

Agenda

Policy and Planning Committee

April 1, 2016
12:00 – 1:30 p.m.

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

12:00	Welcome and Approval of Minutes	Action	Tab 1	John Lund
12:05	Rules 3-302, 4-106, 9-105. Remote Hearings.	Action	Tab 2	Nancy Sylvester
12:20	Rules 3-306.01, 3-306.02, 3-306.03, 3-306.04, 3-306.05. Language Access.	Action	Tab 3	Nancy Sylvester
12:25	Rule 4-408.01. Responsibility for Administration of Trial Courts.	Action	Tab 4	Nancy Sylvester
12:30	Rule 4-602. Victims' Rights Committees.	Action	Tab 5	Nancy Sylvester
12:35	Rule 9-302. Mandatory electronic filing (justice courts).	Action	Tab 6	Nancy Sylvester
12:40	Rule 3-108. Senior Judge Assistance.	Discussion	Tab 7	Tom Langhorne, Judge Nolan
1:00	Rule 4-401.03. Notice to public of recording.	Action	Tab 8	Nancy Sylvester
1:20	Other Business			John Lund

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.

May 6, 2016

June 3, 2016

Policy and Planning Committee Meeting Executive Summary - Focus Sheet

April 1, 2016

Issue	Scope	Status	Assignments	Notes
Approval of Minutes		Action Vote	Read March minutes for accuracy and approval.	
Rules for Final Action	Consider rules 3-302 through 9-302 for final action	Action Vote	Review comments to Rule 4-106.	Ms. Sylvester will review the proposed rules. <i>The comment period is closed and only Rule 4-106 received a public comment.</i>
Rule 3-108. Senior Judge Assistance.	Consider amendments to Rule 3-108 regarding the use of senior judges as mentors.	Discussion	Review rule proposal and be prepared to discuss it.	Tom Langhorne and Judge Dane Nolan will review the proposed amendments to Rule 3-108, which add provisions for the use of senior judges as mentors.
Rule 4-401.03. Notice to public of recording.	Consider enacting Rule 4-401.03 in response to S.B. 42, which requires the judiciary to provide notice that court proceedings are being recorded.	Action Vote	Review the rule proposal and be prepared to discuss it.	Nancy Sylvester will review the proposed rule. The rule should be generic enough that justice courts can either satisfy the law with a verbal announcement or in writing, but leave room in the rule for local courts to satisfy the law in their own way. The state courts will comply with the law by posting signs.

Next Meeting: May 6, 2016 at 12:00 p.m.

Tab 1

Minutes of the Policy and Planning Committee

March 4, 2016

Draft

Members Present

Judge Marvin Bagley, Judge Ann Boyden, Judge Mark DeCaria, and Judge Reed S. Parkin,

Members Excused

John Lund and Judge Mary Noonan

Staff

Alison Adams-Perlac

Nancy Sylvester

(1) Approval of Minutes

Judge Reed Parkin welcomed everyone to the meeting. Judge DeCaria moved to approve the previous minutes. Judge Ann Boyden seconded the motion and it passed unanimously. Alison Adams-Perlac was thanked for her time on the committee. Nancy Sylvester was welcomed to the committee.

(2) Rule 1-201 (Membership Election) for Final Action

Ms. Adams-Perlac noted the comment period has expired for this rule. There were no comments submitted. The rule prohibits Judicial Council members from being voting members of boards of judges. It was noted the Judicial Council will consider this rule at their April meeting. After brief discussion, Judge Parkin moved to pass the rule as it is written. Judge Bagley seconded the motion and it passed unanimously.

(3) Rule 11-201 (Senior Judges)

After discussion about active senior judges being required to reside in Utah, the Committee determined the rule is ready to be published for public comment. A member moved to send this rule to the Judicial Council. Judge Parkin seconded the motion and it passed unanimously.

(4) Rule 3-108 (Judicial Assistance)

It was noted the Judicial Council would like to discuss Rule 3-108 during their March meeting. The Committee addressed that this rule would only be for district and juvenile

courts. The appellate courts already have a similar rule in place, Rule 11-201. The committee discussed this rule in depth with respect to the procedures surrounding exigent versus non-exigent circumstances. The committee also discussed the budget issues surrounding the appointment of judges. In an extraordinary circumstance like a judge leaving a court due to appointment to a higher court, what Tim Shea did with the Court of Appeals in coming up with a plan and the budget amount prior to appointing a senior judge is ideal. The committee discussed whether judges could be appointed temporarily without having to go to the Management Committee for approval, and the consensus was that yes, there is a budget for that. The bigger concern with this rule is when longer coverage is needed. Ms. Adams-Perlac said she would draft some language to capture the discussion and circulate it to the committee. Judge Parkin said he would work with Ms. Sylvester on getting the rule in its final language to the Council.

The meeting adjourned at 1:25 p.m.

Tab 2



Nancy Sylvester <nancyjs@utcourts.gov>

Comments to Code of Judicial Administration Rules 3-302, 3-306.01, etc.

Nancy Sylvester <nancyjs@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Wed, Mar 16, 2016 at 3:57 PM

The comment period is now closed on the following Code of Judicial Administration Rules. <http://www.utcourts.gov/utc/rules-comment/2016/01/29/code-of-judicial-administration-65/>

They received one comment:

Leslie Slauch

February 3, 2016 at 4:13 pm

Proposed rule CJA04-0106 appears to conflict with Rule 43 of the Utah Rules of Civil Procedure. It would be better to amend that rule.

Code of Judicial Administration

CJA 03-0302. Clerk of Court. Amend. Provides that the clerk's office shall be open during all business hours except Saturdays, Sundays, and holidays. Provides that during hours of operation the clerk or deputy shall be physically present, or immediately available remotely.

CJA 03-0306.01. Language access definitions. New. Defines terms applicable to rules 3-306.02 through 3-306.05 of the Utah Code of Judicial Administration. Deletions and additions to the language are redlined.

CJA 03-0306.02. Language Access Committee. New. Outlines the Language Access Committee's responsibilities. Deletions and additions to the language are redlined.

