

# Agenda

## Policy and Planning Committee

October 4, 2016

10:00 – 12:00 p.m.

Park City Marriott  
1895 Sidewinder Drive  
Park City, UT 84060

Ph: 435-649-2900 / Keisa Cell: 385-227-1426  
(\*Same room as Judicial Council meeting)

|       |   |                       |       |                   |
|-------|---|-----------------------|-------|-------------------|
| 10:00 | Welcome and Approval of Minutes   | Action                | Tab 1 | Judge Reed Parkin |
| 10:10 | CJA 4-503. Mandatory electronic filing (District court civil cases).                  | Discussion/<br>Action | Tab 2 | Clayson Quigley   |
|       | CJA 4-603. Mandatory electronic filing (District court criminal cases).               | Discussion/<br>Action | Tab 3 | Clayson Quigley   |
|       | CJA 9-302. Mandatory electronic filing (Justice court criminal cases).                | Discussion/<br>Action | Tab 4 | Clayson Quigley   |
| 10:35 | CJA 2-212. Communication with the Office of Legislative Research and General Counsel. | Discussion/<br>Action | Tab 5 | Keisa Williams    |
| 11:05 | CJA 3-201. Court commissioners.   | Discussion/<br>Action | Tab 6 | Keisa Williams    |
| 11:50 | 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.

November 4, 2016

December 2, 2016

January 6, 2017

# Policy and Planning Committee Meeting Executive Summary - Focus Sheet

October 4, 2016

| Issue   | Scope  | Status      | Assignments  | Notes  |
|---|--|-------------|--|--|
| Approval of Minutes   |  | Action/Vote | Read September minutes for accuracy and approval.                |  |
| <b>CJA Rule 4-503.<br/>Mandatory electronic filing.</b>   | Review amendments to Rule 4-503 regarding electronic filing in <i>District Court civil cases</i> .   | Discussion  | Review the rule 4-503 proposals and be prepared to discuss them. | Debra Moore proposes an addition to the rules regarding electronic filing in both the district and justice courts. The amendment requires e-filers to associate related documents at the time of filing. The language added to each Rule is identical. Clayson Quigley will attend the meeting on Debra's behalf to explain further and answer any questions.  |
| <b>CJA Rule 4-603.<br/>Mandatory electronic filing.</b>   | Review amendments to Rule 4-603 regarding electronic filing in <i>District Court criminal cases</i> .  | Discussion  | Review the rule 4-603 proposals and be prepared to discuss them. |  |
| <b>CJA Rule 9-302.<br/>Mandatory electronic filing.</b>   | Review amendments to Rule 9-302 regarding electronic filing in <i>Justice Court criminal cases</i> .   | Discussion  | Review the rule 9-302 proposals and be prepared to discuss them. |  |
| <b>CJA Rule 2-212.<br/>Communication with the Office of Legislative Research and General Counsel.</b> | Consider amendments to Rule 2-212 regarding the provision of notice of Judicial Council rule amendments to the Office of Legislative Research and General Counsel. | Discussion  | Review the rule 2-212 proposal and be prepared to discuss it.    | At the last meeting, the committee asked Keisa Williams to get clarification from Rick Schwermer regarding the proposed amendments to this rule. Mr. Schwermer provided insight and made a separate proposal. <ul style="list-style-type: none"> <li>• <b>Johnson proposal:</b> Limits the notice requirement from the AOC (versus committees, etc), eliminates notice to the Judicial Rules Review Committee, and changes timing for the</li> </ul> |

