. “The Sheriff applies the process mechanically, making no individualized assessment regarding public safety, flight risk, ability to pay, or strength of evidence.”

“Under state law, some arrestees may apply to a magistrate for pre-arraignment release on lower bail or on his or her own recognizance (OR). The application can be made without a hearing. Ironically, individuals charged with certain offenses are ineligible to apply pre-arraignment for either OR release or a reduction in bail, but if they pay the applicable amount under the Bail Schedule, the Sheriff may release them.”

In setting bail, a judge or magistrate may consider the information included in a report prepared by investigative staff (pretrial staff) employed by the court for the purpose of recommending whether a detainee should be released on his/her OR. For arrestees eligible for OR release, pretrial staff prepare a packet including the PSA, summary of criminal history, and police report. The packet is presented to the duty judge at arraignment.

“In terms of timing, the evidence unequivocally demonstrates that arrestees who post the full amount of bail listed on the Bail Schedule can secure release more quickly than any other category of arrestees. This is true even when an arrestee who posts the full bail amount has been charged with a more serious offense than the indigent arrestee.” “...a wealthy arrestee who is charged with a violent offense can be released from custody within a matter of hours, while an indigent arrestee can remain incarcerated for as many as five days before seeing a judicial officer or the case is discharged for ‘lack of evidence.’”

Analysis:

Strict Scrutiny review applies to plaintiffs’ Due Process and Equal Protection claims.

- Heightened scrutiny is required by the U.S. Supreme Court’s *Bearden-Tate-Williams* line of cases,¹ particularly “where fundamental deprivations are at issue and arrestees are presumed innocent.”
- Because the Sheriff’s use of the Bail Schedule implicates plaintiffs’ fundamental right to liberty, “any infringement on such rights requires a strict scrutiny analysis.”
- Distinguished *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir. 2018) and *ODonnell v. Goodhart*, 900 F.3d 220 (5th Cir. 2018)(“*ODonnell II*”), and aligned with the dissenting opinions in those two cases.
- *ODonnell II* is a split decision of the 5th Circuit arising from *procedural* due process claims. That case’s passing reference to the appropriateness of “rational basis review” ignores its own decision in *ODonnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018)(“*ODonnell I*”) calling for “heightened scrutiny.”
- Indigent arrestees detained prior to their individualized hearings solely because they cannot afford secured money bail do not receive any “meaningful consideration of other possible alternatives” that would enable their pre-hearing release.
- Rather, they “share two distinguishing characteristics” which trigger heightened scrutiny: (1) “because of their impecunity they [are] completely unable to pay for some desired benefit”; and

¹ *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395 (1971); and *Williams v. Illinois*, 399 U.S. 235 (1970)

(2) “as a consequence, they sustain an absolute deprivation of a meaningful opportunity to enjoy a benefit.”²

- In *Walker*, a split 11th Circuit court vacated a preliminary injunction based on *procedural* due process arguments. This court finds that *Walker’s* reasoning regarding *procedural* due process does not bear on the analysis of plaintiffs’ equal protection and *substantive* due process claims here. *Walker* didn’t challenge the amount and conditions of bail *per se*, but the process by which those terms are set.
- This court does not share the same view on the principle of liberty as the *Walker* court.
- In cases involving the fair treatment of indigents in the criminal justice system, “[d]ue process and equal protection principles converge.”³ Constitutional questions in that context require “a careful inquiry into such factors as ‘the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose...’ Those means are not hard and fast but must be tested. The question is under what standard.

There is no 48-hour safe harbor window for making indigency determinations.

- In *Gerstein*, the Supreme Court held that the 4th Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest. 420 U.S. at 124-25. The Court did not specify what would meet the promptness standard, instead noting that “the nature of the probable cause determination usually will be shaped to accord with a State’s pretrial procedure viewed as a whole.” *Id.* At 123.
- The Supreme Court noted a *presumption*, not a safe harbor.
- The *McLaughlin* Court made clear that the 48-hour presumption was rebuttable. A probable cause hearing held within 48 hours may nonetheless be unconstitutional “if the arrested individual can prove that his or her probable cause determination was delayed unreasonably.” 500 U.S. 44, at 56 (1991). In the dissent, Scalia said 48 hours was arbitrary and argued that given the data available, law enforcement needed only 24 hours to obtain probable cause review.
- The 48 hour presumption must be viewed in context. Nothing stopped the lower court from taking Plaintiff #1 to court on Tuesday morning, 10 hrs after she was booked, or even on Wednesday. Had it done so, Plaintiff would have seen a judge who could have made a release determination. Holding her 4 ½ times longer and well after the court closed on Wednesday suggests that the gov’t is unjustifiably taking advantage of the 48-hr window. Such delay for delay’s sake has been condemned by the Supreme Court (referencing *McLaughlin*).

A significant deprivation of liberty has occurred.

- The existence of a significant deprivation is not a threshold requirement *triggering* strict scrutiny, but rather the first inquiry in a strict scrutiny analysis.
- All parties agree that cash and the posting of a surety bond are the fastest ways to be released. The use of the bail schedule results in longer statutory detention of the plaintiff class.
- In determining significance, the time differential is but one component of the analysis. “Significance” is measured by more than just a difference in hours. The real world consequences of such a deprivation can include loss of employment, housing, public benefits, child custody,

² *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973)

³ Referring to the rule of law established by the *Bearden-Tate-Williams* cases

and the burden of significant long-term debt due to a short period of detention. Many detainees plead guilty (or no contest) at an early stage in the proceedings to secure their release.

- Given the consequences which flow from extended pre-arraignment detention, the court finds the deprivation significant.

Plausible alternatives exist which are consistent with the government's compelling interests.