CJA 03-0306.03. Interpreter certification. New. Outlines the process for becoming a certified interpreter. Provides a process whereby an exception may be made to one or more of the requirements as determined by the

Language Access Committee. Reiterates the policy that contract interpreters are independent contractors. Deletions and additions to the language are redlined.

CJA 03-0306.04. Interpreter appointment, payment, and fees. New. Outlines the interpreter appointment process. Provides that the Judicial Council will review a market study every three years in order to set hourly rates for interpreters. Deletions and additions to the language are redlined.

CJA 03-0306.05. Interpreter removal, discipline, and formal complaints. New. Outlines the interpreter discipline process. Provides that an interpreter may be disciplined for unprofessional conduct, or for being convicted of, or charged with, a crime. Revises the formal complaint process so that following a proposed resolution by the Language Access Program Coordinator, an interpreter may request a hearing before a panel of the Language Access Committee, and may appeal that panel's decision to the Language Access Committee. Deletions and additions to the language are redlined.

CJA 04-0106. Electronic conferencing. Amend. Authorizes the use of remote conferencing in lieu of personal appearances when certain requirements are met.

CJA 04-0408.01 Responsibility for administration of trial courts. Amend. Removes Morgan from the list of district courts administered by a county or municipality, since it is administered by the Administrative Office of the Courts.

CJA 04-0602. Victims' Rights Committees. Repeal. Repeals the rule because the process for establishing Victims' Rights Committees is now outlined by Utah Code section 77-37-5.

CJA 09-0105. Justice Court hours. Amend. Provides that during hours of operation, the justice court judge or clerk shall be physically present, or immediately available remotely.

CJA 09-0302. Mandatory electronic filing. New. Provides that e-filing will be discretionary in justice court criminal cases from July 1, 2016 to December 31, 2016. Provides that e-filing will be mandatory in justice court criminal cases beginning December 31, 2016.

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Rule 3-302. Clerk of the Court.**Intent:**

To describe the role of the Clerk of the Court.

To specify the procedure by which the Clerk of the Court is selected.

Applicability:

This rule shall apply to the trial courts of record.

Statement of the Rule:

(1) The Clerk of the district and juvenile courts shall be appointed by the court executive with the concurrence of a majority of the judges assigned to that court location. In locations of the district court administered by contract with the administrative office of the courts, the elected county clerk shall serve as Clerk of the Court.

(2) The Clerk of the Court shall:

(A) take charge of and safely keep the court seal;

(B) take charge of and safely keep or dispose of, according to law, all books, papers and records filed or deposited in the Clerk's Office;

(C) issue all notices, process and summonses where authorized by law;

(D) keep a record of all orders, judgments and decrees as required by law and this Code;

(E) keep minutes of court proceedings;

(F) keep a fee record as provided in this Code;

(G) keep records of jurors' services as provided in this Code;

(H) keep records of witnesses' attendance as provided in this Code;

(I) keep a record of executions as provided in this Code;

(J) take and certify acknowledgments and administer oaths;

(K) keep a record of fines, penalties, costs, and forfeitures as required by law and this Code;

(L) prepare revenue reports, reconcile accounting ledgers to bank statements, maintain and serve as custodian of trust accounts and perform such other accounting duties as assigned by the court executive;

(M) keep a record of court exhibits and ensure the safekeeping of exhibits;

(N) supervise such deputy clerks as required to perform the duties specified in this rule;

(O) keep such other records and perform such other duties as assigned by the court executive in accordance with applicable law and the provisions of this Code.

(3) The clerk's office shall be open and available to transact business during business hours on all days except Saturdays, Sundays, and legal holidays. When the clerk's office is open, the clerk or a deputy shall be physically present or immediately available remotely.

Rule 9-105. Justice Court hours.**Intent:**

To establish minimum court hours for Justice Courts.

Applicability:

This rule shall apply to all Justice Courts.

Statement of the Rule:

(1) Every Justice Court shall establish a regular schedule of court hours to be posted in a conspicuous location at the court site.

(2) Justice Courts shall be open and available to transact judicial business every business day, Monday through Friday, excluding holidays as defined in Utah Code Section 63G-1-301, and unless specifically waived by the Judicial Council. ~~The Justice Court judge shall be available d~~During the scheduled hours of court operation and the Justice Court judge or clerk shall be in attendance at the court ~~during the regularly scheduled hours of operation~~ physically present or immediately available remotely.

(3) Justice Courts shall provide, at a minimum, the following hours of operation:

Number of Average Monthly Filings	Hours Per Day
0-60	1
61-150	2
151-200	3
201-300	4
301-400	5
401-500	6
501 or more	8

(4) The Justice Court judge may schedule the court hours to meet the needs of the litigants and the availability of bailiff and clerk services.

(5) Court hours shall be set at least quarterly and the Justice Court judge shall annually send notice to the Administrative Office of the Courts of the hours which have been set for court operation.

Rule 4-106. ~~Electronic Remote~~ conferencing.

Intent:

To authorize the use of ~~electronic~~ conferencing from a different location in lieu of personal appearances in appropriate cases.

To establish the minimum requirements for remote appearance from a different location.

Applicability:

This rule shall apply to all courts of record and not of record.

Statement of the Rule:

~~(1) In the judge's discretion, any hearing may be conducted using telephone or video conferencing.~~

~~(2) Any proceeding in which a person appears by telephone or video conferencing shall proceed as required in any other hearing including keeping a verbatim record.~~

(1) If the requirements of paragraph (3) are satisfied, the judge may conduct the hearing remotely.

(2) If the requirements of paragraph (3) are met, the court may, for good cause, permit a witness, a party, or counsel to participate in a hearing remotely.

(3) The remote appearance must enable:

(3)(A) a party and the party's counsel to communicate confidentially;

(3)(B) documents, photos and other things that are delivered in the courtroom to be delivered previously or simultaneously to the remote participants;

(3)(C) interpretation for a person of limited English proficiency; and

(3)(D) a verbatim record of the hearing.

Rule 43. Evidence.

(a) Form. In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. All evidence shall be admitted which is admissible under the Utah Rules of Evidence or other rules adopted by the Supreme Court.

