

# Agenda

## Policy and Planning Committee

January 6, 2017

10:00 a.m. – 12:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Executive Dining Room W18A

10:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Reed Parkin
10:10	CJA 4-202.09 - Miscellaneous (tax case confidentiality)	Discussion	Tab 2	Rick Schwermer and guests, Mark Buchi and Steve Young (Holland and Hart), Rebecca Rockwell of the Tax Commission, and Michelle Alig Lombardi, Laron Lind and John McCarrey of the Attorney General's Office, Kelly Wright, Tim Bodily and Brad Johnson of the Salt Lake County District Attorney's Office, and Tom Peters of the law firm of Peters Scofield
	CJA 6-103(6) - District Court Tax Judges (redacting information from tax case opinions before published)	Discussion	Tab 2	
10:40	CJA 3-201. Court commissioners. And CJA 3-111. Performance evaluations of senior judges and court commissioners.	Discussion/ Action	Tab 3	Nancy Sylvester
11:30	CJA 9-301 Record of conviction.	Discussion/ Action	Tab 4	Nancy Sylvester
1:45	Other Business (AIS & 4-202.02)			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.

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  
January 6, 2017**

<b>Issue</b>	<b>Scope</b>	<b>Status</b>	<b>Assignments</b>	<b>Notes</b>
<b>Approval of Minutes</b>		Action/Vote	Read December minutes for accuracy and approval.	
<b>CJA 4-202.09 - Miscellaneous (tax case confidentiality) and CJA 6-103(6) - District Court Tax Judges (redacting information from tax case opinions before published)</b>	Review proposals by tax attorneys and discuss them.	Discussion	Review proposals by tax attorneys and be prepared to discuss them.	This is listed as a discussion item, but the committee may choose to take action on it if appropriate.
<b>CJA 3-201. Court commissioners. And CJA 3-111. Performance evaluations of senior judges and court commissioners.</b>	Continue reviewing amendments to Rule 3-201 regarding court commissioners and also review possible amendments to Rule 3-111.	Discussion/ Action	Review the proposals in the memo and be prepared to discuss them.	
<b>CJA 9-301 Record of conviction.</b>	Consider Brent's suggestion to repeal the rest of 9-301.	Discussion/ Action	Review proposal and be prepared to discuss it.	

Next Meeting: Friday, February 3, 2017 at 10:00 a.m. in the West Conference Room at Matheson.

Tab 1

## **Policy and Planning Committee**

Judicial Council Room  
Matheson Courthouse  
450 South State Street  
Salt Lake City, Utah 84111

December 2, 2016

**Draft**

### **Members Present**

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

### **Members Excused**

### **Staff**

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

### **Guests**

Judge Barry Lawrence  
Rick Schwermer

### **(1) Approval of minutes.**

Judge Reed Parkin welcomed the members to the meeting and guests, Judge Barry Lawrence and Rick Schwermer. Judge Parkin then addressed the November 4, 2016 minutes. There being no changes to the minutes,

Judge Ann Boyden moved to approve the November 4, 2016 minutes. Judge Marvin Bagley seconded the motion and the committee unanimously approved the minutes.

### **(2) CJA 1-205. Standing and ad hoc committees. CJA 3-117. Committee on Court Forms.**

Judge Lawrence introduced the topic, noting that he was representing the Committee on Resources for Self-represented Parties. He explained some of the history of the current forms committee and then brought up some concerns he had with the new forms committee as proposed in the materials. He said both Jessica Van Buren and Mary Jane Ciccarello suggested that language be added stating the forms should be written in plain language. Judge Lawrence then discussed how the law library is the current “keeper” of forms. He thought that should continue and that it was also important to make sure someone from the law library was a part of the new forms committee. Judge Lawrence also noted his and others’ concerns that the committee will move at a pace slower than it should if they have to review and correct every single form as a committee of the whole. He believes there should be an exception for

technical or simple amendments. But on more complex issues, like a gender change forms, which don't have clear statutory or rule guidance, the whole committee should take them up.

The committee proposed changes to rule 1-205. Rick Schwermer stated he thought Kim Allard, who staffs OCAP, should be included in this discussion since many of the forms are changed based on statute and she is already tracking this. Judge Parkin noted the legal component is already established since the General Counsel Office will be staffing it. John Lund said all forms should cite to the appropriate references; he thought only some do currently. The Supreme Court is working on creating new licensure for Paralegal Professionals so they will eventually need an LLP on the committee. The committee also discussed a need to have Jessica Van Buren as the State Law Librarian on the forms committee.

