

# Agenda

## Policy and Planning Committee

March 4, 2016

12:00 – 1:30 p.m.

Executive Dining Room  
Matheson Courthouse  
450 South State Street  
Salt Lake City, Utah 84114

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Reed Parkin
12:05	Rules for Final Action.	Action	Tab 2	Alison Adams-Perlac
12:10	Rule 11-201. Senior judges.	Action	Tab 3	Alison Adams-Perlac
12:20	Rule 3-108. Judicial assistance.	Action	Tab 4	Alison Adams-Perlac
1:25	Other Business			Judge Reed Parkin

**Committee Web Page:** <http://www.utcourts.gov/intranet/committees/policyplan/>

**Meeting Schedule:** Meetings are held in the Matheson Courthouse, Judicial Council Room, from 12:00 to 1:30 unless otherwise stated.

April 1, 2016

May 6, 2016

# Policy and Planning Committee Meeting Executive Summary - Focus Sheet

March 4, 2016

Issue	Scope	Status	Assignments	Notes
<b>Approval of Minutes</b>		Action Vote	Read 2/5/2016 minutes for accuracy and approval.	
<b>Rules for Final Action</b>	Consider rule 1-201 for final action.	Action Vote	Review memo and rule proposal for approval.	Ms. Adams-Perlac will review the proposed rule.  <i>The comment period is closed, and the rule received no public comments.</i>
<b>Rule 11-201. Senior Judges.</b>	Consider amendments to the senior judge rule requiring a judge to be available to take cases, in addition to being a resident of Utah	Action Vote	Review rule proposal be prepared to discuss it.	Ms. Adams-Perlac will review the proposed amendment which requires a senior judge to be available to take cases, in addition to being a resident of Utah (at line 21).  <i>This amendment was proposed by Policy and Planning at its last committee meeting. It will need to be sent to the Supreme Court for its approval before being approved by the Judicial Council, since it is a Supreme Court rule.</i>

**Policy and Planning Committee Meeting  
Executive Summary - Focus Sheet**

**March 4, 2016**

<b>Issue</b>	<b>Scope</b>	<b>Status</b>	<b>Assignments</b>	<b>Notes</b>
<b>Rule 3-108. Judicial assistance.</b>	Consider amendments to the judicial assistance rule.	Action Vote	Review the proposal and be prepared to discuss it.	Ms. Adams-Perlac will review the proposed amendments (at lines 44-69) which conform to the committee's discussion at its last meeting.

Next Meeting: April 1, 2016 at 12:00 p.m.

Tab 1

**Minutes of the Policy and Planning Committee**  
February 5, 2016  
Draft

**Members Present**

Marvin Bagley, Ann Boyden, Mark DeCaria, Mary Noonan, Reed S. Parkin

**Members Excused**

John Lund

**Staff**

Alison Adams-Perlac

**Guests**

None

**(1) Approval of Minutes**

Judge Bagley moved to approve the minutes of the January 8, 2015 meeting. Judge DeCaria seconded the motion and it passed unanimously.

**(2) Rules for Final Action**

Ms. Adams-Perlac reviewed the proposals for rules 3-114, Judicial outreach, and 4-503, Mandatory electronic filing, of the Utah Code of Judicial Administration. She stated that neither rule received any public comments.

Judge DeCaria moved to recommend the proposed rule, as written, to the Council for final action. Judge Boyden seconded the motion and it passed unanimously.

**(3) Rule 4-202.02. Records access.**

Ms. Adams-Perlac discussed the proposal to make jail booking sheets and nonresident violator notices of noncompliance private. She stated that this proposal was recommended by Court Services, since both of these documents have very sensitive information.

She stated that the proposal also deletes language regarding appellate addenda, as there are other rules in the Code of Judicial Administration and the Rules of Appellate Procedure that address access to these records.

The committee discussed booking sheets and the notices. They discussed how these records contain a lot of private information, e.g. addresses, driver's license numbers, etc., and that the public should not be entitled to access. They also discussed how the information on a booking sheet that should be public is included in other public documents, like an Information.

Judge Boyden moved to make both jail booking notices and nonresident violator notices of noncompliance private, and to delete the language at lines 159 through 164 and to recommend the proposals, to the Council for public comment. Judge Bagley seconded the motion and it passed unanimously.