(b) Evidence on motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

Tab 3

Rule 3-306.01. Language access definitions. ~~in the courts.~~**Intent:**

To define terms used in rules 3-306.01 through 3-306.05.

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

~~To outline the procedure for certification, appointment, and payment of interpreters for legal proceedings.~~

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

Applicability:

~~This rule shall apply to terms used in rules 3-306.01 through 3-306.05. legal proceedings in the courts of record and not of record. This rule shall apply to interpretation for non-English speaking people and not to interpretation for persons with a hearing impairment, which is governed by Utah and federal statutes.~~

Statement of the Rule:

~~(1) Definitions.~~

~~(1)(A)~~ “Appointing authority” means a judge, commissioner, referee or juvenile probation officer, or delegate thereof.

~~(42)(B)~~ “Approved interpreter” means a person who has been rated as “superior” in testing and has fulfilled the requirements established in paragraph (3).

~~(43)(C)~~ “Certified interpreter” means a person who has successfully passed the examination of the Consortium for Language Access in the Courts and has fulfilled the requirements established in paragraph (3).

~~(44)(D)~~ “Committee” means the Language Access Committee established by Rule 1-205.

~~(45)(E)~~ “Conditionally-approved interpreter” means a person who, in the opinion of the appointing authority after evaluating the totality of the circumstances, has language skills, knowledge of interpreting techniques, and familiarity with interpreting sufficient to interpret the legal proceeding. A conditionally approved interpreter shall read and is bound by the Code of Professional Responsibility and shall subscribe the oath or affirmation of a certified interpreter.

~~(46)(F)~~ “Code of Professional Responsibility” means the Code of Professional Responsibility for Court Interpreters set forth in Code of Judicial Administration Appendix H. An interpreter may not be required to act contrary to law or the Code of Professional Responsibility.

~~(47)(G)~~ “Legal proceeding” means a proceeding before the appointing authority, court-annexed mediation, communication with court staff, and participation in mandatory court programs. Legal proceeding does not include communication outside the court unless permitted by the appointing authority.

(4)(H) "Limited English proficiency" means the inability to understand or communicate in English at the level of comprehension and expression needed to participate effectively in legal proceedings.

(4)(I) "Registered interpreter" means a person who interprets in a language in which testing is not available and who has fulfilled the requirements established in paragraph (3) other than paragraph (3)(A)(vi).

(10)(J) "Testing" means using an organization approved by the committee that uses the American Council on the Teaching of Foreign Languages (ACTFL) scale.

~~(2) Language Access Committee. The Language Access Committee shall:~~

~~(2)(A) research, develop and recommend to the Judicial Council policies and procedures for interpretation in legal proceedings and translation of printed materials;~~

~~(2)(B) issue informal opinions to questions regarding the Code of Professional Responsibility, which is evidence of good-faith compliance with the Code; and~~

~~(2)(C) discipline court interpreters.~~

~~(3) Application, training, testing, roster.~~

~~(3)(A) Subject to the availability of funding, and in consultation with the committee, the administrative office of the courts shall establish programs to certify and approve interpreters in English and the non-English languages most frequently needed in the courts. The administrative office shall publish a roster of certified, approved, and registered interpreters. To be certified, approved or registered, an applicant shall:~~

~~(3)(A)(i) file an application form approved by the administrative office;~~

~~(3)(A)(ii) pay a fee established by the Judicial Council;~~

~~(3)(A)(iii) pass a background check;~~

~~(3)(A)(iv) provide proof that the applicant is a Utah resident;~~

~~(3)(A)(v) complete training as required by the administrative office;~~

~~(3)(A)(vi) obtain a passing score on the court interpreter's test(s) as required by the administrative office;~~

~~(3)(A)(vii) complete 10 hours observing a certified interpreter in a legal proceeding; and~~

~~(3)(A)(viii) take and subscribe the following oath or affirmation: "I will make a true and impartial interpretation using my best skills and judgment in accordance with the Code of Professional Responsibility."~~

~~(3)(B) A person who is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this rule may be certified without complying with paragraphs (3)(A)(v) through (3)(A)(viii) but shall pass an ethics examination and otherwise meet the requirements of this rule.~~

~~(3)(C) No later than December 31 of each even-numbered calendar year, certified, approved, and registered interpreters shall pass the background check for applicants, and certified interpreters shall complete at least 16 hours of continuing education approved by the administrative office of the courts.~~

~~(4) Appointment.~~

~~(4)(A) Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing authority determines that a party, witness, victim or person who will be bound by the legal proceeding has a primary language other than English and limited English proficiency, the appointing authority shall appoint a certified interpreter in all legal proceedings. A person requesting an interpreter is presumed to be a person of limited English proficiency.~~

~~(4)(B) An approved interpreter may be appointed if no certified interpreter is reasonably available.~~

~~(4)(C) A registered interpreter may be appointed if no certified or approved interpreter is reasonably available.~~

~~(4)(D) A conditionally approved interpreter may be appointed if the appointing authority, after evaluating the totality of the circumstances, finds that:~~

~~(4)(D)(i) the prospective interpreter has language skills, knowledge of interpreting techniques and familiarity with interpreting sufficient to interpret the legal proceeding; and~~

~~(4)(D)(ii) appointment of the prospective interpreter does not present a real or perceived conflict of interest or appearance of bias; and~~

~~(4)(D)(iii) a certified, approved, or registered interpreter is not reasonably available or the gravity of the legal proceeding and the potential consequence to the person are so minor that delays in obtaining a certified or approved interpreter are not justified.~~

~~(4)(E) The appointing authority may appoint an interpreter with certified or approved or equivalent credentials from another state if the appointing authority finds that the approved, registered or conditionally approved interpreters who are reasonably available do not have the language skills, knowledge of interpreting techniques, or familiarity with interpreting sufficient to interpret the legal proceeding. The appointing authority may consider the totality of the circumstances, including the complexity or gravity of the legal proceeding, the potential consequences to the person of limited English proficiency, and any other relevant factor.~~

~~(4)(F) No interpreter is needed for a direct verbal exchange between the person and court staff if the court staff can fluently speak the language understood by the person and the state court employee is acting within guidelines established in the Human Resources Policies and Procedures. An approved, registered or conditionally approved interpreter may be appointed if the court staff does not speak the language understood by the person.~~