The committee next discussed new proposed rule 3-117. Judge Lawrence requested that the rule give the forms committee authority to create an expedited process for handling urgent forms and simple updates. The committee discussed how currently the Board of District Court Judges reviews and approves forms, even though that process is not in the rule. Ms. Sylvester noted that staff members amend the forms when there are simple, non-substantive updates. With the creation of this standing committee, the Board will no longer have authority over approval of forms. Judge Derek Pullan wondered how or whether the forms would be presented to the Judicial Council. Ms. Sylvester stated it could be done by the consent calendar. Judge Pullan said the Board is concerned that forms would be created with no oversight and no approving authority. Judge Boyden wondered what the current practice is for amendments that do not need to go out for public comment. Mr. Schwermer said there is nothing in the rules that gives guidance. The committee amended the proposed rule to give the forms committee authority to know when and how a form change is needed. The committee was concerned about the forms committee being able to mandate the use of a form, so instead the forms committee would be able to recommend that a certain form be mandatory and the Council would ultimately make that decision. The committee then discussed the composition of the forms committee with respect to the addition of a community member who interacts with self-represented parties. The committee decided not to overstaff the forms committee with self-represented parties-focused members since the forms committee would have more than that function. The committee was satisfied that the addition of Law Library and Self-Help Center members would be sufficient, especially since non-members could weigh in on forms. Ms. Sylvester stated these rules were approved through the Management Committee on an expedited basis so that the forms committee will be in place before the Paralegal Practitioners taskforce completes its work. Judge Parkin said he did not want to move too fast with these rules, but thought they were pretty close to being done. Mr. Schwermer said he thought the rule could use further discussion, but Ms. Sylvester

reminded the committee that the rule would go out for comment still and the committee would have another chance to look at it before it was finalized.

After further discussion and several amendments to the rules,

John Lund moved to send rules 1-205 and 3-117 to the Judicial Council to be adopted on an expedited basis with the rules also going out for a 45-day public comment. Judge Ann Boyden seconded the motion and it passed unanimously.

Judge Lawrence was thanked for his contributions and excused.

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

Judge Parkin next addressed rule 3-201. The Committee determined that the rule should provide that commenters on commissioner candidates should have their names redacted if the comments are furnished to the candidates. Ms. Sylvester then discussed that she had proposed eliminating the comment period for commissioners, but Mr. Schwermer and Debra Moore had informed her that this was a new amendment within the last year. So she withdrew her proposal to eliminate it. Ms. Sylvester addressed further the changes proposed by Brent Johnson. The committee discussed his proposal to change the word “remove” when referring to the Council and district courts’ decision not to retain a commissioner at the end of their term. The committee then clarified disciplinary procedures in paragraph (7) to deal specifically with decisions to remove and sanction during a commissioner’s term. The committee separated that process from decisions to retain at the end of a commissioner’s term. The committee discussed potential situations in which one district or court level chooses to remove a commissioner but the other district or court level that uses the same commissioner does not. The committee asked Ms. Sylvester to bring in and modify for commissioners the language from Rule 3-104 dealing with when there is a conflict regarding senior judge appointments and the process of the Management Committee making the final decision.

The committee will continue this discussion at its next meeting.

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

Mr. Schwermer noted this rule needs to be expedited due to an accompanying legislative file being opened. Judge Parkin said the Council had two committee assignments, one for jail release and the other for expungements. It appeared that the jail release issue would go to the criminal rules committee.

Mr. Schwermer said legislators have raised concerns that even if charges are dismissed in a criminal case, the case is still available in multiple public locations, such as Xchange. Mr. Schwermer said his proposal is to let the courts change the records to private when a case is dismissed. The committee briefly discussed the various dismissals: with prejudice and without prejudice. Even if a case is dismissed without

prejudice, meaning it can be refiled, there is no good public policy reason for keeping those records public. Mr. Schwermer said governmental entities would still have access to the information, but the general public would not. He said prosecutors are in favor of the proposal. Judge Noonan asked about how this will apply to juvenile court cases. The committee discussed the current practice in the juvenile court. Judge Noonan said a dismissal on the record shows on the legal file, which is public, just as with district court cases. Judge Noonan would like to find current language then replicate it with this rule. Judge Parkin asked Ms. Sylvester to add the juvenile court language to this proposal.

John Lund moved to recommend to the Judicial Council expedited action on the proposed changes with the addition of equivalent juvenile court language. Judge Marvin Bagley seconded the motion and it passed unanimously.

