

# Agenda

## Policy and Planning Committee

October 3, 2017  
10:00 a.m. – 12:00 p.m.

Zermatt Resort  
784 Resort Dr, Midway, UT 84049  
Basel Room

10:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Derek Pullan
10:05	CJA 1-201. Membership – Election. (Back from Public Comment)	Discussion/ Action	Tab 2	Keisa Williams
10:15	CJA 3-201. Court Commissioners. CJA 3-111. Performance evaluations of senior judges and court commissioners.	Update	Tab 3	Nancy Sylvester
10:30	CJA 4-202.02. Records Classification.	Discussion/ Action	Tab 4	Keisa Williams
10:50	CJA 4-703. Outstanding Citations and Warrants.	Discussion/ Action	Tab 5	Keisa Williams
11:10	CJA 4-202.09. Miscellaneous.	Discussion/ Action	Tab 6	Keisa Williams
11:30	CJA 3-407. Accounting.	Discussion/ Action	Tab 7	Keisa Williams

**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.

**2017 Meetings:**

November 3, 2017  
December 1, 2017 (9:00 a.m. – 5:00 p.m.)

**2018 Meetings (through June):**

January 5, 2018  
February 2, 2018  
March 2, 2018  
April 6, 2018  
May 4, 2018 (9:00 a.m. – 5:00 p.m.)  
June 1, 2018

# Tab 1

## **Policy and Planning Committee**

Executive Dining Room  
Matheson Courthouse  
450 S. State St.  
Salt Lake City, UT 84111

September 11, 2017

**Draft**

### **Members Present**

Hon. Derek Pullan – Chair  
Hon. Ann Boyden  
Hon. Mary Noonan  
Hon. Reed S. Parkin  
Hon. Marvin D. Bagley  
Rob Rice

### **Members Excused**

### **Staff**

Keisa L. Williams  
Nancy J. Sylvester

### **Guests**

Nini Rich, Director, ADR/Mediation  
Shane Bahr  
Jim Peters

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

Judge Pullan welcomed the members to the meeting. Judge Pullan then addressed the August 4, 2017 minutes. There being no changes to the minutes, Mr. Rice moved to approve the minutes. Judge Noonan seconded the motion and it passed unanimously.

### **(2) CJA 4-501.03. Qualification of ADR Providers. (Amendment)**

Judge Pullan welcomed the Director of ADR Programs for the AOC, Nini Rich, to the meeting and thanked her for proposing some rule changes and using the new form to do it. Ms. Rich explained that a few years ago when the ADR Committee undertook the process of determining how to educate mediators on their ethical requirements and provide them more training, it was determined that a best practice guide should be created. The ADR Committee developed that guide and then started looking at the ethics exam with the desire of making it broader in scope. In order to be included on the Court's roster as a mediator, individuals must pass an ADR ethics exam. The previous exam covered only the Code of Ethics for ADR Providers found in the Utah Court-Annexed Dispute Resolution Rules (Rules 101-104). However, mediators are subject to compliance with not only those court rules, but also the Utah Alternative Dispute Resolution Act (Title 78B, Chapter 6), the Utah Uniform Mediation Act (Title

78B, Chapter 10), and Code of Judicial Administration Rule 4-510.03. The new ethics exam covers all of those standards and requirements.

Judge Parkin asked if the ADR Committee approved the language Ms. Rich is proposing. Ms. Rich said she did run it by the committee to see if it would be sufficient.

Mr. Rice asked what the other requirements were for the rule change. Ms. Rich stated that in addition to the rules and statutes (noted above), there is also case law that affects the ethical behavior of mediators, such as *Reese v. Tingey* and *Rawlings v. Rawlings*. The rule amendment doesn't change any of the requirements, it's just a better process to test as well as educate. The Committee has taken the best practice guide to the Utah State Bar, the Family Law Section and the Utah Council on Conflict Resolution and have received positive responses. This test was given out as a beta test to the current members, who stated that it was helpful to them.

Judge Parkin: Is your language sufficient or do we need to have Ms. Sylvester or Ms. Williams draft a proposed amendment?

Judge Pullan pointed to the proposed language from Ms. Rich on Line 36 that says "successfully pass an examination on the ethical requirements of the new members on the Utah Court Roster". The committee felt that the proposed change addressed the issues.

Judge Noonan made a motion approve the amendment as proposed for submission to the Judicial Council for public comment. Mr. Rice seconded the motion and it passed unanimously.

### **(3) CJA 3-201. Court Commissioners / CJA 3-111. Performance evaluations of senior judges and court commissioners (Back from Public Comment)**

Ms. Sylvester noted that these rules have come back from public comment and only one comment was received from Commissioner Thomas Morgan. The comment had to do with a legislative issue with respect to the retirement benefits for commissioners. Ms. Sylvester feels this comment should be passed along to somebody who could deal with this on a legislative level.

Ms. Sylvester: Line 111 of CJA 3-111 talks about surveys of presiding judges (PJs) and court staff. These rule amendments were raised in the Judicial Council meeting today. There was feedback from TCEs and PJs saying that the PJ surveys aren't being done and seem like a bureaucratic redundancy or maybe something that is meaningless. Ms. Sylvester sent out a survey to PJs and TCEs for those who had senior judges appear in their district and has not received any meaningful responses, which is problematic. Since Ray Wahl approves the senior judge requests for courts of record and allocates the

funds, he said he could send an e-mail to the PJ in each district asking them to complete an evaluation. For senior judges, we do simultaneous attorney evaluations by the National Center for State Courts (NCSC). What we would be doing is duplicating that process at the PJ and TCE level. It would be an immediate evaluation, as opposed to right before they are certified. Ms. Sylvester asked if they should look at the rule language and change something, or perhaps work this through the NCSC and have them do the same thing that they're doing with the attorneys.

Judge Boyden: A comment was made that senior judges don't appear often enough all over the state and PJs might not have a relationship with them. Clearly that's not the case. Judge Skanchy's concern is that since PJs' aren't in court, they wouldn't know about the senior judge's performance. It would be easiest to see if they have received any complaints. By definition, no PJ is in the courtroom when a senior judge is on the bench because the very reason we need a senior judge is that no one is available to cover that calendar. When we ask attorneys who appear in court before a senior judge for an evaluation, then the attorneys at least have a foundation for valuable feedback. We could also ask the clerks for input. The PJ, and no other judge by definition, is going to know how the senior judges are managing their court calendars. That is the crux of the PJs' complaint. Not that they're unwilling to fill out an evaluation, it's just that they don't have firsthand information.

Ms. Sylvester: Currently, the NCSC is conducting attorney surveys. Within a week or so after a senior judge takes over a calendar, the NCSC e-mails a survey to the attorneys that have appeared before the judge. They accumulate results until the senior judge is up for certification and Ms. Sylvester receives them back. The response rate for senior judge evaluations is pretty low. Commissioners are also evaluated by attorneys and have a much higher response rate.