#### **(4) Jury Service Rules.**

Ms. Adams-Perlac explained the proposals to amend the jury service rules. She stated that the amendment to Rule 4-404, Jury selection and service, is in line with a recent statutory change. She stated that the amendment to Rule 4-405, Juror and witness fees and expenses, corrects a reference. She stated that the change to 4-405 does not require public comment, and will be held until the Judicial Council takes final action on 4-404.

Judge DeCaria moved to recommend the 4-404 proposal to the Council for public comment, and the 4-405 proposal to the Council for final action. Judge Parkin seconded the motion and it passed unanimously.

#### **(5) Rule 4-903. Uniform custody evaluations.**

Ms. Adams-Perlac explained the proposed amendments to the rule. She stated that the Standing Committee on Children and Family Law has thoroughly vetted and recommended these changes. She further stated that the committee expressed concerns that when two evaluators each conduct an evaluation, neither of the evaluations is useful, because the evaluators only communicate with one side. The amendments would allow only one evaluation. She also stated that the amendments include more best interest factors for evaluators to consider.

Judge Bagley moved recommend the proposal, as written, to the Council for public comment. Judge Parkin seconded the motion and it passed unanimously.

#### **(6) Rule 3-403. Judicial branch education.**

Ms. Adams-Perlac explained the proposed amendments to the rule. She stated the Judicial Council approved the rule in concept a few months prior, but she moved the concept to the education rule, since it made more sense there.

Judge Boyden suggested changing “completed” on line 49 to “to complete.”

Judge Parkin moved to recommend the proposal, as amended, to the Council for public comment. Judge DeCaria seconded the motion and it passed unanimously.

The committee asked Ms. Adams-Perlac to bring a rule proposal addressing requiring senior judges to be “available” in order to be appointed to next month’s meeting.

#### **(7) Senior Judge Assistance Discussion**

Judge Parkin led the discussion on the senior judge assistance rule. He provided a handout to the committee and stated that the rule should address non-exigent circumstances and exigent circumstances. The committee agreed.

Judge Boyden suggested that the rule state the Judicial Council shall approve the plan, rather than the AOC. She also suggested that senior judges not being appointed for long-term or in-depth assignments is a training issue, rather than something that should go into the rule.

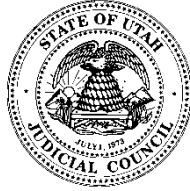
The committee determined that exigent circumstances are unforeseeable and should have a timeline. The committee discussed four weeks.

The committee asked Ms. Adams-Perlac to draft a rule amendment to address its concerns, and to bring the proposal back to the next meeting.

#### **(8) Other Business**

There was no other business and the meeting was adjourned.

Tab 2



# Administrative Office of the Courts

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

## MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

**To:** Policy and Planning Committee  
**From:** Alison Adams-Perlac *Alison Adams-Perlac*  
**Date:** March 2, 2016  
**Re:** Rules for Final Action

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The public comment period for rule 1-201 of the Utah Code of Judicial Administration is now closed. The proposal received no public comments. The rule is now ready for final action by this committee.

**CJA 01-0201. Membership – Election.** Amend. Provides that Council members are not eligible to be voting members of a Board of Judges of a trial court.

If the proposal is recommended by this committee, it will be forwarded to the Judicial Council for final action with a May 1, 2016 effective date.

Encl. CJA 01-0201

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



**Rule 1-201. Membership - Election.**

**Intent:**

To establish the manner of election of Council members as authorized by statute.

To establish the procedure for filling a vacancy on the Council as authorized by statute.

**Applicability:**

This rule shall apply to all elected members of the Council. This rule shall not apply to the Chief Justice of the Supreme Court.

This rule shall apply to the Boards of Judges and the Board of Commissioners of the Utah State Bar.

As used in this rule, unless the context indicates otherwise, "Board" includes the Boards of Judges and the Board of Commissioners of the Utah State Bar.

**Statement of the Rule:**

(1) The composition of the Council, the term of office of elected Council members, and the electorate of elected Council members shall be as prescribed by law. The term of office of all elected Council members shall begin with the October meeting of the Council.

(2) Election of Council members from courts of record shall take place at the annual judicial conference. Election of Council members from courts not of record shall take place at the annual spring training conference of the justice court judges. Election of the representative of the Utah State Bar shall take place at a regularly scheduled meeting of the Board of Commissioners.