Mr. Schwermer was thanked for his time and excused.

#### **(5) Other Business.**

The committee discussed future meetings and times that would be better for the committee. The committee decided during the liaison committee timeframes, they will meet from 10:00 – 12:00 instead of 12:00 – 2:00. This will affect January, February, and March. The next meeting is January 6 in the executive dining room. There being no other business, the meeting adjourned at 2:15 pm.



# Tab 2



Nancy Sylvester &lt;nancyjs@utcourts.gov&gt;

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## Proposed Judicial Rule Amendment Addressing Confidentiality in Property Tax Cases

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**Steve Young** <SPYoung@hollandhart.com>

Wed, Dec 28, 2016 at 2:08 PM

To: Nancy Sylvester &lt;nancyjs@utcourts.gov&gt;

Cc: Timothy Bodily &lt;TBodily@slco.org&gt;, "Thomas W. Peters (twp@psplawyers.com)" &lt;twp@psplawyers.com&gt;, "JMCCARREY@utah.gov" &lt;JMCCARREY@utah.gov&gt;, "Laron Lind (LLind@utah.gov)" &lt;LLind@utah.gov&gt;, "Michelle Alig Lombardi (malig@utah.gov)" &lt;malig@utah.gov&gt;, Mark Buchi &lt;MKBuchi@hollandhart.com&gt;, "kwright@slco.org" &lt;kwright@slco.org&gt;, "Brad Johnson (bcjohnson@slco.org)" &lt;bcjohnson@slco.org&gt;

Nancy –

A concern exists relating to district court commercial property tax cases in Utah because district court cases are presumptively open to the public, and much property tax information should be public to ensure uniformity, but nevertheless, commercial property tax cases often involve confidential business information specific to a taxpayer, and such cases frequently involve numerous documents that may contain such information. As such, when a commercial property tax case is filed in district court, Taxpayers, the Utah State Tax Commission, the involved Utah counties and the district court judge often spend substantial time and resources trying to find the right balance between public and confidential information, while also trying not to overburden the parties and courts with the responsibility to find each piece of confidential information within the numerous documents to ensure protection.

To try to make this process more uniform and efficient for all parties, legislation was proposed during the 2016 legislative session. The courts felt that the issue would more appropriately be addressed through a judicial rule. As such, on September 29, 2016, a proposed rule was submitted to the Judicial Council for consideration. Since that time, the Tax Commission (represented primarily by Rebecca Rockwell of the Tax Commission, and Michelle Alig Lombardi, Laron Lind and John McCarrey of the Attorney General's Office), the Utah counties (represented primarily by Kelly Wright, Tim Bodily and Brad Johnson of the Salt Lake County District Attorney's Office and Tom Peters of the law firm of Peters Scofield, who often represents the counties in property tax cases), and industry (represented primarily by Mark Buchi and Steve Young of the law firm of Holland & Hart, who often represent taxpayers in property tax cases) have engaged in numerous discussions and circulated numerous drafts in an effort to present a compromise rule to the Judicial Council that addresses the concerns of all parties.

To that end, attached hereto is a draft of a proposed rule which has been jointly prepared by all of the above parties, which we jointly request that you circulate (along with this e-mail) to the Policy and Planning Committee of the Judicial Council for consideration at its January 6 meeting. The proposed rule basically provides that, if requested by a party, the district court case file will be closed to public access unless a request is made to the taxpayer or court for a specific record, or the case is over, in which case the requested record or the case file will be made publicly available unless a motion is filed to protect specific information.

At your invitation, many of the above individuals plan to be at the January 6 meeting to discuss and/or answer questions about the proposed rule. We also note that, while the attached rule has received extensive review by and input from the individuals listed above, with the holidays, there are some within the Tax Commission, counties and taxpayer community who have not yet reviewed the attached version of the proposed rule. As such, there may be additional comments that arise before or at the January 6 meeting. We will do our best to discuss any such comments before the January 6 meeting so that the rule presented on January 6 is a joint rule without controversy. All parties are hopeful that the Judicial Council will adopt the attached proposed rule (or something similar if additional comments are made) to strike a proper balance between preserving the resources of the parties and courts, protecting confidential taxpayer information, and preserving uniformity and appropriate public access.

Thank you.

