2019

DAVIS COUNTY, Plaintiff/Appellant, vs. PURDUE PHARMA L.P., ET AL., Defendants/Appellees. : Brief of Appellee

Utah Supreme Court

No. 20190487–SC

IN THE SUPREME COURT OF UTAH

DAVIS COUNTY,
Plaintiff/Appellant,

vs.

PURDUE PHARMA L.P., ET AL.,
Defendants/Appellees.

APPELLEES' RESPONSE BRIEF

On interlocutory appeal from the Ruling and Order entered in the Second District Court, the Honorable David M. Connors presiding. District case no. 180700870.

Oral Argument Requested

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INTRODUCTION

The district court acted within its discretion in transferring this complex, opioid-related lawsuit so that it could be coordinated for pretrial purposes with more than a dozen materially identical opioid actions pending throughout the State. Doing so not only was a valid exercise of the court's inherent powers and procedural rules, but also will conserve party and judicial resources, prevent duplicative discovery and pretrial motions practice, and avoid the risk of inconsistent rulings on the same issues. The district court's order should be affirmed.

Davis County's argument to the contrary —that the temporary transfer was ultra vires—is incorrect. Utah venue statutes on their face do not strip district courts of power to coordinate actions for pretrial proceedings in a single county's court. In addition, the county's ultra vires argument is based on an antiquated and outmoded interpretation of Utah venue

jurisprudence, relying principally on caselaw that predates important constitutional changes. Those changes confirm that the county's hyper-technical, counterproductive interpretation is wrong. This Court should affirm.

* * *

STATEMENT OF THE ISSUE

1. Did the district court properly transfer the case for coordinated pretrial proceedings pursuant to its inherent authority and Rule 42?

Standard of Review: "A court's exercise of its inherent authority is essentially discretionary and accordingly reviewed for abuse of discretion." *Warner v. Warner*, 2014 UT App 16, ¶ 15, 319 P.3d 711 (simplified); *see also U.S. Bank Nat. Ass'n v. HMA, L.C.*, 2007 UT 40, ¶ 30, 169 P.3d 433 (applying a "clear abuse of discretion" standard to the related issue of venue).

Preservation: This issue was preserved when the Defendants/Appellees filed a motion to transfer and the district court heard oral arguments. R.1495, 7118. The district court ruled on the motion at R. 6873.

* * *

STATEMENT OF THE CASE

This case is one of more than 2,000 substantially similar lawsuits filed across the country seeking to hold manufacturers and distributors of certain lawful, FDA-approved prescription opioid medications liable for the entire spectrum of public costs arising from the abuse and misuse of opioids, including illicit drugs.

To date, counties and agencies in Utah have filed 15 nearly identical cases across every judicial district in the State (the Related Cases).[2] Three

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[2] The Related Cases, in order of filing, are: (1) *Summit County, Utah v. Purdue Pharma L.P., et al.*, Case No. 180500119 (filed March 20, 2018); (2) *Tooele County, Utah v. Purdue Pharma L.P., et al.*, Case No. 180300423 (filed March 28, 2018); (3) *Salt Lake County v. Purdue Pharma L.P., et al.*, Case No. 180902421 (filed April 10, 2018); (4) *Weber County, Utah v. Purdue Pharma L.P., et al.*, Case No. 180903087 (filed May 24, 2018); (5) *Uintah County, Utah v. Purdue Pharma L.P., et al.*, Case No. 180800056 (filed June 4, 2018); (6) *Wasatch County, Utah v. Purdue Pharma L.P., et al.*, Case No. 180500079 (filed June 28, 2018); (7) *Davis County v. Purdue Pharma L.P., et al.*, Case No. 180700870 (filed August 28, 2018); (8) *Iron County v. Purdue Pharma L.P., et al.*, Case No. 180500149 (filed October 26, 2018); (9) *San Juan County v. Purdue Pharma L.P., et al.*, Case No. 180700011 (filed November 6, 2018); (10) *Grand County v. Purdue Pharma L.P., et al.*, Case No. 180700040 (filed November 8, 2018); (11) *Millard County v. Purdue Pharma, L.P., et al.*, Case No. 180700044 (filed November 9, 2018); (12) *Sanpete County v. Purdue Pharma, L.P., et al.*, Case No. 180600095 (filed November 13, 2018); (13) *Washington County v. Purdue Pharma, L.P.*, et al., Case No. 190500179 (filed April 3, 2019); (14) *Cache County v. Purdue Pharma, L.P.,*

of the Related Cases were filed in the Third District; Summit County was the first to file (case no. 180500119), followed by Salt Lake and Tooele counties.

In August 2018, Davis County filed a complaint in the Second Judicial District Court. Represented by the same plaintiffs' counsel, Iron County, San Juan County, Grand County, Millard County, and Sanpete County then filed additional opioids actions in each's plaintiff's respective county.

In December 2018, after Davis County served its complaint on Appellees Johnson and Johnson and Janssen Pharmaceuticals, Inc., and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc. (collectively, Janssen), this case and the Related Cases were stayed pending the outcome of the manufacturer defendants' joint motion to consolidate filed in the Third District before Judge Mrazik. R. 306. Davis County joined with the other plaintiffs opposing consolidation. R. 363.

The Third District's Consolidation Order. On March 15, 2019, the Third District Court entered an order consolidating the three Third District cases and inviting other districts across Utah to transfer, for pretrial purposes, the remaining Related Cases to the Third District to allow a single court to handle the overlapping pretrial proceedings. *See* Consolidation Order, R. 6954, *attached at* App'x B. The Third District

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et al., Case No. 190100112 (filed April 3, 2019); and (15) *Sevier County v. Purdue Pharma, L.P., et al.*, Case No. 190600050 (filed June 7, 2019).

reasoned "the ends of justice would be promoted by transferring the matters pending outside the Third District to Summit County—for pretrial proceedings only—because doing so would facilitate consolidation of the matters and, by extension, achieve the substantial benefits offered by pretrial coordination." R.6959.

Although Judge Mrazik found the "benefits of pretrial coordination far outweigh the potential prejudice to any litigant," the court did not order transfers from outside of the Third District. R. 6958. Specifically, the court declined "to use an untested interpretation of Rule 42 to consolidate matters pending in other judicial districts into the Summit County matter." *Id.* The Third District, however, invited courts presiding in the "opioid matters pending outside the Third District to [transfer the cases to] Summit County as a means of facilitating pretrial coordination and achieving the benefits it offers." R. 6959.

Pursuant to that invitation, Janssen moved to transfer the present case to the Third District (Transfer Motion, R. 1495); Davis County opposed the motion, R. 5290; and the Second District Court heard oral arguments on the motion before ultimately granting it. R. 7118.

The Second District's order. The subject of this appeal is the Second District Court's decision to transfer the case to the Third District Court for the purposes of consolidating discovery and pretrial proceedings. *See* Transfer Order, R. 6873, *attached at* App'x A.

The Second District Court then expressly exercised "its inherent power to manage its trials, cases, and docket" to direct the pretrial transfer.

Transfer Order at 6877. The court reasoned that "there are significant benefits that will result from the partial transfer of venue," including:

> (1) Conservation of judicial resources by avoiding the need for eleven judges to manage twelve substantively similar lawsuits, in parallel, at the same time; (2) Avoidance of inconsistent legal rulings regarding the pleadings, discovery disputes—of which there are likely to be many—and potentially dispositive motions; and (3) Avoidance of unnecessarily duplicative discovery, and judicial coordination and management of the extraordinary discovery, well beyond the standard limits set by Rule 26, that is almost certainly required in a litigation of this size.

Transfer Order, R. 6876 (quoting Consolidation Order, R. 6957–58).

The Second District Court determined "that a limited transfer of venue for pretrial proceedings will promote the ends of justice and the efficient administration of pending cases and dockets." *Id.* at R. 6877.

The Second District is not an outlier in seeing the benefits of coordinating opioid actions for pretrial proceedings. A federal MDL has coordinated nearly 1,800 federal opioid lawsuits, concluding that "centralization will substantially reduce the risk of duplicative discovery, minimize the possibility of inconsistent pretrial obligations, and prevent conflicting rulings on pretrial motions. In re National Prescription Opiate Litigation, 1:17-md-02804 (Dec. 5, 2017 Order, N.D. Ohio) at 3. For similar reasons, courts in numerous states—Arkansas, California, Illinois, Massachusetts, New York, Pennsylvania, South Carolina, Texas, Utah, and West Virginia—have coordinated the opioid lawsuits filed in different courts throughout those states.

On July 11, 2019, the Utah Court of Appeals granted Davis County's petition to appeal the Transfer Order. On July 30, 2019, this Court stayed the Transfer Order and recalled the appeal from the Court of Appeals.

* * *

SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion in temporarily transferring this case to Summit County for pretrial coordination with other opioid-related actions. It did so to conserve judicial resources, avoid inconsistent pretrial rulings, and avoid unnecessarily duplicative discovery and concluded "that a limited transfer of venue for pretrial proceedings will promote the ends of justice and the efficient administration of pending cases and dockets." To protect against any possibility of prejudice, the court also ordered that the case would return to Davis County for trial at the end of the consolidated pretrial proceedings.

On interlocutory appeal, Davis County challenges the transfer order, claiming that the district court exceeded its authority. But the county ignores the power of district courts to fashion orders that promote efficiency and justice. For one, the venue statute itself grants courts power to transfer cases for trial, so it necessarily allows for transfer for other matters less than trial. In any case, nothing in the provision strips courts of their inherent case management powers. Those flow from at least two sources: the court's inherent power and rule 42 of the Utah Rules of Civil Procedure.

District courts, for example, have inherent authority to manage their cases in a way that supports "fairness and thoroughness in administering justice." Rule 42 likewise affords the district court "considerable discretion to administer the business of its docket and determine how a

trial should be conducted." The flexibility provided by both sources of judicial power lead to the conclusion that the district court was well within its discretion to order transfer.

Davis County's primary argument to the contrary rests on Utah's venue statute, which, according to the county, prohibits the transfer order. As the district court recognized, the statute contains no express prohibition to transfer for pretrial proceedings as is sought here. And, in any case, the county's argument fails for two reasons: First, the county's position is predicated on caselaw that has been abrogated and superseded by intervening constitutional changes giving courts authority with respect to venue.

Second, the county's interpretation would create a separation of powers problem—it would allow the legislature to trump the judiciary with respect to procedural matters within the judicial department's purview. At a minimum, under the doctrine of constitutional avoidance, the Court should interpret the venue statute and the court's inherent powers in a manner that permits the transfer at issue here. Any other result would mean that courts in Utah are powerless to coordinate duplicative, multi-county actions for pretrial purposes. That would unduly hamstring trial courts who seek to manage related lawsuits in a fair and efficient way. It would also be extraordinarily inefficient—courts hearing multiple identical or materially identical actions presenting identical issues would have to consider the cases piecemeal, not only wasting resources but risking inconsistent rulings. This Court should affirm.

ARGUMENT

I. The district court has the inherent power to coordinate similar cases for pretrial proceedings.

Managing cases and dockets to increase efficiency is well within the inherent power of the district court. Though many of the matters confronting trial judges are common and covered in the Utah Rules of Civil Procedure, others are not.

Courts thus retain "inherent powers," which fill gaps in the rules and "are necessary to the proper discharge of their [the courts'] duties." *In re Evans*, 130 P. 217, 224 (Utah 1913); *see also Dietz v. Bouldin*, 136 S. Ct. 1885, 1891 (2016) ("[T]his Court has long recognized that a district court possesses inherent powers that are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." (simplified)).

To provide judges flexibility in the myriad of case management issues they encounter, courts enjoy "broad latitude to control and manage the proceedings and preserve the integrity of the trial process." *State v. Parsons*, 781 P.2d 1275, 1282 (Utah 1989). This discretion stems from the court's "inherent powers as the authority in charge of the trial," *id.*, and includes the "power to punish for contempt, to make, modify, and enforce rules for the regulation of the business before the court, to amend its record and proceedings, to recall and control its process, to direct and control its officers," among others. *In re Evans*, 130 P. at 224. In short,

courts are "responsible for carrying the trial forward as efficiently and expeditiously as possible, consistent with fairness and thoroughness in administering justice," and their exercise of inherent power is fundamental to that goal. *See Parsons*, 781 P.2d at 1282 (simplified).