# Policy and Planning Committee Meeting Executive Summary - Focus Sheet

October 4, 2016

|   |   |                   |   |   |
|---|---|-------------------|---|---|
|   |   |                   |   | <p>notice to the date rules are published for public comment.</p> <ul style="list-style-type: none"> <li>• <b>Schwerner proposal:</b><br/>Agree with AOC only notice requirement and changes to timing for notice to publication date, but do not eliminate notice to Judicial Rules Review Committee.</li> </ul>   |
| <p><b>CJA Rule 3-201.</b><br/><b>Court commissioners.</b></p> | <p>Continue reviewing amendments to Rule 3-201 regarding court commissioners.</p> | <p>Discussion</p> | <p>Review the rule 3-201 proposals and be prepared to discuss them.</p> | <p>At the last meeting, the committee reviewed and approved (with revisions) proposals to subsections (3)(C), (3)(D), (3)(G), (3)(H), and (3)(J).</p> <p>The committee must continue reviewing the following additional proposed amendments:</p> <ul style="list-style-type: none"> <li>• (4)(D)(ii) – Allows publication to be by press release or other public notice rather than newspaper.</li> <li>• (4)(G) – Requiring names associated with public comments be redacted prior to dissemination to the candidate.</li> <li>• (5) - Change the word “remove” when referring to the Council &amp; district</li> </ul> |

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

**October 4, 2016**

|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  |  | <p>courts' decision not to retain a commissioner at the end of their term and attempts to clarify discipline and certification.</p> <ul style="list-style-type: none"><li>• (6) - Requires the preparation of performance plans and includes the time requirements listed on the forms so that they are given the force of rule.</li><li>• (7) - Attempts to clarify that there are separate processes for discipline and retention.</li></ul> |
|--|--|--|--|--|

Next Meeting: Friday, November 4, 2016 at 12:00 p.m. in the Judicial Council room at Matheson.

# Tab 1

**Policy and Planning Committee**  
Matheson Courthouse  
Council room  
450 South State St.  
Salt Lake City, Utah 84111

September 9, 2016

**Draft**

**Members Present**

Hon. Marvin Bagley  
Hon. Ann Boyden  
Hon. Mary Noonan  
Hon. Reed S. Parkin - Chair  
John Lund

**Members Excused**

Hon. Mark DeCaria

**Staff**

Nancy J. Sylvester  
Keisa L. Williams

**Guests**

**(1) Approval of minutes**

Judge Reed Parkin welcomed the members to the meeting. Judge Parkin announced Judge Mark DeCaria had been moved to the Liaison Committee. The committee then addressed the August 5, 2016 minutes.

Judge Noonan moved to approve the August 5, 2016 minutes. Judge Boyden seconded the motion and it passed unanimously.

**(2) CJA 3-111. Performance evaluation of senior judges and court commissioners.**

Keisa Williams discussed a proposal by Brent Johnson to amend Rule 3-111. The amendment is to clarify a question posed to Mr. Johnson regarding whether separate performance evaluations are required from each presiding judge when a commissioner serves multiple districts. Mr. Johnson offered two versions. Version 1 required separate evaluations; Version 2 required only one evaluation with each presiding judge consulting with one another and providing feedback. Mr. Johnson recommended Version 1, due to a concern that each presiding judge will not perform the duties required in the evaluation form, namely surveying judges and court personnel and reviewing at least five of the commissioner's cases. During discussions, the committee concurred with Mr. Johnson's concerns and noted that commissioner performance may differ greatly by district and it was important that the evaluation process be a complete and accurate review of performance.

Judge Noonan moved to approve Version 1 of the amendments to Rule 3-111 to be sent out for public comment. Judge Bagley seconded the motion and it passed unanimously.

### **(3) CJA 2-212. Communication with the Office of Legislative Research and General Counsel.**

Keisa Williams discussed a proposal by Brent Johnson to amend Rule 2-212. The purpose of the amendment is to eliminate the requirement of the Board of Judges and Standing and Ad Hoc Committees to send copies of rule drafts to the Director of the Office of Legislative Research and General Counsel and the chair of the Judicial Rules Review Committee at the same time the draft rules are sent to the Judicial Council. The amendment would simply require the Administrative Office of the Courts (AOC) to send such rule drafts to the Office of Legislative Research and General Counsel when they are sent out for public comment. Mr. Johnson felt that this change would make things more efficient and comport with current practice.

After discussion, the committee asked Keisa Williams to follow up with Rick Schwermer to clarify whether the Judicial Rules Review Committee still exists and get Mr. Schwermer's opinion on whether this rule change would cause an issue with the legislature.

