

Agenda

Policy and Planning Committee

September 11, 2017
 2:00 p.m. – 4:00 p.m.
 Scott M. Matheson Courthouse
 450 South State Street
 Judicial Council Room

2:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Derek Pullan
2:05	CJA 4-202.02. Records Classification.	Discussion/ Action	Tab 2	Brent Johnson
2:25	CJA 4-501.03. Qualification of ADR Providers.	Discussion/ Action	Tab 3	Nini Rich
2:40	CJA 3-201. Court Commissioners. CJA 3-111. Performance evaluations of senior judges and court commissioners.	Discussion/ Action	Tab 4	Nancy Sylvester
3:15	New Rule. CJA 9-109. Presiding Judges in Justice Court.	Discussion/ Action	Tab 5	Nancy Sylvester
3:45	Other business: <ul style="list-style-type: none"> • Internal Operating Guide • P&P Rule Amendment Request Form 	Discussion/ Action	Tab 6	Judge Derek Pullan

Committee Web Page: <http://www.utcourts.gov/intranet/committees/policyplan/>

Meeting Schedule: Meetings are held in the Matheson Courthouse, Judicial Council Room, from 12:00 to 1:30 unless otherwise stated.

2017 Meetings:

October 3, 2017 – (10:00 a.m. - 12:00 p.m. - Zermatt Resort)

November 3, 2017

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

Tab 1

Policy and Planning Committee

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

August 4, 2017

Draft

Members Present

Hon. Derek Pullan - Chair
Hon. Ann Boyden
Hon. Mary Noonan
Hon. Reed S. Parkin – by phone
Rob Rice

Members Excused

Hon. Marvin Bagley

Staff

Nancy J. Sylvester

Guests

Rick Schwermer
Jim Peters – by phone
Judge Reuben Renstrom – by phone

(1) Approval of minutes.

Judge Derek Pullan welcomed the members to the meeting. Judge Pullan welcomed new member, Rob Rice to the committee. Mr. Rice replaced John Lund on the Judicial Council. Judge Pullan then addressed the June 2, 2017 minutes. There being no changes to the minutes, Judge Mary Noonan moved to approve the minutes. Mr. Rice seconded the motion and it passed unanimously.

(2) New Rule. CJA 9-109. Presiding Judges in Justice Court.

Judge Pullan welcomed Jim Peters and Judge Reuben Renstrom, who appeared with Judge Parkin by phone. Mr. Peters explained the proposal to create Rule 9-109. Judge Parkin said the Board of Justice Court Judges requested the rule change and the Management Committee approved it in concept. Mr. Peters explained that there are currently 120 justice courts throughout Utah and a lot of local issues going on. Presiding judges representing each judicial district would help Mr. Peters better manage the individual courts, including in disciplinary matters. The rule covers how presiding and associate presiding judges are elected, the annual meetings, and the authority of presiding judges. The goal is to ensure that justice courts are following state statutes and our constitutions. Some duties would also include serving as liaisons with the media and other courts. Judge Noonan asked if there were any negative reviews of this proposal. Judge Parkin said this proposal has been mentioned several times and he has not heard any negative feedback. Judge Renstrom said he has only received one negative comment from a justice court judge. Judge Pullan asked what the concerns

were. Judge Renstrom said the judge felt like it would allow for a “big brother” effect. Jim Peters he has been handling issues that a presiding judge would normally be handling.

Judge Parkin noted that current court practice does not always follow statutes. Mr. Peters said the rule is modeled from the district court rule (Rule 3-104), with slight modifications to account for the differences in justice courts. Judge Pullan asked if this rule would allow for a caseload reduction to permit more time for a presiding judge’s administrative work. Judge Parkin said this is not addressed in the rule because sometimes a judge would be a presiding judge and be the only judge in the court; thus their caseload could not be reduced. Judge Renstrom noted the justice court judges are very helpful with assisting other judges.

Judge Ann Boyden questioned how this would work politically when there are city councils or other political bodies that have to be answered to. Mr. Peters said he has not had any conversations at the city or local council levels. But he does not believe this would cause any concerns because this is an effort to improve judge’s performance on the bench. Judge Renstrom said when ethical issues or opinions are brought forth the judges are quick to respond and train. He noted that if there is a need for a temporary judge then this will be addressed with the presiding judge. Mr. Peters noted that the local government does not typically get too involved in the justice courts’ processes.

Rick Schwermer raised an issue with proposed section (3)(G). He thought it was redundant to the civil and criminal procedure rules that address judge disqualification. The committee discussed the term “temporary” in Utah Code section 78A-7-208 and how it would apply in this section. Judge Parkin noted temporary judges are appointed and approved by local city council. Judge Pullan requested clarification that this section would cover motions for disqualification. Mr. Peters and Judge Renstrom said it does and that they had had conversations with Ms. Sylvester about the need for this language. Judge Pullan stated Rule 63 of the Utah Rules of Civil Procedure and Rule 29 of the Utah Rules of Criminal Procedure address reassignments and agreed with Mr. Schwermer that the wording needs to mirror those rules if we keep the section. Mr. Peters said he could add references to those rules. Judge Pullan suggested taking this section out because it’s procedural and not administrative. Mr. Schwermer agreed this would be a good idea since this issue is already covered in statute and our rules of procedure. Judge Parkin said he doesn’t have a problem with removing this section. Mr. Schwermer asked if the effective date is still set for during the annual conference. Mr. Peters said he is looking for November 1 as an effective date, which would work with the justice court judges meeting. Mr. Schwermer said it would probably be best to have it effective right before the annual conference in the spring so that there isn’t a gap with no presiding judges. Mr. Peters agreed.

Judge Parkin moved to send rule 9-109--with section (3)(G) being removed – to the Judicial Council for approval to send out for public comment. Judge Noonan seconded the motion and it passed unanimously.

(3) CJA 1-205. Standing and Ad Hoc Committees.

Ms. Sylvester addressed the proposal to amend Rule 1-205 and those on the phone were also asked to comment. She said the Standing Committee on Resources for Self-represented Parties proposes adding a member from the AOC Education Department as well as adding another justice court judge member. The Board of Justice Court Judges specifically requested another justice court judge. Mr. Peters said the reason behind this request is that the justice courts are the court level that is most involved with self-represented parties. Ms. Sylvester said Kim Free from the Education Department requested to be on the committee and the committee has so many issues that need to go back to her department that it made sense to add her. Judge Renstrom said having an educator liaison would be invaluable. Judge Noonan asked how has the education part been accomplished to date. Judge Parkin said educational videos or materials have not happened.

