Agenda

Policy and Planning Committee

May 5, 2017
12:00 p.m. – 2:00 p.m.
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room

12:00	Welcome and approval of minutes.	Action	Tab 1	Judge Derek Pullan
12:05	CJA 4-202.02. Criminal dismissals and record access. Comment and rule review.	Discussion/ Action	Tab 2	Judge Derek Pullan, Nancy Sylvester, and guests: Jeff Hunt, David Reymann, Jennifer Valencia
12:40	CJA 2-212. Communication with the Office of Legislative Research and General Counsel. Comment and rule review.	Discussion/ Action	Tab 3	Judge Derek Pullan, Nancy Sylvester
1:00	CJA 1-205. Standing Committee on Court Forms (committee composition); CJA 3-117. Forms committee charge. Comment and rule review.	Discussion/ Action	Tab 4	Judge Derek Pullan, Nancy Sylvester
1:20	CJA 4-202.09. Records in tax cases. Comment and rule review.	Discussion/ Action	Tab 5	Judge Derek Pullan, Nancy Sylvester
1:40	CJA 4-103. Orders of dismissal; CJA 9-301. Record of arraignment and conviction. Comment and rule review.	Discussion/ Action	Tab 6	Judge Derek Pullan, Nancy Sylvester
1:55	Other Business			Judge Derek Pullan

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. June 2, 2017 July 7, 2017 August 4, 2017 September 1, 2017 October 6, 2017 November 3, 2017 December 1, 2017

Tab 1

Policy and Planning Committee
Executive Dining Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111

March 3, 2017
Draft

Members Present	**Members Excused**
Hon. Derek Pullan - Chair (by phone)	Hon. Marvin Bagley
Hon. Ann Boyden	
John Lund	
Hon. Mary Noonan	
Hon. Reed S. Parkin	

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

(1) Approval of minutes.
Judge Derek Pullan welcomed the members to the meeting. Judge Parkin addressed the February 3, 2017 minutes. There being no changes to the minutes, Judge Ann Boyden moved to approve the February 2, 2017 minutes. John Lund seconded the motion and it passed unanimously.

(2) CJA 3-201. Court Commissioners.
CJA 3-111. Performance Evaluations of Senior Judges and Court Commissioners.

Ms. Sylvester addressed her memorandum regarding Rules 3-201 and 3-111. She focused first on new paragraph (7) in Rule 3-201, which deals with sanctions and removal. In the process of reviewing this rule at past meetings, the committee had requested that the process for both be clarified and separated from retention. Ms. Sylvester reviewed the changes she had made.

Ms. Sylvester then reviewed (7)(C) and, at the committee members' request, updated the paragraph to remove "presiding judge" and insert "district or court level," which was an update from earlier in the rule. Judge Pullan then asked if it has historically been the practice to reduce a commissioner's salary as is proposed on line 135 of the rule under "sanctions." Ms. Sylvester said yes it has always been the rule, however, she has not heard of this happening in the past. Judge Pullan said a district court judge cannot constitutionally have his or her salary reduced. Judge Pullan wondered about the effect

of that sanction. Judge Parkin asked if this section was necessary. Judge Boyden said in the past commissioners were not at the same pay rate as district court judges or appellate court judges but they have always had a set pay. Judge Parkin said he believed salary could be set on a step program. Judge Boyden said she is also concerned about the terms, salary reduction or suspension. Judge Parkin asked if there are only full-time or if there are part-time commissioners as well. Ms. Sylvester said it is her belief that all commissioners are full-time. Judge Pullan wondered if a reduction in salary was similar to a suspension without pay. After further discussion, the committee agreed to change lines 134 and 135 regarding the reduction in salary to reduction in case assignments with corresponding salary reduction and add a suspension without pay.

Judge Boyden moved to change the section as discussed. Judge Parkin seconded the motion. The committee asked if they needed to approve each change or the rule in full. The committee decided to approve at the end.

Judge Parkin next discussed the two-thirds rule in section 7(B)(i)(c) regarding commissioner removals by the Council. He wanted to make sure this rule reflected the current rules in practice for how voting is done. Judge Parkin asked who sets the rule for the Council's processes. Does this committee have the authority to direct the Judicial Council to set a higher standard? Judge Pullan noted this committee submits the rule proposals and the Council approves them. Mr. Lund said he was concerned that the Council would see this as a recommendation to set the standard higher. Ms. Sylvester noted she was concerned about saying "simple majority" instead of two-thirds because of the message this would send to current commissioners, and also noted that the two-thirds language is already in the existing rule. Judge Parkin said with the justice court judges, decisions are based on a majority. Mr. Lund said the rule would be sent to the Council and that body would decide if that was still acceptable. Judge Boyden said the practice of majority has been done in the district courts as well but also noted that the Council cannot remove a judge, only the Judicial Conduct Commission can.

Judge Mary Noonan said, in reference to section (7)(C) there are protections for judges, but are there protections for commissioners? Is there an appeal right? The committee agreed to amend section (C) to clarify how and to whom a commissioner can request a review. Judge Pullan recommended dividing this into two sections. Judge Pullan explained that an attempted removal would initially start with the presiding judges. But a removal could go directly to the Management Committee. Judge Pullan stated he believes it's important to preserve the idea that decisions are to be made at either the local level or Council level. Mr. Lund recommended that section (C) have a title as well. Keisa Williams asked if the committee would keep the section on the Management Committee making the decision. Judge Boyden said she could see there being an issue if a commissioner is really effective in their job in one district or court level but not in

another. Judge Boyden does not want to see two-thirds move forward, she would prefer majority instead. The committee discussed the Council's authority to remove or sanction a commissioner.

Judge Parkin requested that Ms. Sylvester organize the rule better, such as with more titles. He said the committee was also getting confused because of all of the formatting. Ms. Sylvester said she would be happy to clean up the rule.

