

Agenda

Policy and Planning Committee

December 2, 2016

12:00 – 2:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room, N31

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Reed Parkin
	CJA 1-205, 3-117. Forms Committee rules	Discussion/ Action	Tab 2	Nancy Sylvester
	CJA 3-201. Court commissioners. And CJA 3-111. Performance evaluations of senior judges and court commissioners.	Discussion/ Action	Tab 3	Nancy Sylvester
	CJA 4-202.02. Dismissals and protected records.	Discussion/ Action	Tab 4	Rick Schwermer
	CJA 9-301 Record of conviction.	Discussion/ Action	Tab 5	Nancy Sylvester
1:55	Other Business: AIS & 4-202.02	Discussion		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.

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
December 2, 2016**

Issue	Scope	Status	Assignments	Notes
Approval of Minutes		Action/Vote	Read November minutes for accuracy and approval.	
CJA 1-205, 3-117. Forms Committee rules	Review proposed amendments to Rule 1-205 and new rule 3-117.	Discussion/ Action	Review proposed amendments.	
CJA 3-201. Court commissioners. And CJA 3-111. Performance evaluations of senior judges and court commissioners.	Continue reviewing amendments to Rule 3-201 regarding court commissioners and also review possible amendments to Rule 3-111.	Discussion/ Action	Review the proposals and be prepared to discuss them.	<p>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"). And at the November meeting, the committee reviewed the issue of press releases. The committee must continue reviewing the following additional proposed amendments and also please look at the items listed in my memo:</p> <ul style="list-style-type: none"> • Require names associated with public comments be redacted prior to dissemination to the candidate. • Change the word "remove" when referring to the Council & district courts' decision not to retain a commissioner at the end of

**Policy and Planning Committee Meeting
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				<p>their term and attempts to clarify discipline and certification.</p> <ul style="list-style-type: none"> Clarify that there are separate processes for discipline and retention.
CJA 4-202.02. Dismissals and protected records.	Consider Rick's proposal to amend Rule 4-202.02 to make criminal cases private when they have been dismissed.	Discussion/ Action	Review proposal and be prepared to discuss it.	
CJA 9-301 Record of conviction.	Consider Brent's suggestion to repeal the rest of 9-301.	Discussion/ Action	Review proposal and be prepared to discuss it.	

Next Meeting: Friday, January 6, 2017 at 12:00 p.m. in the Executive Dining Room at Matheson.

Tab 1

Policy and Planning Committee

November 4, 2016

Draft

Members Present

Hon. Reed S. Parkin - Chair
Hon. Marvin Bagley - by phone
Hon. Ann Boyden
John Lund

Members Excused

Hon. Mary Noonan
Hon. Derek Pullan

Staff

Nancy J. Sylvester
Keisa L. Williams
Jeni Wood - recording secretary

Guests

Sue Willis

(1) Approval of minutes.

Judge Reed Parkin welcomed the members to the meeting. Judge Parkin addressed the October 4, 2016 minutes. Judge Parkin proposed an amendment to the minutes in section number 3 to clarify that the committee was leaning toward the IT route with Clayson Quigley's proposed rule changes. With that being the only change,

John Lund moved to approve the October 4, 2016 minutes. Hon. Reed Parkin seconded the motion and it passed unanimously.

(2) CJA 4-202.02(3)(A)(iv). Records classification.

Judge Parkin asked Nancy Sylvester to explain this rule. Ms. Sylvester stated this rule has gone out for public comment and was based on some 2016 legislation dealing with disease testing and the warrant system. With brief discussion and no further changes to the rule,

Mr. Lund moved to send this rule to the Judicial Council for final approval. Judge Ann Boyden seconded the motion and it passed unanimously.

(3) CJA 3-201. Court commissioners.

Ms. Sylvester discussed Brent Johnson's proposed changes to rule 3-201, starting with (4)(d)(ii) (where the committee had left off from the previous meeting), but expressed concerns based upon her experience with the commissioner certification process about a comment period for retention of commissioners. She noted that the commissioners are already subject to attorney surveys, so this seemed redundant, unnecessary, and never done. Judge Parkin asked staff to clarify with Brent Johnson the proposed rule changes.

(4) CJA 9-301. Enhancements in justice courts.

Judge Parkin discussed justice courts enhancement notification. Judge Parkin stated the enhancements have grown exponentially. Judge Parkin brought in a two page drug enhancement notification to show the committee. He said an attorney has expressed their desire to repeal the rule and said everyone agrees this is burdensome and seemingly unnecessary. Judge Parkin said the Board of Justice Courts has voted to repeal the rule. Judge Parkin said even with following through on the appropriate colloquies, there are still complaints on a regular basis from defendants. It has been suggested that colloquies should be given at the beginning of a case instead at the end as is current practice. The committee briefly discussed having the same policies for both the justice and district courts. John Lund suggested writing a new rule to clarify the procedures up front. Judge Parkin said he's found it is best at arraignment to deliver the enhancement information to defendants so they are fully aware early in the stages what can happen.

After further discussion, Judge Parkin's final recommendation is to abandon the majority of rule 9-301 and make the enhancements a best policy practice. Judge Parkin questioned whether the last section, paragraph (3) should be repealed. He asked staff to check with Brent Johnson on the necessity of keeping it.

Mr. Lund moved to approve repealing the enhancement portion of rule 9-301 (sections 1 and 2 only) and sending the rule to the Judicial Council. Judge Boyden seconded the motion and it passed unanimously. Ms. Sylvester will discuss with Brent Johnson as to what the best move will be for section 3.

(5) CJA 4-103(2). Dismissals "without prejudice."