Judge Parkin moved to send Rule 1-205 to the Judicial Council for approval to send out for public comment adding the justice court judge. Judge Boyden seconded the motion and it passed unanimously. Judge Pullan asked the committee if there was a separate motion or recommendation for adding the educational representative. There was brief discussion on the current composition of the Self-Represented Parties committee members. Judge Pullan noted there is a consistent concern with increasing committee members. Judge Renstrom said the education department member could attend the meeting without becoming a member. Judge Noonan said she was not persuaded at this point that it is necessary to add another member.

(4) CJA 6-501. Reporting Requirements for Guardians and Conservators.

Ms. Sylvester discussed the proposal to amend Rule 6-501. She said these amendments were intended to mirror H.B. 214 (2017), which removed the requirement that co-guardians report to the court when at least one is a parent.

Judge Noonan moved to approve rule 6-501 to go to the Judicial Council for approval to send out for public comment. Mr. Rice seconded the motion and it passed unanimously.

(5) CJA 3-104. Presiding Judges.

Ms. Sylvester discussed the proposal to amend Rule 3-104, which came from Brent Johnson. Mr. Schwermer noted the Rules of Criminal Procedure committee is rewriting rule 7. He said the goal was to ensure justice court judges are being utilized fairly in magistrate rotations. Mr. Schwermer said in some areas judges are not used at all and

in some areas they are frequently used. Mr. Schwermer said the justice court administrator would be the person to discuss this with. Judge Pullan asked if a district court presiding judge can play a role in this process. Mr. Schwermer said yes they can. Judge Pullan felt comfortable with the rule as written.

Judge Noonan moved to send rule 3-104 to the Judicial Council for approval to send out for public comment. Judge Boyden seconded the motion and it passed unanimously.

(6) Other business.

Internal Operating Guide

Judge Pullan addressed the changes to the Policy & Planning Committee's Internal Operating Guide (the name was changed from "Bylaws"). Judge Boyden said she appreciated the structure it gave the committee. Judge Noonan said she had concerns about section 3 when the Policy and Planning committee declines to recommend a rule to the Council. Judge Noonan said it would be helpful to add a note about communications to the rule proposer.

Ms. Sylvester will make the amendments as discussed in the meeting.

P&P Rule Amendment Request Form

The committee discussed the proposed form. After brief discussion the committee agreed use of this form is acceptable at this time, with a small change of adding room in the box about explanation as to urgent requests. There was no motion made.

The next meeting is scheduled for September 1, 2017 in the council room at 12:00. There being no other business the meeting adjourned at 1:20 pm.

Tab 2



Keisa Williams <keisaw@utcourts.gov>

Rule change

1 message

Brent Johnson <brentj@utcourts.gov>
To: Keisa Williams <keisaw@utcourts.gov>
Cc: Nancy Sylvester <nancyjs@utcourts.gov>

Thu, Aug 24, 2017 at 5:57 PM

Attached you will find a proposed rule change. The change is to the ever-evolving rule 4-202.02. I was recently contacted by a clerk who asked whether children's full names should be used in protective orders. Apparently the protective order system is programmed to only use initials. Law enforcement officers have informed at least two clerks of court that they cannot enforce the protective orders and protect children because initials are not sufficient to identify the exact children who are to be protected. I am a bit surprised that we are only being notified of this issue now, because this has been the practice for some time. However, my understanding is that there are audits currently being conducted by the FBI or another federal agency and courts are being criticized for only using initials because of the enforcement problems. I think perhaps law enforcement agencies are being told the same thing and that is now why it is becoming an issue.

The rule currently allows for minors names to be public in "child protective order" cases in district court. I assume this applies when a child protective order is transferred from the juvenile court to the district court, because child protective orders are not filed directly in the district court. I'm not certain that it makes much sense to have full names in child protective orders, but not in cohabitant abuse protective orders when protection of children is equally as important. I suppose that the rule could be interpreted more generically to allow full names in any orders that protect children but because "child protective order" is a term of art, the interpretation might not be legally sound. I therefore propose that we delete the word "child." This would allow for the listing of full names of minors in any type of protective order, including child protective orders and ex parte protective orders.

Let me know if you have questions.

Thank you.



4-202.02 (8-24-17 version).docx
21K

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;

115 (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
116 (4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph
117 (B);
118 (4)(C) an affidavit supporting a motion to waive fees;
119 (4)(D) aggregate records other than public aggregate records under subsection (2);
120 (4)(E) alternative dispute resolution records;
121 (4)(F) applications for accommodation under the Americans with Disabilities Act;
122 (4)(G) jail booking sheets;
123 (4)(H) citation, but an abstract of a citation that redacts all non-public information is public;
124 (4)(I) judgment information statement;
125 (4)(J) judicial review of final agency action under Utah Code Section 62A-4a-1009;
126 (4)(K) the following personal identifying information about a party: driver's license number, social
127 security number, account description and number, password, identification number, maiden name and
128 mother's maiden name, and similar personal identifying information;
129 (4)(L) the following personal identifying information about a person other than a party or a victim
130 or witness of a crime: residential address, personal email address, personal telephone number; date of
131 birth, driver's license number, social security number, account description and number, password,
132 identification number, maiden name, mother's maiden name, and similar personal identifying information;
133 (4)(M) medical, psychiatric, or psychological records;
134 (4)(N) name of a minor, except that the name of a minor party is public in the following district and
135 justice court proceedings:
136 (4)(N)(i) name change of a minor;
137 (4)(N)(ii) guardianship or conservatorship for a minor;
138 (4)(N)(iii) felony, misdemeanor, or infraction;
139 (4)(N)(iv) ~~child~~ protective orders; and
140 (4)(N)(v) custody orders and decrees;
141 (4)(O) nonresident violator notice of noncompliance;
142 (4)(P) personnel file of a current or former court personnel or applicant for employment;
143 (4)(Q) photograph, film, or video of a crime victim;
144 (4)(R) record of a court hearing closed to the public or of a child's testimony taken
145 under URCrP 15.5:
146 (4)(R)(i) permanently if the hearing is not traditionally open to the public and public access
147 does not play a significant positive role in the process; or
148 (4)(R)(ii) if the hearing is traditionally open to the public, until the judge determines it is
149 possible to release the record without prejudice to the interests that justified the closure;
150 (4)(S) record submitted by a senior judge or court commissioner regarding performance
151 evaluation and certification;
152 (4)(T) record submitted for in camera review until its public availability is determined;
153 (4)(U) reports of investigations by Child Protective Services;

(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.

