

Agenda

Policy and Planning Committee

February 2, 2018
9:30 – 11:30 a.m.
Council Room – 3rd Floor, N31
 Matheson Courthouse
 450 S. State St., Salt Lake City, UT

9:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Derek Pullan
9:05	<u>Update from Supreme Court:</u> BYU LawX Project for debt collection cases (SoloSuit)	Discussion		Keisa Williams
9:25	CJA 9-109. Presiding Judges in justice court.	Discussion/ Action	Tab 2	Jim Peters Nancy Sylvester
10:00	CJA 2-207. Annual rulemaking and periodic review of the Code. <ul style="list-style-type: none"> Adopt a schedule for periodic review 	Discussion/ Acton	Tab 3	Keisa Williams
11:00	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:

March 2, 2018 (9:30-11:30 a.m.)

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

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

**January 5, 2018
12:00 – 2:00 p.m.**

Draft

Members Present

Hon. Derek Pullan - Chair
Hon. Augustus Chin
Hon. Mary Noonan
Rob Rice
Hon. Kara Pettit (by phone)
Hon. John Walton (by phone)

Members Excused

Staff

Pam Johns – recording Secretary
Nancy Sylvester
Keisa Williams
Richard Schwermer- Court Administrator
Catherine Dupont
Judge Barry Lawrence

Guests

Kimball Parker- Parson Behle & Latimer

(1) Welcome and Approval of minutes.

Judge Derek Pullan welcomed the members to the meeting. Judge Pullan addressed the December 1, 2017 minutes. There being no changes, Rob Rice made a motion to approve the minutes as written. Judge Chin seconded the motion and it passed unanimously.

(2) BYU LawX Project for debt collection cases.

Mr. Parker is the Director of LawX, a BYU Legal Design Lab. The Lab has developed a new software program for pro se, debt collection defendants. The program is similar to Turbo Tax and will assist pro se parties in answering a complaint for a debt collection case in both the District and Justice Court. The program will be free to users. Mr. Parker is asking the courts to allow pro se litigants using the program to be able to email the PDF package to the court, rather than have to print the documents and hand-deliver or mail them. The documents submitted to the court would be formatted based on the online forms provided by the court. Mr. Parker walked the committee through a demonstration of the program.

Ms. Dupont asked if the software program would be available in different languages. Mr. Parker stated that the lab is currently working on a Spanish version and they are interested in other languages as well. Ms. Williams directed Mr. Parker to the Utah Court Certified Interpreter List on the court's website and encouraged him to use one of those interpreters to ensure any interpreters they use are familiar with legal terminology.

Judge Pullan noted that if the court allowed the documents to be filed via email, there would be question as to when the documents were officially deemed "filed" with the court. Is it the date/time the email is sent? Is it the date/time the clerk opens the email? What if it goes to a Spam folder?

Judge Lawrence said that the Self-represented Parties Committee has been looking at the issue of the high percentage of debt collection case defaults and was interested in what Mr. Kimball and his students were doing.

Mr. Schwermer noted that the courts are working to address e-filing for pro se litigants through a CORIS rewrite and the court's ODR program will likely be extended to debt collection cases in the near future. The Supreme Court will be discussing this program at its January 17th conference. Mr. Schwermer will attend and report back to this committee any guidance from the Court.

The committee discussed various filing options and the impact they might have on Utah Rules of Civil Procedure and in-house policies. Ms. Sylvester suggested to Mr. Kimball that the drop down list of districts should filter out the location data of other districts in the next drop down box. The committee asked Ms. Sylvester to be the direct contact with Mr. Parker to update him on the progress of his request and to work with him on any potential civil rules issues.

Judge Pullan thanked Mr. Parker for addressing the committee. The committee is supportive of the concept and will consider the request, although it may take some time for a full resolution of it.

(3) CJA 3-104. Presiding Judges. CJA 6-501. Reporting Requirements for Guardians and Conservators. CJA 1-205. Standing and Ad Hoc Committees.

Ms. Sylvester addressed CJA Rules 3-104, 6-501, and 1-205. The rules are back from public comment. They did not receive any comments.

A motion was made by Judge Noonan to approve the rules for submission to the Judicial Council with a recommendation that they be adopted as final. Mr. Rice seconded the motion and it passed unanimously.

(4) Policy on Naming Courthouses.

Judge Pullan addressed the revision of the policy on naming courthouses and the direction from the Judicial Council. Judge Pullan is opposed to naming courthouses after individuals because he thinks the law transcends any one individual, no matter how great the person's accomplishments. Judge Noonan noted that policies should not begin with a statement that the court does not have the authority to act.

After discussion, Judge Noonan moved to remove the first two sentences and send the revised policy to the Judicial Council for consideration and approval. Judge Chin seconded the motion and it passed unanimously.

(5) CJA 2-212. Communication with the Office of Legislative Research and General Counsel.

