

# Agenda

## Policy and Planning Committee

December 1, 2017

9:00 a.m. – 5:00 p.m.

**Conference Room B/C – 1<sup>st</sup> Floor (Behind Jury Room)**

Matheson Courthouse

450 S. State St., Salt Lake City, UT

9:00	Welcome, Member Introductions, Chair re-election	Action	Tab 1	Judge Derek Pullan Keisa Williams
9:05	Approval of Minutes	Action	Tab 2	Judge Derek Pullan
9:10	CJA 3-201. Court Commissioners. CJA 3-111. Performance evaluations of senior judges and court commissioners.	Discussion/ Action	Tab 3	Nancy Sylvester
10:00	CJA 3-101. Judicial Performance Standards.	Discussion/ Action	Tab 4	Nancy Sylvester
10:30	<b>Break</b>			
10:45	CJA 7-303. Truancy Referrals.	Discussion/ Action	Tab 5	Dawn Marie Rubio
11:00	CJA 3-104. Presiding Judges.	Discussion/ Action	Tab 6	Brent Johnson
11:20	CJA 6-601. Mental Health Commissioners.	Discussion/ Action	Tab 7	Brent Johnson
12:00	<b>Break (grab lunch)</b>			
12:30	CJA 4-202.07. Appeals.	Discussion/ Action	Tab 8	Brent Johnson
1:00	HR Policy: Definitions and 220 – Employment Assessments	Discussion/ Action	Tab 9	Brent Johnson
1:45	Code of Personal Conduct 500 – Court Security	Discussion/ Action	Tab 10	Brent Johnson

2:15	CJA 4-202.02. Records Classification. <ul style="list-style-type: none"> <li>• Affidavits of Indigence</li> <li>• Vital Records</li> <li>• Probable Cause Statements</li> </ul>	Discussion/ Action	Tab 11	Brent Johnson Keisa Williams
3:15	Policy on Naming Courthouses	Discussion/ Action	Tab 12	Judge Derek Pullan
3:45	Reorganization of CJA 4-202.02. Records Classification.	Discussion	Handout	Keisa Williams

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

**Meeting Schedule:** Meetings are held in the Matheson Courthouse, Judicial Council Room, from 12:00 to 2:00 unless otherwise stated.

**2018 Meetings:**

January 5, 2018

February 2, 2018

March 2, 2018

April 6, 2018

May 4, 2018 (9:00 a.m. – 5:00 p.m.)

June 1, 2018

July 6, 2018

August 3, 2018

September 7, 2018

October 5, 2018

November 2, 2018 (9:00 a.m. – 5:00 p.m.)

December 7, 2018

# Tab 1

## POLICY & PLANNING COMMITTEE

Updated November 27, 2017

<b>Judge Derek Pullan - CHAIR</b> 4th District Court 125 N. 100 W. Provo, UT 84601 Tel: (435) 654-4676 <a href="mailto:dpullan@utcourts.gov">dpullan@utcourts.gov</a> <b>Term Start:</b> 11/16 <b>Term End:</b>	<b>Keisa Williams - STAFF</b> Administrative Office of the Courts 450 South State Street Salt Lake City, Utah 84114 Tel: 801-578-3821 <a href="mailto:keisaw@utcourts.gov">keisaw@utcourts.gov</a>	<b>Judge Augustus Chin</b> 3 <sup>rd</sup> District Justice Court 4580 S. 2300 E. Holladay, UT 84117 Tel: (801) 273-9731 <a href="mailto:gchin@utcourts.gov">gchin@utcourts.gov</a> <b>Term Start:</b> 11/17 <b>Term End:</b>
<b>Judge Kara Pettit</b> 3rd District Court 450 South State St P.O. Box 1860 Salt Lake City, Utah 84114-1860 Tel: (801) 238-7144 <a href="mailto:kpettit@utcourts.gov">kpettit@utcourts.gov</a> <b>Term Start:</b> 11/17 <b>Term End:</b>	<b>Rob Rice</b> Ray Quinney & Nebeker 36 S. State Street Suite 1400 Salt Lake City, UT 84111 Tel: (801) 532-1500 <a href="mailto:rrice@rqn.com">rrice@rqn.com</a> <b>Term Start:</b> 8/17 <b>Term End:</b>	<b>Judge John Walton</b> 5th District Court 206 West Tabernacle Suite 100 St. George, UT 84770 Tel: (435) 986-5700 <a href="mailto:jwalton@utcourts.gov">jwalton@utcourts.gov</a> <b>Term Start:</b> 11/17 <b>Term End:</b>

# Tab 2

## **Policy and Planning Committee**

**Zermatt Resort  
Basel Room  
784 Resort Drive  
Midway, UT 84049**

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

**Draft**

### **Members Present**

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

### **Members Excused**

### **Staff**

Keisa Williams

### **Guests**

Shane Bahr

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

Judge Pullan welcomed the members to the meeting. Judge Pullan addressed the September 11, 2017 minutes. There being no changes to the minutes, Rob Rice moved to approve the September 11, 2017 minutes. Judge Bagley seconded the motion and it passed unanimously.

### **(2) CJA 1-201. Membership -Election.**

Keisa Williams noted that the rule was back from public comments, with no comments received. The committee recommended that the rule go before the Judicial Council for final approval as written.

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

#### **CJA 3-111. Performance evaluations of senior judges and court commissioners.**

Ms. Williams referred the committee to Nancy Sylvester's detailed memo on the status of this rule. Ms. Williams noted that Ray Wahl's suggestion was that the rule be presented to the presiding judges, senior judges, and TCEs for comment and feedback. Ms. Williams and Ms. Sylvester will present the rule drafts to the presiding judge and senior judge meetings this week and move the item to the next agenda.

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

Ms. Williams briefly addressed the proposed changes from Brent Johnson. Ms. Williams explained the new automated PC system being implemented state-wide. This proposal would classify probable cause statements as private, rather than public. Court services expressed concerns about exposing individuals to public scrutiny when there was no basis for their arrest (no charges filed). Mr. Johnson noted that individuals could have those records expunged after 30 days.

The committee discussed the draft and how the process currently works. Judge Parkin noted citations are currently listed as private because the document itself has private information on it. Judge Pullan noted the probable cause statements have private information as well. Ms. Williams noted probable cause statements are public by default. Judge Pullan questioned whether the probable cause statements or citations would remain private forever if classified as such by the courts, or would the public still be able to obtain them. Rob Rice said the courts cannot amend what is private under the GRAMA statute. The committee discussed the difference between making the probable cause statement private in Xchange versus amending the rule to classify the document as private. Judge Boyden noted that when a person is arrested, the information is public. Judge Parkin said software can be created to redact information automatically. Ms. Williams said the PC system will roll out fairly quickly.

Judge Pullan moved to not accept the proposed draft at this time. Judge Bagley seconded the motion and it passed unanimously.

#### **(5) CJA 4-703. Outstanding Citations and Warrants.**

Ms. Williams said this rule was addressed at the justice court clerk's conference with Brent Johnson. Justice court clerks indicated that they are not following this rule. Mr. Johnson suggested that the rule be kept, but amended to remove the requirement for prosecutors to appear in court to show cause (OSC) why a citation should not be dismissed. Mr. Johnson suggested that it was sufficient for the court to send an OSC to prosecutors who could simply respond in writing. In addition, Mr. Johnson suggested that the requirement for clerks to prepare OSCs no less than quarterly should be removed or amended to once a year.

Judge Boyden and Judge Parkin said on a regular basis they work with the prosecutors to clear out old cases. Judge Boyden said her clerks pull cases prior to the warrants expiring date. Judge Pullan suggested the rule state a certain timeframe, such as quarterly or annually for a warrant review. Judge Boyden noted felony warrants do not expire. Judge Pullan recommended sending the rule back to Mr. Johnson to work with the clerks to propose a rule that coincides with current practice. Judge Parkin noted when a warrant is issued, the case pending time is stayed. Judge Parkin said there is no value to reviewing the warrants prior to them expiring. Judge Noonan asked Ms. Williams to review the juvenile rules to make sure the court procedures are consistent.

Judge Pullan questioned if there would be a need for an affidavit and probable cause to reissue an expired warrant.

Judge Boyden said when the prosecutor is presented with the expiring warrants, they respond with a probable cause/order to show cause and it is then documented in the case history. Judge Bagley said periodically the clerk adds the expiring warrant to the court calendar and the prosecutor is asked in open court what their intentions are.

The committee decided to remove the rule from the committee queue until Mr. Johnson is able to review and resubmit the rule based on the committee's feedback. Questions and direction for Mr. Johnson include:

- What is the current practice?
- Review with clerks of court to conform to current practice.
- When do citations expire?
- What does "outstanding citation" mean?
- Is the practice consistent with juvenile court rules?
- The format for prosecutors' written responses to an OSC should be formal.
- What criteria is required to find that probable causes exists to revive an expired warrant/citation? What should be included in the probable cause affidavit/Information?
- Is this consistent with Rule 7 of the Rules of Criminal Procedure? If a citation/warrant is expired, are prosecutors required to issue a summons?
- Why is this necessary? If a warrant expires, shouldn't a prosecutor have to reapply for a new warrant?
- Is there a difference if it is a misdemeanor vs. a felony?

#### **(6) CJA 4-202.09. Miscellaneous.**

Ms. Williams next addressed this rule draft received from the Standing Committee on Court Forms. The Forms Committee would like to remove the requirement for filers to certify that the documents do not contain non-public information. As a practical matter, the certification has no value. If the filer does not include a certification, there are no consequences. If the filer includes an incorrect certification, there are no consequences. If this amendment is not made, the Standing Committee on Court Forms will be required to review every form to ensure relevant forms include this certification.

Rob Rice moved to approve the rule as amended and send the rule to the Judicial Council for approval for public comment. Judge Noonan seconded the motion and it passed unanimously.

#### **(7) CJA 3-407. Accounting.**

Ms. Williams said this proposal came from John Bell, the Director of Finance. The amendment changes the membership of the Accounting Manual Review Committee to reflect current practice. The Accounting Manual Review Committee proposed this



change because the co-chairs are listed as the finance and budget managers, but those positions no longer exist in the AOC. The Director of Finance chairs the committee and has done so for some time. This is just an administrative amendment.

Judge Parkin moved to approve the draft as proposed and send to the Judicial Council for approval for public comment. Mr. Rice seconded the motion and it passed unanimously.

#### **(8) Other Business**

Ms. Williams presented a working draft of CJA 4-202.02 for the purpose of making the rule easier to understand and read. Ms. Williams noted this committee has made many requests regarding the reorganization of this rule. Judge Parkin said he believes this is a much-needed change. Ms. Williams included the summary of the classifications currently posted on the Court's website, but noted that it didn't reflect all of the requirements included in the rule itself. Judge Pullan recommended using a similar table to that found in Rule 26 of the Utah Rules of Civil Procedure. The committee recommended that the rule itself remain in narrative format, albeit reorganized, but the table should be linked to the rule.

The next meeting is scheduled for November 3, 2017 in the council room at 12:00. There being no other business the meeting was adjourned at 11:20 a.m.

# Tab 3

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Nancy Sylvester

E-mail:

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

Phone Number:

801-578-3808

Date of Request:

11/27/2017

### RULE AMENDMENT:

Rule Number:

3-111

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

This is a continuation of earlier discussions about Rules 3-111 and 3-201 and the senior judge evaluation process.

### Reason Amendment is Needed:

Rule 3-201 is finished but still requires a final vote. Rule 3-111 was held back after the comment period based on feedback from the Counsel about the lack of meaningful information derived from presiding judge and TCE surveys. Ray Wahl and I took this issue to the senior judges at their annual meeting and we received the attached feedback. I also spoke with JPEC about their evaluation process of part-time justice court judges, which consists of only qualitative information. The form used by their surveyor is attached. I have revised paragraph (3)(B) to reflect that in non-appellate courts, the presiding judge and TCE's will gather information for their surveys from questionnaires completed by court staff and jurors. In appellate courts, the presiding judge and clerk of court will gather information for their surveys from questionnaires completed by the other judges on the panel and the law clerks. We have not previously had a provision for the Court of Appeals but have needed one. I will revise JPEC's qualitative part-time justice court judges form to address the evaluation of senior judges and distribute it at P&P's meeting.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

All court levels (minus the Supreme Court), staff, and senior judges.

Select each entity that has approved this proposal:

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

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

Ray Wahl is in the process of reviewing this proposal and I will also make sure I have TCE feedback.