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

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

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

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

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

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

(5)(F) court security plans;

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

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

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

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

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

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

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

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

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

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

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

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

(5)(O) record the disclosure of which would jeopardize life, safety, or property;
(5)(P) strategy about collective bargaining or pending litigation;
(5)(Q) test questions and answers;
(5)(R) trade secrets as defined in Utah Code Section 13-24-2;
(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;
(5)(T) presentence investigation report;
(5)(U) except for those filed with the court, records maintained and prepared by juvenile probation; and
(5)(V) other records as ordered by the court under Rule 4-202.04.

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

(6)(A) correspondence relating to juvenile social records;
(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;
(6)(C) medical, psychological, psychiatric evaluations;
(6)(D) pre-disposition and social summary reports;
(6)(E) probation agency and institutional reports or evaluations;
(6)(F) referral reports;
(6)(G) report of preliminary inquiries; and
(6)(H) treatment or service plans.

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

(7)(A) accounting records;
(7)(B) discovery filed with the court;
(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;
(7)(D) name of a party or minor;
(7)(E) record of a court hearing;
(7)(F) referral and offense histories
(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

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

(8)(A) upon request, location information, contact information, and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
(8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;

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

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

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

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

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

Tab 3


Administrative Office of the Courts

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

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

MEMORANDUM

To: Policy and Planning Committee of the Utah Judicial Council

From: Nini Rich, ADR Director 

Date: April 12, 2017

Re: Proposed Amendments to UCJA 4-510.03(2)(B) , Alternative Dispute Resolution (ADR)

Overview: The proposed amendment would update the language of the rule to reflect the scope of the new ADR ethics exam approved by the Judicial Council's ADR Committee in January 2017.

Specifics: Redline of proposed change:

UCJA 4-510.03 (2)(B) successfully pass an examination on the ~~Code of Ethics for ADR providers~~ ethical requirements for mediators on the Utah Court Roster;

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

1 Rule 4-510.03. Qualification of ADR providers.

2 Intent:

3 To establish eligibility and qualification requirements for inclusion on the Utah Court Approved
4 ADR Roster including additional requirements for designation as a Divorce Roster Mediator,
5 Master Mediator and Domestic Mentor.

6 Applicability:

7 This rule applies in the district court.

8 Statement of the Rule:

9 (1) To be eligible for the roster, an applicant must:

10 (1)(A) submit a written application to the Director setting forth:

11 (1)(A)(i) a description of how the applicant meets, or will meet within a reasonable time, the
12 requirements specified in paragraph (2)(A), if applicable;

13 (1)(A)(ii) the major areas of specialization and experience of the applicant, such as real estate,
14 estates, trusts and probate, family law, personal injury or property damage, securities, taxation,
15 civil rights and discrimination, consumer claims, construction and building contracts, corporate
16 and business organizations, environmental law, labor law, natural resources, business
17 transactions/commercial law, administrative law and financial institutions law;

18 (1)(A)(iii) the maximum fees the applicant will charge for service as a provider under the ADR
19 program; and

20 (1)(A)(iv) the judicial districts in which the applicant is offering to provide services and the
21 location and a description of the facilities in which the applicant intends to conduct the ADR
22 proceedings;

23 (1)(B) agree to complete and annually complete up to six hours of ADR training as required by
24 the Judicial Council;

25 (1)(C) submit an annual report to the Director indicating the number of mediations and
26 arbitrations the ADR provider has conducted that year; and

27 (1)(D) be re-qualified annually.

28 (2) To be included on the roster as a mediator:

29 (2)(A) all new applicants to the court roster must also have successfully completed at least 40
30 hours of court-approved basic formal mediation training in the last three years. This training
31 shall be under a single training course from a single, court-approved training provider. The
32 applicant must also complete 10 hours of experience in observing a court qualified mediator
33 conduct mediation, and 10 hours in either conducting mediations singly or co-mediating with a

34 court qualified mediator, or meet such other education, training and experience requirements as
35 the Council finds will promote the effective administration of the ADR program;

36 (2)(B) successfully pass an examination on the ~~Code of Ethics for ADR providers~~ ethical
37 requirements for mediators on the Utah Court Roster;

38 (2)(C) agree to conduct at least three pro bono mediations each year as referred by the Director;
39 and

40 (2)(D) be of good moral character in that the provider has not been convicted of a felony, a
41 misdemeanor involving moral turpitude, or any other serious crime, and has not received
42 professional sanctions that, when considered in light of the duties and responsibilities of an ADR
43 provider, are determined by the Director to indicate that the best interests of the public are not
44 served by including the provider on the roster.

45 (3) To be included on the court roster for qualified divorce mediators:

46 (3)(A) All new applicants to the roster of divorce mediators must also have an additional 32
47 hours of court-approved training specific to the skills, Utah laws, and information needed to
48 conduct divorce mediation. This training shall be under a single training course from a single,
49 court-approved provider.

50 (3)(B) All applicants must have a minimum of 6 hours of training specific to domestic violence
51 and screening for domestic violence which may be included in the court approved 32 hour
52 training referred to above.

53 (3)(C) New applicants to the court roster of divorce mediators are required to have acquired
54 experience specific to divorce mediation. This is in addition to the 20 hours of experience
55 required for the court roster of basic mediators. The additional experience includes having
56 observed a minimum of two divorce mediations, co-mediating two divorce mediations and
57 having been observed conducting two divorce mediations. Each of these includes debriefing
58 and analysis afterward with a mediator who has Domestic Mentor status. The Domestic Mentor
59 may charge a fee for this service.

60 (3)(D) The Director will maintain and make available a list of those mediators who have
61 Domestic Mentor status.