(3)(A) If a judicial member of the Council who represents a trial court is unable to complete a term of office, the Board for the court represented by that member shall appoint a judge to serve on the Council until the next judicial conference or the next spring training conference as the case may be. At such conference, the judges shall elect a member to the Council to serve for the unexpired portion of the original term. If a judicial member of the Council who represents an appellate court is unable to complete a term of office, the members of that court shall appoint a judge to serve on the Council until the expiration of the vacated term.

(3)(B) If the representative of the Utah State Bar is unable to complete a term of office, the Board of Commissioners shall elect a member or ex officio member of the Board of Commissioners to serve for the unexpired portion of the original term.

(3)(C) No person shall serve on the Judicial Council for more than two consecutive terms and the remainder of a predecessor's term.

(4) The Boards shall develop procedures for the nomination and election of Council members and shall certify to the Council the names of the members elected. The Boards shall give due regard to geographic representation, security of the election, timely publication of Council vacancies or expired terms, and ease of administration.

(5) When a judicial member of the Council is unable to attend a Council meeting, that member may designate a judge from the same level of court to attend the Council meeting and observe the proceedings. When the representative of the Utah State Bar is unable to attend a Council meeting, that

member may designate a member or ex officio member of the Board of Commissioners to attend the Council meeting and observe the proceedings. The designee shall be provided with a copy of the Council agenda and other meeting materials, and may attend the open and closed sessions of the meeting. The designee may participate in the general discussion of agenda items but may not make motions or vote on Council issues.

(6) Council members or their designated substitutes may be reimbursed for actual and necessary expenses incurred in the execution of their duties as Council members.

(7) Council members shall not be eligible to serve as voting members of ~~a the~~ Boards of Judges of a ~~trial court~~ or to serve as members of the standing committees of the Council. The representative of the Utah State Bar may vote at meetings of the Board of Commissioners if permitted to vote under rules governing the conduct of the Board of Commissioners.

Tab 3

**Rule 11-201. Senior judges.**

**Intent:**

To establish the qualifications, term, authority, appointment and assignment for senior judges and active senior judges.

**Applicability:**

This rule shall apply to judges of courts of record.

The term "judge" includes justices of the Supreme Court.

**Statement of the Rule:**

(1) Qualifications.

(1)(A) Senior Judge. To be a senior judge, a judge shall:

(1)(A)(i) have been retained in the last election for which the judge stood for election;

(1)(A)(ii) have voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, shall have recovered from or shall have accommodated that disability;

(1)(A)(iii) demonstrate appropriate ability and character;

(1)(A)(iv) be admitted to the practice of law in Utah, but shall not practice law; and

(1)(A)(v) be eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

(1)(B) Active Senior Judge. To be an active senior judge, a judge shall:

(1)(B)(i) meet the qualifications of a senior judge;

(1)(B)(ii) be a current resident of Utah, and be available to take cases;

(1)(B)(iii) be physically and mentally able to perform the duties of judicial office;

(1)(B)(iv) maintain familiarity with current statutes, rules and case law;

(1)(B)(v) satisfy the education requirements of an active judge;

(1)(B)(vi) attend the annual judicial conference;

(1)(B)(vii) accept assignments, subject to being called, at least two days per calendar year;

(1)(B)(viii) conform to the Code of Judicial Conduct, the Code of Judicial Administration and rules of the Supreme Court;

(1)(B)(ix) obtain attorney survey results on the final judicial performance evaluation survey conducted prior to termination of service sufficient to have been certified for retention election regardless whether the survey was conducted for self-improvement or certification;

(1)(B)(x) continue to meet the requirements for certification for judicial retention election as those requirements are determined by the Judicial Council to be applicable to active senior judges;

(1)(B)(xi) undergo a performance evaluation every eighteen months following an initial term as an active senior judge; and

(1)(B)(xii) take and subscribe an oath of office to be maintained by the state court administrator.

(2) Disqualifications. To be an active senior judge, a judge:

(2)(A) shall not have been removed from office or involuntarily retired on grounds other than disability;

(2)(B) shall not have been suspended during the judge's final term of office or final six years in office, whichever is greater;

(2)(C) shall not have resigned from office as a result of negotiations with the Judicial Conduct Commission or while a complaint against the applicant was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause; and

(2)(D) shall not have been subject to any order of discipline for conduct as a senior judge.

(3) Term of Office.