### **(4) CJA 3-201. Court commissioners.**

Keisa Williams discussed a proposal by Brent Johnson to make several amendments to Rule 3-201. Mr. Johnson's proposals stem from recent issues that arose during the Second District Court Commissioner approval process and a review conducted by Mr. Johnson when presenting to the presiding judges and trial court executives on commissioner evaluations. The proposals are as follows:

#### **(3)(C) - Clarify that the word "court" refers to the site and not the entity**

- After discussion, the committee amended the language to clarify that the presiding judge or designee from each court "level" the commissioner will serve shall sit on the nominating committee. The committee expressly changed the word "site" to "level" because commissioners may serve at several court "sites" under one district, and requiring a judge from each "site" would make the committee unwieldy.

#### **(3)(C) - Proposes the creation of a commissioner nominating manual because we no longer control the judicial nominating process**

- After discussion, the committee agreed with Mr. Johnson's proposal of the creation of a commissioner nominating manual similar to that used by the Justice Courts, as it will clarify the specific duties and requirements in the nominating process.

(3)(D) – Limits the number of judges serving on the committee when a commissioner serves multiple districts.

- After discussion, the committee removed the language from Mr. Johnson’s proposal regarding service percentages as it seemed arbitrary, but approved the language limiting service on the nominating committee to a maximum of two judges from each district so as to not make the committee unwieldy.

(3)(G) – Requires voting by the nominating committee to be by confidential ballot and provides a process for reconsidering a candidate.

- After discussion, the committee agreed with Mr. Johnson’s proposal as written because it makes the voting process fair and less contentious.

(3)(H) – Requires the names of public commenters be redacted before they are provided to the candidates.

- After discussion, the committee agreed with Mr. Johnson’s proposal as written, in order to promote candid public comments without fear of retaliation.

(3)(J) – Clarifies that votes for nominees require a majority of judges in each district if the commissioner is serving more than one district.

- After discussion, the committee agreed with Mr. Johnson’s proposal and made an additional edit to make the language consistent with (3)(C) regarding court “levels.”

Judge Bagley moved to approve amendments to Rule 3-201, with committee changes on sections (3)(C), (3)(D), (3)(G) and (3)(J). The rule will not be sent out for public comment until the committee has a chance to review the remaining proposed amendments.

Judge Noonan seconded the motion and it passed unanimously.

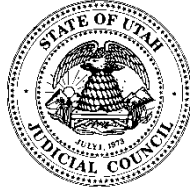
The committee asked Keisa Williams to add the remaining proposed amendments to the committee’s next agenda.

## **(5) Other business**

There was no other business and the meeting was adjourned at 1:50 pm.



# 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:** Keisa L. Williams *Keisa L. Williams*  
**Date:** October 4, 2016  
**Re:** Mandatory Electronic Filing

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At the request of the Board of District Judges, the IT Department has designed a system to number documents filed with the court and to link related documents so that they are displayed together in the case history. For example, a motion will be displayed with the supporting memorandum and all other documents associated with that motion. Filers who use the e-filing system will need to do the initial linking. Without a rule requiring filers to take the time to identify the related documents, the Board of District Judges is concerned filers will not do it, which would defeat the purpose of this feature.

The new feature will save judicial and clerical time and is scheduled to be deployed by the end of this calendar year. There are three rules related to electronic filing that would require amendment. The proposed language is identical in all three rules. If the rule amendments are approved, the effective date will be the date the feature is operational.

Encl. CJA 4-503  
CJA 4-603  
CJA 9-302

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 4-503. Mandatory electronic filing.**

Intent:

To require that documents in district court civil cases be filed electronically.

To provide for exceptions.

Applicability:

This rule applies in the district court.

Statement of the Rule:

(1) Except as provided in Paragraph (2), pleadings and other papers filed in civil cases in the district court on or after April 1, 2013 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 District Court Administrator.

(2)(C) Pleadings and other papers in probate cases may be filed using any means of delivery permitted by the court until July 1, 2013, at which time they shall be electronically filed using the electronic filer's interface.

(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.