62 (4) To be included on the roster as a Master Mediator, the provider must also have completed
63 300 hours in conducting mediation sessions.

64 (5) To be included on the roster as a Domestic Mentor, the provider must also have completed
65 300 hours in conducting mediation in domestic cases and completed a domestic mentor
66 orientation.

67 (6) To be included on the roster as an arbitrator, the provider must also:

(6)(A) have been a member in good standing of the Utah State Bar for at least ten years, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program;

(6)(B) be of good moral character in that the provider has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other serious crime, and has not received professional sanctions that, when considered with the duties and responsibilities of an ADR provider are determined by the Director to indicate that the best interests of the public are not served by including the provider on the roster; and

(6)(C) agree to conduct at least one pro bono arbitration each year as referred by the Director.

(7) To be re-qualified as a mediator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least six mediation sessions or conducted 24 hours of mediation during the previous year.

(8) To be re-qualified as an arbitrator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least three arbitration sessions or conducted 12 hours of arbitration during the previous year.

(9) A provider may be sanctioned for failure to comply with the code of ethics for ADR providers as adopted by the Supreme Court or for failure to meet the requirements of this rule or state statute. The committee shall inform the public of public sanctions against a provider promptly after imposing the sanction.

(9)(A) Public sanctions may include singly or with other sanctions:

a written warning and requirement to attend additional training;

(9)(A)(i) require the mediator to allow the Director or designee to observe a set number of mediation sessions conducted by the mediator;

(9)(A)(ii) suspension for a period of time from the court roster; and

(9)(A)(iii) removal from the court roster.

(9)(B) Private sanctions may include singly or with other sanctions:

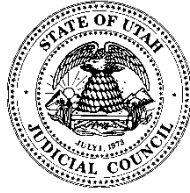
(9)(B)(i) admonition;

(9)(B)(ii) re-take and successfully pass the ADR ethical exam.

(10) The committee shall approve and publish procedures consistent with this rule to be used in imposing the sanction. The complainant shall file a written and signed complaint with the director. The director shall notify the provider in writing of the complaint and provide an opportunity to respond. The director may interview the complainant, the provider and any parties involved. Upon consideration of all factors, the director may impose a sanction and notify the complainant and the provider. If the provider seeks to challenge the sanction, the provider must notify the director within 10 days of receipt of the notification. The provider may request

- 103 reconsideration by the director or a hearing by the Judicial Council's ad hoc committee on ADR.
- 104 The decision of the committee is final.

Tab 4



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 J. Sylvester*
Date: September 6, 2017
Re: Commissioner Rules Back from Comment

RULES BACK FROM COMMENT

CJA Rules 3-201 and 3-111 are back from their comment period and ready for Policy and Planning's consideration.

CJA 03-111. Performance evaluation of senior judges and court commissioners. Amend. 1) Clarifies when court commissioners' annual evaluations will be completed, by whom, what the evaluation process will entail; 2) establishes when the presiding judge will prepare a performance plan versus a corrective action plan for a court commissioner; and 3) moves the Judicial Council's certification process from August to July.

CJA 03-201. Court commissioners. Amend. Clarifies 1) how the districts and court levels that a commissioner will serve will be represented on the court commissioner nominating committee; 2) how a commissioner is selected if they will serve more than one judicial district or court level; 3) that the commissioner certification process addresses retention, not removal; 4) that when a commissioner serves two districts or court levels, the presiding judges will each prepare performance evaluations and performance plans; and 5) how the commissioner public comment period results are reviewed and used.

The rules received only one comment, as follows:

CJA 03-201 Subparagraph 9(b) should reflect the reality that court commissioners are prohibited from the practice of law, just like judges, and should receive the same retirement benefits as judges. Without the ability to do work for which they are trained, court commissioners are severely limited in their ability to increase their revenue and save additional amounts for retirement. Considering that recommended rulings from the commissioners are not objected to approximately 88% of

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.

the time and less than 1/2 of the objections are reversed by the judges, the commissioners do a considerable amount of work that would normally go to a judge. The commissioners should benefit from the same retirement structure/calculation as judges. Also, considering that there are only 11 commissioners statewide, the potential increase to the budget is modest at best and is an incentive to retain good commissioners.

-Commissioner Thomas Morgan.

Although Commissioner Morgan undoubtedly makes a good point, this is probably not the forum or time to discuss this issue. That is a policy call for the legislature.

Encl. CJA03-201 (Redline)

CJA03-111 (Redline)

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.

Rule 3-201. Court commissioners.

Intent:

To define the role of court commissioner.

To establish a term of office for court commissioners.

To establish uniform administrative policies governing the qualifications, appointment, supervision, discipline and removal of court commissioners.

To establish uniform administrative policies governing the salaries, benefits and privileges of the office of court commissioner.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) **Definition.** Court commissioners are quasi-judicial officers established by the Utah Code.

(2) **Qualifications.**

(2)(A) Court commissioners must be at least 25 years of age, United States citizens, Utah residents for three years preceding appointment and residents of Utah while serving as commissioners. A court commissioner shall reside in a judicial district the commissioner serves.

(2)(B) Court commissioners must be admitted to practice law in Utah and exhibit good character. Court commissioners must possess ability and experience in the areas of law in which the court commissioner serves.

(2)(C) Court commissioners shall serve full time and shall comply with Utah Code Section 78A-2-221.

(3) **Appointment - Oath of office.**

(3)(A) Selection of court commissioners shall be based solely upon consideration of fitness for office.

(3)(B) When a vacancy occurs or is about to occur in the office of a court commissioner, the Council shall determine whether to fill the vacancy. The Council may determine that the court commissioner will serve more than one judicial district.

(3)(C) A committee for the purpose of nominating candidates for the position of court commissioner shall consist of ~~one judge~~ the presiding judge or designee from each court level and judicial district that the commissioner will serve, three lawyers, and two members of the public. Committee members shall be appointed by the presiding judge of the district court of each judicial district. The committee members shall serve three year terms, staggered so that not more than one term of a member of the bench, bar, or public expires during the same calendar year. The presiding judge shall designate a chair of the committee. All members of the committee shall reside in the judicial district. All members of the committee shall be voting members. A quorum of one-half the committee members is necessary for the committee to

act. The committee shall act by the concurrence of a majority of the members voting. When voting upon the qualifications of a candidate, the committee shall follow the ~~voting procedures of the judicial nominating commissions established in the commissioner nominating manual.~~

(3)(D) If the commissioner will serve more than one judicial district, the presiding judges of the districts involved shall select representatives from each district's nominating committee to form a joint nominating committee with a size and composition equivalent to that of a district committee, except that a maximum of two judges from each district shall serve on the joint nominating committee.

