# Agenda

## Policy and Planning Committee

November 4, 2016
12:00 – 2:00 p.m.
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room, N31

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|---|---|---|---|---|
| 12:00 | Welcome and Approval of Minutes | Action | Tab 1 | Judge Reed Parkin |
| 12:10 | CJA 4-202.02(3)(A)(iv). Records Classification. (Infectious diseases) | Final Action | Tab 2 | Nancy Sylvester |
| 12:15 | CJA 3-201. Court commissioners. | Discussion/ Action | Tab 3 | Keisa Williams, Nancy Sylvester |
| 1:00 | CJA 9-301. Enhancements in justice courts. | Discussion/ Action | Tab 4 | Judge Reed Parkin |
| 1:20 | CJA 4-103(2). Dismissals "without prejudice." | Discussion/ Action | Tab 5 | Nancy Sylvester |
| 1:40 | CJA 4-202.02(2)(C), (2)(F), (4)(A)(iv), (4)(B). Records Classification. (AIS/Appellate case types) | Discussion/ Action | Tab 6 | Nancy Sylvester, Kim Allard |
| 1:55 | 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.

December 2, 2016
January 6, 2017
February 3, 2017
March 3, 2017
April 7, 2017
May 5, 2017
June 2, 2017
July 7, 2017
August 4, 2017
September 1, 2017
October 6, 2017
November 3, 2017
December 1, 2017

# Policy and Planning Committee Meeting
# Executive Summary - Focus Sheet
# November 4, 2016

| Issue | Scope | Status | Assignments | Notes |
|---|---|---|---|---|
| **Approval of Minutes** | | Action/Vote | Read October minutes for accuracy and approval. | |
| **CJA 4-202.02(3)(A)(iv). Records classification. (Infectious diseases)** | Review proposed amendments to Rule 4-202.02(3)(A)(iv) regarding a new process for individuals to obtain warrants for infectious disease testing. | Final Action | Review proposed amendments and be prepared to vote on sending it to the Judicial Council. | |
| **CJA Rule 3-201. Court commissioners.** | Continue reviewing amendments to Rule 3-201 regarding court commissioners. | Discussion/ Action | Review the rule 3-201 proposals and be prepared to discuss them. | At the September meeting, the committee reviewed and approved (with revisions) proposals to subsections (3)(C), (3)(D), (3)(G), (3)(H), and (3)(J). At the October meeting, the committee further revised subsection (3)(C) ("level and judicial district").<br>The committee must continue reviewing the following additional proposed amendments:<br>• (4)(D)(ii) – Allows publication to be by press release or other public notice rather than newspaper.<br>• (4)(G) – Requiring names associated with public comments be redacted prior to dissemination to the candidate.<br>• (5) - Change the word |

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| | | | | "remove" when referring to the Council & district courts' decision not to retain a commissioner at the end of their term and attempts to clarify discipline and certification.<br>• (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.<br>• (7) – Attempts to clarify that there are separate processes for discipline and retention. |
| **CJA 9-301. Record of arraignment and conviction. (Enhancements in justice courts)** | Consider Brent Johnson's recommendation to repeal the rule or in the alternative amend it to incorporate URCrP 11 by reference and streamline the rule's requirements. | Discussion/ Action | Review Brent's proposal and be prepared to discuss it. | Judge Parkin will report on his discussion with the Board of Justice Court Judges. |
| **CJA 4-103(2). Civil calendar management. (Dismissals "without prejudice")** | In *Cannon v. Holmes*, 2016 UT 42, the Supreme Court noted a tension between Civil Rule 41(b) and CJA Rule 4-103(2). On page 6 in the footnote, the court offers a suggestion on how to remedy it: "The difficulty in the future can be easily resolved by amending rule 4-103 to require that all dismissals entered pursuant to the rule must contain the language 'without prejudice,' and by | Discussion/ Action | Review Supreme Court opinion and proposed amendment to rule and be prepared to discuss it. | |

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| | developing forms consistent with that requirement." | | | |
| **4-202.02(2) (C) and (4)(B) (AIS and public access to filings)** | AIS will shortly have a public portal for litigants to view appellate filings. Consider the appellate courts' request to carve out private filings. | Discussion/ Action | Review memo and proposed rule and be prepared to discuss it. | |

Next Meeting: Friday, December 2, 2016 at 12:00 p.m. in the Judicial Council room at Matheson.

# Tab 1

**Policy and Planning Committee**
Park City Marriott
1895 Sidewinder Drive
Park City, Utah 84060

October 4, 2016
Draft

**Members Present**
Hon. Marvin Bagley
Hon. Ann Boyden
Hon. Mark DeCaria
Hon. Mary Noonan
Hon. Reed S. Parkin - Chair
John Lund

**Members Excused**

**Staff**
Nancy J. Sylvester
Keisa L. Williams

**Guests**
Clayson Quigley
Rick Schwermer

**(1) Approval of minutes.**
Judge Reed Parkin welcomed the members as well as guests, Rick Schwermer and Clayson Quigley, to the meeting. The committee then addressed the September 9, 2016 minutes. There being no changes to the minutes, Mr. Lund moved to approve the September 9, 2016 minutes. Judge Pullan seconded the motion and it passed unanimously.

**(2) CJA 4-503. Mandatory electronic filing (District court civil cases).**
**CJA 4-603. Mandatory electronic filing (District court criminal cases).**
**CJA 9-302. Mandatory electronic filing (Justice court criminal cases).**

Mr. Quigley introduced the topic, stating that the Board of District Court Judges requested some time ago that the efiling program allow for the numbering and association of documents. This would allow clerks, judges, and attorneys to group and act on documents that relate to each other. Ms. Sylvester noted that the federal courts already do this in their ECF system. The committee discussed whether this should be in a rule or whether the system should just require it. Addressing the committee's concerns, Mr. Quigley stated that although the language in the rule might eventually have to be modified, this initial change to the rule is to get the system set up so that the attorneys will learn to recognize that this should be done at the time of filing. This will eventually save time for the courts and is to the benefit of the attorneys and parties. A member asked whether the system will require this step or if it would simply be an option. Mr. Quigley explained that within the system there are 277 document types.

They are working on adding an alert to certain types of documents that will pop up and force the attorney to link the document, such as a memorandum to a motion. Mr. Quigley said one large problem they have currently is many attorneys are efiling documents under the "other" category, therefore the alert wouldn't pop up because it is such a broad category. This is in part the reason for the rule. A member noted that many clerks are trained in correcting this issue and redesignating the document type.

The committee wondered if a rule could be created or amended to require an attorney to be more specific when selecting the document type. The committee discussed the incredible burden to clerks and judges in correcting these and noted that the filer should have the obligation to associate the correct documents. There was concern as to whether amending the rule would make this a substantive requirement for attorneys. If the rule is not followed, would this then affect the validity of the document? Mr. Quigley stated that in order to be able to associate documents with other pleadings the court had to create a numbering system, which would automatically number each document filed in a case. These numbers will be assigned in chronological order. Attorneys will be able to see the documents and numbers to associate them. Mr. Quigley said although there are 277 document types, as the efilers go through the system, each step pairs down that number. When the efiler states what type of case it is, the 277 documents are narrowed down to what is needed for that type of case. The designation will be based on the number of the filing; for example, document number 79 will be associated with document number 74. The docket number will not show on the document. Ms. Sylvester said in the federal court system the docket number shows on the document, which is incredibly helpful when there are documents that are similarly titled. Mr. Quigley said the attorneys would be able to see the documents and numbers when they are associating them. Mr. Quigley stated he will discuss with the Board the option of adding the docket number to the document.