**(4) If there are related documents, the filer shall associate the documents, if prompted, at the time of filing.**

Effective date: May 1, 2016

# Tab 3

**Rule 4-603. Mandatory electronic filing.**

Intent:

To require that documents in district court criminal cases be filed electronically.

To provide for exceptions.

Applicability:

This rule applies in the district court.

Statement of the Rule:

(1) Except as provided in Paragraph (2), pleadings and other papers filed in criminal cases in the district court on or after March 31, 2014 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 District Court Administrator.

(2)(C) The Information may be filed using any means of delivery permitted by the court until January 1, 2015, at which time it shall be electronically filed using the electronic filer's interface.

(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.

**(4) If there are related documents, the filer shall associate the documents, if prompted, at the time of filing.**

Effective date: May 1, 2016

# Tab 4

**Rule 9-302. Mandatory electronic filing.**

Intent:

To require that documents 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 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 January 1, 2017 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.

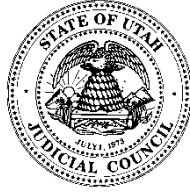
(3) The electronic filer shall be an attorney of record and shall use a unique and personal identifier that is provided by the filer's service provider.

**(4) If there are related documents, the filer shall associate the documents, if prompted, at the time of filing.**

Effective date: May 1, 2016

# Tab 5



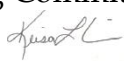


# Administrative Office of the Courts

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:** Keisa L. Williams   
**Date:** October 4, 2016  
**Re:** Communication with the Office of Legislative Research and General Counsel

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At the September 9, 2016 meeting, the committee discussed Brent Johnson's proposed amendments to CJA Rule 2-212. The rule requires the court to send rules to the Office of Legislative Research and General Counsel as well as the Chair of the Judicial Rules Review Committee. Mr. Johnson proposed eliminating the requirement to send notice of those rules to the Judicial Rules Review Committee because he did not believe that committee to be active. Mr. Johnson also proposed eliminating the references to the Boards of Judges and Standing Committees because all the rules are ultimately Council rules and it is the Administrative Office of the Courts that publish all rules.

After discussion, the committee asked Keisa Williams to get clarification from Rick Schwermer regarding the proposed amendments to this rule. Mr. Schwermer stated that the Judicial Rules Review Committee has not convened in the last 10 years, but they are still considered an active committee. The Office of Legislative Research and General Counsel staffs the Judicial Rules Review Committee, so technically if we send notice to that office, the committee will also receive it. However, Mr. Schwermer felt it best to keep the reference to the Judicial Rules Review Committee because it does not constitute an additional burden on the AOC. The AOC may simply send an email to a staff member in the Office of Legislative Research and General Counsel to fulfill both requirements. Mr. Schwermer concurred with the remaining amendments proposed by Mr. Johnson.

Encl. CJA 2-212

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.

1 **Rule 2-212. Communication with the Office of Legislative Research and General Counsel.**

2  
3 Intent:

4  
5 To provide the Legislature, through the Office of Legislative Research and General Counsel, with  
6 notice of Council rules and opportunity to comment upon them.

7  
8 To provide the Legislature, ~~and~~ through the Office of Legislative Research and General Counsel  
9 with notice of Council action upon Council rules.

10  
11 Applicability:

12  
13 This rule shall apply to the Council, the Boards of Judges, the standing and ad hoc committees of  
14 the Council, and the Administrative Office.

15  
16 Statement of the Rule:

17  
18 (1) The ~~principal staff person assigned to the Council, the Boards of Judges, and the standing and~~  
19 ~~ad hoc committees of the Council~~ Administrative Office of the Courts shall send to ~~the Director~~  
20 ~~of the Office of Legislative Research and General Counsel and the chair of the Judicial Rules~~  
21 ~~Review Committee~~ the a draft rule of the Council, ~~Board, or committee~~ at the same time the draft  
22 rule is ~~submitted to the Council~~ published for public comment.

23  
24 (2) A legislator or representative of the Office of Legislative Research and General Counsel may  
25 attend any meeting of the Council at which a rule of the Council is under consideration, and may  
26 comment upon the rule.