(3)(E) No member of the committee may vote upon the qualifications of any candidate who is the spouse of that committee member or is related to that committee member within the third degree of relationship. No member of the committee may vote upon the qualifications of a candidate who is associated with that committee member in the practice of law. The committee member shall declare to the committee any other potential conflict of interest between that member and any candidate as soon as the member becomes aware of the potential conflict of interest. The committee shall determine whether the potential conflict of interest will preclude the member from voting upon the qualifications of any candidate. The committee shall record all declarations of potential conflicts of interest and the decision of the committee upon the issue.

(3)(F) The administrative office of the courts shall advertise for qualified applicants and shall remove from consideration those applicants who do not meet minimum qualifications of age, citizenship, residency, and admission to the practice of law. The administrative office of the courts shall develop uniform guidelines for the application process for court commissioners.

(3)(G) The nominating committee shall review the applications of qualified applicants and may investigate the qualifications of applicants to its satisfaction. The committee shall interview selected applicants and select the three best qualified candidates. All voting shall be by confidential ballot. The committee shall receive public comment on those candidates as provided in paragraph (4). Any candidate may be reconsidered upon motion by a committee member and upon agreement by a majority of nominating committee members.

(3)(H) When the public comment period as provided in paragraph (4) has closed, the comments shall ~~go be given~~ to the nominating committee. If any comments would negatively affect the committee's decision on whether to recommend a candidate, the candidate shall be given ~~notice~~ all comments with the commenters' names redacted and an opportunity to respond to the comments. If the committee decides not to recommend a candidate based on the comments, the committee shall select another candidate from the interviewed applicants and again receive public comment on the candidates as provided in paragraph (4).

(3)(I) The chair of the nominating committee shall present the names, applications, and the results of

background investigations of the nominees to the judges of the courts the court commissioner will serve. The committee may indicate its order of preference.

(3)(J) The judges of ~~the each courts level~~ the court commissioner will serve shall together select one of the nominees by a concurrence of a majority of judges voting. If the commissioner will serve more than one judicial district, the concurrence of each court independent of the others a majority of judges in each district is necessary for selection.

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

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

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

(4) Public comment for appointment and retention.

(4)(A) Final candidates for appointment and court commissioners who are up for retention shall be subject to public comment.

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

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

(4)(D) The nominating committee or district in which the commissioner serves shall:

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

(ii) ~~publish~~ issue a press release and other public notices listing the names of the nominees or court commissioner with instructions on how to submit comments ~~in a newspaper of general circulation~~; and

(iii) allow at least 10 days for public comment.

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

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

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

following concurrence by the Council. At the conclusion of the first term of office and each subsequent term, the court commissioner shall be retained for a term of four years unless the judges of the courts the commissioner serves ~~remove vote not to retain~~ the commissioner in accordance with paragraph ~~(6)(C)(8)(B)~~ or unless the Judicial Council does not certify the commissioner for retention under rule 3-111. The term of office of court commissioners holding office on April 1, 2011 shall end December 31 of the year in which their term would have ended under the former rule.

(6) **Court commissioner Pperformance evaluation and public comments.review.**

~~(6)(A) **Performance evaluations and performance plans.** The presiding judge of the each district and court level the commissioner serves shall prepare an evaluation of the commissioner's performance and a performance plan in accordance with Rule 3-111. on an annual basis, on forms provided by the administrative office. The presiding judge shall provide copies of the evaluation to the Judicial Council. A copy of the performance plan and any subsequent evaluation shall be maintained in the official personnel file in the administrative office. Court commissioners shall comply with the program for judicial performance evaluation, including any recommendations made in the evaluation expectations set forth in a performance plan.~~

~~(B) When the public comment period has closed, the comments shall go to the presiding judge in the district in which the commissioner serves. If any comments would negatively affect the presiding judge's decision on whether to discipline or remove the commissioner from office, the commissioner shall be given notice and an opportunity to respond to the comments.~~

~~(6)(B) **Public comment period results.** When the public comment period for a commissioner provided in paragraph (4) closes, the comments shall be given to and reviewed by the presiding judge of each district and court level the commissioner serves. If any comments would negatively affect the presiding judge's decision of whether to sanction the commissioner or remove the commissioner from office in accordance with paragraph (7), the commissioner shall be provided all comments with the commenters' names redacted and the commissioner shall be given an opportunity to respond to the comments.~~

(7) **Sanctions or removal during a commissioner's term.**~~Removal and sanctions.~~

~~(7)(A) **Sanctions.**~~

~~(7)(A)(i) The court commissioner may be sanctioned by the Council as the result of a formal complaint filed under rule 3-201.02.~~

~~(7)(A)(ii) If the commissioner's performance is not satisfactory, the commissioner may be sanctioned in accordance with paragraph (7)(A)(iii) by the presiding judge, or presiding judges if the commissioner serves multiple districts or court levels, with the concurrence of a majority of the judges of that jurisdiction in either district or court level the commissioner serves., may discipline the~~

commissioner-

(7)(A)(iii) Sanctions may include but are not limited to private or public censure, restrictions in case assignments with corresponding reduction in salary, mandatory remedial education, and suspension without pay for a period not to exceed 60 days. ~~suspension for a period not to exceed 60 days, and reduction in salary~~

(7)(B) Removal.

(7)(B)(i) Removal by Judicial Council. During a commissioner's term, ~~T~~the court commissioner may be removed by the Council:

(7)(B)(i)(a) as part of a reduction in force;

(7)(B)(i)(b) for failure to meet the evaluation and certification requirements; or

(7)(B)(i)(c) as the result of a formal complaint filed under rule 3-201.02 upon the concurrence of two-thirds of the Council.

(7)(B)(ii) or Removal by District or Court Level.