Judge Parkin: We need effective evaluations. The whole purpose for this policy and the rule was to create a system that allows us to objectively assess senior judges who are appointed to the bench to do the people's work but really have no accountability to the public. The State legislature made it very clear that the courts need to include senior judges in the evaluations or they'll do it for us. We need some process that is effective. We empower PJs to know the business of their district. I understand that this hasn't been in practice, but we might need to train TCEs and PJs more thoroughly on their expanded role. I don't want to rely on an outside organization to be the only evaluators. It may be one component of the evaluation process, but it shouldn't be all that we do.

Ms. Sylvester: Senior judges are supposed to be evaluated every 18 months, but the Judicial Council only gets the evaluations if there is a "needs improvement" rating. That happens very rarely. We need to make sure PJs and TCEs have a list of who is appearing in the courts and find out how well the judge did substantively. We aren't

delegating our responsibilities to the NCSC, we have a contract in place to conduct the surveys, so they could just duplicate that process for the PJs and TCEs.

Mr. Rice clarified that senior judges and court commissioners aren't covered under the JPEC process.

Shane Bahr: From a TCE perspective, it is difficult to complete evaluations because all I know when I report to the PJ is whether the senior judge showed up and whether there were any complaints from staff. On occasion I will hear good comments from staff saying they really liked a particular senior judge, but I don't know what that means in terms of their performance as a judge, only that they got along with staff and perhaps administratively managed their calendar well. What would be helpful is telling the TCEs and PJs what you really want to know. Perhaps creating a form that is filled out just after a senior judge's calendar that says, "here is how he/she performed in these particular areas." The form would then be submitted to the TCE after each appearance. The other issue is that some PJs rotate in and out, so they have to contact the TCEs to find out who was even in their district in the last year. There is some disconnect between what information we are really looking for and when we collect it. If we don't collect it immediately, it's gone.

Judge Pullan: The entire point of hiring a senior judge is to cover a calendar. As a PJ, if I have to sit in court and observe them, and they are only there for one day every 45 days, that would be very difficult to balance with other judicial responsibilities.

The committee discussed creating a simple form survey that court staff could fill out after an assignment is done, asking whether the senior judge appeared on time, etc. Substantive performance could be tracked in the attorney surveys. NCSC could send out a survey to the attorneys and, at the same time, send a survey to the court staff, PJ and TCE. Mechanically it might make sense to send out the surveys simultaneously, perhaps in an e-mail. All of the surveys could then be compiled in a repository for use when the time is up for certification/evaluation. That way, all of the surveys over the last few years would be available.

Shane Bahr: PJs sign the notice of assignment, which is then scanned into every case the senior judge is hearing that day. The clerk sitting next to the senior judge has that notice of assignment. If that notice also included a few questions asking how the judge did that day, it could be tied into the existing process.

The committee expressed concern that the attorney surveys are anonymous, but the clerks' evaluations may not be as anonymous if there are only one or two clerks working in the office.

Judge Noonan: What we are focusing on here in my estimation is procedure, and how we get the information. The substance of the rule seems to be appropriate. I am not

persuaded based on the conversation today that the rule needs to be changed. I think we've identified some infirmities in the procedure, but I'm not in favor of holding these rules for another month because we haven't really touched on anything substantive. If we have the ability to craft questions that will illicit meaningful information, then we can do that in the survey and we don't need to amend the rule. Judge Boyden agreed.

Ms. Sylvester expressed concern that if the processes or procedures are not captured in the rule itself, they won't be followed.

Judge Pullan pointed to the language in lines 111-118 of CJA 3-111, noting that it gives the committee the discretion to do just what Judge Noonan suggested. Ms. Sylvester noted that the problem is highlighted under lines 40-65, which outlines the criteria for evaluating senior judges. PJs can't speak to those specific criteria if they aren't in the courtroom. One of the questions on the survey should ask if the PJ has reviewed the information provided by the NCSC regarding the senior judge with a "yes" or "no" checkbox. That tells us if the judge has some foundation to render an opinion. However, several committee members expressed concern that a few simple questions for PJs in a survey wouldn't comply with the criteria listed in lines 40-65.

The committee discussed ways in which PJs could obtain firsthand information sufficient to evaluate a senior judge's substantive abilities. The presiding judge could pick five of the ten cases a senior judge handled and review them, but that may not save time. If a PJ knew that's what he/she had to do every time a senior judge was used, they would be inclined to just handle the calendar themselves. One way to give PJs meaningful information would be to require him/her to go back and listen to a random number of hearings the senior judge presided over. It would impose some meaningful duty on the PJ. Under CJA 3-111, lines 21-23, PJs are required to review at least five active cases presided over by a commissioner, including courtroom observation. This would be the same concept over senior judges. That would be a substantive change requiring a rule amendment.

Ms. Sylvester recommended that the committee hold rules 3-201 and 3-111 until the October meeting and she would speak to Ray Wahl about his recommendations. Judge Bagley made that motion. Mr. Rice seconded the motion and it passed unanimously.

#### **(4) CJA 9-109. Presiding Judges in Justice Court. (New)**

Ms. Sylvester: Last policy and planning meeting, the presiding judge rule came here. The justice courts are proposing this rule. This committee removed paragraph (g), but after conversations with the Supreme Court about URCP Rule 63 and URCrP Rule 29, there needs to be a mechanism for the assignment of substitute judges, causing amendments to Rules 63 and 29. During those discussions, the Supreme Court made a few more edits to paragraph (g) of CJA rule 9-109. Looking at URCrP Rule 29 (lines 39

and 47), the edits require that assignments of justice court cases be made in accordance with CJA 9-109, rather than the statute (78A-7-208). The problem with the statute is that the local government can make a list of judges authorized to preside in their court, but there was no mechanism identifying who can make the actual assignment. Currently, the county makes the assignment, but the Supreme Court expressed some concerns that there may be a constitutional issue because court assignments are a judicial procedure. The Supreme Court asked for clarifying language in CJA 9-109. T

Judge Parkin: Most justice courts have a list of five judges that they take to the city council, and the city council approves the list, so it complies with the statute. If there is a conflict for a particular judge, justice courts want language authorizing them to assign a conflict judge from the pre-approved list. This language puts the assignment in the hands of the presiding judge.

Ms. Sylvester: URCrP 29 and URCP 69 refer back to CJA 9-109 for Justice Court assignments. These amendments remove the statutory citation because the Supreme Court is very uncomfortable with it. The proposal would be to send the three rules out together once the judicial council weighs in just to make it clear what we are doing.

Judge Pullan: If that's the distinction we're making then in lines 87 – 89, instead of using the word "appoint", we should probably use the word "assign." It should read, "In the event that a judge is disqualified from a case, the presiding judge shall assign any judge duly appointed pursuant to Section 78A-7-208."