27  
28 (3) The ~~State Court Administrator~~ Administrative Office of the Courts shall notify ~~the chair of~~  
29 ~~the Judicial Rules Review Committee and the Director of~~ the Office of Legislative Research and  
30 General Counsel of the Council's final action on any rule ~~published for comment or adopted~~ the  
31 Council adopts.

# Tab 6



Nancy Sylvester <nancyjs@utcourts.gov>

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## Rule 3-201

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**Brent Johnson** <brentj@utcourts.gov>

Thu, Jul 14, 2016 at 2:22 PM

To: Nancy Sylvester <nancyjs@utcourts.gov>, Keisa Williams <keisaw@utcourts.gov>

And finally (for today) is the big one. (Excuse any typos or other issues. In the interest of time I only edited this once.)

Attached you will find rule 3-201 with proposed changes. The changes appear to be fairly extensive, but much of it is simply an attempt to clarify existing practices. The changes result from recent issues that arose during the Second District Court Commissioner approval process and they result from a review I conducted when presenting to the presiding judges and trial court executives on commissioner evaluations. There is at least one set of changes that I feel strongly about.

The proposed changes that I feel most strongly about are the changes that deal with districts and the Judicial Council being able to "remove" a commissioner at the end of the commissioner's term of office. I don't think that these actions should be considered "removal." They should instead be decisions on whether to retain the commissioner. Using the word remove may create an expectation that a commissioner has a right to a next term. Just like judges, there is no right to a next term. Commissioners should be subject to retention, the same as judges.

I will provide a brief explanation of some of the proposals. The change to paragraph (3)(c) reflects confusion that arose about whether judges on the selection committee would come from each court site or if "court" meant something else. As you know, the word court can refer to the entity and it can mean a site. Typically when court is used in a rule or statute it means the entity and not the site. But there has been confusion. The distinction is important because the rule later states that the majority of judges in each court the commissioner serves must approve the commissioner. This would effectively give veto authority to one judge if a commissioner only serves one site such as is the case in Morgan County. I am proposing that at least in this first instance it refer to a court site. But perhaps it truly means the entity and we just need to educate the districts.

In the next change, I propose that a commissioner nominating manual be created, similar to the nominating manual used for justice court judges. The rule currently refers to the procedures of the judicial nominating commissions. This made sense when the judicial nominating commissions were housed in the judiciary, but because we no longer control the judicial nominating process or we should have our own internal procedures. Perhaps everything can be spelled out in a rule, rather than a manual, but I am at least proposing this for discussion. We can use the justice court manual as a starting point.

The next proposal relates to the issue that arises about the number of judges that serve on the committee when the commissioner serves multiple districts. I am proposing that the number of judges be limited because I don't think that every judge that serves on the single committee should serve on the joint committee, because that could get unwieldy. However, again, that is just thrown out for discussion. The next area specifically states that voting shall be by confidential ballot. This was a problem in the recent process. If the committee agrees to creating a nominating manual then that could be instead addressed in the manual. The next line also addresses a process for reconsidering a candidate and is intended to address recent problems. The change in (j) addresses the problem about whether the vote is from judges at each court site or the total judges in the district. The next change is on press releases and recognizes that using newspapers of general circulation is an outdated concept and there should be other means of notifying those who are interested.

The next section addresses public comments and recognizes that there is currently a gap. In another section the rule states that comments will go to a candidate, but there is nothing in the rule stating that comments should go to a sitting commissioner. Also, there is a question about whether the comments given to the commissioner should include the names. During the recent process, candidates were given the names of commenters and one of the candidates confronted an individual who provided a negative comment. The person complained to this office and suggested that if names are given to the candidates and commissioners fewer people will comment out

of fear of retaliation.

The proposed changes that begin in (5) deal with the previously mentioned clarification on removal or retention. They also attempt to clarify the circumstances involving discipline. The first changes address Judicial Council certification. As I looked at the rules, there wasn't anything that specifically equated certification with the commissioner automatically receiving a new term. I think making this clear is important. Under the process for judges, if JPEC does not certify a judge the judge can still be retained if the judge receives enough votes. It appears that the Judicial Council's process for certification means that the commissioner will not have a new term, but it isn't clear. Perhaps we should eliminate the concept of certification, which is a carryover from the days when the Judicial Council certified judges, and more directly state that the Judicial Council votes on whether to retain a commissioner.

