

Agenda

Policy and Planning Committee

January 5, 2018
12:00 – 2:00 p.m.

Executive Dining Room – 1st Floor (through cafeteria)

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

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Derek Pullan
12:05	<ul style="list-style-type: none"> • CJA 3-104. Presiding Judges. • CJA 6-501. Reporting Requirements for Guardians and Conservators. • CJA 1-205. Standing and Ad Hoc Committees. <ul style="list-style-type: none"> ○ Back from Public Comment 	Discussion/ Action	Tab 2	Nancy Sylvester
12:35	Policy on Naming Courthouses	Discussion/ Action	Tab 3	Keisa Williams
1:00	CJA 2-212. Communication with the Office of Legislative Research and General Counsel	Discussion/ Action	Tab 4	Nancy Sylvester
1:30	CJA 4-703. Outstanding Citations and Warrants.	Discussion/ Action	Tab 5	Brent Johnson
2:00	Adjourn	Action		Judge Derek Pullan

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

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

2018 Meetings:

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 and Planning Committee

**Matheson Courthouse
Council Room
450 S. State St.
Salt Lake City, UT 84114**

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

Draft

Members Present

Hon. Derek Pullan - Chair
Hon. Augustus Chin
Hon. John Walton
Rob Rice

Members Excused

Hon. Kara Pettit

Staff

Keisa Williams
Nancy Sylvester

Guests

Dawn Marie Rubio
Brent Johnson
Rob Parkes
Jaycee Skinner

(1) Welcome, Member Introductions, and Chair re-election.

Judge Pullan welcomed everyone and introduced the Committee's two newest members. Judge Augustus Chin is from the Holladay Justice Court and has been on the bench for six years. Judge John Walton is from the Fifth District Court and today marks his twelfth year on the bench. Judge Kara Pettit was unable to attend. Judge Pullan left the room. A motion was made by Judge Chin to reappoint Judge Pullan as Committee chair. Judge Walton seconded the motion and it passed unanimously.

(2) Approval of minutes.

Judge Pullan addressed the October 3, 2017 minutes. Judge Pullan stated that in paragraph four under "Records classification", he would like to add that the Committee discussed the significant public interest in knowing the grounds on which the Executive Branch exercises its arrest power, and for that reason, probable cause statements ought to remain public. There being no other amendments to the minutes, Rob Rice made a motion to approve the minutes as amended. Judge Walton seconded the motion and it passed unanimously.

(3) CJA 3-201. Court Commissioners.

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

CJA 3-201

Ms. Sylvester addressed CJA 3-201 and stated that the rule draft is essentially finished and just needs a motion to approve it. A motion was made by Judge Chin to approve the current version of rule CJA 3-201 which will become effective as of May 1, 2018. Rob Rice seconded the motion and it passed unanimously.

CJA 3-111

Ms. Sylvester provided an update on CJA 3-111. The Committee has approved most of the amendments, but the Council recently raised some issues when they were going through senior judges' certifications about getting meaningful feedback from presiding judges and trial court executives (TCEs). The rule has already been circulated for public comment, but it has been subject to enough changes that it will likely need to go back out for public comment before being approved.

Ms. Sylvester met with senior judges and Keisa Williams met with the presiding judges at the Annual Judicial Conference. The presiding judges' feedback was the same as the senior judges, in that there needs to be a better mechanism for gaining more significant feedback. JPEC was contacted and asked for suggestions on how to attain feedback for the part-time justice court judges since they are not getting as much response through the regular process for full-time judges. Ms. Sylvester spoke with Jennifer Yim who explained that an interviewer stands outside the courtroom after a hearing and as people leave, they are given a questionnaire to fill out.

Ms. Sylvester created four new questionnaires based upon what was drafted in paragraph 3(b), lines 111 – 135. The idea is that presiding judges and trial court executives will collect the questionnaires which will inform their creation of senior judges' performance evaluations. Even if presiding judges and TCEs don't have direct knowledge of a senior judge's performance, they can still gather information which can then be processed, distilled and sent to the Council.

Ms. Sylvester explained that the Court of Appeals survey is an entirely different process since there is no trial court executive. She suggested that it may be best to have a clerk of court (CoC) essentially become the TCE in 3(b)(2)(i). This way, the presiding judge and CoC would acquire information from the other members of the panel and law clerks. Central staff is assigned to senior judges in the appellate court. Since there is no way of concealing the identity of an individual answering the survey, Ms. Sylvester suggested that lines 122 and 133 (3)(b)(2)(i) be removed from the appellate surveys that states, "retype and edit as necessary." Judge Pullen expressed concerned that if there is

no anonymity in the survey, law clerks and court staff may not feel comfortable being honest about a senior judge's evaluation.

The new language in Lines 115 – 117 are provisions that deal with the form that Ms. Sylvester has created where she draws a distinction between the questionnaire and the survey. The questionnaire is less formal and is what the public and court staff will be filling out. The survey is filled out by the presiding judge and TCE. Judge Pullen asked if the questionnaire will be anonymous. Ms. Sylvester stated that it may ultimately be a policy question. Rob Rice said that in order to get a candid response from court staff, the questionnaires should be done anonymously. There was discussion about whether the language in the questionnaire should reflect that it's an "anonymous questionnaire" and if the signature line should be removed.

Judge Chin pointed out that if the questionnaire is anonymous, it may be difficult to follow-up on performance issues or concerns. Senior judges will continually be evaluated by attorneys who have appeared before them. The presiding judge is usually unaware of evaluation results. Another concern is that if the questionnaire is anonymous and the signature line is taken out, presiding judges and TCEs may not be able to ask the individual for additional details about a specific situation that raises a flag or concern. The questionnaires are not subject to GRAMA requests because they deal with personnel so that is not a concern. Jurors may raise significant issues about the trial itself and the court would have an obligation to do something about it. Judge Pullen noted that in order for a questionnaire to be meaningful, it has to be candid. Ms. Sylvester suggested that it may be up to internal staff to determine whether questionnaires should be anonymous.

It was also noted that because there are no TCEs in justice courts, line 114 should be changed to include the justice court administrator. It was decided by the Committee that "anonymous questionnaire" would be added to line 115 (the same applies with the appellate court). Ms. Sylvester will take out "and jurors" in section 3(B)(i) because jurors only fill out the questionnaires.

Judge Pullen asked for clarification as to why survey questions only deal with the "non-legal ability of judges." Ms. Sylvester explained that attorneys are being surveyed on the legal abilities of the judge, where court staff may not be qualified to weigh in on a judge's legal ability.

Ms. Sylvester pointed out that sections 3(B)(i) and 3(B)(ii) deal with courts of record. Since justice courts don't have TCEs, it might be helpful to add the language, "or in the justice courts, the justice court administrator" on line 114.

Recently the Judicial Council brought up a concern about section 3(C), regarding the case under advisement standard because senior judges who are up for retention are

self-certifying. The council suggested that something be put in the rule that says the AOC will pull all of that information. The Committee decided to revisit this issue at a later date.

In section (4)(F) (lines 205-207), Judge Pullen suggested that the language be changed to read, "At the request of the Council the senior judge or court commissioner challenging a non-certification decision shall meet with the Council in August." The committee agreed to that change.

A motion was made by Judge Chin to recommend to the Judicial Council that rule CJA 3-111 be published for public comment. The motion was seconded by Rob Rice and it passed unanimously.

(4) CJA 3-101. Judicial Performance Standards.

This came up in the last Council meeting. The Council felt that the rule was too harsh and didn't allow room for discretion of the Council and their ability to consider special circumstances. Ms. Sylvester proposed changes to the Rule's intent at lines 3-4. The language clarifies that the rule establishes standards of performance upon which the Council certifies judges for retention to JPEC.

Ms. Sylvester added paragraph 5, a good cause standard, which states, "For good cause, including excusable neglect, the Council may elect to certify a judge who does not meet all performance standards." Mr. Rice questioned whether the good cause and excusable neglect language is articulated elsewhere in the rules or whether it's just a general definition. Judge Walton suggested that there is an advantage to using similar language to that outlined in the statute requiring JPEC to provide reasoning for any deviation to the certification standards. Mr. Rice felt that "good cause" is an appropriate standard rather than just a detailed explanation for the deviation. Judge Walton noted that the "good cause" standard might be too strict because there may be circumstances in which a judge's issue doesn't rise to the level of good cause, but it was one minor issue over a short period of time that could be explained through the less strict JPEC deviation requirement.