- Plaintiffs bear the burden of identifying a plausible alternative that is less restrictive and at least as effective at serving the government's compelling interests: protecting public safety and assuring future court appearance.
- The burden is not high, and it need not rise to the level of scientific precision.⁴
- Plaintiffs' proposed alternative is to rely solely on the PSA. In enacting S.B. 10,⁵ the government *itself* concurs that the alternative is plausible. Unlike current reliance on the bail schedule, S.B. 10 requires all jurisdictions to generate a PSA for each arrestee, *prior to arraignment*, to determine eligibility for release, with low- and medium-risk individuals to be released OR prior to arraignment *without review by the court*.
- The court declined to address the constitutionality of S.B. 10. "The wholesale elimination of bail is outside the scope of this action."
- The argument that the plaintiffs' proposed alternative would pose "insurmountable administrative" problems for the Sheriff in determining which arrestees can "afford" bail is unfounded. Other jurisdictions have detainees execute affidavits for determining ability to pay.⁶
- The court referenced a study report conducted by the California Chief Justice's Pretrial Detention Reform Workgroup as additional evidence that a plausible alternative to the current system exists.

The proposed alternative is less restrictive than and at least as effective as the Bail Schedule in serving the government's compelling interests, and does not perpetuate the deprivation of one's liberty.

- The record is devoid of *any* evidence showing that the Bail Schedule considers either of the government's articulated goals: public safety and appearance.
- There is no requirement for any input, data collection, deviation reports, or comparative data in putting together the bail schedule.
- Defendants admit that there are no peer-reviewed studies that have empirically addressed questions specifically regarding the effectiveness of bail schedules, and that such schedules are simply used for "operational efficiency."
- Absent any evidence justifying the bail schedule as a means for accomplishing the government's compelling interests, the court finds that "operational efficiency" does not trump a significant deprivation of liberty. Delay until the end of the 48 hours appears to have become operational protocol.
- Merely assigning a random dollar amount to a code section does not address an actual person's ability or willingness to appear in court or the public safety risk a person poses. At most, all that

⁴ See, e.g., *Ashcroft*, 542 U.S. at 666-68 and *Video Software Dealers Ass'n v. Schwarzenegger*, 556 F.3d 950, 965 (9th Cir. 2009)

⁵ August 20, 2018, Governor Brown signed the California Money Bail Reform Act (S.B. 10) into law, which was originally set to go into effect on October 1, 2019. However, a referendum to overturn S.B. 10 qualified for the November 3, 2020 statewide ballot. Approval by a majority of voters will be required before S.B. 10 can take effect.

⁶ See, e.g., *Walker*, 901 F.3d at 1253 and *O'Donnell II*, 900 F.3d at 222.

can be discerned is that the amounts are so high as to keep all arrestees detained except for those who can afford to be released.

- This practice replaces the presumption of innocence with the presumption of detention.
- Accordingly, the Bail Schedule, which merely associates an amount of money with a specific crime, without any connection to public safety or future court appearance, cannot be deemed *necessary*. In fact, the use of such an arbitrary schedule may not even satisfy an analysis under a rational basis review. The presumption of detention is not rationally related to a legitimate government purpose.⁷

Walker v. City of Calhoun, 2016 WL 361612 (N.D. Ga. Jan. 28, 2016) (“*Walker I*”) and *Walker v. City of Calhoun, GA* (“*Walker III*”), 2017 WL 2794064 (N.D. Ga. June 16, 2017)(incorporating its findings in *Walker I* and issuing another preliminary injunction with more specificity pursuant to the 11th Circuit in *Walker v. City of Calhoun, GA* (“*Walker II*”), 682 F. App’x 721, 724-25 (11th Cir. 2017)(vacating on grounds that the district court’s order in *Walker I* was insufficiently specific).

Issue:

1. Whether Defendant violated the Plaintiff class’s 14th Amendment rights by jailing them because of their inability to pay fixed amounts of secured money bail?
2. Whether Plaintiff is entitled to an order preliminarily and permanently enjoining Defendant from enforcing its post-arrest money-based detention policies against Plaintiff and the class?

Holding:

1. Plaintiff’s Motion for Preliminary Injunction is granted.
2. Defendant is ordered to implement post-arrest procedures that comply with the Constitution, and further orders that, unless and until Defendant implements lawful post-arrest procedures, Defendant must release any other misdemeanor arrestees in its custody, or who come into its custody, on their own recognizance or on an unsecured bond in a manner otherwise consistent with state and federal law and with standard booking procedures.
3. Arresting officers, jail staff, or the court – as soon as practicable after booking – must verify that an arrestee is unable to pay secured or money bail via a sworn affidavit of indigency. The affidavit of indigency must be evaluated within 24 hrs after arrest.
4. The affidavit must include information about the arrestee’s finances and the opportunity for the arrestee to attest indigency, defined as “less than 100 percent of the applicable federal poverty guidelines.”
5. Defendant may not continue to keep arrestees in its custody for any amount of time solely because the arrestees cannot afford a secured monetary bond.

Certified Class: All arrestees unable to pay for their release who are or will be in the custody of the City of Calhoun as a result of an arrest involving a misdemeanor, traffic offense, or ordinance violation.

Facts: Plaintiff is 54-yr-old unemployed man with a mental health disability and income of \$530/mo. in Social Security disability payments. Plaintiff has a prescription for medication for his mental disorder and must take the medication every day. He was arrested for being a pedestrian under the influence of alcohol, a misdemeanor with no possible jail sentence and a fine not to exceed \$500. He was held in jail on \$160 cash bond for 5 days before filing suit.

⁷ See Chemerinsky, Erwin, *Constitutional Law Principles and Policies*, 5th Edition, at 706.

At the time the case was filed, Defendant rarely, if ever, deviated from the scheduled secured money bail amounts. Defendant did not allow post-arrest release on recognizance or with an unsecured bond prior to initial appearance. Defendant held weekly court sessions on Mondays, and new arrestees who could not post bond had to wait until the following Monday to see the judge. Defendant did not hold court on the Monday following Plaintiff's arrest, due to the Labor Day holiday. Plaintiff was not scheduled to appear in court until 11 days post-arrest. Plaintiff was released 6 days following arrest (1 day after the filing of this suit) by stipulation of the parties.

