

2000

Lynn Allan Jenkins v. Hon A. Lynn Payne, David  
Young Payne, Utah State Bar, Noth Salt Lake City,  
Davis County, and Uintah County : Brief of  
Appellant

Utah Court of Appeals

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Melvin C. Wilson, Gerald E. Hess, Gary O. McKean, Brent M. Johnson; Kent L. Christiansen; Christiansen, Sonntag; Kenneth R. Wallentine; attorneys for appellee.

Lynn A. Jenkins; pro se.

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#### Recommended Citation

Brief of Appellant, *Jenkins v. Payne*, No. 20000956 (Utah Court of Appeals, 2000).

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IN THE UTAH COURT OF APPEALS

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LYNN ALLAN JENKINS,	)	
	)	
Plaintiff and Appellant,	)	<b>BRIEF OF THE APPELLANT</b>
	)	
vs.	)	Case No. 20000956-CA
	)	
ALBERT "LYNN" PAYNE, DAVID	)	(Appeal from the Second
YOUNG PAYNE, UTAH STATE BAR,	)	Judicial District Court,
NORTH SALT LAKE CITY, DAVIS	)	Davis County, Judge Rodney S.
COUNTY and UINTAH COUNTY.	)	Page, Civil No. 970700315 CN)
	)	
Defendants and Appellee.	)	

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**Priority No. 15**

Appellee's Attorney:

DAVIS COUNTY, Appellee,  
Davis County Attorney  
Melvin C. Wilson Esq.  
Gerald E. Hess Esq.  
Gary O. McKean Esq.  
Davis County Courthouse  
Box 618  
Farmington UT 84025

ALBERT "LYNN" PAYNE, Appellee,  
Brent M. Johnson Esq.  
Administrative Office of Court, Suite N31  
450 South State Street,  
PO Box 140241  
Salt Lake City, UT 84114-0241

NORTH SALT LAKE CITY, Appellee  
Kent L. Christiansen Esq.  
CHRISTIANSEN & SONNTAG  
525 East 100 South, Suite 120,  
PO Box 11751  
Salt Lake City, UT 84147

UINTAH COUNTY, Appellee,  
Uintah County Attorney  
Kenneth R. Wallentine Esq.  
Chief Deputy  
152 East 100 North  
Vernal, UT 94078

Appellant, pro se:

LYNN A. JENKINS I.  
3 East 2750 South  
Bountiful City, Utah 84010  
Telephone No: (801) 299-1513

**FILED**  
Utah Court of Appeals

**MAY 15 2001**

**Paulette Staggs**  
Clerk of the Court

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(d) other authorities;

**Statement showing Jurisdiction of the appellate court.**

The Supreme Court has jurisdiction in this matter pursuant to §78-2-2(3)(j) and §78-33-7 Utah Code Annotated 1953, as amended, however it transferred this appeal to the Utah Court of Appeals pursuant Section 78-2-2(4) on or about January 17, 2001.

**Issue(s) for review and standard(s) of review.**

I. Does the Uintah County district court have jurisdiction of real property in Davis County, relating to Davis County's recorded records? Standard of review is alleged to be §78-33-1. Also, the supporting authority with the determinative constitutional provisions, statutes, ordinances, and rules that are set forth verbatim in the addendum.

II. Did the court deny Plaintiff/Appellant due process on his August 21, 1997 Motion for Declaratory Judgment? Standard of review is alleged to be Utah Constitution Article I. Section 7, Utah Code Annotated, §§78-33-1, 78-33-2, 78-33-3, 78-33-4, 78-33-5, 78-33-6, 78-33-7, 78-33-8, 78-33-9, 78-33-10, 78-33-11, 78-33-12, 78-33-13, and Utah Code of Judicial Administration, Rule 4-501. Also, the supporting authority with the determinative constitutional provisions, statutes, ordinances, and rules that are set forth verbatim in the addendum.

III. Did the court deny Plaintiff/Appellant his right to a trial by jury in Davis County? Standard of review is alleged to be Article I. Section 10, Utah Constitution. Also, the supporting authority with the determinative constitutional provisions, statutes, ordinances, and rules that are set forth

verbatim in the addendum.

IV. Are the courts in Davis and Uintah counties "open" for pro se, participation? Standard of review is alleged to be Article I. Section 11, Utah Constitution. Also, the supporting authority with the determinative constitutional provisions, statutes, ordinances, and rules that are set forth verbatim in the addendum.

V. Are Utah judges public servants? Standard of review is alleged to be Article I. Section 2, Utah Constitution. Also, the supporting authority with the determinative constitutional provisions, statutes, ordinances, and rules that are set forth verbatim in the addendum.

**Determinative constitutional provisions, statutes, ordinances, and rules set forth verbatim or by citation alone if they are set forth verbatim in the addendum.**

Utah Constitution Article I.

- Sec. 2. [All political power inherent in the people.]
- Sec. 7. [Due process of law.]
- Sec. 10. [Trial by jury.]
- Sec. 11. [Courts open - Redress of injuries.]

Utah Constitution Article VIII.

- Sec. 1. [Judicial powers - Courts.]
- Sec. 4. [Rule-making power of Supreme Court - Judges pro tempore - Regulation of practice of law.]
- Sec. 5. [Jurisdiction of district court and other courts - Right of appeal.]
- Sec. 6. [Number of judges of district court and other courts - Divisions.]
- Sec. 7. [Qualifications of justices and judges.]
- Sec. 9. [Judicial retention elections.]
- Sec. 10. [Restrictions on justices and judges.]
- Sec. 11. [Judges of courts not of record.]
- Sec. 12. [Judicial Council - Chief justice as administrative officer - Legal counsel.]
- Sec. 13. [Judicial Conduct Commission.]
- Sec. 16. [Public prosecutors.]

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§78-40-9. Alienation pending action not to prejudice recovery.  
§78-40-12. Service of summons and conclusiveness of judgment.  
§78-40-13. Judgment on default - Court must require evidence - Conclusiveness of judgment.

Utah Code of Judicial Administration,  
Rule 4-501. Motions.

### **Statement of the case.**

#### **a. nature of the case;**

The nature of this case is complex since it involves Plaintiff/Appellant Lynn Allan Jenkins' ("Appellant" hereinafter), February 1997, petition to the Utah Supreme Court for a appointment of an "special prosecutor" on issues, relating to this appeal such as: the denying by Defendant/Appellee Albert Lynn Payne ("Lynn Payne" hereinafter) and his brother David Young Payne ("David Payne" hereinafter) of Appellant's request(s) for a jury trial(s) in David's North Salt Lake City Court jurisdiction, and Lynn Payne's Uintah County District Court jurisdiction; their apparent failure to disclose to the Fourth Judicial District Court, Heber City, Wasatch County, the total assets of their deceased uncle, Welby Wilson Young's Estate, whose estate they both administrated as attorneys of record; who, upon information and belief, they commingled those assets with their parents assets and/or commingled their assets with those assets, thus shielding assets from the courts and/or spouses and/or creditors and/or benefactors. All this information was given to the Utah Judicial Council, Judicial Conduct Commission and Utah State Bar, which entities requested the information from the Appellant, concerning an investigation being conducted upon, then North Salt Lake City Judge David Payne, as to his duty, honesty and assets, also, Eighth District Court Judge John R. Anderson's failure to disclose his on going partnership with John C. Beaslin Esq., while Mr. Beaslin was practicing before Judge Anderson. (It is



noted for the record, North Salt Lake City's Prosecutor was acting as trustee for the Payne family and appearing before Judge David Payne during the same period of time he was the city prosecutor and/or Assistant Davis County Attorney and/or Assistant Utah Attorney General).

As to the course of the above stated administrative proceedings, (1) the Utah Supreme Court denied the appointment of a "special prosecutor"; (2) in late April 1997, David Payne resigned as judge for Defendant/Appellee NORTH SALT LAKE CITY, ("NSLC" hereinafter); (3) David Payne was sent to jail; (4) David Payne was disbarred by the Utah Bar; and (5) the Judicial Conduct Commission notified Appellant, it's investigation would be closed. If he desired to seek any relief against David and/or Lynn Payne and/or NSLC and/or it's prosecutor and/or Uintah County and/or Davis County, and/or Judge Anderson, his option was to seek relief in the civil courts.

Further, on or about April 30, 1996 Appellant paid under protest to the First National Bank of Layton, approximately \$300,000.00 on his Davis County Property. That protested issue is a \$224,000.00 wire transfer in July 1986 from the 1st National Bank of Austin TX. A cause of action on that issue cannot be tendered to the proper court until the cloud on the Davis County UREC is resolved by defendant Davis County which has regulatory and administrative powers pursuant to law.

b. course of proceedings;

July 22, 1997, Appellant filed a civil action against LYNN

PAYNE, DAVID PAYNE, UTAH STATE BAR, NSLC, DAVIS COUNTY and UINTAH COUNTY, in the Second Judicial District Court, Davis County, Judge Rodney S. Page, presiding, Civil No. 970700315 CN.

August 21, 1997 plaintiff filed his Motion For Declaratory Judgment.

August 25, 1997 the Administrative Office of the Courts, without motion nor leave of the court, filed for Lynn Payne a Motion and Memorandum To Dismiss Judge Payne from the action however that motion and memorandum was not mailed to plaintiff as it certified, but was mailed August 26, 1997. Historically, it has been observed that the courts of Utah and it's attorneys, mail either not at all, or two or three days later than indicated on the mailing certificate.

September 4, 1997 Appellant filed a Motion to Strike the Motion to Dismiss of Lynn Payne.

September 4, 1997 Appellant filed a Notice to Submit his Motion for Declaratory Judgment of August 21, 1997.

October 10, 1997 Appellant filed a Notice to Submit Motion to Strike the Motion to Dismiss of Lynn Payne since the Administrative Office of the Courts had not filed any response to Appellant's Motion to Strike of September 4, 1997.

October 16, 1997 the court entered its Findings of Fact, Conclusions of Law and Order dismissing Lynn Payne and not dismissing him as named in his individual capacity.

October 26, 1997 Appellant filed a MOTION with PLAINTIFF'S MEMORANDUM IN SUPPORT FOR A NEW TRIAL ON DEFENDANT ALBERT "LYNN"

PAYNE, AND REQUEST FOR MORE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW. There were no responses filed by the parties.

c. disposition at trial court or agency.

The trial court on OCTOBER 5, 2000, entered it's RULING ON DEFENDANT[S] NORTH SALT LAKE CITY AND DAVIS COUNTY'S MOTION TO DISMISS AND ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (ENTITLED MOTION FOR DECLARATORY JUDGMENT). There were no post judgement motion(s) filed and Appellant filed his notice of appeal on November 3, 2000. However, there have been related appeals:

LYNN A. JENKINS I., vs. EIGHTH JUDICIAL DISTRICT'S CLERK OF THE COURT, SHANA WITBECK; and LEAD DEPUTY CLERK, CHERYL WEEKS, No. 960101-CA, 960232-SC; cert. denied United States Supreme Court.

LYNN A. JENKINS, v. NELDEN E. COOPER, Eighth District Court Civil No. 960800361, Appeals No. 960835-CA; 970036-SC; 970283-SC. 970498-CA.

H. ARVENE COOPER AND MAURICE N. COOPER vs. M & J CONSTR., INC., a Utah Corporation, and EDWIN M. HIGLEY, aka EDWIN HIGLEY, and AFTON C. HIGLEY and Intervenor, LYNN A. JENKINS I., Eighth District Civil No. 930800100CN; Appeals No. 970186-SC;

LYNN A. JENKINS I. vs. THE HONORABLE RODNEY S. PAGE, Case No. 980272-SC, Utah Supreme Court.

LYNN A. JENKINS vs. In re: THE HONORABLE A. LYNN PAYNE Jr., THE HONORABLE JOHN R. ANDERSON, THE HONORABLE BRUCE K. HALLIDAY, THE HONORABLE LYLE R. ANDERSON, THE SEVENTH JUDICIAL DISTRICT COURT and THE EIGHTH JUDICIAL DISTRICT COURT, Civil No. 930800100 CN; Case No. 980219-SC; Case Pourover No. 980219-CA; No. 981832-SC;

LYNN A. JENKINS I. vs. THE HONORABLE A. LYNN PAYNE and THE EIGHTH JUDICIAL DISTRICT CLERK OF THE COURT, Case No. 981432-SC;

**Relevant facts with citation to the record.**

[Extracted from August 21, 1997 MOTION FOR DECLARATORY JUDGEMENT]

*June 1977, H. Arvene Cooper and Maurice N. Cooper ("the*

Coopers"), owners of approximately 430 acres of a Uintah County farm and Edwin M. Higley and Afton C. Higley ("the Higleys"), owners of certain Davis County and Weber County lands entered into verbal agreements to exchange Higleys' Davis County undeveloped land, for Coopers' partially developed farm with its irrigation water and equipment.

M&J Construction Inc., a Utah corporation ("M&J"), owned 1/3 by Mark Higley (one of the Higleys' sons), 1/3 by John Higley (another of the Higleys' sons), and 1/3 by it's President Edwin M. Higley, in conjunction with the Higleys' verbal commitments, agreed to repurchase from the Coopers, the Davis County real property on or about July 13, 1977. The exchange value and purchase price consideration was to be \$300.00 per acre on the 430 acres of Uintah County farm, with 430 shares of Ouray Park Irrigation Company stock, other improvements and equipment being a total exchange consideration of \$129,000.00 (M&J check no. 1637 "earnest money" in the amount of \$2,000.00). Gayle F. McKeachnie Esq. ("McKeachnie"), acted as escrow-transfer agent for the Coopers.

September 15, 1977, the Coopers encumbered approximately 381.59 acres on their Uintah County farm by giving a "Real Estate Mortgage For Utah", in the amount of \$17,000.00 and in favor of the United States of America through it's Farmers Home Administration ("FmHA"), as recorded by McKeachnie. FmHA had existing mortgages with the Coopers of (6-21-72) \$25,000.00; (5-8-74) \$24,000.00; (1-29-75) \$6,600.00; or a total as of September

15, 1977 of \$72,600.00.

September 17, 1977, M&J gave Brent Cooper ("Brent"), one of the Coopers' sons, and Arvene Cooper \$25,000.00 (M&J check no. 2166).

December 24, 1977, M&J agreed to purchase from Rouvoo C. Archer a.k.a., E. Rouvoo Christenson ("Archer"), for consideration of \$50,543.00 plus \$1,000.00 (M&J check no. 2599), for her Uintah County farm containing 320 acres or \$161.07 per acre. Archer did not hold any Ouray Park Irrigation Company stock; however, her parents had filed and were entitled to at least 320 shares from Pelican Lake at a rate of 3.4 acre feet per share annually. Those Pelican Lake shares were split 2 for 1 with a book value of \$25.00 for each new share in or about 1977.