The committee discussed a forced prompt and not just an alert that would not allow the efiler to proceed without associating the document. This would eliminate the need for the rule change. Mr. Quigley restated the biggest concern regarding the use of the "other" option. The committee wondered how this would affect the public versus private filings. Mr. Quigley said the options would be very limited. However, they can create a special type of document if needed.

The committee asked Mr. Schwermer for his opinion on this matter. Mr. Schwermer suggested asking IT if there is a way to force the prompt. If not, then perhaps a rule should be issued. Mr. Quigley said this is currently in the process with IT and should be completed no later than the end of this year. Mr. Quigley said the Board is still in the decision-making process on whether the prompt should require association or just allow it. Mr. Quigley said part of the issue is that association shouldn't be required on all documents because many filed are not going to be associated with something else.

Mr. Quigley noted the juvenile courts have not addressed this issue in their own system and the appellate courts are writing their efiling package now. The committee noted that if the rule change route was the way this should go, it should be consistent throughout the other courts: justice, juvenile, and appellate. If they choose to take the IT route instead, this could mean inconsistency throughout the courts. The committee asked Clayson to loop in the other court levels on this discussion.

After further discussion, the committee decided to have Mr. Quigley take the committee's questions back to the Board for further clarification. Mr. Quigley was thanked for his time.

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

Keisa Williams addressed this rule and said she spoke with Brent Johnson about his proposed change of removing the notice to the Judicial Rules Review Committee. The committee, although still active, hasn't done any work for approximately 10 years. Ms. Williams said she also discussed the proposed changes with Mr. Schwermer. Mr. Schwermer suggested that since notices are sent to the Office of Legislative Research, which staffs the committee, there is no harm in keeping everything status quo, especially where the Judicial Rules Review Committee is still technically active.

After brief discussion, the committee decided to accept the proposed changes with a few modifications to take out superfluous language.

Mr. Lund moved to approve the proposed changes to rule 2-212 and send the rule to the Judicial Council consent calendar for approval then public comment. Judge Noonan seconded the motion and it passed unanimously.

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

Ms. Williams discussed Brent Johnson's proposed rule amendments in detail. Ms. Williams stated Mr. Johnson was looking to clarify existing practices on commissioner nominating committees. The committee reviewed changes they made to this rule at the last meeting to update those members who weren't present then. The committee made an additional revision to paragraph (3)(C) ("level and judicial district") and voted to approve that revision. Judge Noonan made the motion and Judge Boyden seconded. It passed unanimously. The committee asked to reset this rule to the November agenda to address the remaining proposed amendments as laid out in the executive summary.

**(5) 4-202.02. Records classification and taxpayer confidentiality.**

Ms. Sylvester discussed the request, made by Utah attorneys who are seeking to preserve tax payer confidentiality. Their focus is on their clients: large companies and wealthy individuals. Ms. Sylvester stated the records classification rule would need to be amended as well as Rule 6-103 (District court tax judges). Mr. Schwermer stated these tax attorneys are concerned about the "secret sauce" of their clients being made public, but noted there is already a process in place where a litigant can request that a specific document be considered private. The attorneys requesting this felt that was burdensome on their part and costly for their clients. The committee discussed what is considered private and public. Mr. Schwermer stated the general consensus among judges is to let the litigants request that specific documents be marked as private and that the rest of the case can be public.

Mr. Schwermer noted the second half of the request is that opinions get published only after the tax payers have the opportunity to review them. Mr. Schwermer asked the committee if they wanted to afford the attorneys a procedural avenue to be heard at a future Policy & Planning meeting or if the committee wanted to make a decision on this without hearing from the requestors. Mr. Schwermer's recommendation was that the committee extend an invitation to the attorneys to discuss this issue in person. Mr. Schwermer will attend the meeting as well. One of the concerns the committee had is that this could potentially open the door for every attorney who wants an audience with the committee.

Judge Parkin took a straw vote on whether the committee members would be in favor of, opposed to, or neutral about inviting attorneys to the meetings who want to discuss rule changes. The consensus was to allow it on a case-by-case basis.

The committee decided to allow these attorneys to come to a meeting to discuss their proposal. Mr. Schwermer will invite them to attend. The committee took no further action on the proposed rules.

Ms. Williams noted Judge McVey's suggestion to have John McGarry from the Attorney General's Office attend a meeting. Mr. Schwermer will contact Mr. McGarry to get a feel for his position on this issue.

**(6) Other Business.**

***Pro se E-filing.*** **CJA 4-503. Mandatory electronic filing (District court civil cases).**

Ms. Sylvester asked Mr. Quigley to speak briefly on the CORIS rewrite and what pro se e-filing may look like in the future. Mr. Quigley noted that the CORIS rewrite is expected to be about a two year process. Several groups have been established to

address various issues around it. The CORIS rewrite is initially looking at high-level, more urgent needs, but is developing a process for pro se litigants to use CORIS, receive notifications, and manage their cases. Based on past committee discussions and this update, Ms. Sylvester said she would contact Tyler Felt, who requested pro se efiling, to let him know that the committee felt a rule on this would be premature or unnecessary.

For quorum purposes, Judge Parkin asked the committee members to let staff know ahead of time if they are not able to attend a meeting. The meeting adjourned at 11:20 am.

# Tab 2

# Administrative Office of the Courts

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

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

## MEMORANDUM

**To:** Policy and Planning Committee
**From:** Nancy Sylvester
**Date:** October 25, 2016
**Re:** Rule for Final Action

The public comment period for rule 4-202.02(3)(A)(iv) of the Utah Code of Judicial Administration has now closed. The proposal received no public comments. The rule is now ready for final action by this committee.

**CJA 04-202.02** Amend. Classifies court records associated with actions for disease testing as sealed.

If the proposal is recommended by this committee, it will be forwarded to the Judicial Council for final action.

Encl. CJA 4-202.02

**Rule 4-202.02. Records classification.**

Intent:
To classify court records as public or non-public.

Applicability:
This rule applies to the judicial branch.

Statement of the Rule:
(1) Court records are public unless otherwise classified by this rule.
(2) Public court records include but are not limited to:
(2)(A) abstract of a citation that redacts all non-public information;
(2)(B) aggregate records without non-public information and without personal identifying information;
(2)(C) appellate filings, including briefs;
(2)(D) arrest warrants, but a court may restrict access before service;
(2)(E) audit reports;
(2)(F) case files;
(2)(G) committee reports after release by the Judicial Council or the court that requested the study;
(2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;
(2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;
(2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;
(2)(K) financial records;
(2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:
(2)(L)(i) amount in controversy;
(2)(L)(ii) attorney name;
(2)(L)(iii) case number;
(2)(K)(iv) case status;
(2)(L)(v) civil case type or criminal violation;
(2)(L)(vi) civil judgment or criminal disposition;
(2)(L)(vii) daily calendar;
(2)(L)(viii) file date;
(2)(L) party name;
(2)(M) name, business address, business telephone number, and business email address of an adult person or business entity other than a party or a victim or witness of a crime;
(2)(N) name, address, telephone number, email address, date of birth, and last four digits of the following: driver's license number; social security number; or account number of a party;
(2)(O) name, business address, business telephone number, and business email address of a lawyer appearing in a case;
(2)(P) name, business address, business telephone number, and business email address of court