After the case was filed, and while this case was pending, the Municipal Court issued a standing order altering its bail policy as follows:

- Re-adopted the bail schedule for state offenses, with cash bail set at an amount no more than the expected fine with applicable surcharges should the accused later enter a plea or be found guilty.
- As an alternative to cash bail, arrestees can use their driver's license as collateral, or "make secured bail by property or surety" at an amount "twice that set forth in the schedule."
- If they can't meet those conditions, they shall be brought before a judge within 48 hrs of arrest for an initial appearance. They shall be represented by court-appointed counsel, and will be given the opportunity to object to the bail amount, including on the basis of indigency.
- The court shall determine whether the accused is unable to post a secured bail because he/she is indigent, making an individualized determination based upon the evidence provided.
- If the court finds the person indigent, he shall be subject to release on recognizance without making secured bail, with notice of the date for the next proceeding or trial.
- If no hearing is held within 48 hrs, the accused shall be released on a recognizance bond.
- On charges of a violation of city code (vs. state law), arrestees shall be release on an unsecured bond in the amount established by the bail schedule.

Analysis:

Plaintiff has a substantial likelihood of succeeding on the merits of his claims.

- Keeping individuals in jail solely because they cannot pay for their release, whether via fines, fees, or cash bond, is impermissible.⁸
- Any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses to obtain pretrial release, without any consideration of indigence or other factors, violates the Equal Protection Clause.
- The Equal Protection Clause generally prohibits "punishing a person for his poverty."⁹ This provision has special implications as it relates to depriving a person of his liberty.
- This is especially true where the individual being detained is a pretrial detainee who has not yet been found guilty of a crime.¹⁰ In *Pugh*, the 5th Circuit observed that a bond schedule that did not take into account indigency would fail to pass constitutional muster.

⁸ *Tate v. Short*, 401 U.S. 395, 398 (1971); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970); *Smith v. Bennett*, 365 U.S. 708, 709 (1961); *Griffin v. Illinois*, 351 U.S. 12, 19 (1956)

⁹ *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)

¹⁰ See *Pugh*, 572 F.2d at 1056 ("We view such deprivation of liberty of one who is accused but not convicted of crime as presenting a question having broader effects and constitutional implications than would appear from a rule stated solely for the protection of litigants.").

- Although the standing order attempts to remedy the deficiencies of the earlier bail policy, it simply shortens the amount of time that indigent arrestees are held in jail to 48 hours. However, any detention based solely on financial status or ability to pay is impermissible.
- Generally, an individual's indigence does not make them a member of a suspect class. However, detention based on wealth is an exception to the general rule that rational basis review applies to wealth-based classification.
- Because the new bail order treats those who can afford to pay the bail schedule amount differently than those who can't, it was subject to heightened scrutiny.

The amended bail policy does not deprive Plaintiff of his standing.

- There is no guarantee that Defendant will not revert back to its previous bail policy at some point. Further, the Standing Order gives rise to some of the same concerns as the previous bail policy. For the same reason, the standing order does not render this case moot.
- Given Plaintiff's evidence that he is indigent, it is entirely foreseeable that Plaintiff might be subject to arrest and detention in violation of his rights even under the new Standing Order.
- The Plaintiff is not challenging the requirements or provisions of a state statute or bail schedules *per se*.

Plaintiff has suffered irreparable harm.

- Plaintiff has suffered an improper loss of liberty by being jailed simply because he could not afford to post money bail. This constitutes irreparable harm.¹¹

The balance of harms favors Plaintiff.

- Defendant's contention that modifying its bail system will create significant administrative and procedural problems and will result in the release of individuals who pose a risk or danger to the community is unpersuasive.
- Defendant fails to acknowledge that its current system of releasing arrestees as soon as they post bond does nothing to address either of those concerns.
- Any difficulties Defendant may suffer if the Court grants injunctive relief are not so significant as to outweigh the important constitutional rights at issue.

Public interest supports preventing the violation of a party's constitutional rights.

- "It is always in the public interest to prevent the violation of a party's constitutional rights."¹²
- "Upholding constitutional rights surely serves the public interest."¹³

¹¹ See *Rodriguez v. Providence Cmty. Corrs., Inc.*, Case No. 3:15-CV-01048, — F.Supp.3d —, —, 2015 WL 9239821, at 9 (M.D.Tenn. Dec. 17, 2015) (finding that irreparable harm requirement was satisfied based on "the unconstitutional liberty deprivation which stems from Defendants' practice of jailing probationers on secured money bonds with[out] an indigency inquiry").

¹² See *Simms*, 872 F.Supp.2d at 105

¹³ See also *Giovani Carandola, Ltd.*, 303 F.3d at 521

Walker v. City of Calhoun, 901 F.3d 1245 (11th Cir. 2018) (“*Walker IV*”)

Issue: What process does the Constitution require in setting bail for indigent arrestees?

Holding:

1. *Younger* abstention was not warranted;
2. City was not immune from § 1983 liability;
3. Due process and equal protection, rather than the Eighth Amendment, applied to indigent arrestee's claims;
4. Bail schedule order was not subject to heightened scrutiny (*Dissenting opinion would have imposed strict scrutiny*);
5. District court abused its discretion in granting preliminary injunction requiring municipal court to make indigency determination with respect to arrestees within 24 hours;
6. District court abused its discretion in issuing preliminary injunction requiring municipal court to adopt affidavit-based process for determining indigency;
7. Arrestee failed to establish that he was likely to succeed on the merits of his claim that municipal court's standing bail order violated equal protection and due process; but
8. Arrestee's claim challenging original bail policy was not moot.
9. The district court may enjoin a return to the City's original bail policy, but the district court erred in also enjoining the entirely constitutional standing bail order. The preliminary injunction is vacated and the case is remanded to the district court for further proceedings.

Analysis:

Younger does not apply.

- Younger doesn't readily apply because Walker is not asking to enjoin any prosecution.¹⁴
- Walker does not ask for pervasive federal court supervision of State criminal proceedings, but merely asks for a prompt pretrial determination of a distinct issue which will not interfere with subsequent prosecution.
- At the very least, the district court could reasonably find the relief Walker seeks is not sufficiently intrusive to implicate *Younger*. The district court did not abuse its discretion and was not required to abstain.

City is not immune from §1983 liability.