December 26, 1977, M&J as buyer and the Coopers as sellers executed a Davis County Uniform Real Estate Contract ("1977 DAVIS UREC"), in the amount of \$184,457.00, less \$15,000.00 for the down payment, the balance of \$169,457.00 was to be "be paid as follows: \$9,259.28 interest shall be due on January 1, 1979, then 14 equal annual payments of \$20,642.28, which includes \$8,538.21 interest each year commencing January 1, 1980. The above described property will be deeded to Buyers as the same is needed, as long as the sellers have security", purportedly attached thereto is the legal descriptions of Higleys' Davis-Weber County properties. This 1977 DAVIS UREC was executed in duplicate originals by the Coopers and M&J; however M&J retained those originals in it's files until January 1995.

December 26, 1977, M&J gave the Coopers \$13,000.00 (M&J check no. 2600).

December 26, 1977, the Higleys gave the Coopers a Promissory Note in the amount of \$18,500.00 "payable as follows: \$8,000.00 shall be due on or before September 15, 1978, and the balance of \$10,000.00 plus \$840.00 interest shall be due on or before January 1, 1979". The original Note was returned to the Higleys on or about January 7, 1979, marked "Paid in Full".

December 26, 1977, the Higleys transferred in five Warranty Deeds, certain real property they owned which was located in Davis and Weber County, Utah to the Coopers. These properties were purportedly transferred pursuant to an Exchange Agreement dated December 26, 1977 but executed about December 31, 1977. That Exchange Agreement provides in essence that the Higleys would transfer the Davis-Weber County real properties to the Coopers in exchange for the Coopers' transfer of their Uintah County farm to Edwin M. Higley with the understanding "It is agreed that the deeds will be held in escrow (McKeachnie) until the 2nd party (Coopers) pay off an existing Loan (FmHA), however, this exchange agreement is effective immediately (December 26, 1977)".

Purportedly on December 26, 1977, the Coopers executed only one Warranty Deed before Notary Public Gayle F. McKeachnie Esq., to Edwin M. Higley, for 215.26 acres of Coopers' Uintah County farm. McKeachnie's jurat on the Warranty Deed is fraudulent on it's face since it states "My commission expires March 1, 1983".

(The state of Utah issued that date to McKeachnie on March 1, 1979).

Purportedly on December 26, 1977, McKeachnie prepared a "Notice of Interest" on Higleys Davis County real property and on February 9, 1978, it was filed with the recorder of Davis County. The notice was not executed by the Higleys nor M&J.

Purportedly on December 27, 1977, the Coopers gave Edwin M. Higley a Quit Claim Deed on the Archer's farm.

M&J's records indicate it paid Archer a total of \$54,146.00, with earned interest, as of February 15, 1978, and on or about March 8, 1982, the estate of Rouvov C. Archer, transferred to the Higleys its interest in her 320 acre farm by Personal Representative's Deed.

August 22, 1978, the Coopers, by five Warranty Deeds executed December 26, 1977, transferred their interest in the Davis-Weber County real properties to M&J thus terminating their Notice of Interest, and any claim, if any, as to M&J's 1977 DAVIS UREC.

November 1, 1991, the Higleys, in their respective rights to their Uintah County farms, transferred 320 acres to Utah Spuds, Inc., and 295.26 acres to Lynn Allan Jenkins, I.

On or about March 16, 1993, the Coopers filed suit against the Higleys and M&J, (COOPERS v. M&J, herein), knowing that Appellant was the purchaser of the Uintah farms and his mortgage company, Residential Mortgage Inc., had fee simple title to the Davis County real property and an Absolute Assignment from M&J on

the Weber County real property. The complaint's cause of action was for an accounting of the 1977 DAVIS UREC.

September 19, 1995, Appellant served the Coopers in COOPERS v. M&J, his motion to intervene, with an answer and counterclaim, however, the Uintah County court has refused to allow Appellant standing to intervene and defend that answer and counterclaim.

On or about July 21, 1997, Appellant filed his Complaint in Davis County, the subject matter of the above entitled appeal (JENKINS v. PAYNE, herein).

August 21, 1997, Appellant filed in JENKINS v. PAYNE, a MOTION and MEMORANDUM IN SUPPORT OF MOTION FOR DECLARATORY JUDGEMENT, pursuant to Utah Rule of Civil Procedures, Rules 56 and 57, and Utah Code Annotated Chapter 33 of Title 78 and §78-33-1.

September 5, 1997, Appellant filed in JENKINS v. PAYNE, his NOTICE TO SUBMIT MOTION FOR DECLARATORY JUDGEMENT, since there were no responses from the parties, and a proposed ORDER GRANTING DECLARATORY JUDGMENT requesting, "Plaintiff (Appellant), is granted Declaratory Judgment against the defendants as follows:

(1). Plaintiff is entitled to a Davis County jury trial on his Davis County real property;

(2). that the December 26, 1977, Davis County Uniform Real Estate Contract attached to plaintiff's memorandum is satisfied in full as shown by the records of Davis County Recorder's office on August 22, 1978; and



(3). that defendants Albert "Lynn" Payne and David Young Payne are barred from practicing law in Davis County until plaintiff has had his jury trial(s)."

On or about February 4, 1998, the COOPERS v. M&J, Uintah court entered a RULING AND ORDER, which contained nothing more than fraudulent and/or misplaced findings of fact, conclusions of law and order of the Uintah court on M&J's 1977 DAVIS UREC, however, there is no final order in that cause of action.

**Summary of the argument.**

April 16, 1996 Appellant filed with the Uintah District Court his Request For Jury Trial, a proposed Order of (sic) Jury Trial and a \$50.00 filing fee.

May 3, 1996 Lynn Payne returned Appellant's proposed Order of (sic) Jury Trial with a hand written notation stating "Defendants (sic) Motion for jury trial was denied at \* 4-23-96 hearing. AL PAYNE 5-3-96" which is the typical final order from the Uintah District court.

April 9, 1997 Lynn Payne ordered from the Uintah court bench trial the following:

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UTAH COUNTY	
STATE OF UTAH	
-000-	
H. ARVENE COOPER, AND MAURICE	:
N. COOPER,	:
	:
PLAINTIFFS,	:
	:
VS.	:
	:
EDWIN M. HIGLEY AND AFTON	:
HIGLEY, AND M&J CONSTRUCTION,	:
INC.,	:
DEFENDANTS.	:

CASE NO. 930800100

BENCH TRIAL

VOLUME III

..... : HONORABLE A. LYNN PAYNE  
 LYNN A. JENKINS, I. :  
 :  
 INTERVENOR. :  
 ..... :

-000-

BE IT REMEMBERED, THAT ON THE 9TH DAY OF APRIL, 1997,  
 THE ABOVE-ENTITLED ACTION NOW PENDING IN THE ABOVE-NAMED  
 COURT, WAS HEARD BEFORE THE HONORABLE A. LYNN PAYNE,  
 COMMENCING IN THE MORNING SESSION OF SAID DAY AT THE  
 UINTAH COUNTY COURTHOUSE, VERNAL, UTAH.

#### APPEARANCES

FOR PLAINTIFFS:	JOHN C. BEASLIN 185 NORTH VERNAL AVENUE VERNAL, UTAH 84078
FOR DEFENDANTS:	PHILLIP HUGHES P.O. BOX 1133 BOUNTIFUL, UTAH 84011-1133
FOR INTERVENOR:	LYNN A. JENKINS, PRO SE. THREE EAST 2750 SOUTH BOUNTIFUL, UTAH 84010

age 583

...

1 THE COURT: THERE ISN'T ANYTHING IN 106 THAT WOULD  
 2 BE CONTINGENT UPON THE TESTIMONY OF MR. HIGLEY FOR THE COURT  
 3 TO RECEIVE. WELL, LET'S TALK. COME ON UP.  
 4 (WHEREUPON A SIDE BAR CONFERENCE WAS HELD)  
 5 THE COURT: THE RECORD WILL INDICATE WE HAVE BEEN  
 6 TALKING OFF THE RECORD OF SCHEDULING. AND IT'S NOW 11:30.  
 7 AND UNLESS THE PARTIES CAN TELL ME THEY ARE GOING TO BE ABLE  
 8 TO GET THEIR EVIDENCE IN TODAY, WE ARE GOING TO HAVE TO  
 9 CONTINUE THIS. SO LET'S TALK ABOUT THAT ISSUE FIRST. ARE YOU  
 10 FOLKS GOING TO BE ABLE TO GET YOUR EVIDENCE IN TODAY?  
 11 MR. BEASLIN: NO, YOUR HONOR. I STILL HAVE TWO  
 12 WITNESSES.  
 13 MR. HUGHES: WHICH ONES?  
 14 MR. BEASLIN: BRENT AND CHUCK WINN. I STILL HAVE  
 15 WINN AND BRENT. AND THEY HAVE CROSS ON MR. HIGLEY.  
 16 MR. HUGHES: BOY, IT MIGHT BE BETTER. I WOULD BE  
 17 WILLING TO POSTPONE CROSS ON MR. HIGLEY TO MY DIRECT.  
 18 THE COURT: LET'S GET HIGLEY IN. HE'S CRITICAL. I  
 19 WANT HIM IN.  
 20 MR. HUGHES: YES, BUT TO DIRECT, MR. BEASLIN HAS  
 21 EXAMINED HIM. I HAVE NOT HAD AN OPPORTUNITY TO CROSS-EXAMINE  
 22 HIM OR DO DIRECT. I WOULD BE WILLING IF THE COURT IS WILLING  
 23 TO.  
 24 THE COURT: WELL, YOUR DIRECT WILL COME TO YOUR

25 CASE, BUT IT DOESN'T SOUND LIKE WE ARE GOING TO GET TO YOUR  
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1 CASE. BUT WE'LL --  
2 MR. HUGHES: POSTPONE FURTHER CROSS ON MR. HIGLEY?  
3 THE COURT: NO. TAKE CARE OF EVERYTHING IN MR.  
4 BEASLIN'S CASE TODAY, INCLUDING THE CROSS OF MR. HIGLEY, AND  
5 THEN CALL MR. HIGLEY AS YOUR WITNESS AS YOU MAY WHEN YOU START  
6 TO PRESENT YOUR CASE, WHICH WILL BE AT SOME LATER TIME. YOU  
7 KNOW, TO BE HONEST WITH YOU I HAVE SOME QUESTIONS I WANT TO  
8 ASK MR. HIGLEY BASED UPON HIS TESTIMONY AND THE FACTS THAT ARE  
9 NOW BEFORE THE COURT, AND SO IF IT'S GOING TO BE CONTINUED,  
10 WITH ALL OF THE CASES THAT I HAVE, I AM GOING TO BE ASKING HIM  
11 QUITE A FEW QUESTIONS IF YOU FOLKS DON'T ASK THEM TODAY.  
12 SO I'LL GIVE YOU FOLKS THE OPPORTUNITY TO TAKE HIM  
13 AND ASK THE QUESTIONS, AND ANYTHING THAT YOU DON'T THAT I WANT  
14 TO ASK HIM, I AM GOING TO ASK HIM. OKAY? SO WE'LL COMPLETE  
15 MR. HIGLEY'S TESTIMONY AS IT HAS BEEN OFFERED. AND WE'LL SEE  
16 IF WE CAN GET YOUR TWO OTHER WITNESSES ON. AND THEN WE'LL  
17 TAKE YOUR CASE AT A LATER DATE.  
18 MR. LYNN JENKINS: YOUR HONOR, I BELIEVE THAT WE  
19 NEED TO HAVE A CLARIFICATION OF YOUR ORDER THAT YOU GAVE.  
20 THE COURT: HOW MUCH LONGER WILL YOU NEED?  
21 MR. LYNN JENKINS: PARDON?  
22 THE COURT: HOW MUCH LONGER WILL YOU NEED TO PUT  
23 THIS CASE ON, TO COMPLETE THE CASE AFTER TODAY? ONE DAY?  
24 MR. BEASLIN: NOT THE WAY THEY HAVE BEEN GOING. I  
25 WOULD SAY IT WILL TAKE MORE THAN A DAY.

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1 MR. HUGHES: WE HAVE -- I HAVE A NUMBER OF EXHIBITS  
2 REGARDING PAYMENTS TO INTRODUCE TO MR. HIGLEY.  
3 THE COURT: WELL, HOW SOON WILL YOU BE BACK WITH  
4 THIS?  
5 MR. BEASLIN: IT WILL BE MIDDLE OF MAY, OR I HOPE  
6 FIRST OF MAY SOMETIME. I HOPE. I HAVE A LOT OF CASES SET IN  
7 MAY I HAVE CONTINUED. I HAVE A TON OF CASES, YOUR HONOR.  
8 THE COURT: WHY DON'T YOU COME BACK AND WE'LL TAKE  
9 A LOOK AT YOUR CALENDARS PROBABLY THIS AFTERNOON. BRING YOUR  
10 CALENDARS EVERYBODY, WE'LL TALK ABOUT IT. AND I AM JUST GOING  
11 TO HAVE TO, UNFORTUNATELY, SET THIS CATCH-AS-CATCH-CAN. YOU  
12 MAY HAVE TO COME BACK FOR A DAY HERE AND A DAY THERE AT THIS  
13 POINT. WHAT I AM REALLY CONCERNED ABOUT, AS I INDICATED THIS  
14 MORNING, I WORKED REAL HARD ON THIS CASE TRYING TO KEEP UP  
15 WITH IT TO BE ABLE TO UNDERSTAND IT, BECAUSE IT'S 20 YEARS  
16 OLD, AND IT'S VERY DIFFICULT, THE FACTS ARE LESS THAN CLEAR,  
17 AND THE RELATIONSHIP BETWEEN THE TESTIMONY AND EXHIBITS, WHAT  
18 HAPPENED IS VERY FUZZY. AND IT'S TAKEN A LOT OF MY EFFORT,  
19 AND I AM NOT GOING TO LET THIS THING JUST HANG OUT THERE  
20 FOREVER. WE ARE GOING TO COME BACK ACCORDING TO MY SCHEDULE  
21 AND WE ARE GOING TO TRY THIS CASE. THAT MEANS IF YOU FOLKS  
22 NEED TO MAKE THREE MORE TRIPS TO VERNAL, SO BE IT. OKAY?