Indeed, Utah's appellate courts have regularly affirmed the breadth and flexibility of inherent power. In *Western Water, LLC v. Olds,* for example, this Court held that a district court had the inherent power to award litigation costs "even though [it] lacked subject matter jurisdiction over the merits" of the case. 2008 UT 18, ¶ 42, 184 P.3d 578. Thus, courts can "conduct in camera proceedings where the circumstance warrants," even when there is no specific legal authority to do so. *See Kearns Tribune Corp. v. Wilkinson*, 946 P.2d 372, 376 n.3 (Utah 1997) (simplified, collecting cases). They can also appoint a CEO to run a company under their inherent power. *See Chen v. Stewart,* 2004 UT 82, ¶¶ 50–53, 100 P.3d 1177 (allowing appointment of a CEO "based on the court's [similar] inherent equitable power" to appoint receivers). It is even within a court's inherent authority to refuse to exercise jurisdiction. *Summa Corp. v. Lancer Indus., Inc.*, 559 P.2d 544, 546 (Utah 1977) ("[A]s part of the inherent power that our district courts have, … they undoubtedly could refuse to exercise jurisdiction.").

Here, the district court acted well within its authority and did not abuse its discretion in transferring the case to the Third District to be coordinated with numerous other similar actions. The court properly used its "inherent powers" to "control and manage the proceedings." *Compare*

id., *with* R. 6876 (grounding the order on the court's authority to "manage its trials, cases, and docket"). In support of the transfer, the court determined that "there are significant benefits that will result from the partial transfer" of the case. R. 6876. Among those benefits are the "conservation of judicial resources," "avoidance of inconsistent legal rulings," less "unnecessarily duplicative discovery," and "judicial coordination and management of the extraordinary discovery" required in the case. R. 6876 (simplified). Those are not fanciful reasons. They are grounded in judicial economy and common sense. The district court's order thus fits squarely within its inherent power and should be affirmed for that reason alone.

II. This Court can affirm on alternative grounds because the rules of procedure allow the type of consolidation that the district court ordered.

Although the district court did not explicitly cite to the procedural rules, its order can be affirmed because the rules provide an alternative source of power for the court's temporary consolidation order. *Bailey v. Bayles*, 2002 UT 58, ¶ 10, 52 P.3d 1158, 1161 ("It is well settled that an appellate court may affirm the judgment appealed from 'if it is sustainable on any legal ground or theory apparent on the record[.]'"). Rule 42 of the Utah Rules of Civil Procedure empowers district courts to do just what it did here—it allows them to consolidate "actions involving a common question of law or fact." Utah R. Civ. P. 42(a). In cases of such overlap, the rule sets out three broad powers:

1. "it may order a joint hearing or trial of any or all the matters in issue in the actions";
2. "it may order all the actions consolidated"; and
3. "it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Id.

The rule also allows the district court to order "a separate trial" of claims "in furtherance of convenience or to avoid prejudice." *Id.* Rule 42 is thus highly flexible, a point this Court has repeatedly recognized. "Rule 42(b) of the Utah Rules of Civil Procedure gives the trial court considerable discretion to administer the business of its docket and determine how a trial should be conducted." *Walker Drug Co. v. La Sal Oil Co.*, 972 P.2d 1238, 1244 (Utah 1998) (simplified); *see also Slusher v. Ospital*, 777 P.2d 437, 441 (Utah 1989) ("[T]rial courts enjoy considerable discretion in deciding bifurcation and consolidation requests under rule 42.").

Although it did not cite the rule directly, the district court invoked the powers granted by rule 42. It based its order on the finding that the "case before this Court clearly has common questions of law or fact shared with the similar opioid-related cases." R. 6874. And because that factual and legal overlap was not "genuinely disputed by [Davis County]," *id.*, the consolidation order met the threshold requirement of rule 42, *see* Utah R. Civ. P. 42(a) (allowing consolidation of "actions involving a common question of law or fact").

The relief granted in the order likewise conformed to rule 42's plain language. The temporary transfer effectively ordered "a joint hearing … of any or all the matters in issue," in this case the significant pretrial issues of extraordinary discovery and related case management. *Cf.* Utah R. Civ. P. 42(a). It was also an "order[] concerning proceedings" issued in part "to avoid unnecessary costs" of discovery. *Compare id.* (allowing such orders), *with* R. 6877 (justifying the order because consolidation would "achieve the substantial benefits offered by pre-trial coordination" (simplified)).

Finally, the district court explicitly incorporated by reference the Summit County court's transfer order, which was based on rule 42. *See* R. 6876 (block quoting "Judge Mrazik's ruling" from Summit County regarding consolidation of cases); *see also id.* ("[T]he Court specifically agrees with Judge Mrazik's conclusion [regarding the benefits of consolidation]").

Taken together, the nature and substance of the court's order shows that it was a valid exercise of the court's "considerable discretion to administer the business of its docket" under rule 42. *See Walker Drug*, 972 P.2d at 1244 (simplified). The order also accords with rule 1's primary command "to achieve the just, speedy, and inexpensive determination of every action." Utah R. Civ. P. 1. The only difference between the order at issue here and other cases involving rule 42 is the fact that this one crossed over judicial district boundaries. That distinction makes no meaningful difference, however, because the judicial districts do not

impose any limitations on consolidation under rule 42. Instead, judicial districts are best understood as administrative boundaries that carry no substantive weight—at least for these purposes, the district lines do not segregate the district court into individual district courts distinct from one another.

That conclusion follows from a review of Utah's legal framework. The Utah Constitution, for example, commits determination of the physical number of Utah judges and courts to the legislative branch. *See* Utah Const. art VIII, § 6 ("The number of judges of the district court … shall be provided by statute."). But in spite of the recognition that there will be multiple physical judges and courts, the Constitution nonetheless treats all the district courts as a single entity: "*The district court* shall have original jurisdiction in all matters except as limited by this constitution or by statute." Utah Const. art VIII, § 5 (emphasis added); *see also id.* § 1 ("The judicial power of the state shall be vested … in a trial court of general jurisdiction known as *the district court*." (emphasis added)). Thus, the Constitution by its plain language treats all physical district courts, regardless of number, as one and the same court—any district court is "the district court." *See id.* § 5.[3]

[3] The conclusion that Utah's district courts are homogenous for purposes of pretrial consolidation is confirmed by the fact that judicial districts are optional, and not mandatory, under the Constitution. "Geographic divisions for all courts of record except the Supreme Court may be provided by statute." Utah Const. art VIII § 6; *see also id.* § ("[I]f geographic divisions are provided for any court … ."). Any contention that

Rule 42 follows the same approach. Instead of distinguishing between courts of a given district, it applies to "the court" categorically in the same way the Constitution addresses "the district court" categorically even though it also provides for multiple physical courts. *Compare* Utah R. Civ. P. 42(a) ("When actions involving a common question of law or fact are pending before the court, it may order … ."), *with* Utah Const. art VIII, § 5 ("The district court shall have original jurisdiction … ."). Rule 42 thus applies to cases pending in the district court generally, not to only those cases pending in a particular district.

In short, any district court is *the* district court. At least for purposes of this appeal, there is no meaningful distinction between the Davis County court and the Summit County court—both are the district court under the Utah Constitution and under the plain language of rule 42. For that reason, it is of no moment that the order on appeal crossed district boundaries. The power granted courts by rule 42 is not limited by administrative lines, and the district court properly invoked its powers.

If this Court does not affirm the district court's temporary transfer order as a proper exercise of inherent authority, it should affirm on the alternative ground that rule 42 provides the very sort of flexibility that was employed here. *See Walker Drug*, 972 P.2d at 1244. The district court's order was a proper exercise of judicial power.

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the lines of judicial districts are substantive rather than administrative thus fails to persuade.

III. Davis County's argument against transfer is based on outdated law.

Section 309 of the venue statute does not, as the county argues, prohibit the transfer at issue here. Aplt. Br. at 9; *see also id.* at 9–13 (explaining the argument).

Section 309 provides as follows:

> The court may, on motion, change the place of trial in the following cases: when the county designated in the complaint is not the proper county; (2) when there is reason to believe that an impartial trial cannot be had in the county, city or precinct designated in the complaint; (3) when the convenience of witnesses and the ends of justice would be promoted by the change; (4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county.

Utah Code § 78B-3-309. Nothing in the statute prohibits the district court's order here.

For one, granting the power to transfer for trial "when the convenience of witnesses and the ends of justice would be promoted by the change" necessarily would encompass similar transfers for things short of trial. *See* R. 6959. At a minimum, the venue provision does not strip a district court of power here since the transfer was for pretrial purposes.

Putting aside the text of the statute, Davis County's argument proceeds in several flawed steps. The county first asserts that Utah courts "'have only such authority to transfer for trial causes of action from one county to another as is granted by the Code.'" Aplt. Br. at 10 (quoting *Hale v.*

Barker, 259 P. 928, 931 (Utah 1927)). The county then asserts that the Utah Code does not permit the sort of transfer that was ordered here: "the transfer of [the] case is not permitted under any of the four statutory grounds found in [section 309]." Aplt. Br. at 14. From those points, Davis County concludes that the district court's temporary transfer order was, in essence, ultra vires. *See* Aplt. Br. at 10 ("The district court exceeded its authority by granting Defendants' motion."). The syllogism is broken for at least two reasons.

First, Davis County's major premise is incorrect. The county's argument turns on its core assertion that courts have only the transfer-of-venue powers explicitly granted by the Utah Code. *See* Aplt. Br. at 9–12. This is essentially an assertion that venue is a topic wholly within the legislative realm. The case on which Davis County principally relies is *Hale v. Barker*, which holds that "[d]istrict courts of this state have only such authority to transfer for trial causes of action from one county to another as is granted by the Code." 259 P. at 931.[4]

However, *Hale* and all other cases reaching a similar holding have been abrogated and superseded by constitutional change and are no longer valid statements of law. When this Court decided *Hale*, the Utah Constitution was different. Until it was changed in 1984, article VIII, section 6 provided: "'All civil and criminal business arising in any county, must be tried in such county, unless a change of venue be taken, in such

[4] Davis County also cites *State v. Cauble*, 563 P.2d 775, 777 (Utah 1977), for the same basic proposition. *See* Aplt. Br. at 9, 12.

cases as provided by law.'" *Gibbs v. Gibbs*, 73 P. 641, 644 (Utah 1903) (quoting Utah Const. art VIII, § 5 (repealed 1984)); *see also Cauble*, 563 P.2d at 777 (quoting the same provision and thereby establishing that the same language still existed in 1977).[5] That language meant that the Constitution "permit[ted] a change of venue ***only*** as [provided] by law." *Sanipoli v. Pleasant Valley Coal Co.*, 86 P. 865, 869 (Utah 1906) (emphasis added). That is, under the original Utah Constitution, venue was set by the Constitution and only the legislative branch had power to enact venue law. *See id.*; *see also Cauble*, 563 P.2d at 777 (recognizing that the old section 5 "would seem to imply that the Constitution grants to the legislature the power to pass such laws relating to the change of venue … as it deems proper").

Although *Hale* did not quote section 5's language directly, the case clearly relied on it for the proposition that courts only have venue powers as provided by the Utah Code. *See* 259 P. at 931 (stating without support that courts "have only such authority to transfer for trial … as is granted by the Code"). The absence of a citation to the Constitution is likely because, by 1927, the underlying principle that the legislature controlled venue was well established. *See Sherman v. Droubay*, 74 P. 348, 349 (Utah

[5] A typescript of the original Utah Constitution is available at https://archives.utah.gov/community/exhibits/Statehood/conintro.htm. It appears the *Gibbs* opinion omitted several commas from its quotation of the then-existing Utah Constitution. For readability and because they do not affect the substance of the section, this brief has included the commas sub silentio.