personnel other than judges;
(2)(Q) name, business address, and business telephone number of judges;
(2)(R) name, gender, gross salary and benefits, job title and description, number of hours worked per pay period, dates of employment, and relevant qualifications of a current or former court personnel;
(2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empanelled to try a case, but only 10 days after the jury is discharged;
(2)(T) opinions, including concurring and dissenting opinions, and orders entered in open hearings;
(2)(U) order or decision classifying a record as not public;
(2)(V) private record if the subject of the record has given written permission to make the record public;
(2)(W) probation progress/violation reports;
(2)(X) publications of the administrative office of the courts;
(2)(Y) record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person;
(2)(Z) record of the receipt or expenditure of public funds;
(2)(AA) record or minutes of an open meeting or hearing and the transcript of them;
(2)(BB) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;
(2)(CC) record of a request for a record;
(2)(DD) reports used by the judiciary if all of the data in the report is public or the Judicial Council designates the report as a public record;
(2)(EE) rules of the Supreme Court and Judicial Council;
(2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40; and
(2)(GG) statistical data derived from public and non-public records but that disclose only public data.
(2)(HH) Notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.
(2)(II) Notwithstanding subsection (3)(A)(i), adoption records become public on the one hundredth anniversary of the date the final decree of adoption was entered.
(3) The following court records are sealed:
(3)(A) records in the following actions:
(3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;
(3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the conclusion of

proceedings, which are private until sealed; and-
(3)(A)(iii) Title 76, Chapter 7, Part 304.5, Consent required for abortions performed on minors;
**(3)(A)(iv) Title 78B, Chapter 8, Part 402, actions for disease testing;** and
(3)(B) expunged records;
(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;
(3)(D) records showing the identity of a confidential informant;
(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;
(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;
(3)(G) records designated as sealed by rule of the Supreme Court;
(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings; and
(3)(I) other records as ordered by the court under Rule 4-202.04.
(4) The following court records are private:
(4)(A) records in the following actions:
(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;
(4)(A)(ii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed; and
(4)(A)(iii) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and
(4)(B) records in the following actions, except that the case history; judgments, orders and decrees; letters of appointment; and the record of public hearings are public records:
(4)(B)(i) Title 30, Husband and Wife, except that an action for consortium due to personal injury under Section 30-2-11 is public;
(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;
(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;
(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;
(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;
(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;
(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;
(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);
(4)(C) an affidavit supporting a motion to waive fees;
(4)(D) aggregate records other than public aggregate records under subsection (2);
(4)(E) alternative dispute resolution records;
(4)(F) applications for accommodation under the Americans with Disabilities Act;
(4)(G) citation, but an abstract of a citation that redacts all non-public information is public;
(4)(H) judgment information statement;
(4)(I) judicial review of final agency action under Utah Code Section 62A-4a-1009;
(4)(J) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, and similar personal identifying information;
(4)(K) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email address, personal telephone number; date of birth, driver's license number, social security number, account description and number,

password, identification number, and similar personal identifying information;
(4)(L) medical, psychiatric, or psychological records;
(4)(M) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:
(4)(M)(i) name change of a minor;
(4)(M)(ii) guardianship or conservatorship for a minor;
(4)(M)(iii) felony, misdemeanor or infraction;
(4)(M)(iv) child protective orders; and
(4)(M)(v) custody orders and decrees;
(4)(N) notices from the U.S. Bankruptcy Court;
(4)(O) personnel file of a current or former court personnel or applicant for employment;
(4)(P) photograph, film or video of a crime victim;
(4)(Q) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:
(4)(Q)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or
(4)(Q)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;
(4)(R) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;
(4)(S) record submitted for in camera review until its public availability is determined;
(4)(T) reports of investigations by Child Protective Services;
(4)(U) victim impact statements;
(4)(V) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;
(4)(W) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;
(4)(X) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;
(4)(Y) an addendum to an appellate brief filed in a case involving:
(4)(Y)(i) adoption;
(4)(Y)(ii) termination of parental rights;
(4)(Y)(iii) abuse, neglect and dependency;
(4)(Y)(iv) substantiation under Section 78A-6-323; or
(4)(Y)(v) protective orders or dating violence protective orders;
(4)(Z) other records as ordered by the court under Rule 4-202.04.
(5) The following court records are protected:
(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding;
(5)(B) records that are subject to the attorney client privilege;
(5)(C) bids or proposals until the deadline for submitting them has closed;
(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance

of the final recommendations in these areas;
(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the court's contemplated policies or contemplated courses of action;
(5)(F) court security plans;
(5)(G) investigation and analysis of loss covered by the risk management fund;
(5)(H) memorandum prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process;
(5)(I) confidential business records under Utah Code Section 63G-2-309;
(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:
(5)(J)(i) interfere with an investigation;
(5)(J)(ii) interfere with a fair hearing or trial;
(5)(J)(iii) disclose the identity of a confidential source; or
(5)(J)(iv) concern the security of a court facility;
(5)(K) record identifying property under consideration for sale or acquisition by the court or its appraised or estimated value unless the information has been disclosed to someone not under a duty of confidentiality to the courts;
(5)(L) record that would reveal the contents of settlement negotiations other than the final settlement agreement;
(5)(M) record the disclosure of which would impair governmental procurement or give an unfair advantage to any person;
(5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation or parole;
(5)(O) record the disclosure of which would jeopardize life, safety or property;
(5)(P) strategy about collective bargaining or pending litigation;
(5)(Q) test questions and answers;
(5)(R) trade secrets as defined in Utah Code Section 13-24-2;
(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;
(5)(T) presentence investigation report;
(5)(U) except for those filed with the court, records maintained and prepared by juvenile probation; and
(5)(V) other records as ordered by the court under Rule 4-202.04.
(6) The following are juvenile court social records:
(6)(A) correspondence relating to juvenile social records;
(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;
(6)(C) mediation disposition notices;
(6)(D) medical, psychological, psychiatric evaluations;
(6)(E) pre-disposition and social summary reports;
(6)(F) probation agency and institutional reports or evaluations;
(6)(G) referral reports;
(6)(H) report of preliminary inquiries; and

(6)(I) treatment or service plans.
(7) The following are juvenile court legal records:
(7)(A) accounting records;
(7)(B) discovery filed with the court;
(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;
(7)(D) name of a party or minor;
(7)(E) record of a court hearing;
(7)(F) referral and offense histories
(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.
(8) The following are safeguarded records:
(8)(A) upon request, location information, contact information and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
(8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;
(8)(C) location information, contact information and identity information of prospective jurors on the master jury list or the qualified jury list;
(8)(D) location information, contact information and identity information other than name of a prospective juror summoned to attend court;
(8)(E) except as required by Utah Code section 78-6-304(4), the following information about a victim or witness of a crime:
(8)(E)(i) business and personal address, email address, telephone number and similar information from which the person can be located or contacted;
(8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, and similar personal identifying information.