23 MR. BEASLIN: OKAY.  
24 MR. LYNN JENKINS: YOUR HONOR, ON OCTOBER THE 31ST,  
25 1995, WE HAD THE HEARING WHICH YOU REFERRED TO AS TO MY

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1 STANDING AND IT'S AS TO THE ISSUES THAT ARE HERE. AT LINE 1  
2 ON PAGE 146, YOU SAID,  
3 "THE COURT: OKAY. YOU ARE IN. BUT THE COURT IS  
4 ALSO GOING TO ENTER AN ORDER THAT THIS LAWSUIT IS NOT ABOUT  
5 THE OWNERSHIP OF PROPERTY."  
6 NOW, FURTHER DOWN, ON LINE 18 --  
7 THE COURT: WHAT ARE YOU CONCERNED ABOUT?  
8 MR. LYNN JENKINS: THAT ORDER HAS NOT BEEN ENTERED.  
9 THAT ORDER DOES NOT EXIST. AND WHAT YOU SAID DOES NOT EXIST.  
10 AND I THINK YOUR UNDERSTANDING AND MY UNDERSTANDING AND MR.  
11 BEASLIN'S UNDERSTANDING ARE ENTIRELY DIFFERENT.  
12 MR. BEASLIN --  
13 THE COURT: I DON'T WANT TO GO THROUGH THIS AGAIN.  
14 WHAT I UNDERSTAND ABOUT THIS LAWSUIT IS THAT NOBODY'S ASKING  
15 ME TO QUIET TITLE --  
16 MR. BEASLIN: RIGHT.  
17 THE COURT: -- PROPERTY. I AM NOT GOING TO ENTER  
18 AN ORDER QUIETING TITLE ON THE PROPERTY. NOBODY'S ASKING ME  
19 TO DETERMINE THE OWNERSHIP OF THE SHEEP PERMIT. I AM NOT  
20 GOING TO ENTER AN ORDER THAT SAYS SOMEBODY'S THE OWNER OF THE  
21 SHEEP PERMIT. BUT THE ISSUES THAT WE ARE DEALING WITH WILL  
22 REQUIRE SOME TESTIMONY AS TO THE SHEEP PERMIT, AND THAT HAS  
23 COME IN -- AND SOME TESTIMONY AS TO THE PROPERTY, AND THAT'S  
24 COME IN. I THINK THAT'S ALL I SAID.  
25 I SAID MR. BEASLIN WASN'T ASKING FOR THE RETURN OF

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1 THE PROPERTY. HE WAS MERELY SAYING THAT THE CONTRACT HASN'T  
2 BEEN PERFORMED AND SO HE HAS NO OBLIGATION TO CONVEY THE  
3 PROPERTY, AND HE'S ASKING FOR DAMAGES.  
4 MR. LYNN JENKINS: DAMAGES UNDER WHAT THEORY? I  
5 BELIEVE IT WAS FRAUD, YOUR HONOR.  
6 THE COURT: WELL, HE'S ASKING FOR SOMETHING ON A  
7 SHEEP PERMIT. YOU STIPULATED THAT IT CAN'T BE BASED UPON  
8 FRAUD.  
9 MR. LYNN JENKINS: SO I GUESS THAT WOULD BE OUT.  
10 MR. BEASLIN: WELL, IT IS OUT.  
11 MR. LYNN JENKINS: THE SHEEP PERMIT'S OUT.  
12 MR. BEASLIN: NO. NO. FRAUD IS OUT.  
13 THE COURT: THEORY OF FRAUD IS OUT.  
14 MR. BEASLIN: SHEEP PERMIT COMES IN FOR ANY THEORY  
15 OF DAMAGES FOR BY FACT OF MR. HIGLEY AND DOING WHAT HE SHOULD  
16 HAVE DONE BY GETTING THAT PERMIT TRANSFERRED.  
17 MR. LYNN JENKINS: ALL RIGHT. THEN, YOUR HONOR, WE  
18 GO DOWN A LITTLE FURTHER.  
19 THE COURT: HEY, I AM REAL TIRED OF THIS.

20 MR. LYNN JENKINS: WELL, I JUST WANT TO ASK, IS  
21 MR. --

22 THE COURT: EVERY ORDER THAT I HAVE MADE YOU HAVE  
23 ASKED ME TO REVIEW IT THREE OR FOUR TIMES. YOU NEED TO GET  
24 USED TO THE IDEA THAT WHEN I RULE UPON SOMETHING IT'S RULED  
25 UPON.

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1 MR. LYNN JENKINS: SHOW ME THE SIGNED ORDER IN THE  
2 FILE. I CANNOT FIND THEM. YOU KEEP REFERRING TO ORDERS THAT  
3 HAVE BEEN PREPARED AND SIGNED, AND I HAVE NOT SEEN THIS.

4 THE COURT: NOT EVERY ORDER OR RULING THAT I MAKE  
5 IS SIGNED AND IN THE FORM OF A FORMAL ORDER. I RULED UPON  
6 THOSE ISSUES.

7 MR. BEASLIN: AND YOU HAVE FILED YOUR RULINGS, YOUR  
8 HONOR. YOU FILED YOUR RULINGS. WE HAVE THOSE. WE ALL HAVE  
9 COPIES OF THOSE.

10 THE COURT: I JUST DON'T KNOW WHY WE KEEP COMING  
11 BACK TO THESE ISSUES.

12 MR. LYNN JENKINS: YOUR HONOR, I REMEMBER YOU TOLD  
13 ME THAT I MUST FOLLOW THE RULES, THAT YOU REQUIRE EVERYONE IN  
14 THIS COURT TO FOLLOW THE RULES. FOR EXAMPLE --

15 THE COURT: WELL, WAIT A MINUTE. I DON'T KNOW  
16 WHERE YOU ARE GOING. I DON'T UNDERSTAND WHAT YOU ARE DOING.  
17 IF YOU DON'T THINK I AM FOLLOWING THE RULES --

18 MR. LYNN JENKINS: I DON'T THINK YOU ARE. BUT I  
19 CAN'T APPEAL A NON-FINAL ORDER.

20 THE COURT: WELL, OBVIOUSLY YOU'LL HAVE THE  
21 OPPORTUNITY TO FILE AN APPEAL, THAT'S YOUR RIGHT. BUT YOU  
22 CAN'T ARGUE OVER THE ORDER THAT I HAVE MADE.

23 MR. LYNN JENKINS: I'VE GOT TO UNDERSTAND WHAT THE  
24 RULES -- YOUR UNDERSTANDING OF THE RULES ARE. FOR EXAMPLE, ON  
25 RULE 17, TALKS ABOUT PARTIES, PLAINTIFFS, AND DEFENDANTS. AND

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1 TO ME IT'S VERY CLEAR --

2 THE COURT: MR. JENKINS, IF YOU WANT TO MAKE A  
3 MOTION, YOU FILE IT IN WRITING. OKAY? YOU ARE GOING TO HAVE  
4 TIME TO FILE IT IN WRITING. WE ARE GOING TO CONTINUE THIS  
5 CASE. AND IT BETTER NOT BE SOMETHING I HAVE RULED UPON,  
6 BECAUSE I'LL HOLD YOU IN CONTEMPT IF I HAVE RULED UPON IT.

7 MR. LYNN JENKINS: CAN YOU -- CAN I PRESENT A ORDER  
8 FOR YOUR SIGNATURE ON THAT RULING, YOUR HONOR?

9 THE COURT: THE RECORD IS JUST FULL OF -- I HAVE  
10 SAID ABOUT WHAT I HAVE SAID TO YOU JUST HERE AT THE BENCH  
11 ABOUT FOUR OR FIVE TIMES.

12 MR. LYNN JENKINS: I KNOW, BUT JUST WHAT YOU HAVE  
13 GOT THROUGH SAYING, CAN I GET A SIGNED ORDER FROM YOU, YOUR  
14 HONOR?

15 THE COURT: I DON'T THINK THAT THERE IS ANYTHING

16 THAT NEEDS TO BE DONE.  
17 MR. LYNN JENKINS: OKAY. I THINK --  
18 THE COURT: I THINK IT'S A MATTER OF RECORD. IT'S  
19 BEEN A MATTER OF RECORD FOUR OR FIVE TIMES. MR. MORGAN'S BEEN  
20 TAKING DOWN EVERYTHING WE HAVE SAID.  
21 ALL RIGHT. LET'S TAKE A LUNCH BREAK. WE NEED TO  
22 FINISH YOUR CASE TODAY. HOW LONG IS THAT GOING TO TAKE?  
23 MR. BEASLIN: I HAVE THE TWO BUT, OBVIOUSLY, I  
24 DON'T KNOW HOW LONG THEY ARE GOING TO BE WITH MR. HIGLEY.  
25 THE COURT: HE'S GOING TO BE QUITE A WHILE.

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1 MR. BEASLIN: THEY COULD BE QUITE A WHILE, YOUR  
2 HONOR, SO I DON'T KNOW. IT'S JUST ONE OF THOSE THINGS. I  
3 DON'T KNOW WHETHER MR. WINN HAS BEEN BACK TO CRAIG. WE HAVE  
4 WASTED SO MANY DAYS, I AM NOT SURE. I HAVE TO VERIFY WHETHER  
5 OR NOT MR. WINN IS STILL HERE.  
6 THE COURT: WHY DON'T WE TAKE LUNCH. I'LL BE BACK  
7 AT TEN TO ONE.  
8 MR. BEASLIN: I'LL GET MY CALENDAR, YOUR HONOR.  
9 MR. HUGHES: YOUR HONOR, CAN WE BE BACK AT ONE?  
10 THE COURT: SURE. BE BACK AT ONE.  
11 (WHEREUPON, AT 11:50 A.M. THE TRIAL WAS RECESSED FOR  
12 LUNCH AND RECONVENED AT 1 O'CLOCK P.M.)  
13 THE COURT: THE RECORD WILL INDICATE ALL THE  
14 PARTIES ARE PRESENT. WE NEED TO BEGIN, I SUPPOSE, WITH  
15 MR. HIGLEY AGAIN.  
16 MR. HIGLEY, WOULD YOU LIKE TO COME UP, SIR.  
17 MR. HIGLEY, YOU ARE STILL UNDER OATH. DO YOU UNDERSTAND THAT?  
18 THE WITNESS: YES.  
19 THE COURT: OKAY. HAVE YOU FINISHED, MR. JENKINS?  
20 I FORGOT WHO WAS EXAMINING HIM.  
21 MR. HUGHES: MR. JENKINS WAS.  
22 MR. LYNN JENKINS: YES, YOUR HONOR, WITH THE RULING  
23 OF THE COURT, I AM THROUGH.  
24 THE COURT: WHAT RULING ARE YOU REFERRING TO?  
25 MR. LYNN JENKINS: THE ONE BEFORE WE LEFT FOR

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1 LUNCH.  
2 THE COURT: I DON'T KNOW HOW YOU ARE INTERPRETING  
3 THAT AS MEANING YOU ARE THROUGH. ALL I SAID IS THAT IF I RULE  
4 UPON SOMETHING AND IT HAS BEEN RULED UPON, I DON'T WANT TO  
5 RULE UPON IT A SECOND AND THIRD AND FOURTH TIME. I DIDN'T  
6 MEAN TO SUGGEST THAT YOU COULDN'T ASK QUESTIONS TO THIS  
7 PERSON. IF YOU CHOOSE NOT TO ASK QUESTIONS TO THIS PERSON,  
8 THEN YOU ARE WAIVING YOUR RIGHT TO CROSS-EXAMINE HIM. THERE  
9 ARE CERTAINLY ISSUES THAT YOU MAY BE INTERESTED IN THAT THIS  
10 PERSON MIGHT HAVE INFORMATION ON. IF YOU DON'T WANT TO  
11 CROSS-EXAMINE HIM, THAT'S UP TO YOU.

12                   MR. LYNN JENKINS: YOUR HONOR, I WOULD PREFER TO  
13   SUBMIT IT IN WRITING ANY QUESTIONS THAT I MIGHT HAVE FOR  
14   MR. HIGLEY PURSUANT TO YOUR ORDER.  
15                   THE COURT: I DIDN'T ORDER YOU TODAY TO SUBMIT  
16   THINGS IN WRITING. I SAID TO SUBMIT ALL MOTIONS IN WRITING.  
17   YOU DON'T HAVE TO SUBMIT YOUR QUESTIONS TO MR. HIGLEY IN  
18   WRITING.

#### **Detail of the argument.**

The dog and pony show of the Utah court system, with it's administrative branch that oversees judges, Appellant believes, have created a closed court system in Utah. On one hand you must follow the rules of procedures and administration in order to appeal a court's ruling and on the other hand you must have a final written order. Both the Uintah and Davis county courts have refused to give the Appellant final orders for him to correctly appeal, therefore, denying him due process of law. Lynn Payne's above stated trial transcript is an example of the problems a citizen has in petitioning his government for redress. Further, when sanctions and/or contempt of court becomes the buzz word for judicial administration, then our society is not free to express an opinion, nor petition the courts openly to protect our rights or property.

The Court should grant Appellant relief from Lynn Payne for his unethical conduct as an attorney i.e., Welby Wilson Young's Estate, and for his judgeship actions in Uintah county i.e., ruling upon Davis county real property ownership and record status, which is clearly outside his official court jurisdiction. In CLINTON v. JONES, Case No. 95-1853 (May 27, 1997) the United States Supreme Court held in part:

"As public servants, the prosecutor and the judge represent the interest of society as a whole. The conduct of their official duties may adversely affect a wide variety of different individuals, each of whom may be a potential source of future controversy. The societal interest in providing such public officials with the maximum ability to deal fearlessly and impartially with the public at large has long been recognized as an acceptable justification for official immunity. ... This reasoning provides no support for an immunity for unofficial conduct. As we explained in Nixon v. Fitzgerald, [457 U.S. 731], "the sphere of protected action must be related closely to the immunity's justifying purposes" Id., 755. ... But we have never suggested that ... any other official, has an immunity that extends beyond the scope of any action taken in an official capacity. See Id., at 759 (Burger, C.J., concurring) (noting that ... judges, prosecutors, ... --all having absolute immunity--are not immune for acts outside official duties"); see also id., at 761, n. 4.

Utah law is very clear that the jurisdiction of real property resides within the district court where that real property is located. Judge Payne administers real property within Uintah county not Davis county. §78-33-1. "The district courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed."

The lower court provided no clear findings nor conclusions of law which makes the Appellant's burden on appeal almost, if not, impossible and for that reason Appellant has provided a lengthy ADDENDUM hereto in an attempt for a resolution on appeal. For example Judge Page references the "law of the case" doctrine which Appellant does not understand and Word and Phrases contains no help, so what does it mean? AND, Lynn Payne claims he cannot be named in his individual capacity as an attorney nor as a Utah District Court Judge under "law of the case" doctrine. Since he



does not cite any law or explain what this "law of the case" doctrine is then Appellant must assume it means this cause of action and none other.

The issue is for a jury trial in a Davis County District Court because it concerns Davis County real property and its payments on a purported December 26, 1977 Uniform Real Estate Contract.

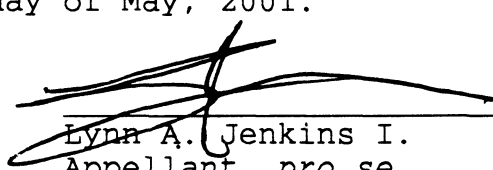
Lynn Payne cites: R & R Energies vs. Mother Earth Industries, Inc., 936 P.2d 1068, 313 Utah Adv. Rep. 33 (Utah 1997) at its Footnote 10 stating "...oppressive litigation tactics that waste court resources and require opponents to spend a great deal of money in defense thereof ...", yet Lynn Payne fails to recognize, Footnote 11 that provides "Rule 8.3(a) of the Utah Rules of Professional Conduct provides, 'A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.' Canon 3(D) of the Code of Judicial Administration adds, 'A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.'"

(emphases added). Lynn and David Payne have condemned the Appellant for doing what an attorney should ethically do when a question of an attorney's honesty or integrity is a question for the administrative branches of the judiciary and Judge Page, it

appears, is nothing more than their rubber stamp to be dishonest and abusive of their trust.