~~(4)(G) The appointing authority will appoint one interpreter for all participants with limited English proficiency, unless the judge determines that the participants have adverse interests, or that due process, confidentiality, the length of the legal proceeding or other circumstances require that there be additional interpreters.~~

~~(4)(H) A person whose request for an interpreter has been denied may apply to review the denial. The application shall be decided by the presiding judge. If there is no presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer the application to any judge of the court or any judge of a court of equal jurisdiction. The application must be filed within 20 days after the denial.~~

~~(5) Payment.~~

~~(5)(A) The fees and expenses for language access shall be paid by the administrative office of the courts in courts of record and by the government that funds the court in courts not of record. The court may assess the fees and expenses as costs to a party as otherwise provided by law. (Utah Constitution, Article I, Section 12, Utah Code Sections 77-1-6(2)(b), 77-18-7, 77-32a-1, 77-32a-2, 77-32a-3, 78B-1-146(3), URCP 54(d)(2), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and regulations and guidance adopted under that title.)~~

~~(5)(B) A person who has been ordered to pay fees and expenses for language access may apply to the presiding judge to review the order. If there is no presiding judge, the person may apply to any judge of the court or any judge of a court of equal jurisdiction. The application must be filed within 20 days after the order.~~

~~(6) Waiver. A person may waive an interpreter if the appointing authority approves the waiver after determining that the waiver has been made knowingly and voluntarily. A person may retract a waiver and request an interpreter at any time. An interpreter is for the benefit of the court as well as for the non-English speaking person, so the appointing authority may reject a waiver.~~

~~(7) Removal from legal proceeding. The appointing authority may remove an interpreter from the legal proceeding for failing to appear as scheduled, for inability to interpret adequately, including a self-reported inability, and for other just cause.~~

~~(8) Discipline.~~

~~(8)(A) An interpreter may be disciplined for:~~

~~(8)(A)(i) knowingly making a false interpretation in a legal proceeding;~~

~~(8)(A)(ii) knowingly disclosing confidential or privileged information obtained in a legal proceeding;~~

~~(8)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of Professional Responsibility and this rule;~~

~~(8)(A)(iv) failing to pass a background check;~~

~~(8)(A)(v) failing to meet continuing education requirements;~~

~~(8)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction; and~~

~~(8)(A)(vii) failing to appear as scheduled without good cause.~~

~~(8)(B) Discipline may include:~~

~~(8)(B)(i) permanent loss of certified or approved credentials;~~

~~(8)(B)(ii) temporary loss of certified or approved credentials with conditions for reinstatement;~~

~~(8)(B)(iii) suspension from the roster of certified or approved interpreters with conditions for reinstatement;~~

~~(8)(B)(iv) prohibition from serving as a conditionally approved interpreter;~~

~~(8)(B)(v) suspension from serving as a conditionally approved interpreter with conditions for reinstatement; and~~

~~(8)(B)(vi) reprimand.~~

(9) Complaints.

(9)(A) Any person may file a complaint about a matter for which an interpreter can be disciplined. A party, witness, victim or person who will be bound by a legal proceeding, may file a complaint about the misapplication of this rule.

(9)(B) The complaint shall allege an act or omission for which an interpreter can be disciplined or that violates this rule. The complaint shall be in writing and signed and filed with the program coordinator. The complaint may be in the native language of the complainant, which the AOC shall translate in accordance with this rule. The complaint shall describe the circumstances of the act or omission, including the date, time, location and nature of the incident and the persons involved.

(9)(C) The program coordinator may dismiss the complaint if it is plainly frivolous, insufficiently clear, or does not allege an act or omission for which an interpreter can be disciplined or that does not violate this rule.

(9)(D) If the complaint alleges that the court did not provide language access as required by this rule, the program coordinator shall investigate and recommend corrective actions that are warranted.

(9)(E) If the complaint alleges an act or omission for which the interpreter can be disciplined, the program coordinator shall mail the complaint to the interpreter at the address on file with the administrative office of the courts and proceed as follows:

(9)(E)(i) The interpreter shall answer the complaint within 30 days after the date the complaint is mailed or the allegations in the complaint are deemed true and correct. The answer shall admit, deny or further explain each allegation in the complaint.

(9)(E)(ii) The program coordinator may review records and interview the complainant, the interpreter and witnesses. After considering all factors, the program coordinator may propose a resolution, which the interpreter may stipulate to. The program coordinator may consider aggravating and mitigating circumstances such as the severity of the violation, the repeated nature of violations, the potential of the violation to harm a person's rights, the interpreter's work record, prior discipline, and the effect on court operations.

(9)(E)(iii) If the complaint is not resolved by stipulation, the program coordinator will notify the committee, which shall hold a hearing. The committee chair and at least one interpreter member must attend. If a committee member is the complainant or the interpreter, the committee member is recused. The program coordinator shall mail notice of the date, time and place of the hearing to the interpreter. The hearing is closed to the public. Committee members and staff may not disclose or discuss information or materials outside of the meeting except with others who participated in the meeting or with a member of the Committee. The committee may review records and interview the interpreter, the complainant and witnesses. A record of the proceedings shall be maintained but is not public.

(9)(E)(iv) The committee shall decide whether there is sufficient evidence of the alleged conduct or omission, whether the conduct or omission violates this rule, and the discipline, if any. The chair shall

184 ~~issue a written decision on behalf of the committee within 30 days after the hearing. The program~~
185 ~~coordinator shall mail a copy of the decision to the interpreter.~~

186 ~~(9)(E)(v) The interpreter may review and, upon payment of the required fee, obtain a copy of any~~
187 ~~records to be used by the committee. The interpreter may attend all of the hearing except the committee's~~
188 ~~deliberations. The interpreter may be represented by counsel and shall be permitted to make a statement,~~
189 ~~call and interview the complainant and witnesses, and comment on the claims and evidence. The~~
190 ~~interpreter may obtain a copy of the record of the hearing upon payment of the required fee.~~

191 ~~(9)(E)(vi) If the interpreter is certified in Utah under Paragraph (3)(B), the committee shall report the~~
192 ~~findings and sanction to the certification authority in the other jurisdiction.~~