Jaycee Skinner suggested a hybrid approach – where the court would keep the strict liability standard, either they met the criteria or they didn't, but make a finding of good cause to JPEC that overcomes the presumption. It would be helpful for JPEC to have the benefit of the court's reasoning. The court would be saying that the judge doesn't technically meet the certification requirements, but the court is, nonetheless, recommending that they be certified for the following reasons. JPEC makes the final decision about whether a judge has met the certification/performance standards, but it will now have the benefit of the Court's information. The committee expressed concern about whether the Council can certify a judge for retention who does not meet the minimum certification requirements. After a review of the statutory language and

JPEC's administrative rules, the committee determined that the strict liability standard for certification cannot be changed. The language was amended to state that the Council declines to certify the judge, but recommends retention.

The committee expressed potential timing concerns of publishing this rule for comment because it may cause confusion about the court's intent. A decision on this is time-sensitive because Chief Justice Durrant will be meeting with JPEC and it might be helpful for him to discuss the potential rule amendment. Ms. Skinner suggested that the timing is less a problem for the legislative session and is more of an issue if it's changed in the middle of a retention election.

Ms. Skinner suggested that Ms. Sylvester speak to JPEC and get their opinion before putting this out for public comment. It was decided that the committee would submit the rule draft for discussion by the Council and not recommend that it be sent out for public comment until the Council has had time to address it and Ms. Sylvester can get JPEC's feedback.

A motion was made by Judge Chin to send this to the Judicial Council for discussion. The motion was seconded by Rob Rice and it passed unanimously.

(5) CJA 7-303. Truancy Referrals.

Dawn Marie Rubio addressed a proposal to repeal rule CJA 7-303 of the Code of Judicial Administration. The rule outlines the court's process for truancy referrals made to the juvenile court. Last year during the legislative session, HB 239 eliminated the jurisdiction of the juvenile court over habitual truancy matters. As such, this rule is no longer needed and similar efforts are being made by the Rules of Juvenile Procedure Committee to repeal URJP Rule 31. The proposal to repeal CJA 7-303 has been supported and vetted through the Board of Juvenile Court Judges.

A motion was made by Rob Rice to repeal rule CJA 7-303 and recommend to the Judicial Council that this be published for public comment. Judge Chin seconded the motion and it passed unanimously.

(6) Policy on Naming Courthouses.

Ms. Sylvester reviewed the Judicial Council's discussion at its last meeting regarding a request to name the Provo Courthouse. There were no competing proposals and the Council was concerned about acting upon it and suggested that a policy regarding naming courthouses be created. Nancy drafted a proposed policy and Justice Lee provided feedback and edits. Justice Lee wanted to make it clear that we're creating this policy because of a recent request. The proposal creates a presumption that the Council won't name any of their new courthouses, except for those that are named geographically. The Council would consider requests to name newly constructed or significantly remodeled courthouses. In order to have a courthouse named after a

person (living or dead), the person must have strong ties to the community and have made significant contributions to the community where the courthouse is located. In order to be considered, the person must have contributed to the administration of justice, have a tie to the judiciary, have lived an exemplary life, and served as a role model in the community. The Committee may consider a request to name a courthouse, but ultimately it does not have the authority to name it. The authority resides with the Department of Administrative Services' Building Board, to which the Judicial Council may make recommendations. The Committee has the authority to name internal areas of a courthouse. Naming an internal area would require the same criteria. Judge Chin noted that in paragraph two, the phrase "will consider requests" should be changed to "may consider requests."

The Committee reviewed the Building Board's naming policy. The committee discussed the meaning of "ties to the community" and whether it has to mean ties to the local community or to the state of Utah. Ms. Sylvester recommended adding the desire of the individual's family as a requirement. The committee discussed whether there should be a policy at all. The policy could also be used if there were a legislative proposal to name a building. The Council may need to be equipped with a tool to respond to requests. The committee made amendments based on their discussion and agreed to recommend that a policy be in place.

A motion was made by Judge Chin to advance the proposed policy to the Judicial Council for discussion. Judge Walton seconded the motion and it passed unanimously.

(7) CJA 3-104. Presiding Judges.

Brent Johnson reviewed proposed rule changes to CJA 3-104. There was an omission in the packet. Brent handed out paragraph (3)(O) that should have been added at the end of the rule. The Rules of Criminal Procedure Committee is reorganizing URCrP Rule 7 and dividing it into several distinct rules, each addressing different subjects. One of the proposed changes to Rule 7 incorporated a requirement for the development of a rotation of magistrates. The Supreme Court suggested that the provision be moved out of Rule 7 and into the presiding judge rule because it involved internal operating procedures, not rules of criminal procedure. Developing the rotation isn't mandatory; this would just provide the ability for jurisdictions to do it if they wanted to.

The amendments in section (3)(L)(ii), at lines 163-166, refer to a different issue. This relates to judges reporting cases under advisement. Currently, the rule refers to a form that doesn't exist. The practice throughout the district is different, some only require reporting if judges have cases under advisement. Some require reporting every month. Mr. Johnson recommended that the rule be tabled pending further review and edits on his part so that he can explore whether the AOC can/should just internally run reports every month so that judges don't have to report anything at all. That data would just be tracked by the AOC. There is a concern about self-reporting in part because some

judges have not reported when a case is under advisement, although it hasn't been a significant issue. Judge Pullan stated that he liked the self-reporting requirement because it kept the issue fresh in his mind. He suggested that the AOC run automatic reports, but keep the self-reporting requirement. Judge Walton stated that requiring self-reporting also helps judges to discover problems with the data. For example, the docket says the case is under advisement, but the judge has resolved the issue with attorneys including a stipulation that the case not be decided at that time. In those instances, there should be a record made to that effect, but it might have been overlooked.

Mr. Johnson stated that it might be important to approve the portion of the amendment getting rid of a form that doesn't exist now and table the remaining amendments for a later time. Mr. Rice suggested that all of the amendments to (3)(L)(ii) be held until the entire section can be revisited.

A motion was made by Mr. Rice to recommend to the Council that the amendments under section (3)(O) – but not section (3)(L)(ii) - be published for public comment. The motion was seconded by Judge Walton and passed unanimously.

(8) CJA 6-601. Mental Health Commissioners.

Brent Johnson reviewed the proposed amendments to CJA 6-601. 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. The new statute is under Title 62A, Chapter 15, Substance Abuse and Mental Health Act. Court commissioners are currently authorized to conduct proceedings under part 6, which includes the provisions on civil commitments of mentally ill individuals. Because court commissioners are already conducting those proceedings, the Second District Court is proposing that court commissioners also be allowed to preside over the essential treatment proceedings.

Judge Pullan stated that there is a policy question about whether commissioners should preside over those proceedings. Judge Pullan reviewed the statute and expressed a concern that commissioners do a lot of their work by taking proffers from attorneys. The statute makes several references to the fact that the parties may testify and be cross-examined and the court must make certain findings. The statute contemplates something more than what a commissioner can do and there are very few commissioners state-wide to address these cases.

Mr. Johnson stated that his concern is that the intent behind the statute is for these proceedings to happen as quickly as possible because there are people with opioid addictions who need treatment right away. Mr. Johnson is uncomfortable having commissioners handle these proceedings because it would be good to have a judge's eyes on it right away. In addition, Mr. Johnson expressed concerned that we are

already stretching the authority of commissioners to do what they are doing now. Adding this ability may be going too far. Judge Pullan stated that he thinks these time-sensitive cases should go directly to a district court judge. Judge Walton stated that because these are new, they could be high-profile and involve the media. Commissioners don't run for retention elections. For a variety of reasons, these should remain with district court judges. Judge Chin supported that position.

A motion was made by Judge Walton to decline to adopt the proposed rule amendments. The motion was seconded by Judge Chin and it passed unanimously.

(9) CJA 4-202.07. Appeals.

Brent Johnson reviewed the proposed amendments to CJA 4-202.07. There are 3 proposals:

1. Clarifies 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 that the record doesn't exist, although we have never done so.
2. Increases the time-frames for responses. Appeals on denials of records requests are fairly frequent. When an appeal is sent to the state court administrator, he refers those to the legal department for research and response. We have found that the response time of 5 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 would be very helpful and would not have a significant impact on the person appealing the decision.
3. Extends 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.