- Georgia law indicates that the City has the authority to set bail policy. The State's broad grant of authority enables the City to regulate bail and the City already does so.
- Georgia's Uniform Municipal Court Rules, as promulgated by the Supreme Court of Georgia, recognize that “[b]ail in misdemeanor cases shall be set as provided in [State statutes], *and as provided by applicable municipal charter or ordinance.*”
- The district court did not err in finding that the City could directly regulate bail if it wished to and so may be held responsible for acquiescing in an unconstitutional policy and practice by its Municipal Court and its police.

¹⁴ *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975),

The 14th Amendment, rather than the 8th Amendment, applies to Plaintiff's claims.

- The 8th Amendment doesn't apply because the right at issue here is equal protection, not the protection against excessive bail.
- If the 8th Amendment did apply, the Plaintiffs would lose because the 8th Amendment says nothing about whether bail shall be available at all, but is meant merely to provide that bail shall not be excessive in those cases where it is proper to grant bail.¹⁵
- Bail is not excessive under the 8th amendment merely because it is unaffordable. The basic test for excessive bail is whether the amount is higher than reasonably necessary to assure the accused's presence at trial. As long as that's the reason for setting the bond, the final amount, type, and other conditions of release are within the discretion of the releasing authority.
- The district court correctly evaluated this case under due process and equal protection of the 14th Amendment.
- The decisive case is *Pugh v. Rainwater*. The court weighed the State's compelling interest in assuring appearance at trial with an individual's presumption of innocence and constitutional guarantees. 572 F.2d 1053, 1056 (5th Cir. 1978).
- *Pugh* held that the "demands of equal protection of the laws and of due process prohibit depriving pre-trial detainees of the rights of other citizens to a greater extent than necessary to assure appearance at trial and security of the jail."
- Therefore, the "incarceration of those who cannot" meet a master bond schedule's requirements, "without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements."
- Walker's claim, like the plaintiffs' in *Rainwater*, doesn't challenge the amount and conditions of bail *per se*, but the process by which those terms are set.
- In *Bearden v. Georgia*, the court explained that "[d]ue process and equal protection principles converge in the Court's analysis" of cases where defendants are treated differently by wealth. Under Due Process, "we generally analyze the fairness of relations between the criminal defendant and the State." Under Equal Protection, we address "whether the State has invidiously denied one class of defendants a substantial benefit available to another class."¹⁶

Bail Schedule order was not subject to heightened scrutiny.

- In *Rainwater*, the court approved the "[u]tilization of a master bond schedule" without applying any heightened form of scrutiny. It upheld the scheme because it gave indigent defendants who could not satisfy the master bond schedule a constitutionally permissible secondary option: a bail hearing at which the judge could consider "all relevant factors" when deciding the conditions of release.
- In *Bearden*, mere diminishment of a benefit (as opposed to an absolute deprivation of a meaningful opportunity to enjoy that benefit) was insufficient to make out an equal protection claim: "[A]t least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages."
- Under the new bail order, indigent defendants suffer no absolute deprivation of pretrial release, rather they must merely wait some appropriate amount of time to receive the same benefit as the more affluent.

¹⁵ *Carlson v. Landon*, 342 U.S. 524 (1952)

¹⁶ 461 U.S. 660, 661, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983)

- After such a delay, they arguably receive preferential treatment by being release on recognizance without have to provide any security. Such a scheme does not trigger heightened scrutiny under the Supreme Court’s equal protection jurisprudence.
- Similarly, in *Salerno*, the Supreme Court’s analysis was much closer to a relatively lenient procedural due process analysis than any form of heightened scrutiny.¹⁷ Rather than asking if preventative detention of dangerous defendants served a compelling or important State interest and then demanding narrow tailoring, the Court employed a general due process balancing test between the State’s interest and the detainee’s.
- Even if *Salerno* did embrace a form of heightened scrutiny, we do not believe it applies in this case because the City is not seeking to impose any form of preventative detention. Walker was released, and the standing bail order guarantees release within 48 hours of arrest to all indigent defendants.

Indigency determinations for purposes of setting bail are presumptively constitutional if made within 48 hours of arrest.

- Relying on *County of Riverside v. McLaughlin* (500 U.S. 44, 55 (1991)) – making probable cause determinations within 48 hours of arrest complies with the promptness requirement.
- This court expressly rejects a 24 hour bright-line limitation.
- *McLaughlin* allows detention for 48 hours before even establishing probable cause. The Court expressly envisioned that one reason is so that PC hearings could be combined with bail hearings and arraignments. The city can take 48 hours to set bail for someone held *with* probable cause.
- The 5th Circuit in *ODonnell* recently imported the *McLaughlin* 48-hour rule to the bail determination context. They held that a 24-hour limit was a heavy administrative burden and therefore too strict.
- The court expressly did not decide whether a jurisdiction could adopt a system allowing for longer than 48 hours to make a bail determination because the city’s system sets 48 hours.

An affidavit-based procedure for indigency determinations is not required.

- Federal courts should give States wide latitude to fashion procedures for setting bail.
- Directly on point, the bail rule upheld in *Rainwater* was based on formal hearings at which judges would consider the arrestee's financial resources, just as the Standing Bail Order provides.
- Even if *Rainwater* were not dispositive, however, there is no constitutional basis for the district court's imposition of its preferred method of setting bail.
- The City may have had good reasons for preferring a judicial hearing to a purely paper-based process for evaluating indigency. It may reasonably prefer that a judge have the opportunity to probe arrestees' claims of indigency in open court.
- Whatever limits may exist on a jurisdiction's flexibility to craft procedures for setting bail, it is clear that a judicial hearing with court-appointed counsel is well within the range of constitutionally permissible options.

¹⁷ 481 U.S. at 741, 107 S.Ct. 2095.

Tab 13

Agenda

District Court Judicial Support Staff Training Document	
Effective Date Statewide: 08/2009	Revision Date: 09/2019

CUSTODY AND SUPPORT**OVERVIEW**

When a child is born outside of a marriage, the parents can establish parentage, custody, parent-time and support by filing a custody and support case. A petition is submitted to the court that has jurisdiction in the matter. A custody and support case is used to establish, enforce, or modify support orders as well as determine parentage.