A motion was made by Judge Parkin to adopt the proposed language in 3(G), with Judge Pullan's amendment, for submission to the Judicial Council for public comment. Mr. Rice seconded the motion and it was unanimously passed.

#### **(5) CJA 4-202.02. Records Classification. (Amendment)**

Keisa Williams discussed Brent Johnson's email proposing an amendment to CJA 4-202.02. Currently, a minor's full name is used in child protective orders, but only the minor's initials are used in all other protective orders. Law enforcement has said they can't enforce protective orders when only initials are used because the initials are not sufficient to identify the exact child requiring protection. Brent thinks this came up because of an FBI audit criticizing the courts for only using the initials due to enforcement problems. Brent is proposing that the word "child" be deleted in line 139, allowing a minor's full name to be listed in any type of protective order.

After discussion, Judge Bagley made a motion to approve the proposed amendment for submission to the Judicial Council for public comment. Mr. Rice seconded the motion and it passed unanimously.



#### **(6) Internal Operating Procedures**

At the last meeting, this committee asked Ms. Williams to add language to the internal operating guide requiring the committee's staff attorney to get back with people who have submitted rule amendment requests. Ms. Williams pointed to the language she added in paragraph 5.

Judge Noonan suggested adding a date on the bottom of the form indicating when the committee adopted and/or approved a request.

After discussion, the committee approved both the internal operating guide and the request form, with the proposed amendments. Ms. Williams will distribute these documents to staff, notifying them of the procedural change for getting rule drafts before this committee.

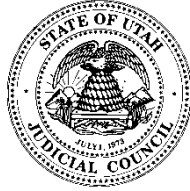
#### **(7) Other Business.**

The committee discussed the date/time for the next meeting. Currently, it is scheduled for October 3, 2017 from 4:00-6:00, just after the Judicial Council meeting because the Liaison Committee took the 10:00-12:00 spot. But, if the council meeting ends early, the Policy and Planning meeting may be able to start early. Judge Pullan asked Ms. Williams not to invite presenters if at all possible so that the start time of the meeting could remain flexible.

#### **(8) Adjourn**

There being no further issues, there was a motion for the meeting to be adjourned by Judge Noonan. The motion was seconded by Judge Bagley and it passed unanimously.

# Tab 2



# Administrative Office of the Courts

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

## MEMORANDUM

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

**To:** Policy and Planning Committee  
**From:** Keisa L. Williams *Keisa L. Williams*  
**Date:** September 27, 2017  
**Re:** CJA Rule 1-201. Membership - Election. - Back from Public Comment

### History of Rule Amendment Proposal:

The Management Committee proposed amendments to CJA Rule 1-201. This rule establishes the manner of election of Judicial Council members. Currently, CJA Rule 1-201(1) states, "The term of office of all elected Council members shall begin with the October meeting of the Council." Subsection (2) states, "Election of Council members from courts of record shall take place at the annual judicial conference."

These two provisions have created an issue with the terms of office for new judicial council members because oftentimes the annual judicial conference elections take place after the October council meeting. The Management Committee recommended amendments to lines 15-16, which would change the start of a new term of office from the October council meeting to the council meeting directly following the annual judicial conference.

At Policy and Planning's June 2, 2017 meeting, this committee approved the amendments as written for public comment. On June 26, 2017, the Judicial Council approved sending the rule out for public comment.

### Current Status – Action for Committee:

The public comment period for this rule expired on September 15, 2017. No comments were received. The rule is now up for discussion and a motion to send the rule to the Judicial Council for final approval.

Encl. CJA 1-201

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

**Rule 1-201. Membership - Election.**

**Intent:**

To establish the manner of election of Council members as authorized by statute.

To establish the procedure for filling a vacancy on the Council as authorized by statute.

**Applicability:**

This rule shall apply to all elected members of the Council. This rule shall not apply to the Chief Justice of the Supreme Court.

This rule shall apply to the Boards of Judges and the Board of Commissioners of the Utah State Bar.

As used in this rule, unless the context indicates otherwise, "Board" includes the Boards of Judges and the Board of Commissioners of the Utah State Bar.

**Statement of the Rule:**

(1) The composition of the Council, the term of office of elected Council members, and the electorate of elected Council members shall be as prescribed by law. The term of office of all elected Council members shall begin with the ~~October~~ Council meeting of the Council immediately following the annual judicial conference.

(2) Election of Council members from courts of record shall take place at the annual judicial conference. Election of Council members from courts not of record shall take place at the annual spring training conference of the justice court judges. Election of the representative of the Utah State Bar shall take place at a regularly scheduled meeting of the Board of Commissioners.

(3)(A) If a judicial member of the Council who represents a trial court is unable to complete a term of office, the Board for the court represented by that member shall appoint a judge to serve on the Council until the next judicial conference or the next spring training conference as the case may be. At such conference, the judges shall elect a member to the Council to serve for the unexpired portion of the original term. If a judicial member of the Council who represents an appellate court is unable to complete a term of office, the members of that court shall appoint a judge to serve on the Council until the expiration of the vacated term.

(3)(B) If the representative of the Utah State Bar is unable to complete a term of office, the Board of Commissioners shall elect a member or ex officio member of the Board of Commissioners to serve for the unexpired portion of the original term.

(3)(C) No person shall serve on the Judicial Council for more than two consecutive terms and the remainder of a predecessor's term.

(4) The Boards shall develop procedures for the nomination and election of Council members and shall certify to the Council the names of the members elected. The Boards shall give due

36 regard to geographic representation, security of the election, timely publication of Council  
37 vacancies or expired terms, and ease of administration.

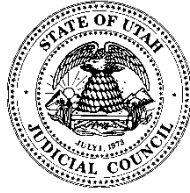
38 (5) When a judicial member of the Council is unable to attend a Council meeting, that member  
39 may designate a judge from the same level of court to attend the Council meeting and observe  
40 the proceedings. When the representative of the Utah State Bar is unable to attend a Council  
41 meeting, that member may designate a member or ex officio member of the Board of  
42 Commissioners to attend the Council meeting and observe the proceedings. The designee shall  
43 be provided with a copy of the Council agenda and other meeting materials, and may attend the  
44 open and closed sessions of the meeting. The designee may participate in the general  
45 discussion of agenda items but may not make motions or vote on Council issues.

46 (6) Council members or their designated substitutes may be reimbursed for actual and  
47 necessary expenses incurred in the execution of their duties as Council members.

48 (7) Council members shall not be eligible to serve as voting members of a Board of Judges of a  
49 trial court or to serve as members of the standing committees of the Council. The representative  
50 of the Utah State Bar may vote at meetings of the Board of Commissioners if permitted to vote  
51 under rules governing the conduct of the Board of Commissioners.

52  
53 Effective May 1, 2016

# Tab 3



# Administrative Office of the Courts

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

## MEMORANDUM

Richard H. Schwermer  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

**To:** Policy and Planning Committee  
**From:** Nancy Sylvester *Nancy D. Sylvester*  
**Date:** September 27, 2017  
**Re:** Rule 3-111. Performance evaluations of senior judges and court commissioners.

