

2000

# Greg F. Knight, Steve Hall, Roy Neizer and Brock Hudson, personally and on behalf of a class of persons similarly situated v. Salt Lake County, a governmental entity : Brief of Appellant

Utah Court of Appeals

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GREG F. KNIGHT, STEVE HALL,  
ROY NEIZER and BROCK HUDSON, : BRIEF OF APPELLANTS  
personally and on behalf of a :  
class of persons similarly :  
situated,

Plaintiffs/Appellants,

## Priority No. 15

Defendant/Appellees.

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**FILED**  
**Utah Court of Appeals**

FEB 13 2001

**Paulette Stagg**  
Clerk of the Court

**ORAL ARGUMENT REQUESTED**

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IN THE UTAH COURT OF APPEALS

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:

GREG F. KNIGHT, **STEVE HALL**,  
**ROY NEIZER** and **BROCK HUDSON**, : **BRIEF OF APPELLANTS**  
personally and on behalf of a :  
class of persons similarly :  
situated, :  
:  
Plaintiffs/Appellants, : Case No. 20000864-CA  
:  
vs. :  
:  
**SALT LAKE COUNTY**, a :  
governmental entity, :  
:  
Defendant/Appellees. :

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AN APPEAL FROM JUDGMENT ENTERED BY THE THIRD JUDICIAL  
DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, SALT  
LAKE DEPARTMENT, The Hon. David Young, Judge Presiding  
(Trial Court Case No. 97-090-7950 CV)

-----

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**ORAL ARGUMENT REQUESTED**

### LIST OF PARTIES IN THE COURT BELOW

The following is a complete list of the parties in the proceedings before the Third Judicial District Court:

#### JUDGE

The Hon. David Young, Judge Presiding, Third Judicial District, Salt Lake Department.

#### PARTIES

1. Greg F. Knight<sup>1</sup>, Steve Hall, Roy Neizer, Brock Hudson, personally and on behalf of a class of persons similarly situated represented by Utah Legal Clinic, Brian M. Barnard, and James L. Harris, Jr., Attorneys at Law.

Andrea J. Garland represented plaintiffs and plaintiff class at an earlier stage of the litigation.

2. Salt Lake County, a governmental entity, represented by David Yocom, Salt Lake County District Attorney, John Soltis, Valerie Wilde, Deputy District Attorneys.

Douglas R. Short, Brendan P. McCullagh, and Rena Beckstead represented defendant Salt Lake County at an earlier stage of the litigation.

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<sup>1</sup> Greg Knight withdrew from personal participation in the action below, and no longer appears personally or on behalf of the certified class. He is still, however, a class member.

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### **PRIOR OR RELATED APPEALS**

Plaintiffs/appellants filed a premature appeal in this action, Case No. 20000735-SC. That appeal has been dismissed. Plaintiffs also filed a related appeal, Case No. 20000880-SC. That appeal has been consolidated into this action. There are no other or related appeals.

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**IN THE UTAH COURT OF APPEALS**

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GREG F. KNIGHT, **STEVE HALL**,  
**ROY NEIZER** and **BROCK HUDSON**, : **BRIEF OF APPELLANTS**  
personally and on behalf of a :  
class of persons similarly :  
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Plaintiffs/Appellants, :  
 : Case No. 20000864-CA  
vs. :  
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**SALT LAKE COUNTY**, a :  
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AN APPEAL FROM JUDGMENT ENTERED BY THE THIRD JUDICIAL  
DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, SALT  
LAKE DEPARTMENT, The Hon. David Young, Judge Presiding  
(Trial Court Case No. 97-090-7950 CV)

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Plaintiffs/Appellants submit the following brief:

**STATEMENT OF JURISDICTION**

The Utah Court of Appeals has jurisdiction in this matter  
pursuant to Utah Code Ann. § 78-2-2 (3)(j) (1953 as amended).  
The case was transferred by the Supreme Court of the State of  
Utah to the Utah Court of Appeals for disposition pursuant to an  
ORDER dated January 17, 2001.

### **ISSUES PRESENTED FOR REVIEW**

1) Whether appellants (hereinafter "Plaintiff-Officers") were employees of Salt Lake County based upon written employment contracts thereby subjecting their wage claims to a six-year statute of limitations; or, whether Plaintiff-Officers are "statutory employees" thereby subjecting their wage claims to a three-year statute of limitations.

2) Whether the documents presented by Plaintiff-Officers establish a written employment contract.

### **ISSUES RAISED AND CONSIDERED**

1) Whether Plaintiff-Officers were employees of Salt Lake County based upon written employment contracts was raised and considered at hearing/trial on April 18, 2000<sup>2</sup>. Transcript, p. 12:9 to 15:18; p. 5:6 to 9:19; p. 42:9-21. Order on Motions for Summary Judgment, p. 2 (R. 1458-1459), Attachment "D" attached hereto. This issue was previously raised in Plaintiffs' Motion for Partial Summary Judgment and supporting Memorandum (R. 75, 81); it was considered at hearing on February 6, 1998 (R. 288) and by the court's Order Granting Partial Summary, p. 296 (R. 292), Attachment "C" attached hereto. The issue was also raised

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<sup>2</sup> The case below was set for trial on April 18, 2000. However, the court considered and ruled on the parties' cross motions for summary judgment immediately prior to trial. Transcript, p. 2:15 to 3:9.

in Motion for Ruling on Applicable Statute of Limitations, and supporting Memorandum (R. 119, 142). Finally, this issues was raised in Defendant's Motion for Summary Judgment and supporting Memorandum, and Plaintiffs' Motion for Summary Judgment and supporting Memorandum (R. 410, 413, 751, 757).

2) Whether the documents presented by Plaintiff-Officers establish a written employment contract was raised and considered at hearing/trial on April 18, 2000. Transcript, p. 11:8 - 12:25; p. 20:5 - 22:18; p. 42:9-16. This issue was also raised in the pleadings mentioned above.

#### **STANDARD OF REVIEW**

1) The issues presented are questions of law. As such, they are reviewed under the "correctness" standard. State v. Pena, 869 P.2d 932, 936 (Utah 1994); Certified Surety Group, Ltd. v. UT Inc., 960 P.2d 904, 905-06 (Utah 1998) ("In reviewing a trial court's grant of summary judgment, 'we do not defer to the trial court's conclusion of law but review them for correctness.'" (citation omitted)).

2) The underlying facts are not in dispute and should be reviewed in a light most favorable to plaintiffs/appellants. Bowen v. Riverton City, 656 P.2d 434, 436 (Utah 1982) (court to present facts and reasonable inferences from them in a light most favorable to the party opposing summary judgment); Harnicher v. University of Utah Med. Ctr., 962 P.2d 67 (Utah 1998) (on summary

judgment, the court must view the facts in the light most favorable to the non-moving party).

#### **STATEMENT OF THE CASE**

This is an action based upon written contracts by STEVE HALL, ROY NEIZER and BROCK HUDSON, former employees of Salt Lake County, who worked as staff members in the Salt Lake County Metro Jail and/or Oxbow Jail. This action below was certified as a class action pursuant to Ut. R. Civ. P. 23(b)(1)&(2). Order Granting Partial Summary Judgment, p. 2 (R. 293-294). The appellants herein, Hall, Neizer and Hudson, were certified as the class representatives and were the named plaintiffs below. SALT LAKE COUNTY was the defendant below and is the appellee herein.

After July 16, 1991, the County employed Hall, Neizer and Hudson (hereinafter "Plaintiff-Officers") in various occupations and positions as staff members in operating the Salt Lake County Metro Jail and/or Oxbow Jail. During the time period from July 16, 1991 to late 1995, the County required Plaintiff-Officers to arrive and to report for work ten (10) minutes early for briefing or roll call before the beginning of every assigned regular work shift. The County's policy was to not pay Plaintiff-Officers for the required briefing time they worked before each work shift.

Upon hearing on February 6, 1998, the lower court found that Plaintiff-Officers' claims were based upon written contracts and

therefore governed by a six (6) year statute of limitations.  
Order Granting Partial Summary Judgment, p. 3 (R. 294),  
Attachment "C" attached hereto.

Subsequently (two (2) years later), the lower court allowed Salt Lake County to re-argue these issues and found that the Plaintiff-Officers were not contractual employees; rather, the court found that the Plaintiff-Officers were statutory employees. Order on Motions for Summary Judgment, p. 2 (R. 1458), Attachment "D" attached hereto. As such, the court found that Plaintiff-Officers' claims are governed by a three (3) year statute of limitations, thereby finding no triable issues. Order on Motions for Summary Judgment, p. 2 (R. 1458-1459).

Thus, Plaintiff-Officers' claims were dismissed, a summary judgment was granted, and this timely appeal followed.

#### **STATEMENT OF FACTS**

1. Appellants, STEVE HALL, ROY NEIZER and BROCK HUDSON former employees of Salt Lake County, ("Plaintiff-Officers") bring this action personally and on behalf of other employees of Salt Lake County similarly situated, to recover unpaid wages under employment contracts. Amd. Compl. ¶ 1 (R. 333), Attachment "A" attached hereto; Aff. of Neizer (dated 12/12/97), Hudson (dated 11/21/97) & Hall (dated 11/25/97), ¶¶ 2 & 5 (R. 28, 14, 153).

2. HALL, NEIZER and HUDSON worked in the Salt Lake County Metro Jail and/or Oxbow Jail (hereinafter "Jails"). They were uniform services personnel. Amd. Complt. ¶ 5 (R. 334); Answer to Amd. Complt. ¶ 5 (R. 365), Attachment "B" attached hereto; Order Granting Partial Summary Judgment, p. 5 (R. 296).

3. Defendant SALT LAKE COUNTY is a government entity. At all times pertinent, from July 16, 1991 through and including July 16, 1997 inclusive, or during portions of that period Salt Lake County employed the Plaintiff-Officers in the operations of the Jails. Amd. Complt. ¶ 6; ¶ 8 (R. 334); Answer to Amd. Complt. ¶ 6; ¶ 8 (R. 365); Aff. of Neizer, Hudson & Hall, ¶¶ 2-3 (R. 28, 14, 153); Order Granting Partial Summary Judgment, p. 5 (R. 296).

4. The periods of employment of named Plaintiff-Officers as jail staff members are:

STEVE HALL: February, 1977 through February, 1995;

ROY NEIZER: June, 1991 through April, 1995; and,

BROCK HUDSON: January, 1990 through October, 1993.

Amd. Complt. ¶ 9 (R. 335); Answer to Amd. Complt. ¶ 9 (R. 365); Aff. of Neizer, Hudson & Hall, ¶ 3 (R. 28, 14, 153).

5. The Plaintiff-Officers had written employment contracts with Salt Lake County. Amd. Complt. ¶ 10 (R. 336); Aff. of Neizer, Hudson & Hall, ¶¶ 2-4 (R. 28, 14, 153).

6. All contracts entered into by Salt Lake County, including employment agreements, must be in writing. Salt Lake County Ordinance § 2.04.100.

7. During the period from July 16, 1991 to July 16, 1997, Salt Lake County required Plaintiff-Officers to arrive and to begin work ten (10) minutes early for briefing or roll call (hereinafter "briefing time") before the beginning of every assigned regular work shift. Amd. Complt. ¶ 11 (R. 336); Aff. of Neizer, Hudson & Hall, ¶ 6 (R. 28, 14, 153); Order Granting Partial Summary Judgment, p. 5 (R. 296); Depo. of County,<sup>3</sup> p. 44:19-25 (R. 711).

8. Between July 16, 1991 and July 16, 1997, Salt Lake County subjected Plaintiff-Officers to disciplinary action if they were not present for the briefing time. 2<sup>nd</sup> Depo. of Cunningham, p. 32:1-6 (R. 726); Amd. Complt. ¶ 18 (R. 338); Answer to Amd. Complt. ¶ 18 (R. 366); Aff. of Neizer, Hudson & Hall, ¶ 6 (R. 28, 14, 153); Order Granting Partial Summary Judgment, p. 5 (R. 296); Defendant's Answers to Interr. pp. 22-23, ¶ 50 (a verbal order) (R. 679-680).