1903) (asserting that the meaning of section 5 was "so plain that it would require no judicial interpretation").

In any event, the people of Utah fundamentally changed the Constitution in 1984, long after *Hale* was decided. They did so, in part, in response to the "emerging view that procedural rulemaking was exclusively a judicial function." Kent R. Hart, *Court Rulemaking in Utah Following the 1985 Revision of the Utah Constitution*, 1992 Utah L. Rev. 153, 159; *see also Brown v. Cox*, 2017 UT 3, ¶¶ 17–18 & n.8, 387 P.3d 1040 (discussing this Court's contemporary and historical rule making power). As a result of the 1984 amendments, the whole of section 5 was rewritten. *See generally* Constitutional Revision Commission, *Report of the Constitutional Revision Commission* at 23–41 (Jan. 1984) (explaining proposed changes to article VIII), *attached at* App'x C (the Commission Report).

Rather than delineating the proper place of trial as the original section 5 did, the modernized section deals with jurisdiction and the right of appeal. There is no mention of venue at all. *Compare Gibbs*, 73 P. at 644, *with* Utah Const. art. VIII, § 5; *see also* Commission Report at 27–28 (showing the major changes proposed to section 5). In sum, the 1984 amendments adopted the modern view that venue provisions are not *exclusively* within the power of the legislature in keeping with the growing understanding that courts have a say over procedural matters. *See* Hart, *Court Rulemaking in Utah* at 159.

The constitutional changes also mean that *Hale* is no longer good law regarding venue, because its discussion of venue was premised on a constitutional provision that no longer exists. As a result, *Hale's* assertion that the legislative branch exclusively controls the law of venue finds no support in the modern Constitution. And because *Hale* is no longer controlling on that point, the major premise of Davis County's argument fails—the Utah Legislature is no longer in the exclusive control of venue and the venue statute does not determine this case. To be sure, the legislature can enact venue provisions, but absent a conflict with those statutes, they do not sub silentio trump a court's inherent powers to manage multi-county litigation.[6]

Second, Davis County's interpretation of the venue statute would run afoul of the separation of powers. "Unlike the U.S. Constitution, our state constitution explicitly prohibits sharing powers among the branches, at least with regard to powers deemed 'primary, core, or essential' to a particular branch of government." *Carter v. Lehi City*, 2012 UT 2, ¶ 18 n.5, 269 P.3d 141 (quoting *In re Young*, 1999 UT 6, ¶ 14, 976 P.2d 581). As a result of this strict separation, the powers of each branch of government are not subject to limitation by another branch unless such limitation is

[6] That section 309's language has not changed over time, *see* Aplt. Br. at 10 n.4, is irrelevant. The county does not rely on the language of section 309. Rather, the county's argument rests on the supposition that if the type of transfer at issue here is not listed in section 309, the court has no power to make a transfer. As noted, that premise is wrong in light of changes to the Utah Constitution.

expressly provided in the Constitution. *See* Utah Const. art V, § 1 ("[N]o person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.").

The strict separation of powers embodied in our Constitution strongly suggests that Davis County's preferred construction of the venue statute, particularly section 309, is unconstitutional. Under the modern constitutional regime this Court holds rulemaking authority over procedure and evidence. *See* Utah Const. art VIII, § 4 ("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."). Although that rulemaking power is not absolute—the legislature can amend this Court's rules "upon a vote of two-thirds of all members of both houses," *id.*—the power to implement procedural rules in the first instance lies with this Court. *See State v. Drej,* 2010 UT 35, ¶ 26, 233 P.3d 476 ("The Supreme Court … has the prerogative to adopt rules for practice and procedure in all courts."). It is hornbook law that "[v]enue is a procedural rule." *Trillium USA, Inc. v. Bd. of Cty. Comm'rs of Broward Cty., Fla.*, 2001 UT 101, ¶ 15, 37 P.3d 1093; *see also id.* (collecting cases).[7] Thus, under the

[7] Like in Utah, Ohio venue law was once in the province of the legislative branch but then became a uniquely judicial matter. "Venue is a procedural matter. Although once the private domain of the General Assembly, it is now properly within the rule-making power of the Supreme Court under [the Ohio Constitution]." *Morrison v. Steiner,* 290 N.E.2d 841, 843 (Ohio 1972).

Utah Constitution, absent a valid statute prohibiting a procedural matter, the courts have inherent power to manage venue related matters. There is no legislative enactment prohibiting the exercise of the procedural order here.

The county's interpretation would have the venue provision here prohibit a judicial procedure without expressly saying so. In that instance, the venue statute would likely violate separation of powers and be unconstitutional. *See* Utah Const. art V, § 1; *see id.* art VIII, § 4. Indeed, the district court raised just that concern in a hearing on this issue. "[T]his is where we get to the separation of powers issue. … . What business do[es] [the legislature] have to prohibit this Court from making a procedural [decision]?" R. 7190; *see also* R. 7191 ("I mean there's an argument that the Legislature ought not even to have ever enacted 78B-3-309 … on separation of powers rules").[8]

But this Court need not—and perhaps should not—get into the constitutional question. *See State v. Wood*, 648 P.2d 71, 82 (Utah 1982) ("It is a fundamental rule that we should avoid addressing a constitutional issue unless required to do so."); *see also State v. DeJesus*, 2017 UT 22, ¶

[8] The current venue statute is essentially similar to one that was originally enacted by the Territorial Legislature in 1870. *Compare* Utah Code § 78B-3-309, *with* 1870 Utah Terr. Laws tit. II, § 21, *attached at* App'x D. For example, the original law, like the current law, provided, "The Court may, on motion, change the place of trial in the following cases:" including "when there is reason to believe that an impartial trial cannot be had" and "when the convenience of witnesses and the ends of justice would be promoted by the change." *See id.*

33, 395 P.3d 111 ("[I]t is well established that courts will not pass upon a constitutional question … if there is also present some other ground upon which the case may be disposed of." (simplified)).

In this case, both the district court's inherent power and the flexibility provided by rule 42 justify the temporary transfer order. Because this Court can (and should) affirm on those grounds, it need not decide the constitutionality of the venue statute. But if the Court does not affirm on those grounds, the Court will need to address the separation of powers problem as a threshold matter and whether the venue statute remains constitutionally sound. [9]

Finally, it is a blackletter principle that "if doubt or uncertainty exists as to the meaning or application of an act's provisions, [we] . . . analyze the act in its entirety and harmonize its provisions in accordance with the legislative intent and purpose." *Savely v. Utah Hwy Patrol*, 2018 UT 44, ¶

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[9] The Court might also consider two additional measures. As discussed above, article VIII, section 4, gives broad rulemaking authority to this Court. An interim rule of procedure may be announced before the formal rulemaking process. *See, e.g.*, *Anderson v. Taylor*, 2006 UT 79, ¶ 23 n.8, 149 P.3d 352.

In addition, article VIII, section 12, allows the chief justice to implement rules for administration of the courts, as adopted by the Judicial Council. *See also* Utah R. Jud. Admin. 2-205 (expedited rulemaking procedure) and 2-209 (suspension of procedures).

The Court may consider whether this litigation merits the adoption of an interim or expedited rule. Five of the Related Cases are stayed pending the outcome of this appeal—a clearly defined procedure for coordinated pretrial proceedings may be appropriate. *See* R. 6983.

25, 427 P.3d 1174, 1180. Reading section 309's venue provision in harmony with rule 42's aim of efficiency and avoiding time and expense from overlapping actions, there is only one interpretation that effectuates the intent of both the rule and statute: allowing coordination where the defendant consents to the transfer and the coordination is only for pretrial purposes.[10]

* * *

[10] Janssen is not requesting transfer/consolidation for trial at this time, but fully reserves and does not waive its rights to make such a request in the future pursuant to section 309.

CONCLUSION

The district court determined that unified pretrial proceedings would benefit the ends of justice in this complex case. Under its inherent power, it therefore transferred the case to Summit County temporarily for consolidated pretrial proceedings. To avoid any prejudice, the court explicitly retained control of the trial itself.

Those actions were well within the court's inherent authority to control its cases, and this Court should affirm the use of that authority. The Court may also affirm on alternative grounds because rule 42 of the Utah Rules of Civil Procedure provides the same flexibility that the court employed here. Either way, the court properly exercised its discretion under the law.

Dated: September 18, 2019

s/ Andrew G. Deiss
Andrew G. Deiss
John Robinson Jr.
Corey D. Riley
DEISS LAW PC

Charles C. Lifland*
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Attorneys for the Appellees

CERTIFICATE OF COMPLIANCE

This brief complies with rules 21 and 24 of the Utah Rules of Appellate Procedure because it contains 5,981 words (as counted by Microsoft Word 2016) and because it contains no information other than public information.

Dated: September 18, 2019

s/ Corey D. Riley

CERTIFICATE OF SERVICE

I certify that I filed the above brief with the Supreme Court of Utah and served it on counsel of record as follows.*

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Dated: September 18, 2019

s/ Corey D. Riley

Appendix A

Transfer Order (Second District)

R. 6873

IN THE SECOND DISTRICT COURT, STATE OF UTAH
DAVIS COUNTY

DAVIS COUNTY, Plaintiff, vs. PURDUE PHARMA L.P., et al., Defendants.	**RULING AND ORDER ON DEFENDANTS JOHNSON & JOHNSON AND JANSSEN PHARMACEUTICALS, INC.'S MOTION TO TRANSFER VENUE AND DEFENDANTS ALLERGEN'S MOTION TO CONSOLIDATE RELATED CASES** Case No. 180700870 Judge David M. Connors

This matter comes before the Court on two separate motions filed by different groups of defendants. First, a Motion to Transfer Venue was filed March 29, 2019 by Defendants Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. n/m/a Janssen Pharmaceuticals, Inc.'s (collectively, the "Janssen Defendants"). Plaintiff Davis County filed an opposition memorandum on April 12, 2019. The Janssen Defendants filed a reply on May 6, 2019. Second, a Motion to Consolidate Related Cases was filed on April 26, 2019 by Defendants Allergan Finance, LLC f/k/a, Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Allergan Sales LLC, and Allergan USA, Inc.'s (collectively, the "Allergan Defendants"). Plaintiff filed an opposition memorandum on May 10, 2019. The Allergan Defendants filed a reply on May 13, 2019. The Court held oral argument on the motions on May 15, 2019. Prior to the hearing, Plaintiff objected to the Court hearing the Motion to Consolidate Related Cases; however, at oral

argument the Court heard both motions by stipulation of the parties. Having reviewed the filings and considered the parties' arguments, the Court rules and orders as follows:

ANALYSIS AND RULING

Pursuant to Utah Code Section 78B-3-309, a Court may transfer venue "when the convenience of witnesses and the ends of justice would be promoted by the change." It is within the discretion of the Court to determine whether the ends of justice would in fact "be promoted by the change." *Id.*; *see also Gunn Hill Dairy Properties, LLC v. Los Angeles Dep't of Water & Power*, 2015 UT App 261, ¶ 7, 361 P.3d 703 (noting that a lower court's decision to transfer is "review[ed] . . . for an abuse of discretion."). "The trial court, with its inherent powers as the authority in charge of the trial, has broad latitude to control and manage the proceedings and preserve the integrity of the trial process." *State v. Parsons*, 781 P.2d 1275, 1282 (Utah 1989). The Utah Court of Appeals has held that "[a] district court is endowed with discretion in exercising its 'inherent power to manage its docket.'" *Matter of J. Melvin*, 2018 UT App 121, ¶ 25, 428 P.3d 43 (quoting *Jensen v. Ruflin*, 2017 UT App 174, ¶ 23, 405 P.3d 836). Additionally, "[t]rial courts have broad discretion in managing the cases before them and we will not interfere with their decisions absent an abuse of discretion." *Townhomes at Pointe Meadows Owners Ass'n v. Pointe Meadows Townhomes, LLC*, 2014 UT App 52, ¶ 9, 329 P.3d 815 (citation and internal quotation marks omitted). In its review of the trial court's exercise of discretion, the appellate court will "reverse only if there is no reasonable basis for the district court's decision." *Solis v. Burningham Enterprises Inc.*, 2015 UT App 11, ¶ 12, 342 P.3d 812.