**Steve Young**

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**2016-12-28 Proposed Judicial Rule Amendment Addressing Confidentiality in Property Tax Cases.pdf**  
38K

## PROPOSED JUDICIAL RULE AMENDMENT ADDRESSING CONFIDENTIALITY IN PROPERTY TAX COURT CASES

Amend Rule 4-202.09 as follows:

(10)(a) Except as otherwise ordered by the court and except as provided in subsections (b) and (c), if a case involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, all records shall be classified as public records under Rule 4-202.02.

(b) Except as provided in subsection (c), the court shall deny public access to all records in a case that involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, if:

(i) the case also involves commercial information as that term is defined by Utah Code Ann. § 59-1-404; and

(ii) a party to the litigation requests the court to deny public access to the records.

(c) For a case described in subsection (b):

(i) if a request for a specific record is made to a party to the litigation or to the court and notice is given to the taxpayer, such record shall be released within 30 days after notice is given to the taxpayer, unless the court orders the specific record to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3);

(ii) thirty days after the issuance of a non-appealable final order by the court, all records shall be released unless the court orders specific records to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3); or

(iii) if a party files a motion to classify a record as private prior to the record being released under subsections (i) or (ii), the court shall continue to deny access to such record until the court issues an order authorizing access.

(iv) No specific record shall be classified as sealed, private, protected, or safeguarded unless the court enters an order complying with Rule 4-202.04(6).

Amend Rule 6-103 as follows:

(6) If a tax judge decides a taxation case of first impression, or one which creates new law or gives new guidance, the tax judge shall cause an opinion of the case to be published. An opinion need not be published where the case deals with settled rules of law. Any information previously classified as sealed, private, protected, or safeguarded by order of the Court shall be redacted from a published decision.

**Rule 4-202.09. Miscellaneous.****Intent:**

To set forth miscellaneous provisions for these rules.

**Applicability:**

This rule applies to the judicial branch.

**Statement of the Rule:**

(1) The judicial branch shall provide a person with a certified copy of a record if the requester has a right to inspect it, the requester identifies the record with reasonable specificity, and the requester pays the fees.

(2)(A) The judicial branch is not required to create a record in response to a request.

(2)(B) Upon request, the judicial branch shall provide a record in a particular format if:

(2)(B)(i) it is able to do so without unreasonably interfering with its duties and responsibilities; and

(2)(B)(ii) the requester agrees to pay the additional costs, if any, actually incurred in providing the record in the requested format.

(2)(C) The judicial branch need not fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(3) If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the judicial branch may provide the requester with the facilities for copying the requested records and require that the requester make the copies, or allow the requester to provide his own copying facilities and personnel to make the copies at the judicial branch's offices and waive the fees for copying the records.

(4) The judicial branch may not use the form in which a record is stored to deny or unreasonably hinder the rights of persons to inspect and receive copies of a record.

(5) Subpoenas and other methods of discovery under state or federal statutes or rules of procedure are not records requests under these rules. Compliance with discovery shall be governed by the applicable statutes and rules of procedure.

(6) If the judicial branch receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, it shall allow access to the information in the record that the requester is entitled to inspect, and shall deny access to the information in the record the requester is not entitled to inspect.

(7) The Administrative Office shall create and adopt a schedule governing the retention and destruction of all court records.

(8) The courts will use their best efforts to ensure that access to court records is properly regulated, but assume no responsibility for accuracy or completeness or for use outside the court.

(9)(A) Non-public information in a public record. The person filing a public record shall omit or redact non-public information. The person filing the record shall certify that, upon information and belief, all non-public information has been omitted or redacted from the public record. The person filing a private,

protected, sealed, safeguarded, juvenile court legal, or juvenile court social record shall identify the classification of the record at the top of the first page of a classified document or in a statement accompanying the record.

(9)(B) A party may move or a non-party interested in a record may petition to classify a record as private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social or to redact non-public information from a public record.

(9)(C) If the following non-public information is required in a public record, only the designated information shall be included:

(9)(C)(i) social security number: last four digits;

(9)(C)(ii) financial or other account number: last four digits;

(9)(C)(iii) driver's license number: state of issuance and last four digits;

(9)(C)(iv) address of a non-party: city, state and zip code;

(9)(C)(v) email address or phone number of a non-party: omit; and

(9)(C)(vi) minor's name: initials.

(9)(D) If it is necessary to provide the court with private personal identifying information, it must be provided on a cover sheet or other severable document, which is classified as private.

(10)(A) Except as otherwise ordered by the court and except as provided in subsections (b) and (c), if a case involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, all records shall be classified as public records under Rule 4-202.02.