Requester's Signature:

/s/ Nancy Sylvester

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
- ☐ No

Queue Priority Level:

- ☐ Red
- ☐ Yellow
- ☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

**Rule 3-111. 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) **Non-attorney Surveys.**

(3)(B)(i) **Surveys of presiding judges, and court staff, and jurors regarding non-appellate senior judges.** 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 presiding judge and trial court executive will gather information for the survey from questionnaires completed by court staff on the calendars to which the senior judge is assigned and from jurors on jury trials to which the senior judge is assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). 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 qualitative assessment of the senior judge's indicates satisfactory performance. ~~survey scores are satisfactory.~~

(3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.** The Council shall measure performance of appellate senior judges by a survey of the presiding judge and clerk of court of the Court of Appeals. The presiding judge and clerk of court will gather information for the survey from questionnaires completed by the other judges on each panel to which the appellate senior judge is assigned and of the appellate law clerks with whom the appellate senior judge works. The



Administrative Office of the Courts shall distribute the survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question, retyped and edited as necessary to redact the respondent's identity. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicate satisfactory performance.

**(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.

**(45) 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.





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

## Feedback on Rule 3-111: PJ and TCE evaluations of senior judges

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

Thu, Oct 12, 2017 at 3:31 PM

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

Cc: Ray Wahl &lt;rayw@utcourts.gov&gt;, Keisa Williams &lt;keisaw@utcourts.gov&gt;

Bcc: Kim Adamson <ktadamson@aol.com>, jmarkandrus@gmail.com, Meredith Ashton <meredithashton26@gmail.com>, Judith Atherton <atherton540@gmail.com>, Kent Bachman <jlkbach@hotmail.com>, Bill Barrett <bill.barrett2358@gmail.com>, RAND BEACHAM <beacham3033@msn.com>, Judge Rand Beacham <jbeacham@utcourts.gov>, Judge James Beesley <jbeesley@utcourts.gov>, cjandjbees@hotmail.com, Russell Bench <russellwbench@gmail.com>, Judith Billings <jmbill2405@msn.com>, dar140@q.com, Sr Judge Hans Chamberlain <hqchamber@gmail.com>, "W.B. Cooper" <wbcooper@digis.net>, "Judge L. A. Dever" <jdever@utcourts.gov>, Roger <rogerdutton@yahoo.com>, "Sr. Judge Dennis Fuchs" <fuchs.dennis@gmail.com>, Sr Judge Pamela Greenwood <pamgreenwood@me.com>, Ben Hadfield <hadfieldben1@gmail.com>, shadleyfamily@yahoo.com, Steven L Hansen <hansen1495@gmail.com>, Pamela Heffernan <heffernanp@yahoo.com>, clint judkins <csjudkins@hotmail.com>, Denise Lindberg <dplindberg@q.com>, "Sr. Judge Gordon Low" <gordonjlow@gmail.com>, "Michael D. Lyon" <mdlyon@gmail.com>, Sheila McCleve <sheilakmccleve@gmail.com>, Judge Dane Nolan <dnolan@utcourts.gov>, Ric Oddone <ricoddone@hotmail.com>, Sandra Peuler <spinslc@gmail.com>, Gmail <rwreese4516@gmail.com>, Stephen Roth <rothsl1010@gmail.com>, Sterling Sainsbury <jsainsbu@gmail.com>, John Sandberg <jlsandberg@gmail.com>, Sr Judge James Shumate <james@infowest.com>, roysteen@gmail.com, Sr Judge Gary Stott <gary.stott@comcast.net>, Judge Marsha Thomas <mthomas@utcourts.gov>, William Thorne <jthorneut@gmail.com>, Fred Voros <fredvoros@gmail.com>, west007@aol.com, Judge Ronald Wolthuis <rwolthuis@utcourts.gov>

Dear Active Senior Judges,

As we discussed at your meeting last week during the Annual Judicial Conference at the Zermatt Resort, I am seeking your feedback on Rule 3-111(3)(B). This is found at lines 111 through 118 of the attached draft and the question is how to improve evaluations of your performance by presiding judges and trial court executives.

The problem we identified is that PJ's and TCE's have a difficult time evaluating senior judges because senior judge assignments can be sporadic and a senior judge may serve in any geographic region of the state. So PJ's and TCE's may not always have meaningful interactions with the senior judges serving in their districts.

Here are some suggestions that we discussed last week for improving the amount of information PJ's and TCE's receive about senior judges:

- 1) Survey jurors if the senior judge presides over a jury trial.
- 2) In May or June of each year, Ray can send to presiding judges a list of the senior judges that have served in their districts.
- 3) Draft a separate provision for the Court of Appeals (the other judges on the panel and the law clerks should be surveyed).
- 4) Senior judges provide a survey to in-court staff during their assignment. The survey would be brief, 3-5 questions, on such things as starting court on time, maintaining decorum and order, and respect for parties' time. Staff would then turn this in to the TCE.
- 5) Let attorneys be the ones who evaluate based on legal ability, and staff evaluate on things such as civility and other non-legal aspects.

If you have further feedback or suggestions for improvement, please email it to me by **Wednesday, October 25**. You may also call me at (801) 578-3808.

Thank you for your help with this.

Sincerely,

Nancy

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Nancy J. Sylvester  
Associate General Counsel  
Administrative Office of the Courts

11/24/2017

Utah State Courts Mail - Feedback on Rule 3-111: PJ and TCE evaluations of senior judges

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**Rule 3-111 (For Comment).pdf**

43K



Nancy Sylvester <nancyjs@utcourts.gov>

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## Feedback on Rule 3-111

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**Senior Judge Marsha Thomas** <mthomas@utcourts.gov>

Wed, Oct 18, 2017 at 2:49 PM

To: Nancy Sylvester <nancyjs@utcourts.gov>

Dear Nancy:

As an active senior justice court judge my feedback on Rule 3-111 is as follows:

First, I do think that the Chair of the Board of Justice Court Judges would benefit from external input regarding the evaluation criteria for each judge.

I think the 'who to evaluate' for senior active justice court judges should (as closely as possible) mirror that of their part-time colleagues. As you know, JPEC has struggled with the issue of how to evaluate part-time justice court judges, and my understanding is that they were thinking of changing their evaluation of part-time judges to include some open ended questions about the judge for exiting court participants. For input from the public, I think that will be a beneficial 'snapshot' of that judges' performance.

The 'how to get the information' should be similar for a senior active justice court judge as any other justice court judge - if all was input correctly at the court where they substituted - all should be recorded in CORIS - as the judge should show as the judge over the hearings, etc. so then if there are sufficient amount of attorney appearances to send surveys - that could be done. Or if there was a jury - questionnaires could be sent to the jurors. Additionally, the staff of each court could be surveyed.

I think my main point is just that the evaluation process would benefit from mirroring the JPEC process as closely as possible, because one part-time judge should be evaluated the same as another part-time judge.

Thank you for collecting all our input!

Sincerely,

Marsha Thomas  
[mthomas@utcourts.gov](mailto:mthomas@utcourts.gov)  
801-244-6341



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

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## Feedback on Rule 3-111: PJ and TCE evaluations of senior judges

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**Michael D. Lyon** <mdlyon@gmail.com>

Mon, Oct 23, 2017 at 12:32 PM

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

Nancy,

Here are my thoughts on the evaluation of senior district judges:

1. When a district TCE engages a senior judge for services, he or she should alert the presiding judge, the judge who normally has the calendar or case, and the in-court staff who will assist the senior judge. All of them should evaluate the senior judge within a brief time after the senior judge completes his or her service. If it is done much later, memories will dim and the evaluation will lose its reliability.
2. Clerical staff should send out, under a cover letter from the presiding or associate presiding judge, a brief evaluation of the senior judge by the lawyers and jurors in the case or court calendar. Every lawyer and juror should be asked to participate in order to provide a reliable evaluation. A small sample could skew the results.
3. The regular judge on the case may also have valuable insights. For example, I recently completed two conflict cases, one in the 4th District and one in the 1st District. In both instances, the regularly assigned judge was conversant with the issues involved and could evaluate the quality of my work, perhaps better than anyone, by reading the written decisions that I entered in both cases. The regular judge, after completing his or her evaluation, should forward that evaluation to the presiding judge.
4. Once the presiding judge has gathered all evaluations, he or she should appropriately submit them.
5. Under the foregoing scheme, the presiding judge is then in a position to recommend or not recommend that a senior judge be re-certified or even used again by a particular district. The presiding judge could also give valuable feedback to the senior judge for improvement, if appropriate, based on all of the evaluations.

I hope this is helpful. The scheme is somewhat cursory, but I believe it conveys the main ideas. I am happy to elaborate on any facet of it, if you wish.

Michael Lyon

[Quoted text hidden]





Nancy Sylvester <nancyjs@utcourts.gov>

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## Feedback on Rule 3-111: PJ and TCE evaluations of senior judges

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**Sandra Peuler** <spinslc@gmail.com>

Sat, Oct 14, 2017 at 7:17 PM

To: Nancy Sylvester <nancyjs@utcourts.gov>

Nancy, I think all of those are good suggestions, and I would support any or all of them. Thanks, Sandra Peuler

Sent from my iPad

[Quoted text hidden]

<Rule 3-111 (For Comment).pdf>

MID-LEVEL JUSTICE COURT INTERCEPT INTERVIEW
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1. Why were you in court today?

<input type="checkbox"/> I had a case	<input type="checkbox"/> Other Attorney	<input type="checkbox"/> Service Provider
<input type="checkbox"/> Family or friend had a case	<input type="checkbox"/> Bailiff	<input type="checkbox"/> Witness
<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Translator	<input type="checkbox"/> Other:
<input type="checkbox"/> Defense Attorney	<input type="checkbox"/> Court Clerk	

2. Tell me about your experience today. How well did the judge do today at treating everyone fairly?

Why do you say that? What did the judge do or say that made you feel that way? Can you give me some examples?

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3. What else can you tell me about the judge's performance today?

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4. For attorneys only: What can you tell me about the judge's legal ability and knowledge?

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Judge: \_\_\_\_\_ Courthouse: \_\_\_\_\_ Date: \_\_\_\_\_

**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, ~~The~~ 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~~ 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, ~~The~~ 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.



## Appellate Law Clerk Questionnaire on Senior Judge Performance

Please tell me about your experience today. How well did the judge:

- a) Demonstrate courtesy toward attorneys, court staff, and others in the court?

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- b) Maintain decorum in the courtroom?

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- c) Demonstrate judicial demeanor and personal attributes that promote public trust and confidence in the judicial system?

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- d) Prepare for the hearing or oral argument?

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- e) Display fairness and impartiality toward all parties?

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- f) Clearly communicate court procedures and decisions, if applicable?

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- g) Manage his or her workload?

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- h) Use the court's case management system?

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Judge: \_\_\_\_\_ Courthouse: \_\_\_\_\_ Date: \_\_\_\_\_

Name of person completing survey (optional): \_\_\_\_\_

Thank you for taking the time to fill out this questionnaire. We appreciate your service.

Court Staff: Please return this survey to the presiding judge in your district upon completion.

## Appellate Panel Questionnaire on Senior Judge Performance

Please tell me about your experience today. How well did the judge:

- a) Demonstrate courtesy toward attorneys, court staff, and others in the court?

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- b) Maintain decorum in the courtroom?

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- c) Demonstrate judicial demeanor and personal attributes that promote public trust and confidence in the judicial system?

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- d) Prepare for the hearing or oral argument?

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- e) Display fairness and impartiality toward all parties?

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- f) Clearly communicate court procedures and decisions, if applicable?

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- g) Manage his or her workload?

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- h) Use the court's case management system?

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Judge: \_\_\_\_\_ Courthouse: \_\_\_\_\_ Date: \_\_\_\_\_

Name of person completing survey (optional): \_\_\_\_\_

Thank you for taking the time to fill out this questionnaire. We appreciate your service.

Court Staff: Please return this survey to the presiding judge in your district upon completion.

## Court Staff Questionnaire on Senior Judge Performance

Please tell me about your experience today. How well did the judge:

- a) Demonstrate courtesy toward attorneys, court staff, and others in the court?

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- b) Maintain decorum in the courtroom?

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- c) Demonstrate judicial demeanor and personal attributes that promote public trust and confidence in the judicial system?

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- d) Prepare for the hearing or oral argument?