Mr. Lund said he is concerned judges can vote to remove a commissioner and then the Management Committee can overturn that decision. The committee agreed this is a concern. Judge Parkin noted the Management Committee moves most issues to the Council. Judge Pullan said he is okay with the Management Committee taking on issues but he believes the Council should be the final decision-maker. The committee agreed to change line 148 to add that the Council will make the final decision.

Ms. Sylvester discussed line 160, paragraph 8, which discusses retention. Ms. Sylvester noted the practice has been the Council reviews a commissioner's declaration and the supporting materials (attorney surveys, etc.) and then votes on whether to certify that person for another term. The Council then sends the recommendation to the district courts for their approval. Judge Pullan said he would like the rule to be specific as to retention. Judge Noonan recommended putting "is eligible to be retained." Mr. Lund agreed. The committee agreed to change this section to say the decision sent from the Counsel is as to eligibility. Ms. Sylvester said the rule isn't on the Council's agenda for this month therefore the committee can make a final decision at the next meeting.

Ms. Sylvester next discussed rule 3-111. Ms. Sylvester noted the rule was sent to the Council in November 2016 on a different issue but she held it back from comment when she realized the issues overlapped with the ones raised here.

The committee discussed changes to section (1). Judge Noonan was concerned about some of the language, such as at lines 16 and 22. Line 22 talked about courtroom observation, which could be done by a review of recordings. Judge Noonan said in juvenile court the audio would not be helpful, specifically to evaluation of demeanor. The committee removed the option to review audio. Ms. Sylvester noted Mr. Johnson had put this proposal in rule 3-201 but she moved it to rule 3-111 since it seemed like a better fit there.

Judge Parkin asked if the language was underlined because it was new language or just moved from another rule. Ms. Sylvester said it's both. She explained which words were new and which were preexisting. Mr. Lund asked if the results from the commissioners' performance plans would be kept in the human resources personnel file. Ms. Sylvester noted this was new language recommended through a discussion she had with Judge Pullan, Mr. Johnson, and Keisa Williams. Ms. Sylvester stated that

currently the performance plan is only for someone needing correction. Mr. Lund said this should be an HR issue, he is not sure if this needs to be in a rule. Ms. Sylvester noted she currently manages the process and performance plans are ineffective. Ms. Sylvester noted the evaluations are done annually but the performance plans have not been done and they contain basically the same language as the evaluations. Judge Noonan said she would like to clarify performance plans in section 4(G). The committee agreed on line 155 to delete "new" performance plan and instead use just performance plans. Then that would allow for corrective action plans. Judge Parkin didn't agree with using corrective action plans because it had a negative connotation. Ms. Sylvester noted a situation that had recently happened with a commissioner who needed corrective action and the presiding judge prepared a performance plan for them. The committee briefly discussed how performance or corrective action plans apply to senior judges then decided to remove the section since senior judges are not employees.

Judge Parkin then went back to discussing section (1)(D). Judge Parkin asked if the justice courts policy is only for that section. Ms. Sylvester stated lines 11 through 13 say the rule applies to justice court judges. Judge Parkin said he specifically wanted to know if after line 35, sections (1)(E) and on apply to justice courts. Ms. Sylvester said they do. Mr. Lund recommended identifying that in the rule. Mr. Lund recommends having section (2) have a title to clarify it is where evaluations section begins.

No voting took place. The committee instructed Ms. Sylvester to make the changes as proposed and return with cleaner versions of the rules.

(3) Other Business.
The next meeting is scheduled for April 7 in the Judicial Council room at 12:00. The legislative update is the same day so Ms. Sylvester will see if they can get a meeting room onsite. Mr. Lund noted he will not be able to attend the April 7 meeting. There being no other business, the meeting adjourned at 11:44 am.

Tab 2

CJA04-202.02. Records Classification. Amend. Makes dismissals in criminal cases private except in limited circumstances.

Posted by Linda Petersen

Re: CJA04:0202–02

As the president of the Utah Foundation for Open Government I urge the court not to accept this rule.

The right of the public to review and understand the judicial process would be hampered by deeming this entire set of records as private.

While in this country we operate under the principle that an individual is innocent until proven guilty, that criminal charges have/are filed against an individual at any point is significant information the public has a right to know..

Posted by Mike Cavender

RE: Rule 4-202.02

As the Executive Director of the Radio-Television Digital News Association (RTDNA,) the nation's largest professional association of electronic journalists with members in Utah and across the United States, I am writing to register our opposition to this rule amendment, for the following reasons:

1.) The Amendment is unconstitutional. There is a presumptive right of access to court records under both the First Amendment and the Utah Constitution. Placing an entire category of criminal court files off limits to public inspection makes it difficult or impossible for journalists and the public at large to have official knowledge of those proceedings.

2.) The Amendment is unnecessary. Utah law currently provides for an accused to seek expungement of charges under certain statutory conditions. We believe a case-by-case consideration of this issue is far preferable to putting all criminal dismissal cases out of the public light.

3.) The Amendment is bad policy. The public interest is best served when court proceedings–regardless of their outcomes–are transparent and open to scrutiny. Accurate reporting on these cases is critical to hold court officers and the courts themselves accountable for their actions.

For these and other reasons, the RTDNA strongly urges this Amendment be rejected and the Utah courts continue to follow present accepted practice with regard to the availability of court records, regardless of the disposition of the cases.

Thank you,

Sincerely,

Mike Cavender
Executive Director
RTDNA
Washington, DC

Posted by Sheryl Worsley

I am commenting about rule 4-202.02

The suggested change to make case files private when criminal charges are dismissed flies in the face of transparency and would be a giant step backward. The rule change ignores the need and right of the public to check the work of those who prosecute and adjudicate crime.

The proposed rule ignores the need for the public to understand past history if a crime is re-committed.

The rule is unconstitutional as it would deny the public and news media the right to access records to which they have a presumptive right under the First Amendment and the Utah constitution.