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At our September meeting, the Policy and Planning Committee discussed some issues surrounding the senior judge evaluation rule, Rule 3-111. At the Council meeting, I had raised concerns from the districts that they were not able to meaningfully evaluate senior judges as part of the recertification process. Part of this is simply a function of senior judges' transitory nature. They can travel among districts and do not have a home base. So the only time they can really be evaluated is when they are in court on a temporary assignment.

I discussed this issue with Ray Wahl and he said he would like me to also discuss it with Peyton Smith since 3<sup>rd</sup> District deals so frequently with senior judges. I have contacted Peyton about setting up a time to do so. Ray also wants to discuss it with the senior judges themselves. We have the opportunity to do so at the senior judge meeting on Wednesday of the Annual Judicial Conference. Ray has asked that I present the rule and give them the opportunity to suggest changes. It is possible that their suggestions could be a part of the internal processes behind the assignment of senior judges, rather than in the rule. For example, Ray suggested one possibility of requiring senior judges to take a survey with them to each assignment. In order to get paid, they would be required to ask court staff to fill it out and submit it to the TCE or presiding judge. The survey would be an abbreviated version of what is now in the rule at line 40. It may be appropriate to put those abbreviated questions in the rule, too. Ray also raised another question regarding survey respondents in juvenile court since JJS, probation, and DCFS are in court in addition to the normal court staff. That is something we will need to hammer out, too. I expect to have the answers to these questions by Policy and Planning's November meeting.

Regarding the survey questions at line 40, this committee raised a question about their origin. Our questions basically follow JPEC's questions, which are outlined in

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

[Utah Code 78A-12-204](#), but the statute does not control how we evaluate senior judges. JPEC's questions are as follows:

- 1) The judge follows the applicable legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that apply to the case at issue.
- 2) The judge makes appropriate findings of fact and applies the law to those facts.
- 3) The judge follows legal precedent or clearly explains departures from precedent.
- 4) The judge only considers evidence in the record.
- 5) The judge's written opinions/decisions offer meaningful legal analysis. Legal Ability The judge's written opinions contain a readily understandable, concise ruling
- 6) The judge makes sure that everyone's behavior in the courtroom is proper.
- 7) The judge appears to pay attention to what goes on in court.
- 8) The judge's personal life or beliefs do not impair his or her judicial performance.
- 9) The judge demonstrates respect for the time and expense of those attending court.
- 10) The judge promotes access to the justice system for people who speak a language other than English, or for people who have a physical or mental limitation.
- 11) The judge is prepared for court proceedings.
- 12) The judge's interactions with courtroom participants and staff are professional and constructive.
- 13) The judge is an effective manager.
- 14) The judge convenes court without undue delay.
- 15) The judge rules in a timely fashion.
- 16) The judge maintains diligent work habits.
- 17) The judge's oral communications are clear.
- 18) The judge's written opinions/decisions are clear and logical.
- 19) The judge treats all courtroom participants with equal respect.
- 20) The judge is fair and impartial.
- 21) The judge promotes public trust and confidence in the courts through his or her conduct.
- 22) The judge provides the parties with a meaningful opportunity to be heard.



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

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

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

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

**Applicability:**

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

**Statement of the Rule:****(1) Performance evaluations.****(1)(A) Court commissioners.**

(1)(A)(i) On forms provided by the administrative office, the presiding judge of the a district or court level a court commissioner primarily serves shall complete an annual evaluation of the court commissioner's performance by June 1 of each year. If a commissioner serves multiple districts or court levels, the presiding judge of each district or court level shall complete an evaluation.

(1)(A)(ii) The presiding judge shall survey judges and court personnel seeking feedback for the evaluation. During the evaluation period, the presiding judge shall review at least five of the commissioner's active cases. The review shall include courtroom observation.

(1)(A)(iii) The presiding judge shall provide a copy of each commissioner evaluation to the Judicial Council. Copies of plans under paragraph (3)(G) and all evaluations shall also be maintained in the commissioner's personnel file in the administrative office.

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

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

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

~~(1)(E) The presiding judge shall provide a copy of each commissioner evaluation to the Judicial Council.~~ (1)(FE) **Senior judges and "Needs Improvement" ratings.** If a senior judge receives an overall "Needs Improvement" rating on the performance evaluation, the evaluator shall provide a copy of the evaluation to the Judicial Council.

(2) **Evaluation and Certification Criteria.** Active senior judges and court commissioners shall be evaluated and certified upon the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2)(N) management of workload;

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

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

~~(2)(Q)3 Senior judges shall also be evaluated on their ability and willingness to use the court's case management systems in all cases.~~

**(34) Standards of performance.**

**(34)(A) Survey of attorneys.**

(34)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the senior judge or court commissioner during the period for which the senior judge or court commissioner is being evaluated. The Council shall measure satisfactory performance based on the results of the final survey conducted during a court commissioner's term of office, subject to the discretion of a court commissioner serving an abbreviated initial term not to participate in a second survey under Section (32)(A)(vi) of this rule.

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

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

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

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

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

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

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

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

**(34)(A)(iv) Exclusion from survey respondents.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(3)(G) Performance and corrective action plans for court commissioners.**

(3)(G)(i) The presiding judge of the district a court commissioner serves shall prepare a performance plan for a new court commissioner within 30 days of the court commissioner's appointment. If a court commissioner serves multiple districts or court levels, the presiding judge of each district and court level shall prepare a performance plan. The performance plan shall communicate the expectations set forth in paragraph (2) of this rule.

(3)(G)(ii) If a presiding judge issues an overall "Needs Improvement" rating on a court commissioner's annual performance evaluation as provided in paragraph (1), that presiding judge shall prepare a corrective action plan setting forth specific ways in which the court commissioner can improve in deficient areas.

**(4) Judicial Council certification process**

**(4)(A) July Council meeting.** At its meeting in ~~August~~ July, the Council shall begin the process of determining whether the senior judges and court commissioners whose terms of office expire that year

meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

(45)(A)(i) survey scores;

(45)(A)(ii) judicial education records;

(45)(A)(iii) self-declaration forms;

(45)(A)(iv) records of formal and informal sanctions;

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

(45)(A)(vi) any information requested by the Council.

(45)(B) **Records delivery.** Prior to the meeting the Administrative Office of the Courts shall deliver the records to the Council and to the senior judges and court commissioners being evaluated.

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

(45)(D) **Certification presumptions.** If the Council finds the senior judge or court commissioner has met the performance standards, it is presumed the Council will certify the senior judge or court commissioner for reappointment. If the Council finds the senior judge or court commissioner did not meet the performance standards, it is presumed the Council will not certify the senior judge or court commissioner for reappointment. The Council may certify the senior judge or court commissioner or withhold decision until after meeting with the senior judge or court commissioner.