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- e) Display fairness and impartiality toward all parties?

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- f) Clearly communicate court procedures and decisions?

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- g) Manage his or her workload?

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- h) Use the court's case management system in all cases?

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Judge: \_\_\_\_\_ Courthouse: \_\_\_\_\_ Date: \_\_\_\_\_

Name of person completing survey (optional): \_\_\_\_\_

Thank you for taking the time to fill out this questionnaire. We appreciate your service.

Court Staff: Please return this survey to the presiding judge in your district upon completion.

# Tab 4

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

E-mail:

Phone Number:

Date of Request:

Nancy Sylvester for the Council

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

801-578-3808

11/24/2017

### RULE AMENDMENT:

Rule Number:

Location of Rule:

3-101

Code of Judicial Administration

### Brief Description of Proposed Amendment:

This amendment rounds some of the edges of this rule. Right now it is strict liability in terms of the Council certifying a judge for retention to JPEC. Either a judge has met the standards or he or she hasn't. This proposal would add a "good cause" standard to allow the Council to certify even if a judge has not met all of the performance standards.

### Reason Amendment is Needed:

This harshness of this rule came to the Council's attention this month when it was certifying judges for 2018 retention elections. Two judges were not certified for failing to meet the under advisement standards. The Council became very concerned that there was no out from this and requested that the rule be softened to allow some leeway for certification when the judge performs the vast majority of his or her duties competently but is deficient in a minor way.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

All judges, Council, AOC.

Select each entity that has approved this proposal:

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

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

Requester's Signature:

/s/ Nancy Sylvester

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
- ☐ No

Queue Priority Level:

- ☐ Red
- ☐ Yellow
- ☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

**Rule 3-101. Judicial performance standards.**

## Intent

To establish standards of performance upon which the Judicial Council certifies judges for retention to  
for application by the Judicial Performance Evaluation Commission.

## Applicability

This rule applies to all justices and judges of the courts of record and not of record.

## Statement of the Rule

(1) 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 judge for final determination.

(2)(A) A justice of the Supreme Court demonstrates satisfactory performance by circulating not 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.

(2)(B) A judge of the Court of Appeals demonstrates satisfactory performance by:

(2)(B)(i) circulating not 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

(2)(B)(ii) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(2)(C) A trial court judge demonstrates satisfactory performance by holding:

(2)(C)(i) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(ii) no case under advisement more than six months after submission.

(3) Education standard. Satisfactory performance is established if the judge annually obtains 30 hours of judicial education subject to the availability of in-state education programs.

(4) Physical and mental competence. Satisfactory performance is established if the response of the judge 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.

(5) For good cause, including excusable neglect, the Council may elect to certify a judge who does not meet all performance standards.

# Tab 5



## RULE AMENDMENT REQUEST

### Policy and Planning

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

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

#### REQUESTER CONTACT INFORMATION:

Name of Requester:

Dawn Marie Rubio

E-mail:

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

Phone Number:

801-578-3812

Date of Request:

11/16/2017

#### RULE AMENDMENT:

Rule Number:

Rule 7-303

Location of Rule:

Code of Judicial Administration

#### Brief Description of Proposed Amendment:

Repeal.

#### Reason Amendment is Needed:

House Bill 239 eliminates Juvenile Court jurisdiction over habitual truancy matters.

See lines 577-596 of HB239 at the following: <https://le.utah.gov/~2017/bills/static/HB0239.html>.

Similar changes have been made to the Utah Rules of Juvenile Procedure 31 to reflect the statutory changes removing juvenile court jurisdiction over habitual truants.

Is this proposal urgent?

☒ No

☐ Yes

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

These jurisdictional changes went into effect on August 1, 2017. The Juvenile Court is operating consistent with the new legislation. Repealing 7-303 would align the Utah Code of Judicial Administration with statute and practice.

**List all stakeholders:**

Juvenile Board Members -Judge Ryan Evershed, Chair; Judge Jim Michie, Vice Chair/Chair Elect; Judge Angela Fannesbeck, Judge Robert Neilson, Judge Julie Lund, Judge Doug Neilson, Judge Rick Smith

**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 checked="" 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:**

Dawn Marie Rubio, Juvenile Court Administrator

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**Date Committee Approved for Public Comment:**

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

1    **Rule 7-303. Truancy referrals.**

2    Intent:

3    To establish a uniform policy for handling truancy referrals.  
4

5    **Applicability:**

6    This rule shall apply to all truancy referrals made to the Juvenile Courts.  
7

8    **Statement of the Rule:**

9    (1) All truancy cases must be referred from the local school board or the school district and not from an  
10   individual school within the district.

11   (2) All truancy referrals must be accompanied by a statement, if required, alleging habitual truancy in  
12   defiance of efforts of school authorities and parents and setting forth the results of the review conducted  
13   at the school district level.

14   (3) If the above conditions are met, the probation department shall conduct a preliminary inquiry to  
15   determine whether a non-judicial adjustment can be made. The filing of a petition and the use of detention  
16   as a sanction for failure to attend school, even in contempt situations, should be avoided.

17

# Tab 6

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

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

Phone Number:

801-578-3884

Date of Request:

11/27/2017

### RULE AMENDMENT:

Rule Number:

3-104

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

Adds an administrative responsibility for Presiding Judges to consult with the justice court administrator to develop a rotation of magistrate judges within their district.

### Reason Amendment is Needed:

The Supreme Court's Advisory Committee on the Rules of Criminal Procedure is currently reorganizing the rules of criminal procedure. The reorganization includes dividing rule 7 into several distinct rules, each rule addressing different subjects. One of the provisions in rule 7 deals with developing a rotation of magistrates. The advisory committee originally proposed creating a rule 7D to incorporate this provision. However, when this proposal was presented to the members of the Supreme Court, one of the justices expressed the opinion that the subject matter involved internal operating procedures and therefore should not be in the rules of criminal procedure. The other court members agreed and suggested that the provision be moved to the presiding judge rule in the rules of judicial administration. I moved the language as reflected in the attached proposal.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Presiding Judges, Justice Court Administrator, Committee on Rules of Criminal Procedure, Supreme Court

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

- ☐ Accounting Manual Committee
- ☐ ADR Committee
- ☐ Board of Appellate Court Judges
- ☐ Board of District Court Judges
- ☐ Board of Justice Court Judges
- ☐ Board of Juvenile Court Judges
- ☐ Board of Senior Judges
- ☐ Children and Family Law Committee
- ☐ Court Commissioner Conduct Committee
- ☐ Court Facility Planning Committee
- ☐ Court Forms Committee
- ☐ Ethics Advisory Committee
- ☐ Ethics and Discipline Committee of the Utah Supreme Court
- ☒ General Counsel
- ☐ Guardian ad Litem Oversight Committee
- ☐ Judicial Branch Education Committee
- ☐ Judicial Outreach Committee
- ☐ Language Access Committee
- ☐ Law Library Oversight Committee

- ☐ Legislative Liaison Committee
- ☐ Licensed Paralegal Practitioner Committee
- ☐ Model Utah Civil Jury Instructions Committee
- ☐ Model Utah Criminal Jury Instructions Committee
- ☐ Policy and Planning member
- ☐ Pretrial Release and Supervision Committee
- ☐ Resources for Self-represented Parties Committee
- ☐ Rules of Appellate Procedure Advisory Committee
- ☐ Rules of Civil Procedure Advisory Committee
- ☒ Rules of Criminal Procedure Advisory Committee
- ☐ Rules of Evidence Advisory Committee
- ☐ Rules of Juvenile Procedure Advisory Committee
- ☐ Rules of Professional Conduct Advisory Committee
- ☐ State Court Administrator
- ☐ TCE's
- ☐ Technology Committee
- ☐ Uniform Fine and Bail Committee
- ☐ WINGS Committee
- ☐ NONE OF THE ABOVE

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

**Requester's Signature:**

Brent Johnson

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes
- ☐ No

**Queue Priority Level:**

- ☐ Red
- ☐ Yellow
- ☐ Green

**Committee Notes/Comments:**

**Rule 3-104. Presiding judges.****Intent:**

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

**Applicability:**

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

**Statement of the Rule:**

(1) Election and term of office.

(1)(A) Presiding judge. The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court. The presiding judge's term of office shall be at least two years. A district, by majority vote of the judges of the court, 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 presiding officer of the Council to serve for two years.

(1)(B) Associate presiding judge.

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court 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 or by the court.

(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) Court organization.

(2)(A) Court en banc.

(2)(A)(i) Multi-judge courts shall have regular court en banc meetings, including all judges of the court and the court executive, to discuss and decide court business. The presiding judge has the discretion to excuse the attendance of the court executive from court en banc meetings called for the purpose of discussing the performance of the court executive. In single-judge courts, the judge shall meet with the court executive to discuss and decide court business.

(2)(A)(ii) The presiding judge shall call and preside over court meetings. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(2)(A)(iii) Each court shall have a minimum of four meetings each year.

(2)(A)(iv) 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)(A)(v) In addition to regular court en banc meetings, the presiding judge or a majority of the judges may call additional meetings as necessary.

(2)(A)(vi) Minutes of each meeting shall be taken and preserved.

(2)(A)(vii) Other than judges and court executives, those attending the meeting shall be by court invitation only.

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

(2)(B) Absence of presiding judge. When the presiding judge and the associate presiding judge, if any, are absent from the court, an acting presiding judge shall be appointed. The method of designating an acting presiding judge shall be at the discretion of the presiding judge. All parties that must necessarily be informed shall be notified of the judge acting as presiding judge.

(3) Administrative responsibilities and authority of presiding judge.

(3)(A)(i) Generally. The presiding judge is charged with the responsibility for the effective operation of the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and directives of the Council as they pertain to the administration of the courts, orders of the court en banc

and supplementary rules. The presiding judge has the authority to delegate the performance of non-judicial duties to the court executive. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

(3)(A)(ii) Caseload. Unless the presiding judge determines it to be impractical, there is a presumption that the judicial caseload of the presiding judge shall be adjusted to provide the presiding judge sufficient time to devote to the management and administrative duties of the office. The extent of the caseload reduction shall be determined by each district.

(3)(A)(iii) Appeals. Any judge of the judicial district may ask the Chief Justice or Judicial Council to review any administrative decision made by the presiding judge of that district.

(3)(B) Coordination of judicial schedules.

(3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.

(3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge consistent with Rule 3-103(4).

(3)(C) Authority to appoint senior judges.

(3)(C)(i) The presiding judge is authorized to use senior judge coverage for up to 14 judicial days if a judicial position is vacant or if a judge is absent due to illness, accident, or disability. Before assigning a senior judge, the presiding judge will consider the priorities for requesting judicial assistance established in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule 11-201(6).

(3)(C)(ii) The presiding judge will notify the State Court Administrator when a senior judge assignment has been made.

(3)(C)(iii) If more than 14 judicial days of coverage will be required, the presiding judge will promptly present to the State Court Administrator a plan for meeting the needs of the court for the anticipated duration of the vacancy or absence and a budget to implement that plan. The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should estimate the funds needed for travel by judges and for time and travel by senior judges.

(3)(C)(iv) If any part of the proposed plan is contested by the State Court Administrator, the plan will be reviewed by the Management Committee of the Judicial Council for final determination.

(3)(D) Court committees. The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(3)(E) Outside agencies and the media.

(3)(E)(i) The presiding judge or court executive 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, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court.

(3)(E)(ii) Generally, the presiding judge or, at the discretion of the presiding judge, the court executive shall represent the court and make statements to the media on matters pertaining to the total court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(3)(F) Docket management and case and judge assignments.

(3)(F)(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(3)(F)(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(3)(F)(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the State Court Administrator, request assistance of visiting judges or other appropriate resources when needed to handle the workload of the court.

(3)(F)(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

(3)(G) Court executives.

(3)(G)(i) The presiding judge shall review the proposed appointment of the court executive made by the State Court Administrator and must concur in the appointment before it will be effective. The presiding judge shall obtain the approval of a majority of the judges in that jurisdiction prior to concurring in the appointment of a court executive.



(3)(G)(ii) The presiding judge for the respective court level and the state level administrator shall jointly develop an annual performance plan for the court executive.

(3)(G)(iii) Annually, the state level administrator shall consult with the presiding judge in the preparation of an evaluation of the court executive's performance for the previous year, also taking into account input from all judges in the district.

(3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the court executive, including coordination of annual leave.