Even when charges are dismissed, the public has an inherent right to know what happened in the case. You can't learn from mistakes if you don't know what those mistakes are. You can't hold an elected District Attorney or his staff paid with public funds accountable for what happened in a dismissed case if you are suddenly denied access to the case file. You can't benefit from collected evidence in a criminal case that was dismissed on a 'technicality' if the entire case is then obscured from view. In cases where public officials or the rich or powerful are able to obtain dismissal, the public has a right to know the details and journalists should be reporting on those cases. That would be impossible without the case files.

Lastly, the proposed rule change is overly broad in that it places an entire category of cases unnecessarily off limits. For those who are innocent, there are already measures in place for expungement under Utah law when charges are dismissed.

I urge you to reject the change to rule 4-202.02. It sends the message that what happens in our courts is secret, is above reproach and takes a giant eraser to the public record.

Sheryl Worsley

News Director, KSL Newsradio

Region 3 Director, RTDNA –Radio Television Digital News Association

Board member, Utah Headliners chapter of SPJ- Society of Professional Journalists

Posted by George Severson

CJA04-202.02. Records Classification. Amend. Makes dismissals in criminal cases private except in limited circumstances.

In regards to this proposed amendment – I strongly disagree with this action. It's a blatant contradiction to our constitutional right to access court records under the First Amendment and the Utah Constitution as well. Restricting access to journalists and therefore the general public of a total section of records is simply bad policy and prohibits the blessed checks and balances system on which our country is founded. We must have access to records to make sure people and institutions are working as they should be and are held accountable for their actions. Being able to review the process from start to finish, regardless of its outcome, is vital in ensuring justice is served. The public has the right to be informed and to take action. As I understand it, this amendment is not only unconstitutional, it is completely unnecessary since Utah Law already provides defendants to seek removal of charges under existing statutory conditions and Utah law already allows citizens to seek privatization of public court records based on their argument of need. The existing case-by-case approach is much more logical than a total, across the board block of all criminal dismissal cases which again, is an absolute disregard of our constitutional rights to review and question the judicial process for the sake of ensuring fairness and balance.

I appreciate your consideration of my opinion.

Sincerely,

George B. Severson

Director of News and Local Content

ABC4 Utah/CW30

Taylorsville Resident

Posted by Jessica Miller

I am writing to oppose CJA04-202.02, a proposed change that would make dismissals in criminal cases private.

This proposed change is not only unconstitutional — the public and news media have a presumptive right of access to these records under the First Amendment and the Utah Constitution — it is an unnecessary amendment. If the goal of such a change is to

protect those who have been falsely accused, a remedy is already in place in the form of an expungement.

If this rule is accepted, there is concern about the public and news media's ability to access important information. As a criminal justice reporter at The Salt Lake Tribune, part of my job is to track criminal court cases to their conclusion. If a case is dismissed, it would become impossible under this proposed rule change to accurately report the conclusion of a case. And the public interest in a dismissed case is often unusually high: Was evidence lost or had a witness recanted? Were the charges improperly filed? Was a plea deal negotiated? Important questions like these can't be answered if a case's conclusion is shrouded in secrecy.

In the last year, the Tribune has reported a number of dismissed cases, each under unique circumstances. One case was dropped because the defendant died, another because it was refiled as a heightened charge in a separate case. Yet another was dismissed because a victim did not show up to court to testify, while another was dropped after a judge found there was not enough evidence for the case to move forward. One of the most high-profile dismissal of charges was that of a former attorney general, whose case was dismissed because of discovery issues and concerns of a speedy trial.

Each one of these cases came to the same conclusion, but each in their own distinct way. To enact a blanket rule that would make all of these cases private is too broad of a meaure. Instead, if there is a concern of privacy in a specific case, it should be resolved on a case-by-case basis through the expungement process.

For these and other reasons, I urge the council to reject the proposed rule change, and keep in place current policy that favors availability of court records, regardless of the disposition of a case.

Thank you,

Jessica Miller

Justice Reporter

Salt Lake Tribune

Posted by Ben Winslow

I write in opposition to CJA04-202.02, which seeks to make dismissals in criminal cases private, except in limited circumstances.

This rule change would significantly affect transparency in court proceedings by obscuring a subject's prior history. That prior history can be telling, both for the subject of the record and the court itself.

As a reporter, being able to write or broadcast whether a criminal case is dismissed and being able to see documents that reveal why it was dismissed are important. It is not only important for the issue of fairness, but also to explain important judicial determinations by prosecutors, defense attorneys and judges.

This rule seeks to roll back important information at a time when the courts have been making moves to be more open and transparent to the public. The existing policies of the courts on privatizing records as well as a process of expungement for defendants is already working.

Regards,

-Ben Winslow

Reporter, KSTU FOX 13

Salt Lake City, Utah

Posted by Marc Sternfield

As News Director of KSTU-TV Fox 13 News in Salt Lake City, Utah, I am writing in opposition to the proposed amendment to Rule 4-202.02 of the Utah Rules of Judicial Administration.

The transparency of court proceedings in the United States is one of the foundations of our free and open society. Put simply, the public has a right to know what happens with criminal cases, regardless of how cases are resolved.

Criminal charges can be dismissed for a variety of reasons, and not just because someone is innocent. As Mike Cavender with the Radio Television Digital News Association points out, evidence may be lost or witnesses may change their stories, or a defendant could reach a pre-trial deal with prosecutors.

Conversely, if a criminal defendant is innocent, it is important for the public to know why and how charges were pursued to begin with. Public scrutiny is critical at every step.

I stand with my colleagues in the Utah Media Coalition in firm opposition to this proposed rule change.

Thank you.

Marc Sternfield

News Director, KSTU-TV Fox 13 News

Salt Lake City, Utah

Posted by Nate Carlisle

I am commenting on CJA04-202. I oppose the proposal to make private criminal court records when the charges or indictments have been dismissed.

If adopted, the rule would deny access to a large number of court records, including cases with important facts but where justice was not served. The recently dismissed case against former Attorney General Mark Shurtleff is the easy example, but it's not difficult to imagine scenarios where your babysitter, doctor or blind date was thought to have done something serious, but the case was dismissed for a technical reason or because a witness didn't appear for trial.