Ms. Sylvester discussed the proposed changes to Rule 4-103(2) based on the Supreme Court case of *Cannon v. Holmes*, 2016 UT 42. The Supreme Court suggested that the tension between Civil Rule 41 and Rule 4-103 could be resolved but requiring that all dismissals entered pursuant to Rule 4-103 should explicitly state, "without prejudice." Judge Boyden said the changes have already been made in CORIS. After brief discussion, Judge Parkin recommended the rule changes pass the committee but also that staff discuss with Brent Johnson whether the rule should apply to justice courts.

Judge Boyden moved to approve the proposed changes to rule 4-103 and send the rule to the Judicial Council consent calendar for approval then to send the rule out for public comment, after staff receives approval from Brent Johnson regarding the rule applying to justice courts as well. John Lund seconded the motion and it passed unanimously.

(6) CJA 4-202.02(2)(C), (2)(F), (4)(A)(iv), (4)(B). Records classification.

Ms. Sylvester introduced Sue Willis from the appellate courts to the meeting. Ms. Sylvester explained the reasoning for the proposed changes to this rule, which was to deal with a more public appellate documents online interface. The committee discussed the rule changes. Sue Willis stated she believes the most important part of the changes

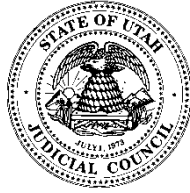
is protecting the juvenile cases. Ms. Sylvester noted it was both the appellate court and the IT department who requested the change. Judge Parkin said this seems to be a fairly simple change. John Lund, however, noted that the proposed amendments already appear in another section of the rule and that would need to be resolved.

After discussion, the committee agreed to have Ms. Sylvester confirm the proposed changes with James Ishida and work through some of the drafting issues. Ms. Sylvester will bring the rule back at the December meeting.

(7) Other Business.

The next meeting is December 2. There being no other business and the meeting was adjourned at 1:41 pm.

Tab 2



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Nancy Sylvester *Nancy D. Sylvester*
Date: November 29, 2016
Re: Standing Committee on Court Forms

The Management Committee of the Judicial Council recently approved the creation of a standing committee on court forms on an expedited basis. Brent drafted the following and they are attached:

- 1) Committee composition in CJA Rule 1-205;
- 2) Committee charge in new CJA Rule 3-117; and
- 3) A technical amendment to 78A-2-502 (the OCAP statute) to address this new committee (this informational only).

Up to this point, the court forms have been created on an ad hoc basis as part of the Standing Committee on Resources for Self-represented Parties. It was initially a large effort involving law students, professors, and staff, but soon whittled down to members of the Law Library staff and General Counsel's office. Unfortunately, without an official body directing its work, it was not clear who should be approving the forms, nor from whom input should come on the creation of new forms. So this resulted in some challenges. Additionally, with the Supreme Court's task force working on the creation of Paralegal Practitioners as a new licensing type, the forms upon which the paralegals will be practicing needed to have a committee home. The solution on both issues is the creation of a new standing committee on court forms.

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

Rule 1-205. Standing and ad hoc committees.

Intent:

To establish standing and ad hoc committees to assist the Council and provide recommendations on topical issues.

To establish uniform terms and a uniform method for appointing committee members.

To provide for a periodic review of existing committees to assure that their activities are appropriately related to the administration of the judiciary.

Applicability:

This rule shall apply to the internal operation of the Council.

Statement of the Rule:

(1) Standing committees.

(1)(A) Establishment. The following standing committees of the Council are hereby established:

(1)(A)(i) Technology Committee;

(1)(A)(ii) Uniform Fine Schedule Committee;

(1)(A)(iii) Ethics Advisory Committee;

(1)(A)(iv) Judicial Branch Education Committee;

(1)(A)(v) Court Facility Planning Committee;

(1)(A)(vi) Committee on Children and Family Law;

(1)(A)(vii) Committee on Judicial Outreach;

(1)(A)(viii) Committee on Resources for Self-represented Parties;

(1)(A)(ix) Language Access Committee;

(1)(A)(x) Guardian ad Litem Oversight Committee;

(1)(A)(xi) Committee on Model Utah Civil Jury Instructions;

(1)(A)(xii) Committee on Model Utah Criminal Jury Instructions; and

(1)(A)(xiii) Committee on Pretrial Release and Supervision;

(1)(A)(xiv) Committee on Court Forms.

(1)(B) Composition.

(1)(B)(i) The Technology Committee shall consist of one judge from each court of record, one justice court judge, one lawyer recommended by the Board of Bar Commissioners, two court executives, two court clerks and two staff members from the Administrative Office.

(1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of one district court judge who has experience with a felony docket, three district court judges who have experience with a misdemeanor docket, one juvenile court judge and three justice court judges.

(1)(B)(iii) The Ethics Advisory Committee shall consist of one judge from the Court of Appeals, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, one justice court judge, and an attorney from either the Bar or a college of law.

(1)(B)(iv) The Judicial Branch Education Committee shall consist of one judge from an appellate court, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, the education liaison of the Board of Justice Court Judges, one state level administrator, the Human Resource Management Director, one court executive, one juvenile court probation representative, two court clerks from different levels of court and different judicial districts, one data processing manager, and one adult educator from higher education. The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.

(1)(B)(v) The Court Facility Planning Committee shall consist of one judge from each level of trial court, one appellate court judge, the state court administrator, a trial court executive, and two business people with experience in the construction or financing of facilities.