(10)(B) Except as provided in subsection (C), the court shall deny public access to all records in a case that involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, if:

(10)(B)(i) the case involves commercial information as defined in Utah Code § 59-1-404; and

(10)(B)(ii) a party to the litigation requests that the court deny public access to the records.

(10)(C) For a case described in subsection (B):

(10)(C)(i) if a request for a specific record is made to a party to the litigation or to the court and notice is given to the taxpayer, such record shall be released within 30 days after notice is given to the taxpayer, unless the court orders the specific record to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3);

(10)(C)(ii) thirty days after the issuance of a non-appealable final order by the court, all records shall be released unless the court orders specific records to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3); or

(10)(C)(iii) if a party files a motion to classify a record as private prior to the record being released under subsections (i) or (ii), the court shall continue to deny access to such record until the court issues an order authorizing access.

**Comment [NS1]:** Is this superfluous to 4-202.02(2)?

**Comment [NS2]:** We need to have a good cause standard here or something. The definition of "commercial information" is pretty weak in 59-1-404. Shouldn't the party need to show that their commercial interests will be substantially compromised if it is made public?

**Comment [NS3]:** I'm not sure what deny public access means. Private? Safeguarded? Sealed? Wouldn't this be better under 4-202.02(4)? Let's just call these private records if a record fits the criteria.

**Comment [NS4]:** Would this be better in 4-202.04?

**Comment [NS5]:** I'm not sure what this means or when a final order in a tax case is non-appealable.

74 | (10)(C)(iv) No specific record shall be classified as sealed, private, protected, or safeguarded unless  
75 | the court enters an order in compliance with Rule 4-202.04(6).



**Rule 6-103. District court tax judges.**

Intent:

To designate certain district court judges as tax judges.

To establish a procedure whereby district court tax cases are heard by designated tax judges.

To designate a supervising tax judge.

Applicability:

This rule shall apply to district court judges.

Statement of the Rule:

(1) The Judicial Council shall formally designate at least three district court judges who volunteer as tax judges. In making the designation, the Judicial Council shall consider the knowledge and experience of the judge in relation to the theory and practice of ad valorem, excise, income, sales and use, and corporate taxation.

(2) If a party to a case involving taxation makes a request, as part of the complaint, petition for review, or first responsive pleading, to have the case assigned to a tax judge, the case will be assigned to a tax judge. Thereafter, a request to have the case assigned to a tax judge may be granted in the discretion of the judge assigned to the case.

(3) Assignment of cases involving taxation to a tax judge shall be made on a random basis. Assignment will include an adjustment in the judge's calendar to allow the judge to handle the case.

(4) For purposes of this Rule 6-103, cases involving taxation include:

(i) appeals from and petitions for review of decisions of the Utah State Tax Commission;

(ii) actions brought for recovery of a tax or portion of a tax paid under protest; and

(iii) cases which originate under Section 59-2-402 of the Utah Code relating to transitory personal property.

(5) The tax judges shall elect one of the tax judges to be the supervising tax judge. The term of office of the supervising tax judge is two years beginning July 1. The supervising tax judge shall be primarily responsible for:

(i) the assignment of taxation cases to tax judges;

(ii) the coordination of schedules of tax judges and the assignment of courtrooms and facilities in conjunction with the state court administrator and the presiding judge of each district court;

(iii) addressing concerns of tax judges, other district court judges, or the Judicial Council regarding the management of district court taxation cases;

(iv) overseeing the tax education of the tax judges, in conjunction with the Standing Committee on Judicial Branch Education and the Education Division of the Administrative Office of the Courts;

(v) presiding over meetings of the tax judges; and

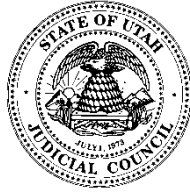
(vi) the use of law clerk resources to develop tax expertise, to assist the tax judges, and to facilitate consistency in the development of case precedents in the tax area and otherwise assist in the transition as new tax judges are designated.

(6) If a tax judge decides a taxation case of first impression, or one which creates new law or gives new guidance, the tax judge shall cause an opinion of the case to be published. An opinion need not be published where the case deals with settled rules of law. Any information previously classified as sealed, private, protected, or safeguarded by order of the Court shall be redacted from a published decision.

(7) Tax judges shall serve only so long as they are district court judges. Tax judges may, however, resign as tax judges, at their own request or the request of the Judicial Council, while still serving as district court judges.