Incongruities also are possible. Charges could be dismissed against a co-defendant who agrees to testify. So even though he or she may have done everything the remaining defendant did, the witness' case file is sealed. Likewise, you can have someone that was wrongly convicted or whose conviction was overturned on appeal, and while that person's court record is available, there will be no record available for a defendant who was fortunate enough to have his or her case dismissed.

I am also not aware that any other state court system has such a rule. Such a rule certainly does not exist in federal court. Utah could become the oddball with a strange court rule.

I do not know why this rule was proposed. I suspect there is a fear that dismissed cases still leave a certain stigma on the defendant.

However, the Utah Legislature created a remedy for that. The defendant can apply for an expungement of the arrest and charges.

The courts in Utah are part of a great American tradition of open courts. Please don't work against that tradition. Please reject the proposal in 4-202.02.

Nate Carlisle

Reporter, Salt Lake Tribune

Board member Utah Headliners Chapter of Society of Professional Journalists

Posted by Nadine Hansen

CJA04-202.02. Records Classification. Amend. Makes dismissals in criminal cases private except in limited circumstances.

I urge the Judicial Council not to adopt proposed subsection (4)(Z) of this proposed rule. In addition to the public's right to know, which others have addressed here, this rule would shield abusive individuals who are not prosecuted from having past behaviors noted and examined. Sometimes abusers are not prosecuted because their victims are too young or too scared to effectively participate in prosecution. Records of past behaviors should remain public in order to identify patterns of behavior that might help in subsequent prosecutions if abusive behaviors are repeated.

Posted by Brian West

CJA04-202.02. Records Classification. Amend. Makes dismissals in criminal cases private except in limited circumstances.

The idea of classifying as private criminal court records in which the charges are dismissed would critically hamper the public's vital right of access to the court system and of the ability for the public to scrutinize the judicial process.

While the intent of this rule change may be to restore reputations of people who have been wrongly charged, classifying those court files as private would mean the public couldn't even know that such charges have been dismissed.

As a newspaper of record, the Deseret News regularly reports on criminal cases throughout the state. When charges are filed in a newsworthy case, that information is published so the public knows what crimes are occurring and what charges prosecutors are filing against those accused of such crimes. If a case is dismissed, unless a reporter is present during the hearing to learn first hand when such action occurs, how will the newspaper be able to publish a story that says such charges have been dropped? How could explanations of such actions taken by prosecutors and other public employees be presented to the public? In such cases, the accused's reputation could be unfairly tarnished because the records reporting the dropping of the charges aren't available to the public, leaving only the original stories about the charges that were filed and the allegations found within them available through a simple web search.

Occasionally, the Deseret News receives requests to annotate archived stories on the web about people whose cases were dismissed or whose situations otherwise changed from previous news reports. Without public court records to determine whether such cases were dismissed and why they were dismissed, we would be unable to accurately report on any changed circumstances.

Years of experience as a courts reporter and an editor have taught me that in the majority of criminal cases where charges are dismissed, it is not because police and prosecutors believe the crimes weren't committed by the defendant. Many times, the prosecution isn't prepared to move forward, for example, when a witness doesn't show up. Sometimes witnesses disappear for fear of retaliation. Sometimes state charges are dismissed so federal charges can be pursued. Sometimes a person is charged in several cases and one is dismissed in lieu of conviction on the others. This is important information that the public has the right to understand about a criminal case. Another important component of a dismissed criminal case is also whether it was dismissed with or without prejudice. Such information is important for the public to know. If a case is dismissed without prejudice and is later re-filed, the public has the right to know the differences between the new and old case and compare what changes prosecutors may have made to their case. If such dismissed cases become private, the public would not know about the previous case nor would it be able to compare the two.

Part of the job of the free press is to independently be a watchdog to police, prosecutors, defense attorneys and judges. If prosecutors are filing charges against innocent people, the media should and will report such important information to the public. County attorneys, district attorneys and attorney generals are directly elected by the public, which has a right to know how they are performing their duties. Judges are also retained through general elections. Taking away information about dismissed criminal cases takes away important information the public is entitled to know. If a judge dismisses a case, the public has a right to know why it was dismissed and if there is any pattern a judge may have in dismissing cases.

The public needs to know why charges in a case have been dismissed just as much as the public needs to know why charges were filed in the first place. The public's resources are also being used to investigate, prosecute, often defend, and adjuciate these cases. These cases are referred to as "The State of Utah versus John Doe" for a reason. It is the public, its tax dollars and its laws that are prosecuting (and often defending) those accused of breaking the public laws. As such, the public has the constitutional right to know how

such cases are handled in court, which includes their resolutions, be it through an acquittal, a conviction or a dismissal.

For these and other reasons, i urge you to reject the proposed changes to rule 4-202.02. Thank you for your consideration.

Brian West

News director, Deseret News

Posted by Lois M. Collins

RE: CJA04-202.02. I urge you strongly not to make this proposed amendment. There are compelling reasons to keep access to dismissals open, all of which benefit the public. First, a one-size-fits-all closure of records is bad public policy, especially since the people in the records have other options to ask that their file be considered private. It's also a disservice in cases where the occurrence of a crime and an arrest have been made known; responsible journalists also report that the charge has been dismissed and why. It protects both the formerly accused and the public. It's also important from the viewpoint of seeing that the system works well and that arrests are not being made and charges filed frivolously or sloppily; it provides a way to look at that. While it would at first glance appear this benefits those who might be accused of a crime without enough evidence to sustain the charge, it actually does the opposite. It fails to hold law enforcement or prosecutors accountable, while not letting the public know the charge was, in fact, dismissed. It's not needed, it is the opposite of the transparent approach under which our system flourishes and it's bad public policy. Please don't do this. Instead, continue to make the remedy available on a case-by-case basis as needed and keep our legal system as open and viewable as possible. Thank you for considering my comments.