WHEREFORE, Appellant appeals for (1) an empanelment in Davis County of a jury of its citizens to determine the facts of Appellant's Davis County real property with the Hon. A. Lynn Payne, presiding; (2) that North Salt Lake City shall grant Appellant a jury trial in its courtroom on the issues of its January 11, 1995 DUI arrest and conviction; (3) Uintah County shall file a report with the court as to its findings and conclusions of law concerning the Uintah County Court lawsuit in which Judge John R. Anderson and Judge A. Lynn Payne have both presided; (4) for Appellant's costs and attorney fees; also, for such other and further relief the court deem proper in the premises.

DATED this 15<sup>th</sup> day of May, 2001.

  
\_\_\_\_\_  
Lynn A. Jenkins I.  
Appellant, pro se.

CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of May, 2001, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be placed with the US Postal Service, postage prepaid first class to:

UTAH COURT OF APPEAL  
Office of the Clerk  
450 South State Street  
PO Box 140230  
Salt Lake City, UT 84114-0230

Davis County Attorney  
Melvin C. Wilson Esq.  
Gerald E. Hess Esq.  
Gary O. McKean  
Davis County Courthouse  
Box 618  
Farmington UT 84025

Brent M. Johnson Esq.  
Administrative Office of the Court  
450 South State Street, Suite N31  
PO Box 140241  
Salt Lake City, UT 84114-0241

Kent L. Christiansen Esq.  
CHRISTIANSEN & SONNTAG  
525 East 100 South, Suite 120,  
PO Box 11751  
Salt Lake City, UT 84147

Kenneth R. Wallentine Esq.  
Chief Deputy Uintah County Attorney  
152 East 100 North  
Vernal, UT 94078

  
Lynn A. Jenkins I.

## ADDENDUM

Determinative constitutional provisions, statutes, ordinances, and rules set forth verbatim in the addendum alone as if they were set forth in the Appellant's Brief verbatim.

### Utah Constitution Article I.

Sec. 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require. History: Const. 1896.

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law. History: Const. 1896.

Sec. 10. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded. History: Const. 1896.

Sec. 11. [Courts open - Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party. History: Const. 1896.

### Utah Constitution Article VIII.

Sec. 1. [Judicial powers - Courts.]

The judicial power of the state shall be vested in a supreme court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts designated by statute shall be courts of record. Courts not of record shall also be established by statute. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1.

Sec. 4. [Rule-making power of Supreme Court - Judges pro tempore - Regulation of practice of law.]

The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage

the appellate process. The Legislature may amend the Rules of Procedure and Evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature. Except as otherwise provided by this constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah. The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1.

Sec. 5. [Jurisdiction of district court and other courts - Right of appeal.]

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause. History: Const. 1896; L. 1943, S.J.R. 2; 1984 (2nd S.S.), S.J.R. 1.

Sec. 6. [Number of judges of district court and other courts - Divisions.]

The number of judges of the district court and of other courts of record established by the Legislature shall be provided by statute. No change in the number of judges shall have the effect of removing a judge from office during a judge's term of office. Geographic divisions for all courts of record except the Supreme Court may be provided by statute. No change in divisions shall have the effect of removing a judge from office during a judge's term of office. History: Const. 1896; L. 1943, 1984 (2nd S.S.), S.J.R. 1.

Sec. 7. [Qualifications of justices and judges.]

Supreme Court justices shall be at least 30 years old, United States citizens, Utah residents for five years preceding selection, and admitted to practice law in Utah. Judges of other courts of record shall be at least 25 years old, United States citizens, Utah residents for three years preceding selection, and admitted to practice law in Utah. If geographic divisions are provided for any court, judges of that court shall reside in the geographic division for which they are selected. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1.

Sec. 9. [Judicial retention elections.]

Each appointee to a court of record shall be subject to an unopposed retention election at the first general election held more than three years after appointment. Following initial voter

approval, each Supreme Court justice every tenth year, and each judge of other courts of record every sixth year, shall be subject to an unopposed retention election at the corresponding general election. Judicial retention elections shall be held on a nonpartisan ballot in a manner provided by statute. If geographic divisions are provided for any court of record, the judges of those courts shall stand for retention election only in the geographic division to which they are selected. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1.

Sec. 10. [Restrictions on justices and judges.]

Supreme court justices, district court judges, and judges of all other courts of record while holding office may not practice law, hold any elective nonjudicial public office, or hold office in a political party. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1.

Sec. 11. [Judges of courts not of record.]

Judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by statute. However, no qualification may be imposed which requires judges of courts not of record to be admitted to practice law. The number of judges of courts not of record shall be provided by statute. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1.

Sec. 12. [Judicial Council - Chief justice as administrative officer - Legal counsel.]

(1) There is created a Judicial Council which shall adopt rules for the administration of the courts of the state.

(2) The Judicial Council shall consist of the chief justice of the Supreme Court, as presiding officer, and other justices, judges, and other persons as provided by statute. There shall be at least one representative on the Judicial Council from each court established by the Constitution or by statute.

(3) The chief justice of the Supreme Court shall be the chief administrative officer for the courts and shall implement the rules adopted by the Judicial Council.

(4) The Judicial Council may appoint legal counsel which shall provide all legal services for the Judicial Department unless otherwise provided by statute. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1; 1992, S.J.R. 8, §10.

Sec. 13. [Judicial Conduct Commission.]

A Judicial Conduct Commission is established which shall investigate and conduct confidential hearings regarding complaints against any justice or judge. Following its investigations and hearings, the Judicial Conduct Commission may order the reprimand, censure, suspension, removal, or involuntary retirement of any justice or judge for the following:

- (1) action which constitutes willful misconduct in office;
- (2) final conviction of a crime punishable as a felony under state or federal law;

(3) willful and persistent failure to perform judicial duties;

(4) disability that seriously interferes with the performance of judicial duties; or

(5) conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Prior to the implementation of any commission order, the Supreme Court shall review the commission's proceedings as to both law and fact. The court may also permit the introduction of additional evidence. After its review, the Supreme Court shall, as it finds just and proper, issue its order implementing, rejecting, or modifying the commission's order. The Legislature by statute shall provide for the composition and procedures of the Judicial Conduct Commission. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1.

#### Sec. 16. [Public prosecutors.]

The Legislature shall provide for a system of public prosecutors who shall have primary responsibility for the prosecution of criminal actions brought in the name of the State of Utah and shall perform such other duties as may be provided by statute. Public prosecutors shall be elected in a manner provided by statute, and shall be admitted to practice law in Utah. If a public prosecutor fails or refuses to prosecute, the Supreme Court shall have power to appoint a prosecutor pro tempore. History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 1.

#### Utah Code Annotated,

##### §17-18-1. Powers - Duties of county attorney - Prohibitions.

(1) In each county which is not within a prosecution district, the county attorney is a public prosecutor and shall:

(a) conduct on behalf of the state all prosecutions for public offenses committed within the county, except for prosecutions undertaken by the city attorney under Section 10-3-928 and appeals from them;

(b) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of any public offense when in possession of information that the offense has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(c) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved. All the duties and powers of public prosecutor shall be assumed and discharged by the county attorney.

(2) The county attorney:

(a) shall appear and prosecute for the state in the district court of the county in all criminal prosecutions;

(b) may appear and prosecute in all civil cases in which the state may be interested; and

(c) shall render assistance as required by the attorney

general in all cases that may be appealed to the Supreme Court and shall prosecute the appeal from any crime charged by the county attorney as a misdemeanor in the district court.

(3) The county attorney shall:

- (a) attend the deliberations of the grand jury;
- (b) draw all indictments and informations for offenses against the laws of this state within the county;
- (c) cause all persons indicted or informed against to be speedily arraigned;
- (d) cause all witnesses for the state to be subpoenaed to appear before the court or grand jury;
- (e) examine carefully into the sufficiency of all appearance bonds that may be tendered to the district court of the county;
- (f) upon the order of the court, institute proceedings in the name of the state for recovery upon the forfeiture of any appearance or other bonds running to the state and enforce the collection of them; and

(g) perform other duties as required by law.

(4) The county attorney shall:

- (a) receive from the clerk of the district court a record of past-due fines, penalties, costs, and forfeitures and take action to collect the past-due amounts;
- (b) at the close of every term of the district court prepare a statement of all fines, penalties, and forfeitures accruing to the state that have been collected or received by any officer required to collect or receive them, stating each case and the amount, and shall transmit the list to the state auditor; and
- (c) proceed against any officer and sureties under this subsection for any neglect of duty.

(5) The county attorney shall:

- (a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;
- (b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and
- (c) file a copy of the list in the office of the state auditor and of the attorney general.

(6) The county attorney shall:

- (a) each year on the first business day of August file a report with the attorney general covering the preceding fiscal year, stating the number of criminal prosecutions in the district, the character of the offenses charged, the number of convictions, the amount of fines and penalties imposed, and the amount collected; and
- (b) call attention to any defect in the operation of the laws and suggest amendments to correct the defect.

(7) The county attorney shall:

- (a) appear and prosecute for the state in the juvenile court of the county in any proceeding involving delinquency;



(b) represent the state in any proceeding pending before the juvenile court if any rights to the custody of any juvenile are asserted by any third person; and

(c) prosecute before the court any person charged with abuse, neglect, or contributing to the delinquency or dependency of a juvenile.

(8) The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, and precinct officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(9) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the state any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an indictment or information without the consent of the court.

(10) If at any time after investigation by the district judge involved, the judge finds and recommends that the county attorney in any county is unable to satisfactorily and adequately perform the duties in prosecuting a criminal case without additional legal assistance, the attorney general shall provide the additional assistance. History: R.S. 1898, §633; L. 1901, ch. 42, §1; 1907, ch. 143, §1; C.L. 1907, §633; C.L. 1917, §1610; R.S. 1933 & C. 1943, 19-15-1; L. 1971, ch. 26, §1; 1979, ch. 64, §1; 1989, ch. 153, §1; 1990, ch. 118, §1; 1991, ch. 268, §4; 1992, ch. 219, §1; 1993, ch. 38, §16; 1995, ch. 302, §1.

§17-18-1.5. Powers - Duties of county attorney within a prosecution district - Prohibitions.

(1) In each county which is within a state prosecution district, the county attorney is a public prosecutor only for the purpose of prosecuting violations of county ordinances or as otherwise provided by law and shall:

(a) conduct on behalf of the county all prosecutions for violations of county ordinances committed within the county;

(b) have authority to grant transactional immunity for violations of county ordinances committed within the county;

(c) institute proceedings before the proper magistrate for

the arrest of persons charged with or reasonably suspected of violations of county ordinances when in possession of information that the violation has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(d) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(2) The county attorney:

(a) may appear and prosecute in all civil cases in which the state may be interested; and

(b) shall render assistance as required by the attorney general in all civil cases that may be appealed to the Supreme Court and prosecute the appeal from any violation of a county ordinance.

(3) The county attorney shall:

(a) draw all informations for violations of a county ordinance;

(b) cause all persons informed against to be speedily arraigned;

(c) cause all witnesses for the county to be subpoenaed to appear before the court;

(d) upon the order of the court, institute proceedings in the name of the county for recovery upon the forfeiture of any appearance or other bonds running to the county and enforce the collection of them; and

(e) perform other duties as required by law.

(4) The county attorney shall:

(a) receive from the clerk of the district court a record of past-due fines, penalties, costs, and forfeitures and take action to collect the past due amounts;

(b) at the close of every term of the district court prepare a statement of all fines, penalties, and forfeitures accruing to the state that have been collected or received by any officer required to collect or receive them, stating each case and the amount, and shall transmit the list to the state auditor; and

(c) proceed against any officer and sureties under this subsection for any neglect of duty.

(5) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(6) The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines,

penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, precinct, and prosecution district officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(7) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the county any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an information without the consent of the court.

(8) The county attorney or his deputy may be sworn as a deputy district attorney for the purpose of public convenience for a period of time and subject to limitations specified by the district attorney. History: C. 1953, 17-18-1.5, enacted by L. 1993, ch. 38, §17; 1997, ch. 296, §4.

§17-18-1.9. Creation of prosecution district by ordinance or interlocal agreement.

(1) The county governing body may create a countywide state prosecution district by ordinance.

(2) (a) Two or more counties, whether or not contiguous, may unite to create and maintain a state prosecution district by interlocal agreement pursuant to Title 11, Chapter 13.

(b) At the time of the creation of the prosecution district, the participating counties shall be located within the same judicial district.

(3) The county governing body or bodies shall not dissolve a prosecution district during the term of office of an elected or appointed district attorney.

§63-30-13. Claim against political subdivision or its employee - Time for filing notice.

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of his duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as

governmental. History: L. 1965, ch. 139, §13; 1978, ch. 27, §7; 1983, ch. 131, §3; 1987, ch. 75, §6.

§77-6-1. Officers subject to removal.

All justices of the peace and all officers of any city, county or other political subdivision of this state not liable to impeachment shall be subject to removal as provided in this chapter for high crimes and misdemeanors or malfeasance in office. History: C. 1953, 77-6-1, enacted by L. 1980, ch. 15, ^U 2.

§77-6-2. Commencement of action for removal.

An action for the removal of a justice court judge or officer of a city, county, or other political subdivision of this state shall be commenced by presenting a sworn, written accusation to the district court. The accusation may be initiated by any taxpayer, grand jury, county attorney, or district attorney for the county in which the officer was elected or appointed, or by the attorney general. History: C. 1953, 77-6-2, enacted by L. 1980, ch. 15, §2; 1990, ch. 59, §27; 1993, ch. 38, §87.

§77-6-3. Form of accusation.

The accusation shall state the grounds for removal in ordinary and concise language. History: C. 1953, 77-6-3, enacted by L. 1980, ch. 15, §2.

§77-6-4. Presentation of accusation - Service on defendant.

(1) When the accusation is initiated by:

(a) a grand jury, the foreperson shall present the accusation to the court in the presence of the grand jurors which shall be filed with the clerk; or

(b) a taxpayer, the county attorney, district attorney, or the attorney general, any of these persons shall present the accusation to the presiding judge of the district court for filing with the clerk.

(2) (a) Except when the accusation is initiated by the county attorney or district attorney, the court shall furnish a copy of the accusation to the county attorney or, if within a prosecution district, the district attorney who shall investigate and may prosecute the accusation.

(b) If the accusation is against the county or district attorney, the court shall furnish a copy of the accusation to the Office of the Attorney General, who shall investigate and may prosecute the accusation.

(c) If prosecution is pursued, the county attorney, district attorney, or attorney general shall serve a copy of the accusation on the defendant with a summons which requires the defendant to appear before the district court of the county in which the county attorney or district attorney serves and to answer the accusation.

(3) The time fixed for appearance may not be less than ten days from the date of service of summons. The service of the

accusation, summons, and the return of service shall be made in the manner provided by law for service of civil process. History: C. 1953, 77-6-4, enacted by L. 1980, ch. 15, §2; 1993, ch. 38, §88; 1996, ch. 67, §1.

§77-6-7. Trial on denial or refusal to answer - Procedure.