# Tab 3

Utah State Courts

**Nancy Sylvester <nancyjs@utcourts.gov>**

# Rule 3-201

**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

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

Intent:
To define the role of court commissioner.
To establish a term of office for court commissioners.
To establish uniform administrative policies governing the qualifications, appointment, supervision, discipline and removal of court commissioners.
To establish uniform administrative policies governing the salaries, benefits and privileges of the office of court commissioner.
Applicability:
This rule shall apply to all trial courts of record.
Statement of the Rule:
(1) Definition. Court commissioners are quasi-judicial officers established by the Utah Code.
(2) Qualifications.
(A) Court commissioners must be at least 25 years of age, United States citizens, Utah residents for three years preceding appointment and residents of Utah while serving as commissioners. A court commissioner shall reside in a judicial district the commissioner serves.
(B) Court commissioners must be admitted to practice law in Utah and exhibit good character. Court commissioners must possess ability and experience in the areas of law in which the court commissioner serves.
(C) Court commissioners shall serve full time and shall comply with Utah Code Section 78A-2-221.
(3) Appointment - Oath of office.
(A) Selection of court commissioners shall be based solely upon consideration of fitness for office.
(B) When a vacancy occurs or is about to occur in the office of a court commissioner, the Council shall determine whether to fill the vacancy. The Council may determine that the court commissioner will serve more than one judicial district.
(C) A committee for the purpose of nominating candidates for the position of court commissioner shall consist of the presiding judge or designee from each court level and judicial district that the commissioner will serve, three lawyers, and two members of the public. Committee members shall be appointed by the presiding judge of the district court of each judicial district. The committee members shall serve three year terms, staggered so that not more than one term of a member of the bench, bar, or public expires during the same calendar year. The presiding judge shall designate a chair of the committee. All members of the committee shall reside in the judicial district. All members of the committee shall be voting members. A quorum of one-half the committee members is necessary for the committee to act. The committee shall act by the concurrence of a majority of the members voting. When voting upon the qualifications of a candidate, the committee shall follow the ~~voting~~ procedures ~~of the judicial nominating commissions~~ established in the commissioner 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, ~~T~~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, ~~I~~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, ~~T~~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~~the ~~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.

# Tab 4

Utah State Courts

**Nancy Sylvester <nancyjs@utcourts.gov>**

# Rule 9-301

**Brent Johnson** <brentj@utcourts.gov> Thu, Jul 14, 2016 at 1:40 PM
To: Nancy Sylvester <nancyjs@utcourts.gov>, Keisa Williams <keisaw@utcourts.gov>

Attached you will find rule 9-301 with proposed changes. I am in favor of completely repealing 9-301 because it is ultimately a meaningless exercise. The Court of Appeals has determined that failure to follow this rule does not affect the validity of a plea or conviction. The rule simply results in extra work for justice court judges and clerks. I have raised this issue several times in the past, but I have always lost the battle. Apparently there are political reasons for keeping the rule. However, if no one can remember what those reasons are then lets repeal the dang thing. In fact keeping this rule may incorrectly focus on this as a requirement, rather than focusing on the importance of rule 11. (And I would note here that the rule does not address convictions that occur after trial. If an individual was not represented by counsel and did not adequately waive the right, then that conviction cannot be used to enhance future offenses. It seems like the rule should impose requirements at sentencing and not just taking a plea. But I didn't touch that because I presume there are reasons why it was originally written this way.) So maybe ask P&P to consider repealing before wading into my proposed changes.

I am proposing these changes in hopes of clarify and streamlining the process. The rule includes requirements from rule 11 of the rules of criminal procedure, so why not just let that rule control? The critical requirement for enhancement is that a judge follow rule 11, and that the defendant be represented by counsel or has knowing and voluntarily waived that right. So I propose eliminating anything in rule 9-301 that is covered by rule 11.

The other proposed amendments are designed to recognize the types of enhancements in the Utah Code. The rule currently refers to "enhanced penalties," but I'm not certain that this completely reflects the future possibilities. The Utah Code establishes three types of enhancements: 1) increase in the degree of offense; 2) the establishment or increase of minimum mandatory penalties; and 3) increase of the degree of the present offense based on the existence of an additional factor, such as weapons, gangs, or protected categories. The third type of enhancement is not an issue because judges only warning about the future. I suggest that the rule recognize the distinction between the other two types of enhancements by including language on an enhanced offense as well as an enhanced penalty. Also, enhancements are not always based on conviction of the same offense in the future. It can be based on conviction of a similar offense. For example, enhancement of a DUI conviction can be based on several offenses, each of which can enhance the other. Domestic violence can be based on one offense, but that offense would also serve as a prior conviction for enhancing a different offense involving cohabitants. I'm not certain that the "same or similar" language completely captures what may happen, but it at least recognizes that there are multiple types.

If you have any questions about this proposal, please let me know.

Thank you.

**2 attachments**

**9-301 (7-14-16 version).pdf**
47K

**9-301 (7-14-16 version).wpd**
5K

**Rule 9-301. Record of ~~arraignment and conviction~~ enhancement warning.**

Intent:

To establish a procedure for justice courts to follow in making a record at the time of ~~arraignment and~~ conviction in those cases where the defendant may be subject to an enhanced penalty if convicted of the same or similar offense in the future.

Applicability:

This rule shall apply to the justice courts in those cases where the defendant may be subject to an enhanced penalty if convicted of the same offense in the future.

Statement of the Rule:

(1) At the time of arraignment, the justice court judge shall determine whether a conviction may subject the defendant ~~would be subject~~ to an enhanced offense or penalty if convicted of the same or similar offense in the future.

(2) If the defendant would be subject to an enhanced penalty, upon the entry of a plea of guilty, the justice court judge shall:

(A) In addition to complying with Rule 11 of the Rules of Criminal Procedure, ~~A~~advise the defendant, ~~orally and~~ in writing of ~~the defendant's rights, the elements of the charged offense, the penalties for the charged offense, and~~ the ~~enhancement~~enhanced offense or ~~-~~ penalty ~~which~~ that may be imposed ~~in the event the defendant is convicted of the same offense in the future~~; and

(B) Require the defendant to sign a statement acknowledging that the defendant ~~understands his rights and that he knowingly, intelligently and voluntarily waives those rights~~was advised of the possibility of enhancement.

(3) Upon the entry of a guilty plea or receipt of a conviction, the justice court judge shall execute a written and signed judgment of conviction and forward the appropriate information and/or fingerprints to the state agencies responsible for maintaining criminal records.

# Tab 5

# Administrative Office of the Courts

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

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

## MEMORANDUM

**To:** Policy and Planning Committee
**From:** Nancy Sylvester
**Date:** October 25, 2016
**Re:** CJA 4-103(2). Civil calendar management. (Dismissals "without prejudice")

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In *Cannon v. Holmes*, 2016 UT 42, footnote 3, the Utah Supreme Court noted a tension between Civil Rule 41(b) and CJA Rule 4-103(2). It said,

> The difficulty, unrecognized by the court of appeals in *Panos*, is that the portion of rule [4-103](2) providing that "the court shall dismiss the case without prejudice" cannot alter the requirement in rule 41(b) that the order of dismissal must specify on its face that it is without prejudice to avoid the presumption that the dismissal is on the merits. The Judicial Council has no authority to override a rule of civil procedure. Thus, even though rule [4-103](2) on its face purports to give trial judges the power to dismiss for lack of prosecution only without prejudice, trial judges cannot properly exercise that power without complying with rule 41(b)'s "otherwise specifies" language.