Lois M. Collins

journalist and Salt Lake City resident

Posted by Don Kauffman

RE: CJA04-202.02. Records Classification.

As Acting News Director at 2News (KUTV/KJZZ/KMYU), I'm writing to oppose the proposed rule change. We feel the proposed change would severely limit our access to important information in our community. Being able to view an individual's entire history of criminal legal interactions is a vital part of evaluating a story and providing appropriate context in our reporting.

The courts have taken important steps toward greater transparency and openness in recent years. This feels like a step in the wrong direction.

Thank you for the opportunity to respond.

Don Kauffman

KUTV

Posted by Craig Buschmann

I am commenting about rule 4-202.02

I am opposed to the suggested revision to make case files private when criminal charges are dismissed.

The public has an interest in transparency, but in the disposition of cases against potential defendants and in how the judicial system operates. The proposed rule change ignores the need and right of the public to check the work of those who prosecute and adjudicate crime.

Further, the proposed rule ignores the need for the public to understand past history if a crime is re-committed. Rules of criminal procedure are in place to properly limit such information in a trial. Outside of trial, however, the due process considerations that justify such rules during a trial are not outweighed by the public interests.

In addition, it is possible that the proposed rule is unconstitutional as it would deny the public and news media the right to access records to which they have a presumptive right under the First Amendment and the Utah constitution.

Finally, the proposed rule change is overly broad in that it places an entire category of cases unnecessarily off limits. For those who are innocent, there are already measures in place for expungement under Utah law when charges are dismissed.

I urge you to reject the change to rule 4-202.02. It sends the message that what happens in our courts is secret and above consideration by the public.

Craig Buschmann

UT Bar Member

Posted by Joel Campbell

RE: CJA04-202.02

As has been the case for decades in Utah when talking about the Government Records Access and Management Act, court records or the Open Meetings Act, the Legislature and other policymakers, have generally preferred a “surgical approach” rather than a shotgun approach to improving Utah’s public records laws and policies. Unfortunately, the proposal to amend CJA04-202.02 fits into that later shotgun approach category of overly broad policy without properly balancing all public and privacy interests in these records.

I was fortunate enough to serve as one of 13 members on the “Privacy and Public Court Records” Committee appointed by the Utah Judicial Council during 2004. The committee looked at how court records would be made available online. I believe that months-long discussion was invaluable in setting judiciary information balancing standards. However, now 13 years later, this blanket exemption flies directly in the face of the principles adopted by the Privacy and Public Courts Committee. Unfortunately, I believe the work of that committee has been long forgotten, resulting in a knee-jerk

information closure such as this rule proposes. (I am including a link here to the report which is worth review https://www.utcourts.gov/Privacy_Public_Records/Report.pdf/)

Specifically, Rule CJA04-202.02 would simply override the Constitutionally-mandated process for closing an entire category of records. Reviewing the record closure outlined by Privacy and Public Court Records committee on Pages 7-8 relies on both Constitutional and statutory standards. It reads:

"Since court records are public unless classified otherwise, we believe the same fundamental procedures adopted by the Utah Supreme Court in closing court hearings should apply to closing public court records. Specifically, a party seeking to close a public record must serve advance written notice of a closure motion upon the opposing party, the court and any press representatives who have requested notice in that particular case. The judge must:

1) Conduct a hearing when a motion to close a record is contested, when the press has requested notice of closure motions in that particular case or when the judge decides public interest in the record warrants a hearing;

2) Identify and analyze with particularity the court record, the interests favoring access and the interests favoring closure;

3) Apply the constitutional standard or the common law standard that applies in the

circumstances; and

12 Society of Professional Journalists v. Bullock, 743 P.2d 1166, 1177 and fn. 15 (Utah 1987) citing KearnsTribune Corp. v. Lewis, 685 P.2d 515 (Utah 1984).7

4) Make written findings that the interests favoring closure outweigh the interests favoring access and that there are no reasonable alternatives to closure sufficient to protect the interests served by closure, such as redaction, etc."

In the case of dismissed charges, the first, second and fourth principle are key. This proposed rule is tantamount tossing all records about dismissed charges in Utah into an unconstitutional information black hole. To assert that all of these dismissed charge cases are exactly alike, all raise the same issues, and therefore deserve the came classification is ludicrous. The very specific nature of each case demands a case-by-case judgment where the interests favoring closure for privacy or other reasons outweighs the interests keeping it open are balanced.

Furthermore, this rule would rob Utahns of the Constitutional protection of open courts and thereby open records. Such policy of open courts and open court records must be given even stronger value when considered alongside Utah's GRAMA's guiding principle that all records are "presumed open" unless there is a specific exemption to close them. This rule turns both the Constitutional and statutory right of access on its head and then requires citizens to go to extraordinary means, probably including hiring an attorney and expending legal fees, to mine this presumptive public record out of the information black hole the judiciary proposes to create. This simply create's a devil's workshop. There is plenty of evidence in many U.S. jurisdictions where authorities have tried to hide behind such information black holes to protect criminals and errant police officers and elected officials. I don't have the time here to go into details, but would happy to provide such information.

I hope that the Judicial Council rejects this unconstitutional, unnecessary and overly broad rule change that flies in the face of Utah's developed record policy that enshrines balancing tests for all interests surrounding records. Most importantly, it is an anathema to the First Amendment principles of open courts and public accountability.

Joel Campbell

Associate Professor — journalism

Brigham Young University (for identification purposes only)

School of Communications

Lindon, Utah

P.S. A note about this policy process. Unlike other public agencies, why does not the court publish justification or reasoning presented for such a dramatic change in the court policy, particularly in relation any other state or in federal courts. Unlike, the amendments to GRAMA and other record policy changes that go through the Legislature, I don't see any evidence that all parties who would be concerned with this policy have been invited to the table to discuss it. I hope that this one-dimensional sterile comment process is not considered sufficient engagement in very opaque policy promulgation process. The appearance of this policy change was a surprise to many. The Judicial Council knows how to conduct more transparent and open processes. I was part of a committee that conducted a more open and public review of record policy. What's the benefit? As we have seen at the Legislature, when broad public discussion is heard and considered, it is easier to do small surgery to correct an record policy issue, that cutting off a limb. Reasonable protections of privacy result from better public input and processes. In this case, I believe broader public discussion may have shown the out-of-step nature of this policy earlier or shown its unnecessary function when compared to remedies already on the books.