The case before this Court clearly has common questions of law or fact shared with the similar opioid-related cases (hereinafter, the "opioid cases") brought in other counties throughout Utah (and throughout the country). This conclusion has not been genuinely disputed by Plaintiff.

Recently a motion was brought before Utah's Third District Court seeking consolidation of all of the Utah opioid cases, including the Davis County case, into the first filed case, which happened to be in Summit County. *Summit County v. Purdue Pharma L.P. et al.*, Case No. 180500119 in the Third District Court in and for Summit County (hereinafter, the "Summit County Case"). In a decision entered in the Summit County Case on March 15, 2019, the court, through Judge Mrazik, concluded that consolidation of the three cases pending in the Third District Court was appropriate for pre-trial purposes, but declined consolidation of the cases from outside of the Third District, asserting that it was "an untested interpretation of Rule 42 to consolidate matters pending in other judicial districts into the Summit County matter." *See* Pl's Ex. 12, Summit County Case, 5. However, the court then noted that cases outside the Third District could be transferred to the Third District by appropriate order of the district court in the district where they were originally filed for pretrial proceedings. *Id.* at 7.

Presumably following the Summit County court's suggestion, the Janssen Defendants moved this Court to transfer venue to Summit County for pre-trial proceedings, and specifically for discovery and other pretrial matters. In response, Plaintiff asserts that the transfer statute relied on by the Janssen Defendants[1] does not specifically authorize the type of transfer being sought in the present motion (*i.e.*, a transfer of the case for purposes of handling pretrial matters, but not for trial). To some extent the Court agrees with the assertion that the statute does not specifically authorize the type of transfer sought by the Janssen Defendants. In fact, the statute deals narrowly with only one particular subset of the potential universe of types of transfers the court might need to consider when exercising its discretionary authority to manage its trials, cases, and dockets. Specifically, the statute referenced by both the Janssen Defendants and the

[1] "The court may, on motion, change the place of trial . . . when the convenience of witnesses and the ends of justice would be promoted by the change." Utah Code Ann. § 78B-11-309(3).

Plaintiff only addresses a situation where the court is asked to transfer a matter to another district for purposes of trial. Such a motion is not before the Court at this time in this case. Rather, the Court is being asked to transfer this case to Summit County to be consolidated with other opioid cases solely for purposes of resolving the pretrial issues that will be common to all of the opioid cases in Utah. The statute is silent on this type of a transfer request.

But the fact that the transfer sought by the Janssen Defendants is not the type of transfer covered by the statute does not answer the question of whether the motion can be granted or not. Importantly, the statute does not prohibit the type of transfer sought in the present motion. The Court retains its inherent power to manage its trials, cases, and docket. *See State v. Parsons*, 781 P.2d at 1282; *see also Matter of J. Melvin*, 2018 UT App 121, ¶ 25. And even though the statute is silent on this type of transfer, the Court believes that the general principle stated therein, that transfers should only be granted when they promote the ends of justice, is an appropriate standard for this Court to consider in evaluating the Janssen Defendants' motion.

Clearly, there are significant benefits that will result from the partial transfer of venue requested by the Janssen Defendants' motion. Some of those benefits are outlined in Judge Mrazik's ruling:

> (1) Conservation of judicial resources by avoiding the need for eleven judges to manage twelve substantively similar lawsuits, in parallel, at the same time; (2) Avoidance of inconsistent legal rulings regarding the pleadings, discovery disputes—of which there are likely to be many—and potentially dispositive motions; and (3) Avoidance of unnecessarily duplicative discovery, and judicial coordination and management of the extraordinary discovery, well beyond the standard limits set by Rule 26, that is almost certainly required in a litigation of this size.

Pl's Ex. 12, 4–5. This Court concurs with this assessment of the benefits of a limited transfer for the purpose of consolidating pretrial proceedings. Furthermore, the Court specifically agrees

with Judge Mrazik's conclusion that "the ends of justice would be promoted by transferring the matters pending outside the Third District to Summit County—for pretrial proceedings only—because doing so would facilitate consolidation of the matters and, by extension, achieve the substantial benefits offered by pre-trial coordination." *Id.* at 6. Accordingly, this Court, exercising its inherent authority to manage its cases and dockets, concludes that a limited transfer of venue for pretrial proceedings will promote the ends of justice and the efficient administration of pending cases and dockets. Therefore, the Court transfers the venue of pre-trial proceedings only, to Summit County in Utah's Third District Court.

Regarding the Allergan Defendants' Motion to Consolidate Related Cases, in light of the Court's decision to transfer this case to Summit County for pretrial proceedings, it is not appropriate for this Court to consider taking a position that would be inconsistent with the position already taken in the Summit County case on the issue of consolidation of cases from outside the Third District. Accordingly, the Allegan Defendants' Motion to Consolidate Related Cases is denied at this time.

ORDER

The Court grants the Janssen Defendants' Motion to Transfer Venue to Summit County for pre-trial proceedings. Trial in this case will remain before this Court. The Court denies Defendants Allergan's Motion to Consolidate Related Cases. In light of these rulings, the hearing on pending motions to dismiss, previously set for Friday, June 7, 2019, is hereby stricken.

DATED this 31ST day of May, 2019.

BY THE COURT

David M. Connors
District Court Judge

Appendix B

Consolidation Order (Third District)

R. 6954

The Order of the Court is stated below:
Dated: March 15, 2019 10:36:45 AM
/s/ RICHARD MRAZIK
District Court Judge

IN THE THIRD JUDICIAL DISTRICT COURT FOR
SUMMIT COUNTY, SILVER SUMMIT DIVISION, STATE OF UTAH

SUMMIT COUNTY, UTAH, Plaintiff, vs. PURDUE PHARMA L.P. *et al.*, Defendants.	**RULING AND ORDER GRANTING IN PART AND DENYING IN PART THE MANUFACTURER DEFENDANTS' MOTION TO CONSOLIDATE** **(Modified by Court)** Case No. 180500119 Judge Richard E. Mrazik

INTRODUCTION

At least fourteen Utah counties have filed twelve separate lawsuits against manufacturers, distributors, and promoters of opioids, each alleging claims related to the marketing, sale, or distribution of opioid medications.

Seventeen defendant manufacturers have filed a Joint Motion to Consolidate Related Cases for Pretrial Proceedings, requesting that the counties' lawsuits be consolidated into this matter, which is the first filed case, for coordinated pretrial proceedings.

Five other defendants—three distributors and two physicians—have joined in the Manufacturers' Motion to Consolidate.

Seven of the plaintiff counties—Summit, Tooele, Wasatch, Uintah, Daggett, Duchesne, and Weber Counties—along with the TriCounty Health District, have filed a Notice of Non-Opposition to the Manufacturers' Motion to Consolidate.

But the remaining seven plaintiff counties—Salt Lake, Davis, Iron, San Juan, Grand, Millard, and Sanpete Counties—oppose the Manufacturers' Motion to Consolidate.

So the question before the Court is whether the counties' twelve lawsuits can and should be consolidated before a single judge for coordination and management of pretrial proceedings. Having fully considered all briefs and other filings related to the Motion to Consolidate as well as the parties' oral arguments at the lengthy hearing on February 22, 2019, the Court rules as follows.

RULING

Under Rule 42 of Utah Rules of Civil Procedure, when actions pending before the Court involve a common question of law or fact, the Court may order, among other things, that the actions be consolidated and may enter such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. While the Court has substantial discretion to decide whether to consolidate cases that satisfy this standard, that discretion can be abused if the prejudice to any party from consolidation far outweigh the likely benefits. *See Lignell v. Berg,* 593 P.2d 800, 806 (Utah 1979).

As a threshold matter, the Court finds the pending opioid matters involve numerous common questions of law and fact. In each of the twelve complaints the

Court has reviewed in connection with the Motion to Consolidate, against at least eight of the same defendants, among others.

Each of the twelve complaints also asserts at least five common causes of action, based on the following theories: (1) violation of the Utah Consumer Sales Practice Act; (2) public nuisance; (3) fraud; (4) civil conspiracy; and (5) unjust enrichment.

In addition to the common parties and claims, the allegations in the Utah opioid litigation involve numerous common questions of fact, including: (1) what Defendants knew about the benefits and risks of opioids medications; (2) when they knew about those benefits and risks; (3) (3) whether and how they communicated that knowledge to the medical community and to the public at large (meaning, whether they misrepresented the risks and benefits of opioids, and if so, how); and (4) why defendants acted or failed to act in the way they did with respect to that knowledge. And those are only a small sample of the numerous common questions of law and fact raised by the causes of action shared by the complaints filed in the twelve pending matters.These are only a small sample of the numerous common questions of law and fact raised by the claims and allegations in the pending complaints, and they are sufficient to meet the standard set forth in Rule 42(a).

In light of these common questions of law and fact, the benefits of consolidation far outweigh the potential prejudice to any party. First, the form of consolidation requested by the Manufacturer Defendants--and the form being

considered by the Court--is to consolidate and coordinate the cases for pre-trial proceedings only, with each matter returning to its original venue for trial. This paradigm honors each Plaintiff's choice of venue for trial, and ensures that each County's case, if tried, will be heard in that County by jurors who reside in that County. This paradigm also allays any concern that consolidation will sow juror confusion by injecting superfluous issues, irrelevant evidence, or immaterial legal issues into each county's trial.

Second, the Court finds that potential prejudice can be effectively mitigated through careful judicial management of the coordinated pre-trial proceedings. This Court is sensitive to and respects each county's right to prosecute its own case according to its own strategy on its own schedule—albeit within the bounds imposed by opposing counsel, and by reasonable coordination by the judge managing the litigation. Consolidation before a single judge who can reasonably coordinate and manage pre-trial proceedings will bring more efficiency to these complicated and numerous proceedings, and each County's desire to prosecute its own case according to its own strategy can be appropriately balanced against these goals of consolidation.

Third, the benefits of coordinated pre-trial proceedings are many and significant, and include: (1) Conservation of judicial resources by avoiding the need for eleven judges to manage twelve substantively similar lawsuits, in parallel, at the same time; (2) Avoidance of inconsistent legal rulings regarding the pleadings, discovery disputes—of which there are likely to be many—and potentially dispositive motions; and (3)

Avoidance of unnecessarily duplicative discovery, and judicial coordination and management of the extraordinary discovery, well beyond the standard limits set by Rule 26, that is almost certainly required in a litigation of this size. On balance, the Court finds the benefits of consolidation far outweigh the potential prejudice to any litigant.

For the foregoing reasons, the Court grants in part the Motion to Consolidate and consolidates the Salt Lake County and Tooele County matters into the Summit County matter, for purposes of pre-trial coordination only. If trial becomes necessary, the Salt Lake County and Tooele County matters will return to Salt Lake County and Tooele County, respectively, to be tried in their original venues. . By approval of the presiding and associate presiding judges of the Third District Court, the consolidated Summit County matter shall now be assigned to Judge Richard E. Mrazik.

Regarding the matters pending outside the Third District, and notwithstanding the substantial benefits of consolidation, the Court declines to use an untested interpretation of Rule 42 to consolidate matters pending in other judicial districts into the Summit County matter.

Rather, the Court elects to follow the more conservative approach raised in the opposing parties' briefing—namely, allowing the parties desiring consolidation, if they choose, to file motions in those matters pending outside of the Third Judicial District requesting a change of venue to Summit County. If the parties who desire consolidation file such motions and they are granted, they may then request that this Court consolidate any transferred matters into the Summit County matter for coordinated

pretrial proceedings, as the Court has done with the three cases pending in the Third Judicial District via this Order.