(1)(B)(vi) The Committee on Children and Family Law shall consist of one Senator appointed by the President of the Senate, one Representative appointed by the Speaker of the House, the Director of the

Department of Human Services or designee, one attorney of the Executive Committee of the Family Law Section of the Utah State Bar, one attorney with experience in abuse, neglect and dependency cases, one attorney with experience representing parents in abuse, neglect and dependency cases, one representative of a child advocacy organization, one mediator, one professional in the area of child development, one representative of the community, the Director of the Office of Guardian ad Litem or designee, one court commissioner, two district court judges, and two juvenile court judges. One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The Committee on Judicial Outreach shall consist of one appellate court judge, one district court judge, one juvenile court judge, one justice court judge, one state level administrator, a state level judicial education representative, one court executive, one Utah State Bar representative, one communication representative, one law library representative, one civic community representative, and one state education representative. Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.

(1)(B)(viii) The Committee on Resources for Self-represented Parties shall consist of two district court judges, one juvenile court judge, one justice court judge, three clerks of court – one from an appellate court, one from an urban district and one from a rural district – one member of the Online Court Assistance Committee, one representative from the Self-Help Center, one representative from the Utah State Bar, two representatives from legal service organizations that serve low-income clients, one private attorney experienced in providing services to self-represented parties, two law school representatives, the state law librarian, and two community representatives.

(1)(B)(ix) The Language Access Committee shall consist of one district court judge, one juvenile court judge, one justice court judge, one trial court executive, one court clerk, one interpreter coordinator, one probation officer, one prosecuting attorney, one defense attorney, two certified interpreters, one approved interpreter, one expert in the field of linguistics, and one American Sign Language representative.

(1)(B)(x) The Guardian ad Litem Oversight Committee shall consist of seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.

(1)(B)(xi) The Committee on Model Utah Civil Jury Instructions shall consist of two district court judges, four lawyers who primarily represent plaintiffs, four lawyers who primarily represent defendants, and one person skilled in linguistics or communication.

(1)(B)(xii) The Committee on Model Utah Criminal Jury Instructions shall consist of two district court judges, one justice court judge, four prosecutors, four defense counsel, one professor of criminal law, and one person skilled in linguistics or communication.

(1)(B)(xiii) The Committee on Pretrial Release and Supervision shall consist of two district court judges, one juvenile court judge, two justice court judges, one prosecutor, one defense attorney, one county sheriff, one representative of counties, one representative of a county pretrial services agency, one representative of the Utah Insurance Department, one representative of the Utah Commission on Criminal and Juvenile Justice, one commercial surety agent, one state senator, one state representative, and the court's general counsel or designee.

(1)(B)(xiv) The Committee on Court Forms shall consist of one district court judge, one juvenile court judge, one justice court judge, one court clerk, an appellate court staff attorney, one representative from the self-help center, one member selected by the Online Court Assistance Committee, one representative from a legal service organization that serves low-income clients, one paralegal, and one representative from the Utah State Bar [and in the future one from LPP].

(1)(C) The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

(1)(D) At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its

purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

(1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.

(2) Ad hoc committees. The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.

(3) General provisions.

(3)(A) Appointment process.

(3)(A)(i) Administrator's responsibilities. The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:

(3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;

(3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;

(3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and

(3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.

(3)(A)(ii) Council's responsibilities. The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.

(3)(B) Terms. Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.

(3)(C) Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.

(3)(D) The Administrative Office shall serve as secretariat to the Council's committees.

Rule 3-117. Committee on Court Forms

Intent:

To establish a committee to create forms for use by litigants in all court levels.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

- (1) The committee shall conduct a comprehensive review of the need for court forms to assist parties and practitioners in all court levels.
- (2) The committee shall create forms as it deems necessary for use by parties and practitioners, including forms for the Online Court Assistance Program.
- (3) Each committee member is expected to solicit and receive input from the group the member represents. The committee shall solicit input from other interested groups as it deems appropriate. The committee may establish subcommittees using non-committee members to facilitate its work.
- (4) The committee shall have the authority to mandate the use of particular forms. However designation of a form as mandatory is not binding on a decision-maker asked to review the legal correctness of the form.
- (5) The office of General Counsel shall staff the committee and shall review all forms for legal correctness before final approval by the committee.

78A-2-502 Creation of policy board -- Membership -- Terms -- Chair -- Quorum -- Expenses.

(1) There is created a 13 member policy board to be known as the "Online Court Assistance Program Policy Board" which shall:

- (a) identify the subject matter included in the Online Court Assistance Program;
- (b) develop information and provide forms in conformity with the rules of procedure and evidence; and
- (c) advise the Administrative Office of the Courts regarding the administration of the program.

(2) The voting membership shall consist of:

- (a) two members of the House of Representatives designated by the speaker, with one member from each party;
- (b) two members of the Senate designated by the president, with one member from each party;
- (c) two attorneys actively practicing in domestic relations designated by the Family Law Section of the Utah State Bar;
- (d) one attorney actively practicing in civil litigation designated by the Civil Litigation Section of the Utah State Bar;
- (e) one court commissioner designated by the chief justice of the Utah Supreme Court;
- (f) one district court judge designated by the chief justice of the Utah Supreme Court;
- (g) one attorney from Utah Legal Services designated by its director;
- (h) one attorney from Legal Aid designated by its director; and
- (i) two persons from the Administrative Office of the Courts designated by the state court administrator.

(3)

- (a) The terms of the members shall be four years and staggered so that approximately half of the board expires every two years.
- (b) The board shall meet as needed.

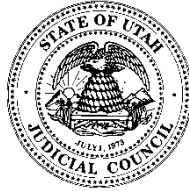
(4) The board shall select one of its members to serve as chair.

(5) A majority of the members of the board constitutes a quorum.