Custody and support petitions may be filed by an individual or by the State Office of Recovery Services. The Office of Recovery Services files a petition for registration of administrative order for the purpose of registering the support order with the court to establish, enforce, or modify support orders or to determine parentage and parent-time. The parties may establish custody and legal parent-time through a custody and support case.

Parties are not required to attend divorce education classes. There is not a 30-day waiting period and a vital statistics form is not required. If the case is contested, it follows the same path as a contested divorce (DCJUST: [Divorce/Annulment](#)).

The OCAP (Online Court Assistance Program) parentage forms can be used to file a custody and support case.

REFERENCE

Utah Code Annotated:

UCA [63G-4-501](#) Civil Enforcement

UCA [78B-12](#) Utah Child Support Act

UCA [62A-11-101 thru 327](#) Recovery Services

UCA [30-5a-103](#) Custody and visitation for persons other than a parent.

Utah State Courts website:

Child Custody and Parent-Time

www.utcourts.gov/howto/divorce/custody.html

Online Court Assistance Program

www.utcourts.gov/ocap/

MANUAL PROCEDURE

1. From the **Primary Menu**, select **Case > Case Filing > Domestic Filing**.

The screenshot shows the 'Domestic Filing' window. The 'Case Type' dropdown menu is open, displaying a list of case types. 'Custody and Support' is selected and highlighted in blue. Other visible options include 'Common Law Marriage', 'Divorce/Annulment', 'Grandparent Visitat.', 'ORS Child Supp Order', 'Paternity', 'Protective Orders', 'Separate Maintenance', 'Temporary Separation', 'UCC/JEA Child Cus Jur', and 'UI/FA'. The 'Filing Date' is set to 07/30/2019. The 'Commission' is set to 'Common Law Marriage'. The 'Party' section includes fields for Last Name, First Name, Address, City, State, and Zip Code. There are also checkboxes for 'Disabled' and 'Safeguarded'. At the bottom, there are buttons for 'Re-assign Judge', 'Accept Fee', 'Show Attorneys', 'Enter', and 'Exit'.

2. Under **Case Type**, select **Custody and Support** (DCJUST: [Domestic Filing](#)).
3. Enter the party information. Under **Party** select **PET** for the petitioner and **RES** for the respondent.
4. After all parties have been entered, select **Accept Fee**. A box will display containing the case number and judge assignment. Write the case number and judge assignment on all pleadings. If the State of Utah or other government agency is filing the petition, no filing fee is required.
5. CORIS will proceed to the **Cashiering** screen. Select the **Civil Fees** box in the **Payments** screen. A warning screen will display to verify that the correct payor of the fees has been selected. If the payor is correct, select **Yes**, if the payor is not correct, change the payor. If the case initiating documents were received by mail, check the **Mail/Drop Box Payment** checkbox.
6. The **Civil Fees** screen will display. In the drop-down box, select **Divorce/Cust & Su Petn** and **Online Assistance** if OCAP was used. Select **Continue**. If a fee waiver is requested select **Fee Waiver Requested**.

The screenshot shows the 'Civil Fees' window. The 'Case' is 194902880 and the 'Case Type' is 'Custody and Support'. The 'Title' is 'ONE, PETITIONER VS. ONE, RESPONDENT'. The 'Amount of Suit' is \$0 and 'Fees paid to date' is \$0. There is a 'Scroll to fee' dropdown menu. Below is a table of fees:

Fee Description	Fee Amount
DIVORCE/CUST MODIFY	100.00
DIVORCE/CUST&SU PETN	310.00
JUDICIAL DOCUMENT AP	35.00
TEMPORARY SEPARATION	35.00
VITAL STATISTICS FEE	8.00
ONLINE ASSISTANCE	20.00

At the bottom, there are checkboxes for 'Government Fee (based on filing date)', 'Zero Amount', 'Proceed to Miscellaneous Copies', and 'Fee Waiver Requested'. The 'Amount Due' is \$330.00. There are buttons for 'All Fee Codes', 'Paid Fees', 'Note', 'Continue', and 'Exit'.

7. The **Civil Fee Documents** screen will open. Enter the title of the document under Document Title. Select **Enter**. Choose the detailed document category from the **Document Categorization** screen and click on **Select**. The Cashiering screen will open so the fees can be receipted (DCJUST: [Cashiering in CORIS](#)).
8. Enter all documents in the Documents screen (follow local policy). **Primary Menu > Case > Documents** (F5) (DCJUST: [Documents Screen](#)).
9. Refer to the DCJUST: [District Court Domestic Case Checklist](#) for documents filed in a custody and support case.

Efiling Note: If the case has been eFiled, certain pleadings will display in the review queue. The eFiled pleadings will need to be opened and reviewed to determine the necessary actions to take according to local policy.

ENTERING THE FINDINGS AND DECREE

A custody and support case is complete when the judge signs the findings of fact and conclusions of law, and the paternity decree. A judgment is not entered on a custody and support case unless there is an actual monetary judgment ordered.

Enter the findings of fact and conclusions of law in the **Documents** screen (**F5**).

1. Select **Findings of Fact/Conclusions of Law** as the Document Type, select the judge, and enter the date signed. Select **Enter**. (DCJUST: [Documents Screen](#))

If there **isn't a monetary judgment** ordered, enter the decree using the following procedure:

1. Enter the paternity decree in the Documents screen (**F5**) using the document type **Order** (DCJUST: [Documents Screen](#)). Enter the complete the title of the document. Select **Enter**.
2. A disposition will need to be entered.
 - a. Select Civil Case Disposition on the Documents screen (**F5**) (**Toolbox > Civil Case Disposition**).
 - b. Select **Granted** as the **Disposition**.
 - c. Select the judge assigned to the case. Select **Enter**.

If there **is a monetary judgment** ordered, enter the decree as a judgment using the following procedure:

1. From the **Primary Menu**, Select **Case > Judgments > Civil/Criminal** (F6).
2. From the drop down menu in the Type box, select **Custody and Suppt Jdmt**.