9. Plaintiff-Officers have not been paid nor compensated for the ten (10) minute briefing time they worked before each

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<sup>3</sup> Pursuant to Ut. R. Civ. Pro. 30(b)(6), Susan Biesele was designated as the representative of Salt Lake County and through her the deposition of Salt Lake County was taken on June 17, 1999.



work shift prior to February 1, 1994. Amd. Compl't. ¶ 12 (R. 336); Aff. of Neizer, Hudson & Hall, ¶ 7 (R. 28, 14, 153); 3<sup>rd</sup> Depo. of Cunningham, p. 7:12-15 (R. 714); Depo. of County, p. 7:1-14 (R. 701); p. 16:6-10 (R. 704).

10. In approximately June, 1996, after Salt Lake County was sued in federal court by Plaintiff-Officers herein, (referred to as the Villalobos case), the County paid most plaintiff class members in wages for the uncompensated briefing time worked after February 1, 1994. The class claims herein are for compensation for the unpaid briefing time worked prior to February 1, 1994. Plaintiff-Officers seek compensation for the unpaid briefing time they worked prior to and after February 1, 1994. Amd. Compl't. ¶ 13 (R. 336-337); Aff. of Neizer, Hudson & Hall, ¶ 8 (R. 29, 15, 154).

11. Defendant never granted compensatory time off to its jail staff members. Since 1986 the County has always had a policy of paying jail employees and members of the plaintiff class wages for time worked. Plaintiff class members who worked more than their regularly scheduled shift/hours were to be compensated by payment of wages for the additional time worked. Amd. Compl't. ¶ 17 (R. 337-338); Aff. of Neizer, Hudson & Hall, ¶ 11 (R. 29-30, 15-16, 154-155); 2<sup>nd</sup> Depo. of Cunningham, p. 9:8-13 (R. 721); p. 17:5-7 (R. 723).

12. The uncompensated briefing time required of Plaintiff-Officers prior to November, 1995 was neither occasional nor sporadic. Amd. Compl't. ¶ 19 (R. 338); Answer to Amd. Compl't. ¶ 19 (R. 366); Aff. of Neizer, Hudson & Hall, ¶¶ 6-7 (R. 28, 14, 153); Defendant's Answers to Interr. p. 19, ¶ 40 (R. 677); pp. 19-20, ¶ 41 (R. 677-678).

13. The uncompensated briefing time was easily computed, recorded and subject to easy book keeping procedures; it was required and worked every assigned shift of every class member. Amd. Compl't. ¶ 20 (R. 338); Answer to Amd. Compl't. ¶ 20 (R. 366); Aff. of Neizer, Hudson & Hall, ¶¶ 6-7 (R. 28, 14, 153); Defendant's Answers to Interr. p. 20, ¶¶ 43-45 (R. 678).

14. In approximately November, 1995, defendant changed its policy as to payment of wages for the briefing time. Currently and since ~November, 1995, jail staff members are required to report fifteen (15) minutes before their regular shift for briefing time. Jail staff members are now compensated with pay for the mandatory briefing time. Amd. Compl't. ¶ 21 (R. 338); Answer to Amd. Compl't. ¶ 21 (R. 366); Aff. of Neizer, Hudson & Hall, ¶ 11 (R. 29-30, 15-16, 154-155).

15. Based upon their employment contracts, Plaintiff-Officers seek compensation for unpaid briefing time they worked between July 16, 1991 and July 16, 1997. Amd. Compl't. ¶¶ 22 - 23 (R. 339); Aff. of Neizer, Hudson & Hall, ¶ 12 (R. 30, 16, 155).

16. Pursuant to Utah Rule of Civil Procedure 23, this action has been certified as a class action. That class is:

All jail staff employees of the defendant during the time period of July 16, 1991 to July 16, 1997 inclusive, who were required to report to work at the Salt Lake County Metro or Oxbow Jails ten (10) or more minutes before their assigned work shifts for briefing time and who did not receive compensation (wages or compensatory time) from the defendant for that time worked.

Order Granting Partial Summary Judgment, p. 2 (R. 293).

17. The employment agreements between Plaintiff-Officers and Salt Lake County were that Plaintiff-Officers would be paid a set hourly rate for all time each worked and when a Plaintiff-Officer worked more than a scheduled shift he/she was to be compensated either with time off ("schedule adjustment") or additional pay. Interr. Answers Neizer, Hudson & Hall (hereinafter "Interr. Answers Hudson"), p. 4, ¶ 3 (R. 685).<sup>4</sup> Plaintiffs never agreed to work for defendant without compensation. Id., p. 5, ¶ 5 (R. 686). On occasions Plaintiff-Officers might voluntarily have stayed a few minutes late at the end of a shift to complete an assignment and not seek compensation for that time, however that was not routine nor mandatory. Id., p. 7, ¶ 9 (R. 687-688). Plaintiff-Officers were prohibited by County policy from voluntarily working without pay.

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<sup>4</sup> The three (3) sets of answers to interrogatories are virtually identical, therefore only one set (from Plaintiff-Officer Hudson) is cited herein.

Id., pp. 7-8 (R. 687-688); 3<sup>rd</sup> Depo. of Cunningham, p. 8:4-16 (R. 715); Depo. of County, p. 6:2-3 (R. 701).

18. Each Plaintiff-Officer and class member worked an additional ten (10) minutes as unpaid briefing time for every shift that he or she worked during 1991 - 1995 inclusive. Interr. Answers Hudson, p. 4, ¶ 4 (R. 685-686).

19. Plaintiff-Officers were ordered by their supervisors not to record the briefing time on plaintiffs' time cards. Interr. Answers Hudson, pp. 8-9, ¶ 11 (R. 688-689); 2<sup>nd</sup> Depo. of Cunningham, p. 18:14 to p. 19:6 (R. 723). Plaintiff-Officers who did record the briefing time on their time cards, were ordered by their supervisors to remove that time from the time cards. Interr. Answers Hudson, pp. 8-9, ¶ 11 (R. 688-689); 2<sup>nd</sup> Depo. of Cunningham, p. 19:17 to p. 20:18 (R. 723).

#### **SUMMARY OF THE ARGUMENT**

This is a contractual dispute between Plaintiff-Officers and Salt Lake County. Plaintiff-Officers worked for Salt Lake County based upon written contracts. Each Plaintiff-Officer has written documents establishing a contract whereby each would work for Salt Lake County and the County would pay for their services. These documents set forth terms of the employment, starting date, rate of pay and other conditions of the employment.

The employment documents set forth an offer of employment, an acceptance of employment, work performed and a promise to pay wages for work performed, the nature of the employment, starting date of employment, rate of pay, job code and other information establishing the nature of employment. Plaintiff-Officers have established a breach of contract in that Salt Lake County has refused to pay Plaintiff-Officers for the briefing time worked. Therefore, this Court should overturn the lower court's erroneous ruling that appellants were not contractual employees.

The lower court erroneously interpreted and applied Hom v. Ut. Dept. of Pub. Safety, 962 P.2d 95 (Ut. App. 1998). Hom does not support a conclusion that governmental employees have no contractual employment rights. Rather, Hom represents the premise that the Utah State Personal Management Act and implementing regulations, absent additional alterations or agreements, do not form an employment contract.

The statutory and contractual rights of state or county employees are concomitant. The court must look to the right that is being enforced to see whether a statutory or contractual analysis applies. Plaintiff-Officers' wage claim is a contractual claim, and subject to a contractual analysis. The employment agreements between Plaintiff-Officers and Salt Lake County were that plaintiffs would be paid a set hourly rate for all time worked and when a Plaintiff-Officer worked more than a

scheduled shift he/she was to be compensated either with time off during that pay period or additional pay. Nevertheless, the County has refused to pay for the briefing time. Therefore, this Court should determine Plaintiff-Officers' wage claim is based upon the written contracts of the parties.

The decision to require staff members to attend briefings and not pay for that time was a jail commanders' decision. The decision was an erroneous interpretation by the jail commanders of the rules, policies, procedures, regulations and practices of the sheriff's office. That erroneous decision was not a policy or decision of the Legislature, the County, the Sheriff nor of the County Commission. Nothing in the statutory or policy scheme allows Salt Lake County to force Plaintiff-Officers to work uncompensated. Salt Lake County admits the failure to pay Plaintiff-Officers for the briefing time was an error. Therefore, under the County rules, policies, procedures, regulations and practices of the sheriff's office, plaintiffs should have been paid for the briefings.

No statute of this state creates the liability of Salt Lake County to pay wages to the Plaintiff-Officers. The liability or obligation of the County to pay wages for time worked is based upon the employment contracts between the County and the Plaintiff-Officers. Plaintiff-Officers' claims, therefore, are

subject to a six (6) year statute of limitations. Plaintiff-Officers' claims back to July 16, 1991 are within that limit.

This Court should determine that the documents presented by Plaintiff-Officers establish a written employment contract; that Plaintiff-Officers were employees of Salt Lake County based upon written employment contracts thereby subjecting their wage claims to a six-year statute of limitations; and remand the case below for an accounting of wages owed to named plaintiffs and plaintiff class.

#### **ARGUMENT**

##### **I. THIS IS A CONTRACTUAL DISPUTE.**

The underlying dispute is a contractual dispute between Plaintiff-Officers and Salt Lake County. The court below incorrectly found that the plaintiffs and plaintiff class are "statutory employees".

Plaintiff-Officers, STEVE HALL, ROY NEIZER and BROCK HUDSON, and class members worked for Salt Lake County based upon written contracts. Each Plaintiff-Officer has written documents establishing a contract whereby each would work for Salt Lake County and the County would pay for their services.<sup>5</sup> Those documents include Letter from Sheriff N.D. "Pete" Hayward to Brock E. Hudson of January 11, 1990 (R. 130), Letter from Sheriff

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<sup>5</sup> These documents are attached hereto as Attachment "E".

Aaron D. Kennard to Roy David Neizer of June 1, 1991 (R. 131)<sup>6</sup>, Notice of Personnel Action<sup>7</sup> (R. 132 & 133), Salt Lake County Deputy Sheriff's Merit Service Commission Policies and Procedures (R. 134-140 (policy related to payment of wages)), and, written agreements to follow such rules (R. 141)<sup>8</sup>. These various documents combined constitute an employment contract based upon written instruments. These documents set forth the nature of the employment, starting date of employment, rate of pay, job code and other information establishing the nature of employment.

Save these written documents, the terms and conditions of Plaintiff-Officers' employment are not determined. For instance, Plaintiff-Officers individual hourly rates and job levels are set not by statute, but rather by the written agreements between employee and employer. Plaintiff-Officers' employment is in some degree controlled by statute and constitutional provisions (as described below) but not to the degree that it ceases being "contractual" in nature.

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<sup>6</sup> Each Plaintiff-Officer is given an Offer of Employment Letter.

<sup>7</sup> The Notice of Personnel Action forms are referred to as "CP-4" forms. Every correctional officer working in the County Jails has a completed "CP-4" signed and approved by the County Commission. These forms authorize employment and compensation (R. 132 & 133).

<sup>8</sup> Each Plaintiff-Officer signs an agreement that they will follow the rules.



Absent the title "Employment Contract", every required element is present in Plaintiff-Officers' contracts: offer of employment, terms of the employment, starting date, rate of pay and other conditions of the employment. See Transcript, p. 21:3 to p. 22:18.

Plaintiff-Officers' written contracts comply with mandates of Salt Lake County. Salt Lake County Ordinance § 2.04.100 reads as follows:

**2.04.100 Contract authorization**

The commission shall make or authorize the making of all contracts to which the county may be a party, and no contract shall be entered into on behalf of or be binding on the county unless it is reduced to writing and approved by the commission, or expressly authorized by ordinance or resolution.

In full conformance, Plaintiff-Officers' employment contracts contain approval from all three (3) Salt Lake County Commissioners. Nothing in that ordinance indicates that it does not apply to employment contracts.

The employment agreements were that Plaintiff-Officers would be paid a set hourly rate for all time worked and when a Plaintiff-Officer worked more than a scheduled shift he/she was to be compensated either with time off within that pay period ("schedule adjustment") or additional pay. Interr. Answers Hudson, p. 4, ¶ 3 (R. 685). Plaintiff-Officers never agreed to work for Salt Lake County without compensation. Id., p. 5, ¶ 5 (R. 686). Plaintiff-Officers were prohibited by County policy

from voluntarily working without pay. Id., pp. 7-8 (R. 687-688); 3<sup>rd</sup> Depo. of Cunningham, p. 8:4-16 (R. 715); Depo. of County, p. 6:2-3 (R. 701); Salt Lake County Personnel Policy and Procedure, Overtime & Compensatory Time, § 5420 (2.8) (effective 04-02-92) (R. 493); Overtime & Compensatory Time, § 5420 (2.9) (effective 05-25-94) (R. 500).