The records requests are technically requests under the Court's rules, not GRAMA. We get these requests from prisoners, litigants, etc. District and Justice Courts get them all the time. The appeals from those come to the legal department. Judge Pullan asked how a 10 day response time compares to response times in the Executive Branch because we wouldn't want to be significantly slower than we should be. Mr. Johnson stated that the court would not be out of synch with the Executive Branch and 5 days has proven to be unworkable.

Judge Pullan stated that all the other response times in the rule should be changed to make them consistent with the dates in rules of procedure by removing the reference to "business" days, etc. The changes recommending 10 business days will be changed to

14 days. In line 14, 30 days was changed to 28 to align it with other rules. The reference to 15 days in line 23 will be changed to 21 days.

A motion was made by Mr. Rice to recommend to the Council that the amendments, with the proposed changes, be published for public comment. The motion was seconded by Judge Walton and it passed unanimously.

(10) HR Policy: Definitions and 220 – Employment Assessments.

Brent Johnson reviewed the proposed amendments to the Human Resources Policy and Procedure Manual. This proposal came from one TCE and was then approved for submission to this committee by all of the TCEs. The proposal is to require pre-employment drug tests for a certain category of employees – “highly sensitive positions.” That special category is created by these amendments in the definition section. The TCEs are particularly concerned with deputy probation officers because they transport juveniles on a daily basis for work crews. The executive branch has a category of highly sensitive positions and they mostly include law enforcement and positions which frequently handle money. The proposal is to include probation officers, deputy probation officer, others who work with juveniles, such as volunteer coordinators and program managers, and the most controversial category, any other position that frequently requires operating a motor vehicle. The ADR director, Nini Rich, is concerned that the last category is unnecessary and may reduce the applicant pool for mediators.

Judge Pullan asked exactly what positions would be affected by the last category. Mr. Johnson stated that it would apply to mediators, TCEs, and Clerks of Court who travel between courts on a frequent basis and not those traveling to Salt Lake for a monthly meeting. In order to apply, the job description for the position must require frequent travel. Mr. Rice asked whether there was a specific incident that instigated this proposal. Mr. Johnson stated that there was no incident, there is just a general concern and a desire to be proactive and prevent an incident in the future. Judge Pullan noted that pre-employment testing is easily evaded because it is scheduled.

The HR Director, Rob Parkes, joined the meeting for this discussion. Mr. Johnson noted that a distinction could be made between those positions which involve driving juveniles, rather than just driving alone. The policy allows drug testing when there is reasonable suspicion of impairment. Randomized testing would be unconstitutional for most positions. Probation officers don’t drive juveniles very often. Deputy probation officers drive juveniles daily. Judge Pullan noted that deputy probation officers do not rise to the level of law enforcement officers. Mr. Rice asked Mr. Parkes whether this would address a risk that is of great concern from a human resources perspective. Mr. Parkes stated that this is not something HR has had specific issues or concerns with, it would be strictly preventative. Mr. Rice stated that if the question is how to mitigate risk, it seems that the last category may be going too far. This seems like a safety issue,

not a highly sensitive position issue. The village project coordinator deals primarily with volunteers and is typically a deputy probation officer. Mr. Rice stated that we may be trying to fix a problem that doesn't exist.

Mr. Parkes stated that there are less than 50 deputy probation officers statewide. He didn't feel this would have an impact on recruiting. Judge Chin questioned whether creating a solution for a problem that doesn't exist is appropriate. Judge Walton noted that this would be exceeding the standards set by the state for driving state vehicles. Judge Pullan noted that the only real risk is that these probation officers are driving other people's kids around. Ultimately, the committee felt that having the ability to test based on reasonable suspicion is enough.

A motion was made by Rob Rice to decline to adopt the amendment. Judge Walton seconded and the motion passed unanimously.

(11) HR Policy: Code of Personal Conduct 500 – Court Security.

Brent Johnson reviewed the proposed amendment creating a new section addressing court security in the Human Resources Policy and Procedure Manual. This request comes from the TCEs and was promulgated based on an incident where a probation officer left a handgun in a state vehicle. Carrying a weapon in a state vehicle is a violation of state regulations, even if the person has a concealed weapon permit, however, it does not currently violate any court policy. The TCEs want to make it clear to employees when and where they can possess weapons. Employees are already prohibited from possessing weapons in courthouses. This proposal would extend that prohibition to state vehicles, probation officers that are not covered under court security plans, and any other offices where employees might work. The proposal would also prevent weapons at conferences, meetings, or other gatherings conducted off court premises.

Judge Pullan asked if the gatherings provision would apply to summer barbeques and other social gatherings of employees. Mr. Johnson stated that it would. Judge Chin asked if any employees are engaged in weapons training that might coincide with conferences or gatherings off-site. Mr. Johnson stated that probation officers are trained on safety and how to disarm an individual, but they are not trained on handguns, however, they do have OC spray. Judge Chin asked whether any court employees are required to carry weapons within the scope of their employment. Mr. Johnson and Mr. Parkes confirmed that there are no positions requiring the possession of weapons.

Mr. Rice asked whether the off-site provision would violate statutory provisions and whether Mr. Johnson had reviewed the statute. Mr. Johnson stated that he did review the statute and the court has the ability to regulate weapons for its court employees. It is important to note that employees may possess weapons in their vehicles in parking lots. Judge Pullan questioned what security interest the Court has in restricting

weapons at outside events. Ms. Sylvester expressed concerned about employees having weapons around judges. Judge Pullan expressed concern that the “gatherings” provision might violate the 2nd amendment.

The committee decided to remove the provision restricting weapons at “other work-related gatherings.” Section 16.4 will continue to apply to court functions off-premises, such as conferences and meetings.

A motion was made by Mr. Rice to recommend to the Council that the amendments, with the proposed changes, be approved. The motion was seconded by Judge Chin and it passed unanimously.

(12) CJA 4-202.02. Records Classification.

Brent Johnson reviewed the proposed amendments to CJA 4-202.02 pertaining to vital records (line 119) and affidavits of indigency (lines 120). Ms. Williams reviewed the proposed amendments to probable cause statements (line 72).

Vital Records

Mr. Johnson stated that this proposal relates to petitions and orders to amend a Utah vital record. The Office of Vital Records will typically allow an individual to seek an amendment to 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 first obtain a court order. There is very little statutory support for referring them to the court, but these are occurring regularly and judges are reviewing them and issuing orders.

The old forms committee considered creating specific forms for these petitions because the self-help center receives these requests on a weekly basis. The question arose whether these should be public or private records. The committee felt that they should be classified as private 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.

Judge Pullan noted that the statute does not require a court order. This is ultimately the responsibility of the Office of Vital Records. Judge Pullan is concerned that by creating a form, we are creating a cause of action. Mr. Johnson doesn't think this would create or legitimize the creation of a cause of action. Judge Pullan questioned why the Office of Vital Records is punting this responsibility to the courts. Mr. Johnson stated that he thinks they are just seeking the protection afforded by a court order. Judge Pullan asked if these were the gender change requests. Mr. Johnson said no, these aren't the gender change requests, but they could potentially cover those. Mostly, these are for clerical errors.

Mr. Johnson noted that the forms have been tabled until the statute has been amended creating a cause of action for the court. Mr. Rice asked whether, even though we aren't creating a form, this amendment would imply that there is a legitimate cause of action. Judge Pullan feels that it would and expressed a strong opposition to creating a cause of action. Judge Chin and Mr. Rice agreed. Judge Pullan noted that this would encourage the Office of Vital Records to continue to not do its job. The committee discussed what information is included in the petition that would support making the document private, including dates of birth and social security numbers. Mr. Johnson noted that there is a provision in the rules currently whereby a party can petition the court to classify a record as private.

A motion was made by Judge Chin to decline to adopt the amendment. Mr. Rice seconded and the motion passed unanimously.

Affidavit of Indigency

Mr. Johnson stated that this proposal makes affidavits of indigency private records. The rule classifies affidavits of impecuniosity in civil cases as private records but it does not address affidavits of indigency in the criminal context. If a person's financial information is private in civil cases, it should also be private in criminal cases. One argument might be that a defendant in a criminal case has a lesser expectation of privacy than a litigant in a civil case, however, that diminished expectation wouldn't extend to financial information that has nothing to do with the crime itself. Judge Chin agreed.