(6)

- (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Tab 3



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Nancy Sylvester *Nancy D. Sylvester*
Date: November 29, 2016
Re: CJA 3-201 and 3-111

In reviewing with Brent his proposed changes to Rule 3-201 following our last committee meeting, we discovered that there were several areas that needed further updating and changes:

- 1) The committee needs to make a policy decision on redacting the names of commenters on commissioner candidates. This is found at line 63.
- 2) The current practice is not to do a comment period on commissioners already in office. We recommend removing references to these in paragraph 4 (starting at line 83).
- 3) Brent added a time frame for presiding judges to do performance evaluations and also added in the language from the performance evaluations currently in use starting at line 112. I propose moving much of this over to Rule 3-111 since it is redundant, but keeping some flags about the requirements of 3-111.
 - a. Since 3-111 was sent to the Council on a different matter at the Council's November meeting (see lines 18-19), I have held it back from publishing for comment so that we can examine these other issues and then send it out as a whole package.
- 4) The committee needs to make a decision on performance plans. Brent and I think they are redundant to the performance evaluations and add an unnecessary layer of bureaucracy to this process. In case the committee thinks there is still value to them, though, I added a new paragraph (4)(G) in rule 3-111 to address them. They have not previously been addressed by rule, but have been available on the intranet next to the performance evaluations.
- 5) Also, please take a look at the "district or court levels" language I added in the performance evaluation sections of 3-201.

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

Rule 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

Comment [NS1]: Brent says the committee needs to make a policy decision on this. Start with this question and then move on to paragraph (4).

71 concurrence of a majority of judges voting. If the commissioner will serve more than one judicial district,
72 ~~The~~ concurrence of ~~each court independent of the others~~ a majority of judges in each district is necessary
73 for selection.

74 (K) The presiding judge of the district ~~court of the district~~ the court commissioner will primarily serve shall
75 present the name of the selected candidate to the Council. The selection shall be final upon the
76 concurrence of two-thirds of the members of the Council. The Council shall vote upon the selection within
77 45 days of the selection or the concurrence of the Council shall be deemed granted.

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

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

83 (4) Public comment for appointment and retention.

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

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

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

90 ~~(DB)~~ The nominating committee ~~or district in which the commissioner serves~~ shall:

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

93 (ii) publish issue a press release and other public notices listing the names of the nominees ~~or court~~
94 ~~commissioner~~ with instructions on how to submit comments ~~in a newspaper of general circulation~~; and
95 (iii) allow at least 10 days for public comment.

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

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

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

105 (5) Term of office. The court commissioner shall be appointed until December 31 of the third year

Comment [NS2]: The current practice is to only do public comment on candidates, so these other sections on current commissioners are superfluous.

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 or court level ~~the commissioner serves~~ shall prepare an evaluation of the commissioner's performance and a performance plan in accordance with Rule 3-111. ~~on an annual basis, on forms provided by the administrative office. The presiding judge shall provide copies of the evaluation to the Judicial Council. The presiding judge shall also prepare an annual performance plan in accordance with rule 3-105(3)(M). A copy~~ Copies of the performance plans and any subsequent evaluations shall be maintained in the official commissioner's personnel file in the administrative office.

Court commissioners shall comply with the program for judicial performance evaluation, including ~~any recommendations made in the evaluation~~ expectations set forth in a performance plan.

~~(B) The presiding judge shall complete the annual performance evaluation by January 31 of each year.~~
The presiding judge shall survey judges and court personnel on a quarterly basis seeking feedback for the evaluation. During the evaluation period, the presiding judge shall review at least five of the commissioner's active cases. The review shall include courtroom observation or a review of recorded hearings.

(7) Removal, retention, and sanctions.

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

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

- (i) as part of a reduction in force;
- (ii) for failure to meet the evaluation ~~and certification~~ requirements; or
- (iii) as the result of a formal complaint filed under rule 3-201.02 upon the concurrence of two-thirds of the Council.

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

Comment [NS3]: I propose moving most of this section over to 3-111 since it's redundant, but keeping some flags about Rule 3-111's requirements in it. Brent added this because it was what's in the performance evaluations.

~~(C)(D)~~ At the end of a commissioner's term, the court commissioner may be removed without cause by the judges of the each courts districts or court levels 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 or court level 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 the The presiding judge, or presiding judges of the if the commissioner serves multiple districts or court levels, with a concurrence of a majority of the judges in each district or court level 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.

Rule 3-111 Performance evaluation of senior judges and court commissioners.

Intent:

To establish a performance evaluation, including the criteria upon which senior judges and court commissioners will be evaluated, the standards against which performance will be measured and the methods for fairly, accurately and reliably measuring performance.

To generate and to provide to senior judges and court commissioners information about their performance.

To establish the procedures by which the Judicial Council will evaluate and certify senior judges and court commissioners for reappointment.

Applicability:

This rule shall apply to presiding judges, the Board of Justice Court Judges and the Judicial Council, and to the active senior judges and court commissioners of the Court of Appeals, courts of record and courts not of record.

Statement of the Rule:

(1) Performance evaluations.

(1)(A) On forms provided by the administrative office, the presiding judge of ~~the a~~ district a court commissioner ~~primarily~~ serves shall complete an ~~annual~~ evaluation of the court commissioner's performance by January 31 of each year.¹ If a commissioner serves multiple districts, the presiding judge of each district shall complete an evaluation.² 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.³

Comment [NS1]: Is this better here or in 3-201?

(1)(B) On forms provided by the administrative office, the presiding judge of the Court of Appeals shall complete an evaluation of the appellate senior judge's performance every eighteen months starting after the senior judge's initial term.