If the defendant denies the accusation or refuses to answer or appear, the court shall proceed to try the accusation. The rights of the parties and procedures used shall be the same as in any civil proceeding. History: C. 1953, 77-6-7, enacted by L. 1980, ch. 15, §2.

§77-6-8. Judgment of removal - Service on defendant.

If the defendant admits the accusation or is convicted, the court shall enter judgment against him directing the defendant be removed from office and setting forth the causes of removal. The judgment of removal shall immediately be served upon the defendant. History: C. 1953, 77-6-8, enacted by L. 1980, ch. 15, §2.

§78-1-1. Courts of justice enumerated - Courts of record enumerated.

(1) The following are the courts of justice of this state:

- (a) the Supreme Court;
- (b) the Court of Appeals;
- (c) the district courts;
- (d) the circuit courts;
- (e) the juvenile courts; and
- (f) the justice courts.

(2) The courts enumerated in Subsections (1)(a) through (e) are courts of record. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-1-1; L. 1977, ch. 77, §55; 1986, ch. 47, §38; 1991, ch. 268, §18.

§78-1-2.1. Trial courts of record - Divisions.

The trial courts of record shall be divided into eight geographical divisions:

- (1) First District - Box Elder, Cache, and Rich Counties;
- (2) Second District - Weber, Davis, and Morgan Counties;
- (3) Third District - Salt Lake, Summit, and Tooele Counties;
- (4) Fourth District - Utah, Wasatch, Juab, and Millard Counties;
- (5) Fifth District - Beaver, Iron, and Washington Counties;
- (6) Sixth District - Garfield, Kane, Piute, Sanpete, Sevier, and Wayne Counties;
- (7) Seventh District - Carbon, Emery, Grand, and San Juan Counties; and
- (8) Eighth District - Daggett, Duchesne, and Uintah Counties. History: C. 1953, 78-1-2.1, enacted by L. 1988, ch. 115, §3.

§78-1-2.2. Number of district judges.

(1) Subject to changes due to the reallocation of circuit court positions under Section 20A-12-105, the number of district court judges shall be not more than:

- (a) four district judges in the First District;
- (b) 13 district judges in the Second District;
- (c) 28 district judges in the Third District;
- (d) 12 district judges in the Fourth District;
- (e) four district judges in the Fifth District;
- (f) two district judges in the Sixth District;
- (g) three district judges in the Seventh District; and
- (h) two district judges in the Eighth District.

(2) The difference in the number of district court judges caused by the amendment of this section will be funded by the reallocation of vacant circuit court positions pursuant to Section 20A-12-105. History: C. 1953, 78-1-2.2, enacted by L. 1988, ch. 115, §4; 1991, ch. 268, §20; 1993, ch. 59, §3; 1995, ch. 62, §2; 1995, ch. 276, §1.

§78-1-3. Effect of act on election functions.

(1) Any justice or judge of a court of record, whose election to office was effective on or before July 1, 1985, shall hold the office for the remainder of the term to which he was elected. The justice or judge is subject to an unopposed retention election as provided by law at the general election immediately preceding the expiration of the respective term of office.

(2) Any justice or judge of a court of record whose appointment to office was effective on or before July 1, 1985, is subject to an unopposed retention election as provided by law at the first general election held more than three years after the date of the appointment.

(3) Any justice or judge of a court of record whose appointment to office was effective after July 1, 1985, is subject to an unopposed retention election as provided by law at the first general election held more than three years after the date of the appointment. History: C. 1953, 78-1-3, enacted by L. 1986, ch. 47, §39; 1988, ch. 248, §3.

§78-2-2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;  
(e) final orders and decrees in formal adjudicative proceedings originating with:  
    (i) the Public Service Commission;  
    (ii) the State Tax Commission;  
    (iii) the School and Institutional Trust Lands Board of Trustees;  
    (iv) the Board of Oil, Gas, and Mining;  
    (v) the state engineer; or  
    (vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Sovereign Lands and Forestry;  
(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e);  
(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;  
(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;  
(i) appeals from the district court involving a conviction of a first degree or capital felony;  
(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and  
(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.  
(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:  
    (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;  
    (b) election and voting contests;  
    (c) reapportionment of election districts;  
    (d) retention or removal of public officers;  
    (e) matters involving legislative subpoenas; and  
    (f) those matters described in Subsections (3)(a) through (d).  
(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).  
(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings. History: C. 1953, 78-2-2, enacted by L. 1986, ch. 47, §41; 1987, ch. 161, §303; 1988, ch. 248, §5; 1989, ch. 67, §1; 1992, ch. 127, §11; 1994, ch. 191, §2; 1995, ch. 267, §5; 1995, ch. 299, §46.

§78-2-4. Supreme Court - Rulemaking, judges pro tempore, and practice of law.

(1) The Supreme Court shall adopt rules of procedure and evidence for use in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature.

(2) Except as otherwise provided by the Utah Constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah.

(3) The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law. History: C. 1953, 78-2-4, enacted by L. 1986, ch. 47, §42.

§78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Sovereign Lands and Forestry actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) appeals from the circuit courts, except those from the small claims department of a circuit court;

(e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital



felony;

(h) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

(j) appeals from the Utah Military Court; and

(k) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings. History: C. 1953, 78-2a-3, enacted by L. 1986, ch. 47, §46; 1987, ch. 161, §304; 1988, ch. 73, §1; 1988, ch. 210, §141; 1988, ch. 248, §8; 1990, ch. 80, §5; 1990, ch. 224, §3; 1991, ch. 268, §22; 1992, ch. 127, §12; 1994, ch. 13, §45; 1995, ch. 299, §47.

#### §78-2a-4. Review of actions by Supreme Court.

Review of the judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court. History: C. 1953, 78-2a-4, enacted by L. 1986, ch. 47, §47.

#### §78-3-4. Jurisdiction - Appeals.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

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

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

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

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

(7) The district court has jurisdiction to review agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings.

(8) Notwithstanding Subsection (1), the district court has

subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

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

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

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

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

#### §78-3-18. Judicial Administration Act - Short title.

This act is known and may be cited as the "Judicial Administration Act."

#### §78-3-19. Purpose of act.

The purpose of this act is to create an administrative system for all courts of this state, subject to central direction by the Judicial Council, to enable these courts to provide uniformity and coordination in the administration of justice.

#### §78-3-20. Definitions.

As used in this act:

(1) "Administrator" means the administrator of the courts appointed under Section 78-3-23.

(2) "Conference" means the annual statewide judicial conference established by Section 78-3-27.

(3) "Council" means the Judicial Council established by Article VIII, Sec. 12, Utah Constitution.

(4) "Courts" mean all courts of this state, including all courts of record and not of record.

#### §78-3-21. Judicial Council - Creation - Members - Terms and election - Responsibilities - Reports.

(1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution, shall be composed of:

(a) the chief justice of the Supreme Court;

(b) one member elected by the justices of the Supreme Court;

(c) one member elected by the judges of the Court of Appeals;

(d) five members elected by the judges of the district courts;

(e) two members elected by the judges of the juvenile courts;

(f) three members elected by the justice court judges; and

(g) a member or ex officio member of the Board of Commissioners of the Utah State Bar who is an active member of the Bar in good standing elected by the Board of Commissioners.

(2) (a) The chief justice of the Supreme Court shall act as

presiding officer of the council and chief administrative officer for the courts. The chief justice shall vote only in the case of a tie.

(b) All members of the council shall serve for three-year terms. If a council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to complete the term of office. In courts having more than one member, the members shall be elected to staggered terms. The person elected to the Judicial Council by the Board of Commissioners shall be a member or ex officio member of the Board of Commissioners and an active member of the Bar in good standing at the time the person is elected. The person may complete a three-year term of office on the Judicial Council even though the person ceases to be a member or ex officio member of the Board of Commissioners. The person shall be an active member of the Bar in good standing for the entire term of the Judicial Council.

(c) Elections shall be held under rules made by the Judicial Council.

(3) The council is responsible for the development of uniform administrative policy for the courts throughout the state. The presiding officer of the Judicial Council is responsible for the implementation of the policies developed by the council and for the general management of the courts, with the aid of the administrator. The council has authority and responsibility to:

(a) establish and assure compliance with policies for the operation of the courts, including uniform rules and forms; and

(b) publish and submit to the governor, the chief justice of the Supreme Court, and the Legislature an annual report of the operations of the courts, which shall include financial and statistical data and may include suggestions and recommendations for legislation.

(4) (a) The Judicial Council shall make rules establishing:  
(i) standards for judicial competence; and  
(ii) a formal program for the evaluation of judicial performance containing the elements of and meeting the requirements of this subsection.

(b) The Judicial Council shall ensure that the formal judicial performance evaluation program has improvement in the performance of individual judges, court commissioners, and the judiciary as its goal.

(c) The Judicial Council shall ensure that the formal judicial performance evaluation program includes at least all of the following elements:

(i) a requirement that judges complete a certain number of hours of approved judicial education each year;

(ii) a requirement that each judge certify that he is:  
(A) physically and mentally competent to serve; and  
(B) in compliance with the Codes of Judicial Conduct and Judicial Administration; and

(iii) a requirement that the judge receive a satisfactory

score on questions identified by the Judicial Council as relating to judicial certification on a survey of members of the Bar developed by the Judicial Council in conjunction with the American Bar Association.

(d) The Judicial Council shall ensure that the formal judicial performance evaluation program considers at least the following criteria:

- (i) integrity;
- (ii) knowledge;
- (iii) understanding of the law;
- (iv) ability to communicate;
- (v) punctuality;
- (vi) preparation;
- (vii) attentiveness;
- (viii) dignity;
- (ix) control over proceedings; and
- (x) skills as a manager.

(e) (i) The Judicial Council shall provide the judicial performance evaluation information required by Subsection 20A-7-702(2) to the Lieutenant Governor for publication in the voter information pamphlet.

(ii) Not later than August 1 of the year before the expiration of the term of office of a municipal court judge, the Judicial Council shall provide the judicial performance evaluation information required by Subsection 20A-7-702(2) to the appointing authority of a municipal justice court judge.

(5) The council shall establish standards for the operation of the courts of the state including, but not limited to, facilities, court security, support services, and staff levels for judicial and support personnel.

(6) The council shall by rule establish the time and manner for destroying court records, including computer records, and shall establish retention periods for these records.

(7) (a) Consistent with the requirements of judicial office and security policies, the council shall establish procedures to govern the assignment of state vehicles to public officers of the judicial branch.

(b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and may be assigned for unlimited use, within the state only.

(8) (a) The council shall advise judicial officers and employees concerning ethical issues and shall establish procedures for issuing informal and formal advisory opinions on these issues.

(b) Compliance with an informal opinion is evidence of good faith compliance with the Code of Judicial Conduct.

(c) A formal opinion constitutes a binding interpretation of the Code of Judicial Conduct.

(9) (a) The council shall establish written procedures authorizing the presiding officer of the council to appoint judges of courts of record by special or general assignment to serve temporarily in another level of court in a specific court

or generally within that level. The appointment shall be for a specific period and shall be reported to the council.

(b) These procedures shall be developed in accordance with Subsection 78-3-24(10) regarding temporary appointment of judges.

(10) The Judicial Council may by rule designate municipalities in addition to those designated by statute as a location of a trial court of record. There shall be at least one court clerk's office open during regular court hours in each county. Any trial court of record may hold court in any municipality designated as a location of a court of record. Designations by the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

(11) The Judicial Council shall by rule determine whether the administration of a court shall be the obligation of the administrative office of the courts or whether the administrative office of the courts should contract with local government for court support services.

(12) The Judicial Council may by rule direct that a district court location be administered from another court location within the county.

(13) The Judicial Council shall establish and supervise the Office of Guardian Ad Litem Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912, and assure compliance of the guardian ad litem program with state and federal law, regulation, and policy, and court rules.

(14) The Judicial Council shall establish and maintain, in cooperation with the Office of Recovery Services within the Department of Human Services, the part of the state case registry that contains records of each support order established or modified in the state on or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec. 654A.

§78-5-117. Filing and docketing of abstract.

(1) The judge, on the demand of a party in whose favor judgment is rendered, shall provide the party with an abstract of the judgment in substantially the form approved by the Judicial Council.

(2) The abstract may be filed in the office of the clerk of the district court of any county in the state but shall be docketed in the judgment docket of that district court.

(3) The clerk shall note the time of receipt of the abstract on the abstract and on the docket. Enacted by Chapter 157, 1989 General Session.

§78-7-1. Disqualification for interest or relation to parties.

(1) Except by consent of all parties, no justice, judge, or justice court judge may sit or act in any action or proceeding:

(a) to which he is a party, or in which he is interested;

(b) when he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of the common law; or

(c) when he has been attorney or counsel for either party in the action or proceeding.

(2) The provisions of this section do not apply to the arrangement of the calendar or the regulation of the order of business, nor to the power of transferring the action or proceeding to some other court. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-1; L. 1990, ch. 59, §36.

§78-7-2. Justices and judges - Limitations during terms.

No justice or judge of any court of record may, during his term of office:

(1) practice law or have a partner engaged in the practice of law;

(2) hold office in or make any contribution to any political party or organization engaged in political activity; or

(3) use, in his efforts to obtain or retain judicial office, any political party designation, reference, or description. History: C. 1953, 78-7-2, enacted by L. 1986, ch. 47, §77.

§78-7-3. Sittings of courts - To be public.

The sittings of every court of justice are public, except as provided in Section 78-7-4. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-3; 1995, ch. 20, §151.

§78-7-5. Powers of every court.

Every court has authority to:

(1) preserve and enforce order in its immediate presence;

(2) enforce order in the proceedings before it, or before a person authorized to conduct a judicial investigation under its authority;

(3) provide for the orderly conduct of proceedings before it or its officers;

(4) compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in a pending action or proceeding;

(5) control in furtherance of justice the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it in every matter;

(6) compel the attendance of persons to testify in a pending action or proceeding, as provided by law;

(7) administer oaths in a pending action or proceeding, and in all other cases where necessary in the exercise of its authority and duties;

(8) amend and control its process and orders to conform to law and justice;

(9) devise and make new process and forms of proceedings, consistent with law, necessary to carry into effect its authority and jurisdiction; and

(10) enforce rules of the Supreme Court and Judicial Council. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-5; L. 1988, ch. 248, §41.

§78-7-6. Rules - Right to make - Limitation - Security.

(1) Every court of record may make rules, not inconsistent with law, for its own government and the government of its officers; but such rules must neither impose any tax or charge upon any legal proceeding nor give any allowance to any officer for service.

(2) The judicial council may provide, through the rules of judicial administration, for security in or about a courthouse or courtroom, or establish a secure area as prescribed in Section 76-8-311.1.

(3) Unless authorized by the rules of judicial administration, any person who knowingly or intentionally possesses a firearm, ammunition, dangerous weapon, or explosive within a secure area established by the judicial council under this section is guilty of a third degree felony. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-6; L. 1996, ch. 164, §5.

§78-7-9.5. Judge of court of record - Service in other division or court.

A judge of a court of record may serve temporarily as a judge in another geographic division or in another court of record, in accordance with the Utah Constitution and the rules of the Judicial Council. History: C. 1953, 78-7-9.5, enacted by L. 1988, ch. 248, §42.