Judge Pullan noted that there could be a public interest in knowing how frequently public defenders are appointed and on what grounds because it involves the expenditure of state funds. Judge Walton asked how parties would challenge those appointments. Ms. Williams noted that parties to a case and attorneys of record can access private records. Judge Pullan was more concerned with the general public's interest, including the media, not individual parties. Judge Chin noted that the public is not without remedy in obtaining those records. Mr. Johnson agreed, stating that our rules allow the court to release private records for research purposes.

Mr. Rice asked what the federal court does with affidavits of indigency. He noted that there was a recent article in the news where the federal court was questioned about how public defenders are appointed. Judge Chin stated that his recollection of the procedure in federal courts is to appoint almost automatically under most circumstances. There were rarely affidavits of indigency submitted. It was based on limited testimony stating simply that the person was indigent and was requesting an attorney.

The forms addressing affidavits of indigency are very different across jurisdictions. Some include sensitive income information, social security numbers, tax returns, pay

stubs, and spousal income details. Ms. Williams stated that because there is a mechanism for obtaining the information, the public interest concern would be covered.

A motion was made by Judge Chin to recommend to the Council that the amendments be published for public comment. The motion was seconded by Judge Walton. Judge Pullen voted against the motion. The motion passed.

Probable Cause Statements

Ms. Williams reviewed the proposed amendment to CJA 4-202.02 regarding probable cause (PC) statements. Ms. Williams has been travelling around the state conducting presentations on the new automated probable cause system. A concern arose regarding the potential for private information to be accidentally included in an officer's statement (i.e., victim names and addresses, SSN, names of confidential informants, etc.). BCI, sheriffs, and county attorneys all stated that they are training officers consistently that these documents are public and not to include such information. However, sheriffs and county attorneys noted that it still happens and they don't want anyone to get hurt if these are made public.

Pursuant to URCrP Rule 40, search warrants are sealed for 20 days before they become public. This is also reflected in section (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 their entirety upon certain findings by the court.

The probable cause working group does not feel that the warrant process is appropriate given the public nature of PC statements. The group considered several options and is proposing that PC statements be treated as public, unless a judge sees private information in the affidavit at the time of the PC review. The judge could then approve the PC statement (if PC existed), but flag the document as sealed. The document would remain sealed for 72 hours. It would not be made public in Xchange, nor would it attach to a case filed by the prosecutor. Prosecutors and law enforcement could motion the court to redact the document before it is made public. This would require a court order. The new PC system is in place currently in several jurisdictions so there is some urgency in addressing this issue.

Mr. Johnson stated that PC statements are public documents and the court has always treated them accordingly. The difference now is that they are more easily accessible in electronic form immediately upon a judge's PC decision. Before, the public would have to make a records request and law enforcement agencies had the opportunity to redact any sensitive information. Mr. Johnson does not support this change to the court's policy. Our rules put the onus on parties to redact, or not include, private information in a public document. This is ultimately the responsibility of the officers. Ms. Williams noted that PC statements in the new system go from the officers to the jail before it gets

to the court. Jails are being trained to look for sensitive information and reject it. That would require correction by the officers and resubmission to the jail for another review.

Judge Chin expressed concern that in domestic violence cases, the release of the names of minor children, victims, and addresses would be very dangerous. Judge Pullan noted that judges should not be responsible for catching officers' mistakes. The judiciary should not be the back-stop for law enforcements' training failures. Judge Walton stated that if the court starts solving the problem for them, they will not self-regulate. Judge Pullan agrees. Mr. Johnson noted that our rules still allow prosecutors and law enforcement to make a motion to seal a document. However, if a party wanted to make a motion to seal the record, there is no case opened to file it in and the document would likely have already been publicly available in Xchange for some period of time. Judge Pullan questioned whether there are any circumstances under which a judge might want to classify a PC statement as sealed. He described a homicide case where there were multiple defendants and one indicated the involvement of another. Judge Pullan noted, however, that there is a way for officers to exclude such information and still meet the PC requirements.

A motion was made by Mr. Rice to decline to adopt the amendment. Judge Walton seconded and the motion passed unanimously.

(13) Reorganization of CJA 4-202.02. Records Classification.

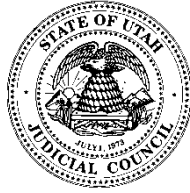
Ms. Williams presented a working document requested by the committee to reorganize CJA Rule 4-202.02 in a more user-friendly way. The proposal creates a table that would be included as a link in the rule. The rule itself would not be altered.

Judge Pullan asked that the first word in the right-hand column be capitalized. The committee discussed the various aspects of the table, including the addition of section references. Ms. Sylvester suggested that Ms. Williams have another person review the table for accuracy. Ms. Sylvester will conduct the review. Because this table would be demonstrative and would not change the language in the rule, it does not need to go out for public comment.

A motion was made by Judge Walton to advance the proposed policy to the Judicial Council for discussion and approval. Mr. Rice seconded the motion and it passed unanimously.

The next meeting is scheduled for January 5, 2018 in the council room at 12:00. There being no other business the meeting was adjourned at 1:53 p.m.

Tab 2



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Nancy Sylvester *Nancy J. Sylvester*
Date: December 23, 2017
Re: Rules 1-205, 3-104, 6-501 for Final Action

The public comment period for Rules 1-205, 3-104, and 6-501 of the Utah Code of Judicial Administration has now closed. The proposals received no public comments.

CJA01-0205. Standing and ad hoc committees. Amend. Adds a justice court judge to the Standing Committee on Resources for Self-represented Parties.

CJA03-0104. Presiding judges. Amend. Moves and amends paragraph (c)(5) from Rule 7 of the Utah Rules of Criminal Procedure, which addresses the use of justice court judges as magistrates.

CJA06-0501. Reporting requirements for guardians and conservators. Amend. In conformity with [H.B. 214](#) (2017), removes the requirement that a non-parent co-guardian report to the court when another co-guardian is the parent of the protected person.

Following discussion, the Policy and Planning Committee may vote to recommend that the Council adopt these rules. If the Council adopts them, the rules will be effective May 1, 2018.

Encl. CJA 1-205
CJA 3-104
CJA 6-501

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

Rule 1-205. Standing and ad hoc committees.

Intent:

To establish standing and ad hoc committees to assist the Council and provide recommendations on topical issues.

To establish uniform terms and a uniform method for appointing committee members.

To provide for a periodic review of existing committees to assure that their activities are appropriately related to the administration of the judiciary.

Applicability:

This rule shall apply to the internal operation of the Council.

Statement of the Rule:

(1) Standing committees.

(1)(A) **Establishment.** The following standing committees of the Council are hereby established:

(1)(A)(i) Technology Committee;

(1)(A)(ii) Uniform Fine Schedule Committee;

(1)(A)(iii) Ethics Advisory Committee;

(1)(A)(iv) Judicial Branch Education Committee;

(1)(A)(v) Court Facility Planning Committee;

(1)(A)(vi) Committee on Children and Family Law;

(1)(A)(vii) Committee on Judicial Outreach;

(1)(A)(viii) Committee on Resources for Self-represented Parties;

(1)(A)(ix) Language Access Committee;

(1)(A)(x) Guardian ad Litem Oversight Committee;

(1)(A)(xi) Committee on Model Utah Civil Jury Instructions;

(1)(A)(xii) Committee on Model Utah Criminal Jury Instructions;

(1)(A)(xiii) Committee on Pretrial Release and Supervision; and

(1)(A)(xiv) Committee on Court Forms.

(1)(B) Composition.

(1)(B)(i) The Technology Committee shall consist of one judge from each court of record, one justice court judge, one lawyer recommended by the Board of Bar Commissioners, two court executives, two court clerks and two staff members from the Administrative Office.

(1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of one district court judge who has experience with a felony docket, three district court judges who have experience with a misdemeanor docket, one juvenile court judge and three justice court judges.

(1)(B)(iii) The Ethics Advisory Committee shall consist of one judge from the Court of Appeals, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, one justice court judge, and an attorney from either the Bar or a college of law.

(1)(B)(iv) The Judicial Branch Education Committee shall consist of one judge from an appellate court, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, the education liaison of the Board of Justice Court Judges, one state level administrator, the Human Resource Management Director, one court executive, one juvenile court probation representative, two court clerks from different levels of court and different judicial districts, one data processing manager, and one adult educator from higher education. The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.

(1)(B)(v) The Court Facility Planning Committee shall consist of one judge from each level of trial court, one appellate court judge, the state court administrator, a trial court executive, and two business people with experience in the construction or financing of facilities.