Jeffrey J. Hunt
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February 16, 2017

VIA EMAIL AND U.S. MAIL

UTAH JUDICIAL COUNCIL
c/o Ms. Nancy Sylvester
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241
nancyjs@utcourts.gov

Dear Members of the Judicial Council:

We represent the Utah Media Coalition, which is comprised of Utah's leading news and journalism organizations, including the *Salt Lake Tribune*, *Deseret News*, *Standard-Examiner*, *Daily Herald*, *The Spectrum*, *Herald Journal*, the Associated Press, KSL, KUTV, KTVX, KSTU, the Utah Press Association, and the Utah Headliners Chapter of the Society of Professional Journalists. We write in opposition to a pending proposed amendment to Rule 4-202.02 of the Utah Rules of Judicial Administration that would classify as private, "except in the case of a plea held in abeyance, court records involving a criminal charge where a dismissal of all charges has been entered." Utah R. Jud. Admin. 4-202.02(4)(Z). The proposed amendment violates the public's constitutional right of access to court records; is contrary to the public's right to know and hold the judicial system accountable; and is an overbroad and unnecessary measure given the properly-tailored tools already present in Utah law. We urge the Council to reject it.

1. **The Proposed Amendment Violates the Public's Presumptive Right of Access.**

The Utah Supreme Court has recognized that the public has a presumptive right of access to court records. *State v. Archuleta*, 857 P.2d 234 (Utah 1993). This time-honored right is grounded not only in the First Amendment to the United States Constitution, *id.* at 238-39, but also in Article I, section 15 of the Utah Constitution, *id.* at 239-40, and in the common law, *id.* at 240-41. *See also* Utah R. Jud. Admin. 4-202.02(2)(F) (stating that "case files" are public records). As the Court explained in *Archuleta*, the public's right of access to the court file serves a critical function in the judicial process:

> "Access to pretrial documents furthers the same societal needs served by open trials and pretrial civil and criminal proceedings.... The availability of documents means that graft and ignorance will be more difficult to conceal." Disclosing documents used by courts in reaching a decision in a preliminary hearing will discourage decisions based on improper means and will promote conscientious performance by all officials involved in the criminal justice system. Therefore, providing a presumptive right of access to documents filed in connection with preliminary hearings can play a significant positive role in the functioning of that process.

857 P.2d at 238-39 (citations omitted) (ellipses in original).

Conversely, denying public access to judicial records precludes public scrutiny of the judicial process, creating an impression of unfairness and secrecy, even though the proceedings may in fact be imminently fair. *See* M. Fowler & D. Leit, *Media Access to the Courts: The Current Status of the Law* (American Bar Association, Section of Litigation 1995) at 1; *see also Soc'y of Prof'l Journalists v. Sec'y of Labor*, 616 F. Supp. 569, 576 (D. Utah 1985) ("Openness safeguards our democratic institutions. Secrecy breeds mistrust and abuse."), *appeal dismissed and remanded on other grounds*, 832 F.2d 1180 (10th Cir. 1987).

The public's constitutional right of access can be overcome only in the most exceptional circumstances, where the proponent of closure establishes a "substantial probability" that public access will endanger a compelling governmental interest, such as the right to a fair trial, and where there are no less restrictive alternatives to closure that will protect that interest. *Archuleta*,

857 P.2d at 238 (quoting *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 14 (1986)). This standard cannot be satisfied by generalized assertions applicable to entire categories of records. Rather, "[i]t is only upon the showing of some specific circumstance that gives rise to significant probability of prejudice to the proceeding that the courts are inclined to close the courtroom and seal the records." *People v. DeBeer*, 774 N.Y.S.2d 314, 315 (N.Y. Cty. Ct. 2004); *see also State v. Cianci*, 496 A.2d 139, 145 (R.I. 1985) (a "blanket statement of potential prejudice was not sufficient to demonstrate compelling reasons for ordering the sealing of discovery documents").

The proposed amendment plainly violates this constitutional standard. It would place off limits to the public an entire category of criminal court records without any specific findings in a particular case regarding a compelling governmental interest or whether less restrictive alternatives exist. It would also reverse the bedrock presumption of access to records of critical importance to holding the judicial process accountable, and would require journalists to engage in an unnecessary process or hire a lawyer just to restore the presumption of access to what should be the public's property. *See* Utah R. Jud. Admin. 4-202.04(2)(B).

More than two hundred years ago, the United States Supreme Court declared that "[i]t is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Because the proposed amendment would place the Rules of Judicial Administration directly at odds with the governing constitutional standard, the amendment should be rejected.

2. <u>The Proposed Amendment is Bad Policy.</u>

In addition to its constitutional infirmities, the proposed amendment is misguided from a policy perspective. The apparent purpose of the amendment—to help restore the reputations of the wrongfully accused—may be laudable, but that purpose represents only a small sliver of the issues involved in public access to criminal proceedings that do not result in a conviction.

The public's interest in the criminal process does not vanish when charges are dismissed. To the contrary, in such cases the public's need for information and accountability is often greater. If prosecutors have filed charges that should not have been filed, the public needs to know that. If valid charges have been dismissed for reasons other than the merits, the public needs to know that too. Both are critical to the public's role of holding prosecutors and the courts accountable. And that is in addition to the fact that if the public's resources have been

expended pursuing and adjudicating charges that ultimately end in dismissal, the public needs to understand why.