§78-7-12. Change of place of trial because of calamity.

The judge or judges authorized to hold or preside at a court appointed to be held in a county, city or town may, by an order filed with the clerk and published as he or they may prescribe, direct that the court may be held or continued at any other place in the city, town or county than that appointed, when war, insurrection, pestilence or other public calamity, or danger thereof, or the destruction of or danger to the building appointed for holding courts, may render it necessary, and may in the same manner revoke the order, and in his or their discretion appoint another place in the same city, town or county for holding court. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-12.

§78-7-16. Powers of judge contradistinguished from court.

A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from the court. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-16.

§78-7-17. Powers of every judicial officer.

Every judicial officer has power:

(1) to preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;

(2) to compel obedience to his lawful orders as provided by law;

(3) to compel the attendance of persons to testify in a

proceeding before him in the cases and manner provided by law;

(4) to administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-17.

§78-7-17.5. Authority of magistrate.

(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3 shall have the authority to:

(a) commit a person to incarceration prior to trial;

(b) set or deny bail under Section 77-20-1 and release upon the payment of bail and satisfaction of any other conditions of release;

(c) issue to any place in the state summonses and warrants of search and arrest and authorize administrative traffic checkpoints under Section 77-23-104;

(d) conduct an initial appearance in a felony;

(e) conduct arraignments;

(f) conduct a preliminary examination to determine probable cause;

(g) appoint attorneys and order recoupment of attorney fees;

(h) order the preparation of presentence investigations and reports;

(i) issue temporary orders as provided by rule of the Judicial Council; and

(j) perform any other act or function authorized by statute.

(2) A judge of the justice court may exercise the authority of a magistrate specified in Subsection (1) with the following limitations:

(a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment in a felony case as provided by rule of the Judicial Council; and

(b) a judge of the justice court may not set bail in a capital or first degree felony nor deny bail in any case; and

(c) a judge of the justice court may authorize administrative traffic checkpoints under Section 77-23-104 and issue search warrants only within the judicial district. History: C. 1953, 78-7-17.5, enacted by L. 1991, ch. 268, §47; 1993, ch. 159, §13; 1994, ch. 35, §1; 1997, ch. 212, §2.

§78-7-18. Power to punish for contempt.

For the effectual exercise of the powers conferred by Section 78-7-17 a judicial officer may punish for contempt in the cases provided by law. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-18; L. 1995, ch. 20, §152.

§78-7-19. Repeated application for orders forbidden.

(1) If an application for an order, made to a judge of a court in which the action or proceeding is pending, is refused in whole or in part or is granted conditionally, a subsequent



application for the same order may not be made to any other judge, except of a higher court.

(2) This section does not apply to motions refused for any informality in the papers or proceedings necessary to obtain the order, or to motions refused with liberty to renew them.

(3) A notice of appeal for a trial de novo is not a subsequent application for the same order. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-19; L. 1988, ch. 73, §6; 1996, ch. 198, §64.

#### §78-7-20. Disobedience, contempt.

A violation of Section 78-7-19 may be punished as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of the court in which the action or proceeding is pending. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-7-20; L. 1995, ch. 20, §153.

#### §78-7-24. Courts of justice - Authority.

(1) All courts of justice have the authority necessary to exercise their jurisdiction.

(2) If a procedure for an action is not established, a process may be adopted that conforms with the apparent intent of the statute or rule of procedure. History: C. 1953, 78-7-24, enacted by L. 1988, ch. 248, §46.

#### §78-7-25. Decisions to be rendered within two months - Procedures for decisions not rendered.

(1) A judge of a trial court shall decide all matters submitted for final determination within two months of submission, unless circumstances causing the delay are beyond the judge's personal control.

(2) The Judicial Council shall establish reporting procedures for all matters not decided within two months of final submission. History: L. 1969, ch. 249, §1; 1977, ch. 77, §67; 1988, ch. 248, §47; 1998, ch. 171, §12.

#### §78-7-27. Judicial Conduct Commission - Creation - Members - Terms - Vacancies - Voting - Expenses.

(1) The membership of the Judicial Conduct Commission established by Article VIII, Section 13 of the Utah Constitution consists of:

(a) two members of the House of Representatives to be appointed by the speaker of the House of Representatives for a two-year term, not more than one of whom may be of the same political party as the speaker;

(b) two members of the Senate to be appointed by the president of the Senate for a two-year term, not more than one of whom may be of the same political party as the president;

(c) three members from the board of commissioners of the Utah State Bar, who shall be appointed by the board of commissioners of the Utah State Bar for a four-year term;

(d) two persons not members of the Utah State Bar, who

shall be appointed by the governor, with the advice and consent of the Senate, for four-year terms, not more than one of whom may be of the same political party as the governor; and

(e) one judge, and one alternate judge, of a trial court of record, to be selected by the nonjudicial members of the Judicial Conduct Commission for four-year terms. The judge and the alternate judge shall coordinate attendance for meetings so that, if possible, at least one is in attendance at each meeting. If both judges are in attendance at a meeting, the alternate judge shall not be counted for quorum purposes nor vote on any issue before the commission.

(2) The terms of the members shall be staggered so that approximately half of the commission expires every two years. The judges shall be appointed so that the terms expire in staggered two year increments.

(3) If a judge serving on the commission is disqualified from participating in any proceeding, the Judicial Conduct Commission shall select a substitute judge of a trial court of record.

(4) The Judicial Conduct Commission shall establish guidelines and procedures for the disqualification of any member from consideration of any matter.

(5) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the appointing authority for the unexpired term.

(b) If the appointing authority fails to appoint a replacement, the commissioners who have been appointed may act as a commission under all the provisions of this section.

(6) Six members of the commission shall constitute a quorum. Any action of a majority of the quorum constitutes the action of the commission.

(7) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.

(d) The chair shall be allowed the actual expenses of secretarial services, the expenses of services for either a court reporter or a transcriber of electronic tape recordings, and other necessary administrative expenses incurred in the

performance of the duties of the commission.

(8) Upon a majority vote of the quorum, the commission may:

(a) employ a director, legal counsel, investigators, and other staff to assist the commission; and

(b) incur other reasonable and necessary expenses within the authorized budget of the commission and consistent with the duties of the commission. History: C. 1953, 78-7-27, enacted by L. 1977, ch. 146, §1; 1983, ch. 157, §3; 1986, ch. 47, §78; 1988, ch. 101, §6; 1995 (1st S.S.), ch. 8, §1; 1996, ch. 194, §26; 1996, ch. 243, §193; 1998, ch. 76, §1.

§78-7-28. Grounds for removal, suspension, censure, involuntary retirement, or reprimand of justice or judge - Reinstatement.

(1) A justice, judge, or justice court judge of any court of this state in accordance with the procedure prescribed in this section, may be removed from office, suspended, censured, involuntarily retired, or publicly or privately reprimanded for:

(a) willful misconduct in office;

(b) final conviction of a crime punishable as a felony under state or federal law;

(c) willful and persistent failure to perform judicial duties;

(d) disability that seriously interferes with the performance of judicial duties;

(e) conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

(2) In addition to the reasons specified in Subsection (1), justice court judges may be removed from office, suspended, censured, involuntarily retired, or publicly or privately reprimanded for failure to obtain and maintain certification from the Judicial Council for attendance at required judicial training courses or for failure to meet the minimum requirements for office, including residency.

(3) The Supreme Court on its own motion may suspend a justice, judge, or justice court judge from office without salary or compensation if he pleads guilty, no contest to, or is found guilty of a crime punishable as a felony under state or federal law. If he is not convicted or if the conviction is reversed, his suspension is terminated and he shall be paid his salary or compensation for the period of suspension. History: C. 1953, 78-7-28, enacted by L. 1977, ch. 146, §2; 1983, ch. 157, §4; 1985, ch. 17, §1; 1990, ch. 59, §37; 1990, ch. 119, §1.

§78-7-29. Disability retirement of justice or judge.

(1) A justice, judge, or justice court judge of any court of this state, in accordance with the procedure prescribed in this chapter, may be retired for a disability seriously interfering with the performance of his duties and which is, or is likely to become, of a permanent character. Any justice, judge, or justice court judge desiring to retire on grounds of disability shall certify to the commission his request for retirement and the nature of his disability. The commission may order a medical

examination and report.

(2) Action of the Judicial Conduct Commission in approving or disapproving an application for disability retirement shall be based upon the evaluation and recommendations submitted by one or more medical examiners or physicians, including an examination of essential statements submitted by either bar or judicial associations or committees certifying that:

(a) the justice, judge, or justice court judge is mentally or physically disabled and totally incapacitated for the further performance of his assigned job; and

(b) his incapacity is likely to continue and be permanent and that he should be retired. History: C. 1953, 78-7-29, enacted by L. 1977, ch. 146, §3; 1983, ch. 157, §5; 1986, ch. 47, §79; 1990, ch. 59, §38.

§78-7-30. Authority of Judicial Conduct Commission - Procedure for removal, suspension, censure, reprimand, or involuntary retirement.

(1) The Judicial Conduct Commission is authorized to receive any complaint directly from the complainant.

(2) (a) After an investigation, the Judicial Conduct Commission may order a formal hearing to be held concerning the removal, suspension, censure, public reprimand, or involuntary retirement of a justice, judge, or justice court judge.

(b) The commission shall provide the justice or judge with all information necessary to prepare an adequate response or defense, which may include the identity of the complainant.

(c) A formal hearing may be conducted before a quorum of the commission. Any finding or order shall be made upon a majority vote of the quorum.

(3) (a) Alternatively, the commission may appoint three special masters, who are justices or judges of courts of record, to hear and take evidence in the matter and to report to the commission.

(b) After the formal hearing or after considering the record and report of the masters, if the commission finds good cause, it shall order the removal, suspension, censure, reprimand, or involuntary retirement of the justice, judge, or justice court judge.

(4) Rules and procedures in effect prior to July 1, 1996, are exempt from Title 63, Chapter 46a, Utah Administrative Rulemaking Act. On or after July 1, 1996, the commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, governing the issuance of private reprimands, including rules for disclosing the information to the Judicial Council. A private reprimand may be issued only if a formal hearing is not conducted regarding this matter.

(5) (a) Prior to the implementation of any commission order under Subsection (1) or (2), the Supreme Court shall review the record of the proceedings on the law and facts and may permit the introduction of additional evidence. The Supreme Court shall enter its order implementing, modifying, or rejecting the

commission's order.

(b) (i) Upon an order for retirement, the justice, judge, or justice court judge shall retire with the same rights and privileges as if the justice, judge, or justice court judge retired pursuant to statute.

(ii) Upon an order for removal, the justice, judge, or justice court judge shall be removed from office and his salary or compensation ceases from the date of the order.

(iii) Upon an order for suspension from office, the justice, judge, or justice court judge may not perform any judicial functions and may not receive a salary for the period of suspension.

(6) The transmission, production, or disclosure of any complaints, papers, or testimony in the course of proceedings before the Judicial Conduct Commission, the masters appointed under Subsection (2), or the Supreme Court are privileged in any civil action. Complaints, papers, or testimony may not be disclosed by the commission, masters, or any court until the Supreme Court has entered its final order in accordance with this section, except:

(a) upon order of the Supreme Court;

(b) upon the request of the judge or justice who is the subject of the complaint; or

(c) the dismissal of a complaint or allegation against a judge or justice shall be disclosed without consent of the judge or justice to the person who filed the complaint or allegation.

(7) Rules and procedures in effect prior to July 1, 1996, are exempt from Title 63, Chapter 46a, Utah Administrative Rulemaking Act, on or after July 1, 1996, the Judicial Conduct Commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, outlining its procedures and the appointment of masters. A justice, judge, or justice court judge who is a member of the commission or the Supreme Court may not participate in any proceedings involving the justice's, judge's, or justice court judge's own removal or retirement.

(8) Retirement for disability or involuntary retirement as provided by Sections 78-7-28 through 78-7-30 shall be processed through the Utah State Retirement Office, and the judge retiring shall meet the requirements for retirement as specified in Sections 78-7-28 through 78-7-30. History: C. 1953, 78-7-30, enacted by L. 1977, ch. 146, §4; 1983, ch. 157, §6; 1985, ch. 17, §2; 1986, ch. 160, §1; 1990, ch. 59, §39; 1990, ch. 119, §2; 1995 (1st S.S.), ch. 8, §2; 1996, ch. 120, §1; 1997, ch. 10, §144; 1997, ch. 237, §1.

§78-7-31. Subpoena power of the commission - Testimony - Contempt.

(1) The Judicial Conduct Commission may issue subpoenas in aid of an investigation of a complaint filed with the commission. The subpoena shall have the same authority as an order of the district court. Commission subpoenas shall be issued in the

manner and form prescribed for subpoenas by the Utah Rules of Civil Procedure. Commission subpoenas shall be served in the manner prescribed for subpoenas by the Utah Rules of Civil Procedure.

(2) The commission may administer oaths and compel testimony under oath in aid of an investigation of a complaint filed with the commission and at formal hearings before the commission.

(3) If a person fails to comply with a subpoena, or if a person appears before the commission and refuses to testify to a matter upon which the person may be lawfully questioned, the person is in contempt of the commission, and the commission may file in the district court a motion for an order to show cause why the penalties established in Title 78, Chapter 32, Contempt, should not be imposed. History: C. 1953, 78-7-31, enacted by L. 1995 (1st S.S.), ch. 8, §3.

§78-22-1. Duration of judgment - Judgment as lien upon real property - Abstract of judgment - Small claims judgment not lien.

(1) Judgments shall continue for eight years unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Except as limited by Subsection (4), the entry of judgment by a district court is a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) An abstract of judgment issued by the court in which the judgment is entered may be filed and docketed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) A judgment entered in the small claims division of any court shall not qualify as a lien upon real property unless filed and docketed in accordance with Subsection (3). This subsection shall apply to all small claims judgments entered on or after April 27, 1992. History: C. 1953, 78-22-1, enacted by L. 1992, ch. 127, §15.

§78-22-1.5. Definitions -- Judgment recorded in Registry of Judgments.

(1) For purposes of this section, "Registry of Judgments" means the index where a judgment shall be recorded and searchable by the name of the judgment debtor through electronic means or by tangible document.

(2) On or after July 1, 1997, a judgment rendered or recorded in a district court does not create a lien upon or affect the title to real property unless the judgment is recorded in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) In addition to the requirement of Subsection (2), any judgment that is recorded in the Registry of Judgments on or after September 1, 1998, shall include a separate information statement of the judgment creditor that contains:

(a) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;

(b) the name and address of the judgment creditor;

(c) the amount of the judgment as entered in the Registry of Judgments;

(d) if known, the judgment debtor's social security number, date of birth, and driver's license number if a natural person; and

(e) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

(4) For the information required in Subsection (3), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in which the judgement was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

(5) (a) Any judgment that requires payment of money and is recorded on or after September 1, 1998, and is not accompanied by the separate information statement as required in Subsections (3) and (4) may be amended by recording a document entitled "Amendment to Recorded Judgment" in the Registry of Judgments in compliance with Subsections (3) and (4).