(7)(B)(ii)(a) During a commissioner's term, if the commissioner's performance is not satisfactory, the commissioner may be removed by the presiding judge, or presiding judges if the commissioner serves multiple districts or court levels, only with the concurrence of a majority of the judges in each district or court level the commissioner serves. ~~remove the commissioner from office.~~

(7)(B)(ii)(b) If the commissioner serves multiple districts or court levels and one district or court level contests a commissioner removal decision made by the other district or court level, the Management Committee will review the decision, with final determination by the Judicial Council.

(7)(C) Review of District or Court Level Decisions. If the commissioner disagrees with ~~the a~~ presiding judge's district or court level's decision to sanction or remove, the commissioner may request a review of the decision by the Management Committee of the Council.

(8) Retention

(8)(A) The Council shall review materials on the commissioner's performance during prior to the end of the commissioner's term of office and the Council shall vote on whether the commissioner is eligible to be retained for another term in accordance with rule 3-111.

(8)(CB) At the end of a commissioner's term, ~~T~~the court commissioner may be removed without cause by the judges of the each courts district and court level the commissioner serves at the conclusion of a term of office may vote not to retain the commissioner for another term of office. ~~Removal under this paragraph.~~ The decision not to retain is without cause and shall be by the concurrence of a majority of all the judges of in each district and court level the courts the commissioner serves. A decision not to ~~remove~~ retain a commissioner under this paragraph shall be communicated to the commissioner within a

reasonable time after the decision is made, and not less than ~~30~~60 days prior to the end of the
commissioner's term ~~termination~~.

(9) Salaries and benefits.

(9)(A) The Council shall annually establish the salary of court commissioners. In determining the salary of the court commissioners, the Council shall consider the effect of any salary increase for judges authorized by the Legislature and other relevant factors. Except as provided in paragraph (6), the salary of a commissioner shall not be reduced during the commissioner's tenure.

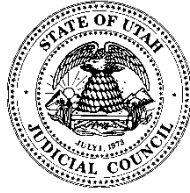
(9)(B) Court commissioners shall receive annual leave of 20 days per calendar year and the same sick leave benefits as judges of the courts of record. Annual leave not used at the end of the calendar year shall not accrue to the following year. A commissioner hired part way through the year shall receive annual leave on a prorated basis. Court commissioners shall receive the same retirement benefits as non-judicial officers employed in the judicial branch.

(10) Support services.

(10)(A) Court commissioners shall be provided with support personnel, equipment, and supplies necessary to carry out the duties of the office as determined by the presiding judge.

(10)(B) Court commissioners are responsible for requesting necessary support services from the presiding judge.

Tab 5



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 6, 2017
Re: CJA Rule 9-109, URCP 63, URCrP 29

This memo addresses the intersection of three rules: the new proposed justice courts presiding judge rule which is codified (proposed) at Utah Code of Judicial Administration Rule 9-109, Utah Rule of Civil Procedure 63, and Utah Rule of Criminal Procedure 29.

About six months ago, I met with the Supreme Court regarding Rule 63 because the Civil Rules Committee had proposed matching its language to Rule 29's recent amendments, which expressly exempted the presiding officer of the Judicial Council from being a reviewing judge on a motion to disqualify. In the course of our conversation, the Court proposed removing references to "if the court has no presiding judge" on the assumption that no court would ever be without one. Justice courts, however, have not historically had presiding judges. In speaking with Judge Renstrom and Jim Peters about this issue thereafter, I learned that a justice courts presiding judge rule was already in the works. In light of that, I thought the "no presiding judge" references should still be removed and that, like in Rule 29, a reference to Utah Code section 78A-7-208 should be added to Rule 63. The question then became timing and coordination, which is what led to a subsequent meeting with the court a month or two later.

At that meeting, several justices raised a constitutionality question regarding the reference to Utah Code section 78A-7-208 in Rule 29 and the one I also proposed to add in Rule 63. The reference *appears* to suggest that the local authorities assign judges when there is a judge disqualification in a case, rather than the court itself making the assignment. But what the statute really says is that the local authority can come up with a list of judges with whom they are comfortable taking cases in their court. It then falls on the court to make the assignment from that list.

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.

To resolve some confusion in the procedural rules about the mechanics of this, I worked with Jim Peters and Judge Renstrom on adding a section to their new PJ rule regarding reassignment of cases as follows:

(3)(G) Reassignment of cases. In the event that a judge is disqualified from a case, the presiding judge shall appoint any judge duly authorized by the governing body of that court's jurisdiction to serve as a temporary justice court judge to preside over that case.

But Policy and Planning removed that paragraph at its last meeting, concluding that it conflicted with Rules 63 and 29. I became concerned that the bigger issue was actually with the statutory reference in the procedural rules, not with paragraph (g) in the new justice courts presiding judge rule. It seemed to make more sense to add a statutory reference to the new paragraph and take out the old reference in Rule 29. And at its September 6 meeting, the Supreme Court agreed. The Court proposed the following substitute language:

(3)(G) Reassignment of cases. In the event that a judge is disqualified from a case, the presiding judge shall appoint any judge duly authorized pursuant to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

The Court also made the following edits to Rules 63 and 29:

- 1) removing the statutory references to justice court assignments in Rule 29;
- 2) removing the language "if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing" in both rules; and
- 3) adding the following language to Rules 29 and 63: "Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109."

I propose sending all of these rules out for comment together once the Judicial Council also weighs in. The proposed amendments are attached.

Rule 9-109. Presiding judges.**Intent:**

To establish the procedure for election, term of office, role, responsibilities, and authority of presiding judges and associate presiding judges for Justice Courts.

Applicability:

This rule shall apply to presiding judges and associate presiding judges in the Justice Courts.

Statement of the Rule:**(1) Election and term of office.**

(1)(A) Presiding judge.

(1)(A)(i) A presiding judge in each judicial district shall be elected by a majority vote of the judges in the district at the 2018 annual conference. Thereafter, regular elections shall take place at the annual conference in odd years for odd-numbered districts and in even years for even-numbered districts. Interim elections, if necessary, shall take place as provided in this rule.

(1)(A)(ii) The presiding judge's term of office shall be from the time of his or her election or appointment until he or she resigns or until the next regular election, whichever occurs first. A district, by majority vote of its judges, may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the chair of the Board of Justice Court Judges to serve until the next regular election.