193 ~~_(10) Fees.~~

194 ~~(10)(A) In April of each year the Judicial Council shall set the fees and expenses to be paid to~~
195 ~~interpreters during the following fiscal year by the courts of record. Payment of fees and expenses shall~~
196 ~~be made in accordance with the Courts Accounting Manual.~~

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

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

201 ~~(12) Court employees as interpreters. A court employee may not interpret legal proceedings except~~
202 ~~as follows.~~

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

210 ~~(12)(B) A state court employee employed as an interpreter has the rights and responsibilities provided~~
211 ~~in the Utah state court human resource policies, including the Code of Personal Conduct, and the Court~~
212 ~~Interpreters' Code of Professional Responsibility also applies. A justice court employee employed as an~~
213 ~~interpreter has the rights and responsibilities provided in the county or municipal human resource policies,~~
214 ~~including any code of conduct, and the Court Interpreters' Code of Professional Responsibility also~~
215 ~~applies.~~

216 ~~(12)(C) A court may use an employee as a conditionally approved interpreter under paragraph (4)(C).~~
217 ~~The employee will be paid the wage and benefits of the employee's grade and not the fee established by~~
218 ~~this rule.~~

Rules 3-306.02. Language Access Committee.

Intent:

To outline the responsibilities of the Language Access Committee.

Applicability:

This rule applies to the Language Access Standing Committee of the Judicial Council.

Statement of the Rule:

The Language Access Committee shall:

- (1) research, develop and recommend to the Judicial Council policies and procedures for interpretation in legal proceedings and translation of printed materials;
- (2) issue informal opinions to questions regarding the Code of Professional Responsibility, which is evidence of good-faith compliance with the Code; and
- (3) discipline court interpreters as provided by rule 3-306.06.

Rule 3-306.03. Interpreter certification.**Intent:**

To outline the procedure for certification of interpreters for legal proceedings.

Applicability:

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

Statement of the Rule:

(1) Subject to the availability of funding, and in consultation with the committee, the administrative office of the courts shall establish programs to certify and approve interpreters in English and the non-English languages most frequently needed in the courts. The administrative office shall publish a roster of certified, approved, and registered interpreters. To be certified, approved or registered, an applicant shall:

(1)(A) file an application form approved by the administrative office;

(1)(B) pay a fee established by the Judicial Council;

(1)(C) pass a background check;

(1)(D) provide proof that the applicant is a Utah resident;

(1)(E) complete training as required by the administrative office;

(1)(F) obtain a passing score on the court interpreter's test(s) as required by the administrative office;

(1)(G) complete 10 hours observing a certified interpreter in a legal proceeding; and

(1)(H) take and subscribe the following oath or affirmation: "I will make a true and impartial interpretation using my best skills and judgment in accordance with the Code of Professional Responsibility."

(2) A person who is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this rule may be certified without complying with paragraphs (1)(A) through (1)(H) but shall pass an ethics examination and otherwise meet the requirements of this rule.

(3) A person credentialed under this rule has an ongoing obligation to immediately report to the program coordinator any criminal charges or convictions the interpreter has and any Utah State Court cases the interpreter is personally involved in as a party.

(4) When the interpreter speaks a rare language and the courts currently lack credentialed interpreters in that language, the Language Access Committee may, for good cause shown, exempt an interpreter from meeting one or both of the requirements listed in subparagraph (1)(B) and (1)(F). An interpreter seeking an exemption shall make a written request, outlining the reasons for the exemption, to the Language Access Program Coordinator. The Language Access Committee shall consider the request at its next meeting following the request, and may require the interpreter making the request to appear at the meeting or to provide more information.

38 | (5) If an exemption is granted, the interpreter shall meet the conditions set by the committee and shall
39 | apply for an extension of the exemption annually, or as otherwise required by the committee.

40 | ~~(36)~~ No later than December 31 of each even-numbered calendar year, certified, approved, and
41 | registered interpreters shall pass the background check for applicants, and certified interpreters shall
42 | complete at least 16 hours of continuing education approved by the administrative office of the courts.

43 | (7) With the exception of staff interpreters who are employees of the courts, court interpreters,
44 | including those listed on the statewide roster, are independent contractors.

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

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

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

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

Applicability:

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

Statement of the Rule:**(1) Appointment.**

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

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

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

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

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

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

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

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

37 complexity or gravity of the legal proceeding, the potential consequences to the person of limited English
38 proficiency, and any other relevant factor.

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

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

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

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

57 (2)(B) A state court employee employed as an interpreter has the rights and responsibilities
58 provided in the Utah state court human resource policies, including the Code of Personal Conduct, and
59 the Court Interpreters' Code of Professional Responsibility also applies. A justice court employee
60 employed as an interpreter has the rights and responsibilities provided in the county or municipal human
61 resource policies, including any code of conduct, and the Court Interpreters' Code of Professional
62 Responsibility also applies.

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

66 (3) Review of denial of request for interpreter. A person whose request for an interpreter has been
67 denied may apply to review the denial. The application shall be decided by the presiding judge. If there is
68 no presiding judge or if the presiding judge is unavailable, the clerk of the court shall refer the application
69 to any judge of the court or any judge of a court of equal jurisdiction. The application must be filed within
70 20 days after the denial.

71 (4) Waiver. A person may waive an interpreter if the appointing authority approves the waiver after
72 determining that the waiver has been made knowingly and voluntarily. A person may retract a waiver and

request an interpreter at any time. An interpreter is for the benefit of the court as well as for the non-English speaking person, so the appointing authority may reject a waiver.

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

(6) Payment.

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

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

(7) Fees.

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

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

Rule 3-306.05. Interpreter removal, discipline, and formal complaints.**Intent:**

To outline the procedures for interpreter removal and discipline.

Applicability:

This rule shall apply to the Language Access Program Manager, the Language Access Program Coordinator, the Language Access Committee, interpreter coordinators and contract interpreters.

Statement of the Rule:

(1) Removal from legal proceeding. The appointing authority may remove an interpreter from the legal proceeding for failing to appear as scheduled, for inability to interpret adequately, including a self-reported inability, and for other just cause.