The court then offered a way to remedy this issue: "The difficulty in the future can be easily resolved by amending rule 4-103 to require that all dismissals entered pursuant to the rule must contain the language 'without prejudice,' and by developing forms consistent with that requirement."

Civil Rule 41(b) provides in relevant part, "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits."

This committee is not responsible for developing forms, but in accordance with the Supreme Court's suggestion, proposed Rule 4-103(2) is attached.

*This opinion is subject to revision before final publication in the Pacific Reporter*

**2016 UT 42**

IN THE

# SUPREME COURT OF THE STATE OF UTAH

TERRY HOLMES,
*Appellant*,

*v.*

CHRIS CANNON,
*Appellee.*

No. 20150238
Filed September 8, 2016

On Appeal of Interlocutory Order

Third District, Salt Lake Dep't
The Honorable Laura Scott
No. 140905719

Attorneys:

Victor A. Sipos, Salt Lake City, for appellant

Phillip E. Lowry, Bryson R. Brown, Salt Lake City, for appellee

JUSTICE DURHAM authored the opinion of the Court, in which CHIEF JUSTICE DURRANT, ASSOCIATE CHIEF JUSTICE LEE, JUSTICE HIMONAS, and JUSTICE PEARCE joined.

JUSTICE DURHAM, opinion of the Court:

## INTRODUCTION

¶1 In *Panos v. Smith's Food & Drug Centers, Inc.*, 913 P.2d 363 (Utah Ct. App. 1996), the court of appeals held that when a judge issues an order dismissing a case for failure to prosecute, but fails to explicitly provide that the case is dismissed with prejudice or pursuant to Utah Rule of Civil Procedure 41(b), the presumption is that the case is dismissed without prejudice.

¶2 Today we overrule *Panos*, concluding it was incorrectly decided. The plain language of rule 41(b) is clear that the presumption of prejudice applies broadly in most cases, including not only to cases where the judge specifies reliance on rule 41(b), but

also to "any dismissal[s] not provided for in this rule." There are limited exceptions to the rule's presumption, including when a judge "otherwise specifies" that the case is not dismissed with prejudice.

¶3 Because we determine that the appellee in this matter is unable to establish reliance on the *Panos* decision for purposes of prospective application of our holding, we decline to afford it.

## BACKGROUND

¶4 This litigation initially began twelve years ago, when Chris Cannon filed a lawsuit against the defendant individuals and companies he alleges are responsible for several tort and contract violations associated with an investment gone wrong. *See Ted Knodel v. Terry Holmes*, Civ. No. 040918738 (Utah 3rd D. Ct. August 22, 2013). After the case languished for several years, the district court issued an order requiring "the parties to appear . . . and show cause why this case should not be dismissed for failure to prosecute. By failing to appear, the Court will enter an order of dismissal without further notice." Neither side's counsel appeared at the hearing, and the district court dismissed the case: "No parties present. The Court orders this case be dismissed." The judge did not indicate under which rule the case was to be dismissed.

¶5 Mr. Cannon did not attempt to set aside the dismissal, but rather filed a new action in the district court, asserting the same claims against the same defendants. Defendants filed a 12(b)(6) motion to dismiss, arguing that the dismissal operated as a dismissal with prejudice under rule 41(b). Mr. Cannon opposed the motion, arguing that rule 4-103(2) of the Utah Code of Judicial Administration presumes that failure-to-prosecute dismissals are dismissed without prejudice and citing the court of appeals' decision in *Panos v. Smith's Food & Drug Centers, Inc.*, 913 P.2d 363 (Utah Ct. App. 1996).

¶6 The district court judge held a hearing on the defendants' 12(b)(6) motion to dismiss and then denied the motion, finding the *Panos* decision controlling. We granted defendants' petition for an interlocutory appeal pursuant to Utah Code section 78A-3-102(3)(j), and the district court stayed the action pending the outcome of this appeal. We review the district court's interpretation of our rules of procedure for correctness. *Simler v. Chilel*, 2016 UT 23, ¶ 9, -- P.3d –- ("[T]he district court's interpretations of . . . rules of procedure are questions of law reviewed for correctness." (second alteration in original) (citation omitted)).

## ANALYSIS

### I. *PANOS* INCORRECTLY RELIED ON RULE 4-103(2) OF THE UTAH CODE OF JUDICIAL ADMINISTRATION RATHER THAN RELYING ON UTAH RULE OF CIVIL PROCEDURE 41(B)

¶7 Utah Rule of Civil Procedure 41(b) is our rule on the effect of involuntary dismissals and provides in part:

> For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant[1] may move for dismissal of an action or of any claim against him. . . . Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.

¶8 We have interpreted "adjudication on the merits" to mean that the case is dismissed with prejudice—i.e., the plaintiff is barred from re-filing the same claim in the same court. *See Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 2012 UT 66, ¶¶ 22-23, 289 P.3d 502. Therefore, a case is presumptively dismissed with prejudice unless it falls under an exception. *See Alvarez v. Galetka*, 933 P.2d 987, 990 (Utah 1997) ("[I]t is a general rule that if a court grants an involuntary dismissal and does not specify whether it is with or without prejudice, it is assumed that the dismissal is with prejudice.").

¶9 The rule enumerates three express exceptions: lack of jurisdiction, improper venue, and lack of an indispensable party. *Horne*, 2012 UT 66, ¶ 23. "[T]he exceptions enumerated in rule 41 are

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[1] Although the rule provides that "a defendant" may move for dismissal, courts have the inherent power to dismiss cases *sua sponte*. *See Wilson v. Lambert*, 613 P.2d 765, 768 (Utah 1980) ("[T]he court retains inherent power to dismiss an action [under rule 41(b)] for failure to prosecute pursuant to its own motion."); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629, 630-631 (1962) ("The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute cannot seriously be doubted. . . . The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.").

[not] exhaustive. . . . The rule's list of non-preclusive dismissals . . . simply illustrates the types of dismissals that do not preclude further litigation." *Id.* The dismissals mentioned are illustrative of non-preclusive dismissals as they all "result[] from an 'initial bar' to the court's adjudication of the parties' claims and defenses." *Id.* ¶ 24 (citation omitted); *cf. Alvarez*, 933 P.2d at 991 (describing the general rule that dismissals under rule 12(b)(6) are not preclusive and "the court normally will give plaintiff leave to file an amended complaint" (citation omitted)).

¶10 Additionally, district court judges maintain discretion to dismiss without prejudice when they choose to "otherwise specif[y]" that result. *See Donahue v. Smith,* 2001 UT 46, ¶ 8 n.3, 27 P.3d 552 ("[U]nder rule 41(b) the district court was not required to dismiss plaintiff's complaint with prejudice. Rule 41(b) provides that, 'Unless the court in its order for dismissal provides otherwise, a dismissal under this subdivision . . . operates as an adjudication upon the merits.' Under the rule, it would not have been error for the district court to provide in its order that plaintiff's complaint be dismissed without prejudice." (second alteration in original)).