(b) The amendment to the recorded judgment shall state the date of recording the original judgment in the Registry of Judgments.

(c) Recording an amendment to a recorded judgment has no effect on the computation of time as provided in Section 78-22-1.

(6) A judgment that requires payment of money recorded on or after September 1, 1998, has as its priority the date of compliance with Subsections (3) and (4). Amended by Chapter 327, 1998 General Session.

#### 78-22a-3. Notice of filing.

(1) The judgment creditor or attorney for the creditor, at the time of filing a foreign judgment, shall file an affidavit with the clerk of the district court stating the last known post-office address of the judgment debtor and the judgment creditor.

(2) Upon the filing of a foreign judgment and affidavit, the clerk of the district court shall notify the judgment debtor that the judgment has been filed. Notice shall be sent to the address stated in the affidavit. The clerk shall record the date the notice is mailed in the register of actions. The notice shall include the name and post-office address of the judgment creditor and the name and address of the judgment creditor's attorney, if any.

(3) No execution or other process for the enforcement of a foreign judgment filed under this chapter may issue until 30 days after the judgment is filed. Amended by Chapter 172, 1986 General

Session.

78-22a-4. Stay.

(1) If an appeal from a foreign judgment is pending, the time for appeal has not expired, or a stay of execution has been granted, the court, upon proof that the judgment debtor has furnished security for satisfaction of the judgment in the state in which the judgment was rendered shall stay enforcement of the judgment until the appeal is concluded, the time for appeal expires, or until the stay of execution expires or is vacated.

(2) If the foreign judgment debtor, upon motion, shows the district court any ground upon which enforcement of a judgment of a district court of this state would be stayed, the court shall stay enforcement of the foreign judgment upon the posting of security in the kind and amount required to stay enforcement of a domestic judgment. Enacted by Chapter 169, 1983 General Session.

§78-27-1. Tender - Offer in writing sufficient.

An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument or property. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-27-1.

§78-27-2. Receipt may be demanded as condition to payment or deposit.

Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-27-2.

§78-27-3. Objection to tender - Must be specified or deemed waived.

The person to whom a tender is made must, at the time, specify any objection he may have to the money, instrument or property, or he is deemed to have waived it; and, if the objection is to the amount of money, the terms of the instrument or the amount or kind of property, he must specify the amounts, terms or kind which he requires, or be precluded from objection afterwards. History: L. 1951, ch. 58, ^U 1; C. 1943, Supp., 104-27-3.

§78-27-4. Money deposited in court.

(1) (a) Any person depositing money in court, to be held in trust, shall pay it to the court clerk.

(b) The clerk shall deposit the money in a court trust fund or with the county treasurer or city recorder to be held subject to the order of the court.

(2) The Judicial Council shall adopt rules governing the maintenance of court trust funds and the disposition of interest earnings on those trust funds.



(3) (a) Any interest earned on trust funds that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted account.

(b) The Legislature shall appropriate funds from that restricted account to the Judicial Council to:

(i) offset costs to the courts for collection and maintenance of court trust funds; and

(ii) provide accounting and auditing of all court revenue and trust accounts. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-27-4; L. 1990, ch. 61, §2.

#### §78-27-19. "Law" defined.

Where the term "law" is used in this code, it means the Utah Constitution, the Utah Code, court rules, Judicial Council rules, and decisions of the Supreme Court and the Court of Appeals. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-27-12; L. 1988, ch. 248, §48.

#### §78-27-37. Definitions.

As used in Sections 78-27-37 through 78-27-43:

(1) "Defendant" means a person, other than a person immune from suit as defined in Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

(2) "Fault" means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all its degrees, contributory negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

(3) "Person immune from suit" means:

(a) an employer immune from suit under Title 35A, Chapter 3, Workers' Compensation Act, or Chapter 3a, Utah Occupational Disease Act; and

(b) a governmental entity or governmental employee immune from suit pursuant to Title 63, Chapter 30, Governmental Immunity Act.

(4) "Person seeking recovery" means any person seeking damages or reimbursement on its own behalf, or on behalf of another for whom it is authorized to act as legal representative. History: C. 1953, 78-27-37, enacted by L. 1986, ch. 199, §1; 1994, ch. 221, §2; 1996, ch. 240, §374.

#### §78-27-38. Comparative negligence.

(1) The fault of a person seeking recovery shall not alone bar recovery by that person.

(2) A person seeking recovery may recover from any defendant or group of defendants whose fault, combined with the fault of persons immune from suit, exceeds the fault of the person seeking recovery prior to any reallocation of fault made under Subsection 78-27-39(2).

(3) No defendant is liable to any person seeking recovery

for any amount in excess of the proportion of fault attributed to that defendant under Section 78-27-39.

(4) (a) In determining the proportionate fault attributable to each defendant, the fact finder may, and when requested by a party shall, consider the conduct of any person who contributed to the alleged injury regardless of whether the person is a person immune from suit or a defendant in the action and may allocate fault to each person seeking recovery, to each defendant, and to any person immune from suit who contributed to the alleged injury.

(b) Any fault allocated to a person immune from suit is considered only to accurately determine the fault of the person seeking recovery and a defendant and may not subject the person immune from suit to any liability, based on the allocation of fault, in this or any other action. History: C. 1953, 78-27-38, enacted by L. 1986, ch. 199, §2; 1994, ch. 221, §3.

§78-27-39. Separate special verdicts on total damages and proportion of fault.

(1) The trial court may, and when requested by any party shall, direct the jury, if any, to find separate special verdicts determining the total amount of damages sustained and the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, and to any person immune from suit who contributed to the alleged injury.

(2) (a) If the combined percentage or proportion of fault attributed to all persons immune from suit is less than 40%, the trial court shall reduce that percentage or proportion of fault to zero and reallocate that percentage or proportion of fault to the other parties in proportion to the percentage or proportion of fault initially attributed to each party by the fact finder. After this reallocation, cumulative fault shall equal 100% with the persons immune from suit being allocated no fault.

(b) If the combined percentage or proportion of fault attributed to all persons immune from suit is 40% or more, that percentage or proportion of fault attributed to persons immune from suit may not be reduced under Subsection (2)(a).

(c) (i) The jury may not be advised of the effect of any reallocation under Subsection (2).

(ii) The jury may be advised that fault attributed to persons immune from suit may reduce the award of the person seeking recovery.

(3) A person immune from suit may not be held liable, based on the allocation of fault, in this or any other action. History: C. 1953, 78-27-39, enacted by L. 1986, ch. 199, §3; 1994, ch. 221, §4.

§78-27-40. Amount of liability limited to proportion of fault - No contribution.

(1) Subject to Section 78-27-38, the maximum amount for which a defendant may be liable to any person seeking recovery is that percentage or proportion of the damages equivalent to the

percentage or proportion of fault attributed to that defendant.

(2) A defendant is not entitled to contribution from any other person.

(3) A defendant or person seeking recovery may not bring a civil action against any person immune from suit to recover damages resulting from the allocation of fault under Section 78-27-38. History: C. 1953, 78-27-40, enacted by L. 1986, ch. 199, §4; 1994, ch. 221, §5.

#### §78-27-41. Joinder of defendants.

(1) A person seeking recovery, or any defendant who is a party to the litigation, may join as a defendant, in accordance with the Utah Rules of Civil Procedure, any person other than a person immune from suit who may have caused or contributed to the injury or damage for which recovery is sought, for the purpose of having determined their respective proportions of fault.

(2) A person immune from suit may not be named as a defendant, but fault may be allocated to a person immune from suit solely for the purpose of accurately determining the fault of the person seeking recovery and a defendant. A person immune from suit is not subject to any liability, based on the allocation of fault, in this or any other action.

(3) (a) A person immune from suit may intervene as a party under Rule 24, Utah Rules of Civil Procedure, regardless of whether or not money damages are sought.

(b) A person immune from suit who intervenes in an action may not be held liable for any fault allocated to that person under Section 78-27-38. History: C. 1953, 78-27-41, enacted by L. 1986, ch. 199, §5; 1994, ch. 221, §6.

#### §78-27-42. Release to one defendant does not discharge other defendants.

A release given by a person seeking recovery to one or more defendants does not discharge any other defendant unless the release so provides. History: C. 1953, 78-27-42, enacted by L. 1986, ch. 199, §6.

#### §78-27-43. Effect on immunity, exclusive remedy, indemnity, contribution.

Nothing in Sections 78-27-37 through 78-27-42 affects or impairs any common law or statutory immunity from liability, including, but not limited to, governmental immunity as provided in Title 63, Chapter 30, and the exclusive remedy provisions of Title 35A, Chapter 3, Workers' Compensation Act. Nothing in Sections 78-27-37 through 78-27-42 affects or impairs any right to indemnity or contribution arising from statute, contract, or agreement. History: C. 1953, 78-27-43, enacted by L. 1986, ch. 199, §7; 1996, ch. 240, §375.

#### §78-27-45. Financial information privacy - Written consent or court order for disclosure by financial institution - Exception - "Person" defined.

(1) A person acting in behalf of the state, or any agency, office, department, bureau, or political subdivision of the state may not request or obtain by subpoena or otherwise information from a state or federally chartered financial institution regarding the financial transactions or other records reflecting the financial condition of any person without first obtaining written permission from the person whose financial transactions or other records of financial condition are to be examined, or obtaining an order from a court of competent jurisdiction permitting access to the information.

(2) This section does not apply to:

(a) reviews made by the commissioner of financial institutions to determine whether a financial institution is operating in accordance with law; or

(b) reports filed as required by Section 76-10-1906.

(3) As used in this section, "person" includes an individual, corporation, partnership, or association. History: L. 1977, ch. 143, §1; 1989, ch. 241, §8.

§78-27-46. Financial information privacy - Notice to person about whom information sought.

(1) In the event a court order is obtained pursuant to Section 78-27-45, notice thereof shall be given to the person about whom information is sought within three days of the day on which service of the order is made upon the financial institution, but no later than seven days before the day fixed in the order as the day upon which the records are to be produced or examined. The notice shall be accompanied by a copy of the order which has been served upon the financial institution and the motion or application upon which it is based and shall be accompanied by a statement setting forth the rights of the person under Section 78-27-47.

(2) The notice shall be sufficient if, on or before the third day after issuance of the order, notice is served in the manner provided in Rule 4(e), Utah Rules of Civil Procedure, upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of the person. In the event the person entitled to notice is deceased or under legal disability, notice shall be served upon or mailed to the last known address of such person's executor, administrator, guardian or other fiduciary. History: L. 1977, ch. 143, §2.

§78-27-47. Financial information privacy - Intervention to challenge or stay order - Burden on governmental entity.

Notwithstanding any other law or rule of law, any person who is entitled to notice of a court order under Section 78-27-46 shall have the right to intervene in any proceeding with respect to enforcement of the order to challenge the issuance of the order or to stay compliance therewith. Upon intervention, the burden shall be upon the state, agency, officer, department, bureau or political subdivision obtaining the order to show that there is reasonable cause for the issuance of the order and that

the information sought may further the investigation. History: L. 1977, ch. 143, §3.

§78-27-48. Financial information privacy - Reimbursement of financial institution for costs of obtaining information.

Any financial institution which produced records pursuant to permission or in compliance with an order obtained under this act shall be entitled to reimbursement by the party or parties seeking the information, for costs reasonably and directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced. The commissioner of financial institutions shall by regulation establish the rates and conditions under which reimbursement shall be made. History: L. 1977, ch. 143, §4.

§78-27-49. Financial information privacy - Admissibility of information restricted.

No information obtained directly or indirectly from a financial institution in violation of the provisions of this act shall be admissible in any court of this state against the person entitled to notice. This section does not apply in any action between the financial institution and the person otherwise entitled to notice or in any action in which it is claimed that the financial institution has been the victim of fraud, embezzlement or any other criminal act committed by the person otherwise entitled to notice. History: L. 1977, ch. 143, §5.

§78-27-50. Financial information privacy - Chapter inapplicable to certain official investigations.

(1) This chapter shall not apply where an examination of records is a part of an official investigation by any local police, sheriff, peace officer, city attorney, county attorney, district attorney, the attorney general, the Department of Public Safety, the Office of Recovery Services of the Department of Human Services, the Insurance Department, or the Department of Commerce.

(2) Any financial institution or its agent or employee making a disclosure of financial records pursuant to any court order, subpoena, administrative subpoena, or other legal process, is not liable to the customer for disclosure. History: L. 1979, ch. 166, §1; 1990, ch. 133, §18; 1990, ch. 183, §57; 1991, ch. 60, §7; 1993, ch. 38, §116; 1994, ch. 316, §32.

§78-27-56. Attorney's fees - Award where action or defense in bad faith - Exceptions.

(1) In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if

the court:

(a) finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1). History: L. 1981, ch. 13, §1; 1988, ch. 92, §1.

§78-27-56.5. Attorney's fees - Reciprocal rights to recover attorney's fees.

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees. History: C. 1953, 78-27-56.5, enacted by L. 1986, ch. 79, §1.

§78-32-1. Acts and omissions constituting contempt.

The following acts or omissions in respect to a court or proceedings therein are contempts of the authority of the court:

(1) Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

(2) Breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

(3) Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service.

(4) Deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding.

(5) Disobedience of any lawful judgment, order or process of the court.

(6) Assuming to be an officer, attorney or counselor of a court, and acting as such without authority.

(7) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

(8) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial.

(9) Any other unlawful interference with the process or proceedings of a court.

(10) Disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness.

(11) When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, concerning the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

(12) Disobedience by an inferior tribunal, magistrate or

officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-32-1.

§78-32-3. In immediate presence of court; summary action - Without immediate presence; procedure.

When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as prescribed in Section 78-32-10 hereof. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators or other judicial officers. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-32-3.

§78-32-10. Contempt - Action by court.

Upon the answer and evidence taken, the court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding \$1,000, order the person incarcerated in the county jail not exceeding 30 days, or both. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed \$500 or by incarceration for five days or both. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-32-10; L. 1989, ch. 104, §6; 1990, ch. 59, §41; 1993, ch. 159, §14.

78-33-1. Jurisdiction of district courts - Form - Effect.

The district courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-1.

78-33-2. Rights, status, legal relations under instruments or statutes may be determined.

Any person interested under a deed, will or written contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under

the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-2.

78-33-3. Contracts.

A contract may be construed either before or after there has been a breach thereof. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-3.

§78-33-4. Suit by fiduciary or representative.

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic or insolvent, may have a declaration of rights or legal relations in respect thereto:

(1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or,

(2) to direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or,

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-4.

§78-33-5. Court's general powers.

The enumeration in Sections 78-33-2, 78-33-3 and 78-33-4 does not limit or restrict the exercise of the general powers conferred in Section 78-33-1 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-5.

§78-33-6. Discretion to deny declaratory relief.

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-6.

§78-33-7. Appeals and reviews.

All orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-7.

§78-33-8. Supplemental relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court shall,



on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-8.

§78-33-9. Trial of issues of fact.

When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. History: L. 1951, ch. 58, 1; C. 1943, Supp., 104-33-9.