Under this paradigm, the benefits of consolidation can be accomplished without the need for this Court to adopt an interpretation of Rule 42 that has yet to be approved by Utah's appellate courts. Indeed, under Utah Code 78B-11-309(3), "[t]he court may, on motion, change the place of trial ... when the convenience of witnesses and the ends of justice would be promoted by the change." For the reasons discussed above, the Court finds the ends of justice would be promoted by transferring the matters pending outside the Third District to Summit County—for pretrial proceedings only—because doing so would facilitate consolidation of the matters and, by extension, achieve the substantial benefits offered by pre-trial coordination.

Under Utah Code 78B-11-310, in the absence of an agreement between the parties, "the action shall be transferred to the nearest court where the objection or reason for transfer does not exist." For the reasons discussed above, the Court finds Salt Lake County is the nearest court where the reason for transfer—i.e., the risk of inefficient use of judicial resources, duplication of effort, and inconsistent pretrial rulings—does not exist.

Given this Court's careful consideration and discussion of the parties' robust briefing and arguments on the consolidation issue, and the findings and conclusions made by this Court, perhaps the assigned judges outside the Third Judicial District will find this Court's ruling to be persuasive authority—though certainly not binding

authority—weighing strongly in favor of transferring venue of the opioid matters pending outside the Third District to Summit County as a means of facilitating pretrial coordination and achieving the benefits it offers.

ORDER

For the reasons stated above, the Motion to Consolidate is GRANTED IN PART with respect to the Summit, Salt Lake, and Tooele County matters only, and DENIED IN PART without prejudice with respect to the remaining matters.

Any party who wishes to renew a motion to consolidate following the transfer of an opioid case from another judicial district to this one may do so at the appropriate time.

Upon the entry of this Order, the stay entered pursuant to this Court's Pre-Consolidation Case Management Order shall lift in all non-consolidated cases.

* * * END OF ORDER * * *

Pursuant to Rule 10(e) of the Utah Rules of Civil Procedure, this Order will be entered by the Court's electronic signature at the top of the first page of this document.

Appendix C

Constitutional Revision Commission Report of January 1984

Report of the
CONSTITUTIONAL REVISION COMMISSION

Submitted to the Governor and the 45th Legislature of the State of Utah for the years 1982 and 1983

January 1984

CHAPTER II

JUDICIAL ARTICLE

BACKGROUND

The following information summarizes the Constitutional Revision Commission's Judicial Article study. The material includes a brief review of the commission's action from 1980 to 1982, as well as a more extensive review of the commission's Judicial Article study since the 1982 Budget Session.

Judicial Article Study 1980 to 1982
(See The 1982 Report of the Constitutional Revision Commission - January 1982)

The Constitutional Revision Commission began its initial review of the Judicial Article (Art. VIII) in 1980 by supporting a simple amendment to eliminate automatic appeals to the supreme court (HJR 20 - 1980). The measure was ultimately rejected by the legislature. However, even though the commission supported the proposal, there was concern that the entire Judicial Article merited extensive review. As such, a total review of the article was included on the commission's 1981 study agenda.

During the 1981 study year, a Judicial Article Subcommittee was formed to more clearly focus the commission's resources on the Judicial Article study. The commission staff did extensive background work on the problems associated with the present Judicial Article. Several hearings were conducted with representatives of the judiciary to discover areas of concern. The commission's work indicated that, in addition to the appeals problems, other substantive issues warranted review. Specifically, changes in the administration of the judiciary and clarification of the judicial selection process were needed.

The Constitutional Revision Commission defined three major objectives that the revised Judicial Article should address. They were:

1. to articulate the role of the judiciary as a co-equal branch of government within the historical framework of the system of checks and balances;

2. to provide the means to develop a more efficient and effective judicial system; and

3. to attract and maintain quality judges. The proposal, introduced to the 1982 Budget Session of the legislature as HJR 10, was developed to accomplish these objectives.

The 1982 Budget Session

HJR 10 was reviewed closely by the legislature. After significant amendments, the proposal was adopted by the house of representatives. These amendments concerned incorporating a specific reference to justice of the peace courts and restoring the general authority of the legislature to establish the judicial selection process. However, the measure was not acted upon by the senate.

It was in fact the controversy over the selection of judges which ultimately precluded action by the senate. Just prior to the beginning of the legislative session, the Utah Supreme Court ruled on a controversial case challenging the authority of the senate to review judicial appointments. Matheson v. Ferry, 641 P.2d 674 (1982). In this case, the Court struck down the statutory provision requiring senate confirmation of judicial appointments. The political atmosphere surrounding the case made adoption of the Judicial Article revision impossible. As a result, no action was taken and the commission was asked to further study the revision.

The 1982-1983 Judicial Article Study

Following the actions of the 1982 Budget Session, the Constitutional Revision Commission again undertook a review of the Judicial Article. The Judicial Article subcommittee was reconstituted and began to work on the article.

Further study was slowed, however, by a second court case. Again, the governor challenged a statute providing for senate confirmation of judicial appointments. The action was resolved by the Utah Supreme Court shortly before the beginning of the 1983 General Session. Matheson v. Ferry, 657 P.2d 240 (1982). As a result, the commission did not introduce a proposal to the 1983 General Session.

Following this second litigation on judicial selection, the Judicial Article subcommittee began its work in earnest. It was decided by the subcommittee to support most of the previous positions taken in developing HJR 10. However, the subcommittee did reexamine those issues raised by the legislature in 1982.

On the justices of the peace issue, the subcommittee again supported deleting specific reference to them from the constitution. As before, this action was taken to provide legislative flexibility and to avoid unnecessary specificity. The commission, however, did not intend that this recommendation reflect on the value of the justice of the peace system. Rather, the commission position simply states that no court of limited jurisdiction should be mentioned in the constitution.

In examining the selection process for judges, primary concern centered on balancing the interests of the legislature, the governor, the courts, and the public. The subcommittee's study indicated that aspects of the current selection process, specifically the election procedures, contained significant potential for abuse. In some instances, incumbent judges stand for a retention election only based on their record as a judge. If opposed, however, an incumbent judge must participate in a contested election. In the view of the subcommittee, this "hybrid" approach provided neither meaningful review of judges' records nor protection against undue politicizing of judicial elections. As a result, the subcommittee again recommended retention elections only for incumbent judges.

The commission had previously not included senate confirmation as part of the judicial selection process. It felt that the original commission proposal provided adequate legislative involvement at the nominating level. However, the subcommittee now recommended that a senate rejection provision be included, coupled with a strict prohibition on legislative involvement at the nominating level. This approach satisfied concerns over any one governmental branch exercising undue control over judicial appointments.

The full Constitutional Revision Commission considered and adopted the subcommittee recommendations with minor amendments. The full commission restored a provision regarding public prosecutors. Current language provides for elected county attorneys. The subcommittee supported deletion of the provision, arguing for legislative flexibility. The full commission adopted a provision establishing a system of public prosecutors to be selected as provided by statute.

The Recommendations to the 1984 Budget Session

As with other commission recommendations, changes made in the Judicial Article by the commission are comprehensive and do not follow closely the order of the present article. Although the commission's proposal is different in organization from that found in the present constitution, much of the substance of the present article is retained.

The following material presents a comparative outline showing the relationship between the current constitution and the commission proposal, and a section-by-section analysis of the commission's proposal. The discussion will present the current constitutional language as it relates to issues raised by the new proposal. A short statement outlining the commission's rationale is also included. (Appendix C contains a copy of the complete commission proposal as well as a copy of the present Judicial Article.)

COMPARATIVE OVERVIEW

The following information is a summary comparing the Constitutional Revision Commission's proposed Judicial Article revision and the present Judicial Article. The information is organized by subject matter and shows how each document addresses specific issues.

CRC PROPOSED JUDICIAL ARTICLE REVISION

1. Court Structure (Section 1)
   - Specifically mentions supreme court and district court.
   - Allows other courts by statute (juvenile, circuit, j.p's).
2. Supreme Court Organization (Sec. 2)
   - Five justices plus additional.
   - Chief justice to be selected as provided by law.
   - Court may hear cases in panels.
3. Supreme Court Jurisdiction (Sec. 3)
   - Original jurisdiction over extra-ordinary writs and "certified" state law questions.
   - General appellate jurisdiction to be exercised as provided by statute.
4. Supreme Court Rulemaking Authority (Sec. 4)
   - Empowers supreme court to adopt court rules.
   - Empowers supreme court to govern practice of law.

PRESENT JUDICIAL ARTICLE

1. Court Structure (Section 1)
   - Specifically mentions supreme court, district court, and j.p.'s.
   - Allows other courts by statute (juvenile, circuit).
2. Supreme Court Organization (Sec. 2)
   - Five justices plus additional.
   - Chief justice automatically justice with least remaining time on term.
   - All cases must be heard by a majority.
3. Supreme Court Jurisdiction (Sec. 4)
   - Original jurisdiction over certain specified writs.
   - Appellate jurisdiction which requires all cases filed originally in district court to be heard. Specified how appeals to be processed from j.p. courts.
4. Supreme Court Rulemaking Authority (Sec. 4)
   - No stated authority for rulemaking or governance of the practice of law
   - Powers derived from inherent judicial authority powers.

•Authorizes use of retired judges and pro tempore. (See Sec. 2)

•Supreme court by rule manages the appellate process.

•Sec. 2 authorizes use of a district court judge to sit on supreme court. No specific mention for use of other retired judges.

•Sec. 5 authorized use of judges pro tempore

5. District Court and Trial Court Organization and Jurisdiction (Sec. 5)
•Original jurisdiction except as limited by statute.

•Appellate jurisdiction as provided by statute.

•Guarantees right of appeal.

•Eliminates reference to specific writs.

5. District Court Organization and Jurisdiction (Secs. 5, 7, 8, 9)
•Original jurisdiction except as as limited by law.

•Appellate jurisdiction from specific trial courts.

•Lists specific writs.

6. Number of Judges/Judicial Districts (Sec. 6)
•Allows legislature to establish judicial districts (eliminates reference to specific districts).

6. Number of Judges/Judicial Districts (Secs. 5, 6, 8, 16)
•Specifies seven districts, the organiza of the seven may be changed.

7. Qualifications for Judges (Sec. 7)
•Supreme court - 30 years/five-year resident, admitted to practice.

•Other courts of record - 25 years/ Three year resident, admitted to practice.

•If district established, residency in district.

•Courts not of record - as provided by law.

7. Qualifications for Judges (Secs. 2, 5)
•Supreme court - 30 years/five-year resident, admitted to practice.

•District Court - 25 years/three-year resident, admitted to practice.

•Resident of judicial district.

•No mention of other courts.

8. Judicial Selection (Secs. 8,9)
•Judicial Nominating Commissions (no legislative involvement).

•Governor appointment.

•Senate review.

•Unopposed retention election after Three years/then at end of each term.

•Prohibition on partisan involvement.

8. Judicial Selection (Sec. 3)
•Method to be established by statute.

•Prohibition on partisan involvement.
Statutory Method
-Nominating Commissions
-Governor appointment
-Stand for election at first general election following term-retention if unopposed. (Juvenile court does not stand for election - subject to senate review.)

9. Judicial Prohibitions (Sec. 10)
   - Private practice of law.
   - Holding elective nonjudicial offices.
   - Offices in political party.

9. Judicial Prohibitions
   - No similar prohibitions exist in article.

10. Judicial Administration (Sec. 11)
    - Establishes a judicial council.
    - Representatives from each court.
    - Chief justice head of council

10. Judicial Administration (Sec. 7)
    - No similar provision exists.
      -Present judicial council exists by statute.
    - District court has supervisory authority over "inferior" courts.

11. Discipline and Removal of Judges (Sec. 12)
    - Establishes a judicial conduct commission.
    - Standards for discipline.
    - Impeachment still retained.

11. Discipline and Removal of Judges (Secs. 11, 27, 28)
    - General legislative authority to develop standards for removal of judges.
    - Removal-by-address (2/3 vote of each house).
    - Forfeiture by absence.