(45)(E) **Overcoming presumptions.** A presumption against certification may be overcome by a showing of good cause to the contrary. A presumption in favor of certification may be overcome by:

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

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

(45)(F) **August Council meeting.** At the request of the Council the senior judge or court commissioner shall meet with the Council in ~~September~~ August. At the request of the Council the presiding judge shall report to the Council any meetings held with the senior judge or court commissioner, the steps toward self-improvement identified as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the ~~August~~ July meeting, the Administrative Office of the Courts shall deliver to the senior judge or court commissioner being evaluated notice of the Council's action and any records not already delivered to the senior judge or court commissioner. The notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the

senior judge or court commissioner is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the senior judge or court commissioner prior to the ~~September~~August meeting.

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

(45)(H) **Final certification decision.** At its ~~September~~August meeting in open session, the Council shall approve its final findings and certification regarding all senior judges and court commissioners whose terms of office expire that year.

(45)(I) **Communication of certification decision.** The Judicial Council shall communicate its certification decision to the senior judge or court commissioner. The Judicial Council shall communicate its certification decision for senior judges to the Supreme Court and for court commissioners to the presiding judge of the district the commissioner serves.

# Tab 4



## RULE AMENDMENT REQUEST

### Policy and Planning

Policy and Planning is an executive committee of the Judicial Council and is responsible for recommending to the Council new and amended rules for the Code of Judicial Administration and the Human Resource Policies and Procedures Manual.

**Instructions:** Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before they will be considered by the Policy and Planning Committee. **Once completed, please e-mail this form and the proposed rule changes to Keisa Williams at [keisaw@utcourts.gov](mailto:keisaw@utcourts.gov).**

#### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

[brentj@utcourts.gov](mailto:brentj@utcourts.gov)

Phone Number:

801-578-3884

Date of Request:

09/27/2017

#### RULE AMENDMENT:

Rule Number:

4-202.02

Location of Rule:

Code of Judicial Administration

#### Brief Description of Proposed Amendment:

To make probable cause records private when the court determines there was not probable cause for the arrest.

#### Reason Amendment is Needed:

The issue recently arose because probable cause statements will now be available on Xchange. They have not been available up to this time. The Court Services Department expressed concerns about exposing individuals to public scrutiny when there was no basis for the individual's arrest.

I don't feel strongly about it but I think it is worth discussing as a policy matter. A person can, of course, have the arrest records expunged after 30 days, which may or may not weigh in favor of having these be private in that interim.

Is this proposal urgent?

☒ No

☐ Yes

If Yes, provide an estimated deadline date and explain why it is urgent:

**List all stakeholders:**

Court Services Department, Judicial Council, Policy & Planning, General Counsel

**Select each entity that has approved this proposal:**

- |  |   |
|--|---|
| <input type="checkbox"/> Accounting Manual Committee                               | <input type="checkbox"/> Legislative Liaison Committee                    |
| <input type="checkbox"/> ADR Committee   | <input type="checkbox"/> Licensed Paralegal Practitioner Committee        |
| <input type="checkbox"/> Board of Appellate Court Judges                           | <input type="checkbox"/> Model Utah Civil Jury Instructions Committee     |
| <input type="checkbox"/> Board of District Court Judges                            | <input type="checkbox"/> Model Utah Criminal Jury Instructions Committee  |
| <input type="checkbox"/> Board of Justice Court Judges                             | <input type="checkbox"/> Policy and Planning member                       |
| <input type="checkbox"/> Board of Juvenile Court Judges                            | <input type="checkbox"/> Pretrial Release and Supervision Committee       |
| <input type="checkbox"/> Board of Senior Judges                                    | <input type="checkbox"/> Resources for Self-represented Parties Committee |
| <input type="checkbox"/> Children and Family Law Committee                         | <input type="checkbox"/> Rules of Appellate Procedure Advisory Committee  |
| <input type="checkbox"/> Court Commissioner Conduct Committee                      | <input type="checkbox"/> Rules of Civil Procedure Advisory Committee      |
| <input type="checkbox"/> Court Facility Planning Committee                         | <input type="checkbox"/> Rules of Criminal Procedure Advisory Committee   |
| <input type="checkbox"/> Court Forms Committee                                     | <input type="checkbox"/> Rules of Evidence Advisory Committee             |
| <input type="checkbox"/> Ethics Advisory Committee                                 | <input type="checkbox"/> Rules of Juvenile Procedure Advisory Committee   |
| <input type="checkbox"/> Ethics and Discipline Committee of the Utah Supreme Court | <input type="checkbox"/> Rules of Professional Conduct Advisory Committee |
| <input checked="" type="checkbox"/> General Counsel                                | <input type="checkbox"/> State Court Administrator                        |
| <input type="checkbox"/> Guardian ad Litem Oversight Committee                     | <input type="checkbox"/> TCE's  |
| <input type="checkbox"/> Judicial Branch Education Committee                       | <input type="checkbox"/> Technology Committee                             |
| <input type="checkbox"/> Judicial Outreach Committee                               | <input type="checkbox"/> Uniform Fine and Bail Committee                  |
| <input type="checkbox"/> Language Access Committee                                 | <input type="checkbox"/> WINGS Committee                                  |
| <input type="checkbox"/> Law Library Oversight Committee                           | <input type="checkbox"/> NONE OF THE ABOVE                                |

**If the approving entity is not listed above, please list it here:**

**Requester's Signature:**

Brent Johnson

**Supervisor's Signature** (if requester is not a manager or above):

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**Date Committee Approved for Public Comment:**

**Date Committee Approved for Final Recommendation to Judicial Council:**

**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)(L)(iv) case status;

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

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

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

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

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

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

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

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

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

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

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

(2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror 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) Section 76-7-304.5, Consent required for abortions performed on minors; and

(3)(A)(iv) Section 78B-8-402, 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; and  
(4)(Z) other records as ordered by the court under Rule 4-202.04.  
**(4) (AA) probable cause records when the court determines there was not probable cause for the arrest.**

**(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;



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

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

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

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

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

241 (8)(E)(ii) date of birth, driver's license number, social security number, account description  
242 and number, password, identification number, maiden name, mother's maiden name, and similar  
243 personal identifying information.  
244

**77-40-104 Eligibility for expungement of records of arrest, investigation, and detention -- Requirements.**

- (1) A person who has been arrested or formally charged with an offense may apply to the bureau for a certificate of eligibility to expunge all records of arrest, investigation, and detention which may have been made in the case, subject to the following conditions:
  - (a) at least 30 days have passed since the arrest for which a certificate of eligibility is sought;
  - (b) there are no criminal proceedings pending against the petitioner; and
  - (c) one of the following occurred:
    - (i) charges were screened by the investigating law enforcement agency and the prosecutor has made a final determination that no charges will be filed in the case;
    - (ii) the entire case was dismissed with prejudice;
    - (iii) the person was acquitted at trial on all of the charges contained in the case; or
    - (iv) the statute of limitations has expired on all of the charges contained in the case.
- (2) Notwithstanding Subsection (1)(a), a petitioner seeking expungement under Subsection (1)(c) (iii) shall be issued a certificate of eligibility on an expedited basis.