In Bracklein v. Realty Ins. Co., 80 P.2d 471 (Utah 1938) the Utah Supreme Court considered what constitutes a contract "founded upon an instrument in writing."

[I]f the fact of liability arises or is assumed or imposed from the instrument itself, or its recitals, the liability is founded upon an instrument in writing. If the instrument acknowledges or states a fact from which the law implies an obligation to pay, such obligation is founded upon a written instrument within the statute. If the writing upon its face shows a liability to pay such liability is on a written instrument within the statute of limitations. So, also, is an action in which the instrument in writing itself contains the contract or promise to pay or do the thing, to compel the doing of which the action is brought.

Bracklein, 80 P.2d at 476.

"[A] cause of action is not founded on a written instrument merely because it is indirectly connected with the instrument."

Id. However, where, as in the instant case, the written instruments contain the terms and conditions of the contract, the action is founded upon instruments in writing. Id.

Similar to Bracklein, Plaintiff-Officers' employment documents herein state facts "from which the law implies an

obligation to pay." Id. The Offer of Employment letters offer employment, contingent upon passing the physical examination. Plaintiff-Officers met the requisite physical conditions, and their employment was therefore founded upon said letters. Similarly, the terms of compensation recited in each Notice of Personnel Action are terms which create an obligation to pay. The terms set forth in the DSMSC Policies and Procedures also provide terms of the employment contract. The various documents were issued "substantially contemporaneously" (Winegar v. Froerer, 813 P.2d 104 (Utah 1991)) for each Plaintiff-Officer, are interrelated and are construed as one contract.

Under Utah law, Plaintiff-Officers have established a written contract: an offer of employment, an acceptance of employment, work performed and a promise to pay wages for work performed. Plaintiff-Officers have established a breach of contract in that Salt Lake County has refused to pay Plaintiff-Officers for the briefing time worked. Therefore, this Court should overturn the lower court's erroneous ruling that appellants were not contractual employees.

**II. PLAINTIFF-OFFICERS' WAGE CLAIM IS A CONTRACTUAL CLAIM. THE RELATIONSHIP BETWEEN PLAINTIFF-OFFICERS AND SALT LAKE COUNTY IN THIS MATTER IS CONTRACTUAL IN NATURE, AUGMENTED OR LIMITED BY STATUTORY AND CONSTITUTIONAL PROVISIONS.**

The lower court erroneously interpreted and applied Hom v. Ut. Dept. of Pub. Safety, 962 P.2d 95 (Ut. App. 1998). Based upon its interpretation of Hom, the court below found that "state employees/civil servants are statutory in their rights in relation to their employment." Transcript, p. 42:11-13. The court then found that the Plaintiff-Officers were "statutory employees", implying that Plaintiff-Officers have no contractual rights. Transcript, p. 42:13-16. Hom did not hold that the basic relationship between employees and a government employer is purely statutory in nature. Rather, Hom represents the mere proposition that the Utah State Personal Management Act and implementing regulations, absent additional alterations or agreements, do not form an employment contract. Hom, 962 P.2d at 101.

Hom involved a state employee who, ultimately, was required under state law to exhaust administrative remedies.<sup>9</sup> Hom, 962 P.2d at 99-101. Michael Hom was an employee of the Department of

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<sup>9</sup> Hom involved the termination of government employment, an area in which extensive rights and procedures are administratively established. No similar or parallel mandate exists for plaintiffs in this action. No requirement exists that plaintiffs file an administrative grievance on a wage claim much less that they exhaust administrative remedies prior to a suit for non-payment of wages.

Public Safety as a programmer/analyst. Id. at 97. He was a career civil servant, not a sworn law enforcement officer. Id. After ongoing clashes with co-employees and supervisors, Hom was disciplined for his statement that he had "the power to crash and disable the Department computer system" and his employment was terminated. Id. at 98.

Hom filed an administrative appeal pursuant to the Utah State Personal Management Act. Hom, 962 p.2d at 98. However, his administrative review was dismissed for lack of prosecution. Id. at 99. Hom then filed a lawsuit against the Department claiming his dismissal violated the Personal Management Act and the Department's policies and procedures. Id. at 98. The trial court granted the Department's summary judgment motion and dismissed Hom's claims. Id.

On appeal, Hom argued that "the trial court erred in barring his wrongful termination claim under the three-year statute of limitations for violations of rights created by statute." Id. at 98-99. Hom argued that his action was "for breach of contract subject to the six-year statute of limitations for claims arising out of contracts in writing under Utah Code Ann. § 78-12-23 (2) (1996)."<sup>10</sup> Hom, 962 P.2d at 99. Hom argued "that the Personnel Management Act and the implementing regulations constitute a

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<sup>10</sup> Hom also appealed an issue related to a disability claim. That issue is not relevant to the case at bar.

written employment contract between [him] and the [State]." Id. at 100. In essence, Hom argued that he had separate and distinct employment contract with the State based upon the Act and regulations.

The Court of Appeals disagreed. Id. Hom's argument failed because he did not demonstrate that the State entered "into a contract with him that altered or added to the [existing] terms and conditions of public employment." Id. at 101 (emphasis added). Absent said alteration or addition, Hom's termination was exclusively governed by the Personnel Management Act and subject to administrative review through that Act. Id. As a result, the Court found that Hom failed to exhaust administrative remedies, depriving the Court of Appeals jurisdiction in the matter.<sup>11</sup> Id.

Hom does not support a conclusion that governmental employees have no contractual employment rights. Rather, the case indicates the opposite conclusion: public employment rights can be altered or augmented through contractual rights. The Plaintiff-Officers at bar acknowledge that their employment can

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<sup>11</sup> Hom attempted to frame his complaint as a breach of contract because he failed to exhaust administrative remedies against his employer, the State of Utah. Hom, 962 p.2d at 99. However, having determined it lacked jurisdiction, the Court of Appeals did not rule on the statute of limitation issue raised pursuant to Hom's contractual argument (the Court did discuss statute of limitation related to Hom's disability claim (Id. at 101-103)).

be limited or augmented by statutory provisions. They also have contractual rights. Their wage claim is based upon written instruments, and thus contractual.

Thurston v. Box Elder County, 835 P.2d 165 (Utah 1992) (Thurston I); Thurston v. Box Elder County, 892 P.2d 1034 (Utah 1995) (Thurston II) is likewise instructive. In Thurston I & II, an employee of Box Elder County sued for wrongful termination "as an independent action for breach of an employment contract." Thurston I, 835 P.2d 165, 167 n.1 (1992). The employee was terminated in a reduction in force layoff. Thurston II, 892 P.2d at 1036. The Box Elder County Policy and Procedures Manual set forth criteria for such layoff; it provided that "length of service and/or individual performance [should] be considered when implementing a reduction in force." Id. However, Thurston's supervisor told "Thurston that he had been selected for [termination] because he could tolerate the separation better financially than some younger . . . employees with families."<sup>12</sup> Id.

After completing the administrative process, Thurston sued claiming that his termination was a breach of the employment contract set forth in the Policies and Procedures Manual.

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<sup>12</sup> During the administrative process, the County formulated other reasons for Thurston's termination, including poor job performance. Thurston II, 892 P.2d at 1036.

Thurston I, 835 P.2d 167.<sup>13</sup> The lower court held that the County had properly followed its policies in terminating Thurston. Id. at 167. Thurston appealed.

On appeal, the Utah Supreme Court declared, "[B]efore considering whether the County breached an employment contract, we must first determine whether the County's plan for layoffs complies with [statutory requirements]." Thurston I, 835 P.2d at 168. The Supreme Court found that county employees were given augmented, statutory rights in addition to their employment contract as to layoffs. See e.g. Thurston I, 835 P.2d at 169-170. Thus, termination of county employees was governed in part by the County Personnel Management Act<sup>14</sup> (Utah Code Ann. §§ 17-

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<sup>13</sup> The parties agreed that Thurston's employment was governed by the Policies and Procedures Manual. The case was "an action for breach of an express or implied employment contract . . . ." Thurston I, 835 P.2d 167-167. Plaintiff-Officers' contractual claims are similarly based upon written instruments.

<sup>14</sup> The County Employee Management Act, Utah Code Ann. § 17-33-1 et seq., (1953 as amended) and the Deputy Sheriffs' Merit Service Commission Act, Utah Code Ann. § 17-30-1 et seq. (1953 as amended) are not applicable to the case at bar. Those statutes deal mainly with selection, hiring, promotion, discipline and discharge of deputy sheriffs under a "merit system." They do not give the Deputy Sheriffs' Merit Service Commission the authority to resolve wages claims or disputes over unpaid wages. Id.

Salt Lake County asserted a defense of failure to exhaust administrative remedies. Answer, p. 4 (R. 71). The court below dismissed that defense. Order Granting Partial Summary Judgment, pp. 3-4 (R. 294-295). The County was allowed to reassert the defense "by setting out any administrative remedies . . . applicable." Id. at 4 (R. 295). The County did so in its Answer to Amended Complaint, p. 4 (R. 367), yet it failed to identify any applicable administrative process.

The County has identified no statute, ordinance, rule or



33-1 to -15 (1953 as amended)). The Court of Appeals remanded for the lower court to determine if the County had violated provisions of the County Personnel Management Act. The lower court found, on remand, that the County had indeed violated the Act and "had improperly considered factors beyond those enumerated in the Act in terminating Thurston." Thurston II, 892 P.2d at 1037.<sup>15</sup>

Similar to Court of Appeals in Hom, the Utah Supreme Court in Thurston never indicated that the appellant failed to state a contractual claim. Indeed, the Utah Supreme Court confirmed the fact that county employees have contractual rights subject to or augmented by statutory provisions.

These cases stand for the proposition, that Plaintiff-Officers herein are contractual employees with rights that are either augmented or limited by statutory or constitutional

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regulation which requires employees to go through an administrative process when making a wage or contractual claim against the County. 2<sup>nd</sup> Depo. of Bieseles, p. 36:14-20 (R. 695); p. 38:17-20 (R. 695); p. 39:16-21 (R. 696); Depo. of County, p. 24:13-17 (R. 706). The County has not identified any rules or regulations that would deny the court jurisdiction by failure to exhaust administrative remedies. Depo. of County, p. 26:2-5 (R. 706); p. 32:8 to p. 33:19 (R. 708).

<sup>15</sup> Thurston appealed a second time seeking reinstatement of his job. The County also appealed claiming that Box Elder was not subject to the County Personnel Management Act. On appeal, the Supreme Court of Utah held that under the "law of the case" doctrine, it would not reconsider the issue raised by the County. Thurston II, 892 P.2d at 1037-1039. The Court also held that the lower court did not abuse its discretion by refusing reinstatement.

provisions. See Weese v. Davis County Comm'n, 834 P.2d 1, 3 (Utah 1992)<sup>16</sup> ("Any contract between [county employees] and the county is subject to the statutory and constitutional limitations on the county as a governing body"). The statutory and contractual rights of state or county employees are concomitant. The court must look to the right that is being enforced to see whether a statutory or contractual analysis applies. For example, Plaintiff-Officers are subject to statutory limitations when the county cannot (or does not) fund merit pay increases for a particular year. Weese, 834 P.2d at 3. Plaintiff-Officers are subject to statutory limitations should the county re-evaluate a particular job or perform a county-wide reassessment of all jobs. Thurston I & II. Termination of state employment is subject to statutory regulation, and administrative procedure. Hom. County commissions cannot enter into contracts guaranteeing future wage increases for employees. Weese; Utah Const. art. XIV, § 3. A county cannot enter into a contract guaranteeing future or continued employment. Utah Const. art. XIV, § 3. Every contract entered with Salt Lake County must be in writing. Salt Lake

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<sup>16</sup> In Weese, this Court had the opportunity to adopt and recite the "statutory employee" general premise. However, this Court declined to do so, and relied instead upon Utah law which prohibits one governmental administration from spending the next administrations' funds. See Weese, 834 P.2d at 4 (holding that any promise of future raises is beyond the authority of a county commission, therefore, the commission could not have entered into any agreement as to future raises).