12. Judicial Salaries (Sec.13)
    - Legislature to provide for compensation.

12. Judicial Salaries (Sec. 20)
    - $3,000 until changed by law.

13. Retirement of Judges (Sec. 14)
    - Legislature to establish standards (deletes "uniform" requirement.)

13. Retirement of Judges (Sec. 28)
    - Legislature to establish uniform standards for retirement.

14. Public Prosecutors (Sec. 15)
    - Legislature to provide for system of public prosecutors.
    - Selected as provided by statute.
    - Admitted to practice law.

14. Public Prosecutors (Sec. 10)
    - Each county to have attorney.
    - Elected to four-year term.
    - No qualifications.

NOTE -- The proposed CRC revision deleted the following sections:

Sec. 8 - Justice of the Peace Jurisdiction
Sec. 11 - Removal by Address
Sec. 13 - Disqualification of Judges
Sec. 14 - Supreme Court Clerk
Sec. 15 - Appointment of Relatives to Office
Sec. 18 - Style of Process
Sec. 19 - Form of Civil Action

SECTION-BY-SECTION ANALYSIS

Section 1 - Vesting of Judicial Powers

Present Language

Section 1. The Judicial power of the State shall be vested in the Senate sitting as a court of impeachment, in a supreme court, in district courts, in justice of the peace, and such other courts inferior to the Supreme Court as may be established by law.

Sec. 17. The Supreme and District Courts shall be courts of record, and each shall have a seal.

Proposed Language

Section 1. 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 or record. Courts not of record may also be established by statute.

Explanation

This section vests the judicial power of the state in the Utah Supreme Court, establishes a trial court of general jurisdiction known as the district court, and deletes specific reference to justice of the peace courts. Other courts of limited jurisdiction, such as the juvenile court and the circuit court, are also not mentioned specifically. Courts other than the supreme court and district court would be established by the legislature. The proposed article specifically allows for the creation of courts not of record such as justice of the peace courts. Courts not of record are those courts which do not develop appealable records. The proposal also deletes the reference to the senate sitting as a court of impeachment.

Rationale

This provision establishes the supreme court and the general jurisdiction trial court (district court) as the constitutional foundation of the court system. The legislature is empowered to establish additional courts as needed. Most constitutional scholars feel that specific delineation of courts is unnecessary.

The provision does contain a reference to the trial court of general jurisdiction, however, since that court is fundamental to a judicial system. The reference to the senate sitting as a court of impeachment is removed because impeachment is actually a legislative function. The Legislative Article (Article VI, Sec. 18) contains a similar provision regarding the role of the senate in impeachment cases. As such, the removal of this provision from the Judicial Article will have no impact on the impeachment process.

Sec. 2 - The Supreme Court

Present Language

Sec. 2. The Supreme Court shall consist of five judges, which number may be increased or decreased by the legislature, but no alternation or increase shall have the effect of removing a judge from office. A majority of the judges constituting the court shall be necessary to form a quorum or render a decision. If a justice of the Supreme Court shall be disqualified from sitting in a cause before said court, the remaining judges shall call a district judge to sit with them on the hearing of such cause. Every judge of the Supreme Court shall be at least thirty years of age, an active member of the bar, in good standing, learned in the law, and a resident of the state of Utah for the five years next preceding his selection. The judge having the shortest term to serve, not holding his office by selection to fill a vacancy before expiration of a regular term, shall be the chief justice, and shall preside at all terms of the Supreme Court, and in case of his absence, the judge, having in like manner, the next shortest term, shall preside in his stead.

Proposed Language

Sec. 2. The supreme court shall be the highest court and shall consist of at least five justices. The number of justices may be changed by statute, but no change shall have the effect of removing a justice from office. A chief justice shall be selected from among the justices of the supreme court as provided by statute. The chief justice may resign as chief justice without resigning from the supreme court. The supreme court by rule may sit and render final judgment either en banc or in divisions. The court shall not declare any law unconstitutional under this constitution or the Constitution of the United States, except on the concurrence of a majority of all justices of the supreme court. If a justice of the supreme court is disqualified or otherwise unable to participate in a cause before the court, the chief justice, or in the event the chief justice is disqualified or unable to participate, the remaining justices, shall call an active judge from an appellate court or the district court to participate in the cause.

Explanation

This section retains the provision setting the number of supreme court justices at five, but allows the legislature the authority to add additional justices. The proposed language also allows the court to sit in divisions to render decisions not

involving constitutional issues. Otherwise, a full majority is still necessary to render a decision. Also, in case of a justice's disqualification only an active judge from a lower court may be called in to sit with the supreme court.

The proposed article also provides for the selection of a chief justice in a manner provided by statute. The current procedure provides for the selection of the chief justice according to length of service on the bench. The chief justice may also resign as chief justice without resigning from the supreme court.

Qualifications for supreme court justice have been moved to Sec. 7 of the proposed revision.

Rationale

By providing the legislature with the authority to expand the supreme court, the revision gives the legislature an additional option to deal with increasing caseloads. Likewise, allowing the court to sit in divisions is another tool for caseload management. The new selection process for the chief justice is recommended because the chief justice will have more administrative responsibilities under the new Judicial Article. A change in the process for selecting the chief justice will permit a justice with appropriate administrative skills to be selected for the position. The commission felt the legislature should be free to determine the method for selecting the chief justice.

Finally, the commission felt that only active judges should be used to fill temporary vacancies on the supreme court. The present constitution states that a district court judge may be used. Historically, however, retired supreme court justices have also been called to fill temporary vacancies. The proposed revision empowers the supreme court to establish rules for the use of retired judges for proceedings in lower courts (Sec. 4). However, the commission felt that only active judges should be so employed for the supreme court. The commission recommendation follows federal court procedures where retired judges are used for lower court proceedings, but not for the supreme court.

Sec. 3 - Jurisdiction of the Supreme Court

Present Language

> Sec. 4. The Supreme Court shall have original jurisdiction to issue writs of mandamus, certiorari, prohibition, quo warranto and habeas corpus. Each of the justices shall have power to issue writs of habeas corpus, to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any district court or judge thereof of in the State. In other cases the Supreme Court shall have appellate jurisdiction only, and power to issue writs necessary and proper for the exercise of that jurisdiction. The Supreme Court shall hold at least three terms every year and shall sit at the capital of the State.

Proposed Language

Sec. 3. The supreme court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The supreme court shall have appellate jurisdiction over all other matters to be exercised as provided by statute and power to issue all writs and orders necessary for the exercise of the supreme court's jurisdiction or the complete determination of any cause.

Explanation

The proposed article outlines the jurisdiction of the supreme court. The revision gives the court the original jurisdiction to issue all extraordinary writs and to answer questions of state law in federal courts. The supreme court is vested with appellate jurisdiction over all other matters. However, the legislature is empowered to determine how that jurisdiction will actually be exercised. The court is also given the necessary authority to issue writs and orders for the full exercise of its appellate jurisdiction. The provision deletes reference to the terms of the court as well as the requirement that the court sit at the capital of the state.

Rationale

This section, in outlining the appellate and original jurisdiction of the supreme court, grants broad authority to the court. The court's original jurisdiction has been expanded to include dealing with questions of state law when used in federal courts. The original jurisdiction to issue extraordinary writs has been retained, but is written in more general language than that found in the present provision. The court retains general appellate jurisdiction over all matters. However, the method of exercising that jurisdiction is left to statute. The commission felt that the court should not be compelled to actually hear all matters, but rather, options such as an intermediate appellate court should be available. Vesting the authority with the legislature established maximum flexibility to deal with caseload management. The commission deleted the reference to court terms and location of sittings on the basis that these items are better handled by court rule or statute.

Sec. 4 - Supreme Court Rulemaking

Present Language

There is no language in the present constitution providing the Supreme Court with rulemaking authority. Any present rulemaking authority exists pursuant to statute or by inference regarding the traditional role of the judiciary.

Sec. 5. . . . Any cause in the district court may be tried by a judge pro tempore, who must be a member of the bar sworn to try the cause, and agreed upon by the parties, or their attorneys of record. . . .

Proposed Language

Sec. 4. 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. 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.

Explanation

This section gives the supreme court general authority to establish rules of procedure and evidence for the state's various courts. The court is also charged with responsibility for managing the appellate process in those courts. The rulemaking authority also includes a specific responsibility to govern the practice of law, including the admission to practice and the discipline of attorneys. Lastly, the section provides for rulemaking to govern the use of retired judges and judges pro tempore and sets basic qualifications for judges pro tempore.

Rationale

Members of the commission felt that the rulemaking authority of the supreme court should be specifically included in the constitution. This power is considered essential to the maintaining an independent judiciary. The revision also provides the supreme court with clear constitutional authority for the governance of the practice of law. The commission felt that the practice of law is an inherent function of the judiciary. Lastly, the commission decided that the supreme court should be charged with managing the appellate process of the courts since it historically has assumed that role. The provision regarding judges pro tempore is taken essentially from Sec. 5 of the present Judicial Article. The court is granted broad authority to employ retired judges, subject to the limitation outlined in Sec. 2.

Sec. 5 - Jurisdiction of the District Court and Other Courts

Present Language

Sec. 5. . . . All civil and criminal business arising in any county must be tried in such county, unless a change of venue be taken, in such areas as may be provided by law. . . .

Sec. 7. The District Court shall have original jurisdiction in all matters civil and criminal, not excepted in this Constitution, and not prohibited by law; appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. The District Court or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and other writs necessary to carry into effect their orders, judgments and decrees, and to give them a general control over inferior courts and tribunals within their respective jurisdictions.

Sec. 8. . . . The jurisdiction of justices of the peace shall be as now provided by law, but the legislature may restrict the same.

Sec. 9. From all final judgments of the District Courts, there shall be a right of appeal to the Supreme Court. The appeal shall be upon the record made in the court below, and under such regulations as may be provided by law. In equity case the appeal may be on questions of both law and fact; in cases at law the appeal shall be on questions of law alone. Appeals shall also lie from the final orders and decrees of the Court in the administration of decedent estates, and in cases of guardianship, as shall be provided by law. Appeals shall also lie from the final judgments of justices of the peace in civil and criminal cases to the District Courts on the questions of law and fact, with such limitations and restrictions as shall be provided by law; and the decision of the District Courts on such appeals shall be final, except in cases involving the validity or constitutionality of a statute.

Proposed Language

Sec. 5. 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.

Explanation

The proposed article deletes all reference to the jurisdiction of courts other than the district court. The district court is vested with general trial jurisdiction except as may be limited by statute or the constitution. It also gives the court power to issue all extraordinary writs, and permits appellate jurisdiction of the court to be established by statute. The jurisdiction of all other courts is established by statute. Finally, the proposal establishes a right of appeal to an appropriate appellate court.

Rationale

A trial court of general jurisdiction is considered essential to a judicial system. As such, the district court is vested with that authority. However, there are instances where limited authority for specialized matters may better be vested specialized trial courts. This section provides for those options. The district court is also given the authority to issue all extraordinary writs. The jurisdiction of other courts is to be established by statute. The commission felt that the authority to establish the jurisdiction of most state courts properly lies with the legislature.

The proposed article also removes the provision mandating an appeal of all final judgments of the district courts to the supreme court. This proposal would instead provide for a right of appeal to any appropriate appellate court. The actual

determination of how this appeal would be discharged would be determined by statute or court rule. Again, this language was chosen to provide flexibility in determining how the appellate process should be established. It should be noted that the guaranteed right of appeal does not apply to matters raised originally with the supreme court. The court's original jurisdiction is very limited, however, and the commission felt that the court should not be mandated to hear appeals from its own original decisions.

In addition to removing the supreme court's mandated appeals language, the proposal also removes language requiring "de novo" appeals from the justice of the peace courts to the district court.

Sec. 6 - Judicial Districts and Number of Judges

Present Language

> Sec. 5. The state shall be divided into seven judicial districts, for each of which, at least one judge shall be selected as hereinbefore provided. Until otherwise provided by law, a district court at the county seat of each county shall be held at least four times a year. . . .
>
> Sec. 6. The Legislature may change the limits of any judicial district, or increase or decrease the number of districts, or the judges thereof. No alteration or increase shall have the effect of removing a judge from office. In every additional district established, a judge or judges shall be selected as provided in section 3 of this article.
>
> Sec. 8. The Legislature shall determine the number of justices of the peace to be elected, and shall fix by law their powers, duties and compensation. . . .
>
> Sec. 16. This section specifically outlines the present judicial districts for the district court. The most recent alignment of the seven judicial districts became effective July 1, 1982.