¶11 As in this case, *Panos v. Smith's Food & Drug Centers, Inc.*, 913 P.2d 363 (Utah Ct. App. 1996), involved a dismissal for failure to prosecute. The judge's order for dismissal "did not indicate whether the dismissal was with or without prejudice, or pursuant to Rule 41(b) of the Utah Rules of Civil Procedure or Rule 4-103 of the Utah Code of Judicial Administration."[2] *Id.* at 364. After dismissal, the plaintiff filed a new complaint against the defendant. The defendant filed a motion to dismiss, arguing that under rule 41(b), the case was dismissed with prejudice. *Id.*

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[2] The *Panos* opinion recites that the original notice to appear in that case was "pursuant to Rule 4-103," but references a later order as follows: "After presumably finding good cause not to dismiss the case [on the first order]," the court ordered "counsel to settle [the] case or file a Certificate of Readiness for Trial." 913 P.2d at 364. "If neither are done, the case will be dismissed without further notice. . . ." *Id*. Thus, it is arguable, although not clear, that the ultimate dismissal in *Panos* was in a rule 4-103 proceeding and entitled to be treated as without prejudice. Notwithstanding that argument, the language of *Panos* does not reference it when it concludes, "If a trial court wishes to dismiss a case for failure to prosecute, the trial court must expressly indicate that dismissal is with prejudice or pursuant to Rule 41(b). Otherwise, we assume the dismissal was without prejudice under Rule 4-103(2) of the Utah Code of Judicial Administration." *Id.* at 365 (footnote omitted).

¶12 The court of appeals "refuse[d] to apply the Rule 41(b) presumption in favor of dismissal with prejudice when the trial court has failed to explicitly identify that it is dismissing the case pursuant to Rule 41(b), or at least indicate that it is dismissing the case with prejudice." *Id.* at 364–65. The court determined that in this situation, "we assume the dismissal was without prejudice under Rule 4-103(2) of the Utah Code of Judicial Administration." *Id.* at 365.

¶13 Rule 4-103(2) provides that

> [i]f a certificate of readiness for trial has not been served and filed within 330 days of the first answer, the clerk shall mail written notification to the parties stating that absent a showing of good cause by a date specified in the notification, the court shall dismiss the case without prejudice for lack of prosecution.

Because rule 4-103(2) provides that the case is dismissed without prejudice, the court of appeals resolved the apparent conflict between rules 41(b) and 4-103(2) by determining that rule 4-103(2) is the default rule and that "[i]f a trial court wishes to dismiss a case with prejudice for failure to prosecute, the trial court must expressly indicate that dismissal is with prejudice or pursuant to Rule 41(b)." *Panos*, 913 P.2d at 365.

¶14 The problem is that the *Panos* interpretation of rule 41(b) and rule 4-103 reverses the presumption contained in the plain language of rule 41(b). Rule 41(b) presumes that all involuntary dismissals—whether falling under rule 41(b) or *any other rule*—are dismissed with prejudice, unless the dismissal falls under one of the "initial bar" exceptions or the judge "otherwise specifies." In *Panos*, as in this case, the judge did not "otherwise specify" that the case was to be dismissed without prejudice, nor did the case fall under one of the exceptions. Therefore, we overrule *Panos* and hold that involuntary dismissals are presumptively dismissed with prejudice unless the judge otherwise specifies or the case falls under an exception.[3]

[3] Article VIII, section 4 of the Utah Constitution gives the Utah Supreme Court the power to "adopt rules of procedure and evidence to be used in the courts of the state." In Article VIII, section 12 the Judicial Council is empowered to adopt rules for the "administration of the courts of the state." The Code of Judicial Administration, in which rule 4-103(2) appears, has been promulgated in accordance with that authority. Rule 4-103 is contained in "Article I. Calendar Management" of the rules, and is titled "Civil Calendar

## II. WE DECLINE TO APPLY OUR DECISION ONLY PROSPECTIVELY

¶15 The general rule of retroactivity in a civil case is that "the ruling of a court is deemed to state the true nature of the law both retrospectively and prospectively." *Monarrez v. Utah Dep't of Transp.*, 2016 UT 10, ¶ 28, 368 P.3d 846 (citation omitted).[4] However, we will deviate from the default rule of retroactivity and apply our decision prospectively only when two requirements are met. First, the ruling must "result [from] a change in the law" that "significantly alter[s] the legal landscape by ending or overruling a relied-upon practice." *Id.* But it is not enough to make a "bare assertion . . . that our decision overrules prior cases," *id*. (alteration in original) (citation omitted), because the party seeking prospective application of the ruling must also show either "justifiable reliance on the prior state of the law," or that retroactive application would create an undue burden. *Id.* (citation omitted). We conclude that the second requirement is not met in this case.

¶16 As to the first requirement that the ruling "significantly alter[s] the legal landscape by ending or overruling a relied-upon

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Management." Its intent is "to establish a procedure which allows the trial courts to manage civil case processing," and, according to the court of appeals in *Meadow Fresh Farms, Inc. v. Utah State Univ. Dep't of Agric. & Applied Sci.*, "merely codifies . . . an inherent power of the trial court to dismiss a case sua sponte for lack of prosecution under Rule 41(b)." 813 P.2d 1216, 1218 n.3 (Utah Ct. App. 1991).

The difficulty, unrecognized by the court of appeals in *Panos*, is that the portion of rule 403(2) providing that "the court shall dismiss the case without prejudice" cannot alter the requirement in rule 41(b) that the order of dismissal must specify on its face that it is without prejudice to avoid the presumption that the dismissal is on the merits. The Judicial Council has no authority to override a rule of civil procedure. Thus, even though rule 403(2) on its face purports to give trial judges the power to dismiss for lack of prosecution *only without prejudice*, trial judges cannot properly exercise that power without complying with rule 41(b)'s "otherwise specifies" language.

The difficulty in the future can be easily resolved by amending rule 4-103 to require that all dismissals entered pursuant to the rule must contain the language "without prejudice," and by developing forms consistent with that requirement.

[4] The presumption is reversed for statutes, where the general rule is that "[a] provision of the Utah Code is not retroactive, unless the provision is expressly declared to be retroactive." UTAH CODE § 68-3-3.

practice," our decision today overrules the court of appeals' decision in *Panos v. Smith's Food & Drug Centers, Inc.*, 913 P.2d 363 (Utah Ct. App. 1996). As discussed in Part I *supra*, *Panos* held that unless the trial court explicitly says the dismissal is with prejudice or pursuant to rule 41(b), it is dismissed without prejudice. Today we "significantly alter the legal landscape" by reversing what was a clear interpretation of a rule of civil procedure—made by an appellate court—and determine that if an order of dismissal is silent, it is dismissed with prejudice as required by rule 41(b).

¶17 As to the second requirement, the party requesting prospective application must show either "'justifiable reliance on the prior state of the law' or that 'the retroactive operation of the new law may otherwise create an undue burden.'" *Monarrez*, 2016 UT 10, ¶ 28. Mr. Cannon does not argue that overruling *Panos* will create an undue burden; therefore, we focus exclusively on whether he justifiably relied on *Panos*'s clear interpretation of Utah Rule of Civil Procedure 41(b) and Utah Rule of Judicial Administration 4-103.

¶18 We have held that "[l]itigants ought to be able to rely on our constructions of our rules and statutes. . . ." *Carter v. Lehi City*, 2012 UT 2, ¶ 15, 269 P.3d 141. In *Carter*, a group of voters wanted to amend city ordinances through the initiative process. After the city council declined to include the initiatives on the ballot, the group filed a petition for an extraordinary writ. The relevant statute required the group to file its petition "'within 10 days after the refusal' of the initiative by the 'local clerk.'" *Id.* ¶ 11. The group filed its petition on the eleventh day. However, we had earlier held, in *Low v. City of Monticello*, 2002 UT 90, 54 P.3d 1153, that Utah Rule of Civil Procedure 6(e) extended the ten-day period by an additional three days to account for mail service, which would have made the group's petition timely, a ruling on which petitioners specifically relied in calculating their time. Oral Argument at 1:44 – 4:04, Carter v. Lehi City, 2012 UT 2, 269 P.3d 141 (No. 20110482), https://www.utcourts.gov/opinions/streams/sup/.