(3)(G)(v) Pursuant to Council policy and the direction of the state level administrator, the court executive has the responsibility for the day-to-day supervision of the non-judicial support staff and the non-judicial administration of the court. The presiding judge, in consultation with the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the support staff and the general administration of the court including budget, facility planning, long-range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

(3)(H) Courtrooms and facilities. The presiding judge shall direct the assignment of courtrooms and facilities.

(3)(I) Recordkeeping. Consistently with Council policies, the court executive, in consultation with the presiding judge, shall:

(3)(I)(i) coordinate the compilation of management and statistical information necessary for the administration of the court;

(3)(I)(ii) establish policies and procedures and ensure that court personnel are advised and aware of these policies;

(3)(I)(iii) approve proposals for automation within the court in compliance with administrative rules.

(3)(J) Budgets. The court executive, in consultation with the presiding judge, shall oversee the development of the budget for the court. In contract sites, the court executive shall supervise the preparation and management of the county budget for the court on an annual basis and in accordance with the Utah Code.

(3)(K) Judicial officers. In the event that another judge or commissioner of the court 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)(K)(i) Meet with and explain to the judge or commissioner the reasons for the directive given or the position taken and consult with the judge or commissioner.

(3)(K)(ii) Discuss the position with other judges and reevaluate the position.

(3)(K)(iii) Present the problem to the court en banc or a committee of judges for input.

(3)(K)(iv) Require the judge or commissioner to participate in appropriate counseling, therapy, education or treatment.

(3)(K)(v) Reassign the judge or commissioner to a different location within the district or to a different case assignment.

(3)(K)(vi) Refer the problem to the Judicial Council or to the Chief Justice.

(3)(K)(vii) In the event that the options listed above in subsections (i) through (vi) 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)(L) Cases under advisement.

(3)(L)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. The final determination occurs when the judge resolves the pending issue by announcing the decision on the record or by issuing a written decision, regardless of whether the parties are required to subsequently submit for the judge's signature a final order memorializing the decision.

(3)(L)(ii) Once a month each judge shall ~~submit a statement on a form to be provided by the State Court Administrator notifying report~~ to the presiding judge of whether the judge currently has any cases or issues that have been held under advisement for more than two months. If the judge has any such cases or issues, and the judge shall explain the reason why the case or issue continues to be held under advisement.

(3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than two months to the appropriate state level administrator and indicate the reasons why the case or issue continues to be held under advisement.

(3)(L)(iv) If a case or issue is held under advisement for an additional 30 days, the state level administrator shall report that fact to the Council.

(3)(M) Board of judges. The presiding judge shall serve as a liaison between the court and the Board for the respective court level.

(3)(N) Supervision and evaluation of court commissioners. The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

Effective November 1, 2016.

# Tab 7

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

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

Phone Number:

801-578-3884

Date of Request:

11/27/2017

### RULE AMENDMENT:

Rule Number:

6-601

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

Allows Mental Health Commissioners to preside over essential treatment proceedings for substance abuse.

### Reason Amendment is Needed:

During the last legislative session, the legislature created a new cause of action to allow individuals to seek treatment for someone who is suffering from an opioid addiction. These new statutes are found in Title 62A, Chapter 15 of the Utah Code. The chapter is referred to as the "Substance Abuse and Mental Health Act." Court commissioners are currently authorized to conduct proceedings under part 6, which includes the provisions on civil commitment of mentally ill individuals. Because court commissioners are already conducting proceedings under the Substance Abuse and Mental Health Act, the Second District Court is proposing that court commissioners be allowed to preside over the essential treatment proceedings. There are obviously some differences between civil commitment proceedings for mental health and ordering treatment for substance abuse, but both proceedings involve ordering examiners to conduct examinations of respondents and involve evidentiary hearings. Just as in the mental health area, the commissioners' determinations are considered to be recommendations subject to review by a judge.

I have no official position on whether court commissioners should be able to handle these proceedings. It is a policy decision to be made by Policy and Planning.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Commissioners, 2nd District Court

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

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

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

**Requester's Signature:**

Brent Johnson

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**Rule 6-601. Mental health commissioners.**

**Intent:**

To identify the types of cases and matters which commissioners are authorized to hear, to identify the types of relief which commissioners may recommend, and to identify the types of orders which may be issued by commissioners.

**Applicability:**

This rule shall govern proceedings for essential treatment for sufferers of a substance abuse disorder and mental health proceedings for involuntary commitment of an individual.

**Statement of the Rule:**

(1) Types of cases and matters. All petitions for essential treatment and all applications for involuntary commitment of individuals alleged to be mentally ill, which are filed in in counties where mental health commissioners are appointed and serving, shall be referred to the commissioner upon filing with the clerk of the court, unless otherwise ordered by the presiding judge.

(2) Authority of commissioner.

(2)(A) Except as limited in paragraph (4), the commissioner has authority to grant relief set forth in Utah Code Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities and Part 12, Essential Treatment and Intervention Act.

(2)(B) The commissioner has authority to sign orders directing individuals specified as designated examiners by the State Division of Mental Health to conduct examinations of proposed patients in actions filed under Utah Code Title 62A, Chapter 15, Part 6.

(2)(C) The commissioner has authority to sign orders directing individuals who qualify as essential treatment examiners of respondents in actions filed under Title 62A, Chapter 15, Part 12.

(2)(D) The commissioner has authority to recommend dismissal of the application based on the report of the examination.

(2)(E) The commissioner has authority to hold an evidentiary hearing and make findings of fact, conclusions of law and recommendations to the court.

(2)(F) The commissioner's recommendation has the effect of an order of the court until it is modified by the court.

(3) Judicial review of mental health proceedings.

(3)(A) A petition for a new hearing under Section 62A-15-631(13) shall be filed within 30 days after entry of the commissioner's recommendations.

(3)(B) If the new hearing is held before a commissioner, the person committed or that person's representative may object to the commissioner's recommendations under Rule of Civil Procedure 108.

(4) Prohibitions.

(4)(A) Commissioners shall not make final adjudications.

(4)(B) Commissioners shall not serve as pro tempore judges in any matter, except as provided by Rule of the Supreme Court.

# Tab 8

# RULE AMENDMENT REQUEST

## Policy and Planning

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### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

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

Phone Number:

801-578-3884

Date of Request:

11/27/2017

### RULE AMENDMENT:

Rule Number:

4-202.07

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

Pursuant to a records access request, clarifies that the requester has the right to appeal a response from the court that a record does not exist.

Extends the response time for the court to respond to an appeal from 5 to 10 days.

Extends the time for the Management Committee to provide a written decision on a records request appeal from 5-10 days.

### Reason Amendment is Needed:

There are three proposals:

1. Clarify that a person may appeal a response stating that the court does not have the record. Rule 4-202.05 distinguishes between denials of requests and responses that the record does not exist, but the appeals rule does not. In theory, we could reject an appeal on a response stating that the record does not exist, although we have never done so. The proposed change would at least clarify that those responses are appealable, as I think they should be.

2. Increase the time-frames for responses. Appeals to the state court administrator are not uncommon. There are very few appeals that end up with the Management Committee. When an appeal is sent to the state court administrator, the state court administrator refers those to the legal department for research and response. We have found that the response time of five days is sometimes too short because of the time necessary to prioritize the appeal, research the appeal, make efforts to resolve or negotiate a resolution of the appeal, and prepare a decision. Extending the response time to 10 days will be very helpful. Extending the time will not have a significant impact on those who are appealing these decisions.

3. Extending the time for mailing a Management Committee decision. Additional time is sometimes necessary because the Committee's decision must be reduced to writing and disseminated for approval before it is mailed.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

General Counsel, State Court Administrator, Management Committee



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

- ☐ Accounting Manual Committee
- ☐ ADR Committee
- ☐ Board of Appellate Court Judges
- ☐ Board of District Court Judges
- ☐ Board of Justice Court Judges
- ☐ Board of Juvenile Court Judges
- ☐ Board of Senior Judges
- ☐ Children and Family Law Committee
- ☐ Court Commissioner Conduct Committee
- ☐ Court Facility Planning Committee
- ☐ Court Forms Committee
- ☐ Ethics Advisory Committee
- ☐ Ethics and Discipline Committee of the Utah Supreme Court
- ☒ General Counsel
- ☐ Guardian ad Litem Oversight Committee
- ☐ Judicial Branch Education Committee
- ☐ Judicial Outreach Committee
- ☐ Language Access Committee
- ☐ Law Library Oversight Committee

- ☐ Legislative Liaison Committee
- ☐ Licensed Paralegal Practitioner Committee
- ☐ Model Utah Civil Jury Instructions Committee
- ☐ Model Utah Criminal Jury Instructions Committee
- ☐ Policy and Planning member
- ☐ Pretrial Release and Supervision Committee
- ☐ Resources for Self-represented Parties Committee
- ☐ Rules of Appellate Procedure Advisory Committee
- ☐ Rules of Civil Procedure Advisory Committee
- ☐ Rules of Criminal Procedure Advisory Committee
- ☐ Rules of Evidence Advisory Committee
- ☐ Rules of Juvenile Procedure Advisory Committee
- ☐ Rules of Professional Conduct Advisory Committee
- ☐ State Court Administrator
- ☐ TCE's
- ☐ Technology Committee
- ☐ Uniform Fine and Bail Committee
- ☐ WINGS Committee
- ☐ NONE OF THE ABOVE

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

**Requester's Signature:**

Brent Johnson

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes
- ☐ No

**Queue Priority Level:**

- ☐ Red
- ☐ Yellow
- ☐ Green

**Committee Notes/Comments:**

**Rule 4-202.07. Appeals.**

Intent:

To establish the rights and procedures in an appeal of a record request.

Applicability:

This rule applies to requests to access or to classify a court record other than a motion under Rule 4-202.04.

Statement of the Rule:

(1) A person requesting access to a court record may appeal a denial of the request, a response that the record does not exist or is not maintained by the court, a claim of extraordinary circumstances or the time claimed necessary to address the extraordinary circumstances. A person requesting that a court record be classified as private or protected may appeal a denial of the request. A person whose interests are protected by closure may appeal a decision to permit access to a court record. An appeal shall be made in writing within 30 days after the decision giving rise to the appeal. A person described in this subsection may petition for judicial review as provided by statute.

(2) If the original request was to the custodian of the record, the appeal is to the state court administrator. If the original request was to the state court administrator, the appeal is to the Management Committee of the Judicial Council. The appeal of a decision by the state court administrator is to the Management Committee.

(3) The notice of appeal shall contain the appellant's name, mailing address, daytime telephone number, the relief sought, and a statement of facts, authority and argument in support of the appeal.

(4) An appeal to the state court administrator is deemed denied unless a decision on the appeal is mailed within 5 10 business days after receiving the appeal or within 15 business days after mailing notice under Rule 4-202.05(2)(B). An appeal to the Management Committee is deemed denied unless a decision on the appeal is mailed within 5 10 business days after the first meeting of the Committee held more than 15 business days after receiving the appeal.

(5) The state court administrator shall mail notice of the Management Committee meeting to all participants at least 10 business days before the meeting. At least 7 business days before the meeting, all participants shall mail to the state court administrator and to the other participants a written statement of facts, authority and argument in support of or opposition to the appeal. The Management Committee may permit any person whose interests are substantially affected by a decision to participate. The deliberations of the Management Committee are closed, but the balance of the hearing on the appeal is an open and public meeting of which notice will be given in accordance with Rule 2-103.

(6) The Management Committee shall allow the participants a reasonable opportunity to present facts, authority and argument in support of or opposition to the appeal. The order of presentation shall be decided by the Management Committee. The Management Committee may review the record in a closed meeting. Discovery is prohibited, but the Management Committee may compel the production of evidence.

(7) The state court administrator shall mail the decision on an appeal to all participants. The decision shall:

(7)(A) describe the record or portions of the record to which access is denied in a manner that does not disclose information other than public information;

(7)(B) refer to the authority under which the request is being denied;

(7)(C) make findings and conclusions about specific records;

(7)(D) identify and balance the interests favoring opening and closing the record; and, if the record is closed, determine there are no reasonable alternatives to closure sufficient to protect the interests favoring closure;

(7)(E) state that the requester may appeal or seek judicial review; and

(7)(F) state the time limits for filing an appeal or petition for judicial review, and the name and address of the person to whom the appeal or petition must be directed.

(8) The time periods in this rule may be extended by mutual agreement. A document required to be sent by mail may be sent by email, fax or hand-delivery. The duties of the state court administrator may be delegated.