(1)(B) Associate presiding judge.

(1)(B)(i) The judges of a district may, at their discretion, elect one judge of the district to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A).

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge.

(1)(C) A presiding judge or associate presiding judge may be removed as the presiding judge or associate presiding judge by a two-thirds vote of all judges in the district. A successor presiding judge or associate presiding judge shall then be selected as provided in this rule.

(2) District meetings.

(2)(A) Each district shall have regular meetings to discuss and decide court business, receive training, and address issues and concerns specific to the district.

(2)(B) The presiding judge shall call and preside over meetings of other justice court judges in the district. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(2)(C) Each district shall have a minimum of two meetings each year.

(2)(D) An agenda shall be circulated among the judges in advance of the meeting with a known method on how matters may be placed on the agenda.

(2)(E) In addition to regular meetings, the presiding judge or a majority of the judges may call additional meetings as necessary.

(2)(G) Other than judges and the Justice Court Administrator, those attending the meeting shall be by approval of the presiding judge only.

(2)(H) The issues on which judges should vote shall be left to the sound discretion and judgment of each district and the applicable sections of the Utah Constitution, statutes, and this Code.

(3) Administrative responsibilities and authority of presiding judge.

(3)(A) Generally. The presiding judge is charged with the responsibility for the effective operation of the justice courts within a district. He or she is responsible for the implementation and enforcement of statutes, rules, policies, and directives of the Council and the Board of Justice Court Judges as they pertain to the administration of the courts. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

(3)(B) Coordination of required training.

(3)(B)(i) The presiding judge or his or her designee shall: (a) be responsible to see that judges in his or her district are appropriately trained, (b) assist in planning statewide trainings as part of the Education Committee, (c) plan district training to be held in connection with the meetings required by paragraph (2)(C), (d) recommend mentors for new judges, and (e) arrange for individual training, as needed.

(3)(B)(ii) Presiding judges are encouraged to observe the hearings of judges within the district to assess training needs.

(3)(C) Court committees. The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas and handle court business.

(3)(D) Outside agencies and the media. The presiding judge shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, government officials of cities or counties located within the district, civic organizations and other state agencies. The presiding judge shall be the primary representative of the district.

(3)(E) Judicial officers. The presiding judge shall discuss significant problems or complaints regarding the judges in his or her district with the Justice Court Administrator, both of whom shall work together to resolve the concern. In the event that another judge in the district fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment, or violates the Code of Judicial Conduct, the presiding judge may:

(3)(E)(i) Consult with appropriate staff at the Administrative Office of the Courts and/or discuss the issue with other presiding judges;

(3)(E)(ii) Meet with the judge to explain the reasons for the directive given or the position taken, consult with the judge about alternative solutions and reevaluate the directive or position, as appropriate;

(3)(E)(iii) Present the problem to the Board of Justice Court Judges for input;

(3)(E)(iv) Require the judge to participate in appropriate counseling, therapy, education or treatment; or

(3)(E)(v) Refer the problem to the Judicial Council or to the Chief Justice.

(3)(E)(vi) In the event that the options listed in paragraphs (3)(E)(i) through (3)(E)(v) do not resolve the problem and where the refusal or conduct is willful, continual, and the presiding judge believes the conduct constitutes a violation of the Code of Judicial Conduct, the presiding judge shall refer the problem to the Council or the Judicial Conduct Commission.

(3)(F) Liaison. The presiding judge or his or her designee shall serve as a liaison between the justice courts of the district and (i) the Board of Justice Court Judges and (ii) the presiding judges of Juvenile Court and District Court.

(3)(G) Reassignment of cases. In the event that a judge is disqualified from a case, the presiding judge shall appoint any judge duly authorized ~~by the governing body of that court's jurisdiction pursuant to Utah Code section 78A-7-208~~ to serve as a temporary justice court judge ~~to preside over that case.~~

Rule 29. Disability and disqualification of a judge or change of venue.

(a) Disability.

(a)(1) Substitute judge during trial. If, by reason of death, sickness, or other disability, the judge before whom a trial has begun is unable to continue with the trial, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council, upon certifying that the judge is familiar with the record of the trial, may, unless otherwise disqualified, proceed with and finish the trial, but if the assigned judge is satisfied that neither he nor another substitute judge can proceed with the trial, the judge may, in his discretion, grant a new trial.

~~(b)~~(a)(2) Substitute judge after guilty verdict. If, by reason of death, sickness, or other disability, the judge before whom a defendant has been tried is unable to perform the duties required of the court after a verdict of guilty, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council may perform those duties.

(b) Disqualification.

(b)(1) Motion to disqualify.

~~(e)~~(b)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias or prejudice, or conflict of interest.

~~(e)~~(b)(1)(B) The motion shall be filed after commencement of the action, but not later than 21 days after the last of the following:

~~(e)~~(b)(1)(B)(i) assignment of the action or hearing to the judge;

~~(e)~~(b)(1)(B)(ii) appearance of the party or the party's attorney; or

~~(e)~~(b)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than 21 days prior to a hearing, the motion shall be filed as soon as practicable.

~~(e)~~(b)(1)(C) Signing the motion or affidavit constitutes a certificate under Rule 11~~, of the~~ Utah Rules of Civil Procedure and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

~~(e)~~(b)(1)(D) The other parties to the action may not file an opposition to the motion and if any response is filed it will not be considered. The moving party need not file a Request to Submit for Decision under Rule 12. The motion will be submitted for decision upon filing.

(b)(2) Reviewing judge; reassignment.

(b)(2)(A) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. The judge shall take no further action in the case until the motion is decided. If the judge grants the motion, the order shall direct the presiding judge of the court ~~or, if the court has no presiding judge, the presiding officer of the Judicial Council~~ to assign another judge to the action or hearing. Assignment in justice court cases ~~shall~~ will be in accordance with Utah Code of Judicial Administration Rule 9-109. ~~Utah Code §78A-7-208.~~ The presiding judge of the court, any judge of the district, or any judge of a court of like jurisdiction, may serve as the reviewing judge.

~~(e)(32)(AB)~~ If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge ~~or if the court has no presiding judge, the presiding officer of the Judicial Council~~ to do so. Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109. ~~Utah Code §78A-7-208.~~

~~(e)(32)(BC)~~ In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

~~(e)(32)(CD)~~ The reviewing judge may deny a motion not filed in a timely manner.