County Ordinance § 2.04.100. Finally, any contract entered beyond the authority granted to a County is null and void.

Weese.

The foregoing cases never held that county employees do not have contractual employment or contractual employment rights. No statutory or constitutional provisions force Plaintiff-Officers to work uncompensated. Plaintiff-Officers' individual hourly rates and job levels are set not by statute, but rather by the written agreements between employee and employer. The employment agreements between Plaintiff-Officers and Salt Lake County were that plaintiffs would be paid a set hourly rate for all time worked and when a Plaintiff-Officer worked more than a scheduled shift he/she was to be compensated either with time off during that pay period ("schedule adjustment") or additional pay. Interr. Hudson, p. 4, ¶ 3 (R. 685). Plaintiff-Officers never agreed to work for Salt Lake County without compensation. Id., p. 5, ¶ 5 (R. 686). Furthermore, Salt Lake County prohibits Plaintiff-Officers from voluntarily working without pay. 3<sup>rd</sup> Depo. of Cunningham, p. 8:4-16 (R. 715); Depo. of County, p. 6:2-3 (R. 701). Therefore, this Court should determine Plaintiff-Officers' wage claim is based upon the written contracts of the parties.

**III. THE RULES, POLICIES, PROCEDURES, REGULATIONS AND PRACTICES OF THE SHERIFF'S OFFICE ESTABLISH THAT PLAINTIFF-OFFICERS SHOULD BE PAID FOR THE UNCOMPENSATED BRIEFINGS.**

The decision to require staff members to attend briefings and not pay for that time was a jail commanders' decision. Depo. of County, p. 11:5-11 (R. 702); p. 14:5-10 (R. 703). The decision was an erroneous interpretation by the jail commanders of the rules, policies, procedures, regulations and practices of the sheriff's office. Aff. of Bieseles, 11/21/1996, ¶ 12 (R. 730). That erroneous decision was not a policy or decision of the Legislature, the County, the Sheriff nor of the County Commission. 2<sup>nd</sup> Depo. of Bieseles, p. 17:9-24 (R. 692); p. 28:21 to p. 29:6 (R. 693). Nothing in the statutory or policy scheme allows Salt Lake County to force Plaintiff-Officers to work uncompensated.

Salt Lake County has admitted its error. It stated:

It was determined that Roll Call briefings were inappropriately being treated as *de minimis*. We voluntarily corrected our policy, . . . . We chose to go back two years [to February 1, 1994] and pay our employees for all shift briefings . . . . because of the erroneous use of *de minimis* in this case, and to send a message to our employees that we intend to compensate for all time worked . . . .

Defendant's Answers to Interr. pp. 5-6, ¶ 9 (R. 673-674). The County corrected the error and retroactively back to February 1, 1994, paid most jail staff and class members for the briefing time worked.

Salt Lake County admits the failure to pay Plaintiff-Officers for the briefing time was an error. The failure to pay was not a sheriff's office policy, nor a county policy, nor a county commission policy. There is no statutory basis for the failure to pay Plaintiff-Officers. No statute mandated non-payment of Plaintiff-Officers.<sup>17</sup> Rather, the failure to pay Plaintiff-Officers was an admitted error solely made by the jail commanders. Therefore, under the County rules, policies, procedures, regulations and practices of the sheriff's office, plaintiffs should have been paid for the briefings.

**IV. PLAINTIFFS-OFFICERS' CLAIMS ARE WITHIN THE STATUTE OF LIMITATIONS.**

The lower court's erroneous determination that Plaintiff-Officers were "statutory employees" rather than contractual employees lead to further harm and misconstruction when the court was called upon to determine, a second time, the applicable statute of limitations.

Utah Code Ann. § 78-12-23 (2) (1953 as amended) provides that an action must be brought within six (6) years upon any contract, obligation, or liability founded upon an instrument in writing. Utah Code Ann. § 78-12-26 (4) (1953 as amended)

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<sup>17</sup> Similarly, no statute mandates payment of the briefing time. That is a contractual obligation.

provides that an action must be brought within three (3) years for a liability created by the statutes of this state.

The lower court granted partial summary judgment the first time on February 26, 1998 and determined that Plaintiff-Officers were employees with written employment contracts. Order Granting Partial Summary Judgment, p. 3 (R. 294), Attachment "C" attached. Therefore, the court determined under Utah Code Ann. § 78-12-23 (2) (1953 as amended), the applicable limitation period was six (6) years. Id.

The second time the trial court considered the matter, the court reversed itself and determined that the Plaintiff-Officers were not employees based upon written employment contracts. Instead, they were "statutory employees." Order on Motions for Summary Judgment, p. 2 (R. 1458), Attachment "D" attached. The court, by implication, also determined that "written employment contracts" and the status of "statutory employee" were mutually exclusive. Id.

Having found that Plaintiff-Officers were "statutory employees", the lower court then invoked Utah Code Ann. § 78-12-26 (4) (1953 as amended) as the relevant statute of limitations, thereby barring Plaintiff-Officers' claims prior to July 1994. The lower court erred in finding that the relevant statute of limitations is Utah Code Ann. § 78-12-26 (4) (1953 as amended).

That section provides:

An action may be brought within three years:

\* \* \*

(4) for a liability created by the statutes of this state, other than for a penalty or forfeiture under the laws of this state, except where in special cases a different limitation is prescribed by the statutes of this state . . . .

Id.

That statute does not apply to wage claims or actions upon employment contracts. A review of the cases that have applied that section shows it applies to statutorily and government created obligations such as Workers' Compensation claims (Utah Consol. Mining Co. v. Industrial Comm'n, 57 Utah 279, 194 P. 657 (Utah 1920); Maryland Casualty Co. v. Industrial Comm'n, 74 Utah 170, 278 P. 60 (Utah 1929)); claims by government agencies (Parker v. Weber County Irrigation Dist., 68 Utah 472, 251 P. 11 (Utah 1926)); claims under Utah's Blue Sky Law (Wilson v. Guaranteed Sec. Co., 73 Utah 157, 272 P. 946 (Utah 1928)); claims by county officials (Box Elder County v. Harding, 83 Utah 386, 28 P.2d 601 (Utah 1934)); and certain liabilities to the Utah State Tax Commission (In re Swan's Estate, 95 Utah 408, 79 P.2d 999 (Utah 1938)).

Utah Code Ann. § 78-12-26 (4) (1953 as amended) applies to "a liability created by the statutes of this state." No statute of this state creates the liability of Salt Lake County to pay wages to the Plaintiff-Officers. The liability or obligation of

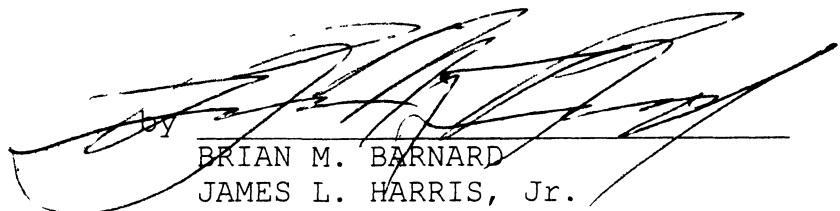
the County to pay wages is based upon the employment contracts between the County and the Plaintiff-Officers. The lower court's invocation of Utah Code Ann. § 78-12-26 (4) (1953 as amended) is not supported by any case law or authority. Plaintiffs' claims, based upon contract, are subject to a six (6) year statute of limitations. See Order Granting Partial Summary Judgment, p. 3 (R. 294); Utah Code Ann. § 78-12-23 (2) (1953 as amended). Plaintiff-Officers' claims to July 16, 1991 are within the limit.

#### **CONCLUSION AND RELIEF SOUGHT**

Wherefore, this Court should determine that the documents presented by Plaintiff-Officers establish written employment contracts; that Plaintiff-Officers were employees of Salt Lake County based upon written employment contracts thereby subjecting their wage claims to a six-year statute of limitations; and remand the case below for an accounting of wages owed to named plaintiffs and plaintiff class.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of FEBRUARY 2001.

UTAH LEGAL CLINIC  
ATTORNEYS FOR PLAINTIFFS/APPELLANTS

by   
BRIAN M. BARNARD  
JAMES L. HARRIS, Jr.



### **ORAL ARGUMENT REQUESTED**

The determination of these issues will affect the rights of many employees of Salt Lake County. This action presents important questions with regard to the rights of governmental employees. The appellants believes that oral argument will give the parties a beneficial opportunity to explain their respective positions and to answer questions from the Court.

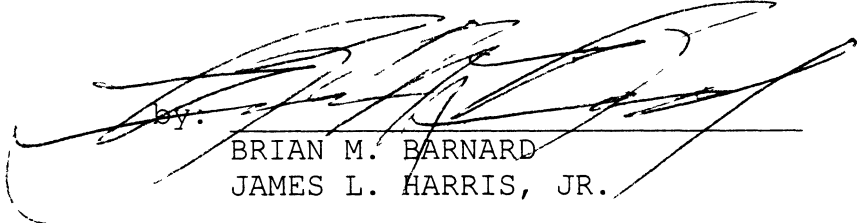
CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed four (4) true and correct copies of the foregoing **BRIEF OF APPELLANTS** to:

DAVE YOCOM  
Salt Lake County District Attorney  
JOHN SOLTIS & VALERIE WILDE  
Deputy District Attorneys  
Attorneys for Appellee, Salt Lake County  
2001 South State Street, South Building  
Salt Lake City, Utah 84190

on the 13<sup>th</sup> day of FEBRUARY, 2001, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC  
Attorneys for PLAINTIFFS/APPELLANTS

by:   
BRIAN M. BARNARD  
JAMES L. HARRIS, JR.

### **APPENDIX/ATTACHMENTS**

- Attachment "A": Amended Complaint, dated April 21, 1998 (R. 332).
- Attachment "B": Amended Answer, dated June 29, 1998 (364).
- Attachment "C": Order Granting Partial Summary Judgment, dated February 26, 1998 (R. 292).
- Attachment "D": Order on Motions for Summary Judgment, dated October 4, 2000 (R. 1457).
- Attachment "E-1": Letter from Sheriff N.D. "Pete" Hayward to Brock E. Hudson, 1/11/90 (R. 130).
- Attachment "E-2": Letter from Sheriff Aaron D. Kennard to Roy David Neizer, 6/01/91 (R. 131).
- Attachment "E-3": "Notice of Personnel Action", 1/23/90, authorizing employment and compensation of Brock E. Hudson (R. 132).
- Attachment "E-4": "Notice of Personnel Action", 6/19/91, authorizing employment and compensation of Roy David Neizer (R. 133).
- Attachment "E-5": Salt Lake County Deputy Sheriff's Merit Service Commission ("DSMSC") Policy and Procedure # 5105 (R. 134-140).
- Attachment "E-6": Brock Hudson, 6/20/90 statement that he has read and is familiar with Salt Lake County Sheriff's Office Policies and Procedures Manual, incident to 1/23/90 action (R. 141).

## **ATTACHMENT A**

Amended Complaint, dated April 21, 1998 (R. 332).

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY STATE OF UTAH

GREG F. KNIGHT, STEVE HALL,  
ROY NEIZER and BROCK HUDSON,  
personally and on behalf of a  
class of persons similarly  
situated,

Plaintiffs,

vs.

SALT LAKE COUNTY, a  
governmental entity,

Defendant.

A M E N D E D  
C O M P L A I N T

Case No. 97-090-7950 CV  
(Judge David Young)

The named plaintiffs, GREG F. KNIGHT, STEVE HALL, ROY NEIZER and BROCK HUDSON, by and through counsel, BRIAN M. BARNARD and ANDREA J. GARLAND of the UTAH LEGAL CLINIC, personally and behalf of a class of similarly situated persons, as a complaint and as a cause of action allege and state as follows:

## **I. PRELIMINARY STATEMENT**

1. Named plaintiffs, GREG F. KNIGHT, STEVE HALL, ROY NEIZER and BROCK HUDSON former or current employees of defendant, bring this action on their own behalf and on behalf of other current and former employees of defendant similarly situated (hereinafter the "plaintiff class members"), to recover unpaid and uncredited wages and compensatory time under their written employment contracts.