Amended by Chapter 136, 2012 General Session

# Tab 5

# RULE AMENDMENT REQUEST

## Policy and Planning

Policy and Planning is an executive committee of the Judicial Council and is responsible for recommending to the Council new and amended rules for the Code of Judicial Administration and the Human Resource Policies and Procedures Manual.

**Instructions:** Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before they will be considered by the Policy and Planning Committee. **Once completed, please e-mail this form and the proposed rule changes to Keisa Williams at [keisaw@utcourts.gov](mailto:keisaw@utcourts.gov).**

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

[brentj@utcourts.gov](mailto:brentj@utcourts.gov)

Phone Number:

801-578-3884

Date of Request:

06/09/2017

### RULE AMENDMENT:

Rule Number:

4-703

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

Amending rule on processes for dismissing old citations and warrants.

### Reason Amendment is Needed:

Earlier this year I taught at the Justice Court Clerks Conference and discussed rules that apply to the clerks. One of the rules that we discussed is rule 4-703, which addresses dismissing old citations and warrants. No one was aware of this rule and no one is following this rule.

I think the rule should remain in place because there is an important process in this rule.

But there are two requirements that I think can be deleted:

1. The requirement that the prosecutor actually appear in court to show cause why a citation should not be dismissed. A court should be able to send an order to show cause to the prosecutor and have the prosecutor respond back in writing.
2. The requirement that the clerk prepare these orders to show cause no less than quarterly. It is important for courts to review their cases and delete cases that are basically stale. However, requiring the clerks to review cases on a quarterly basis is not practical for some. I think the rule should simply be permissive and allow courts to do this, but not mandate within a specific time. If a specific time is to be imposed, I suggest that it be no more than once a year.

This is not a priority request but I think it is something that Policy & Planning should address.

Is this proposal urgent?

☒ No

☐ Yes

If Yes, provide an estimated deadline date and explain why it is urgent:

**List all stakeholders:**

Clerks of Court, Court Services Department, Policy & Planning, Judicial Council, General Counsel, Prosecutors

**Select each entity that has approved this proposal:**

- |  |   |
|--|---|
| <input type="checkbox"/> Accounting Manual Committee                               | <input type="checkbox"/> Legislative Liaison Committee                    |
| <input type="checkbox"/> ADR Committee   | <input type="checkbox"/> Licensed Paralegal Practitioner Committee        |
| <input type="checkbox"/> Board of Appellate Court Judges                           | <input type="checkbox"/> Model Utah Civil Jury Instructions Committee     |
| <input type="checkbox"/> Board of District Court Judges                            | <input type="checkbox"/> Model Utah Criminal Jury Instructions Committee  |
| <input type="checkbox"/> Board of Justice Court Judges                             | <input type="checkbox"/> Policy and Planning member                       |
| <input type="checkbox"/> Board of Juvenile Court Judges                            | <input type="checkbox"/> Pretrial Release and Supervision Committee       |
| <input type="checkbox"/> Board of Senior Judges                                    | <input type="checkbox"/> Resources for Self-represented Parties Committee |
| <input type="checkbox"/> Children and Family Law Committee                         | <input type="checkbox"/> Rules of Appellate Procedure Advisory Committee  |
| <input type="checkbox"/> Court Commissioner Conduct Committee                      | <input type="checkbox"/> Rules of Civil Procedure Advisory Committee      |
| <input type="checkbox"/> Court Facility Planning Committee                         | <input type="checkbox"/> Rules of Criminal Procedure Advisory Committee   |
| <input type="checkbox"/> Court Forms Committee                                     | <input type="checkbox"/> Rules of Evidence Advisory Committee             |
| <input type="checkbox"/> Ethics Advisory Committee                                 | <input type="checkbox"/> Rules of Juvenile Procedure Advisory Committee   |
| <input type="checkbox"/> Ethics and Discipline Committee of the Utah Supreme Court | <input type="checkbox"/> Rules of Professional Conduct Advisory Committee |
| <input checked="" type="checkbox"/> General Counsel                                | <input type="checkbox"/> State Court Administrator                        |
| <input type="checkbox"/> Guardian ad Litem Oversight Committee                     | <input type="checkbox"/> TCE's  |
| <input type="checkbox"/> Judicial Branch Education Committee                       | <input type="checkbox"/> Technology Committee                             |
| <input type="checkbox"/> Judicial Outreach Committee                               | <input type="checkbox"/> Uniform Fine and Bail Committee                  |
| <input type="checkbox"/> Language Access Committee                                 | <input type="checkbox"/> WINGS Committee                                  |
| <input type="checkbox"/> Law Library Oversight Committee                           | <input type="checkbox"/> NONE OF THE ABOVE                                |

**If the approving entity is not listed above, please list it here:**

**Requester's Signature:**

Brent Johnson

**Supervisor's Signature** (if requester is not a manager or above):

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**Date Committee Approved for Public Comment:**

**Date Committee Approved for Final Recommendation to Judicial Council:**

**Rule 4-703. Outstanding citations and warrants.**

Intent:

To establish a uniform procedure for handling outstanding citations and warrants.

Applicability:

This rule shall apply to courts of record and courts not of record.

Statement of the Rule:

All outstanding citations issued for parking, traffic and infraction violations and all outstanding bench warrants for misdemeanors may be dismissed if the following procedure is followed:

(1) Outstanding citations and bench warrants which were issued at least one year prior to the requested dismissal date shall be identified by the clerk of the court on an order to show cause notice and sent to the prosecutor's office.

(2) The order to show cause notice shall specify the date ~~when~~ by which the prosecutor is to ~~appear and~~ show cause why an outstanding citation or bench warrant should not be dismissed.

~~(3) The clerk of the court may prepare the order to show cause notice as often as monthly but no less than quarterly.~~

# Tab 6

# RULE AMENDMENT REQUEST

## Policy and Planning

Policy and Planning is an executive committee of the Judicial Council and is responsible for recommending to the Council new and amended rules for the Code of Judicial Administration and the Human Resource Policies and Procedures Manual.

**Instructions:** Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before they will be considered by the Policy and Planning Committee. **Once completed, please e-mail this form and the proposed rule changes to Keisa Williams at [keisaw@utcourts.gov](mailto:keisaw@utcourts.gov).**

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

[brentj@utcourts.gov](mailto:brentj@utcourts.gov)

Phone Number:

801-578-3884

Date of Request:

06/19/2017

### RULE AMENDMENT:

Rule Number:

4-202.09

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

Amend the rule striking language requiring the Forms Committee to ensure relevant forms include certifications that records don't contain non-public information.