§78-33-10. Costs.

In any proceeding under this chapter the court may make such award of costs as may seem equitable and just. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-10.

§78-33-11. Parties.

When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal or county ordinance or franchise such municipality or county shall be made a party, and shall be entitled to be heard, and if a statute or state franchise or permit is alleged to be invalid the attorney general shall be served with a copy of the proceeding and be entitled to be heard. History: L. 1941, ch. 58, §1; C. 1943, Supp., 104-33-11.

§78-33-12. Chapter to be liberally construed.

This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-12.

§78-33-13. "Person" defined.

The word "person" wherever used in this chapter, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-33-13.

§78-37-1. Form of action - Judgment - Special execution.

There can be but one action for the recovery of any debt or the enforcement of any right secured solely by mortgage upon real estate which action must be in accordance with the provisions of this chapter. Judgment shall be given adjudging the amount due, with costs and disbursements, and the sale of mortgaged property, or some part thereof, to satisfy said amount and accruing costs,

and directing the sheriff to proceed and sell the same according to the provisions of law relating to sales on execution, and a special execution or order of sale shall be issued for that purpose. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-37-1; L. 1965, ch. 172, §1.

§78-37-1.5. Environmental impairment to real property security interest - Remedies of lender.

(1) As used in this section:

(a) "Borrower" means:

(i) the trustor under a deed of trust, or a mortgagor under a mortgage, when the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation; and

(ii) includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(b) "Environmentally impaired" means the estimated costs to clean up and remediate a past or present release of any hazardous matter into, onto, beneath, or from the real property security exceed 25% of the higher of the aggregate fair market value of all security for the loan or extension of credit at the time:

(i) of the making of the loan or extension of credit;

(ii) of the discovery of the release or threatened release by the secured lender; or

(iii) an action is brought under this section.

(c) "Hazardous matter" means:

(i) any hazardous substance or hazardous material as defined in Section 19-6-302; or

(ii) any waste or pollutant as defined in Section 19-5-102.

(d) "Real property security" means any real property and improvements other than real property that contains only one but not more than four dwelling units, and is solely used for either:

(i) residential purposes; or

(ii) if reasonably contemplated by the parties to the deed of trust or mortgage, residential purposes as well as limited agricultural or commercial purposes incidental to the residential purposes.

(e) "Release" has the same meaning as in Section 19-6-302.

(f) "Secured lender" means:

(i) the trustee, the beneficiary, or both under a deed of trust against the real property security;

(ii) the mortgagee under a mortgage against the real property security; and

(iii) any successor-in-interest of the trustee, beneficiary, or mortgagee under the deed of trust or mortgage.

(2) Under this section:

(a) Estimated costs to clean up and remediate the contamination caused by the release include only those costs that would be incurred reasonably and in good faith.

(b) Fair market value is determined without giving consideration to the release, and is exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender.

(c) Any real property security for any loan or extension of credit secured by a single parcel of real property is considered environmentally impaired if the property is:

(i) included in or proposed for the National Priorities List under Section 42 U.S.C. 9605;

(ii) any list identifying leaking underground storage tanks under 42 U.S.C. 6991 et seq.; or

(iii) in any list published by the Department of Environmental Quality under Section 19-6-311.

(3) A secured lender may elect between the following when the real property security is environmentally impaired and the borrower's obligations to the secured lender are in default:

(a) (i) waiver of its lien against:

(A) any parcel of real property security or any portion of that parcel that is environmentally impaired; and

(B) all or any portion of the fixtures and personal property attached to the parcels; and

(ii) exercise of:

(A) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment; and

(B) any other rights and remedies permitted by law; or

(b) exercise of:

(i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security; and

(ii) any other rights and remedies permitted by law, including the right to obtain a deficiency judgment.

(c) The provisions of this subsection take precedence over Section 78-37-1.

(4) (a) Subsection (3) is applicable only if in conjunction with and at the time of the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, the secured lender:

(i) did not know or have reason to know of a release of any hazardous matter into, onto, beneath, or from the real property security; and

(ii) undertook all appropriate inquiry into the previous ownership and uses of the real property security consistent with good commercial or customary practice in an effort to minimize liability.

(b) For the purposes of Subsection (4)(a)(ii), the court shall take into account:

(i) any specialized knowledge or experience of the secured lender;

(ii) the relationship of the purchase price to the value of the real property security if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the real property security;

(iv) the obviousness of the presence or likely presence of contamination at the real property security; and

(v) the ability to detect the contamination by appropriate inspection.

(5) (a) Before the secured lender may waive its lien against any real property security under Subsection (3)(a) on the basis of environmental impairment the secured lender shall:

(i) provide written notice of the default to the borrower; and

(ii) bring a valuation and confirmation action against the borrower in a court of competent jurisdiction and obtain an order establishing the value of the subject real property security.

(b) The complaint in an action under Subsection (5)(a)(ii) may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under Subsection (3)(a) may result only if a final money judgment is obtained against the borrower.

(6) (a) If a secured lender elects the rights and remedies under Subsection (3)(a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law.

(b) Under this subsection the amount of the judgment of the secured lender under Subsection (3)(a) is limited to the remaining balance of the borrower's obligations after the application of the proceeds of the additional collateral.

(c) The borrower may waive or modify the foreclosure requirements of this subsection if the waiver or modification is in writing and signed by the borrower after default.

(7) This section does not affect any rights or obligations arising under contracts existing before July 1, 1993, and applies only to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after July 1, 1993. History: C. 1953, 78-37-1.5, enacted by L. 1993, ch. 240, §3.

#### §78-37-2. Deficiency judgment - Execution.

If it appears from the return of the officer making the sale that the proceeds are insufficient and a balance still remains due, judgment therefor must then be docketed by the clerk and execution may be issued for such balance as in other cases; but no general execution shall issue until after the sale of the mortgaged property and the application of the amount realized as aforesaid. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-37-2.

#### §78-37-3. Necessary parties - Unrecorded rights barred.

No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which

conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action. History: L. 1951, ch. 58, ^U 1; C. 1943, Supp., 104-37-3.

§78-37-4. Sales - Disposition of surplus moneys.

If there is surplus money remaining after payment of the amount due on the mortgage, lien or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-37-4.

§78-37-5. Sales - When debt due in installments.

If the debt for which the mortgage, lien or encumbrance is held is not all due, then as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease, and afterwards, as often as more becomes due on principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, but there shall be a rebate of interest where such rebate is proper. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-37-5.

§78-37-6. Right of redemption - Sales by parcels - Of land and water stock.

Sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under executions generally. In all cases where the judgment directs the sale of land, together with shares of corporate stock evidencing title to a water right used or intended to be used, or suitable for use, on the land, the court shall equitably apportion such water stock to the land, or some part thereof, in one or more parcels, as it may deem suitable for the sale thereof, and the land and water stock in each parcel shall be sold together, and for the purpose of such sale shall be regarded as real estate and subject to redemption as above specified. In all sales of real estate under foreclosure the court may determine the parcels and the order in which such parcels of property shall be sold. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-37-6.

§78-37-8. Restraining possessor from injuring property.

The court or judge may by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-37-8.

§78-37-9. Attorney fees.

In all cases of foreclosure when an attorney's fee is claimed by the plaintiff, the amount thereof shall be fixed by the court, any stipulation to the contrary notwithstanding; provided, no other or greater amount shall be allowed or decreed than the sum which shall appear by the evidence to be actually charged by and to be paid to the attorney for the plaintiff. If it shall appear that there is an agreement or understanding to divide such fees between the plaintiff and his attorney, or between the attorney and any other person except an attorney associated with him in the cause, only the amount to be retained by the attorney or attorneys shall be decreed as against the defendant. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-37-9.

§78-40-1. Action to determine adverse claim to property - Authorized.

An action may be brought by any person against another who claims an estate or interest in real property or an interest or claim to personal property adverse to him, for the purpose of determining such adverse claim. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-1.

§78-40-2. Lis pendens.

In any action affecting the title to, or the right of possession of, real property the plaintiff at the time of filing the complaint or thereafter, and the defendant at the time of filing his answer when affirmative relief is claimed in such answer, or at any time afterward, may file for record with the recorder of the county in which the property or some part thereof is situated a notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-2.

§78-40-3. Disclaimer or default by defendant - Costs.

If the defendant in such action disclaims in his answer any interest or estate in the property, or suffers judgment to be taken against him without answer, the plaintiff cannot recover costs. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-3.

§78-40-4. Termination of title pending action - Judgment - Damages.

If the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property. History: L. 1951,

ch. 58, §1; C. 1943, Supp., 104-40-4.

§78-40-5. Setoff or counterclaim for improvements made.

When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements, except improvements made upon mining property, must be allowed as a setoff or counterclaim against such damages. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-5.

§78-40-6. Right of entry pending action for purposes of action.

The court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or to quiet title or to determine adverse claims thereto, or a judge of such court, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts or drifts thereon for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-6.

§78-40-7. Order therefor - Liability for injuries.

The order must describe the property, and a copy thereof must be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurement; but if any unnecessary injury is done to the property, he is liable therefor. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-7.

§78-40-8. Mortgage not deemed a conveyance - Foreclosure necessary.

A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-8.

§78-40-9. Alienation pending action not to prejudice recovery.

An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-9.

§78-40-12. Service of summons and conclusiveness of judgment.

Where service of process is made upon unknown defendants by publication, the action shall proceed against such unknown persons in the same manner as against the defendants who are named and upon whom service is made by publication, and any such unknown person who has or claims to have any right, title, estate, lien or interest in the said property, which is a cloud

on the title thereto, adverse to the plaintiff, at the time of the commencement of the action, who has been duly served as aforesaid, and anyone claiming under him, shall be concluded by the judgment in such action as effectually as if the action were brought against such person by his or her name, notwithstanding such unknown person may be under legal disability. History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-40-12.

§78-40-13. Judgment on default - Court must require evidence - Conclusiveness of judgment.

When the summons has been served and the time for answering has expired, the court shall proceed to hear the cause as in other cases, and shall have jurisdiction to examine into and determine the legality of the plaintiff's title and of the title and claims of all the defendants and of all unknown persons, and to that end must not enter any judgment by default against unknown defendants, but must in all cases require evidence of plaintiff's title and possession and hear such evidence as may be offered respecting the claims and title of any of the defendants, and must thereafter enter judgment in accordance with the evidence and the law. The judgment shall be conclusive against all the persons named in the summons and complaint who have been served and against all such unknown persons as stated in the complaint and summons who have been served by publication. History: L. 1951, ch. 58, §1; C. 1943, Supp., 104-40-13.

#### Utah Rules of Civil Procedures

##### Rule 56. Summary judgment.

(a) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion. If on motion under



this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

#### Rule 57. Declaratory judgments.

The procedure for obtaining a declaratory judgment pursuant to Chapter 33 of Title 78, U.C.A. 1953, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Utah Code of Judicial Administration,

Rule 4-501. Motions.

Intent: To establish a uniform procedure for filing motions, supporting memoranda and documents with the court. To establish a uniform procedure for requesting and scheduling hearings on dispositive motions. To establish a procedure for expedited dispositions.

Applicability: This rule shall apply to motion practice in all trial courts of record except proceedings before the court commissioners and small claims cases. This rule does not apply to petitions for habeas corpus or other forms of extraordinary relief.

Statement of the Rule:

(1) Filing and service of motions and memoranda.

(a) Motion and supporting memoranda. All motions, except uncontested or ex-parte matters, shall be accompanied by a memorandum of points and authorities appropriate affidavits, and copies of or citations by page number to relevant portions of depositions, exhibits or other documents relied upon in support of the motion. Memoranda supporting or opposing a motion shall not exceed ten pages in length exclusive of the "statement of material facts" as provided in paragraph (2), except as waived by order of the court on ex-parte application.

If an ex-parte application is made to file an over-length memorandum, the application shall state the length of the principal memorandum, and if the memorandum is in excess of ten pages, the application shall include a summary of the memorandum, not to exceed five pages.

(b) Memorandum in opposition to motion. The responding party shall file and serve upon all parties within ten days after service of a motion, a memorandum in opposition to the motion, and all supporting documentation. If the responding party fails to file a memorandum in opposition to the motion within ten days after service of the motion, the moving party may notify the clerk to submit the matter to the court for decision as provided in paragraph (1)(d) of this rule.

(c) Reply memorandum. The moving party may serve and file a reply memorandum within five days after service of the responding party's memorandum.

(d) Notice to submit for decision. Upon the expiration of the five-day period to file a reply memorandum, either party may notify the clerk to submit the matter to the court for decision. The notification shall be in the form of a separate written pleading and captioned "Notice to Submit for Decision." The notification shall contain a certificate of mailing to all parties. If neither party files a notice, the motion will not be submitted for decision.

(2) Motions for summary judgment.

(a) Memorandum in support of a motion. The points and authorities in support of a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the movant relies.

(b) Memorandum in opposition to a motion. The points and authorities in opposition to a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which the party contends a genuine issue exists. Each disputed fact shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the opposing party relies, and, if applicable, shall state the numbered sentence or sentences of the movant's facts that are disputed. All material facts set forth in the movant's statement and properly supported by an accurate reference to the record shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party's statement.

(3) Hearings.

(a) A decision on a motion shall be rendered without a hearing unless ordered by the court, or requested by the parties as provided in paragraphs (3)(b) or (4) below.

(b) In cases where the granting of a motion would dispose of the action or any claim in the action on the merits with prejudice, either party at the time of filing the principal memorandum in support of or in opposition to a motion may file a written request for a hearing.

(c) Such request shall be granted unless the court finds that (a) the motion or opposition to the motion is frivolous or (b) that the dispositive issue or set of issues governing the granting or denial of the motion has been authoritatively decided.

(d) When a request for hearing is denied, the court shall notify the requesting party. When a request for hearing is granted, the court shall set the matter for hearing or notify the requesting party that the matter shall be heard and the requesting party shall schedule the matter for hearing and notify all parties of the date and time.

(e) In those cases where a hearing is granted, a courtesy copy of the motion, memorandum of points and authorities and all documents supporting or opposing the motion shall be delivered to the judge hearing the matter at least two working days before the date set for hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the hearing. Courtesy copies shall not be filed with the clerk of the court.

(f) If no written request for a hearing is made at the time the parties file their principal memoranda, a hearing on the motion shall be deemed waived.

(g) All dispositive motions shall be heard at least thirty (30) days before the scheduled trial date. No dispositive motions shall be heard after that date without leave of the court.

(h) If a hearing has been requested and the non-moving party fails to file a memorandum in opposition, the moving party may withdraw the request or the court on its own motion may strike the request and decide the motion without oral argument.

(4) Expedited dispositions. Upon motion and notice and for good cause shown, the court may grant a request for an expedited disposition in any case where time is of the essence and compliance with the provisions of this rule would be impracticable or where the motion does not raise significant legal issues and could be resolved summarily.

(5) Telephone conference. The court on its own motion or at a party's request may direct arguments of any motion by telephone conference without court appearance. A verbatim record shall be made of all telephone arguments and the rulings thereon if requested by counsel.