## **II. JURISDICTION & VENUE**

2. Venue is proper in the Third Judicial District Court in and for Salt Lake County and the State of Utah. Named plaintiffs are residents of Salt Lake County, Utah. The events giving rise to this action took place in Salt Lake County, Utah. The work performed for which plaintiffs and plaintiff class members were not compensated occurred in Salt Lake County. The defendant government entity is located in Salt Lake County. Venue is proper under Utah Code Ann. § 78-13-4 (1953 as amended).

3. This court has jurisdiction pursuant to Utah Code Ann. § 78-3-4 (1953 as amended).

4. This is an action on written contracts against a governmental entity. This action and the claims herein are not subject to the Utah Governmental Immunity Act. Ut. Code Ann. § 63-30-5 (1953 as amended).

### **III. PARTIES**

5. Named plaintiffs, GREG F. KNIGHT, STEVE HALL, ROY NEIZER and BROCK HUDSON are current or former employees of the defendant Salt Lake County, who in the past worked as staff members in the Salt Lake County Metro Jail and/or Oxbow Jail.

6. Defendant SALT LAKE COUNTY is a government entity organized and existing under the laws of the State of Utah, having its principal office and place of business in Salt Lake City, Utah, within the territorial jurisdiction of this Court. At all times pertinent herein, defendant Salt Lake County was responsible for operating the Salt Lake County Metro and Oxbow Jails. At all times pertinent, defendant Salt Lake County employed the named plaintiffs and plaintiff class members in the operations of the Salt Lake County Metro and Oxbow Jails.

#### IV. FACTS

7. At all times pertinent herein, Salt Lake County was engaged in the operation of two (2) detention and correctional facilities located in Salt Lake County, Utah and known as the Salt Lake County Metro Jail and Oxbow Jail.

8. During the period from April 15, 1986 to approximately November, 1995 inclusive, or during portions of that period, defendant employed named plaintiffs and plaintiff class members in various occupations and positions as staff members in connection with operating the Salt Lake County Metro Jail and Oxbow Jail.

9. The periods of employment of named plaintiffs as correctional officers and jail staff members are:

GREG F. KNIGHT

February, 1989 through January, 1993

STEVE HALL

February, 1977 through February, 1995

ROY NEIZER

June, 1991 through April, 1995

and

BROCK HUDSON

January, 1990 through October, 1993.



10. The named plaintiffs and plaintiff class members are or were employees of defendant Salt Lake County and their claims against the defendant are based upon written employment contracts.

11. During the time period from April 15, 1986 to ~November, 1995, defendant required named plaintiffs and plaintiff class members to arrive and to report for work ten (10) minutes early for briefing or roll call (hereinafter "briefing time") before the beginning of every assigned regular work shift. Named plaintiffs and the members of the plaintiff class were compelled by the defendant, its agents and officers to work for an extra uncompensated ten (10) minutes per assigned shift in the Metro or Oxbow Jail in attending that mandatory uncompensated briefing time.

12. The named plaintiffs and plaintiff class members were not paid nor compensated for the ten (10) minute briefing time they worked before each work shift prior to November, 1995.

13. In approximately June, 1996, after defendant was sued by the named plaintiffs herein, defendant paid all plaintiff class members, in wages for the uncompensated briefing time worked after February 1, 1994. Plaintiffs' claims herein are for

wages and/or compensatory time for the uncompensated briefing time worked prior to February 1, 1994 by plaintiff class members. Named plaintiffs' claims herein are for wages and/or compensatory time for the uncompensated briefing time they worked prior to February 1, 1994.

14. The named plaintiffs and plaintiff class members were never given credit as compensatory time for the ten (10) minute briefing time before each work shift prior to November, 1995.

15. As used in this Complaint, the term "compensatory time" is time off work with pay in an amount equal to the time worked. That time is credited hour-for-hour for the time worked and not at a premium rate (i.e., time and a half). Salt Lake County Deputy Sheriff's Merit Service Commission ("DSMSC"), Policy # 5105

16. From April 15, 1986 through and including November, 1995, the policies of the Salt Lake County Deputy Sheriff's Merit Service Commission ("DSMSC"), Policy # 5105, allowed plaintiff class members to receive and accumulate "compensatory time."

17. Defendant in approximately April, 1995, acting by and through the Salt Lake County Sheriff and his department discontinued its practice of allowing jail employees and members of

the plaintiff class to accrue and use compensatory time. After April, 1995 plaintiff class members who worked more than their regularly<sup>1</sup> scheduled shift/hours are to be compensated by payment of wages for the additional time worked.

18. After April 15, 1986 defendant subjected and continue to subject the named plaintiffs and plaintiff class members to disciplinary action if they were not present for the briefing time before each assigned work shift.

19. The uncompensated briefing time required of the named plaintiffs and plaintiff class members prior to November, 1995 was neither *de minimis*, occasional nor sporadic.

20. The ten (10) minutes uncompensated briefing time required of the named plaintiffs and plaintiff class members was easily computed, recorded and subject to easy book keeping procedures.

21. In approximately November, 1995, defendant changed its policy as to payment of wages for the briefing time. Currently and since approximately November, 1995, jail staff members are required to report fifteen (15) minutes before their regular assigned shift for briefing time. Jail staff members are now compensated with pay for the additional mandatory briefing time.

22. Based upon their written employment contracts, the named plaintiffs and plaintiff class members are entitled to compensation as available in compensatory time or wages for the uncompensated briefing time they worked as set forth above.

23. Named plaintiffs who are no longer employed by the defendant are entitled to cash payment (a "cash out") representing their compensatory time accrued between April 15, 1986 and November, 1995. Plaintiff class members who are no longer employed by the defendant are entitled to cash payment (a "cash out") representing the earned wages and/or compensatory time accrued between April 15, 1986 and November, 1995. Plaintiff class members currently employed by the defendant are entitled to a cash payment (a "cash out") representing the earned wages and/or compensatory time accrued between April 15, 1986 and November, 1995 or compensatory time off accrued between April 15, 1986 and November, 1995.

#### **V. CLASS REPRESENTATION**

24. Pursuant to Utah Rules of Civil Procedure, Rule 23 the named plaintiffs desire to serve as representatives of a class of persons. That class is defined as all jail staff employees of

the defendant during the time period of April 15, 1986 to February 1, 1994 inclusive, who were required to report to work at the Salt Lake County Metro or Oxbow Jails ten (10) or more minutes before their assigned work shifts for briefing time and who did not receive compensation (wages or compensatory time) from the defendant for that time worked.

25. Named plaintiffs believe and allege that there are approximately one hundred and forty (~140) current employees of the defendant that serve as jail staff in the Metro or Oxbow Jails. A large portion of these persons would be within the class of persons similarly situated to the named plaintiffs and members of the class proposed herein.

26. Named plaintiffs believe and allege that there are more than two hundred (200+) former employees of the defendant who served as jail staff in the Metro or Oxbow Jails during the time period April 15, 1986 through February 1, 1994. These persons would be within the class of persons similarly situated to the named plaintiffs and members of the class proposed herein.

27. The members of the plaintiff class number in the hundreds and thus are too numerous to join as individual plaintiffs in this action. Rule 23(a)(1), Ut. R. Civ. Pro.

27. As contemplated in Rule 23(a)(2-4), Ut. R. Civ. Pro., questions of law pertaining to the unpaid wages and/or compensatory time are common to the class, the named plaintiffs' claims are typical of the class claims and the named plaintiffs will adequately and fairly protect the interests of the class.

28. The defendant, its officers and agents have refused to pay or compensate the members of the plaintiff class for work done based upon a consistent long term policy of defendant, thereby making appropriate final relief as under Rule 23(b)(2), Ut. R. Civ. Pro.

28. Claims of individual plaintiffs and class members are of such amounts that absent a class action, pursuit of the claims, by individuals may not be economically feasible.

29. Pursuit of this action as a plaintiff class, is the most reasonable, judicially economic and expeditious method of resolution of the claims of the plaintiff class members.

#### **VI. ATTORNEY'S FEES**

29. Under the court's equitable power and in the interests of justice and equity, the court may and should award reasonable attorney fees to counsel for the named plaintiffs.

30. All class members will be financially benefitted as a result of the efforts of the named plaintiffs and their counsel, thus an award of attorney fees is warranted, appropriate and authorized by Utah law.

#### **VII. RELIEF**

WHEREFORE, based upon the foregoing, named plaintiffs respectfully request that this court:

1. Enter a declaratory judgment against defendant determining the time amounts accrued and due as wages and/or compensatory time to each named plaintiff and plaintiff class member for unpaid wages earned during the briefing periods worked for the time period April 15, 1986 through and including November, 1995, or for such period and in such amounts as allowed by law; and, order defendant to grant and allow reasonable use of that compensatory time to the named plaintiffs and plaintiff class members, who remain employees of the defendant; or in the alternative, in light of defendant's current policy (post April, 1995) of not allowing compensatory time, ordering defendant to

"cash out" plaintiff class members for their accumulated wages and/or compensatory time;

2. Order defendant to pay ("cash out") all former employees within plaintiff class (including the named plaintiffs) all accumulated wages and/or compensatory time due and owing as of the date of the termination of that former employee; enter a monetary judgment against defendant in the amounts respectively due named plaintiffs and plaintiff class members for "cash out" amounts owed for the time period April 15, 1986 through and including November, 1995;

3. Award to plaintiffs' counsel reasonable attorney fees for the prosecution of this action as provided for by Utah case law and the equitable powers of this court. Stewart v. Utah, 885 P.2d 759, (Ut. 1994); Plumb v. State of Utah, 809 P.2d 734, 739-40 (Ut. 1990);

4. Allow the named plaintiffs to represent a class of persons similarly situated in this action under Rule 23 Ut. R. Civ. Pro.;


5. Award plaintiffs their court costs incurred herein; and,



6. Grant such other relief as the Court deems fair and just  
in the premises.

DATED this 21<sup>st</sup> day of APRIL, 1998.

UTAH LEGAL CLINIC  
Attorneys for PLAINTIFFS

by   
BRIAN M. BARNARD  
ANDREA J. GARLAND

lit3\Knigamnd CMP\ajg

## **ATTACHMENT B**

Amended Answer, dated June 29, 1998 (364).

DOUGLAS R. SHORT (#5344)  
Salt Lake County Attorney  
RENA BECKSTEAD (#5033)  
Deputy County Attorney  
2001 South State Street #S3400  
Salt Lake City, Utah 84190-1200  
Telephone: (801) 468-3300

FILED  
CLERK OF DISTRICT COURT  
SALT LAKE COUNTY, UTAH  
SEP 11 1997  
BY [Signature]

**IN THE THIRD JUDICIAL DISTRICT COURT**  
**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

GREG F. KNIGHT, STEVE HALL, ROY  
NEIZER and BROCK HUDSON, personally  
and on behalf of a class of persons similarly  
situated,

Plaintiffs,

-vs-

SALT LAKE COUNTY, a governmental  
entity,

Defendant.

ANSWER TO  
AMENDED COMPLAINT

Civil No. 97-090-7950 CV

Judge David Young

Salt Lake County, by and through Deputy Salt Lake County Attorney Rena Beckstead,  
answers the Plaintiff's Amended Complaint as follows:

**FIRST DEFENSE**

Defendant answers the specific allegations as follows:

1. Admit the named plaintiffs are or have been employed by the defendant. The  
defendant is without information as to whether they bring this action for others and therefore

denies that allegation. The defendant denies that the named plaintiffs are entitled to compensatory time and denies that a written contract exists between the parties.

2. Admits that venue is proper if this Court has jurisdiction but denies that work performed was not compensated for by the defendant.

3. Deny.

4. Admits that this is an action on written contract but denies that a written contract exists between the parties. Denies that the action is not subject to the Governmental Immunity Act.

5. Admit.

6. Admits the allegations of paragraph six except denies that there are plaintiff class members in this action.

7. Admit.

8. Admits that the named plaintiffs were employed by the defendant but denies there are class members in this action.

9. Admit.

10. Admit that the plaintiffs are or were employees of the defendant and that they are alleging a claim on written contract but denies that a written contract exists and denies there are class members.

11. Deny.

12. Deny.

13. Defendant admits that plaintiff Hall filed a federal action in February of 1996 and that plaintiffs Nizer and Hudson later joined that lawsuit. Defendant denies the balance of the allegations.