Ms. Sylvester addressed CJA Rule 2-212. Ms. Sylvester stated that the rule is ready for the committee's consideration. The rule originally went out for public comment in February 2017 and received a comment from the legislature. This committee reviewed the comment at its May 2017 meeting and adopted them into the draft rule but suggested that Ms. Sylvester work with the Appellate Court Administrator and the Supreme Court on a companion Supreme Court rule. Judge Pullan asked if the Supreme Court's rule (CJA 11-106) had been approved by the Supreme Court. Ms. Sylvester stated it had not. She wanted to get this committee's feedback before presenting both rules to the Court.

Judge Pullan and Judge Noonan indicated that the same language should be used in both rules to make them consistent. The committee asked that paragraph (1) in CJA 11-106 outlining the definition of proposed rules be added to CJA 2-212. The distribution list in paragraph (2) in CJA 11-106 should be reviewed for accuracy and should be consistent with CJA 2-212. Judge Noonan noted that the Judicial Council is not listed. "Proposed" should be used instead of "draft." "Email" should be used instead of "send."

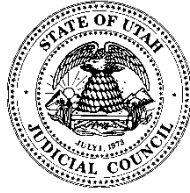
Ms. Sylvester will revise the rules as directed and take this committee's comments to the Supreme Court for feedback and guidance.

(6) Other Business

Judge Chin moved to adjourn the meeting, Mr. Rice seconded the motion and it passed unanimously.

The next meeting is scheduled for February 2, 2018 in the council room at 12:00. There being no other business the meeting was adjourned at 1:26 pm.

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
Date: January 25, 2018
Re: CJA Rule 9-109: Comment Period Complete

The following rule is now back from [comment](#) and we received one comment and one rule draft suggestion.

UCJA09-0109 Presiding judges. New. Establishes the procedure for election, term of office, role, responsibilities, and authority of presiding judges and associate presiding judges for justice courts.

The one comment is from Judge David Marx and reads as follows: "UCJA 9-109 Presiding Judges rule should include the provisions in the presiding judge rules for the other court levels that provides for oversight by the presiding judge as to such things as: cases under advisement monitoring; etc."

Judge Brendan McCullagh sent a proposed draft the goal of which was to capture the edits Judge Marx suggested. Jim Peters, Justice Court Administrator, and Judge Reuben Renstrom, chair of the Board of Justice Court Judges, then refined Judge McCullagh's proposed amendments. Clean and redline versions of their draft are attached.

It appears that this rule is not ready for final action by the Council, so this body should work through the suggested edits and then recommend recirculation for comment.

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

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

Applicability:

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

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

(1)(A) Presiding judge.

(1)(A)(i) A presiding judge in each judicial district shall be elected by a majority vote of the active judges in present at the district meetings held at the 2018 annual Justice Court eConference. Thereafter, regular elections shall take place at ~~the annual that eConference~~ in odd years for odd-numbered districts and in even years for even-numbered districts. Interim elections, if necessary, shall take place as provided in this rule. A presiding judge shall be an active judge, currently appointed to at least one court within the district.

(1)(A)(ii) The presiding judge's term of office shall be from the time of his or her election or appointment until he or she resigns or until the next regular election, whichever occurs first. A district, by majority vote of its judges, may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be determined by a coin toss between the two candidates with the most votes. The candidate whose last name comes first in the alphabet shall have the right to call the toss. ~~appointed by the chair of the Board of Justice Court Judges to serve until the next regular election.~~

(1)(B) Associate presiding judge.

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

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

(1)(C) District education director.

(1)(C)(i) The judges of a district may, at their discretion, elect one judge of the district to the office of education director. An education director shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A). If a district does not elect an education director, the associate presiding judge, if there be one, shall serve as the education director. If the district elects neither an

education director nor an associate presiding judge, the presiding judge shall serve as the education director.

(1)(C)(ii) The education director shall serve on the justice court education committee and shall work with the Education Department of the Administrative Office in developing, planning and presenting relevant judicial training at the district level.

(1)(C) Removal and Other Vacancies of Office.

(1)(D)(i) If a presiding judge vacates that office, then the associate presiding judge shall serve the rest of the presiding judge's term. If there is no associate presiding judge, the district education director shall, if willing, serve the unexpired term. If there is no officer to fill the role, the Chair of the Board of Justice Court Judges shall appoint a willing judge to serve until the next district meeting.

(1)(D)(ii) A presiding judge may appoint, on an interim basis, a willing judge of the district to fill an unexpired term of associate presiding judge or education director until the next district meeting. At that district meeting, the active judges present shall ratify the appointment by majority vote. If they do not ratify the appointment, or if the presiding judge did not make an interim appointment, nominations and an election shall then be held at that meeting to fill the unexpired term.

(1)(D)(iii) A presiding judge, or associate presiding judge or education director may be removed as the presiding judge or associate presiding judge from his or her office at a district meeting by a two-thirds vote of all active justice court judges in the district. A successor presiding judge shall, or an associate presiding judge or education director shall may, then be selected to fill the unexpired term of the vacant office as provided in this rule.