The changes in the next section deal with performance evaluations and performance plans. There are other rules that discuss performance plans by presiding judges, but I believe it is also important to refer to performance plans in this rule because the performance plans and performance evaluations are tied together. The other changes in that area incorporate requirements from the forms that are distributed to presiding judges and trial court executives. The forms impose time and other requirements, but the forms do not seem to have the force of rule. The forms are not referenced in the rule and therefore I think it is important to put the requirements in the rule itself so it is clear that the Judicial Council is the entity that is imposing those requirements.

The changes in section (7) again address the differences between discipline and not being retained. At the present time some of the concepts appear to be confused and this is an attempt to clarify that there is one process for discipline and there is a different process for retention. Hopefully I have captured that distinction.

I would certainly be happy to attend a Policy & Planning meeting to further discuss my reasoning and the language, but hopefully I have at least provided a starting point.

Thank you.

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## 2 attachments



**3-201 (7-14-16 version).pdf**  
53K



**3-201 (7-14-16 version).wpd**  
21K

1 **Rule 3-201. Court commissioners.**

2  
3 Intent:

4 To define the role of court commissioner.

5 To establish a term of office for court commissioners.

6 To establish uniform administrative policies governing the qualifications, appointment,  
7 supervision, discipline and removal of court commissioners.

8 To establish uniform administrative policies governing the salaries, benefits and privileges of the  
9 office of court commissioner.

10 Applicability:

11 This rule shall apply to all trial courts of record.

12 Statement of the Rule:

13 (1) Definition. Court commissioners are quasi-judicial officers established by the Utah Code.

14 (2) Qualifications.

15 (A) Court commissioners must be at least 25 years of age, United States citizens, Utah residents  
16 for three years preceding appointment and residents of Utah while serving as commissioners. A  
17 court commissioner shall reside in a judicial district the commissioner serves.

18 (B) Court commissioners must be admitted to practice law in Utah and exhibit good character.  
19 Court commissioners must possess ability and experience in the areas of law in which the court  
20 commissioner serves.

21 (C) Court commissioners shall serve full time and shall comply with Utah Code Section  
22 78A-2-221.

23 (3) Appointment - Oath of office.

24 (A) Selection of court commissioners shall be based solely upon consideration of fitness for  
25 office.

26 (B) When a vacancy occurs or is about to occur in the office of a court commissioner, the  
27 Council shall determine whether to fill the vacancy. The Council may determine that the court  
28 commissioner will serve more than one judicial district.

29 (C) A committee for the purpose of nominating candidates for the position of court commissioner  
30 shall consist of the presiding judge or designee from each court level that the commissioner will  
31 serve, three lawyers, and two members of the public. Committee members shall be appointed by  
32 the presiding judge of the district court of each judicial district. The committee members shall  
33 serve three year terms, staggered so that not more than one term of a member of the bench, bar,  
34 or public expires during the same calendar year. The presiding judge shall designate a chair of the  
35 committee. All members of the committee shall reside in the judicial district. All members of the  
36 committee shall be voting members. A quorum of one-half the committee members is necessary  
37 for the committee to act. The committee shall act by the concurrence of a majority of the  
38 members voting. When voting upon the qualifications of a candidate, the committee shall follow  
39 the voting procedures of the judicial nominating commissions established in the commissioner  
40 nominating manual.

(D) If the commissioner will serve more than one judicial district, the presiding judges of the  
districts involved shall select representatives from each district's nominating committee to form a  
joint nominating committee with a size and composition equivalent to that of a district  
committee-, except that a maximum of two judges from each district shall serve on the joint

nominating committee.