14. Defendant admits that compensatory time was not credited but alleges there was no duty to do so.

15. Defendant denies that the policy cited contains any such definition of compensatory time.

16. Admits that the DSMC policy allowed compensatory time but denies that the Defendant or its policy allowed compensatory time.

17. Deny.

18. Admits that plaintiffs were subject to discipline action but denies that it was prior to their assigned work time.

19. Admits that the briefing period was neither occasional nor sporadic but denies that it was not de minimus.

20. Admits.

21. Admits that the jail employees are compensated for their briefing period but denies the remainder of the allegation.

22. Deny.

23. Deny.

24. Deny for lack of knowledge.

- 25. Deny for lack of knowledge.
- 26. Deny for lack of knowledge.
- 27. Deny for lack of knowledge.
- 28. Deny.
- 29. Deny for lack of knowledge.
- 29. Admits that the Court may award fees but denies that fees should be awarded.
- 30. Deny.

#### SECOND DEFENSE

The complaint fails to state a claim upon which relief may be granted.

#### THIRD DEFENSE

The claims brought herein are barred by the doctrine of Res Judicata.

#### FOURTH DEFENSE

The claims brought herein are barred by the doctrine of accord and satisfaction. The plaintiffs have fully been compensated in accordance with all applicable statutes and policies and procedures.

#### FIFTH DEFENSE

The plaintiffs have failed to exhaust their administrative remedies.

#### SIXTH DEFENSE

The defendant does not have a contractual relationship with its employees. The employment relationship is statutory and is controlled by the County Employee Management Act

17-33-1 et seq. or the Deputy Merit Sheriff's Merit Service Commission Act 17-30-1 et seq.

#### SEVENTH DEFENSE

Pursuant to the provisions of the Governmental Immunity Act 63-30-1 et seq the defendant is immune.

#### EIGHTH DEFENSE

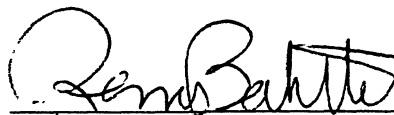
This action is barred by the statute of limitations.

Defendant, having fully answered the amended complaint, demands:

1. That this action be dismissed with prejudice.
2. That the plaintiffs take nothing thereby.
3. That attorney fees be awarded to the defendant for the costs of defense of this frivolous action.
4. Any and all relief this court deems fair and just.

Dated this 29th day of June, 1998.

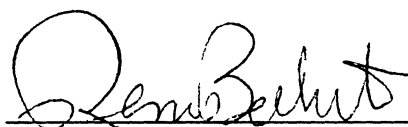
DOUGLAS R. SHORT  
SALT LAKE COUNTY ATTORNEY

A handwritten signature in cursive script, appearing to read 'Rena Beckstead', is written over a horizontal line.

RENA BECKSTEAD  
Deputy County Attorney

MAILING CERTIFICATE

I certify that on the 29th day of June, 1998 I caused a true and correct copy of the foregoing amended answer to be mailed by first class mail postage prepaid to: Brian Barnard, Attorney at Law, 214 East 500 South, Salt Lake City, Utah 84111.



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## **ATTACHMENT C**

Order Granting Partial Summary Judgment,  
dated February 26, 1998 (R. 292).

**SALT LAKE COUNTY**

Deputi 2:

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY STATE OF UTAH

GREG F. KNIGHT, STEVE HALL,  
ROY NEIZER and BROCK HUDSON, : ORDER CERTIFYING CLASS,  
personally and on behalf of a : DETERMINING STATUTE OF  
class of persons similarly : LIMITATIONS and  
situated, : GRANTING PARTIAL SUMMARY  
 : JUDGMENT  
 :  
Plaintiffs, :  
 :  
vs. : Case No. 97-090-7950 CV  
 :  
 : (Judge David Young)  
 :  
SALT LAKE COUNTY, a :  
governmental entity, :  
 :  
 :  
Defendant. :

THE ABOVE CAPTIONED MATTER having come before the Court for hearing on four (4) motions by named plaintiffs, GREG F. KNIGHT, STEVE HALL, ROY NEIZER and BROCK HUDSON, by and through counsel, BRIAN M. BARNARD and ANDREA J. GARLAND of the UTAH LEGAL CLINIC, personally and behalf of a class of similarly situated persons, the hearing being held pursuant to notice on Friday, February 6, 1998, at 8:30 o'clock a.m., the Hon. David Young, judge presiding, plaintiffs appearing by and through counsel as noted above,

the defendant appearing by and through Brendan McCullagh, Special Deputy County Attorney, the Court having reviewed the file and the pleadings therein and having heard the arguments and representations of counsel, based thereon and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED and DECREED:

**Class Certification**

1. Plaintiffs' motion for class certification is granted. Named plaintiffs shall represent a plaintiff class pursuant to Ut. R. Civ. Pro. 23 (b)(1) & (2). That class shall be defined

as: All jail staff employees of the defendant during the time period of April 15, 1986 to February 1, 1994 inclusive, who were required to report to work at the Salt Lake County Metro or Oxbow Jails ten (10) or more minutes before their assigned work shifts for briefing time and who did not receive compensation (wages or compensatory time) from the defendant for that time worked.

2. The defendant has not opposed this class certification. The Court finds that all of the requirements of Rule 23 (b)(1) & (2) have been met and that the facts relative to class certification as set out in Plaintiffs' Statement of Undisputed Facts (¶¶ 5, 8, 24 - 33) are not disputed and are true and sufficient to support class certification.

3. Any issues with regard to notice, etc. to the class (Ut. R. Civ. Pro. 23(c)) are reserved and may be considered at a later date.

#### **Applicable Statute of Limits**

4. The applicable statute of limitations in this action is six (6) years because plaintiffs' claims are based upon written contracts pursuant to Ut. Code Ann. § 78-12-23(2) (1953 as amended). The applicable time period runs from July 16, 1997 when plaintiffs initially filed suit and requested the relief sought herein.

#### **Judgment on the Pleadings**

5. Plaintiffs' motion for judgment on the pleadings should be granted in part and denied in part as follows:

A. Plaintiffs' request that the Court rule on the merits of Defendant's first affirmative defense (1. The complaint fails to state a claim upon which relief may be granted.) is denied.

B. Plaintiffs' request that the Court rule on the merits of Defendant's third affirmative defense (3. Defendant has fully compensated plaintiffs in accordance with all applicable statutes and policies and procedures.) is denied.

C. Plaintiffs' request that the Court rule on the merits of Defendant's fourth affirmative defense (4. Because plaintiffs failed to exhaust their administrative remedies, this Court is

without jurisdiction to entertain this suit.) is granted. The defendant has not set out any applicable administrative remedies or procedures. Therefore the Court finds and determines that plaintiffs' claims are not barred by any failure to exhaust any administrative remedies. Defendant may raise this defense again by setting out any administrative remedies it deems applicable.

D. Plaintiffs' request that the Court rule on the merits of Defendant's fifth affirmative defense (5. Defendant asserts that its relationship with its employees is not one of contract, but rather one of statute and is controlled by the provision of either the County Employee Management Act, Utah Code Annotated §17-33-1 et seq., or the Deputy Sheriffs' Merit Service Commission Act §17-30-1 et seq. whichever is applicable.) is denied.

E. Plaintiffs' request that the Court rule on the merits of Defendant's sixth affirmative defense (6. Plaintiffs' claims are barred by the Governmental Immunity Act, Utah Code Annotated §63-30-1 et seq.) is granted. The Court finds and determines that because this is an action in contract, it is not governed nor barred by the Utah Governmental Immunity Act.

F. Plaintiffs' request that the Court rule on the merits of Defendant's seventh affirmative defense (7. Under the provision of Utah Code Annotated §63-30-13, the plaintiffs' claims are

untimely and therefore this Court should dismiss those claims because any notice plaintiffs could file is deficient because it would be filed more than one (1) year after a claim arose. See *Nielson v. Gurley*, 888 P.2d 130 (Ut. Ct. App. 1994).) is granted. The Court finds and determines that this action in contract required no notice under the Governmental Immunity Act.

**Partial Summary Judgment**

6. The Court grants a partial summary judgment to the plaintiffs. The Court finds and determines that during the relevant time period:

A. The named plaintiffs and the plaintiff class were employees of the defendant, Salt Lake County based upon written employment contracts.

B. The named plaintiffs and the plaintiff class members were each required to attend a briefing session ten (10) minutes before every regularly assigned work shifts.

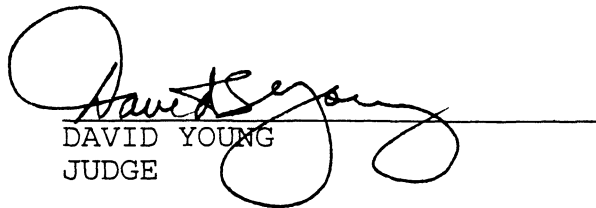
C. The named plaintiffs and the plaintiff class members were subject to discipline by defendant if they failed to attend or were late in attending the briefing session ten (10) minutes before every regularly assigned shifts.

D. The other issues raised by plaintiffs in their motion

for partial summary judgment are reserved for further hearing and/or trial.

DATED this 26<sup>th</sup> day of FEBRUARY, 1998.

BY THE COURT:

  
DAVID YOUNG  
JUDGE

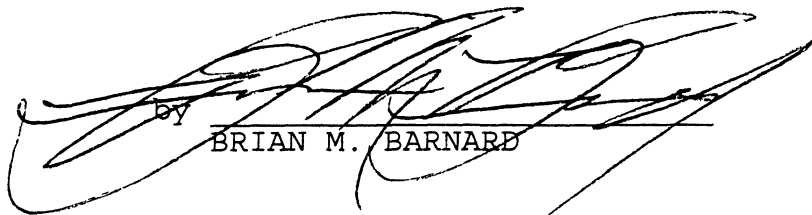
CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing ORDER CERTIFYING CLASS, DETERMINING STATUTE OF LIMITATIONS and GRANTING PARTIAL SUMMARY JUDGMENT to:

DOUG SHORT  
BRENDAN McCULLAGH  
RENA BECKSTEAD  
Attorneys for Defendant  
Salt Lake County Attorney  
2001 South State Street  
South Building  
Salt Lake City, Utah 84190

on the 10TH day of FEBRUARY, 1998, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC  
Attorneys for Plaintiffs

  
by BRIAN M. BARNARD

C:\REGCASE\VILLALOB\CLASSETC ORD\BMB\

## **ATTACHMENT D**


Order on Motions for Summary Judgment,  
dated October 4, 2000 (R. 1457).



**FILED DISTRICT COURT**  
Third Judicial District

DAVID E. YOCOM  
District Attorney for Salt Lake County  
JOHN P. SOLTIS (3040)  
VALERIE M. WILDE (7345)  
Deputy District Attorneys  
2001 South State Street, Suite S3400  
Salt Lake City, Utah 84190  
Telephone: (801) 468-3421

OCT 04 2000

By  \_\_\_\_\_  
SALT LAKE COUNTY  
Deputy Clerk

---

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

GREG F. KNIGHT, STEVE HALL, ROY	)	
NEIZER and BROCK HUDSON,	)	
personally and on behalf of a class of	)	ORDER ON MOTIONS FOR
persons similarly situated,	)	SUMMARY JUDGMENT
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	Case No. 97-090-7950CV
SALT LAKE COUNTY, a governmental		
entity,		
Defendant.		Judge David Young

---

The above-entitled matter came on for trial on the 18th day of April, 2000, before the honorable David S. Young, Judge of the above-entitled Court. Both parties, through their respective counsel, had previously filed competing Motions for Summary Judgment on the issue of whether Plaintiffs and the class members were statutory or contractual employees. Prior to the start of trial, each party argued their motions to the Court. The Court being fully aware of the facts and positions of the parties and advised in the premises, now issues its:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The documents presented by Plaintiffs to establish their written employment contracts with Salt Lake County are contained in footnote 6, on page 4 of Plaintiffs Reply in Further Support of Motion for Summary Judgment. These documents do not establish a written employment contract between the parties.

2. Plaintiffs are statutory employees appointed under Utah Code Ann. §17-31-1 et seq. to career service or Utah Code Ann. §17-33-1 et seq. to classified service. As such, a three year statute of limitations pursuant to §78-12-26(4) is applicable for liabilities created by the statutes of this state.