¶19 We overruled *Low* to the extent that it "adopted a construction of rule 6(e) that is contrary to its text. Rule 6(e) has no application to the ten-day filing requirement for extraordinary writs . . . as the statutory period is triggered by *refusal* of an initiative and not its *service* to a party." *Carter*, 2012 UT 2, ¶ 15. However, if we had followed the general rule in *Carter* and applied this ruling retroactively, it would have "result[ed] in dismissal of the petition as untimely." *Id.* ¶ 14. We therefore did not extend this holding retroactively with respect to the group of voters in *Carter* because we determined that "[l]itigants ought to be able to rely on our

constructions of our rules and statutes. . . ." *Id.* ¶ 15. And where we had previously clearly interpreted one of our rules to apply in this specific situation and the petitioner had actually relied on that interpretation, we held that the group was "entitled to rely on our opinion in *Low* and should not be punished for accepting it as controlling so long as it stood unreversed." *Id.*

¶20 Unlike the petitioners in *Carter*, Mr. Cannon has not asserted on appeal nor demonstrated in the record any decision or act undertaken or not pursued in reliance on *Panos*. He has not even asserted that he was aware of the *Panos* decision until the motion to dismiss was filed in this case. Absent such a demonstration of justified reliance, his argument for prospective-only application of our decision must fail.

## CONCLUSION

¶21 Today we overrule *Panos v. Smith's Food & Drug Centers, Inc.*, 913 P.2d 363 (Utah Ct. App. 1996), and hold that the plain text of Utah Rule of Civil Procedure 41(b) controls whether a case is dismissed with or without prejudice. Because the district court judge in this case did not specify that the case was to be dismissed without prejudice, and this case does not fall within an exception to rule 41(b), the case should have been dismissed with prejudice. Further, we hold that in the absence of a showing of reliance on the court of appeals earlier opinion in *Panos*, Mr. Cannon is not entitled to a prospective-only application of our ruling.

**Rule 41. Dismissal of actions.**

**(a) Voluntary dismissal; effect thereof.**

**(a)(1) By plaintiff.** Subject to the provisions of Rule 23(e) and of any applicable statute, an action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service by the adverse party of an answer or other response to the complaint permitted under these rules. Unless otherwise stated in the notice of dismissal, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

**(a)(2) By order of court.** Unless the plaintiff timely files a notice of dismissal under paragraph (1) of this subdivision of this rule, an action may only be dismissed at the request of the plaintiff on order of the court based either on:

(a)(2)(i) a stipulation of all of the parties who have appeared in the action; or

(a)(2)(ii) upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

**(b) Involuntary dismissal; effect thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.

**(c) Dismissal of counterclaim, cross-claim, or third-party claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to Paragraph (1) of Subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

**(d) Costs of previously-dismissed action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

**(e) Bond or undertaking to be delivered to adverse party.** Should a party dismiss his complaint, counterclaim, cross-claim, or third-party claim, pursuant to Subdivision (a)(1)(i) above, after a provisional remedy has been allowed such party, the bond or undertaking filed in support of such provisional remedy must thereupon be delivered by the court to the adverse party against whom such provisional remedy was obtained.

Rule 4-103. Civil calendar management.

Intent:

To establish a procedure ~~which~~ that allows the trial courts to manage civil case processing.

To reduce the time between case filing and disposition.

Applicability:

This rule shall apply to the District Court.

Statement of the Rule:

(1) If a default judgment has not been entered by the plaintiff within 60 days of the availability of default, the clerk ~~shall~~ will mail written notification to the plaintiff stating that absent a showing of good cause by a date specified in the notification, the court will ~~shall~~ dismiss the case without prejudice for lack of prosecution.

(2) If a certificate of readiness for trial has not been served and filed within 330 days of the first answer, the clerk will ~~shall~~ mail written notification to the parties stating that absent a showing of good cause by a date specified in the notification, the court will ~~shall~~ dismiss the case without prejudice for lack of prosecution.

(3) Pursuant to Rule 41 of the Utah Rules of Civil Procedure, all orders of dismissal entered under this rule must contain the language “without prejudice.”

(~~3~~4) Any party may, pursuant to the Utah Rules of Civil Procedure, move to vacate a dismissal entered under this rule.

# Tab 6

# Administrative Office of the Courts

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

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

## MEMORANDUM

**To:** Policy and Planning Committee
**From:** Nancy Sylvester
**Date:** October 25, 2016
**Re:** CJA 4-202.02. Records Classification, AIS, and public access to filings

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AIS (Appellate Information System) will shortly have a public portal for litigants to view appellate filings. The new portal will be a lot like Xchange in the lower courts, and just as the lower courts went through the process of determining what should be public and what should be private when documents became more readily available, the appellate courts are now doing the same.

The appellate courts have requested that certain cases be excluded from showing up in the system. These include juvenile case types like child welfare, delinquency, and parental consent. The draft rule includes these in paragraph (4)(A)(iv).

For background purposes, the following is an update Penny Rainaldi (system programmer) gave after a meeting on this topic:

> Following is the outcome of our Xchange meeting regarding AIS:
> 1. Case type drop down selection will exclude case types JUP, JUV, JVA, JVD
> 2. Name searches will exclude any results whose case types are: JUP, JUV, JVA, JVD
> 3. All other case types will display results even if the case is private
> 4. The link to the case history should be simply to a message that says "Currently under development"
> 5. Birth date will not be listed in the results
> 6. The link on the name should bring party information as follows:
>
> * No birth date should display
> * Address should be shown for only public cases. Private cases should not show address
>
> Note: We will put in a "switch" that can be set to not show addresses for even public cases if it is set
>
> * Display parties on the case as well as attorneys

7. The document list should show all document entries regardless if the case is public or private.
8. Only documents created on or after 5/1/2016 will be available for viewing / purchasing
9. No documents should be available for viewing on private cases unless it is an Order.

Sue will provide which docket codes specify an Order

10. Documents that exist, but are not available for viewing should display the "NP" "Not Public" as they do for District and Justice Courts.
11. If a document is marked as Private on a public case, it should not be available for viewing

Appellate staff will review documents created since 5/1/2016 to insure their specification of Public or Private is correct.
Appellate staff will review cases to insure their specification of "Public" or "Private" is correct.

Rule 4-202.02. Records classification.

Intent:

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Court records are public unless otherwise classified by this rule.