### Reason Amendment is Needed:

The need for this amendment arose during a recent meeting of the Forms Committee. The committee would like to strike the language requiring the Forms Committee to review every form to ensure relevant forms include a certification that the records don't contain non-public (private) information. The Committee feels that sorting through the forms to determine which forms should have this language creates an administrative burden when, as a practical matter, the certification has no value.

If the certification does not exist on a particular document there are no consequences. If a person incorrectly certifies, there are no consequences. It is perhaps interesting to note that the person who files a private or protected record is required to designate the record as such when the document is filed. There is no requirement however, for the person to certify that the designation is correct. Nor should there be a requirement.

If the Policy & Planning Committee can see some value in keeping the language, then the Forms Committee will certainly undertake the efforts necessary to include the language on appropriate forms. The Forms Committee simply asks the Policy & Planning committee to seriously consider whether there should continue to be a certification requirement.

Is this proposal urgent?

- ☒ No  
☐ Yes

If Yes, provide an estimated deadline date and explain why it is urgent:



**List all stakeholders:**

Court Forms Committee, General Counsel, Policy & Planning, Judicial Council

**Select each entity that has approved this proposal:**

- |  |   |
|--|---|
| <input type="checkbox"/> Accounting Manual Committee                               | <input type="checkbox"/> Legislative Liaison Committee                    |
| <input type="checkbox"/> ADR Committee   | <input type="checkbox"/> Licensed Paralegal Practitioner Committee        |
| <input type="checkbox"/> Board of Appellate Court Judges                           | <input type="checkbox"/> Model Utah Civil Jury Instructions Committee     |
| <input type="checkbox"/> Board of District Court Judges                            | <input type="checkbox"/> Model Utah Criminal Jury Instructions Committee  |
| <input type="checkbox"/> Board of Justice Court Judges                             | <input type="checkbox"/> Policy and Planning member                       |
| <input type="checkbox"/> Board of Juvenile Court Judges                            | <input type="checkbox"/> Pretrial Release and Supervision Committee       |
| <input type="checkbox"/> Board of Senior Judges                                    | <input type="checkbox"/> Resources for Self-represented Parties Committee |
| <input type="checkbox"/> Children and Family Law Committee                         | <input type="checkbox"/> Rules of Appellate Procedure Advisory Committee  |
| <input type="checkbox"/> Court Commissioner Conduct Committee                      | <input type="checkbox"/> Rules of Civil Procedure Advisory Committee      |
| <input type="checkbox"/> Court Facility Planning Committee                         | <input type="checkbox"/> Rules of Criminal Procedure Advisory Committee   |
| <input checked="" type="checkbox"/> Court Forms Committee                          | <input type="checkbox"/> Rules of Evidence Advisory Committee             |
| <input type="checkbox"/> Ethics Advisory Committee                                 | <input type="checkbox"/> Rules of Juvenile Procedure Advisory Committee   |
| <input type="checkbox"/> Ethics and Discipline Committee of the Utah Supreme Court | <input type="checkbox"/> Rules of Professional Conduct Advisory Committee |
| <input checked="" type="checkbox"/> General Counsel                                | <input type="checkbox"/> State Court Administrator                        |
| <input type="checkbox"/> Guardian ad Litem Oversight Committee                     | <input type="checkbox"/> TCE's  |
| <input type="checkbox"/> Judicial Branch Education Committee                       | <input type="checkbox"/> Technology Committee                             |
| <input type="checkbox"/> Judicial Outreach Committee                               | <input type="checkbox"/> Uniform Fine and Bail Committee                  |
| <input type="checkbox"/> Language Access Committee                                 | <input type="checkbox"/> WINGS Committee                                  |
| <input type="checkbox"/> Law Library Oversight Committee                           | <input type="checkbox"/> NONE OF THE ABOVE                                |

**If the approving entity is not listed above, please list it here:**

**Requester's Signature:**

Brent Johnson

**Supervisor's Signature (if requester is not a manager or above):**

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**Date Committee Approved for Public Comment:**

**Date Committee Approved for Final Recommendation to Judicial Council:**

**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.

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

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

39 (9)(A) Non-public information in a public record. The person filing a public record shall omit  
40 or redact non-public information. ~~The person filing the record shall certify that, upon information~~  
41 ~~and belief, all non-public information has been omitted or redacted from the public record.~~ The  
42 person filing a private, protected, sealed, safeguarded, juvenile court legal, or juvenile court  
43 social record shall identify the classification of the record at the top of the first page of a  
44 classified document or in a statement accompanying the record.

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

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

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

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

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

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

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

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

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

# Tab 7

## RULE AMENDMENT REQUEST

### Policy and Planning

Policy and Planning is an executive committee of the Judicial Council and is responsible for recommending to the Council new and amended rules for the Code of Judicial Administration and the Human Resource Policies and Procedures Manual.

**Instructions:** Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before they will be considered by the Policy and Planning Committee. **Once completed, please e-mail this form and the proposed rule changes to Keisa Williams at [keisaw@utcourts.gov](mailto:keisaw@utcourts.gov).**

#### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

[brentj@utcourts.gov](mailto:brentj@utcourts.gov)

Phone Number:

801-578-3884

Date of Request:

09/26/2017

#### RULE AMENDMENT:

Rule Number:

3-407

Location of Rule:

Code of Judicial Administration

#### Brief Description of Proposed Amendment:

Amending the members of the Accounting Manual Review Committee to reflect current practice.

#### Reason Amendment is Needed:

This proposal came from John Bell, Director of Finance. John stated that he was recently reviewing the accounting manual and came across the need to correct this rule. The rule lists the finance and budget managers as co-chairs of the committee. However, current practice is that the director of finance chairs (not co-chairs) the committee. The finance and budget managers do not attend as members.

This could perhaps be done as a technical amendment without the need to have this published for comment. Obviously P & P can make that call.

Is this proposal urgent?