3. Paragraph 12 of Plaintiffs' Motion for Summary Judgment indicates that Plaintiffs request compensation for time worked prior to February 1, 1994. Paragraph 13 of the Plaintiffs' Amended Complaint admits payment for the period covered by a three year statute of limitations.

Based upon the foregoing findings of fact and conclusions of law, the Court hereby makes the following ORDER:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. Plaintiffs are statutory employees appointed under Utah Code Ann. §17-30-1 et seq. to career service or Utah Code Ann. §17-33-1 et seq. to classified service.

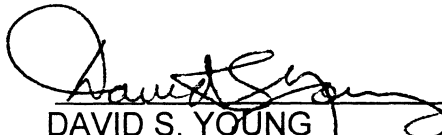
2. As statutory employees, Plaintiffs are governed by the three year statute of limitations pursuant to §78-12-26(4).

3. Plaintiffs admit compensation for the statutory period beginning on November 17, 1994 and continuing to November 17, 1997 and thus, there are no further triable issues to present to the Court.

4. Defendant's Motion for Summary Judgment is hereby granted and this matter is dismissed with prejudice.

DATED this 4 day of ~~September~~<sup>October</sup>, 2000.

By the Court:


  
\_\_\_\_\_  
DAVID S. YOUNG  
District Court Judge

# MAILING CERTIFICATE

I hereby certify that I caused a true and correct copy of the foregoing  
ORDER ON MOTIONS FOR SUMMARY JUDGMENT was mailed, postage  
prepaid, to the following:

Brian Barnard  
James Harris, Jr.  
Utah Legal Clinic  
Attorneys for Named Plaintiffs and Plaintiffs' class  
214 East Fifth South  
Salt Lake City, UT 84111-3204

Dated this 20<sup>th</sup> day of September, 2000.

  
\_\_\_\_\_

## **ATTACHMENT E**

- Attachment "E-1": Letter from Sheriff N.D. "Pete" Hayward to Brock E. Hudson, 1/11/90 (R. 130)
- Attachment "E-2": Letter from Sheriff Aaron D. Kennard to Roy David Neizer, 6/01/91 (R. 131).
- Attachment "E-3": "Notice of Personnel Action", 1/23/90, authorizing employment and compensation of Brock E. Hudson (R. 132).
- Attachment "E-4": "Notice of Personnel Action", 6/19/91, authorizing employment and compensation of Roy David Neizer (R. 133).
- Attachment "E-5": Salt Lake County Deputy Sheriff's Merit Service Commission ("DSMSC") Policy and Procedure # 5105 (R. 134-140).
- Attachment "E-6": Brock Hudson, 6/20/90 statement that he has read and is familiar with Salt Lake County Sheriff's Office Policies and Procedures Manual, incident to 1/23/90 action (R. 141).

SHERIFF'S OFFICE  
SALT LAKE COUNTY

Metropolitan Hall of Justice  
437 South Second East  
Salt Lake City, Utah 84111



N. D. "PETE" HAYWARD  
SHERIFF  
CHARLES J. SHEPHERD  
CHIEF DEPUTY

January 11, 1990

Brock E. Hudson  
[REDACTED]  
[REDACTED]

Dear Mr. Hudson:


I am pleased to offer you employment with the Salt Lake County Sheriff's Office as a Jail Officer.

This offer of employment is conditional on your successful completion of the required County physical.

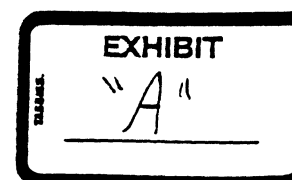
You are assigned to report to Lt. Steve Huntsman of the Jail Administration (2nd floor, Metropolitan Hall of Justice) at 0800 hours, on Tuesday, January 23, 1990.

I appreciate your interest in Sheriff's Office employment and look forward to your contributions to the Office.

Sincerely,

  
N.D. "Pete" Hayward  
Sheriff

NDH/jw



00130



## SALT LAKE COUNTY SHERIFF'S OFFICE

Aaron D. Kennard  
Sheriff

Darrell B. Brady  
Jailer/Deputy

Robert H. Sundquist  
Chief Deputy

Don J. Strong  
Chief Deputy

Metropolitan Hall of Justice  
437 South 200 East  
Salt Lake City, Utah 84111  
(801) 535-5441

June 1, 1991

Roy David Neizer

[REDACTED], Utah [REDACTED]

Dear Mr. Neizer,

I am pleased to offer you employment with the Salt Lake County Sheriff's Office as a Jail Officer. This offer of employment is conditional on your successful completion of the required County physical.

You are assigned to report to Lt. Prescott of the Jail Division at the Metropolitan Hall of Justice, 237 East 400 South at 0800 hours on Wednesday, June 19, 1991.

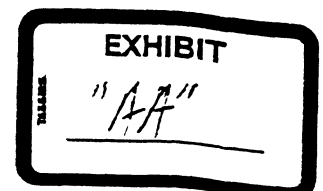
I appreciate your interest in Sheriff's Office employment and look forward to your contributions to our effort.

Sincerely,

A handwritten signature in cursive script, reading "Aaron D. Kennard".

Sheriff Aaron D. Kennard

ADK:tn  
0467J



00131

OK APPROPRIATE ACTION(S)

NOT 2 OF PERSONNEL ACTION

Elected Office / Division Name and Number

IRAD (New Hire)

IRUD (Rehire)

IRUD (Field Change, Transfer)

IRUD (New & Adjusted Salaries)

IRTH (Termination)

NAME Brock E Hudson

JOB TITLE Corrections Officer 17

EFFECTIVE DATE OF THIS

ACTION: 1/23/90

Mo. Dy. Yr.

TUS

Social Security Number

REGULAR

93

☐ INTERNS

MERIT PROBATION

94

☐ RESERVE DEPUTIES

PROVISIONAL

95

☐ APPOINTED NON-MERIT

TEMPORARY

96

☐ FEDERAL MANPOWER

PERMANENT PART TIME

97

☐ ELECTED

PART TIME

Fund	Agency	Organization	Sub. Org.	Activity	Object	Sub. Org.
110		1420			1130	

000/000

Job Cost # Sub. Dept.

NAME HUDSON, Brock E

Last

First

Middle Init.

ADDRESS

Street

City

State

Zip

PHONE

BIRTH DATE

SERVICE DATE

01 23 90

3 FULL TIME  
1E EQUIVALENT

RACE  
CODE

SEX

MARITAL STATUS

MERIT

HANDICAP

TAX EXEMPT WAGE

21 1.00

7

M ☒ MALE  
F ☐ FEMALE

S ☐ SINGLE  
M ☒ MARRIED

Y ☒ YES  
N ☐ NO

Y ☐ YES  
N ☒ NO

Y ☐ YES  
N ☒ NO

BER OF  
ENDENTS  
MED

RETIREMENT

LEAVE WITHOUT PAY

APPLYING FOR  
LONG TERM  
DISABILITY

02

F ☐ FIRE

S ☐ SHERIFF

T ☒ OTHER

N ☐ RETURNING FROM LEAVE ON

SALARY CHANGE

☐ NO SALARY CHANGE

SALARY ADVANCEMENT

\$

Old Rate or Pay-if Any

☐ PROBATIONARY INCREASE

☒ MERIT INCREASE

☐ OTHER ADJUSTMENT

\$ 1600.00

Proposed Rate

CHANGE OF CLASSIFICATION

Percent Increase

☐ PROMOTION

☐ DEMOTION

☐ RECLASSIFICATION

☐ CAREER LADDER

☐ OTHER

Percent Decrease

Date of Allocation Letter

OR

Name of Person Replaced and Date Vacated

R Fred Ross Term. 1/15/90

TERMINATION

Code # (00 OR 10)

LAST WORK DAY

REASON

VACATION LEAVE HOURS TO BE PAID

Number of Hours

AT \$

PER HOUR

TOTAL \$

SICK LEAVE HOURS TO BE PAID

(Reurses Only)

Number of Hours

AT \$

PER HOUR

TOTAL \$

30 DAYS ADVANCE NOTICE

8 HOURS

AT \$

PER HOUR

TOTAL \$

MARKS

GRAND TOTAL \$

Recommended By The Elected Officer/Division Named Above

D. MICHAEL STEPHAN

Signature of Recommending Officer & Date

Other Signature & Date

Other Signature & Date

APPROVED AS TO CLASSIFICATION AND SALARY DATA

APPROVAL OF AVAILABILITY OF UNENCUMBERED FUNDS

BOARD OF COUNTY COMMISSION ACTION

APPROVED

DENIED

Commission Clerk

DATE

DATE

DATE

EART BARKER

M. TOM SHIMIZU

Commissioner

Commissioner

Commissioner

EXHIBIT

"B"

ORIGINATION DEPT. RETURNED FROM CLERK'S OFFICE

00132



OR APPROPRIATE ACTION(S)

# NOTICE OF PERSONNEL ACTION

SNEMITT / 1420  
Elected Office / Division Name and Number

PRAD (New Hire)

PRUD (Renire)

PRUD (Field Change, Transfer)

PRUD (New & Adjusted Salaries)

PRTH (Termination)

NAME Roy D Heizer

JOB TITLE Corrections Officer 17

Section

EFFECTIVE DATE OF THIS

ACTION: NY 5/19/91

Fund	Agency	Organization	Sup. Org.	Activity	Object	Sup. Org.
110		1420			1130	

000 / 000  
Job Cost # Sub Dept

US Social Security Number

REGULAR 93 ☐ INTERN  
MERIT PROBATION 94 ☐ RESERVE DEPUTY  
PROVISIONAL 95 ☐ APPOINTED  
TEMPORARY 96 ☐ FEDERAL MANPOWER  
PART TIME WITH BENEFITS 97 ☐ ELECTED  
PART TIME WITHOUT BENEFITS

NAME HEIZER, Roy D  
Last First Middle Init.

ADDRESS [REDACTED]  
Street

[REDACTED] Utah [REDACTED]  
City State Zip

PHONE [REDACTED] BIRTH DATE [REDACTED] SERVICE DATE 06 19 91  
Mo. Dy. Yr. Mo. Dy. Yr.

FULL TIME EQUIVALENT 21 1.00 RACE CODE 0 SEX M ☒ MALE ☐ FEMALE  
MARITAL STATUS S ☐ SINGLE ☒ MARRIED  
MERIT Y ☒ YES ☐ NO  
HANDICAP N ☐ YES ☒ NO  
TAX EXEMPT WAGE Y ☐ YES ☒ NO

IER OF NDENTS 2 RETIREMENT N ☐ B ☐ Z ☐  
S ☐ T ☒ P ☐  
LEAVE WITHOUT PAY Y ☐ GOING ON LEAVE FROM REASON  
N ☐ RETURNING FROM LEAVE ON REASON  
APPLYING FOR LONG TERM DISABILITY ☐ Y

LARY CHANGE ☐ NO SALARY CHANGE

SALARY ADVANCEMENT \$ 1656.00  
Old Rate of Pay-if Any Proposed Rate  
☐ MERIT INCREASE  
☐ OTHER ADJUSTMENT

CHANGE OF CLASSIFICATION

☐ PROMOTION  
☐ DEMOTION  
☐ RECLASSIFICATION  
☐ CAREER LADDER  
☐ OTHER

Percent Increase  
Percent Decrease

Date of Allocation Letter OR

Name of Person Replaced and Date Vacated Scott Poff Term. 5/31/91

TERMINATION E LAST WORK DAY REASON  
Code # (00 OR 10)

VACATION LEAVE HOURS TO BE PAID Number of Hours AT \$ PER HOUR TOTAL \$ 

SICK LEAVE HOURS TO BE PAID Number of Hours AT \$ PER HOUR TOTAL \$   
(Retirees Only)

0 DAYS ADVANCE NOTICE 8 HOURS AT \$ PER HOUR TOTAL \$

GRAND TOTAL \$

inced By The Elected Office/Division Named Above

Signature of Recommending Officer & Date [Signature] Other Signature & Date JOHN BRADLEY Other Signature & Date

ED AS TO CLASSIFICATION AND SALARY DATA

[Signature] DATE 6-14-91 RANDY HOBROUGH DATE 6-14-91  
County Personnel

VAL OF AVAILABILITY OF UNENCUMBERED FUNDS

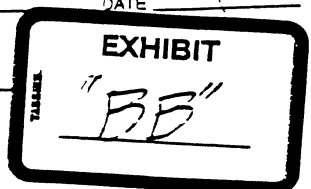
PAID: \$ 10,000.00 DATE 6-14-91 D. MICHAEL STEWART DATE 6-14-91  
County Auditor

BOARD OF COUNTY COMMISSION ACTION

ROVED [Signature] DATE 6-14-91 Commissioner

IED Commission Clerk

00133



## POLICY AND PROCEDURE #5105

### OVERTIME AND COMPENSATORY TIME

#### REFERENCE

SLCPP #5420 (04/08/92)  
Fair Labor Standards Act

#### PURPOSE

To comply with the Fair Labor Standards Act and provide for the uniform and equitable administration of overtime and compensatory time off for sworn employees.