Furthermore, there are many reasons criminal charges may be dismissed beyond the innocence of the accused. Indeed, the law is clear that dismissal of charges, as opposed to a conviction or acquittal, is *not* an adjudication of guilt or innocence. *See Neff v. Neff*, 2011 UT 6, ¶ 58, 247 P.3d 380 ("[N]othing about the dismissal of the aggravated assault charge establishes that Branson was innocent of the alleged misconduct underlying the offense...." (internal quotations omitted)); *Ryan v. N.Y. Tel. Co.*, 467 N.E.2d 487, 493 (N.Y. 1984) (dismissal "is neither an acquittal of the charges nor any determination of the merits. Rather, it leaves the question of guilt or innocence unanswered"). As a result, the apparent premise of the proposed amendment—that court files should be sealed because the accused was wrongfully charged—is incorrect.

If the proposed amendment is being driven by a desire to protect former criminal defendants from discrimination in housing or employment, that too may be a laudable goal. But those problems are best addressed directly through legislation or rules preventing such discrimination, not by sacrificing the public's right to know regarding important features of the criminal process and, in the process, making errors and abuses easier to conceal.

The proposed amendment also has the puzzling feature of attempting to close files that previously have been classified as public, both under the Rules of Judicial Administration and the constitutional right of access. This type of retroactive sealing is contrary to the principle that "[t]he law cannot recall information once it is in the public domain." *Star-Telegram, Inc. v. Walker,* 834 S.W.2d 54, 57 (Tex. 1992); *see also State v. Allgier*, 2011 UT 47, ¶ 17, 258 P.3d 589 (once information reaches the public domain, "any significant interests that would be protected by requiring the [information] to remain sealed are now greatly diminished."). The effectiveness of the amendment, therefore, depends solely on whether a member of the news media or public happens to seek access before charges are dismissed—an unprincipled distinction that ill serves the public's right to know.

Reporting on the judicial process and those charged with public duties "lies near the core of the First Amendment." *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 838 (1978). The Rules of Judicial Administration should serve this critical function, not place an entire category of criminal files beyond the public's reach.

3. **Current Law Already Addresses These Issues in a More Tailored and Appropriate Way.**

Finally, even if protecting the future reputations of the accused were a compelling governmental interest, and even if there were an overriding need to address that issue here, Utah law and the Rules of Judicial Administration already provide better tools to address that concern. The Utah Expungement Act, Utah Code §§ 77-40-101, *et seq.*, provides specific procedures for a "person who has been arrested or formally charged with an offense" to have his or her records expunged on conditions much more indicative of innocence than the proposed amendment would provide. *Id.* § 77-40-104(1). If a person satisfies those conditions, the Rules of Judicial Administration already classify "expunged records" as sealed. Utah R. Jud. Admin. 4-202.02(3)(B).

Further, even if a person decides not to seek expungement, the Rules contain a procedure whereby a person can request that presumptively public records associated with a case be reclassified as non-public. Utah R. Jud. Admin. 4-202.04. That process allows the court to consider the specific interests for and against closure and conduct a constitutionally permissible case-by-case analysis regarding those interests. *Id.* 4-202.04(5). This existing remedy is a far more accurate way to serve the interests the proposed amendment seeks to protect than categorically closing all criminal cases that end in dismissal.

For all of these reasons, the proposed amendment is unconstitutional, unwise, and unnecessary, and if adopted may well lead to litigation challenging it. We urge the Judicial Council to reject it.

Best Regards,

PARR BROWN GEE & LOVELESS

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Marc Sternfield, KSTU
Trent Eyre, Utah Press Association
McKenzie Romero, Utah Chapter of the Society of Professional Journalists

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) **Presumption of Public Court Records.** Court records are public unless otherwise classified by this rule.

(2) **Public Court Records**. Public court records include but are not limited to:

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

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

(2)(C) appellate filings, including briefs;

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

(2)(E) audit reports;

(2)(F) case files;

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

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

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

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

(2)(K) financial records;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) **Sealed Court Records.** 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; -

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

(3)(A)(iv) Title 78B, Chapter 8, Part 402, actions for disease testing;

(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) **Private Court Records.** 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:

(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;

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

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

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

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

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

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

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

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

(4)(V) victim impact statements;

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

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

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

(4)(Z) except in the case of a plea held in abeyance, court records involving a criminal charge where a dismissal of all charges has been entered; and

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

(5) **Protected Court Records.** The following court records are protected:

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

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

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

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

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

(5)(F) court security plans;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5)(Q) test questions and answers;

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

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

(5)(T) presentence investigation report;

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

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

(6) **Juvenile Court Social Records.** The following are juvenile court social records:

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

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

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

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

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

(6)(F) referral reports;

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

(6)(H) treatment or service plans.

(7) **Juvenile Court Legal Records.** The following are juvenile court legal records:

(7)(A) accounting records;

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

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

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

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

(7)(F) referral and offense histories

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

(8) **Safeguarded Court Records.** The following court records are safeguarded:

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

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

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

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

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

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

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

Tab 3

COMMENTS TO CODE OF JUDICIAL ADMINISTRATION
RULE 2-212 (1 COMMENT)

CJA02-212. Communication with the Office of Legislative Research and General Counsel. Amend. Limits and changes the timing of the notice requirement to the Office of Legislative Research and General Counsel of the Court's draft rules.

Posted by Patricia Owen on behalf of Todd Weiler, Senate Chair Daniel McCay, House Chair

On behalf of the Judicial Rules Review Committee of the Utah State Legislature, we recommend the following changes to CJA02-212, Communication with the Office of Legislative Research and General Counsel:

On lines 19-20, we recommend that the rule state that the Administrative Office of the Courts send a draft rule of the Judicial Council to "staff of the Judicial Rules Review Committee within the Office of Legislative Research and General Counsel and the chairs of the Judicial Rules Review Committee." These individuals can be found on the Utah Legislature's website: le.utah.gov. By specifying the individuals who receive the information, it ensures that the information will be properly considered by the individuals assigned to review judicial rules under Utah Code, Title 36, Chapter 20, Judicial Rules Review Committee. Even during those times when the Judicial Rules Review Committee is less active, the Office of Legislative Research and General Counsel will designate staff for the committee.