(3)(A) The initial term of office of a senior judge is until December 31 of the second year following appointment. The initial term of office of an active senior judge less than age 75 years is until December 31 of the second year following appointment or until December 31 of the year in which the judge reaches age 75, whichever is shorter. The initial term of office of an active senior judge age 75 years or more is until December 31 of the year following appointment.

(3)(B) A subsequent term of office of a senior judge is for three years. A subsequent term of office of an active senior judge is three years or until December 31 of the year in which the judge reaches age 75, whichever is shorter. The subsequent term of office of an active senior judge age 75 years or more is for one year.

(3)(C) All subsequent appointments begin on January 1. The Supreme Court may withdraw an appointment with or without cause.

(3)(D) The term of office of senior judges and active senior judges in office on November 1, 2005 shall continue until December 31 of the year in which their terms would have expired under the former rule.

(4) Authority. A senior judge may solemnize marriages. In addition to the authority of a senior judge, an active senior judge, during an assignment, has all the authority of the office of a judge of the court to which the assignment is made.

(5) Application and Appointment.

(5)(A) To be appointed a senior judge or active senior judge a judge shall apply to the Judicial Council and submit relevant information as requested by the Judicial Council.

(5)(B) The applicant shall:

(5)(B)(i) provide the Judicial Council with the record of all orders of discipline entered by the Supreme Court; and

(5)(B)(ii) declare whether at the time of the application there is any complaint against the applicant pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.

74 (5)(C) The Judicial Council may apply to the judicial performance evaluation information the same  
75 standards and discretion provided for in Rule 3-111.05. After considering all information the Judicial  
76 Council may certify to the Supreme Court that the applicant meets the qualifications of a senior judge or  
77 active senior judge and the Chief Justice may appoint the judge as a senior judge or active senior judge.  
78 Judges who declined, under former Rule 3-111, to participate in an attorney survey in anticipation of  
79 retirement may use the results of an earlier survey to satisfy Subsection (1)(B)(ix).

80 (6) Assignment.

81 (6)(A) With the consent of the active senior judge, the presiding judge may assign an active  
82 senior judge to a case or for a specified period of time. Cumulative assignments under this subsection  
83 shall not exceed 60 days per calendar year except as necessary to complete an assigned case.

84 (6)(B) In extraordinary circumstances and with the consent of the active senior judge, the chief  
85 justice may assign an active senior judge to address the extraordinary circumstances for a specified  
86 period of time not to exceed 60 days per calendar year, which may be in addition to assignments under  
87 subsection (6)(A). To request an assignment under this subsection, the presiding judge shall certify that  
88 there is an extraordinary need. The state court administrator shall certify whether there are funds  
89 available to support the assignment.

90 (6)(C) An active senior judge may be assigned to any court other than the Supreme Court.

91 (6)(D) The state court administrator shall provide such assistance to the presiding judge and chief  
92 justice as requested and shall exercise such authority in making assignments as delegated by the  
93 presiding judge and chief justice.

94 (6)(E) Notice of an assignment made under this rule shall be in writing and maintained by the  
95 state court administrator.

Tab 4

**Rule 3-108. Judicial assistance.****Intent:**

To establish the authority, procedure and criteria for judicial assistance.

**Applicability:**

This rule shall apply to judicial assistance provided by active senior judges and judges of courts of record.

**Statement of the Rule:**

(1) Criteria for requesting assistance. Judicial assistance shall be provided only for the following reasons:

(1)(A) to prevent the occurrence of a backlog in the court's calendar;

(1)(B) to reduce a critical accumulated backlog;

(1)(C) to handle a particular case involving complex issues and extensive time which would have a substantial impact on the court's calendar;

(1)(D) to replace a sitting judge who is absent because of assignment as a tax judge, illness or to replace the judges in that location because of disqualification in a particular case;

(1)(E) to handle essential cases when there is a vacant judicial position;

(1)(F) to handle high priority cases during vacation periods or during attendance at education programs by the sitting judge, following every effort by that judge to adjust the calendar to minimize the need for assistance and only to handle those matters which cannot be accommodated by the other judges of the court during the absence;

(1)(G) to provide education and training opportunities to judges of one court level in the disposition of cases in another court level; and

(1)(H) in district court, to handle cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration.