# Tab 9

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

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

Phone Number:

801-578-3884

Date of Request:

11/27/2017

### RULE AMENDMENT:

Rule Number:

220

Location of Rule:

Human Resources Policies and Procedures Manual

### Brief Description of Proposed Amendment:

Identifies several positions which will now be designated as "highly sensitive positions." Creates a new definition for "Highly Sensitive Position."

Requires pre-employment drug testing as a condition of employment for employees in positions designated as highly sensitive.

### Reason Amendment is Needed:

The proposal comes from the TCEs. Initially TCEs discussed whether to propose a policy of random drug testing for certain employment categories. They are particularly concerned about deputy probation officers. Deputy probation officers transport juveniles on a daily basis for work crews. The TCEs are concerned both about the driving and the interaction with the juveniles and therefore considered a random drug testing policy. Ultimately they decided against the policy and instead are proposing pre-employment drug testing. The first aspect of the drug testing policy is creating a category of "highly sensitive positions." The executive branch has a category of highly sensitive positions and they mostly include positions such as law enforcement. They also include positions that frequently handle money. The TCEs are proposing that highly sensitive positions include probation officers, deputy probation officers, and others who work with juveniles, such as volunteer coordinators and program managers. The most controversial category is the last category, which is any other position that frequently requires operating a motor vehicle. This will include clerks of court in some districts in which the clerks of court frequently travel from court site to court site. This will also include the court mediators.

I talked to Nini Rich about the proposal and she expressed concerns. Ms. Rich stated that it is probably rare to conduct preemployment testing of professionals. Ms. Rich is concerned that the requirement may reduce the number of applicants because some individuals may not apply as a matter of principle, while there may be other individuals who are excellent mediators but might engage in occasional recreational use of marijuana. Ms. Rich stated that she knows some professionals who do excellent work in their fields but also partake from time to time. I am not sympathetic to this last concern, because smoking marijuana, even on someone's personal time, can be a basis for termination. (But maybe we're in an era of don't ask - don't tell.) The other concerns about the applicant pool may be legitimate, but considering only the final candidate will be subject to testing, I believe that the program will still attract excellent applicants. Perhaps there is an argument in favor of not drug testing professionals as a matter of principle, and that can be debated by the Policy & Planning Committee, but I personally see no reason for distinguishing professionals from other employment categories, as if professionals are some how entitled to greater deference.

The second aspect of the policy involves the actual procedures for drug testing. I have reviewed other preemployment drug testing policies and some are fairly lengthy. But I do not think that a lengthy policy is necessary. One of the issues raised by the TCEs is whether a test should also capture alcohol use. From what I understand these types of tests are difficult to draw conclusions from and therefore may not be worth testing. The question is whether we test for abused controlled substances, or commonly abused substances (or maybe there is some better phrasing).

Is this proposal urgent?

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

☒ No

☐ Yes

List all stakeholders:

TCEs, some Juvenile Court employees, State Court Administrator

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

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

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

**Requester's Signature:**

Brent Johnson

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

## HUMAN RESOURCE POLICY

### DEFINITIONS

**Administrative Leave:** Leave provided at the discretion of management, to which the employee has no entitlement and which is not charged against the employee's accumulated leave accounts.

**Annual Leave:** Leave accumulated pursuant to an employee's compensation package and to which the employee is entitled use, subject to management's approval.

**Application:** Written documents used to apply for a position with the courts.

**Appointing Authority:** The manager authorized to make appointments in a district, court, or office.

**Board:** Unless otherwise stated, the Career Service Review Board for the Courts.

**Career Ladder:** Functional groupings of similar types of class series by ascending levels of difficulty.

**Career Service Employee:** An employee that was hired to a career service position through a competitive selection process and has successfully completed probation.

**Career Service Exempt:** See definition contained in Policy 230, Employment Categories.

**Career Service Position:** A position in which selection and advancement are governed by comparative merit principles and for which an employee may redress grievances through the grievance process.

**Category of Work:** Positions, job classes, work units, or functions which the state court administrator designates for elimination through a reduction-in-force.

**Class:** A group of positions sufficiently similar that the same title, pay range, and test standards may be applied to each position in the group.

**Class Series:** A grouping of classes on the basis of ascending levels of skill, responsibility or difficulty which represent normal lines of advancement.

**Class Specification:** A description of the duties, responsibilities, skills and the required minimum education, experience, and other qualifications defining a class.

**Court Executive:** Any Trial Court Executive or Appellate Court Administrator.

**Dishonest or Fraudulent Acts:** Acts which include, but are not limited to: theft; misappropriation of funds, securities, supplies or any other assets; unauthorized alteration of court documents; unauthorized use of court equipment; unauthorized modification or release of computer equipment or software.

**Day/Time Period:** A calendar day unless otherwise specified. In computing any period of time prescribed by these policies, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless the last day of the period is a Saturday, Sunday, or legal holiday, in which event the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday. When a period of time allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. When a person is required or permitted to do an act within a prescribed period of time after service of or receipt of a paper and the paper is served by mail, three days shall be added to the prescribed period.

**DHRM:** Utah State Department of Human Resource Management, for the executive and legislative branches of government.

**Director:** Unless otherwise stated, the Director of the Division of Human Resource Management for the Judicial Branch.

**Employ:** To hire, supervise, appoint, vote for, or recommend for appointment or promotion.

**Employee:** For the purposes of these policies, an employee is a worker who occupies a position other than justice, judge, or court commissioner.

**Equal Employment Opportunity:** The practice of fair employment based upon individual merit without regard to race, color, sex, age, religion, disability, ancestry, national origin, or any other non-job related factors.

**Ex-parte:** Communication with a party to an action without notice to the other party or parties.

**Examination:** A written and/or oral exercise designed to test an applicant's qualifications or knowledge for hiring or promotion.

**Excusable Neglect:** The failure to meet time requirements which results from an unexpected or unavoidable hindrance or accident, and not from the employee's carelessness, inattention or willful disregard of the grievance process.

**First Level of Review:** The clerk of court for employees of the Supreme Court, Court of Appeals, or District Court; the clerk of court or chief probation officer for employees of the Juvenile Court; the supervisor for employees of the Administrative Office of the Courts.

**Full-Time Employee:** An employee who works 40 hours per week.

**FLSA:** The federal Fair Labor Standards Act.

**Furlough:** A temporary leave of absence from duty without pay, imposed by management.

**Grievance:** A complaint made by a career service employee pursuant to policy 620, Grievance and Appeal.

**Highly Sensitive Position:** Probation officer, deputy probation officer and any position that requires frequent contact with juveniles other than on work premises and any position that frequently requires operating a motor vehicle for work purposes.

**Human Resource Management:** Those activities related to recruitment, selection, and employment, classification, and salary and benefits administration with the courts.

**Intern:** An individual working for the courts to fulfill an educational program on-the-job requirement.

**Intimate Partner:** A companion in a relationship involving repeated dating and/or sexual contact.

**Intimate Relationship:** A relationship involving repeated dating and/or sexual contact.

**Job Share:** A working arrangement in which employees share the duties and responsibilities of one full-time position.

**Malfeasance:** Intentional wrongdoing; deliberate violation of law or standard; or intentional mismanagement of responsibilities.

**Misfeasance:** Performance of a lawful action in an illegal or improper manner.

**Management:** Individuals with responsibility for supervision.



**Medication:** Legal prescription and non-prescription drugs.

**Nonfeasance:** Failure to do what one has the responsibility to do.

**Ombudsperson:** See definition contained in Policy 500, Code of Personal Conduct.

**Political Activity:** Running for or holding political or elective public office; making or influencing governmental policy unrelated to the performance of official court duties; or active support of a partisan or special interest public policy agenda.

**Probation:** The period of time during which an employee's performance is observed and evaluated by management, to determine if career status should be granted.

**Promotion:** Advancement to a class, exclusive of any classification review, involving substantially greater complexity, responsibility, judgment, and skill and having a higher entry salary.

**Reappointment Register:** A list of former career service employees of the courts who were dismissed within the last 12 months as a result of a reduction in force or, after having accepted an exempt position, were dismissed for reasons other than cause.

**Reassignment:** Lateral movement to a position involving similar complexity, responsibility, judgment, and skill requirements as the position formerly held.

**Reclassification:** Reassignment of a job class to another class based upon internal comparison and/or market data.

**Red Circle:** Suspension of salary advancement for an employee who is paid a salary that exceeds the maximum of the salary range assigned to the class.

**Reduction in Force:** Abolishment of positions which result in the termination of staff required by inadequate funds, change in workload or lack of work.

**Relative:** Father, mother, husband, wife, son, daughter, stepparent, stepchild or sibling, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild, grandparent.

**Second Level of Review:** The court executive for employees of the District, Circuit, or Juvenile Court; the deputy state court administrator for employees of the Supreme Court or Court of Appeals; an assistant state court administrator for employees of the Administrative Office of the Courts.

**Serious Health Condition:** A condition which requires either inpatient care or continuing treatment by a health care provider as defined in Title 29, Part 825 of the Code of Federal Regulations.

**Substantial Evidence:** Evidence that a reasonable person would rely upon as adequate to support a conclusion.

**Suspension:** Disciplinary action taken by management to temporarily relieve an employee of duties and place the employee on leave without pay.

**Telecommuting:** A cooperative agreement between an employee and the State involving work an employee performs on a routine basis, independent of others, that can be accomplished by the employee outside the office environment.

**Third Level of Review:** The court level administrator for employees of the District, Circuit, or Juvenile Court; the state court administrator for employees of the Supreme Court, Court of Appeals, or the Administrative Office of the Courts.

171 **Work Week:** The standard work week shall begin at 12:00 a.m. on Saturday and end at 11:59 p.m. on  
172 the following Friday.

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174 **Volunteer:** A person who donates service to the courts without pay or other compensation.

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**EMPLOYMENT ASSESSMENTS 220****PURPOSE**

In order to facilitate effective selection and promotion decisions, the courts may utilize basic skills assessments and written and/or verbal exercises which simulate typical scenarios employees encounter when working for the court system. The purpose of this policy is to establish procedures for developing and administering these assessments.

**SCOPE**

This policy applies to all applicants for employment and promotion.

**CROSS REFERENCES**

Fairness in Recruiting and Hiring, Policy 130  
Recruitment and Selection, Policy 210  
Employment Categories, Policy 230

**POLICY AND PROCEDURE****1. Promotion and Pre-Employment Assessments**

1.1 Employment Assessments shall test job-related skills, knowledge and aptitude, and meet requirements set forth by the director. Assessments shall be developed and administered under the supervision of the director.

1.2 The director shall develop procedures for the following:

1.2.1 Timely notification to applicants of the location, date, and time of the assessment;

1.2.2 Reasonable accommodation for applicants with disabilities;

1.2.3 Disqualification;

1.2.4 Rating applicants based upon job criteria.

1.3 Written and/or verbal exercises shall be developed in conjunction with the director.

1.4 Written assessments should be administered in an environment conducive to consistency.

1.5 All applications, assessments and records for a position shall be maintained by the director for two years.

**2. Pre-Employment Drug Testing**

2.1 A candidate for a highly sensitive position who has received an offer of employment will be required to undergo and pass a test for commonly abused substances as a condition of employment.

2.2 Testing shall be at the court's expense and shall be at a facility and under the standards established in Policy 520 Substance Abuse.

2.3 If a candidate tests positive, the candidate may request a retest of the sample, at the candidate's expense.

# Tab 10

# 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:

Brent Johnson

E-mail:

bjohnson@utcourts.gov

Phone Number:

801-578-3884

Date of Request:

11/27/2017

### RULE AMENDMENT:

Rule Number:

500

Location of Rule:

Human Resources Policies and Procedures Manual

### Brief Description of Proposed Amendment:

Creates a new section of the Human Resources Code of Personal Conduct on Court Security, including clarification on possession of weapons.

### Reason Amendment is Needed:

The proposal comes from the Trial Court Executives (TCEs).

The TCEs requested a more detailed security policy after a probation officer inadvertently left a handgun in a state vehicle. The probation officer had a concealed weapons permit. Carrying a weapon in a state vehicle is a violation of state regulations, even if the person has a concealed weapons permit. The TCEs were interested, however, in the fact that the probation officer did not violate any specific court policies in possessing a weapon. They therefore asked for a policy on weapons and court security broadly.