(1)(C) On forms provided by the administrative office, the presiding judge of the district an active senior judge primarily serves shall complete an evaluation of the senior judge's performance every eighteen months starting after the senior judge's initial term.

¹¹ This is from Brent's.

² The committee already adopted these changes and they went to the Council consent calendar in November for submitting for comment. Because I am proposing bringing over some of Brent's edits from 3-201 to here, this rule would go back to the Council next month for purposes of requesting again that this be sent out for comment.

³ This was copied over from Brent's edits to 3-201.

(1)(D) On forms provided by the administrative office, the chair of the Board of Justice Court Judges shall complete an evaluation of the active senior justice court judge's performance every eighteen months starting after the senior judge's initial term.

(1)(E) The presiding judge shall provide a copy of each commissioner evaluation to the Judicial Council. Copies of the performance plans under paragraph (4) and any evaluations shall also be maintained in the commissioner's personnel file in the administrative office.

(1)(F) If a senior judge receives an overall "Needs Improvement" rating on the performance evaluation, the evaluator shall provide a copy of the evaluation to the Judicial Council.

(2) Active senior judges and court commissioners shall be evaluated and certified upon the following criteria:

(2)(A) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;

(2)(B) attentiveness to factual and legal issues before the court;

(2)(C) adherence to precedent and ability to clearly explain departures from precedent;

(2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's rulings, including the effect of delay and increased litigation expense;

(2)(E) ability to write clear judicial opinions;

(2)(F) ability to clearly explain the legal basis for judicial opinions;

(2)(G) demonstration of courtesy toward attorneys, court staff, and others in the commissioner's or senior judge's court;

(2)(H) maintenance of decorum in the courtroom;

(2)(I) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system;

(2)(J) preparation for hearings or oral argument;

(2)(K) avoidance of impropriety or the appearance of impropriety;

(2)(L) display of fairness and impartiality toward all parties;

(2)(M) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions;

(2)(N) management of workload;

(2)(O) willingness to share proportionally the workload within the court or district, or regularly accepting assignments; and

(2)(P) issuance of opinions and orders without unnecessary delay.

(3) Senior judges shall also be evaluated on their ability and willingness to use the court's case management systems in all cases.

(4) Standards of performance.

(4)(A) Survey of attorneys.

(4)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the senior judge or court commissioner during the period for which the senior judge or court commissioner is being evaluated. The Council shall measure satisfactory performance based on the results of the final survey conducted during a court commissioner's term of office, subject to the discretion of a court commissioner serving an abbreviated initial term not to participate in a second survey under Section (2)(A)(vi) of this rule.

(4)(A)(ii) Survey scoring. The survey shall be scored as follows.

(4)(A)(ii)(a) Each question of the attorney survey will have six possible responses: Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge. A favorable response is Excellent, More Than Adequate or Adequate.

(4)(A)(ii)(b) Each question shall be scored by dividing the total number of favorable responses by the total number of all responses, excluding the "No Personal Knowledge" responses. A satisfactory score for a question is achieved when the ratio of favorable responses is 70% or greater.

(4)(A)(ii)(c) A court commissioner's performance is satisfactory if:

(4)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

(4)(A)(ii)(c)(2) the favorable responses when divided by the total number of all responses, excluding "No Personal Knowledge" responses, is 70% or greater.

(4)(A)(ii)(d) The Judicial Council shall determine whether the senior judge's survey scores are satisfactory.

(4)(A)(iii) Survey respondents. The Administrative Office of the Courts shall identify as potential respondents all lawyers who have appeared before the court commissioner during the period for which the commissioner is being evaluated.

(4)(A)(iv) Exclusion from survey respondents.

(4)(A)(iv)(a) A lawyer who has been appointed as a judge or court commissioner shall not be a respondent in the survey. A lawyer who is suspended or disbarred or who has resigned under discipline shall not be a respondent in the survey.

91 (4)(A)(iv)(b) With the approval of the Management Committee, a court commissioner may exclude an
92 attorney from the list of respondents if the court commissioner believes the attorney will not respond
93 objectively to the survey.

94 (4)(A)(v) Number of survey respondents. The Surveyor shall identify 180 respondents or all attorneys
95 appearing before the court commissioner, whichever is less. All attorneys who have appeared before the
96 senior judge shall be sent a survey questionnaire as soon as possible after the hearing.

97 (4)(A)(vi) Administration of the survey. Court commissioners shall be the subject of a survey
98 approximately six months prior to the expiration of their term of office. Court commissioners shall be the
99 subject of a survey during the second year of each term of office. Newly appointed court commissioners
100 shall be the subject of a survey during the second year of their term of office and, at their option,
101 approximately six months prior to the expiration of their term of office.

102 (4)(A)(vii) Survey report. The Surveyor shall provide to the subject of the survey, the
103 subject's presiding judge, and the Judicial Council the number and percentage of respondents for each of
104 the possible responses on each survey question and all comments, retyped and edited as necessary to
105 redact the respondent's identity.

106 (4)(B) Survey of presiding judges and court staff. The Council shall measure performance of senior
107 judges by a survey of all presiding judges and trial court executives of districts in which the senior judge
108 has been assigned. The Administrative Office of the Courts shall distribute survey forms with instructions
109 to return completed surveys to the Surveyor. The Surveyor shall provide to the subject of the survey, the
110 subject's presiding judge, and the Judicial Council the number and percentage of respondents for each of
111 the possible responses on each survey question and all comments, retyped and edited as necessary to
112 redact the respondent's identity. The Judicial Council shall determine whether the senior judge's survey
113 scores are satisfactory.