(E) No member of the committee may vote upon the qualifications of any candidate who is the spouse of that committee member or is related to that committee member within the third degree of relationship. No member of the committee may vote upon the qualifications of a candidate who is associated with that committee member in the practice of law. The committee member shall declare to the committee any other potential conflict of interest between that member and any candidate as soon as the member becomes aware of the potential conflict of interest. The committee shall determine whether the potential conflict of interest will preclude the member from voting upon the qualifications of any candidate. The committee shall record all declarations of potential conflicts of interest and the decision of the committee upon the issue.

(F) The administrative office of the courts shall advertise for qualified applicants and shall remove from consideration those applicants who do not meet minimum qualifications of age, citizenship, residency, and admission to the practice of law. The administrative office of the courts shall develop uniform guidelines for the application process for court commissioners.

(G) The nominating committee shall review the applications of qualified applicants and may investigate the qualifications of applicants to its satisfaction. The committee shall interview selected applicants and select the three best qualified candidates. All voting shall be by confidential ballot. The committee shall receive public comment on those candidates as provided in paragraph (4). Any candidate may be reconsidered upon motion by a committee member and upon agreement by a majority of nominating committee members.

(H) When the public comment period has closed, the comments shall go to the nominating committee. If any comments would negatively affect the committee's decision on whether to recommend a candidate, the candidate shall be given notice [with the names redacted] and an opportunity to respond to the comments. If the committee decides not to recommend a candidate based on the comments, the committee shall select another candidate from the interviewed applicants and again receive public comment on the candidates as provided in paragraph (4).

(I) The chair of the nominating committee shall present the names, applications, and the results of background investigations of the nominees to the judges of the courts the court commissioner will serve. The committee may indicate its order of preference.

(J) The judges of each court level the court commissioner will serve shall select one of the nominees by a concurrence of a majority of judges voting. If the commissioner will serve more than one judicial district, the concurrence of each court independent of the others a majority of judges in each district is necessary for selection.

(K) The presiding judge of the district ~~court of the district~~ the court commissioner will primarily serve shall present the name of the selected candidate to the Council. The selection shall be final upon the concurrence of two-thirds of the members of the Council. The Council shall vote upon the selection within 45 days of the selection or the concurrence of the Council shall be deemed granted.

(L) If the Council does not concur in the selection, the judges of the district may select another of the nominees or a new nominating process will be commenced.

(M) The appointment shall be effective upon the court commissioner taking and subscribing to the oath of office required by the Utah Constitution and taking any other steps necessary to qualify for office. The court commissioner shall qualify for office within 45 days after the concurrence by the Council.

(4) Public comment for appointment and retention.

(A) Final candidates for appointment and court commissioners who are up for retention shall be subject to public comment.

(B) For final candidates, the nominating committee shall be responsible for giving notice of the public comment period.

(C) For court commissioners, the district in which the commissioner serves shall be responsible for giving notice of the public comment period.

(D) The nominating committee or district in which the commissioner serves shall:

(i) email notice to each active member of the Utah State Bar including the names of the nominees or court commissioner with instructions on how to submit comments;

(ii) ~~publish~~ issue a press release and other public notices listing the names of the nominees or court commissioner with instructions on how to submit comments ~~in a newspaper of general circulation~~; and

(iii) allow at least 10 days for public comment.

(E) Individuals who comment on the nominees or commissioners should be encouraged, but not required, to provide their names and contact information.

(F) The comments are classified as protected court records and shall not be made available to the public.

(G) When the public comment period closes on a commissioner, the comments shall be given to and reviewed by the presiding judge of each district the commissioner serves. If any comments would negatively affect the presiding judge's decision on whether to discipline or remove the commissioner from office, the commissioner shall be provided the comments [with the commenters' names redacted] and the commissioner shall be given an opportunity to respond to the comments.

(5) Term of office. The court commissioner shall be appointed until December 31 of the third year following concurrence by the Council. At the conclusion of the first term of office and each subsequent term, the court commissioner shall be retained for a term of four years unless the judges of the courts the commissioner serves ~~remove vote not to retain~~ the commissioner in accordance with paragraph (6)(C) or unless the Judicial Council does not certify the commissioner for retention under rule 3-111. The term of office of court commissioners holding office on April 1, 2011 shall end December 31 of the year in which their term would have ended under the former rule.