The TCEs want to make certain that employees understand when and where they can possess weapons. It is already clear that employees cannot possess weapons in courthouses. The TCEs want to extend this prohibition to other areas, such as state vehicles, probation offices that are not covered under security plans, and any other offices where employees might work. The TCEs also want to make clear that employees may not possess weapons at conferences, meetings, or other gatherings that are conducted off court premises. Some of the provisions in the policy are somewhat redundant, but the policy needs to be broad in one sense, while also not infringing on certain rights.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

TCEs, State Court Administrator, Security Director

**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 |
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| <input type="checkbox"/> Court Commissioner Conduct Committee                      | <input type="checkbox"/> Rules of Civil Procedure Advisory Committee      |
| <input type="checkbox"/> Court Facility Planning Committee                         | <input type="checkbox"/> Rules of Criminal Procedure Advisory Committee   |
| <input type="checkbox"/> Court Forms Committee                                     | <input type="checkbox"/> Rules of Evidence Advisory Committee             |
| <input type="checkbox"/> Ethics Advisory Committee                                 | <input type="checkbox"/> Rules of Juvenile Procedure Advisory Committee   |
| <input type="checkbox"/> Ethics and Discipline Committee of the Utah Supreme Court | <input type="checkbox"/> Rules of Professional Conduct Advisory Committee |
| <input checked="" type="checkbox"/> General Counsel                                | <input type="checkbox"/> State Court Administrator                        |
| <input type="checkbox"/> Guardian ad Litem Oversight Committee                     | <input checked="" type="checkbox"/> TCE's                                 |
| <input type="checkbox"/> Judicial Branch Education Committee                       | <input type="checkbox"/> Technology Committee                             |
| <input type="checkbox"/> Judicial Outreach Committee                               | <input type="checkbox"/> Uniform Fine and Bail Committee                  |
| <input type="checkbox"/> Language Access Committee                                 | <input type="checkbox"/> WINGS Committee                                  |
| <input type="checkbox"/> Law Library Oversight Committee                           | <input type="checkbox"/> NONE OF THE ABOVE                                |

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

**Requester's Signature:**

Brent Johnson

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

## **CODE OF PERSONAL CONDUCT 500**

### **PURPOSE**

Public employment in the court system is a public trust justified by the confidence that the citizenry places in the integrity of officers and employees of the judicial branch. Judicial employees should participate in establishing, maintaining, and enforcing, and should personally observe high standards of conduct in order to preserve the integrity and independence of the judiciary. This policy should be construed and applied to further that objective.

### **SCOPE**

This policy establishes standards of conduct expected of court employees. It addresses the general performance of duties, abuse of position, confidentiality, conflict of interest, outside interests and secondary employment.

This policy applies to all court employees.

### **CROSS REFERENCES:**

Utah Code Ann. §34A-5-106, Utah Anti-Discrimination Act, Employment Practices  
42 United States Code §21-VI, Equal Employment Opportunity  
Code of Judicial Administration §4-202.01, et seq., Dissemination,  
§3-201, Professional Conduct of Court Commissioners,  
§3-304(9)(B), Official Court Reporters  
Code of Judicial Conduct  
Grievance and Appeal, Policy 620  
Discipline, Policy 610  
Fairness in Recruiting and Hiring, Policy 130  
Utah Administrative Rules 'R-37-1-8-(6)(a), Risk Management Rules, Underwriting Standards Problem  
Drivers

### **POLICY AND PROCEDURE**

#### **1. General.**

1.1 Employees shall comply with the provisions of UCA 67 16 et. seq., the Utah Public Officers' and Employees' Ethics Act.

1.2 Employees whose conduct is governed by more than one set of ethical regulations shall conform their conduct to the more stringent standard.

1.3 Employees shall maintain conduct standards both on and off duty and are obligated to report to management within five days any arrest and/or charge, other than a minor traffic citation, under a state or federal statute.

#### **2. Management.**

2.1 Management shall make reasonable efforts to ensure that employees subject to their direction and control observe the ethical standards set out in these policies.

2.2 Management shall diligently discharge administrative responsibilities, maintain professional competence in judicial administration and assist other employees in the performance of their duties.

2.3 Managers shall provide information and instruction to employee regarding the security policy and procedures for their work location.

2.4 Management shall take action regarding any unethical conduct of which they may become aware, initiating appropriate disciplinary measures against an employee for any such conduct and reporting to appropriate authorities evidence of any unethical conduct by judges or lawyers.

2.5 Managers may belong to an employee organization but shall not be eligible to be a representative or officer of an employee organization that assists employees in filing grievances or civil actions.

### 3. Performance of duties.

3.1 Employees are expected to apply themselves to their assigned duties during the full schedule for which they are being compensated.

3.2 No employee shall conceal, alter, falsify, destroy, mutilate, or fail to make required entries on any court records. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.

3.3 No employee shall discriminate or manifest by words or actions, bias or prejudice against any person in the conduct of service.

3.4 An employee shall not recommend attorneys, therapists, counseling agencies or other professionals but shall refer such inquiries to the licensing agency or professional organization that governs that profession. When an employee is required as part of the employee's job to refer an individual to a therapist or counseling agency, the employee shall follow the guidelines established by the district and not inconsistent with section 8 below, Conflict of Interest.

3.5 No employee shall provide legal advice, unless it is part of an official duty.

3.6 An employee shall respond to appropriate inquiries and provide information regarding court procedures.

3.7 No employee shall refuse to enforce or otherwise carry out any properly issued rule or order of the court, nor shall a court employee exceed that authority.

3.8 No employee shall be required to perform any duty not related to the official business of the court.

### 4. Abuse of position.

4.1 An employee shall use the public resources, property, and funds under the employee's control, and any influence, power, authority or information derived therefrom, judiciously and solely in accordance with established procedures.

4.2 An employee shall not use or attempt to use a court position to secure privileges, exemptions or exert undue influence.

4.3 An employee shall not discriminate by dispensing special favors to anyone, whether or not for remuneration.

4.4 An employee shall not assist any person securing a contract with the court system in a manner not available to any other interested person.

4.5 An employee shall not be influenced in the performance of the employee's duties by kinship, rank or position.



4.6 An employee shall not request or accept a fee or compensation beyond that received by the employee in an official capacity for advice, information, or assistance that is otherwise available from the courts.

4.7 An employee shall not solicit, accept or agree to accept any gifts, loans, gratuities, discounts, favors, hospitality, or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties. This subsection does not apply to the following:

4.7.1 An award presented in recognition of public services;

4.7.2 Any bonafide loan made in the ordinary course of business by any institution authorized by the laws of this state or any other state to make such loans;

4.7.3 Political campaign contributions if used in a political campaign of the recipient public officer or public employee;

4.7.4 An occasional non pecuniary gift of nominal value, given to all of the employees in an office.

4.8 An employee shall not receive outside compensation for performance of court duties except in cases of:

4.8.1 An award of meritorious public contribution publicly awarded;

4.8.2 The receipt of honoraria or expenses paid for papers, transcripts, talks, demonstrations, or appearances made by an employee during work hours with the approval of management; or on the employee's own time for which the employee is not compensated by the courts and which is not prohibited by these rules;

4.8.3 The receipt of usual social amenities, ceremonial gifts, or insubstantial advertising gifts.

4.9 Under the Utah Procurement Code, those who are involved in the purchasing process may not receive any gifts or similar favors from vendors. Vendors should be discouraged from sending any gifts of any type. If a vendor offers or sends a gift, the gift should be rejected or returned. However, if a vendor sends a consumable of nominal value, such as a box of chocolates for the holiday season, that can be put in an area and shared with others in the office, those do not need to be returned to the vendor. This policy would apply to proposed gifts from interpreters and others who are contractors with the court.

## 5. Dishonest or Fraudulent Acts.

5.1 All persons employed by the courts are responsible for the prevention and detection of dishonest and fraudulent acts. An employee shall notify management of any and all such acts.

5.1.1 Management shall establish preventive measures which shall include, but are not limited to, ongoing internal reviews and employee training on detecting and reporting dishonest and fraudulent acts.

5.1.2 An employee shall immediately report all suspicions of dishonest and fraudulent acts to the court executive, who in turn shall immediately report the matter to the internal audit department. If the employee is employed in the Administrative Office of the Courts, the employee shall report all suspicions of dishonest and fraudulent acts to the deputy court administrator or the state court administrator. If an employee feels uncomfortable

reporting to the court executive, the internal audit department may be contacted directly. The internal audit department shall then immediately notify the state court administrator.

5.1.3 If requested, the internal audit department shall accept confidential information regarding dishonest and fraudulent acts. To the extent possible, anonymity and confidentiality for a reporting employee shall be maintained.

5.1.4 An employee having knowledge of dishonest or fraudulent acts who fails to report it shall be subject to disciplinary action.

5.2 No employee shall engage in reprisals against an employee who reports suspicions of dishonest or fraudulent activities. An employee making such reprisals shall be subject to disciplinary action in accordance with policy 610, Discipline.

5.3 Management shall direct all inquiries from a suspect, a suspect's representative or attorney to the state court administrator or internal audit department.

5.4 After the matter has been referred to the internal audit department, management should make no attempt to conduct independent investigations, interviews or interrogations. The internal audit department shall be responsible to investigate all possible dishonest or fraudulent acts pertaining to the Utah State Courts.

5.4.1 Prior to conducting an investigation, the internal audit department shall advise the state court administrator and the court executive. If the court executive is the person under investigation, the state court administrator shall be advised. If the state court administrator is the person under investigation, the presiding officer of the Judicial Council shall be advised.

5.4.2 Subsequent internal investigations may be performed at the direction of the state court administrator without notice to the court executive.

5.4.3 While investigating, the internal audit department shall have the authority to:

5.4.3.1 Gain full access to court premises;

5.4.3.1.1 Examine, copy and/or secure all files, desks, cabinets and other storage facilities not designated for use by a specific individual and located on court premises without the prior knowledge or consent of any individual who may use or have custody of any such items;

5.4.3.1.2 Examine, copy and/or secure all files, desks, cabinets and other storage facilities designated for use by a specific individual if there is a reasonable suspicion that the individual has either committed or assisted in the commission of a dishonest or fraudulent act.

5.4.3.2 Become the custodian of all original files and individual documents involved in the investigation;

5.4.3.3 Restrict access to any of the above referenced items as necessary; and

5.4.3.4 Interview any employee believed to be able to provide information about the matter being investigated.

5.5 If evidence of a dishonest or fraudulent act exists or if the court executive determines that leaving the suspect employee in place during an investigation may cause a disruptive work

environment or security risk, the suspect may be placed on administrative leave with or without pay.

5.6 Any person employed by the courts determined to have participated in dishonest or fraudulent acts shall be subject to disciplinary action pursuant to policy 610, Discipline.

5.7 In all cases of suspected criminal conduct relating to dishonest or fraudulent acts, the state court administrator shall notify local law enforcement. The determination to pursue prosecution and/or restitution shall be made by management in conjunction with prosecutors.

5.8 A suspect employee may be terminated prior to the conclusion of a criminal investigation if circumstances warrant.

5.9 Upon an individual's plea of guilty or no contest or a guilty verdict in a court of law of criminal charges relating to dishonest or fraudulent acts arising from employment, employment of the individual shall be terminated.

5.10 Any negotiations concerning plea bargains, diversions or restitution shall be conducted with input from the state court administrator and AOC legal counsel.

5.11 If criminal charges are dismissed or the employee is found not guilty, management shall make a determination on the status of the employee in accordance with these policies and procedures.

5.12 The final report of the internal audit department shall be provided to:

5.12.1 The state court administrator, the employee's court executive, the presiding judge, and, if disciplinary action is contemplated, the Director of Human Resources.

5.12.2 The employee and the employee's representative or legal counsel;

5.12.3 Authorized representatives of appropriate law enforcement and prosecuting agencies if the audit reveals the possible commission of a crime.

## 6. Confidentiality.

6.1 An employee shall not disclose to any unauthorized person any information acquired in the course of employment other than public data as defined in the Code of Judicial Administration.

6.2 An employee shall abstain from public comment about proceedings pending or impending in any court without prior approval of the court or the trial court executive.

6.3 An employee shall not initiate or repeat ex parte communications with a litigant, witness, or attorney to the trier of fact, attorney, witness or litigant that might affect the outcome of the case.

## 7. Conflict of interest.

7.1 An employee shall exercise reasonable diligence to become aware of personal conflicts of interest, disclose such conflicts to management, and take appropriate steps to eliminate conflicts when they arise.