(1)(B)(vi) The Committee on Children and Family Law shall consist of one Senator appointed by the President of the Senate, one Representative appointed by the Speaker of the House, the Director of the Department of Human Services or designee, one attorney of the Executive Committee of the Family Law Section of the Utah State Bar, one attorney with experience in abuse, neglect and dependency cases, one attorney with experience representing parents in abuse, neglect and dependency cases, one representative of a child advocacy organization, one mediator, one professional in the area of child development, one representative of the community, the Director of the Office of Guardian ad Litem or designee, one court commissioner, two district court judges, and two juvenile court judges. One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The Committee on Judicial Outreach shall consist of one appellate court judge, one district court judge, one juvenile court judge, one justice court judge, one state level administrator, a state level judicial education representative, one court executive, one Utah State Bar representative, one communication representative, one law library representative, one civic community representative, and one state education representative. Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.

(1)(B)(viii) The Committee on Resources for Self-represented Parties shall consist of two district court judges, one juvenile court judge, ~~one two~~ justice court judges, three clerks of court – one from an appellate court, one from an urban district and one from a rural district – one member of the Online Court Assistance Committee, one representative from the Self-Help Center, one representative from the Utah State Bar, two representatives from legal service organizations that serve low-income clients, one private attorney experienced in providing services to self-represented parties, two law school representatives, the state law librarian, and two community representatives.

(1)(B)(ix) The Language Access Committee shall consist of one district court judge, one juvenile court judge, one justice court judge, one trial court executive, one court clerk, one interpreter coordinator, one probation officer, one prosecuting attorney, one defense attorney, two certified interpreters, one approved interpreter, one expert in the field of linguistics, and one American Sign Language representative.

(1)(B)(x) The Guardian ad Litem Oversight Committee shall consist of seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.

(1)(B)(xi) The Committee on Model Utah Civil Jury Instructions shall consist of two district court judges, four lawyers who primarily represent plaintiffs, four lawyers who primarily represent defendants, and one person skilled in linguistics or communication.

(1)(B)(xii) The Committee on Model Utah Criminal Jury Instructions shall consist of two district court judges, one justice court judge, four prosecutors, four defense counsel, one professor of criminal law, and one person skilled in linguistics or communication.

(1)(B)(xiii) The Committee on Pretrial Release and Supervision shall consist of two district court judges, one juvenile court judge, two justice court judges, one prosecutor, one defense attorney, one county sheriff, one representative of counties, one representative of a county pretrial services agency, one representative of the Utah Insurance Department, one representative of the Utah Commission on Criminal and Juvenile Justice, one commercial surety agent, one state senator, one state representative, and the court's general counsel or designee.

(1)(B)(xiv) The Committee on Court Forms shall consist of one district court judge, one juvenile court judge, one justice court judge, one court clerk, one appellate court staff attorney, one representative from the Self-Help Center, the State Law Librarian, the Court Services Director, one member selected by the Online Court Assistance Committee, one representative from a legal service organization that serves low-income clients, one paralegal, one educator from a paralegal program or law school, one person skilled in linguistics or communication, and one representative from the Utah State Bar.

(1)(C) **Standing committee chairs.** The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

(1)(D) **Committee performance review.** At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

(1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.

(2) **Ad hoc committees.** The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc

committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.

(3) **General provisions.**

(3)(A) **Appointment process.**

(3)(A)(i) **Administrator's responsibilities.** The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:

(3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;

(3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;

(3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and

(3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.

(3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.

(3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.

(3)(C) **Expenses.** Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.

(3)(D) **Secretariat.** The Administrative Office shall serve as secretariat to the Council's committees.

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.

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

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

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

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

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

48 (3) Administrative responsibilities and authority of presiding judge.

49 (3)(A)(i) Generally. The presiding judge is charged with the responsibility for the effective operation of
50 the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and
51 directives of the Council as they pertain to the administration of the courts, orders of the court en banc
52 and supplementary rules. The presiding judge has the authority to delegate the performance of non-
53 judicial duties to the court executive. When the presiding judge acts within the scope of these
54 responsibilities, the presiding judge is acting within the judge's judicial office.

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

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

61 (3)(B) Coordination of judicial schedules.

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

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

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

67 (3)(C)(i) The presiding judge is authorized to use senior judge coverage for up to 14 judicial days if a
68 judicial position is vacant or if a judge is absent due to illness, accident, or disability. Before assigning a
69 senior judge, the presiding judge will consider the priorities for requesting judicial assistance established
70 in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule
71 11-201(6).

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

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

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

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

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

85 (3)(E)(i) The presiding judge or court executive shall be available to meet with outside agencies, such
86 as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association
87 leaders, probation and parole officers, county governmental officials, civic organizations and other state
88 agencies. The presiding judge shall be the primary representative of the court.

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

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

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

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

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

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

103 (3)(G) Court executives.

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

108 (3)(G)(ii) The presiding judge for the respective court level and the state level administrator shall
109 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.

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

148 (3)(K)(vii) In the event that the options listed above in subsections (i) through (vi) do not resolve the
149 problem and where the refusal or conduct is willful, continual, and the presiding judge believes the
150 conduct constitutes a violation of the Code of Judicial Conduct, the presiding judge shall refer the problem
151 to the Council or the Judicial Conduct Commission.

152 (3)(L) Cases under advisement.

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

158 (3)(L)(ii) Once a month each judge shall submit a statement on a form to be provided by the State
159 Court Administrator notifying the presiding judge of any cases or issues held under advisement for more
160 than two months and the reason why the case or issue continues to be held under advisement.

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

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

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

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

172 (3)(O) Magistrate availability. The presiding judge in a district court shall consult with the justice court
173 administrator to develop a rotation of magistrates that ensures regular availability of magistrates within
174 the district. The rotation shall take into account each magistrate's caseload, location, and willingness to
175 serve.

Rule 6-501. Reporting requirements for guardians and conservators.**Intent:**

To establish the requirements sufficient to satisfy the Utah Uniform Probate Code.

Applicability:

This rule applies to guardians and conservators with the following exceptions:

This rule does not apply if the ~~guardian or conservator~~ or coguardian is the parent of the ward.

Paragraph (1) does not apply to the guardian of a minor if the guardianship is limited to the purpose of attending school.

Paragraph (1) does not apply to a conservator licensed under the Title 7, Chapter 5, Trust Business, to a guardian licensed under §75-5-311(1)(a), or to the Office of Public Guardian.

Paragraphs (6)(A), (6)(B) and (6)(C) do not apply to the guardian of a minor if the guardianship is limited to the purpose of attending school. A person interested in the minor may request a report under Utah Code Section 75-5-209.

Paragraph (6)(D) does not apply to the guardian of a minor if the minor's estate is deposited in an account requiring judicial approval for withdrawal or if there is no estate. A person interested in the minor may request an accounting under Utah Code Section 75-5-209.

Statement of the Rule:**(1) Examination and private information record.**

(1)(A) Before the court enters an order appointing a guardian or conservator, the guardian or conservator shall file a verified statement showing satisfactory completion of a court-approved examination on the responsibilities of a guardian or conservator.

(1)(B) After the court enters the order of appointment, the guardian or conservator shall file within 7 days a completed and verified Private Information Record form provided by the Administrative Office of the Courts. The guardian or conservator shall continue to keep the court apprised of any changes to the guardian or conservator's contact information.

(2) **Recordkeeping.** The guardian shall keep contemporaneous records of significant events in the life of the ward and produce them if requested by the court. The conservator shall keep contemporaneous receipts, vouchers or other evidence of income and expenses and produce them if requested by the court. The guardian and conservator shall maintain the records until the appointment is terminated and then deliver them to the ward, if there is no successor, to the successor guardian or conservator, or to the personal representative of the ward's estate.

(3) Definitions.

(3)(A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312 and Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.

(3)(B) "Interested persons" means the ward, if he or she is of an appropriate age and mental capacity to understand the proceedings, the ward's guardian and conservator, the ward's spouse, adult children, parents and siblings and anyone requesting notice under Utah Code Section 75-5-406. If no person is an interested person, then interested person includes at least one of the ward's closest adult relatives, if any can be found.

(3)(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.

(3)(D) "Serve" means any manner of service permitted by Utah Rule of Civil Procedure 5.

(3)(E) "Report" means the annual report on the status of the ward required by Utah Code Section 75-5-209 and Section 75-5-312.