114 (4)(C) Case under advisement standard. A case is considered to be under advisement when the
115 entire case or any issue in the case has been submitted to the senior judge or court commissioner for
116 final determination. The Council shall measure satisfactory performance by the self-declaration of the
117 senior judge or court commissioner or by reviewing the records of the court.

118 (4)(C)(i) A senior judge or court commissioner in a trial court demonstrates satisfactory performance
119 by holding:

120 (4)(C)(i)(a) no more than three cases per calendar year under advisement more than 60 days after
121 submission; and

122 (4)(C)(i)(b) no case under advisement more than 180 days after submission.

123 (4)(C)(ii) A senior judge in the court of appeals demonstrates satisfactory performance by:

(4)(C)(ii)(a) circulating no more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(4)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of no more than 120 days after submission.

(4)(D) Compliance with education standards. Satisfactory performance is established if the senior judge or court commissioner annually complies with the judicial education standards of this Code, subject to the availability of in-state education programs. The Council shall measure satisfactory performance by the self-declaration of the senior judge or court commissioner or by reviewing the records of the state court administrator.

(4)(E) Substantial compliance with Code of Judicial Conduct. Satisfactory performance is established if the response of the senior judge or court commissioner demonstrates substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the court commissioner is in substantial compliance with the Code of Judicial Conduct. Under Rule 11-201 and Rule 11-203, any sanction of a senior judge disqualifies the senior judge from reappointment.

(4)(F) Physical and mental competence. Satisfactory performance is established if the response of the senior judge or court commissioner demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(4)(G) Performance plans.

(4)(G)(1) Court commissioners. The presiding judge of the district a court commissioner serves shall prepare a performance plan by January 31 of each year. If a commissioner serves multiple districts, the presiding judge of each district shall prepare a performance plan. The performance plan shall communicate the expectations set forth in paragraph (2) of this rule and address any "Needs Improvement" ratings in the commissioner's performance evaluation.

(4)(G)(2) Senior judges. The person responsible for preparing a senior judge's performance evaluation under paragraph (1) of this rule shall also prepare a performance plan for a senior judge if the senior judge receives an overall "Needs Improvement" rating on the senior judge's performance evaluation. The performance plan shall communicate the expectations set forth in paragraph (2) of this rule and address all "Needs Improvement" areas in the senior judge's performance evaluation.

(5)(A) At its meeting in August, the Council shall begin the process of determining whether the senior judges and court commissioners whose terms of office expire that year meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

Comment [NS2]: Is this the best place for this and do we even need performance plans? They may be redundant to the performance evaluations, which already communicate almost all of the same information.

159 (5)(A)(i) survey scores;

160 (5)(A)(ii) judicial education records;

161 (5)(A)(iii) self-declaration forms;

162 (5)(A)(iv) records of formal and informal sanctions;

163 (5)(A)(v) performance evaluations, if the commissioner or senior judge received an overall rating of
164 Needs Improvement; and

165 (5)(A)(vi) any information requested by the Council.

166 (5)(B) Prior to the meeting the Administrative Office of the Courts shall deliver the records to the
167 Council and to the senior judges and court commissioners being evaluated.

168 (5)(C) In a session closed in compliance with Rule 2-103, the Council shall consider the evaluation
169 information and make a preliminary finding of whether a senior judge or court commissioner has met the
170 performance standards.

171 (5)(D) If the Council finds the senior judge or court commissioner has met the performance standards,
172 it is presumed the Council will certify the senior judge or court commissioner for reappointment. If the
173 Council finds the senior judge or court commissioner did not meet the performance standards, it is
174 presumed the Council will not certify the senior judge or court commissioner for reappointment. The
175 Council may certify the senior judge or court commissioner or withhold decision until after meeting with
176 the senior judge or court commissioner.

177 (5)(E) A presumption against certification may be overcome by a showing of good cause to the
178 contrary. A presumption in favor of certification may be overcome by:

179 (5)(E)(i) reliable information showing non-compliance with a performance standard; or

180 (5)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to demonstrate lack of
181 substantial compliance with the Code of Judicial Conduct.

182 (5)(F) At the request of the Council the senior judge or court commissioner shall meet with the
183 Council in September. At the request of the Council the presiding judge shall report to the Council any
184 meetings held with the senior judge or court commissioner, the steps toward self-improvement identified
185 as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the
186 August meeting, the Administrative Office of the Courts shall deliver to the senior judge or court
187 commissioner being evaluated notice of the Council's action and any records not already delivered to the
188 senior judge or court commissioner. The notice shall contain an adequate description of the reasons the
189 Council has withheld its decision and the date by which the senior judge or court commissioner is to
190 deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the
191 Council and to the senior judge or court commissioner prior to the September meeting.

192 (5)(G) At its September meeting in a session closed in accordance with Rule 2-103, the Council shall
193 provide to the senior judge or court commissioner adequate time to present evidence and arguments in
194 favor of certification. Any member of the Council may present evidence and arguments of which the
195 senior judge or court commissioner has had notice opposed to certification. The burden is on the person
196 arguing against the presumed certification. The Council may determine the order of presentation.

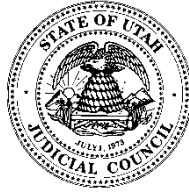
197 (5)(H) At its September meeting in open session, the Council shall approve its final findings and
198 certification regarding all senior judges and court commissioners whose terms of office expire that year.

199 (5)(I) The Judicial Council shall communicate its certification decision to the senior judge or court
200 commissioner. The Judicial Council shall communicate its certification decision for senior judges to the
201 Supreme Court and for court commissioners to the presiding judge of the district the commissioner
202 serves.