7.2 When an employee perceives any potential conflict of interest or has a question about the laws, statutes, and policies the employee shall discuss them with management.

7.3 No employee shall have personal investments in any business entity which will create a substantial conflict between the employee's private interest and public duties. The employee shall

disclose any such conflicts to management. Management and the employee shall take appropriate steps to eliminate the conflict.

7.4 An employee shall not enter into any contract with the courts for services, supplies, equipment, leases, or realty apart from the employment contract relating to the employee's position.

7.5 When an employee is required by the responsibilities of the position to take an action or make a decision which could be interpreted as a conflict of interest, the employee shall declare the potential conflict to management and may be excused by management from so acting.

## 8. Outside Activities

8.1 Court employees shall not use state owned property in support of outside interests and activities when such use would compromise the integrity of the court or interfere with the employee's court duties. Specifically, an employee who is involved in an outside activity such as a civic organization, church organization, committee unrelated to court business, public office, or service club, shall:

8.1.1 Pursue the outside activity on the employee's own time;

8.1.2 Pursue the outside activity away from court offices;

8.1.3 Discourage any phone, mail or visitor contact related to the outside interest at court offices;

8.1.4 Arrange for annual leave or compensatory time off in advance to pursue the outside interest during business hours; and

8.1.5 Except as provided in section 10, not use data processing equipment or court supplies for the outside interest.

8.2 Court employees shall not conduct or participate in sales activities for personal profit in the work place during work hours.

## 9. Personal use of state owned computer and electronic communications systems.

### 9.1 Computer equipment

9.1.1 For purposes of this policy, state-owned computer and electronic communication systems includes, but is not limited to: computer related hardware, software and networking systems as well as duplicating equipment, e-mail, voice mail, telephone, facsimile, the internet, the intranet, and the worldwide web.

9.2 State owned computer communication systems are valuable resources for increasing employee productivity and enhancing the efficiency of court operations. Employee familiarity and comfort with these resources benefit the employee and the judicial system. The judiciary recognizes the value of these resources in employees' professional and personal lives. State-owned computer and electronic communication systems are available for limited personal use, subject to the following conditions:

9.2.1 When using state-owned computer and electronic communication systems, the employee shall observe high standards of conduct so the integrity of the judiciary is preserved, and public confidence in the judiciary is promoted.

9.2.2 An employee shall not have an expectation of privacy when using state-owned computer and electronic communication systems. Management maintains records of internet sites that are accessed, and can monitor e-mail messages and facsimile transmissions to determine compliance with this policy. The employee should assume that any communication created, sent, received or stored may be read or heard by someone other than the intended recipient. Management will respect any privileges related to the courts' business; e.g., attorney/client, doctor/patient, etc., related to human resources issues.

9.2.3 The employee may not send server or network-wide e-mail messages, the purpose of which is purely personal; e.g., selling items, notifications about illnesses and deaths, etc. The courts will provide an electronic bulletin board for these types of messages.

9.2.4 Personal use may only be on the employee's personal time, may not interfere with the employee's duties and may not be excessive.

9.2.5 The employee must pay for the cost of consumables and other attendant expenses (diskettes, paper, etc.).

9.2.6 The employee may not be compensated for work performed during personal time.

9.2.7 The employee may not permanently store personal data on the network.

9.2.8 The employee shall not install games. Other personal software may be installed if the employee has received permission from the employee's supervisor and under guidelines established by the data processing department.

9.2.9 Use may not be for the purpose of conducting a business or soliciting money for personal gain.

9.2.10 The employee may not download information for personal use without the employee's immediate supervisor's expressed written authorization. The employee may not transmit or install without permission copyrighted, trademarked, or patented material, or otherwise transmit confidential information of the judiciary, unless the transmission is related to court practices.

9.2.11 The employee may not use state-owned computers and electronic communication systems for any purpose that a reasonable person would consider to be defamatory, offensive, harassing, disruptive or derogatory, including but not limited to sexual comments or images, racial or ethnic slurs, or other comments or images that would offend someone on the basis of race, gender, national origin, sexual orientation, religion, and political beliefs or disability.

9.2.12 The employee may not enable unauthorized third parties to jeopardize the security of state-owned computers and electronic communication systems. The employee shall take all practical and reasonable steps necessary to keep the employee's log-in access and passwords secure. The employee should perform a virus check on all software and disks used in the system and should immediately report any tampering, viruses, or other system breaches to the data processing department.

9.2.12.1 The employee shall not share the employee's log-in access or passwords with others, including other employees, unless authorized by a supervisor, as warranted by unusual, temporary, work-related circumstances.

9.2.12.2 The supervisor shall maintain a log, documenting, instances of shared access or shared passwords. This record shall contain the date of the

authorization, the work-related reason for the authorization, the name of the employee who is normally authorized to use the log-in access or passwords, and the name of the employee who was granted temporary, emergency access.

9.2.12.3 Following authorized, shared use of a password, the supervisor shall ensure that the employee who normally used the password, replaces it with a new, secure password as soon as possible.

9.2.12.4 No employee shall represent themselves as someone else, fictional or real.

9.2.13 The employee should direct questions concerning personal use of state-owned computers and electronic communication systems to the employee's supervisor.

## 10. Personal Cell Phone Usage in the Workplace

10.1 Employees are expected to exercise the same discretion in using personal cellular phones as is expected for the use of company phones. Excessive personal calls, text messaging, or other personal communication during the work day, regardless of the phone used, can interfere with employee productivity and be distracting to others. Employees are expected to limit personal use to non-work time where possible and to ensure that friends and family members are aware of this policy.

## 11. Secondary Employment

11.1 Employment with the court system shall be the primary employment of full time employees.

11.2 Other employment and volunteer activities must not conflict with the interests of the agency or the State of Utah.

11.3 An employee may, at agency discretion, hold more than one state position as long as the total hours worked do not exceed 40 hours per week.

11.4 An employee may engage in secondary employment or volunteer activity that does not conflict with the interests of the court or create the appearance of a conflict of interest as defined below and in Section 500.8:

11.4.1 An employee shall exercise reasonable diligence to become aware of personal conflicts of interest, disclose such conflicts to management, and take appropriate steps to eliminate conflicts when they occur.

11.4.2 When an employee perceives any potential conflict of interest or has a question about laws, and policies, the employee shall discuss them with management.

11.4.3 No employee shall have substantial personal interest in any business entity which will create a conflict between the employee's private interest and public duties. The employee shall disclose any such conflicts to management. Management and the employee shall determine if there are substantial conflicts or appearances of substantial conflicts and take appropriate steps to eliminate the conflict.

11.4.4 An employee shall not enter into any contract with the courts for services, supplies, equipment, leases, or realty apart from the employment contract relating to the employee's position.

11.4.5 When an employee is required by the responsibilities of the position to take an action or make a decision which could be interpreted as a conflict of interest, the

employee shall declare the potential conflict to management and may be excused by management from so acting.

11.5 An employee may engage in secondary employment if it conforms to the following provisions:

11.5.1 The secondary employment shall not interfere with the employee's ability to perform job duties with full capacity.

11.5.2 Secondary employment/volunteer activity shall not be performed during the same hours that the employee is scheduled to work.

11.5.3 The outside employment is not self-employment or with a contractor that provides services to clients of the court level within which the employee works.

11.5.4 The outside activity is not with a policy making nor advisory board of an organization or agency that does business within the court level.

11.6 Prior to accepting or continuing secondary employment, an employee shall report the employment to the employee's supervisor on the Secondary Employment application form.

11.6.1 If there is not a conflict of interest, the Trial Court Executive may approve the application within five working days, after consulting with the director.

11.6.2 If there is a possible conflict of interest, the application will be submitted to the director and the court level administrator who will, within five working days, seek a legal opinion from the General Counsel before approval, denial or conditional approval.

11.6.3 Copies of secondary employment application forms shall be sent to the director who will review them for consistency.

## 12. Political activity.

12.1 An employee may participate in political activity that does not jeopardize the confidence of the public or of government officials in the impartiality of the judicial branch of government.

12.1.1 An employee shall not participate in political activity which conflicts with or otherwise affects the mission and activities of the Judiciary.

12.1.2 Employees of the Judiciary are prohibited from running for, being appointed to, or holding an elected office at any level of government.

12.1.3 An employee shall not engage in political activity during work hours, unless on approved leave.

12.1.4 An employee shall not use state owned equipment, supplies or resources, and other attendant expenses (diskettes, paper, computer online and access charges, etc.) when engaged in political activity.

12.1.5 An employee shall not discriminate in favor of or against any person or applicant for employment based on political activities.

12.1.6 An employee shall not use the employee's title or position while engaging in political activity.

## 13. Driver Safety.

499  
500 13.1 Court employees are subject to the rules and regulations established by the State Motor  
501 Pool and the Division of Risk Management regarding the safe operation of state vehicles.  
502

503 13.2 Any employee convicted of driving under the influence, reckless driving or an at-fault  
504 accident shall complete an approved driver safety program before operating a state vehicle or  
505 operating the employee's own vehicle on court business.  
506

#### 507 14. Professional Appearance 508

509 14.1 Employees shall exercise good judgment regarding dress and grooming in the workplace, to  
510 promote an environment of professionalism and credibility. An employee's appearance and  
511 cleanliness shall reflect generally accepted community standards, based on the nature of the  
512 work environment and the type of work being performed.  
513

514 14.2 Certain elemental standards of appearance and cleanliness, including personal hygiene,  
515 apply in all work contexts throughout the court system. Restrictions include, but are not limited to,  
516 the following:  
517

518 14.2.1 Visible body piercings, other than those on the ears.  
519

520 14.2.2 Extreme, unnatural hair coloring or styles.  
521

522 14.2.3 Extreme, visible body tattoos  
523

524 14.2.4 Inordinately revealing clothing  
525

526 14.3 Local guidelines for employee appearance may be drafted to require a higher standard than  
527 found in this policy.  
528

529 14.4 Employees appearance shall be consistent with the professional standards of their position  
530 and responsibilities. The prevailing standard of dress in the courts shall include professional and  
531 appropriate apparel in the following environments.  
532

##### 533 14.4.1 Courtroom 534

535 14.4.1.1 The minimum apparel standards for male employees include dress  
536 shoes or dress boots, socks, dress slacks, shirt and tie. Suit and/or sport coats  
537 and/or vests are optional.  
538

539 14.4.1.2 The minimum apparel standards for female employees include dress  
540 shoes or dress boots, dress slacks, dresses or business length skirts. Dress  
541 shirts, blouses, shells, or sweater.  
542

##### 543 14.4.2 Courthouse Offices 544

545 14.4.2.1 The minimum apparel standards for male employees include dress  
546 shoes or dress boots, socks, dress slacks (cotton and corduroy acceptable),  
547 dress shirts. Ties and suit or sport coats are optional.  
548

549 14.4.2.2 The minimum apparel standards for female employees include dress  
550 shoes or dress boots, dress slacks (cotton and corduroy acceptable), dresses,  
551 business length skirts, sweaters, blouses or shells.  
552

##### 553 14.4.3 Position Based Exceptions 554



14.4.3.1 If an employee's primary duties do not involve public interaction and require an employee to be regularly involved in physical work such as; the maintenance and installation of computer hardware, office furniture, workplace related items; or if the employee is juvenile court deputy probation officer the employee may adhere to the following:

14.4.3.2 Dress shoes, athletic footwear or work boots. Slacks or jeans (must be professional and modest in fit and appearance without tears, holes or excessive fading). Dress shirts, blouses, shells sweaters, or polo shirts with collars. T-shirts are not acceptable.

14.4.3.3 For juvenile court probation work crew staff on an active work crew assignment acceptable attire includes athletic shoes or work boots, jean modest in fit and appearance without tears, holes or excessive fading), t-shirt without logos (other than the court logo), appropriate long or short sleeved casual shirts and shorts, of appropriate length, during hot weather. Hats without obscene logos or wording may be worn.

#### 14.4.4 Dress Down Day

14.4.4.1 Employees assigned to appear in court, or on official court business, on a dress down day are required to follow the courtroom standard of dress.

14.4.4.2 Casual Friday will be limited to Friday unless otherwise specified by court management. Employees shall maintain a professional appearance and the minimum apparel standards shall include:

14.4.4.2.1 Dress shoes or casual shoes (flip flops or sandals such as Teva or Birkenstock are not acceptable).

14.4.4.2.2 Dress slacks, business casual slacks, and jeans that are professional and modest in fit and appearance without tears, holes, or excessive fading, dresses, skirts.