(3)(F) "Ward" means a minor or an incapacitated person for whom the court appoints a guardian or a protected person for whom the court appoints a conservator.

(4) **Report forms.** Subject to the requirements of Paragraph (5):

(4)(A) forms substantially conforming to the forms produced by the Utah court website are acceptable for content and format for the report and accounting filed under the Utah Uniform Probate Code;

(4)(B) a corporate fiduciary may file its internal report or accounting; and

(4)(C) if the ward's estate is limited to a federal or state program requiring an annual accounting, the fiduciary may file a copy of that accounting.

(5) **Report information.** The report, inventory and accounting shall contain sufficient information to put interested persons on notice of all significant events and transactions during the reporting period. Compliance with Paragraph (4) is presumed sufficient, but the court may direct that a report or accounting be prepared with content and format as it deems necessary.

(6) **Status reports.**

(6)(A) The guardian shall file with the appointing court a report on the status of the ward no later than 60 days after the anniversary of the appointment. The guardian shall file the report with the court that appointed the guardian unless that court orders a change in venue under Utah Code Section 75-5-313. The reporting period is yearly from the appointment date unless the court changes the reporting period on motion of the guardian. The guardian may not file the report before the close of the reporting period. For good cause the court may extend the time for filing the report, but a late filing does not change the reporting period.

(6)(B) The guardian shall serve a copy of the report on all interested persons with notice that the person may object within 30 days after the notice was served.

(6)(C) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the judge finds that the report is in order, the judge shall approve it.

(6)(D) If there is no conservator, the guardian shall file the inventory and accounting required of a conservator.

(7) **Inventory reports.**

(7)(A) Within 90 days after the appointment, the conservator shall file with the appointing court the inventory required by Utah Code Section 75-5-418. For good cause the court may extend the time for filing the inventory.

(7)(B) The conservator shall serve a copy of the inventory on all interested persons with notice that the person may object within 30 days after the notice was served.

(7)(C) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The judge may conduct a hearing even though no objection is filed. If the judge finds that the inventory is in order, the judge shall approve it.

(8) **Accounting reports.**

87 (8)(A) The conservator shall file with the appointing court an accounting of the estate of the ward no
88 later than 60 days after the anniversary of the appointment. The conservator shall file the accounting with
89 the court that appointed the conservator unless that court orders a change in venue under Utah Code
90 Section 75-5-403. The reporting period is yearly from the appointment date unless the court changes the
91 reporting period on motion of the conservator. The conservator may not file the accounting before the
92 close of the reporting period. For good cause the court may extend the time for filing the accounting, but a
93 late filing does not change the reporting period.

94 (8)(B) The conservator shall serve a copy of the accounting on all interested persons with notice that
95 the person may object within 30 days after the notice was served.

96 (8)(C) If an interested person objects, the person shall specify in writing the entries to which the
97 person objects and state the reasons for the objection. The person shall file the objection with the court
98 and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The
99 judge may conduct a hearing even though no objection is filed. If the judge finds that the accounting is in
100 order, the judge shall approve it.

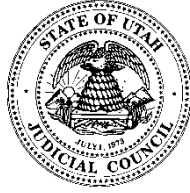
101 | **(9) Final accounting.**

102 (9)(A) The conservator shall file with the court a final accounting of the estate of the ward with the
103 motion to terminate the appointment.

104 (9)(B) The conservator shall serve a copy of the accounting on all interested persons with notice that
105 the person may object within 30 days after the notice was served.

106 (9)(C) If an interested person objects, the person shall specify in writing the entries to which the
107 person objects and state the reasons for the objection. The person shall file the objection with the court
108 and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing. The
109 judge may conduct a hearing even though no objection is filed. If the judge finds that the accounting is in
110 order, the judge shall approve it.
111

Tab 3



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Keisa L. Williams *Keisa L. Williams*
Date: December 21, 2017
Re: Policy on Naming Courthouses

At the Judicial Council's December 18th meeting, the Council discussed Policy and Planning Committee's proposal on naming courthouses. After an extensive discussion, the Council requested an amendment making it clear that the Court's policy is that courthouses should be named after geographic locations only. The Council did not want to include language regarding a presumption and asked that AOC staff reach out to the Department of Administrative Services' Building Board to see if they would be willing to amend their policy to allow the courts to have some input when they are considering a request to name a courthouse. I am working with Jacey Skinner to find a contact with the building board. Attached is a revised draft for your consideration.

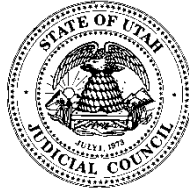
Encl. Draft Policy on Naming Courthouses

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

Judicial Council Policy on Naming Courthouses

The Judicial Council does not have ultimate authority over naming courthouses. That authority resides in the Department of Administrative Services' Building Board, to which the Judicial Council may make recommendations. The Judicial Council's policy is that courthouses should be named after geographic locations.

Tab 4



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Nancy Sylvester *Nancy D. Sylvester*
Date: December 26, 2017
Re: Rules 2-212, Communication with the Office of Legislative Research and General Counsel, and 11-106, Rule Distribution Process.

Rule 2-212 is ready for final action following this committee's amendments at its May 2017 meeting. The amendments were based on a comment from the legislature. Rule 11-106 is the Supreme Court's version of Rule 2-212 and it is ready for this committee's consideration. Rule 2-212 has been held up from final circulation pending amendments to Rule 11-106, the intention of which is to better align the two rules.

In my email communications with James Ishida and Nicole Gray (attached), James and Nicole reference the meeting Rick Schwermer and I had with the Supreme Court, which expressed concerns about drafts being circulated too early to the legislature. This concern abuts the general policy of transparency in rule-making, including making advisory committee materials available on the Internet prior to each meeting. There are times when drafts are in such early stages that it does not make sense to distribute them to other government branches. Nor is it constitutional to be required to do so.

Attached is draft Rule 11-106, which better tracks Rule 2-212 and also offers a definition for when a draft is considered ready for distribution to other government branches. In the right margin, I've made some comments that this committee should discuss. I will also come prepared with more insight from the committee staff and Cathy Dupont, our new appellate court administrator, about uniformity with respect to the posting of advisory committee materials.

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

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

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

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

Applicability:

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

Statement of the Rule:

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

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

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

Rule 11-106. Rule Distribution Process.**Intent:**

To establish a procedure for the distribution of proposed or adopted rule changes and other communications from the Supreme Court.

Applicability:

This rule shall apply to the Supreme Court, its advisory and ad hoc committees, and the Administrative Office of the Courts.

Statement of the Rule:

(1) Definition. As used in this article, proposed rule means a rule the Supreme Court has approved for comment and distribution pursuant to paragraph (2).

(2) Distribution list. At the direction of the Supreme Court, the Administrative Office of the Courts shall email notice of the proposed or adopted rules, and an invitation for comment to the governor, the ~~chairperson~~ staff of the Judicial Rules Review Committee within, ~~the director of~~ the Office of Legislative Research and General Counsel, the chairs of the Judicial Rules Review Committee, the Boards of Judges, ~~the Executive Director of the Commission on Criminal and Juvenile Justice~~, the chair of each of the Supreme Court advisory committees, the Executive Director of the Utah State Bar, each active member of the Utah State Bar, each member of the Judiciary, the proponent of the rule change, and any other person or agency identified by the Supreme Court as requiring notice.

(3) Notice content. The notice shall include a summary of the proposed changes and identify the URL where the full text of proposed rules is available.

(4) Publication. The proposed or adopted rule and an invitation for comment shall be published on the Utah State Courts website ~~in a law reporter~~.

Comment [NS1]: Governor is not in 2-212, Council rules.

Comment [NS2]: I think the notices are being sent to ALLJudicial and the Bar because that pretty much covers all of these entities/people. The only other addition is the publishers. Probably not necessary to put in the rule. I attempted to match some of the 2-212 language.



Nancy Sylvester <nancyjs@utcourts.gov>

Rule 2-212 (accompanying Sup Ct rule?)