203

204

Tab 4



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Nancy Sylvester *Nancy D. Sylvester*
Date: November 29, 2016
Re: Dismissals and CJA 4-202.02

Discussed at the last Judicial Council meeting was the creation of a new rule requiring that upon a dismissal, the court will automatically classify the record in a criminal case as protected in some circumstances. The discussion revolved around accomplishing this through a judicial rule rather than seeking a legislative fix. The idea is to better aid those who are trying to have a second chance. The committee should discuss whether the dismissal should be with or without prejudice. Attached is some language Rick Schwermer has proposed to address this issue. The amendments are found at lines 160-161.

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

Rule 4-202.02. 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)(M) party name;

(2)(N) 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;

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

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

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

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

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

46 (2)(T) unless classified by the judge as private or safeguarded to protect the personal safety of
47 the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury
48 is discharged;

49 (2)(U) opinions, including concurring and dissenting opinions, and orders entered in open
50 hearings;

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

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

54 (2)(X) probation progress/violation reports;

55 (2)(Y) publications of the administrative office of the courts;

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

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

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

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

63 (2)(DD) record of a request for a record;

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

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

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

69 (2)(HH) statistical data derived from public and non-public records but that disclose only public
70 data;

71 (2)(II) Notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed
72 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.

(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;¹ 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) Section 76-10-532, Removal from the National Instant Check System database;

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

(4)(A)(iv) 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:

¹ The Council already approved this section for adoption on May 1, 2017. When this rule is finally approved as to the new section, the notice on both of them will go out.

(4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, 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) jail booking sheets;

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

(4)(I) judgment information statement;

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

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

(4)(L) 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, maiden name, mother's maiden name, and similar personal identifying information;

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

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

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

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

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

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

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

(4)(O) nonresident violator notice of noncompliance;

- 142 (4)(P) personnel file of a current or former court personnel or applicant for employment;
143 (4)(Q) photograph, film or video of a crime victim;
144 (4)(R) record of a court hearing closed to the public or of a child's testimony taken
145 under URCrP 15.5:
146 (4)(R)(i) permanently if the hearing is not traditionally open to the public and public access
147 does not play a significant positive role in the process; or
148 (4)(R)(ii) if the hearing is traditionally open to the public, until the judge determines it is
149 possible to release the record without prejudice to the interests that justified the closure;
150 (4)(S) record submitted by a senior judge or court commissioner regarding performance
151 evaluation and certification;
152 (4)(T) record submitted for in camera review until its public availability is determined;
153 (4)(U) reports of investigations by Child Protective Services;
154 (4)(V) victim impact statements;
155 (4)(W) name of a prospective juror summoned to attend court, unless classified by the judge as
156 safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;
157 (4)(X) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except
158 briefs filed pursuant to court order;
159 (4)(Y) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;
160 (4)(Z) except in the case of a plea held in abeyance, court records involving a criminal charge
161 where a dismissal of all charges has been entered; and
162 (4)(ZAA) other records as ordered by the court under Rule 4-202.04.
163 (5) The following court records are protected:
164 (5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or
165 other representative of the courts concerning litigation, privileged communication between the courts and
166 an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation
167 of litigation or a judicial, quasi-judicial, or administrative proceeding;
168 (5)(B) records that are subject to the attorney client privilege;
169 (5)(C) bids or proposals until the deadline for submitting them has closed;
170 (5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before
171 issuance of the final recommendations in these areas;
172 (5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed
173 would reveal the court's contemplated policies or contemplated courses of action;
174 (5)(F) court security plans;
175 (5)(G) investigation and analysis of loss covered by the risk management fund;
176 (5)(H) memorandum prepared by staff for a member of any body charged by law with performing
177 a judicial function and used in the decision-making process;

- 178 (5)(I) confidential business records under Utah Code Section 63G-2-309;
179 (5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes,
180 audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably
181 could be expected to:
- 182 (5)(J)(i) interfere with an investigation;
 - 183 (5)(J)(ii) interfere with a fair hearing or trial;
 - 184 (5)(J)(iii) disclose the identity of a confidential source; or
 - 185 (5)(J)(iv) concern the security of a court facility;
- 186 (5)(K) record identifying property under consideration for sale or acquisition by the court or its
187 appraised or estimated value unless the information has been disclosed to someone not under a duty of
188 confidentiality to the courts;
- 189 (5)(L) record that would reveal the contents of settlement negotiations other than the final
190 settlement agreement;
- 191 (5)(M) record the disclosure of which would impair governmental procurement or give an unfair
192 advantage to any person;
- 193 (5)(N) record the disclosure of which would interfere with supervision of an offender's
194 incarceration, probation or parole;
- 195 (5)(O) record the disclosure of which would jeopardize life, safety or property;
- 196 (5)(P) strategy about collective bargaining or pending litigation;
- 197 (5)(Q) test questions and answers;
- 198 (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- 199 (5)(S) record of a Children's Justice Center investigative interview before the conclusion of any
200 legal proceedings;
- 201 (5)(T) presentence investigation report;
- 202 (5)(U) except for those filed with the court, records maintained and prepared by juvenile
203 probation; and
- 204 (5)(V) other records as ordered by the court under Rule 4-202.04.
- 205 (6) The following are juvenile court social records:
- 206 (6)(A) correspondence relating to juvenile social records;
 - 207 (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance
208 abuse evaluations, domestic violence evaluations;
 - 209 (6)(C) medical, psychological, psychiatric evaluations;
 - 210 (6)(D) pre-disposition and social summary reports;
 - 211 (6)(E) probation agency and institutional reports or evaluations;
 - 212 (6)(F) referral reports;
 - 213 (6)(G) report of preliminary inquiries; and

214 (6)(H) treatment or service plans.