14.4.4.2.3 Dress shirts, polo shirts, long or short sleeved casual shirts, blouses, or sweaters.

14.5 The following is a list of unapproved attire, not to be considered inclusive, is subject to modification by management and may be subject to the limited exceptions detailed elsewhere in this policy.

14.5.1 Overalls, T-shirts, tank tops, spaghetti string tops, jogging outfits, flip flops, caps/hats, revealing clothing, tube tops, halter tops, strapless tops, shorts, stretch pants, leggings, skorts, casual capris and pants with rivets.

14.6 Management shall enforce the policy and employees determined to be inappropriately attired may be sent home, on their own time, to change into appropriate attire. Employees with ongoing violations of the professional appearance standards will be subject to discipline in accordance with personnel policies and procedures.

## 15. Friends and Family at Work

15.1 Friends and family members of employees shall not remain in the workplace for extended visits. Management may grant temporary exceptions in unusual circumstances, provided their presence does not interfere with the work of employees.

611 15.2 Employees shall not use their court access privileges to allow family or friends to circumvent  
612 the existing security/weapon screening process.

613  
614 15.3 Employees shall not allow access to secure areas of the courthouse by family members or  
615 friends with cases pending before the courts.

616  
617 16. Court Security

618  
619 16.1 Employees shall be familiar and comply with local court security plans.

620  
621 16.2 Employees shall comply with all directives from court security officers, including the court  
622 security director.

623  
624 16.3 Employees may not possess weapons in courthouses, probation offices, other buildings  
625 used for employee work spaces, and state vehicles. This does not include employee parking  
626 areas.

627  
628 16.4 Employees may not possess weapons while attending court functions off-premises, such as  
629 at conferences, meetings, or other work-related gatherings.

630  
631 16.5 Employees may not possess weapons while acting within the scope of employment.

632  
633 16.6 Possession includes on the person and in areas within the immediate control of the  
634 employee.

635  
636 16.7 An employee who has a concealed weapons permit is not excused from complying with  
637 these policies.

# Tab 11

## 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 [kelsaw@utcourts.gov](mailto:kelsaw@utcourts.gov).**

#### REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

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

Phone Number:

801-578-3884

Date of Request:

11/27/2017

#### RULE AMENDMENT:

Rule Number:

4-202.02

Location of Rule:

Code of Judicial Administration

#### Brief Description of Proposed Amendment:

Line 121 - Makes affidavits of indigence private records.

#### Reason Amendment is Needed:

The rule states that affidavits of impecuniosity are private records, by stating that affidavits to waive fees are private. But the rule does not address affidavits of indigency. An affidavit of impecuniosity is not the same as an affidavit of indigency, with one being filed in civil cases and the other being filed in criminal cases. If a person's financial information is private in civil cases, it should also be private in criminal cases. Although one can perhaps argue that a defendant in a criminal case has a lesser expectation of privacy than a litigant in a civil case, I don't think that would extend to financial information that has nothing to do with the crime itself.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Court Services

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

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

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

**Requester's Signature:**

Brent Johnson

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

## RULE AMENDMENT REQUEST

### Policy and Planning

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

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

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Brent Johnson

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

Phone Number:

801-578-3884

Date of Request:

11/27/2017

#### RULE AMENDMENT:

Rule Number:

4-202.02

Location of Rule:

Code of Judicial Administration

#### Brief Description of Proposed Amendment:

Line 120 - Makes actions to amend a Utah vital record private records.

#### Reason Amendment Is Needed:

This rule amendment pertains to a petition and order to amend a Utah vital record. The Office of Vital Records will typically allow an individual to seek an amendment of a vital record simply by providing an affidavit and support for the requested amendment. However, there are also many circumstances in which the office will deny a request and tell a litigant that they must obtain a court order. There frankly is very little statutory support for referring them to the court (and that's perhaps something that we need to change in the future) but these are occurring regularly and judges are reviewing and granting or denying these requests.

The forms committee (old) therefore decided to create forms because the self help center receives these requests on a weekly basis. The question arose as to whether these should be public or private records. The committee decided to propose making these private records, because they deal with the same types of information that have been deemed private in other case types, such as adoptions, divorces, paternity actions, etc. As noted, because there is a lack of a good statutory reference for these actions, I cannot identify a specific statute or section for purposes of the rule. I have therefore proposed more generic language, similar to the language in the rule that proceeds this particular proposal.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Self-Help Center, Court Services

**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                       |
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| <input type="checkbox"/> Board of Senior Judges                                    | <input type="checkbox"/> Resources for Self-represented Parties Committee |
| <input type="checkbox"/> Children and Family Law Committee                         | <input type="checkbox"/> Rules of Appellate Procedure Advisory Committee  |
| <input type="checkbox"/> Court Commissioner Conduct Committee                      | <input type="checkbox"/> Rules of Civil Procedure Advisory Committee      |
| <input type="checkbox"/> Court Facility Planning Committee                         | <input type="checkbox"/> Rules of Criminal Procedure Advisory Committee   |
| <input type="checkbox"/> Court Forms Committee                                     | <input type="checkbox"/> Rules of Evidence Advisory Committee             |
| <input type="checkbox"/> Ethics Advisory Committee                                 | <input type="checkbox"/> Rules of Juvenile Procedure Advisory Committee   |
| <input type="checkbox"/> Ethics and Discipline Committee of the Utah Supreme Court | <input type="checkbox"/> Rules of Professional Conduct Advisory Committee |
| <input checked="" type="checkbox"/> General Counsel                                | <input type="checkbox"/> State Court Administrator                        |
| <input type="checkbox"/> Guardian ad Litem Oversight Committee                     | <input type="checkbox"/> TCE's  |
| <input type="checkbox"/> Judicial Branch Education Committee                       | <input type="checkbox"/> Technology Committee                             |
| <input type="checkbox"/> Judicial Outreach Committee                               | <input type="checkbox"/> Uniform Fine and Bail Committee                  |
| <input type="checkbox"/> Language Access Committee                                 | <input type="checkbox"/> WINGS Committee                                  |
| <input type="checkbox"/> Law Library Oversight Committee                           | <input type="checkbox"/> NONE OF THE ABOVE                                |

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

**Requester's Signature:**

Brent Johnson

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

# 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 Kelsa Williams at [keisaw@utcourts.gov](mailto:keisaw@utcourts.gov).

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Keisa Williams

E-mail:

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

Phone Number:

801-578-3821

Date of Request:

11/27/2017

### RULE AMENDMENT:

Rule Number:

4-202.02

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

General discussion topic for consideration by P&P. May need to be submitted to the Rules of Criminal Procedure Committee.

Probable cause affidavits submitted to the court with private information in the free-form text field would be approved by the judge, but sealed. Prosecutors and law enforcement officers would have to contact the court to get access and redact the private information before it would be reclassified as public.

### Reason Amendment is Needed:

Ms. Williams has been presenting/training on the new Probable Cause system throughout the state with various stakeholders (prosecutors, law enforcement, etc.). An issue that arose concerns possible private information being included in the free-form text field entered by officers. BCI has been training law enforcement not to include private information (i.e., victim names and addresses, SSN, etc.) in the form. However, prosecutors noted that often law enforcement officers include private information regardless of their training.

Pursuant to URCrP Rule 40, search warrants (e-warrants) are sealed for 20 days before they become public (see also (2)(FF) of this rule). If a prosecutor or law enforcement officer wishes to keep the warrants sealed, they must file a motion with the court. The records can then be sealed in part or in entirety if the court makes certain findings.

The PC Working Group does not feel that the warrant process is appropriate given the public nature of PC statements. Several options have been considered. Currently, the proposal is that probable cause statements be treated as public, unless a judge sees private information in the affidavit at the time of the PC review. If that's the case, the judge would approve the PC statement (if PC existed), however, it would be flagged as sealed. It would not be attached to a case when opened in CORIS. Prosecutors or law enforcement officers would have to contact the court to obtain a copy and either ask for the information to be redacted before it is made public, or submit a redacted version to the court for the public file. Sealed records cannot be made public without a court order.

The PC system is live in numerous jurisdictions now and more daily. This needs action quickly.

This request is being made for discussion and guidance.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Rule of Criminal Procedure Committee, Court Services



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

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

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

**Requester's Signature:**

Keisa Williams

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

Brent Johnson

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**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) probable cause affidavits are public, unless otherwise ordered by the court.

(2)(~~HH~~)(II) 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.

79 (3) **Sealed Court Records.** The following court records are sealed:

80 (3)(A) records in the following actions:

81 (3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of  
82 proceedings, which are private until sealed;

83 (3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the  
84 conclusion of proceedings, which are private until sealed; -

85 (3)(A)(iii) Section 76-7-304.5, Consent required for abortions performed on minors; and

86 (3)(A)(iv) Section 78B-8-402, actions for disease testing;

87 (3)(B) expunged records;

88 (3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code  
89 Section 77-23a-15;

90 (3)(D) records showing the identity of a confidential informant;

91 (3)(E) records relating to the possession of a financial institution by the commissioner of financial  
92 institutions under Utah Code Section 7-2-6;

93 (3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

94 (3)(G) records designated as sealed by rule of the Supreme Court;

95 (3)(H) record of a Children's Justice Center investigative interview after the conclusion of any  
96 legal proceedings; and

97 (3)(I) other records as ordered by the court under Rule 4-202.04.

98 (4) **Private Court Records.** The following court records are private:

99 (4)(A) records in the following actions:

100 (4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

101 (4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;

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

103 (4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed;

104 and

105 (4)(B) records in the following actions, except that the case history; judgments, orders and  
106 decrees; letters of appointment; and the record of public hearings are public records:

107 (4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, except that  
108 an action for consortium due to personal injury under Section 30-2-11 is public;

109 (4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

110 (4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

111 (4)(B)(iv) Title 78B, Chapter 7, Protective Orders;

112 (4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;

113 (4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement  
114 Act;

115 (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

116 (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(B)(x) an action to amend a Utah vital record;

(4)(C) affidavit of indigency;

~~(4)(C)(D)~~ an affidavit supporting a motion to waive fees;

~~(4)(D)(E)~~ aggregate records other than public aggregate records under subsection (2);

~~(4)(E)(F)~~ alternative dispute resolution records;

~~(4)(F)(G)~~ applications for accommodation under the Americans with Disabilities Act;

~~(4)(G)(H)~~ jail booking sheets;

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

~~(4)(I)(J)~~ judgment information statement;

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

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

~~(4)(L)(M)~~ the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4)(U)(V) reports of investigations by Child Protective Services;  
(4)(W)(W) victim impact statements;  
(4)(W)(X) 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)(Y) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;  
(4)(Y)(Z) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure; and  
(4)(Z)(AA) 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

233 Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family  
234 Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;  
235 (8)(C) location information, contact information, and identity information of prospective jurors on  
236 the master jury list or the qualified jury list;  
237 (8)(D) location information, contact information, and identity information other than name of a  
238 prospective juror summoned to attend court;  
239 (8)(E) the following information about a victim or witness of a crime:  
240 (8)(E)(i) business and personal address, email address, telephone number, and similar  
241 information from which the person can be located or contacted;  
242 (8)(E)(ii) date of birth, driver's license number, social security number, account description  
243 and number, password, identification number, maiden name, mother's maiden name, and similar  
244 personal identifying information.  
245



# Tab 12

## **Judicial Council Policy on Naming Courthouses**

In light of a recent request to name a courthouse, the Judicial Council enacts the following policy.

The Judicial Council presumes that none of its courthouses will be named after persons living or dead. Except for those already named other than geographically, courthouses should generally retain their geographic names only. Nonetheless, the Council will consider requests to name newly constructed or significantly remodeled courthouses after persons living or dead under the following circumstances:

- The person has made significant contributions and has strong ties to the community in which the courthouse is located;
- The person has contributed to the administration of justice;
- The person has lived an exemplary life and served as a role model in the community; and
- Numerous community stakeholders support the proposed naming.

Although the Judicial Council may consider requests to name its courthouses, it does not have ultimate authority over naming. That authority resides in the Department of Administrative Services' Building Board, to which the Judicial Council may make recommendations. The Judicial Council does, however, retain the authority to post signage within its courthouses. It will therefore consider and may grant requests to name internal areas of its courthouses under the same criteria outlined above.