Proposed Language

> Sec. 6. 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. The number of judges of courts not of record shall be provided by statute.

Explanation

This section removes the specific limitation of seven judicial districts for the district court from the constitution. Instead, the provision allows the legislature to

establish appropriate judicial districts. This section also empowers the legislature to determine the number of judges, but prevents political manipulation of judges by preventing any change in number from removing a judge from office during the judge's term. Otherwise, geographic determination of judicial districts and number of judges is to be established by statute.

Rationale

This section is basically unchanged from the present constitutional language. The recommended change does, however, remove the specific enumeration of judicial districts. In keeping with the policy of making constitutional language more general, the specific duties, powers, and qualifications of judges were removed from this section and included in broader language in Sections 7, 8, and 9 of the proposed article.

Sec. 7 - Judicial Qualifications

Present Language

> Sec. 2. . . . Every judge of the Supreme Court shall be at least thirty years of age, an active member of the bar, in good standing, learned in the law, and a resident of the state of Utah for the five years next preceding his selection. . .
>
> Sec. 5. . . . Each judge of a district court shall be at least twenty-five years of age, an active member of the bar in good standing, learned in the law, a resident of the state of Utah three years next preceding his selection, and shall reside in the district for which he shall be selected. . . .

Proposed Language

> Sec. 7. 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.

Explanation

The proposed article indicates that judges of all courts of record must be citizens of the United States, Utah residents (five years for the supreme court, three for other courts) and admitted to practice law in Utah. The present article sets specific age and residency requirements for certain courts, but they are scattered among several sections in the Judicial Article. In addition, the proposed language contains a more general residency requirement than that

found in the present article. Specifically, the provision states that if courts are divided into districts, judges must reside in the district for which they are selected.

Rationale

The commission agreed with those experts who indicated that specific requirements beyond those of professional competence, age, United States citizenship and basic residency should not be included in the constitution. By placing specific qualifications in the constitution, it is intended that the legislature be precluded from establishing additional requirements.

Sec. 8 - Judicial Selection

Present Language

Sec. 3. Judges of the supreme court and district courts shall be selected for such terms and in such manner as shall be provided by law, provided, however, that selection shall be based solely upon consideration of fitness for office without regard to any partisan political considerations and free from influence of any person whomsoever, and provided further that the method of electing such judges in effect when this amendment is adopted shall be followed until changed by law.

Proposed Language

Sec. 8. When a vacancy occurs in a court of record, the governor shall fill the vacancy by appointment from a list of at least three nominees certified to the governor by the judicial nominating commission having authority over the vacancy. The governor shall fill the vacancy within 30 days after receiving the list of nominees. If the governor fails to fill the vacancy within the time prescribed, the chief justice of the supreme court shall within 20 days make the appointment from the list of nominees. The legislature by statute shall provide for the nominating commissions' composition and procedures. No member of the legislature may serve as a member of, nor may the legislature appoint members to any judicial nominating commission. The senate shall consider and render a decision on each judicial appointment within 30 days of the date of appointment. If necessary, the senate shall convene itself in extraordinary session for the purpose of considering judicial appointments. The appointment shall be effective, unless rejected by a majority vote of all members of the senate. If the senate rejects the appointment, the office shall be considered vacant and a new nominating process shall commence. Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political considerations.

Sec. 9. Each judicial appointee of 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, judges of those courts shall stand for retention election only in the geographic divisions to which they are selected. Judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by statute.

Explanation

The proposed article specifically provides for the method of selecting judges for all courts of record. The procedure includes the following components:

1. Judicial Nominating Commissions - Legislative participation is strictly prohibited. The nominating commissions would recommend three names to the governor.

2. Gubernatorial appointment - The Governor would make an appointment from the nominating commission recommendations.

3. Review by the senate - A majority vote would be necessary to reject a nominee. In addition, the senate could call itself into session to review judicial appointments.

4. Uncontested retention elections - The initial retention election would be held at the first general election three years after appointment. Subsequent elections would be held at the conclusion of each term of office.

Under the proposal, the term of office for supreme court justices is ten years and the terms for judges of other courts of record judges is six years. These terms are the same as those found in the present constitution. Partisan considerations are prohibited as a basis of selection. Also included is a reference stating that if geographic divisions are created for a court, judges will stand for retention election only in their respective division. This position reaffirms existing practice.

The present constitution provides for the selection process to be set entirely by statute. However, direct partisan involvement is prohibited. The scope of legislative authority, however, has been limited through recent court decisions.

Rationale

One of the principal objectives of the Constitutional Revision Commission's study of the Judicial Article was to provide a mechanism to attract and retain quality individuals to serve in the judiciary. Due to the importance of this issue, the Constitutional Revision Commission departed from its usual policy of legislative flexibility and proposed a specific selection process to be included in the constitution.

The Constitutional Revision Commission carefully reviewed the experiences and constitutions of other states, as well as the United States Constitution. The selection process proposed by the Constitutional Revision Commission is based on the following conclusions:

- The judicial selection process must balance the interests of the legislature, the governor, the courts, and the public.

- Absent actionable behavior, selection to the bench contemplates a permanent position. As such, judicial terms are longer than terms for other political offices. (Note: The United States Constitution provides for the lifetime appointment of all federal judges.)

- Periodic public review is necessary to evaluate the performance of sitting judges. However, that review should focus on the record of the judge and not become a contest between personalities or parties.

- The selection process must balance the public's right to review with the protection for the judiciary to render unpopular but legally correct decisions.

The commission feels that its proposal grants a meaningful, but not excessive, role to both the legislature and the governor. Likewise, the public's right to periodically evaluate judges is preserved. Lastly, the necessary protections are maintained to preserve an independent judiciary.

Sec. 10 - Conflict of Interest

Present Language

There is no language in the present constitution establishing guidelines or restrictions in the area of conflict of interest. Such restrictions, if any, are provided by statute.

Proposed Language

Sec. 10. Supreme court justices, district court judges, and judges of all other courts of record while holding office may not practice law, hold any elective non-judicial public office or hold office in a political party.

Explanation

The private practice of law, holding elected public office, and the holding office in a political party are prohibited for judges by the proposed article.

Rationale

Most members of the judiciary expressed concern over the absence of such a provision in the present constitution. For this reason, the commission inserted this provision. It is similar to comparable language found in other state constitutions.

Sec. 11 - Court Administration

Present Language

There is no present language in the constitution dealing directly with administration of the judiciary. Sec. 7 does contain language authorizing the district court to exercise supervisory authority over other "inferior courts".

Sec. 7. . . . The District Courts or any judge thereof, shall have power to issue. . . writs necessary to carry into effect their orders, judgments and decrees, and to give them a general control over inferior courts and tribunals within their respective jurisdictions.

Sec. 14. The Supreme Court shall appoint a clerk, and a reporter of its decisions, who shall hold their offices during the pleasure of the Court. Until otherwise provided, Court Clerks shall be ex officio clerks of the District Courts in and for their respective counties, and shall perform such other duties as may be provided by law.

Proposed Language

Sec. 11. A Judicial Council is established, which shall adopt rules for the administration of the courts of the state. The Judicial Council shall consist of the chief justice of the supreme court, as presiding officer, and such 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. 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.

Explanation

The proposed article specifically establishes a Judicial Council to be composed of representatives from each level of the judiciary. The council would act as the administrative body for the court with the chief justice as presiding officer.

Rationale

This section addresses the issue of whether or not there should be a central administrative authority for the entire judicial branch of government. The commission determined that centralized authority would create a more efficient and effective judicial administration. The proposal, therefore, establishes a single judicial governing body, the Judicial Council, to represent all courts. The inclusion of a representative from every court level would insure the participation of all courts in the administrative process. In addition, placing the chief justice at the head of the council focuses administrative and presiding authority in the senior judicial officer of the state. The commission felt that the legislature should determine the composition of the council (with limited guidelines) to ensure maximum flexibility in developing an administrative body for the judiciary.

Some questions arose over the administrative authority of the judicial council and the rulemaking authority of the supreme court. The commission felt that the primary role of the council lies developing basic administrative policies including consolidated budgeting procedures, personnel systems, relations with other governmental entities, and the management of judicial resources. The role of the supreme court is to establish the actual adjudication procedures used by the courts. In addition, the supreme court is specifically charged with the management of the appeals process.

Sec. 12 - Judicial Conduct

Present Language

Sec. 11. Judges may be removed from office by the concurrent vote of both houses of the Legislature, each voting separately; but two-thirds of the members to which each house may be entitled must concur in such vote. The vote shall be determined by yeas and nays, and the names of the members voting for or against a judge, together with the cause or causes of removal, shall be entered on the journal of each house. The judge against whom the house may be about to proceed shall receive notice thereof, accompanied with a copy of the cause alleged for his removal, at least ten days before the day on which either house of the Legislature shall act thereon.

Sec. 27. Any judicial officer who shall absent himself from the State of district for more than ninety consecutive days, shall be deemed to have forfeited his office: Provided, That in case of extreme necessity, the Governor may extend the leave of absence to such time as the necessity therefor shall exist.

Sec. 28. The Legislature may provide uniform standards for mandatory retirement and for removal of judges from office. Legislation implementing this section shall be applicable only to conduct occurring subsequent to the effective date of such legislation. Any determination requiring the retirement or removal of a judge from office shall be subject to review, as to both law and facts, by the Supreme Court.

Proposed Language

Sec. 12. A Judicial Conduct Commission is established, which shall investigate complaints against any justice or judge and conduct confidential hearings concerning the removal or involuntary retirement of a justice or judge. The legislature by statute shall provide for the composition and procedures of the Judicial Conduct Commission. On recommendation of the Judicial Conduct Commission, the supreme court, after a hearing, may censure, remove, or retire a justice or judge for action which constitutes willful misconduct in office, willful and persistent failure to perform judicial duties, disability that seriously interferes with the performance of judicial duties, or conduct prejudicial to the administration of justice which brings a judicial office into disrepute. The power of removal conferred by this section in alternative to the power of impeachment.

Explanation

Under this section, a Judicial Conduct Commission is established to review complaints against judges and to conduct confidential hearings. The revision provides the Judicial Conduct Commission with the authority to make recommendations to the supreme court concerning discipline or the removal of judges. The section also outlines the parameters of judicial misconduct and provides that the composition and procedures of the commission shall be established by the legislature. Other means of disciplining or removing judges have been deleted, including the "removal by address" power of the legislature (Sec. 11), forfeiture of office by absence (Sec. 27), and other statutory devices (Sec. 28). The provision further provides that the method of discipline and removal used by the commission shall be alternative to the power of impeachment which is provided in the Legislative Article.

Rationale

The commission initially felt that specific standards of judicial conduct would be best left to legislative determination. However, as alternative methods of judicial discipline were reviewed, the commission discovered that most of these methods were either vague regarding grounds for removal, or lacked a fundamental regard for due process.

The commission concluded that the establishment of the Judicial Conduct Commission was the best system and important enough to warrant constitutional inclusion.

Sec. 13 - Judicial Compensation

Present Language

Sec. 12. The Judges of the Supreme and District Courts shall receive at stated times compensation for their services, which shall not be diminished during the terms for which they are selected.

Sec. 20. Until otherwise provided by law, the salaries of supreme and district judges, shall be three thousand dollars per annum, and mileage, payable quarterly out of the State treasury.

Proposed Language

Sec. 13. The legislature shall provide for the compensation for all justices and judges. The salaries of justices and judges shall not be diminished during their terms of office.

Explanation

The proposed article provides for judicial compensation by statute and prohibits diminution of judicial salaries during their terms of office.