(c) Change of venue.

(d)(1) Courts of record.

(c)(1)(A) In the courts of record, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or the case transferred to a court location in a county where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts.

~~(d)(21)(B)~~ If the court is satisfied that the representations made in the affidavit required by subsection (c)(1)(A) are true and justify a change of jury pool or location, the court shall enter an order transferring the case, or selecting a jury from a county free from the objection. If the court is not satisfied that the representations justify an alternate jury pool or transfer of the case, the court shall either enter an order denying the motion or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.

(d)(32) Justice courts.

(c)(2)(A) In the justice courts, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have

the trial of the case take place with a jury from another county or in a court location where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts.

~~(d)~~(42)(B) If the court is satisfied that the representations made in the affidavit required by subsection (c)(2)(A)~~(3)~~ are true and justify a change of jury pool or location, the court shall enter an order selecting a jury from a county free from the objection; or directing that trial proceedings be held in a court location free from the objection. If the court is not satisfied that the representations justify an alternate jury pool or relocation of the trial, the court shall either enter an order denying the motion or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.

~~(d)~~(53) Timing. A motion filed pursuant to this subsection ~~(d)~~ shall be filed not later than 14 days after the party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

(ed) Documents of record. When a change of judge or place of trial is ordered all documents of record concerning the case shall, without delay, be transferred or made available in the new location.

Rule 63. Disability or disqualification of a judge.

(a) Substitute judge; Prior testimony. If the judge to whom an action has been assigned is unable to perform his or her duties, then any other judge of that district or any judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The judge to whom the case is reassigned may rehear the evidence or some part of it.

(b) Motion to disqualify; affidavit or declaration.

(b)(1) A party to an action or the party's attorney may file a motion to disqualify a judge. The motion must be accompanied by a certificate that the motion is filed in good faith and must be supported by an affidavit or declaration under penalty of Utah Code Section 78B-5-705 stating facts sufficient to show bias, prejudice or conflict of interest. The motion must also be accompanied by a request to submit for decision.

(b)(2) The motion must be filed after commencement of the action, but not later than 21 days after the last of the following:

(b)(2)(A) assignment of the action or hearing to the judge;

(b)(2)(B) appearance of the party or the party's attorney; or

(b)(2)(C) the date on which the moving party knew or should have known of the grounds upon which the motion is based.

If the last event occurs fewer than 21 days before a hearing, the motion must be filed as soon as practicable.

(b)(3) Signing the motion or affidavit or declaration constitutes a certificate under Rule 11 and subjects the party or attorney to the procedures and sanctions of Rule 11.

(b)(4) No party may file more than one motion to disqualify in an action, unless the second or subsequent motion is based on grounds that the party did not know of and could not have known of at the time of the earlier motion.

(b)(5) If timeliness of the motion is determined under paragraph (b)(2)(C) or paragraph (b)(4), the affidavit or declaration supporting the motion must state when and how the party came to know of the reason for disqualification.

(c) Reviewing judge.

(c)(1) The judge who is the subject of the motion must, without further hearing or a response from another party, enter an order granting the motion or certifying the motion and affidavit or declaration to a reviewing judge. The judge must take no further action in the case until the motion is decided. If the judge grants the motion, the order will direct the presiding judge of the court ~~or, if the court has no presiding judge, the presiding officer of the Judicial Council~~ to assign another judge to the action or hearing. Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109. The presiding judge of the court, any judge of the district, or any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(c)(2) If the reviewing judge finds that the motion and affidavit or declaration are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge ~~or the presiding officer of the Judicial Council~~ to do so. Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109.

43 (c)(3) In determining issues of fact or of law, the reviewing judge may consider any part of the
44 record of the action and may request of the judge who is the subject of the motion an affidavit or
45 declaration responding to questions posed by the reviewing judge.

46 (c)(4) The reviewing judge may deny a motion not filed in a timely manner.

47

78A-7-208 Temporary justice court judge.

When necessary, the governing body may appoint any senior justice court judge, or justice court judge currently holding office within the judicial district or in an adjacent county, to serve as a temporary justice court judge.

Amended by Chapter 205, 2012 General Session

Tab 6

POLICY AND PLANNING COMMITTEE

Internal Operating Guide

1. Agenda. The Chair of the Committee approves the agenda seven days before the scheduled meeting. After approval by the Chair, the agenda for that meeting is closed.
2. Presenting a Proposed Rule Change to the Committee.
 - a. *Judicial Council, Management Committee, and Supreme Court*. Assignments from the Judicial Council, Management Committee, or Supreme Court shall be accepted in any form presented.
 - b. *Committee Members*. Proposed rule changes from committee members shall not be accepted for consideration by the Committee unless the Request Form has been completed and the proposed amendment is attached to the Request Form.
 - c. *Administrative Office of the Courts*. Proposed rule changes from employees of the Administrative Office of the Courts shall not be accepted for consideration by the Committee unless:
 - i. The Request Form has been completed;
 - ii. The proposed amendment is attached to the Request Form; and
 - iii. Unless the employee is a manager or above, the Request Form is signed by the employee and the employee's supervisor.
3. Priority of Work. The Committee shall approve a system for prioritizing its work. Assignments from the Judicial Council, Management Committee, and Supreme Court shall take first priority.
4. Invitations to Attend Committee Meetings. The Chair, with the advice of the Committee, shall determine whether stakeholders should be invited to attend a Committee Meeting and for what purpose.
- 4.5. Feedback to Requester. The Committee's staff attorney will communicate the outcome of the rule request to the requester as soon as is practicable.

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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.**

REQUESTER CONTACT INFORMATION:

Name of Requester: E-mail: Phone Number: Date of Request:

RULE AMENDMENT:

Rule Number: Location of Rule:

Brief Description of Proposed Amendment:

Reason Amendment is Needed:

Is this proposal urgent?

No

Yes

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

List all stakeholders:

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 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:

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



FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?	Queue Priority Level:	Committee Notes/Comments:
<input type="checkbox"/> Yes	<input type="checkbox"/> Red	
<input type="checkbox"/> No	<input type="checkbox"/> Yellow	
	<input type="checkbox"/> Green	