For the same reasons stated above, on lines 28-30, we recommend that the rule state that the Administrative Office of the Courts notify the "staff of the Judicial Rules Review Committee within the Office of Legislative Research and General Counsel and the chairs of the Judicial Rules Review Committee" of final action on any rule the Judicial Council adopts.

On lines 21-22, we recommend that the rule state that a draft rule be submitted at the "same time the draft rule is submitted to the Council and when the draft rule is published for public comment." Utah Code § 36-20-3 provides that a proposal for a court rule be submitted to the Judicial Rules Review Committee "when:
a) the court rule or proposal for court rule is submitted to:
(i) the Judicial Council for consideration or approval for public comment; or
(ii) the Supreme Court from the advisory committee after its consideration or approval; and
b) the approved court rule or approved proposal for court rule is made available to members of the bar and the public for public comment."

We appreciate your consideration of these recommendations.

Draft
October 4, 2016

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

Intent:

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

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

Applicability:

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

Statement of the Rule:

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

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

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

Tab 4

COMMENTS TO CODE OF JUDICIAL ADMINISTRATION
RULES 1-205 (NO COMMENTS), 3-117 (2 COMMENTS)

CJA01-205. Standing and ad hoc committees. Amend. Creates a new Judicial Council Standing Committee on Forms; provides committee composition. Expedited under Rule 2-205.

No comments.

CJA03-117. Committee on Court Forms. New. Establishes the charge for the new Judicial Council Standing Committee on Forms. Expedited under Rule 2-205.

Posted by Samuel D. McVey

CJA 03-117 on charge to forms committee:

The following should be added:

1) "No new form shall be approved until the Committee has ensured obsolete forms have been removed from all court clerk offices and destroyed and removed from the Courts' OCAP system and website.

2) "In the form for whether a party is on active military duty, there shall be no language about entering a default certificate or judgment."

3) "No form shall be approved for publication and use on a consent calendar. Rather, each member of the Judicial Council or Board of District Court Judges shall review the form and not vote for approval without having first read the form."

The justifications for these proposals are:

1) There are obsolete forms in our system containing outdated procedures and incorrect law (see, e.g., the federal weapons provisions in the stalking injunction forms)..These forms tend to be available in clerks' offices and through searches resulting in forms appearing from the Court website. The first thing the committee should undertake is a thorough search of clerk offices and the court database to delete old and inaccurate forms.

2) A finding of military service or not does not equate to the ability to enter a default or not. There are other requirements. Yet we continue to see language such as "The Court finds the respondent is not on active duty military service and a default may enter."

3) We have found incorrect forms were put in place by committee staff and the Board of District Court Judges could not remember voting on them. No form should be promulgated until the governing body–Boards or Council–actually reads and votes on them.

Posted by Susan Vogel

I would say “at” all levels rather than “in” all levels.

I hope that the “other interested groups” includes the minority communities (in some areas now “majority”) and the LGBTQ community.

I suggest the committee also have the mandate to assess which forms should be bilingual.

Basis for comments: Work on a daily basis with pro se litigants who have a lot of difficulty with forms; extensive experience doing outreach to and trainings for the Latino community.

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, one appellate court staff attorney, one representative from the Self-Help Center, the State Law Librarian, the Court Services Director, 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.

(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 determine the need for forms and 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) Process for form creation.

(3)(a) The committee shall adopt procedures for creating new forms or making substantive amendments to existing forms, and procedures for expediting technical or non-substantive amendments to forms.

(3)(b) Forms should be written in plain language and reference the statutes and rules to which the forms apply.

(3)(c) 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.

(3)(d) The committee may recommend to the Judicial Council mandatory use of particular forms. However the Judicial Council's designation of a form as mandatory is not binding on a decision-maker asked to review the legal correctness of the form.

(3)(e) The Office of General Counsel shall staff the committee and shall review all forms for legal correctness before final approval by the committee.

(4) The State Law Librarian shall be responsible for maintaining and archiving the forms.

Tab 5

CJA 4-0202.09 . Miscellaneous. Amend. Provides that records in property and use tax cases involving commercial information as that term is defined in Utah Code § 59-1-404 are protected. If a request is made to access a record or records, the records will be released within 14 days, except for specific records ordered by the court as sealed, private, protected, or safeguarded. 30 days after the court issues a non-appealable, final order, all records will be public, except as otherwise classified.

No comments.

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) Notwithstanding Rule 4-202.02, 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), 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, shall be protected if the case also involves commercial information as that term is defined by Utah Code § 59-1-404.

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

(10)(C)(i) if a request for a specific record, or access to all records in a case, is made to the court and notice is given to the taxpayer, such record or records shall be released within 14 days after notice is given to the taxpayer, except for specific records ordered by the court 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 public 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).

(10)(C)(iii) The public shall have access to the case history, notwithstanding the limitations in this rule applicable to the underlying records.

Tab 6

COMMENTS TO CODE OF JUDICIAL ADMINISTRATION
RULES 4-103 (NO COMMENTS) AND 9-301 (NO COMMENTS)

CJA04-103. Civil calendar management. Amend. Pursuant to Cannon v. Holmes, 2016 UT 42 and Civil Rule 41, requires that all orders of dismissal entered under the rule must contain the language "without prejudice."

No comments.

CJA 09-301 Record of arraignment and conviction. Repeal. The Court of Appeals has determined that failure to follow this rule does not affect the validity of a plea or conviction with respect to enhancements. State v. Gonzales, 2005 UT App 538, 127 P.3d 1252. The rule is also redundant to other rules and statutes. *See*, *e.g.*, URCrP Rule 11, CJA Rule 4-609, UTAH CODE § 53-10-208.1.

No comments.

Rule 4-103. Civil calendar management.

Intent:

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

To reduce the time between case filing and disposition.

Applicability:

This rule shall apply to the District Court.

Statement of the Rule:

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

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

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

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

~~Rule 9-301. Record of arraignment and conviction.~~

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

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

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

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