17 messages

Nancy Sylvester <nancyjs@utcourts.gov>
To: James Ishida <jamesi@utcourts.gov>
Cc: Keisa Williams <keisaw@utcourts.gov>

Tue, Sep 19, 2017 at 2:42 PM

Dear James,

Attached are Policy and Planning's June minutes and my last memo on CJA Rule 2-212. As we discussed, I'm following up to see if there is any reason to hold up this rule from going to the Council and being circulated as final. Rick and I had discussed this rule with the Supreme Court and the court mentioned that it was interested in having its own to address when its rules will be circulated publicly. You mentioned you would follow up on this, and in looking at my memo it appears this was something we were going to work on coordinating together. If you'd like me to take a first crack at drafting something, I'm happy to.

Thanks!

Nancy

--

Nancy J. Sylvester
Associate General Counsel
Administrative Office of the Courts
450 South State Street
P.O. Box 140241
Salt Lake City, Utah
84114-0241
Phone: (801) 578-3808
Fax: (801) 578-3843
nancyjs@utcourts.gov

2 attachments

Memo re comments to Rule 2-212.pdf
112K



Minutes 20170602.NJS edits.docx
25K

James Ishida <jamesi@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>, Nicole Gray <nicoleg@utcourts.gov>
Cc: Keisa Williams <keisaw@utcourts.gov>

Tue, Sep 19, 2017 at 2:47 PM

Thanks Nancy. I had a brief conversation with Nikki about this, and I've asked her to check her minutes to see where things stand with the Supreme Court.

I suspect you may be correct though. If you wouldn't mind taking the lead, I'll be happy to join in downstream.

Many thanks!

James

[Quoted text hidden]

--

James N. Ishida
Appellate Court Administrator
Administrative Office of the Courts
450 South State Street

Salt Lake City, UT 84114
jamesi@utcourts.gov
 (801) 578-3834

2 attachments



Memo re comments to Rule 2-212.pdf
 112K



Minutes 20170602.NJS edits.docx
 25K

Nancy Sylvester <nancyjs@utcourts.gov>
 To: James Ishida <jamesi@utcourts.gov>
 Cc: Nicole Gray <nicoleg@utcourts.gov>, Keisa Williams <keisaw@utcourts.gov>

Tue, Sep 19, 2017 at 3:17 PM

Thank you, James. I'll go ahead and take the lead.
 [Quoted text hidden]

Nicole Gray <nicoleg@utcourts.gov>
 To: James Ishida <jamesi@utcourts.gov>
 Cc: Nancy Sylvester <nancyjs@utcourts.gov>, Keisa Williams <keisaw@utcourts.gov>

Tue, Sep 19, 2017 at 3:52 PM

James,
 Nancy is correct. My notes indicate that the court asked that you and Nancy coordinate to draft a proposed amendment to Rule 11-106 that is similar to the Judicial Council rule. There was some concern about the need to define the language of a "proposed" rule and to utilize another method or use another term for rule issues that are sensitive or private. Though not reflected in the minutes, I also have a note that the court would like to solicit suggestions from the committee chairs about consistency of practice and potential pitfalls.

The entry on the minutes is attached. Please let me know if you need more from me.

Thanks,

Nicole Gray
 Clerk of Court
 Utah Supreme Court
 801-238-7974

On Tue, Sep 19, 2017 at 2:47 PM, James Ishida <jamesi@utcourts.gov> wrote:
 [Quoted text hidden]

MINUTES OF THE SUPREME COURT CONFERENCE
 May 15, 2017

Present:
 Chief Justice Matthew S. Duncan
 Associate Chief Justice R. Lee
 Justice Christine M. Durham
 Justice David C. Hansen
 Justice John Francis
 Justice Krista Applegate Court Administration
 Clerk Bailey Court Staff Attorney
 Sherie Gray Clerk of Court

Guests:
 Rick Silverman, State Court Administrator
 Nancy Sylvester, Hall

SUMMARY OF ACTIONS TAKEN:

1. Review and approval of April 26, 2017 conference minutes.

The minutes of the court conference on April 26, 2017 were approved.

2. Proposed amendment to Code of Judicial Administration Rule 2-211.

Rick Silverman and Nancy Sylvester discussed an amendment to the Code of Judicial Administration Rule 2-211 that governs dissemination of rules and proposed rules to the legislature's Judicial Rules Review Committee that non-consensually the Policy and Planning Committee of the Judicial Council. After discussion, the Court agreed that similar language could be adopted regarding the rule distribution process of the Supreme Court. Nancy Sylvester and James Ishida will prepare a draft amendment to the rule Code of Judicial Administration Rule 11-106 for the Court to consider. This will be discussed again in 1-2 months to define the term "proposed rule" for that purpose.

Excerpt 5-16-17 Conference Minutes.JPG
 128K

Nancy Sylvester <nancyjs@utcourts.gov>
 To: Nicole Gray <nicoleg@utcourts.gov>
 Cc: James Ishida <jamesi@utcourts.gov>, Keisa Williams <keisaw@utcourts.gov>

Tue, Sep 19, 2017 at 3:54 PM

Perfect. Thank you for sharing that, Nicole. You saved me a few minutes on finding the appropriate rule to amend.

Nancy
[Quoted text hidden]

James Ishida <jamesi@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>
Cc: Nicole Gray <nicoleg@utcourts.gov>, Keisa Williams <keisaw@utcourts.gov>

Tue, Sep 19, 2017 at 4:01 PM

Thanks Nikki. Looks like I have some homework to do. Reading on the airplane!

Sent from my iPhone
[Quoted text hidden]

James Ishida <jamesi@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>
Cc: Nicole Gray <nicoleg@utcourts.gov>, Keisa Williams <keisaw@utcourts.gov>

Tue, Sep 19, 2017 at 4:09 PM

I checked the federal rulemaking procedures, and, in this case, Utah is much more detailed than the Feds.

<http://www.uscourts.gov/rules-policies/about-rulemaking-process/laws-and-procedures-governing-work-rules-committees-0>

As for our distribution of proposed rules amendments, we were much more informal. We essentially tried to distribute the proposals as far and wide as possible. In the paper world, we essentially compiled a mailing list of whomever wanted to be on it. In an electronic, web-based world, that's less important.

Once we have a draft, I'll circulate it to the chairs and staff for their comment and reactions.

Many thanks you two!

James

Sent from my iPhone

On Sep 19, 2017, at 3:55 PM, Nancy Sylvester <nancyjs@utcourts.gov> wrote:

[Quoted text hidden]

James Ishida <jamesi@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Tue, Sep 19, 2017 at 10:07 PM



Sent from my iPhone
[Quoted text hidden]

Nancy Sylvester <nancyjs@utcourts.gov>
To: James Ishida <jamesi@utcourts.gov>
Cc: Nicole Gray <nicoleg@utcourts.gov>, Keisa Williams <keisaw@utcourts.gov>


Thu, Sep 21, 2017 at 2:32 PM

James,

Please see the attached Rule 11-106 (compare 2-212). I added a definition and made some stylistic edits. I've also included some comments. Hopefully the definition captures the discussion the Supreme Court had about this in terms of protecting their early drafts/early stage ideas. I look forward to your thoughts.

Thanks!
[Quoted text hidden]

2 attachments

 **CJA11-0106.docx**

19K

**Rule 2-212 (6-1-17 version with comment edits).docx**

28K

James Ishida <jamesi@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Mon, Sep 25, 2017 at 4:40 PM

Hi Nancy,

Many thanks for doing this. I really appreciate your work and initiative. It looks good, but I have a minor question. Rule 2-212 seems to specify when proposals are distributed to the Legislature and its Office of Legislative Research. That is, when a draft rule is submitted to the Council and when it is published for comment. There is some ambiguity under the old rule as to what it means when a draft rule is "submitted" to the council, but your proposed language makes it clear that the alternative is when the rule is being published for comment. Clear, definitive, and what the Court intended.

But I'm not sure we have the same clarity in Rule 11-106. I like your addition of a new definition subsection, but I'm not sure I understand what we mean by saying "approved for distribution." I think one thing that the Supreme Court was concerned about the release of proposed rules amendments while they were still considered as working drafts. I think your definition subsection is intended to clarify that disclosure to Leg Research is only necessary when the proposal is being published for comment or final approval. But I can think of instances where the Court would approval distributing a proposal rule to a select group of individuals for review and comment prior to a general release for comment. For example, say you had wanted your proposed amendment to Rule 26 to be reviewed by law professors, which the Court approved. Under that scenario, I could see Leg Research arguing that we were required to show the proposal to them because the Supreme Court had approved it for distribution. But I could see the Court being concerned because it's still a work in progress, and not ready for prime time.