215 (7) The following are juvenile court legal records:

216 (7)(A) accounting records;

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

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

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

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

222 (7)(F) referral and offense histories

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

225 (8) The following are safeguarded records:

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

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

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

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

238 (8)(E) the following information about a victim or witness of a crime:

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

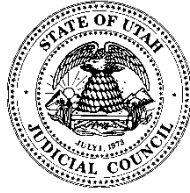
241 (8)(E)(ii) date of birth, driver's license number, social security number, account description
242 and number, password, identification number, maiden name, mother's maiden name, and similar
243 personal identifying information.

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245

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Tab 5



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Nancy Sylvester *Nancy D. Sylvester*
Date: November 29, 2016
Re: Rule 9-301(3)

At the last committee meeting, you asked that I follow up with Brent on whether paragraph (3) should stay in Rule 9-301 after you recommended repealing the rest of the rule. Paragraph (3) provides as follows: "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."

I discussed this issue with Brent and he made several observations:

- 1) Justice courts are not required to gather fingerprints. They are only required to send the defendant to get fingerprinted. *See* CJA Rule 4-609(5): "If the defendant appears at court and does not have the summons form with the date and time of booking and the Offense Tracking Number, court personnel shall instruct the defendant to go immediately, at the conclusion of the appearance, to the jail or other designated place for booking and release."
- 2) The rest of paragraph (3) is also already provided for statutorily. *See* Utah Code § 53-10-208.1 (attached).

Because the rule is inaccurate as to fingerprints and superfluous as to the rest, he recommends that the entire rule be repealed.

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

1 | **Rule 9-301. Record of arraignment and conviction.**

2 | Intent:

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

6 | Applicability:

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

9 | Statement of the Rule:

10 | ~~(1) At the time of arraignment, the justice court judge shall determine whether the defendant would be~~
11 | ~~subject to an enhanced penalty if convicted of the same offense in the future.~~

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

14 | ~~(A) Advise the defendant, orally and in writing of the defendant's rights, the elements of the charged~~
15 | ~~offense, the penalties for the charged offense, and the enhancement penalty which may be imposed in~~
16 | ~~the event the defendant is convicted of the same offense in the future; and~~

17 | ~~(B) Require the defendant to sign a statement acknowledging that the defendant understands his rights~~
18 | ~~and that he knowingly, intelligently and voluntarily waives those rights.~~

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

Rule 4-609. Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail.

Intent:

To establish a procedure for ensuring that fingerprints are obtained from, and an Offense Tracking Number is assigned to, defendants who have not been booked into jail prior to their first court appearance.

Applicability:

This rule shall apply to all prosecutors, law enforcement personnel, jail booking personnel, and trial courts.

This rule shall only apply to offenses which are not included on the Utah Bureau of Criminal Identification's Non-Serious Offense list.

Statement of the Rule:

(1) The prosecutor shall indicate, on the face of the Information that is filed with the court, whether the defendant is appearing pursuant to a summons or a warrant of arrest, by inserting "Summons" or "Warrant" beneath the case number in the caption.

(2) The prosecutor shall cause the criminal summons form to include the following information:

(A) the specific name of the court;

(B) the judge's name;

(C) the charges against the defendant;

(D) the date the summons is issued;

(E) a directive to the defendant to appear at the jail or other designated place for booking and release prior to appearing at court;

(F) the address of the jail or other designated place; and

(G) a space for booking personnel to note the date and time of booking and the Offense Tracking Number (formerly known as the CDR Number).

(3) Booking personnel shall:

(A) complete the booking process, including fingerprinting and issuing an Offense Tracking Number;

(B) record the date and time of booking and the Offense Tracking Number on the summons form;

(C) return the summons form to the defendant;

(D) instruct the defendant to take the summons form with him/her to the court at the time designated on the summons;

(E) release the defendant without bail unless the defendant has outstanding warrants; and

(F) send the Offense Tracking Number to the prosecutor.

(4) Upon receipt of the Offense Tracking Number from booking personnel, the prosecutor shall forward the number immediately to the court.

(5) If the defendant appears at court and does not have the summons form with the date and time of booking and the Offense Tracking Number, court personnel shall instruct the defendant to go immediately, at the conclusion of the appearance, to the jail or other designated place for booking and release.

53-10-208.1 Magistrates and court clerks to supply information.

Every magistrate or clerk of a court responsible for court records in this state shall, within 30 days of the disposition and on forms and in the manner provided by the division, furnish the division with information pertaining to:

- (1) all dispositions of criminal matters, including:
 - (a) guilty pleas;
 - (b) convictions;
 - (c) dismissals;
 - (d) acquittals;
 - (e) pleas held in abeyance;
 - (f) judgments of not guilty by reason of insanity for a violation of:
 - (i) a felony offense;
 - (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - (iii) Title 76, Chapter 10, Part 5, Weapons;
 - (g) judgments of guilty with a mental illness;
 - (h) finding of mental incompetence to stand trial for a violation of:
 - (i) a felony offense;
 - (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - (iii) Title 76, Chapter 10, Part 5, Weapons; or
 - (i) probations granted; and
- (2) orders of civil commitment under the terms of Section 62A-15-631;
- (3) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303, within one day of the action and in a manner provided by the division; and
- (4) protective orders issued after notice and hearing, pursuant to:
 - (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
 - (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.

Amended by Chapter 366, 2011 General Session