(2) Discipline.

(2)(A) An interpreter may be disciplined for:

(2)(A)(i) knowingly making a false interpretation in a legal proceeding;

(2)(A)(ii) knowingly disclosing confidential or privileged information obtained in a legal proceeding;

(2)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of Professional Responsibility and this rule;

(2)(A)(iv) failing to pass a background check;

(2)(A)(v) failing to meet continuing education requirements;

(2)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction; ~~and~~

(2)(A)(vii) failing to appear as scheduled without good cause; ~~and~~

(2)(A)(viii) unprofessional behavior toward a client, judge, court staff, court security, or Language Access Committee member; and

(2)(A)(ix) being charged with, or convicted of, a crime.

(2)(B) Discipline may include:

(2)(B)(i) permanent loss of certified or approved credentials;

(2)(B)(ii) temporary loss of certified or approved credentials with conditions for reinstatement;

(2)(B)(iii) suspension from the roster of certified or approved interpreters with conditions for reinstatement;

(2)(B)(iv) prohibition from serving as a conditionally approved interpreter;

(2)(B)(v) suspension from serving as a conditionally approved interpreter with conditions for reinstatement; and

(2)(B)(vi) reprimand.

(3) As long as he or she complies with rule 3-306.04, an interpreter coordinator has the discretion to decline to assign an interpreter listed on the statewide interpreter roster.

~~(34)~~ Filing of Formal Complaints.

(34)(A) Any person may file a formal complaint about a matter for which an interpreter can be disciplined. A party, witness, victim or person who will be bound by a legal proceeding, may file a formal complaint about the misapplication of this rule.

(4)(B) A formal complaint shall be filed with the Language Access Program Coordinator. However, the Language Access Program Coordinator may file a formal complaint with the Language Access Program Manager, in which case, the program manager will fulfill the program coordinator's responsibilities under this rule.

(34)(B) The complaint shall allege an act or omission for which an interpreter can be disciplined or that violates this rule. The complaint shall be in writing and signed and filed with the program coordinator. The complaint may be in the native language of the complainant, which the AOC shall translate in accordance with this rule. The complaint shall describe the circumstances of the act or omission, including the date, time, location and nature of the incident, and the persons involved.

(5) Investigation by program coordinator.

(35)(CA) The program coordinator may dismiss the complaint if it is plainly frivolous, insufficiently clear, or does not allege an act or omission for which an interpreter can be disciplined or that does not violate this rule.

(35)(DB) If the complaint alleges that the court did not provide language access as required by this rule, the program coordinator shall investigate and recommend corrective actions that are warranted.

(35)(EC) If the complaint alleges an act or omission for which the interpreter can be disciplined, the program coordinator shall mail the complaint to the interpreter at the address on file with the administrative office of the courts and proceed as follows:

(35)(EC)(i) The interpreter shall answer the complaint within 30 days after the date the complaint is mailed or the allegations in the complaint ~~are~~ will be deemed to be true and correct. The answer shall admit, deny or further explain each allegation in the complaint.

(5)(C)(ii) Unless the program coordinator determines the allegation in the formal complaint to be egregious, the interpreter shall remain on the court interpreter roster until a final decision on discipline has been made.

(35)(EC)(iii) The program coordinator may review records and interview the complainant, the interpreter and witnesses. After considering all factors, the program coordinator may propose a resolution, which the interpreter may stipulate to. The program coordinator may consider aggravating and mitigating circumstances such as the severity of the violation, the repeated nature of violations, the potential of the violation to harm a person's rights, the interpreter's work record, prior discipline, and the effect on court operations.

(35)(EC)(iv) When the investigation of the formal complaint is complete, the program coordinator shall notify the interpreter, in writing, of the proposed resolution. Within 15 days of the proposed resolution, the interpreter shall, in writing, either accept the discipline by consent or request a hearing by a panel of the Language Access Committee. If the complaint is not resolved by stipulation, the

74 ~~program coordinator will notify the committee, which shall hold a hearing. If the interpreter fails to respond~~
75 ~~to the program coordinator's proposed resolution, or fails to request a hearing within 15 days, the~~
76 ~~interpreter will be deemed to have stipulated to the proposed resolution.~~

77 (6) Hearing by panel.

78 (6)(FA) The program coordinator shall notify the chair of the Language Access Committee if the
79 interpreter requests a hearing by a panel. The chair of the Language Access Committee shall assign
80 three members of the Committee, including one interpreter, to serve on the panel for the hearing, and
81 shall assign one of the panel members to chair the hearing. The chair of the panel is responsible for
82 sending notice to the interpreter, the complainant and the program coordinator.

83 (6)(GB) The hearing before the panel is private and closed to the public. The hearing shall be
84 recorded. The hearing is informal and is not governed by the Rules of Civil Procedure and the Rules of
85 Evidence. The interpreter, the complainant, and the program coordinator may attend the hearing. The
86 interpreter and the program coordinator may each bring counsel to the hearing. The chair may limit others
87 in attendance to those persons reasonably necessary to the proceedings. The program coordinator and
88 the interpreter may submit exhibits and call witnesses. Panel members and staff may not disclose or
89 discuss information or materials outside of the meeting except with others who participated in the meeting
90 or with a member of the panel.

91 (6)(HC) If any party fails to appear, the panel may proceed on the evidence before it. If the
92 complainant fails to appear, the panel may dismiss the Formal Complaint.

93 (6)(ID) The panel shall determine by a majority whether there is a preponderance of evidence of
94 the alleged conduct or omission, and whether the alleged conduct or omission violates this rule or the
95 Code of Professional Responsibility. Within 30 days, the panel chair will inform the program coordinator,
96 the interpreter, and the complainant, in writing, of its decision and the findings of fact supporting it. The
97 panel may discipline the interpreter as provided under paragraph (2)(B), including permanently removing
98 the interpreter's credentials.

99 (6)(JE) The interpreter may appeal the decision to the Language Access Committee by sending a
100 written request to the program coordinator within 15 days of the date of the panel's decision.

101 (7) Appeal hearing before the Language Access Committee.