3. In the Description box, enter the title of the document. The screen will automatically populate the names of the parties as Petitioner and Respondent. Change the parties to Creditor and Debtor as reflected in the order. Remove any parties that weren't changed to a creditor or debtor. (DCJUST: [Judgment Entry](#)).
4. Select Add Detail Line. Select Decree of Support from the drop down box, Enter the total amount of the judgment. Select Enter.
5. A warning message will display asking if the document was eFiled or already entered/uploaded. Select **No**.
6. The **Judgment Documents** screen will open with the document title, "Custody & Support Judgment." The title of the document can be changed if needed. Select the name of the judge and enter the date it was signed. Select **Enter**.
7. A **New Judgment Entered** box will display with the message, "The judgment was entered successfully." Select **OK** or return.
8. A **Case Disposition** box will open asking "Would you like to dispose the case now?" Select **Yes**.
9. The **Civil Case Disposition** screen will open, select **Judgment** from the **Disposition** drop-down box. The judge assigned to the case will display. Select **Enter**.

Efiling Note: Check both the findings of fact and the decree by selecting each PDF to view the documents to confirm that the names of the parties, case number, and judge are correct. The Edit Data screen should be reviewed for accuracy if the decree has a monetary judgment. Close the documents and reassign them to the judge for review and signature.



When the judge has signed the decree, it will be in the **Post Signature** queue. After signature, enter a disposition of judgment in CORIS.

This document is a product of the District/Justice Court Judicial Support Training Committee. If you have questions or concerns about the contents of this document, contact a DCJUST committee member representing your district. All documents prepared by the DCJUST committee are available at: www.utcourts.gov/intranet/clerktraining/resources/.

District Court Judicial Support Staff Training Document	
Effective Date Statewide: 05/2005	Revision Date: 09/2019

INVOLUNTARY CIVIL COMMITMENT

OVERVIEW

The sole purpose for involuntary commitments is to protect and provide medical aid to the individual who is mentally ill and is likely to cause serious injury to self or others. Proceedings for commitment of an individual under the age of 18 years of age may be commenced by filing a written application with the juvenile court. Costs of all proceedings are paid by the county in which the proposed protected person resides or is found. Utah Code Annotated [62A-15-631](#)

Proceedings for involuntary commitment of a person are commenced by filing a written application for order of involuntary commitment with the district court of the county in which the protected person resides or is found. **An Involuntary Commitment is an expedited filing.**

Involuntary Commitment cases and the documents associated with these cases are private. Only attorneys of record and protected persons with identification may have access to the court file. Anyone else requesting access must have a notarized release, signed within the previous 90 days, or a power of attorney which specifically grants access to involuntary commitment cases and/or court records before access is allowed. The requirement of a notarized release or power of attorney to access the court file also applies to insurance companies, guardians to the protected person, and an examiner. The only exception is to release a copy of a document to the person who filed it (such as providing a copy of the application to the person who filed it). (Information provided by the courts' general counsel and Utah Code Annotated [62A-15-643](#))

An Involuntary Commitment case begins with an application for order of involuntary commitment. A report from the local mental health authority/designee of examination upon admission may also be filed with the application. Notice is to be provided to the local mental health authority in the event of a civil commitment hearing or finding.

An application for an order of involuntary commitment may be filed by any person who has reason to believe the protected person is mentally ill and should be involuntarily committed. The application must be an affidavit or unsworn declaration and contain a written statement that the individual has refused to submit to an examination of their mental condition. The application may also be a certificate from a licensed physician or designated examiner stating they have examined the individual within a seven-day period (from the date of application) and are of the opinion the individual is mentally ill and should be involuntarily committed.

If the petition results in a civil commitment order, the information entered will be transmitted to the Division of Public Safety (DPS) for inclusion on the National Instant Check System (NICS). NICS is a database checked before firearms or explosives can be purchased. NICS is mandated by the Brady Handgun Violence Prevention Act (Brady Law) of 1993. If a protected person needs to be removed from NICS a petition must be filed in a Registry Removal case.

REFERENCE

Utah Code Annotated:

UCA [62A-5-312](#) Involuntary commitment -- Procedures -- Necessary findings -- Periodic review

UCA [62A-15-631](#) Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs

UCA [62A-15-638](#) Reexamination of court order for commitment -- Procedures -- Costs

UCA [62A-15-643](#) Confidentiality of information and records -- Exceptions -- Penalty

UCA [76-10-532](#) Removal from National Instant Check System database

Utah Dept of Human Services website:

Civil Commitment

www.dsamh.utah.gov/providers/civil-commitment

FORMS

Application for Order of Involuntary Commitment	Order Appointing Designated Examiner and Report of Examination
Findings and Order Upon Review Hearing	Order Appointing Legal Counsel
Initial Findings and Order of Commitment	Order Fixing Day and Notice of Hearing
Notice of Continuation of Indeterminate Commitment	Order for Commitment and/or Detention Pending Hearing and/or Examination
Notice to Drop Commitment Proceeding Prior to a Hearing	Order of Dismissal
Notice to patient of Commencement of Proceedings for Involuntary Commitment	Order of Transfer
Notice of Transfer of a Patient	Report of Local Mental Health Authority/Designee of Examination Upon Admission

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FILING PROCEDURE (Manual or eFiling)

An involuntary civil commitment case can be filed in paper or electronically. Judicial assistants should verify the case for accuracy if the case is filed electronically. Any documents eFiled will be highlighted for easy identification.

Manual Filing

1. Upon receiving the application a case must be created in CORIS. From the Primary Menu select
 - a. **Case > Case Filing > Civil Filing.**
 - b. Select **Involuntary Commitment MH** as the case type. The case classification will default to PRIVATE.
2. Enter the protected person's name in the **Name** field after "In the Matter of".
3. Select **Party** and enter the local mental health authority or the individual filing the application as the **PET**.

4. Select **Next Party** and enter the protected person's full name using the party type **PTP**. Enter the protected person's complete Social Security Number and date of birth. Do not enter the Social Security Number as XXX - XX - #####. Enter the physical address and email address if provided.

The completeness and accuracy of the protected person's information is important. If the petition results in a civil commitment order, the information entered will be transmitted to the Division of Public Safety (DPS) for inclusion on the National Instant Check System (NICS). NICS is a database checked before firearms or explosives can be purchased. NICS is mandated by the Brady Handgun Violence Prevention Act (Brady Law) of 1993. If a protected person needs to be removed from NICS click [here](#) for further instructions.