☒ No

☐ Yes

If Yes, provide an estimated deadline date and explain why it is urgent:

**List all stakeholders:**

Accounting Manual Committee, Director of Finance, General Counsel

**Select each entity that has approved this proposal:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Accounting Manual Committee                    | <input type="checkbox"/> Legislative Liaison Committee                    |
| <input type="checkbox"/> ADR Committee   | <input type="checkbox"/> Licensed Paralegal Practitioner Committee        |
| <input type="checkbox"/> Board of Appellate Court Judges                           | <input type="checkbox"/> Model Utah Civil Jury Instructions Committee     |
| <input type="checkbox"/> Board of District Court Judges                            | <input type="checkbox"/> Model Utah Criminal Jury Instructions Committee  |
| <input type="checkbox"/> Board of Justice Court Judges                             | <input type="checkbox"/> Policy and Planning member                       |
| <input type="checkbox"/> Board of Juvenile Court Judges                            | <input type="checkbox"/> Pretrial Release and Supervision Committee       |
| <input type="checkbox"/> Board of Senior Judges                                    | <input type="checkbox"/> Resources for Self-represented Parties Committee |
| <input type="checkbox"/> Children and Family Law Committee                         | <input type="checkbox"/> Rules of Appellate Procedure Advisory Committee  |
| <input type="checkbox"/> Court Commissioner Conduct Committee                      | <input type="checkbox"/> Rules of Civil Procedure Advisory Committee      |
| <input type="checkbox"/> Court Facility Planning Committee                         | <input type="checkbox"/> Rules of Criminal Procedure Advisory Committee   |
| <input type="checkbox"/> Court Forms Committee                                     | <input type="checkbox"/> Rules of Evidence Advisory Committee             |
| <input type="checkbox"/> Ethics Advisory Committee                                 | <input type="checkbox"/> Rules of Juvenile Procedure Advisory Committee   |
| <input type="checkbox"/> Ethics and Discipline Committee of the Utah Supreme Court | <input type="checkbox"/> Rules of Professional Conduct Advisory Committee |
| <input checked="" type="checkbox"/> General Counsel                                | <input type="checkbox"/> State Court Administrator                        |
| <input type="checkbox"/> Guardian ad Litem Oversight Committee                     | <input type="checkbox"/> TCE's  |
| <input type="checkbox"/> Judicial Branch Education Committee                       | <input type="checkbox"/> Technology Committee                             |
| <input type="checkbox"/> Judicial Outreach Committee                               | <input type="checkbox"/> Uniform Fine and Bail Committee                  |
| <input type="checkbox"/> Language Access Committee                                 | <input type="checkbox"/> WINGS Committee                                  |
| <input type="checkbox"/> Law Library Oversight Committee                           | <input type="checkbox"/> NONE OF THE ABOVE                                |

**If the approving entity is not listed above, please list it here:**

**Requester's Signature:**

Brent Johnson

**Supervisor's Signature** (if requester is not a manager or above):

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**Date Committee Approved for Public Comment:**

**Date Committee Approved for Final Recommendation to Judicial Council:**

**Rule 3-407. Accounting.**

Intent:

To establish uniform procedures for the processing, tracking, and reporting of accounts receivable and trust accounts.

Applicability:

This rule applies to the judiciary.

Statement of the Rule:

(1) Manual of procedures.

(1)(A) The administrative office shall develop a manual of procedures to govern accounts receivable, accounts payable, trust accounts, the audit thereof, and the audit of administrative procedures generally. The procedures shall be in conformity with generally accepted principles of budgeting and accounting and shall, at a minimum, conform to the requirements of this Code and state law. Unless otherwise directed by the Judicial Council, the manual of procedures and amendments to it shall be approved by the majority vote of the state court administrator, the court administrators for each court of record, and the finance manager.

(1)(B) There is established an accounting manual review committee responsible for making and reviewing proposals for repealing accounting policies and procedures and proposals for promulgating new and amended accounting policies and procedures. The committee shall consist of the following minimum membership:

(1)(B)(i) ~~the finance manager and the budget manager~~ director of the finance department, who shall serve as ~~co-chairs~~ chair and shall vote only in the event of a tie;

(1)(B)(ii) four support services coordinators who will serve a three year term, and may repeat;

(1)(B)(iii) two accountants or clerks with accounting responsibilities from each of the trial courts of record who will serve a three year term, and may repeat;

(1)(B)(iv) a trial court executive who will serve a three year term;

(1)(B)(v) a clerk of court who will serve a three year term;

(1)(B)(vi) a clerk with accounting responsibilities from an appellate court who will serve a three year term, and may repeat;

(1)(B)(vii) one court services field specialist, who has an indefinite term;

(1)(B)(viii) the audit director or designee, who shall not vote; and

(1)(B)(ix) the director of the state division of finance or designee, who shall not vote.

(1)(C) Unless designated by office, members of the committee shall be appointed by the state court administrator. The department of finance shall provide necessary support to the committee.

(1)(D) New and amended policies and procedures recommended by the committee shall be reviewed by the court executives prior to being submitted to the Judicial Council or to the vote of the administrators and the finance manager. The Court Executives may endorse or amend the draft policies and procedures or return the draft policies and procedures to the committee for further consideration.

(2) Revenue accounts.

(2)(A) Deposits; transfers; withdrawals. All courts shall deposit with a depository determined qualified by the administrative office or make deposits directly with the Utah State Treasurer or the treasurer of the appropriate local government entity. The Supreme Court, Court of Appeals, State Law Library, administrative office, district court primary locations and juvenile courts shall deposit daily, whenever practicable, but not less than once every three days. The deposit shall consist of all court collections of state money. District court contract sites and justice courts having funds due to the state or any political subdivision of the state shall, on or before the 10th day of each month, deposit all funds received by them in the preceding month in a qualified depository with the appropriate public treasurer. The courts shall make no withdrawals from depository accounts.

(2)(B) Periodic revenue report. Under the supervision of the court executive, the clerk of the court shall prepare and submit a revenue report that identifies the amount and source of the funds received during the reporting period and the state or local government entity entitled to the funds. Juvenile courts and primary locations of the district courts shall submit the report weekly to the administrative office. District court contract sites shall submit the report at least monthly, together with a check for the state portion of revenue, to the administrative office. Justice courts shall submit the report monthly, together with a check for the state revenue collected, to the Utah State Treasurer.

(2)(C) Monthly reconciliation of bank statement. The administrative office shall reconcile the revenue account upon receipt of the weekly revenue report from the courts and the monthly bank statements.

(3) Trust accounts.

(3)(A) Definition. Trust accounts are accounts established by the courts for the benefit of third parties. Examples of funds which are held in trust accounts include restitution, child support, and bail amounts.

(3)(B) Accounts required; duties of a fiduciary. District court primary locations and juvenile courts shall maintain a trust account in which to deposit monies held in trust for the benefit of the trustor or some other beneficiary. Under supervision of the court executive, the clerk of the court shall be the custodian of the account and shall have the duties of a trustee as established by law. All other courts of record and not of record may maintain a trust account in accordance with the provisions of this rule.

(3)(C) Monthly reconciliation of bank statement. Each court shall reconcile its ledgers upon receipt of the monthly bank statement and submit the reconciliation to the administrative office.

(3)(D) Accounting to trustor. The courts shall establish a method of accounting that will trace the debits and credits attributable to each trustor.

(3)(E) Bail forfeitures; other withdrawals. Transfers from trust accounts to a revenue account may be made upon an order of forfeiture of bail or other order of the court. Other withdrawals from trust accounts shall be made upon the order of the court after a finding of entitlement.



79 (3)(F) Interest bearing. All trust accounts shall be interest bearing. The disposition of interest  
80 shall be governed by Rule 4-301.

81 (4) Compliance. The administrative office and the courts shall comply with state law and the  
82 manual of procedures adopted by the administrative office.