(6) Performance evaluation and public comments.

(A) The presiding judge of ~~the each~~ district the commissioner serves shall prepare an evaluation of the commissioner's performance on an annual basis, on forms provided by the administrative office. The presiding judge shall provide copies of the evaluation to the Judicial Council. The presiding judge shall also prepare an annual performance plan in accordance with rule 3-105(3)(M). ~~A copy~~ Copies of ~~the~~ performance plans and ~~any subsequent~~ evaluations shall be maintained in the ~~official~~ commissioner's personnel file in the administrative office. Court commissioners shall comply with the program for judicial performance evaluation, including ~~any recommendations made in the evaluation~~ expectations set forth in a performance plan.

(B) The presiding judge shall complete the annual performance evaluation by January 31 of each year. The presiding judge shall survey judges and court personnel on a quarterly basis seeking feedback for the evaluation. During the evaluation period, the presiding judge shall review at



least five of the commissioner's active cases. The review shall include courtroom observation or a review of recorded hearings.

(7) Removal, retention, and sanctions.

(A) During a commissioner's term, if the commissioner's performance is not satisfactory, the presiding judge, or presiding judges if the commissioner serves multiple districts, with the concurrence of a majority of the judges of that jurisdiction in each district the commissioner serves, may discipline sanction the commissioner in accordance with paragraph (7)(D) or remove the commissioner from office. If the commissioner disagrees with the ~~presiding judge's~~ decision, the commissioner may request a review of the decision by the Management Committee of the Council.

(B) During a commissioner's term, The court commissioner may be removed by the Council:

(i) as part of a reduction in force;

(ii) for failure to meet the evaluation ~~and certification~~ requirements; or

(iii) as the result of a formal complaint filed under rule 3-201.02 upon the concurrence of two-thirds of the Council.

(C) At the end of a commissioner's term, the Council shall review materials on the commissioner's performance during the commissioner's office and the Council shall vote on whether the commissioner should be retained for another term in accordance with rule 3-111.

~~(C)(D) At the end of a commissioner's term, T~~he court commissioner may be removed without cause by the judges of the ~~courts~~ districts the commissioner serves ~~at the conclusion of a term of office~~ may vote not to retain the commissioner for another term of office. Removal under this paragraph The decision not to retain is without cause and shall be by the concurrence of a majority of ~~all the judges of in each district the courts~~ the commissioner serves. A decision not to remove retain a commissioner under this paragraph shall be communicated to the commissioner within a reasonable time after the decision is made, and not less than ~~30~~ 60 days prior to ~~termination~~ the end of the commissioner's term.

~~(D)(E)~~ The court commissioner may be sanctioned by the Council as the result of a formal complaint filed under rule 3-201.02. ~~or by T~~The presiding judge, or presiding judges of the if the commissioner serves multiple courts, with a concurrence of a majority of the judges in each district the commissioner serves the commissioner serves may sanction the commissioner if the commissioner's performance is not satisfactory. Sanctions may include but are not limited to private or public censure, restrictions in case assignments, mandatory remedial education, suspension for a period not to exceed 60 days, and reduction in salary.

(8) Salaries and benefits.

(A) The Council shall annually establish the salary of court commissioners. In determining the salary of the court commissioners, the Council shall consider the effect of any salary increase for judges authorized by the Legislature and other relevant factors. Except as provided in paragraph (6), the salary of a commissioner shall not be reduced during the commissioner's tenure.

(B) Court commissioners shall receive annual leave of 20 days per calendar year and the same sick leave benefits as judges of the courts of record. Annual leave not used at the end of the calendar year shall not accrue to the following year. A commissioner hired part way through the year shall receive annual leave on a prorated basis. Court commissioners shall receive the same retirement benefits as non-judicial officers employed in the judicial branch.

(9) Support services.

- (A) Court commissioners shall be provided with support personnel, equipment, and supplies necessary to carry out the duties of the office as determined by the presiding judge.
- (B) Court commissioners are responsible for requesting necessary support services from the presiding judge.