(2) Criteria for transferring or assigning judges. The transfer or assignment of judges shall be based upon the following priorities:

(2)(A) experience and familiarity with the subject matter, including, in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, knowledge of the theory and practice of ad valorem, excise, income, sales and use, and corporate taxation;

(2)(B) active judges before active senior judges with consideration of the following:

(2)(B)(i) active judges from a court of equal jurisdiction in a different geographical division than the court in need, who are physically situated nearest and are most convenient to that court;

(2)(B)(ii) active senior judges from a court of equal jurisdiction to the court in need who are physically situated nearest and are most convenient to that court;

(2)(B)(iii) active judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is most closely related to that court and who are in close proximity to it;



(2)(B)(iv) active judges from a court of equal jurisdiction in a different geographical division than the court in need who are far removed from that court;

(2)(B)(v) active or active senior judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is similar to that court who are not in close proximity;

(2)(C) availability;

(2)(D) expenses and budget.

(3) Assignment of active judges.

(3)(A) Exigent circumstances.

(3)(A)(i) Exigent circumstances are circumstances that are unforeseeable and result in an unanticipated prolonged absence or vacancy of a judge from the bench, including, but not limited to, unexpected retirement, disability, death, a leave of absence, or appointment to the bench at a different court level.

(3)(A)(ii) For purposes of this rule, exigent circumstances are limited to 30 days.

(3)(A)(iii) In exigent circumstances, a presiding judge may appoint a senior judge to cover after exhausting all internal coverage options.

(3)(A)(iv) If a presiding judge appoints a senior judge due to exigent circumstances, the presiding judge shall immediately notify the Judicial Council of the appointment, including the duration of the appointment and expected cost.

(3)(A)(v) Within two weeks of appointing a senior judge, the presiding judge shall develop and present a plan to the Management Committee or to the Judicial Council outlining the presiding judge's plan to address the need for coverage on an ongoing basis, including why the coverage is needed, efforts the presiding judge has made to find coverage from sitting judges in and outside the district, and the expected duration and cost of the senior judge coverage.

(3)(A)(vi) The presiding judge shall obtain the Judicial Council's approval of the plan prior to appointing a senior judge to provide ongoing coverage.

(3)(B) Non-exigent circumstances.

(3)(B)(i) Prior to appointing a senior judge in non-exigent circumstances, a presiding judge shall develop and present a plan to the Management Committee or to the Judicial Council outlining the presiding judge's plan to address the need for coverage on an ongoing basis, including why the coverage is needed, efforts the presiding judge has made to find coverage from sitting judges in and outside the district, and the expected duration and cost of the senior judge coverage.

(3)(B)(ii) The presiding judge shall obtain the Judicial Council's approval of the plan prior to appointing a senior judge to cover under non-exigent circumstances.

(3)(C) Any active judge of a court of record may serve temporarily as the judge of a court with equal jurisdiction in a different judicial district upon assignment by the presiding judge of the district in which the judge to be assigned normally sits or, in district court cases involving taxation, as defined in

73 Rule 6-103(4) of the Utah Code of Judicial Administration, assignment by the supervising tax judge with  
74 the approval of the presiding officer of the Council.

75 ~~(3)(BD)~~ Any active judge of a court of record may serve temporarily as the judge of a court  
76 with different jurisdiction in the same or a different judicial district upon assignment by the presiding officer  
77 of the Council or assignment by the state court administrator with the approval of the presiding officer of  
78 the Council.

79 ~~(3)(CE)~~ The assignment shall be made only after consideration of the judge's calendar. The  
80 assignment may be for a special or general assignment in a specific court or generally within that level of  
81 court and shall be for a specific period of time, or for the duration of a specific case. Full time assignments  
82 in excess of 30 days in a calendar year shall require the concurrence of the assigned judge. The state  
83 court administrator shall report all assignments to the Council on an annual basis.

84 ~~(3)(DE)~~ Requests for the assignment of a judge shall be conveyed, through the presiding  
85 judge, to the person with authority to make the assignment under paragraphs (A) and (B). A judge who is  
86 assigned temporarily to another court shall have the same powers as a judge of that court.

87 (4) Notice of assignments made under this rule shall be made in writing, a copy of which shall be  
88 sent to the state court administrator.

89 (5) Schedule of trials or court sessions. The state court administrator, under the supervision of the  
90 presiding officer of the Council, may schedule trials or court sessions and designate a judge to preside,  
91 assign judges within courts and throughout the state, reassign cases to judges, and change the county for  
92 trial of any case if no party to the litigation files timely objections to the change.