NICS requires the protected person's full name, Social Security Number, and date of birth. **If the protected person's Social Security Number or date of birth aren't available at the time of filing, the information needs to be obtained before the commitment order is entered.** The entry of a Social Security Number or date of birth at a later time will trigger an update to NICS. Updated records are sent electronically every 24 hours.

5. Select **Enter** in the Civil Filing screen. A case number and judge assignment will display.
6. Enter the application for order of involuntary commitment in the documents screen (F5) **Case > Documents > Documents F5** using the document type "Other." (See DCJUST: [Documents Screen](#))
7. The protected person has a right to counsel and the court shall appoint counsel if the protected person is unrepresented. The judge must sign an order appointing legal counsel and an order for commitment and/or detention pending hearing and/or examination prior to the initial hearing. A hearing must be held within ten (10) calendar days of the order for commitment and/or detention pending hearing and/or examination being signed. Instructions to set the hearing are included later in this document.
8. Within 24 hours (excluding Saturdays, Sundays, and legal holidays) of issuing the order for commitment and/or detention pending hearing and/or examination, the court must appoint two designated examiners using an order appointing designated examiner and report of examiners. The examiners may be contracted by the county.

9. The following documents will need to be generated once the case is filed. A copy of all documents must be sent to the protected person, parties to the case, and counsel. (Utah Code Annotated [62A-15-631](#)).
- [Order for commitment and/or detention pending hearing and/or examination](#)
 - [Order appointing designated examiners and report of examination](#)
 - [Notice to patient of commencement of proceedings for involuntary commitment](#)
 - [Order appointing legal counsel](#)
 - [Order fixing day and notice of hearing](#)
 - Mailing certificate (which includes a list of all documents and states who, how, and where the documents were sent)

SETTING THE INITIAL INVOLUNTARY COMMITMENT HEARING

The case must be set for a hearing with notification to the local mental health authority. The hearing must be held within ten (10) calendar days from the date of the order for commitment and/or detention pending hearing and/or examination is signed (See DCJUST: [Calendaring - Scheduling Events](#)). If there is not a hearing date available within that time, the court must issue an order continuing commitment and an order of continuance on initial appearance.

1. To schedule the hearing select:
 - a. **Case > Calendar > Schedule Event** (Alt F8).
 - b. Select the hearing type **Initial Involuntary Commitment**. (See DCJUST: [Calendaring - Scheduling Events](#))
 - c. Send a copy of the notice of hearing to the facility where the protected person is being held and to the local mental health authority and to counsel.
2. Copies of the following must be immediately sent to the facility where the protected person is being held and to the local mental health authority.
 - [Notice to patient of commencement of proceedings for involuntary commitment](#)
 - [Order for commitment and/or detention pending hearing and/or examination](#)
 - [Order fixing day and notice of hearing](#)
3. Prepare and send a copy of a transportation order to the local sheriff or jail (if needed).

NOTICE TO DROP COMMITMENT PROCEEDING PRIOR TO A HEARING

If the designated examiners, the local mental health authority, or the local mental health authority's designee informs the court prior to the hearing that the protected person is not mentally ill, that he/she has agreed to become a voluntary protected person, or that treatment programs are available and acceptable without court proceedings, the court may, without taking any further action, terminate the proceedings and dismiss the application.

A [notice to drop commitment proceeding prior to a hearing](#) may be submitted prior to a hearing to terminate the proceedings and dismiss the case prior to the hearing. If received, enter the notice to drop commitment proceeding and a case disposition of **Dismissed**. Click [here](#) for a complete list of proper case dispositions used in involuntary commitment cases.)

1. If the notice is received, a disposition will need to be entered.
 - a. From the Primary Menu select **Case > Civil Case Disposition**.
 - b. Enter the date of the notice
 - c. Select **Dismissed** as the disposition.
 - d. Select the judge assigned to the case. Select **Enter**.

INITIAL INVOLUNTARY COMMITMENT HEARING

The initial hearing is conducted either informally at the facility the protected person is being held at or at the court. The proceedings must be recorded. At the hearing, the protected person, the applicant, and any other persons to whom notice has been given are given an opportunity to testify and present witnesses. The court may waive the protected person's right to appear for good cause, such as the physical safety of the protected person. The examiners and mental health representative will give an oral report of their findings. A copy of their written report is to be filed with the court (report of local mental health authority/designee of examination upon admission).

1. Create a minute entry from the hearing. (See DCJUST: [Minute Entries](#)). Depending on the outcome of this hearing, the judge will typically sign either an [initial findings and order of commitment](#), or an [order of dismissal](#).
2. If the protected person's Social Security Number and/or date of birth aren't updated in CORIS, update them before entering the order. The information entered will be transmitted to the Division of Public Safety (DPS) for inclusion on the National Instant Check System (NICS).
3. Enter the order in the documents screen **Case > Documents > Documents (F5)** using the document type Order (See DCJUST: [Documents Screen](#)).

4. Enter a disposition.
 - a. From the Primary Menu select **Case > Civil Case Disposition**.
 - b. Enter the date of the notice
 - c. Select either **Committed** or **Dismissed** as the disposition. (Click [here](#) for a complete list of proper case dispositions used in involuntary commitment cases.)
 - d. Select the judge assigned to the case. Select **Enter**.

Selecting the Committed disposition will send the protected person's information to the DPS for registration on the NICS registry. Changing a disposition will not remove a protected person from the NICS registry. If a protected person needs to be removed from NICS click [here](#) for further instructions.

TRACKING COMMITTED DISPOSITIONS

Cases in which the court has entered a disposition of Committed need to be tracked for the time of the commitment. Set a tracking date two weeks prior to the date of expiration of the commitment (or as ordered by the judge).

To set tracking (See DCJUST :[Tracking](#)):

1. From the Primary Menu select **Case > Tracking (F3)**
2. Use the **Mental Health Review** tracking code.
3. Set the Review Date for two weeks prior to the date of expiration of the commitment (or as ordered by the judge).