Rationale

Specific dollar amounts in the constitution were deleted because they unduly restrict constitutional flexibility. In addition, the present language concerning diminution of judicial salaries was retained to prevent political manipulation or retribution on the part of the legislature and to help insure judicial independence.

Sec. 14 - Retirement and Removal From Office

Present Language

> Sec. 28. The Legislature may provide uniform standards for mandatory retirement and for removal of judges from office. Legislation implementing this section shall be applicable only to conduct occurring subsequent to the effective date of such legislation. Any determination requiring the retirement or removal of a judge from office shall be subject to review, as to both law and facts, by the Supreme Court.
>
> This section is additional to, and cumulative with, the methods of removal of justices and judges provided in Sections 11 and 27 of this article.

Proposed Language

> Sec. 14. The legislature may provide standards for the mandatory retirement of justices and judges from office.

Explanation

The proposed article permits the legislature to provide standards for the mandatory retirement or judges. There is little change from the present language as it relates to judicial retirement. However, the term "uniform" has been deleted. The commission has substituted the Judicial Conduct Commissin (Sec. 12) for the legislative authority regarding judicial removal standards. Supreme court review of removal actions is also included in Sec. 12.

Rationale

The commission saw no need to substantially change this section as it relates to mandatory judicial retirement standards. The commission deleted the term "uniform" because it felt that the legislature should be free to set different retirement standards for the judges of the various courts.

Sec. 15 - County Attorneys

Present Language

> Sec. 10. A county attorney shall be elected by the qualified voters of each county who shall hold his office for a term of four years. The

powers and duties of county attorneys, and such other attorneys for the state as the legislature may provide, shall be prescribed by law. In all cases where the attorney for any county, or for the state, fails or refuses to attend and prosecute according to law, the court shall have power to appoint an attorney pro tempore.

Proposed Language

Sec. 15. 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 selected 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.

Explanation

The section deletes specific reference to county attorneys and establishes a system of public prosecutors. The prosecutors would be selected as provided by statute. A requirement that public prosecutors be qualified to practice law is also included. The section retains the authority to appoint prosecutors pro tempore, but clarifies that the supreme court is to be the appointing authority.

Rationale

The commission felt that requiring each county to elect a county attorney was unduly restrictive and precluded the establishment of other prosecutorial structures such as district attorneys. The proposal requires the legislature to establish a system of professionally competent public prosecutors. The prosecutors would be selected as provided by statute. The commission felt that since there are legitimate reasons for requiring elected as well as appointed prosecutors, the legislature should be free to set public policy in this area.

Miscellaneous Provisions

The following sections of Article VIII were considered unnecessary or outdated by the commission and were deleted from the proposal. In some cases the essence of the provision could be incorporated elsewhere in the article, or could be handled either by court rulemaking or statute.

1. Disqualification of Judges, Nepotism

Sec. 13. Except by consent of all the parties, no judge of the supreme or inferior courts shall preside in the trial of any cause where either of the parties shall be connected with him by affinity or consanguinity within the degree of first cousin, or in which he may have been of counsel, or in the trial of which he may be presided in any inferior court.

Sec. 15. No person related to any judge of any court by affinity or consanguinity with the degree of first cousin, shall be appointed by such court or judge to, or employed by such court or judge in any office or duty in any court of which such judge may be a member.

Rationale

The essence of these provisions could be more appropriately retained by statute or court rule.

2. Style of Process--"The State of Utah"

Sec. 18. The style of all process shall be, "The State of Utah," and all prosecutions shall be conducted in the name and by the authority of the same.

Rationale

This provision is a procedural requirement better stated by court rule.

3. Forms of Civil Action

Sec. 19. There shall be but one form of civil action, and law and equity may be administered in the same action.

Rationale

Although there are historical distinctions surrounding this provision, its importance is largely symbolic and could be stated by court rule.

4. Judges to be Conservators of Peace

Sec. 21. Judges of the Supreme Court, District Courts, and justices of the peace, shall be conservators of the peace, and may hold preliminary examinations in cases of felony.

Rationale

The language of this section is outdated and inconsistent with the rest of the proposal.

5. Judges to Report Defects in Law

Sec. 22. District Judges may, at any time, report defects and omissions in the law to the Supreme Court, and the Supreme Court, on or before the

first day of December of each year, shall report in writing to the Governor any seeming defect or omission in the law.

Rationale

This provision is outdated and and could be stated by court rule.

6. Publication of Decision, Supreme Court Decisions to be in Writing

Sec. 23. The legislature may provide for the publication of decisions and opinions of the Supreme Court, but all decisions shall be free to publishers.

Rationale

This provision is outdated and not needed in the constitution. The requirements could be established by statute.

7. Effect of Extending Judges' Terms

Sec. 24. The terms of office of Supreme and District Judges may be extended by law, but such extension shall not affect the terms for which any judge was elected.

Rationale

This provision was considered unnecessary.

8. Court to Prepare Syllabus

Sec. 26. It shall be the duty of the court to prepare a syllabus of all the points adjudicated in each case, which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

Rationale

This requirement was considered unnecessary for inclusion in the constitution and could be stated by statute.

Section 2 - Transition Provision

Section 2. This amendment shall not shorten the term of office or abolish the office of any justice of the supreme court, any judge of the district court, or judge of any other court who is holding office of the effective date of this amendment. Justices and judges holding office on the effective date of this amendment shall hold their respective offices for

the terms for which elected or appointed and at the completion of their current terms shall be considered incumbent officeholders. Existing statutes and rules on the effective date of this amendment, not inconsistent with it, shall continue in force and effect until repealed or changed by statute.

Rationale

This section is included as part of the amendment resolution, but is not part of the actual Judicial Article. The section is intended to ensure a smooth transition after the approval of the amendment and to protect sitting judges. Specifically, judges holding office on the effective date of the amendment are considered incumbent officeholders and therefore not subject to reappointment. At the completion of their term, they would stand for a retention election as provided in the Judicial Article.

Appendix D

Provisions of Law

(1) 1870 Utah Terr. Laws tit. II, § 21
(2) Utah Code § 78B-3-309
(3) Utah R. Civ. P. 42
(4) Utah Const. art VIII, § 5

ACTS,

RESOLUTIONS AND MEMORIALS,

PASSED AT THE SEVERAL

ANNUAL SESSIONS,

OF THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF UTAH,

FROM 1851 TO 1870 INCLUSIVE,

TO WHICH IS PREFIXED

THE DECLARATION OF INDEPENDENCE, THE ARTICLES OF THE CONFEDERATION, THE ORDINANCE OF 1787, THE CONSTITUTION OF THE UNITED STATES, AND AMENDMENTS THERETO, THE NATURALIZATION LAWS, AND THE ORGANIC ACT OF UTAH, AND WITH WHICH IS EMBODIED A NUMBER OF LAW FORMS.

COMPILED AND INDEXED BY VIRTUE OF AN ACT APPROVED FEBRUARY 18, 1870.

SALT LAKE CITY, UTAH:
JOSEPH BULL, PUBLIC PRINTER,
1870.

PRINTED AT THE DESERET NEWS BOOK AND JOB PRINTING ESTABLISHMENT.

of interest, the action may be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action. After verdict shall have been rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law.

SEC. 17. The Court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the Court shall order them to be brought in, and thereupon the party directed by the Court shall serve a copy of the summons in the action, and the order aforesaid in like manner of service of the original summons, upon each of the parties ordered to be brought in, who shall have ten days, or such time as the Court may order, after service in which to appear and plead; and in case such party fail to appear and plead within the time aforesaid, the Court may cause his default to be entered, and proceed as in other cases of default, or may make such other order as the condition of the action and justice shall require.

Controversy, where court to determine.

TITLE II.

Of the Place of Trial of Civil Actions.

SEC. 18. Actions for the following causes shall be tried in the County in which the subject of the action, or some part thereof, is situated, subject to the power of the Court to change the place of trial, as provided in this Act: First—for the recovery of real property, or of an estate, or interest therein, or for the determination in any form of such right or interest, or for injuries to real property. Second—for the partition of real property. Third—For the foreclosure of a mortgage of real property; *provided*, that where such real property is situate partly in one County and partly in another, the plaintiff may select either of said Counties, and the County so selected shall be the proper County for the trial of any or all of such actions as are mentioned in the First, Second and Third subdivisions of this Section.

Where subject matter is situated.

Proviso.

SEC. 19. Actions for the following causes shall be tried in the County where the cause, or some part thereof, arose, subject to the like power of the Court to change the place of trial: First—For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offence committed on a lake, river or other stream of water, situated in two or more Counties, the action may be brought in any County bordering on such lake, river or stream, and opposite to the place where the offence was committed. Second—Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his

Where cause of action arose.

office, or against a person who, by his command or in his aid, does anything touching the duties of such officer.

Where parties reside.

SEC. 20. In all other cases, the action shall be tried in the County where the cause of action originated, or in which the defendants, or any one of them, may reside at the commencement of the action: or, if none of the defendants reside in the Territory, or if residing in the Territory, the County in which they so reside be unknown to the plaintiff, the same may be tried in any County which the plaintiff may designate in his complaint; and if any defendant, or defendants, may be about to depart from the Territory, such action may be tried in any County where either of the parties may reside, or service be had, subject, however, to the power of the Court to change the place of trial, as provided in this Act.

Changing place of trial.

SEC. 21. If the County designated for that purpose in the complaint be not the proper County, the action may, notwithstanding, be tried therein, unless the defendant, before the time for answering expire, demand in writing that the trial be had in the proper County, and the place of trial be thereupon changed by consent of parties, or by order of the Court, as is provided in this Section. The Court may, on motion, change the place of trial in the following cases: First—When the County designated in the complaint is not the proper County. Second—When there is reason to believe that an impartial trial cannot be had therein. Third—When convenience of witnessess and the ends of justice would be promoted by the change. Fourth—When from any cause the Judge is disqualified from acting in the case. When the place of trial is changed, all other proceedings shall be had in the County to which the place of trial is changed; unless otherwise provided by consent of the parties in writing duly filed, or by order of the Court; and the papers shall be filed, or transferred accordingly.

TITLE III.

Of the Manner of Commencing Civil Actions.

Civil actions, how commenced in the District Court.

SEC. 22. Civil action in the courts shall be commenced by the filing of a complaint with the Clerk of the Court, and the issuance of a summons thereon; *provided*, that after the filing of the complaint a defendant in the action may appear, answer or demur, whether the summons has been issued or not, and such appearance, answer or demurrer, shall be deemed a waiver of the summons.

Complaint, how indorsed.

SEC. 23. The Clerk shall endorse on the complaint the day, month and year the same is filed, and at any time within one year after filing of the same, the plaintiff may cause to be issued a summons thereon. The summons shall be issued by the Clerk under the seal of the Court.

Form of Summons.

SEC. 24. The summons shall state the parties to the action, the Court in which it is brought, the County in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint, within the time mentioned in the next Section,

78B-3-309 Grounds.

The court may, on motion, change the place of trial in the following cases:

(1) when the county designated in the complaint is not the proper county;

(2) when there is reason to believe that an impartial trial cannot be had in the county, city, or precinct designated in the complaint;

(3) when the convenience of witnesses and the ends of justice would be promoted by the change;

(4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county.

Renumbered and Amended by Chapter 3, 2008 General Session

Rule 42. Consolidation; separate trials.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(a)(1) A motion to consolidate cases shall be heard by the judge assigned to the first case filed. Notice of a motion to consolidate cases shall be given to all parties in each case. The order denying or granting the motion shall be filed in each case.

(a)(2) If a motion to consolidate is granted, the case number of the first case filed shall be used for all subsequent papers and the case shall be heard by the judge assigned to the first case. The presiding judge may assign the case to another judge for good cause.

(b) Separate trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross claims, counterclaims, third party claims, or issues.

Article VIII, Section 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.

Appendix E

List of Parties and Counsel

List of Remaining Defendants

Party	Counsel
Purdue Pharma LP Purdue Pharma Inc. The Purdue Frederick Company Inc.	Elisabeth M. McOmber (emcomber@swlaw.com) SNELL & WILMER LLP
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