#### DEFINITIONS

**Actual Hours Worked** - Includes all time that an employee is required to be on the employer's premises, or at a prescribed workplace for the employer, and all time during which the employee is suffered or permitted to work for the employer. Paid leave and holidays are not hours worked for the purpose of calculating overtime.

**Call-Back** - Refers to instances where employees are called back to their work at times when they are not scheduled to work.

**Compensation** - Includes all remuneration for employment paid to an employee such as bonuses, shift differentials, the cost of facilities furnished an employee, and other payments for work actually performed including compensatory time.

**Compensatory Time Off** - Compensation in the form of leave with pay that is awarded in lieu of cash payment. Compensatory time can be awarded at either a "regular rate of pay" (hour for hour) or at an overtime rate (1½ hours for each hour worked over 40 in the standard workweek).

**EEO4 Job Categories** - Employment data used to classify employees according to job categories, i.e. officials and administrators; professionals; technicians; protective service workers; paraprofessionals; administrative support; skilled craft workers; and service and maintenance.

**Employment Relationship** - Refers to an employer and an employee and the act or condition of employment.

**Employ** - Is defined as to suffer or permit to work; knowledge by an employer of work done by an employee is sufficient to create an employment relationship under FLSA.

**Excess Hours** - Any hours submitted for compensation in excess of the employee's FTE, which does not meet the definition of overtime.

**FLSA** - Fair Labor Standards Act.

EXHIBIT

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FLSA Covered Employees - Those employees covered by the overtime and minimum wage provisions of the FLSA.

FLSA Exempt Employees - Those management, administrative and professional employees not covered by the overtime provisions of the FLSA.

FTE - Full time equivalency based on the number of hours an employee is regularly scheduled to work in a standard workweek, divided by 40 hours (full time). For example: 32 scheduled /40 full time = .80 FTE.

Overtime - Hours worked by FLSA covered employees that must be compensated at  $1\frac{1}{2}$  times the employee's regular rate of pay, pursuant to the FLSA 207(k) exemption.

Overtime pay - Cash payment of overtime at a rate of  $1\frac{1}{2}$  times the employee's regular rate of pay.

Primary Payroll Unit - The County payroll unit for which an employee works the greatest number of hours on a regular basis; in the event an employee works an equal number of hours for two payroll units, the payroll with the earliest hire date shall be considered the primary payroll unit.

Regular Rate of Pay - The stated rate of pay.

For employees working 5-2 (8 hour shifts), 7-3, 7-4 (8 hour shifts), or 4-3 (10 hour shifts) schedules, salaries paid on the half month are multiplied by 24 and the product divided by 2080 to arrive at a regular rate of pay as required by the FLSA.

For employees working any other schedule, salaries paid on the half month are multiplied by 24 and the product divided by the average number of hours required to be worked by that schedule annually to arrive at a regular rate of pay as required by the FLSA.

Schedule Adjustment - Administrative action changing the schedule and/or hours to be worked within a work period.

Total Hours - All hours submitted for pay by an employee. This includes actual hours worked (including mandatory training), and paid leave (vacation, sick, holiday, military, funeral administrative and compensatory time).

Work Period - Any established and regularly recurring period of work which cannot be less than seven (7) consecutive days nor more than 28 consecutive days, established by written order of the Sheriff.

00135

PROCEDURE

1.0 FLSA Employee Certification

There are two types of employment classes in Salt Lake County relative to FLSA requirements, FLSA exempt and FLSA covered. FLSA covered employees are subject to FLSA requirements.

1.1 FLSA exempt employees are generally those in an executive, administrative, professional, or outside sales capacity, and merit exempt employees. These employees will normally be classified category 1 according to the EE04 definitions, category 1 - officials and administrators; or category 2 - professionals.

1.2 FLSA covered employees are generally included in all other EE04 categories. Category 3 includes technicians, category 4 protected service workers, category 5 paraprofessionals, category 6 office and clerical, category 7 skilled craft workers, category 8 service maintenance.

1.3 FLSA exempt positions in the Sheriff's Office include:

Sheriff (Elected Official)  
Undersheriff (Policy making appointee, executive)  
Chief Deputy (Policy making appointee, executive)  
Deputy Captain (Executive, administrative)  
Deputy Lieutenant (Administrative)  
Jail Lieutenant (Administrative)

1.3.1 Notwithstanding this designation, employees in specific assignments which do not meet exempt position criteria will be FLSA covered. Such determination will be made by a Merit Commission hearing, upon request of the effected employee(s) or the Sheriff.

1.4 FLSA covered positions in the Sheriff's Office include:

Deputy Sergeant  
Deputy Corporal  
Deputy Sheriff  
Jail Sergeant  
Jail Corporal  
Jail Officer  
Bailiff Corporal  
Bailiff  
Identification Technician

**# 5 1 0 5 - 4**

**2.0 Qualifying Conditions Applying to Overtime Eligibility of Non Exempt Employees**

2.1 Holidays, vacation, sick leave and other paid leave such as jury duty, military leave and funeral leave shall not be counted as time worked for purposes of overtime.

2.2 FLSA covered employees may be granted compensatory time off, in lieu of cash payment for overtime hours worked or for other excess hours worked over the employee's regularly scheduled working hours or FTE. Actual hours worked in excess of the straight time hours specified by the 207(k) exception shall be paid at one and one-half ( $1\frac{1}{2}$ ) times the regular rate to eligible employees. Compensatory time off will be preserved, used or exchanged for cash payment in accordance with this Policy and Procedure and with the FLSA.

2.3 The Sheriff may elect to make cash payments for overtime or grant compensatory time off. Overtime payments shall be as follows:

2.3.1 Cash payment for excess hours is provided at a regular rate of pay.

2.3.2 Cash payment for overtime hours is provided at one and one-half ( $1\frac{1}{2}$ ) times the regular rate for hours worked beyond excess hours.

2.4 Compensatory Time Off - may be provided in lieu of cash payment consistent with 29 C.F.R. 553.23 and if:

2.4.1 Provided at a regular rate of pay for each excess hour worked.

2.4.2 Provided at the rate of one and one-half ( $1\frac{1}{2}$ ) hours the regular rate each hour of overtime;

2.4.3 Sworn employees are allowed to accumulate no more than 480 hours.

2.4.4 A FLSA covered terminated employee shall be compensated in cash for any compensatory time remaining on the books at the rate not less than the average rate of pay received by the employee during the last three years or the final regular rate received by the employee, whichever is higher.

- 2.4.5 An employee who requests compensatory time off shall be permitted to use such time within a reasonable period of time if operations are not unduly disrupted.
  - 2.4.6 Compensatory time shall be utilized within a reasonable time not to exceed six (6) months. Compensatory time not utilized within six (6) months shall be paid in cash.
  - 2.4.7 The Sheriff, due to unusual seasonal work loads, can request an exception to the six (6) months compensatory rule (2.4.6) from the Merit Commission. This exception, if granted, will under no circumstances exceed one year.
- 2.5 If County employees work a compensated second job for another County agency, then all hours worked for both (all) agencies during the standard workweek shall be considered jointly for purposes of calculating overtime.
- 2.5.1 If County employees work a compensated second job for another County agency, then all hours worked for both (all) agencies during the standard work period shall be considered jointly for purposes of calculating overtime.
  - 2.5.2 The Sheriff may limit employment of subordinate employees in other County divisions, departments or elected offices if such employment adversely impacts his or her budget on a long term basis or interferes with work performance or the availability of an employee to perform regularly assigned duties.
- 2.6 Volunteers are exempt from FLSA minimum wage and overtime requirements and are not considered employees of the County. They may receive a nominal fee, reimbursement for expenses, or reasonable benefits.
- 2.6.1 County employees may not volunteer to perform the same services for the County they provide on a regular basis as a paid employee. They may however, provide such services for a different government employer.

## #5105-6

### 3.0 Compensation for FLSA Covered, Called Back Personnel

- 3.1 Any eligible employee called back shall be credited a minimum of three (3) hours of work time. If three (3) hours or more are worked only the actual time worked is paid at straight time unless the requirements for overtime are met; then all hours shall be paid at one and one-half ( $1\frac{1}{2}$ ) times the regular rate.

### 4.0 FLSA Exempt Overtime Eligibility

- 4.1 Cash payment for exempt overtime is not permitted under any circumstances during employment or upon termination. Compensatory time off shall be provided very sparingly to FLSA exempt employees and only for extraordinary performance under unusual circumstances.
- 4.2 The decision to provide compensatory time off shall be at the discretion of the Sheriff. Compensatory time off for FLSA exempt employees, if awarded, shall be awarded at straight time.
  - 4.2.1 The Sheriff shall adopt a written internal policy regarding compensatory time off for those employees exempt from FLSA. In the absence of such a policy, the Sheriff will be assumed to follow this policy in the accumulation of compensatory time for FLSA exempt employees.
    - 4.2.1.1 Such internal written policy must be reviewed by the Merit Commission for consistency with this policy and be approved by the Merit Commission.
    - 4.2.1.2 A written policy, which authorizes compensatory time, shall require prior approval of the accumulation of compensatory time hours.
  - 4.2.2 No more than sixty (60) hours of compensatory time may be accumulated by FLSA exempt employees, unless provided for in an internal policy approved by the Merit Commission.
- 4.3 FLSA exempt employees may be employed in second part-time jobs with Salt Lake County. FLSA exempt employees shall be paid straight time for hours worked on a second part-time job with the County, such as seasonal or emergency,

if the second job is also exempt. If the second part-time job is FLSA covered, the employee may be entitled to overtime at one and one-half ( $1\frac{1}{2}$ ) times the regular rate and may require approval from the Board of County Commissioners. Consult with the Merit Commission in these cases.

5.0 Record Keeping

5.1 The Sheriff's Office Payroll Unit shall ensure that the following information is recorded for every employee:

- 5.1.1 Full name of employee;
- 5.1.2 Time of day the work day begins if different than the standard 8-5 work day;
- 5.1.3 Daily and total hours of work for each work period;
- 5.1.4 A document signed by the employee verifying hours worked;
- 5.1.5 The records must be kept for 3 years.

5.2 The Payroll Time and Attendance Register shall include all overtime for pay calculated on the basis of the standard work week and must be reported on the first T & A Register possible after completion of the work period.

5.3 The use of alternative social security numbers for payroll purposes shall be prohibited.

5.4 Hours worked by employees outside of a primary employer's regular payroll unit shall be paid for such hours from their regular payroll unit. The regular payroll unit will make a journal entry for reimbursement from the payroll unit for which hours were actually worked.

APPROVED AND ADOPTED THIS 20 DAY OF August 1992

Gene Phelan



# SALT LAKE COUNTY

Metropolitan Hall of Justice  
37 South Second East  
Salt Lake City, Utah 84111  
CAPTAIN BRUCE THAYNE  
JAIL COMMANDER



N. D. "PETE" HAYWARD  
SHERIFF  
CHARLES J. SHEPHERD  
CHIEF DEPUTY

Date Of Issue: 1 / 23 / 90

I Officer Brock Hudson have read the entire Salt Lake County Sheriffs Office Policies And Procedures Manual. I am fully familiar with all of its contents. I realize what my duties and responsibilities are to the Sheriffs Office and the Jail Division. I will also follow both written and verbal orders given to me by my superior officers.

Date: 6 / 20 / 90

Signature B. Hudson

DP# 0385



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