(8) If a tax judge does not have a full workload of taxation cases, the judge shall hear non-tax district court cases to maintain a full workload of cases.

# 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:** Judicial Council  
**From:** Nancy Sylvester *Nancy D. Sylvester*  
**Date:** December 2, 2016  
**Re:** CJA 3-201 and 3-111

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At the last meeting, the committee left off on paragraph (7)(A)(iii).

- You asked me to bring in the language from Rule 3-104 regarding resolving disputes before the Management Committee when a court level or district disagrees with a decision to remove a commissioner. The language there is a modified version of 3-104(3)(C)(iv). Because paragraph (7) now deals with sanctions and removal during a term of office and does not seem like an appropriate place to also deal with retention, I created a new paragraph (8) to deal with retention.
- In new paragraph (8), Brent proposes changing the word “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.
- His proposal clarifies that there are separate processes for discipline and retention.
- Returning to paragraph (6), 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.
  - 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.
- 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

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.

thinks there is still value to them, though, I added a new paragraph (4)(G) in rule 3-111 to address them as part of the annual evaluation process.

They have not previously been addressed by rule, but have been available on the intranet next to the performance evaluations.

- An alternative way to deal with performance plans would be to have language in Rule 3-111(4)(G) stating that they are only used when a commissioner's performance is not satisfactory. Language could be added to Rule 3-201(7)(A)(ii) stating the presiding judge may put a commissioner on a performance plan *or* sanction, etc. The language in paragraph (6)(A) regarding performance plans would then be deleted.

**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 commenters' 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.

69 The committee may indicate its order of preference.

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

86 (B) For final candidates, the nominating committee shall 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 (D) 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 (E) Individuals who comment on the nominees or commissioners should be encouraged, but not required,  
97 to provide their names and contact information.

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

99 (G) When the public comment period for a commissioner closes, the comments shall be given to and  
100 reviewed by the presiding judge of each district the commissioner serves. If any comments would  
101 negatively affect the presiding judge's decision on whether to discipline or remove the commissioner from  
102 office, the commissioner shall be provided all 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 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) ~~Sanctions or removal during a commissioner's term.~~ Removal and sanctions.

(A) Sanctions.

(A)(i) The court commissioner may be sanctioned by the Council as the result of a formal complaint filed under rule 3-201.02.

(A)(ii) If the commissioner's performance is not satisfactory, the commissioner may be sanctioned in accordance with paragraph (7)(A)(iii) by 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 either district or court level the commissioner serves, may discipline the commissioner.

(A)(iii) 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.

(B) Removal.

**Comment [NS1]:** 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.

(B)(i) During a commissioner's term, ~~the court commissioner may be removed by the Council:~~  
 (B)(i)(a) as part of a reduction in force;  
 (B)(i)(b) for failure to meet the evaluation and certification requirements; or  
 (B)(i)(c) as the result of a formal complaint filed under rule 3-201.02 upon the concurrence of two-thirds of  
 the Council.  
 (B)(ii) ~~or If the commissioner's performance is not satisfactory, the commissioner may be removed by the~~  
~~presiding judge, or presiding judges if the commissioner serves multiple districts or court levels, only with~~  
~~the concurrence of a majority of the judges in each district or court level the commissioner serves. remove~~  
~~the commissioner from office.~~  
 (B)(ii) If the commissioner serves multiple districts or court levels and one district or court level contests a  
 commissioner removal decision made by the other district or court level, the Management Committee will  
 review the decision for final determination.  
 (C) If the commissioner disagrees with the ~~presiding judge's decision to sanction or remove~~, the  
 commissioner may request a review of the decision by the Management Committee of the Council.  
 -  
~~(B) 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.~~  
 (8) Retention  
 (A) 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.  
~~(B) At the end of a commissioner's term, the court commissioner may be removed without cause by~~  
~~the judges of the each courts district or court level 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.  
~~(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 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.~~

(98) 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.

(109) 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.<sup>1</sup> If a commissioner serves multiple districts, the presiding judge of each district shall complete an evaluation.<sup>2</sup> 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.<sup>3</sup>

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.

<sup>11</sup> This is from Brent's.

<sup>2</sup> 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.

<sup>3</sup> 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.

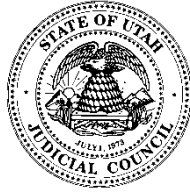
197       (5)(H) At its September meeting in open session, the Council shall approve its final findings and  
198 certification regarding all senior judges and court commissioners whose terms of office expire that year.

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:** Rule 9-301(3)

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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