(2) Public court records include but are not limited to:

(2)(A) abstract of a citation that redacts all non-public information;

(2)(B) aggregate records without non-public information and without personal identifying information;

(2)(C) appellate filings, except as provided in this rule~~filings, including briefs~~;

(2)(D) arrest warrants, but a court may restrict access before service;

(2)(E) audit reports;

(2)(F) case files, except as provided in this rule;

(2)(G) committee reports after release by the Judicial Council or the court that requested the study;

(2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;

(2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;

(2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;

(2)(K) financial records;

(2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:

(2)(L)(i) amount in controversy;

(2)(L)(ii) attorney name;

(2)(L)(iii) case number;

(2)(~~K~~L)(iv) case status;

(2)(L)(v) civil case type or criminal violation;

(2)(L)(vi) civil judgment or criminal disposition;

(2)(L)(vii) daily calendar;

(2)(L)(viii) file date;

(2)(L)(ix) party name;

(2)(M) name, business address, business telephone number, and business email address of an adult person or business entity other than a party or a victim or witness of a crime;

(2)(N) name, address, telephone number, email address, date of birth, and last four digits of the following: driver's license number; social security number; or account number of a party;

(2)(O) name, business address, business telephone number, and business email address of a lawyer appearing in a case;

(2)(P) name, business address, business telephone number, and business email address of court personnel other than judges;

(2)(Q) name, business address, and business telephone number of judges;

(2)(R) name, gender, gross salary and benefits, job title and description, number of hours worked per pay period, dates of employment, and relevant qualifications of a current or former court personnel;

(2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empanelled to try a case, but only 10 days after the jury is discharged;

(2)(T) opinions, including concurring and dissenting opinions, and orders entered in open hearings;

(2)(U) order or decision classifying a record as not public;

(2)(V) private record if the subject of the record has given written permission to make the record public;

(2)(W) probation progress/violation reports;

(2)(X) publications of the administrative office of the courts;

(2)(Y) record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person;

(2)(Z) record of the receipt or expenditure of public funds;

(2)(AA) record or minutes of an open meeting or hearing and the transcript of them;

(2)(BB) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;

(2)(CC) record of a request for a record;

(2)(DD) reports used by the judiciary if all of the data in the report is public or the Judicial Council designates the report as a public record;

(2)(EE) rules of the Supreme Court and Judicial Council;

(2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40; and

(2)(GG) statistical data derived from public and non-public records but that disclose only public data.

(2)(HH) Notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

(2)(II) Notwithstanding subsection (3)(A)(i), adoption records become public on the one hundredth anniversary of the date the final decree of adoption was entered.

(3) The following court records are sealed:

(3)(A) records in the following actions:

(3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the conclusion of proceedings, which are private until sealed; and-

(3)(A)(iii) Title 76, Chapter 7, Part 304.5, Consent required for abortions performed on minors; and

(3)(B) expunged records;

(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;

(3)(D) records showing the identity of a confidential informant;

(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;

(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

(3)(G) records designated as sealed by rule of the Supreme Court;

(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings; and

(3)(I) other records as ordered by the court under Rule 4-202.04.

(4) The following court records are private:

(4)(A) records in the following actions:

(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

(4)(A)(ii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed; and

(4)(A)(iii) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed;

(4)(A)(iv) appellate case types involving a juvenile, including child welfare, delinquency, and parental consent; and

(4)(B) records in the following actions, except that the case history; judgments, orders and decrees; letters of appointment; and the record of public hearings are public records:

(4)(B)(i) Title 30, Husband and Wife, except that an action for consortium due to personal injury under Section 30-2-11 is public;

(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;

(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;

(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(C) an affidavit supporting a motion to waive fees;

(4)(D) aggregate records other than public aggregate records under subsection (2);

(4)(E) alternative dispute resolution records;

(4)(F) applications for accommodation under the Americans with Disabilities Act;

(4)(G) citation, but an abstract of a citation that redacts all non-public information is public;

(4)(H) judgment information statement;

(4)(I) judicial review of final agency action under Utah Code Section 62A-4a-1009;

(4)(J) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, and similar personal identifying information;

(4)(K) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, and similar personal identifying information;

(4)(L) medical, psychiatric, or psychological records;

(4)(M) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(M)(i) name change of a minor;

(4)(M)(ii) guardianship or conservatorship for a minor;

(4)(M)(iii) felony, misdemeanor or infraction;

(4)(M)(iv) child protective orders; and

(4)(M)(v) custody orders and decrees;

(4)(N) notices from the U.S. Bankruptcy Court;

(4)(O) personnel file of a current or former court personnel or applicant for employment;

(4)(P) photograph, film or video of a crime victim;

(4)(Q) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

(4)(Q)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(4)(Q)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;

(4)(R) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(S) record submitted for in camera review until its public availability is determined;

(4)(T) reports of investigations by Child Protective Services;

(4)(U) victim impact statements;

(4)(V) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(W) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(X) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;

(4)(Y) an addendum to an appellate brief filed in a case involving:

(4)(Y)(i) adoption;

(4)(Y)(ii) termination of parental rights;

(4)(Y)(iii) abuse, neglect and dependency;

(4)(Y)(iv) substantiation under Section 78A-6-323; or

(4)(Y)(v) protective orders or dating violence protective orders;

(4)(Z) other records as ordered by the court under Rule 4-202.04.

(5) The following court records are protected:

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding;

(5)(B) records that are subject to the attorney client privilege;

(5)(C) bids or proposals until the deadline for submitting them has closed;

(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the court's contemplated policies or contemplated courses of action;

(5)(F) court security plans;

(5)(G) investigation and analysis of loss covered by the risk management fund;

(5)(H) memorandum prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process;

(5)(I) confidential business records under Utah Code Section 63G-2-309;

(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:

(5)(J)(i) interfere with an investigation;

(5)(J)(ii) interfere with a fair hearing or trial;

(5)(J)(iii) disclose the identity of a confidential source; or

(5)(J)(iv) concern the security of a court facility;

(5)(K) record identifying property under consideration for sale or acquisition by the court or its appraised or estimated value unless the information has been disclosed to someone not under a duty of confidentiality to the courts;

(5)(L) record that would reveal the contents of settlement negotiations other than the final settlement agreement;

(5)(M) record the disclosure of which would impair governmental procurement or give an unfair advantage to any person;

(5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation or parole;

(5)(O) record the disclosure of which would jeopardize life, safety or property;

(5)(P) strategy about collective bargaining or pending litigation;

(5)(Q) test questions and answers;

(5)(R) trade secrets as defined in Utah Code Section 13-24-2;

(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;

(5)(T) presentence investigation report;

(5)(U) except for those filed with the court, records maintained and prepared by juvenile probation; and

(5)(V) other records as ordered by the court under Rule 4-202.04.

(6) The following are juvenile court social records:

(6)(A) correspondence relating to juvenile social records;

(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;

(6)(C) mediation disposition notices;

(6)(D) medical, psychological, psychiatric evaluations;

(6)(E) pre-disposition and social summary reports;

(6)(F) probation agency and institutional reports or evaluations;

(6)(G) referral reports;

(6)(H) report of preliminary inquiries; and

(6)(I) treatment or service plans.

(7) The following are juvenile court legal records:

(7)(A) accounting records;

(7)(B) discovery filed with the court;

(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;

(7)(D) name of a party or minor;

(7)(E) record of a court hearing;

(7)(F) referral and offense histories

(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

(8) The following are safeguarded records:

(8)(A) upon request, location information, contact information and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;

(8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;

(8)(C) location information, contact information and identity information of prospective jurors on the master jury list or the qualified jury list;

(8)(D) location information, contact information and identity information other than name of a prospective juror summoned to attend court;

(8)(E) except as required by Utah Code section 78-6-304(4), the following information about a victim or witness of a crime:

(8)(E)(i) business and personal address, email address, telephone number and similar information from which the person can be located or contacted;

(8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, and similar personal identifying information.