102 (7)(KA) The committee chair and at least one interpreter member ~~must~~ shall attend the hearing
103 before the Language Access Committee. If a committee member is the complainant or the interpreter, the
104 committee member is recused. Members of the panel are also recused. The program coordinator shall
105 mail notice of the date, time and place of the hearing to the interpreter and the complainant. At least 6
106 days before the hearing, the interpreter and program coordinator may submit briefs and exhibits, which
107 the committee shall review. The information the committee may consider is limited to information
108 presented to the panel. The hearing is closed to the public. Committee members and staff may not
109 disclose or discuss information or materials outside of the meeting except with others who participated in
110 the meeting or with a member of the Committee. The committee may review records and interview the

111 interpreter, the complainant and witnesses. A record of the proceedings shall be maintained but is not
112 public.

113 ~~(73)(EB)(iv)~~ The committee shall decide whether there panel is sufficient evidence of the alleged
114 conduct or omission, whether the conduct or omission violates this rule, abused its discretion in making its
115 decision. If the committee determines the panel abused its discretion, the committee may dismiss the
116 Formal Complaint or discipline the interpreter differently as appropriate. If the committee determines that
117 the panel did not abuse its discretion, the interpreter shall be disciplined according to the panel's decision.
118 and the discipline, if any. The chair of the committee, or the chair's designee, shall issue a written
119 decision and analysis on behalf of the committee within 30 days after the hearing. The program
120 coordinator shall mail a copy of the decision to the interpreter. The committee's decision is final.

121 ~~(37)(EC)(v)~~ The interpreter may review and, upon payment of the required fee, obtain a copy of
122 any records to be used by the committee. The interpreter may attend all of the hearing except the
123 committee's deliberations. The interpreter may be represented by counsel and shall be permitted to make
124 a statement, call and interview the complainant and witnesses, and comment on the claims and evidence.
125 The interpreter may obtain a copy of the record of the hearing upon payment of the required fee.

126 ~~(8) (3)(E)(vi)~~ If the interpreter is certified in Utah under ~~Paragraph (3)(B)~~ rule 3-306.03(1), the program
127 coordinator, panel or committee ~~shall~~ may report any final findings and sanction to ~~the~~ other agencies and
128 certification authorities in the other jurisdictions.

Tab 4

Rule 4-408.01. Responsibility for administration of trial courts.

Intent:

To designate the court locations administered directly through the administrative office of the courts and those administered through contract with local government.

Applicability:

This rule shall apply to the trial courts of record and to the administrative office of the courts.

Statement of the Rule:

(1) All locations of the juvenile court shall be administered directly through the administrative office of the courts.

(2) All locations of the district court shall be administered directly through the administrative office of the courts, except the following, which shall be administered through contract with county or municipal government: Fillmore, Junction, Loa, Manila, ~~Morgan~~, Panguitch, Randolph, and Salem.

Tab 5

~~Rule 4-602. Victims' Rights Committees.~~**~~Intent:-~~**

~~To provide consistency in the establishment of the Victims' Rights Committees in accordance with Utah Code Ann. Section 77-37-5.~~

~~To establish the Commission on Criminal and Juvenile Justice as the responsible agency for the development of policies and procedures which govern the operation of the Victims' Rights Committees.~~

~~Applicability:-~~

~~This rule shall apply to the judiciary and the Commission on Criminal and Juvenile Justice.~~

~~Statement of the Rule:-~~

~~(1) On or before July 1st of each odd-numbered year, the presiding judge of the district court in each judicial district shall appoint the chair of the Victims' Rights Committee for that judicial district.~~

~~(2) The chair of the committee shall have experience in and knowledge of the criminal justice system and shall have an interest in the rights of victims and witnesses. The chair shall not be a member of the judiciary or be employed by the judicial branch of government.~~

~~(3) On or before September 1st of each odd-numbered year, the chair shall appoint the members of the Victims' Rights Committee. Members shall consist of: a county attorney, a sheriff, a corrections field services administrator, a juvenile court representative, an appointed victim advocate, a municipal attorney, a municipal chief of police and other representatives as appropriate. Members shall have experience in and knowledge of the criminal justice system and shall have an interest in the rights of victims and witnesses.~~

~~(4) The chair may succeed himself or herself at the discretion of the presiding judge. The members of the committee may succeed themselves at the discretion of the chair.~~

~~(5) The Committee shall act as a clearinghouse to distribute and standardize information relevant to victims of crime and the services available to them within the judicial district. It shall assume a leadership role in developing an educational program for the public as well as professionals who provide services to victims. Victims who have complaints may submit them in writing to the Committee. The Committee will note them for informational purposes and then forward them to the appropriate agency for action. Minutes of the Committee meetings shall be forwarded to the Commission on Criminal and Juvenile Justice for distribution to local Committees on a statewide basis. The Commission shall also provide minutes of the meetings of the Governor's Council on Victims to the local Committees.~~

Tab 6

Rule 9-302. Mandatory electronic filing.

Intent:

To provide that documents filed in criminal cases in justice court be filed electronically.

To provide for exceptions.

Applicability:

This rule applies in the justice court.

Statement of the Rule:

(1) Except as provided in paragraph (3), pleadings and other papers filed in criminal cases in justice court between July 1, 2016 and December 31, 2016 may be electronically filed using the electronic filer's interface.

(2) Except as provided in paragraph (3), pleadings and other papers filed in criminal cases in justice court on or after December 31, 2016 shall be electronically filed using the electronic filer's interface.

(2)(A) A self-represented party who is not a lawyer may file pleadings and other papers using any means of delivery permitted by the court.

(2)(B) A lawyer whose request for a hardship exemption from this rule has been approved by the Judicial Council may file pleadings and other papers using any means of delivery permitted by the court. To request an exemption, the lawyer shall submit a written request outlining why the exemption is necessary to the Justice Court Administrator.

(3) The electronic filer shall be an attorney of record and shall use a unique and personal identifier that is provided by the filer's service provider.