We can brainstorm more, Nancy, but I wonder if we should consider your language in Rule 2-212 that specifies the situations where disclosure is required? Food for thought.

Many thanks again!!

James

[Quoted text hidden]

Nancy Sylvester <nancyjs@utcourts.gov>
To: James Ishida <jamesi@utcourts.gov>

Wed, Sep 27, 2017 at 10:32 AM

Thank you for your thoughts, James. I agree. What about modifying the definition to say "approved for comment and distribution pursuant to paragraph (2)." I'm sure that could be wordsmithed, but that's where I was going with it. A rule proposal is only released when it is ready to go out for comment to all of those parties.

[Quoted text hidden]

James Ishida <jamesi@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Wed, Sep 27, 2017 at 10:38 AM

Thanks Nancy. I like that. Sorry you're hanging....

Sent from my iPhone

[Quoted text hidden]

Nancy Sylvester <nancyjs@utcourts.gov>
To: James Ishida <jamesi@utcourts.gov>

Wed, Sep 27, 2017 at 10:40 AM

It's ok. Catching up on older emails. Which item are they on?

[Quoted text hidden]

Keisa Williams <keisaw@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Thu, Dec 21, 2017 at 2:40 PM

Do you know where this one stands? We don't have much for the January 5th P&P agenda, so I'm checking on old stuff.

[Quoted text hidden]

--

MINUTES OF THE SUPREME COURT CONFERENCE

May 16, 2017

Present:

Chief Justice Matthew B. Durrant
Associate Chief Thomas R. Lee
Justice Christine M. Durham
Justice Deno G. Himonas
Justice John Pearce
James Ishida, Appellate Court Administrator
Clark Sabey, Central Staff Attorney
Nicole Gray, Clerk of Court

Guests:

Rick Schwermer, State Court Administrator
Nancy Sylvester, Staff

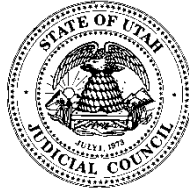
SUMMARY OF ACTIONS TAKEN:

1. Review and approval of April 26, 2017 conference minutes.

The minutes of the court conference on April 26, 2017 were approved.

2. Proposed amendment to Code of Judicial Administration Rule 2-212

Rick Schwermer and Nancy Sylvester described an amendment to the Code of Judicial Administration Rule 2-212 that governs dissemination of rules and proposed rules to the legislature's Judicial Rules Review Committee that was considered by the Policy and Planning Committee of the Judicial Council. After discussion, the Court agreed that similar language could be adopted regarding the rule distribution process of the Supreme Court. Nancy Sylvester and James Ishida will prepare a draft amendment to the rule (Code of Judicial Administration Rule 11-106) for the Court to consider. This will be discussed again in 1-2 months to define the term "proposed rule" for their purposes.



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Nancy Sylvester *Nancy D. Sylvester*
Date: June 1, 2017
Re: Rule 2-212. Communication with the Office of Legislative Research and General Counsel.

At our May meeting, the committee discussed a comment to Rule 2-212, attached, from the Legislature's Judicial Rules Review Committee. The comment requested several amendments to the rule, most of which appear to return previously removed language (with some edits) and tracks [Utah Code section 36-20-3](#). This committee expressed concerns with the language of the rule generally and noted that both the Utah Supreme Court and the Judicial Council had a stake in its outcome. It deferred action on the rule pending staff vetting with the Supreme Court.

Rick Schwermer and I met with the Supreme Court on May 16 to discuss Rule 2-212, its background, including Section 36-20-3, and the Legislature's comments. The Supreme Court expressed concerns with Section 36-20-3 and its reach into its draft rules. The Court discussed the potential repeal of Rule 2-212, but determined that at this point, that sort of action may come with an unintended political cost. Ultimately the Court concluded that it should have its own rule to address the submission of court rules to the Legislature; the statute addresses both Supreme Court and Judicial Council rules. It also determined that its advisory committees should have a more uniform practice with respect to transparency and posting meeting materials, including rule drafts. James Ishida will look into developing some uniform guidelines, based in part on what the federal judiciary has done.

I have redrafted Rule 2-212 with the Legislature's comments incorporated. Policy and Planning should address each of the edits. I will take the final draft and work with James Ishida to create an accompanying Supreme Court rule. The Supreme Court rule will then go to the Court for approval and then both rules will come back to Policy and Planning for discussion if the Court makes changes to its own, or to the Council if not. The goal is to have the rules align as much as possible, taking into account, of course, the needs of each body.

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

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

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

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

Applicability:

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

Statement of the Rule:

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

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

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

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

2
3 Intent:

4
5 To provide the Legislature, through the Office of Legislative Research and General Counsel, with
6 notice of Council rules and opportunity to comment upon them.

7
8 To provide the Legislature, ~~and~~ through the Office of Legislative Research and General Counsel
9 with notice of Council action upon Council rules.

10
11 Applicability:

12
13 This rule shall apply to the Council, the Boards of Judges, the standing and ad hoc committees of
14 the Council, and the Administrative Office.

15
16 Statement of the Rule:

17
18 (1) The ~~principal staff person assigned to the Council, the Boards of Judges, and the standing and~~
19 ~~ad hoc committees of the Council~~ Administrative Office of the Courts shall send to ~~the Director~~
20 of the Office of Legislative Research and General Counsel and the ~~chair of the~~ Judicial Rules
21 Review Committee ~~the a~~ draft rule of the Council ~~Board, or committee~~ at the same time the draft
22 rule is ~~submitted to the Council~~ published for public comment.

23
24 (2) A legislator or representative of the Office of Legislative Research and General Counsel may
25 attend any meeting of the Council at which a rule of the Council is under consideration, and may
26 comment upon the rule.

27
28 (3) The ~~State Court Administrator~~ Administrative Office of the Courts shall notify ~~the chair of~~
29 ~~the Judicial Rules Review Committee and the Director of~~ the Office of Legislative Research and
30 General Counsel and the Judicial Rules Review Committee of the Council's final action on any
31 rule ~~published for comment or adopted~~ the Council adopts.

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

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

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

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

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

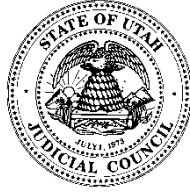
For the same reasons stated above, on lines 28-30, we recommend that the rule state that the Administrative Office of the Courts notify the "staff of the Judicial Rules Review Committee within the Office of Legislative Research and General Counsel and the chairs of the Judicial Rules Review Committee"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

On lines 21-22, we recommend that the rule state that a draft rule be submitted at the "same time the draft rule is submitted to the Council and when the draft rule is published for public comment." Utah Code § 36-20-3 provides that a proposal for a court rule be submitted to the Judicial Rules Review Committee "when:

- a) the court rule or proposal for court rule is submitted to:
 - (i) the Judicial Council for consideration or approval for public comment; or
 - (ii) the Supreme Court from the advisory committee after its consideration or approval;
- and
- b) the approved court rule or approved proposal for court rule is made available to members of the bar and the public for public comment."

We appreciate your consideration of these recommendations.

Tab 5



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Keisa L. Williams *Keisa L. Williams*
Date: January 5, 2018
Re: CJA 4-703. Outstanding Citations and Warrants

At this Committee's October 3, 2017 meeting, Keisa Williams presented a proposed rule draft submitted by Brent Johnson on CJA 4-703. This committee decided to take no action on the proposal, but presented several questions and guidance for Mr. Johnson in bringing the rule back for consideration. Below is an excerpt from the October minutes to refresh your memory. Attached is the original request and proposed amendment. Mr. Johnson will be bringing the revised rule draft to the January meeting. Due to the holidays and Brent's overlapping vacation with mine, we were not able to get the new draft to you before these materials were disseminated.

Excerpt from October 3, 2017 Minutes:

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

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

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?

Encl.

B. Johnson's original request

B. Johnson's original amendments

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:

brentj@utcourts.gov

Phone Number:

801-578-3884

Date of Request:

06/09/2017

RULE AMENDMENT:

Rule Number:

4-703

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

Amending rule on processes for dismissing old citations and warrants.

Reason Amendment is Needed:

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

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

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

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

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

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

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

Select each entity that has approved this proposal:

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

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

Requester's Signature:

Brent Johnson

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
☐ No

Queue Priority Level:

- ☐ Red
☐ Yellow
☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 4-703. Outstanding citations and warrants.

Intent:

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

Applicability:

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

Statement of the Rule:

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

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

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

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