A list of the cases with a disposition of Committed is maintained by the Court Services department in the Administrative Office of the Courts (AOC). (Utah Code Annotated [62A-15-631\(17\)\(b\)](#)) Court Services will distribute a report with the list of cases to each court or district on a quarterly basis for quality review. Court Services can be contacted at courtdatarequest@utcourts.gov if there are any questions about the report or if the list of contacts for the report needs to be updated.

REVIEW HEARINGS

If an order for commitment is entered, the court must hold a review hearing within six months. For each review hearing, the judicial assistant must generate:

- [Order appointing designated examiner and report of examination](#)
- Notice of hearing (generated by CORIS)
- Mailing certificate
- [Findings and order upon review hearing](#)
- [Notice of continuation of indeterminate commitment](#) or [Order of dismissal](#)

A new report of local mental health authority/designee of examination upon admission is to be filed by the designated examiner for each review hearing.

At the review hearing either the order of dismissal or a notice of continuation of indeterminate commitment will be entered.

FINDING OF INSUFFICIENT EVIDENCE AT REVIEW HEARING

If the court finds insufficient evidence to continue to hold the protected person, the judge will sign an order of dismissal. Enter this order in the documents screen **Case > Documents > Documents (F5)** using the document type Order (See DCJUST: [Documents Screen](#)).

Change the disposition to **Prior Commitment Dsm** and change the disposition date to reflect when the order was entered. The disposition must be changed to **Prior Commitment Dsm**, not Dismissed, on cases in which a prior commitment is being dismissed. Do not use Granted or No Cause of Action as the case disposition codes. (Click [here](#) for a complete list of proper case dispositions used in involuntary commitment cases.)

The disposition code can be changed even though the disposition screen instructs users to never change it.

1. From the Primary Menu select **Case > Civil Case Disposition**.
2. Change the disposition to **Prior Commitment Dsm** (The disposition must be changed to **Prior Commitment Dsm** on cases in which a prior commitment is being dismissed. The disposition date shouldn't be changed.)
3. Select **Enter**.

Changing a disposition will not remove a protected person from the NICS registry. If a protected person needs to be removed from NICS click [here](#) for further instructions.

FINDING OF SUFFICIENT EVIDENCE AT REVIEW HEARING

If the court finds sufficient evidence to continue to hold the protected person, another review hearing will be set. Statute requires commitments to be reviewed at six month intervals by the local mental health authority or its designee. If the local mental health authority or its designee determine the conditions justifying the commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The protected person does not have to appear at the review and may sign the notice of continuation of indeterminate commitment.

REMOVAL FROM NATIONAL INSTANT CHECK SYSTEM DATABASE (NICS)

Persons with a civil commitment are not removed from NICS when the civil commitment order is dismissed. A previously committed person will only be removed from the NICS registry by initiating a Registry Removal case by filing a petition for removal Utah gun registry. A removal order must be signed and issued by a district court judge. (Utah Code Annotated [76-10-532](#)) (See DCJUST: [Petition for Removal from Utah Gun Registry](#))

REEXAMINATION OF COURT ORDER FOR COMMITMENT

A protected person who has been previously committed may be reexamined upon filing of a petition. The petition must be filed in the district court the protected person resides in or is being held and can be filed by the protected person, a legal guardian, parent, spouse, relative, or friend. The involuntary commitment process starts over if the petition is filed at least six months after the initial petition. The proceedings aren't required to begin again if the petition is filed less than six months of the initial petition (see local policy for how to proceed in this instance).

TRANSFERRING AN INVOLUNTARY COMMITMENT CASE

Transfers can occur at any time in an Involuntary Commitment case. A transfer is initiated by the facility where the protected person is held by the filing of a [notice of transfer of a patient](#) (this document is only for transferring facilities). The notice must include the facility to which the protected person is being transferred. An [order of transfer](#) must be generated by the court and signed by a judge or commissioner when the transfer results in a change of jurisdiction. A copy of the order of transfer must be mailed to the protected person. Copies must be sent to counsel. Enter the notice of transfer of a protected person and order of transfer in the documents screen **Case > Documents > Documents (F5)** (See DCJUST: [Documents Screen](#)).

The case history should be reviewed for any previously scheduled hearings. If there is a scheduled hearing, the originating court should cancel the hearing and notify the receiving court. The receiving court should then set a new hearing and send notice to the parties. The receiving court should review the case history to determine if any other action is necessary. A hearing should be set within 10 days if a case is transferred prior to an order of commitment.

To complete the transfer in CORIS (DCJUST: [Transferring a Case](#)):

1. The originating court should verify all case documents are entered and scanned before the transfer.
2. The originating court should also verify all eFiled documents have been processed (whether signed or unsigned) before the transfer.
3. Primary Menu > **Case** > **Management** > **Civil/Criminal/Original Transfer**
4. Fill in Case Number and Transfer to information and select **Enter**.
5. Verify the case number and if it's correct, select Yes.
6. Select OK when the transfer is complete.
7. Change the case disposition.
 - a. From the Primary Menu select **Case** > **Civil Case Disposition**.
 - b. Select **Transferred** as the disposition. (Click [here](#) for a complete list of proper case dispositions used in involuntary commitment cases.)
 - c. Select **Enter**.

Case Dispositions in Involuntary Commitment Cases		
Event	Case Disposition Description	Reporting
Court denies the commitment prior to the hearing	Dismissed (Some courts use No cause of action. Either disposition is acceptable.)	Doesn't report to DPS/NICS
Court dismisses the case at the hearing (This typically happens when a notice to drop commitment proceeding prior to a hearing is filed before the initial hearing)	Dismissed	Doesn't report to DPS/NICS
Court orders the commitment	Committed	Reports to DPS/NICS
Court dismisses a prior commitment (This typically happens at a review hearing.)	Prior Commitment Dsm	Doesn't report to DPS/NICS
Used when a case is transferred to another court location.	Transferred	Doesn't report to DPS/NICS

This document is a product of the District/Justice Court Judicial Support Training Committee. If you have questions or concerns about the contents of this document, contact a DCJUST committee member representing your district. All documents prepared by the DCJUST committee are available at: www.utcourts.gov/intranet/clerktraining/resources/.