Tab 7



Nancy Sylvester <nancyjs@utcourts.gov>

CJA Rule 1-308 proposed amendments from education

Tom Langhorne <tomnl@utcourts.gov>

Thu, Mar 17, 2016 at 3:29 PM

To: Nancy Sylvester <nancyjs@utcourts.gov>

Nancy:

Thanks for your valuable help. We are in agreement that Rule 3-108, nor the proposed amendments to same, address the use of senior judges for mentoring new judges. Here's my stab at the proposed amendments:

Education Department's Proposed Amendments to CJA Rule 3-108

(Proposed changes in red)

Amend (1)(G) to read:

(1)(G) to provide education and training opportunities to judges of one court level in the disposition of cases in another court level **or to provide mentoring of a newly confirmed judge**; and

Create a new (3)(C) to read:

In mentoring circumstances, a presiding judge may assign a senior judge to mentor a new judge for up to five days per fiscal year if mentoring assistance from a currently sitting judge in that district, or an adjacent district, is unavailable.

The former (3) (C) becomes the new (3) (D)

As always, I would appreciate your feedback. I would like this language (or replacement language you suggest) to be considered by the P&P Committee.

Tom

—

—

Thomas N. Langhorne, Esq.

Judicial Institute Director

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801.578.3837 (direct)

804.306.3822 (cell)

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 or to provide mentoring of a newly confirmed judge; 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) In exigent circumstances.

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

(3)(A)(ii) For purposes of this rule, exigent circumstances generally exist up to 30 days.

(3)(A)(iii) In exigent circumstances, the presiding judge may assign a senior judge temporarily to cover after exhausting all internal coverage options, including seeking coverage from sitting judges inside or outside the district.

(3)(A)(iv) If the presiding judge assigns a senior judge temporarily due to exigent circumstances, the presiding judge shall immediately notify the chair of the Judicial Council's Management Committee.

(3)(A)(v) Within 14 days of assigning a senior judge, the presiding judge shall develop and present a plan to the Management Committee addressing the need for coverage on an ongoing basis. The plan shall explain why the coverage is needed, describe the efforts the presiding judge has made to find coverage from sitting judges inside and outside the district, and state the expected duration and cost of the senior judge coverage.

(3)(A)(vi) The presiding judge shall obtain the Management Committee's approval prior to assigning a senior judge to provide ongoing coverage.

(3)(B) In non-exigent circumstances.

(3)(B)(i) Non-exigent circumstances are those that do not qualify as exigent under subparagraph (3)(A)(i).

(3)(B)(ii) If a presiding judge anticipates the need for senior judge coverage, the presiding judge shall develop and present a plan to the Management Committee addressing the need for coverage on an ongoing basis. The plan shall explain why the coverage is needed, describe the efforts the presiding judge has made to find coverage from sitting judges inside and outside the district, and state the expected duration and cost of the senior judge coverage.

(3)(B)(iii) The presiding judge shall obtain the Management Committee's approval prior to assigning a senior judge to provide coverage under non-exigent circumstances.

72 | (3)(C) In mentoring circumstances, a presiding judge may assign a senior judge to mentor a
73 | new judge for up to five days per fiscal year if mentoring assistance from a current sitting judge in that
74 | district, or an adjacent district, is unavailable.

75 | (3)(GD) Any active judge of a court of record may serve temporarily as the judge of a court
76 | with equal jurisdiction in a different judicial district upon assignment by the presiding judge of the district in
77 | which the judge to be assigned normally sits or, in district court cases involving taxation, as defined in
78 | Rule 6-103(4) of the Utah Code of Judicial Administration, assignment by the supervising tax judge with
79 | the approval of the presiding officer of the Council.

80 | (3)(BD) Any active judge of a court of record may serve temporarily as the judge of a court
81 | with different jurisdiction in the same or a different judicial district upon assignment by the presiding officer
82 | of the Council or assignment by the state court administrator with the approval of the presiding officer of
83 | the Council.

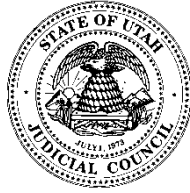
84 | (3)(GE) The assignment shall be made only after consideration of the judge's calendar. The
85 | assignment may be for a special or general assignment in a specific court or generally within that level of
86 | court and shall be for a specific period of time, or for the duration of a specific case.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

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

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

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

Tab 8



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
From: Nancy Sylvester *Nancy J. Sylvester*
Date: March 31, 2016
Re: S.B. 42, Public Notice of Court Recording

S.B. 42, Public Notice of Court Recording, passed in the 2016 legislative session. The bill requires the Judicial Council to direct courts to give notice to the public when court proceedings are being recorded. Amended Utah Code section 78A-2-208 now provides in relevant part the following:

- (1) The sittings of every court of justice are public, except as provided in Subsections (3) and (4).
- (2) The Judicial Council shall require that notice be given to the public that the proceedings are being recorded when an electronic or digital recording system is being used during court proceedings.

In reviewing the Code of Judicial Administration, Chapter 4, Article 4, which addresses internal court operations, seemed to be the most appropriate fit for the new rule. Rules 4-401.01 and 4-401.02 deal with electronic media coverage of court proceedings and possession and use of portable electronic devices, respectively. Although both of these rules discuss what others may or may not do in the courthouse as opposed to what the court must do, they both deal with recording devices. And since the legislature asked the Judicial Council to draft a rule regarding notice of the courts' recording devices, I concluded that an enacted Rule 4-401.03 would be an appropriate place for this charge.

The proposed language for Rule 4-401.03 is based in part on Rule 4-401.01.

**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 4-401.03. Notice to public of recording.

Intent:

To establish uniform standards and procedures for notifying the public when court proceedings are being recorded, consistent with Utah Code section 78A-2-208.

Applicability:

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

This rule governs all judicial proceedings.

Statement of the Rule:

(1) Definitions.

(1)(A) "Notice" as used in this rule means any written or verbal announcement to the public.

(1)(B) "Proceeding" as used in this rule means any trial, hearing, or other courthouse matter that is open or closed to the public.

(1)(C) "Recording" or "recorded" as used in this rule means recording or capturing images, text, or sound in a courthouse.

(2) Notice to the public. Courts will provide notice to the public that all proceedings are being recorded when an electronic or digital recording system is used.

(3) Presumption of recording. There is a presumption that proceedings are being recorded when an electronic or digital recording system is present in a courtroom or courthouse.