(1)(D)(iv) In extraordinary circumstances, to preserve confidence in the fair administration of justice, the Presiding Office of the Judicial Council may remove a judge from any office described in this rule. Vacancies shall be filled as provided in this rule.

(2) District meetings.

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

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

(2)(C) ~~Each district shall have a~~ at the annual Justice Court Conference. Each district shall have at least one other meeting in the second half of the calendar year in which a quorum of active justice court judges is present, including the presiding judge, associate presiding judge, or education director. ~~minimum of two meetings each year.~~

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

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

(2)(~~EG~~) Other than judges and the Justice Court Administrator, ~~those attending attendance at district the meetings~~ shall be ~~by-upon~~ approval of the presiding judge ~~only~~.

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

(3) Administrative responsibilities and authority of presiding judge.

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

(3)(B) Coordination of required training.

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

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

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

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

(3)(D)(i) The presiding judge shall be available to meet with outside agencies, such as ~~the prosecuting attorneys, the city attorneys, county attorneys, public defenders or associations of defense counsel, sheriffs, police chiefs, bar association leaders, probation and parole officers providers,~~ government officials of cities or counties located within the district, civic organizations and other state agencies.

(3)(D)(ii) The presiding judge shall be the primary judicial representative of the justice court judges in the district.

(3)(D)(iii) Nothing in this rule shall replace or interfere with the statutory and administrative responsibilities of an appointed judge to the appointing authority of a court.

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

Conduct, the presiding judge may, depending on the severity of the issue and consistent with legal and ethical obligations:

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

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

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

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

(3)(E)(v) Refer the problem to the Judicial Council, ~~or to the Chief Justice~~ or the Judicial Conduct Commission, as appropriate.

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

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

(3)(G) Reassignment of cases. In the event that all of the appointed judges of a court recuse themselves from a matter, or a motion to disqualify a judge or judges is filed and no appointed judge of the court is available or empowered to hear the motion, a judge is disqualified from a case, the presiding judge shall consider the issue as the Rules of Procedure or other law requires and, if necessary, assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

(3)(H) Compliance with standards. The presiding judge shall monitor and ensure that judges are complying with performance standards established by the Council or otherwise required by law.

(3)(I) Performance evaluations. Pursuant to Utah Code 78A-12-203(7)(c), the presiding judge shall receive the midterm reports prepared by the Judicial Performance Evaluation Commission for other justice court judges in his or her district. The presiding judge shall consult with the evaluated judge and the Justice Court Administrator to develop a plan for addressing the issues resulting in less than satisfactory scores.

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

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

(2)(E) Other than judges and the Justice Court Administrator, attendance at district meetings shall be upon approval of the presiding judge.

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

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

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

(3)(D)(i) The presiding judge shall be available to meet with outside agencies, such as prosecuting attorneys, the city attorneys, county attorneys, public defenders or associations of defense counsel, sheriffs, police chiefs, bar association leaders, probation providers, government officials of cities or counties located within the district, civic organizations and other state agencies.

(3)(D)(ii) The presiding judge shall be the primary judicial representative of the justice court judges in the district.

(3)(D)(iii) Nothing in this rule shall replace or interfere with the statutory and administrative responsibilities of an appointed judge to the appointing authority of a court.

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

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111 treatment; or

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113 Commission, as appropriate.

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115 courts of the district and (i) the Board of Justice Court Judges and (ii) the presiding judges of Juvenile
116 Court and District Court.

117 (3)(G) Reassignment of cases. In the event that all of the appointed judges of a court recuse
118 themselves from a matter, or a motion to disqualify a judge or judges is filed and no appointed judge of
119 the court is available or empowered to hear the motion, the presiding judge shall consider the issue as
120 the Rules of Procedure or other law requires and, if necessary, assign any judge duly appointed pursuant
121 to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

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123 complying with performance standards established by the Council or otherwise required by law.

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125 receive the midterm reports prepared by the Judicial Performance Evaluation Commission for other
126 justice court judges in his or her district. The presiding judge shall consult with the evaluated judge and
127 the Justice Court Administrator to develop a plan for addressing the issues resulting in less than
128 satisfactory scores.

Tab 3

Rule 2-207. Annual rulemaking and periodic review of the Code.

Intent:

To establish an annual schedule for the study, review and adoption of Council and Board rules.

To assure the timely periodic review of Council policies for continued applicability.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) Annual rulemaking procedure.

(A) At least once a year, the Council shall publish rules for comment under Rule 2-203.

(B) The Boards of Judges, the standing and ad hoc Committees of the Council or any other interested individual may submit a written request to the Council, through the office of General Counsel, requesting the adoption, modification or repeal of a Council rule. The request shall set forth the proposed rule or amendment or the text of the rule proposed for repeal and shall specify the need for and anticipated effect of the proposal.

(2) Periodic review of the Code.

(A) The Policy and Planning Committee shall adopt a schedule which ensures that the rules contained in this Code are reviewed on a periodic basis but a minimum of once every five years.

(B) Review of the Code shall be for the purpose of determining the continuing viability, utility and practicality of the rules.

(C) Rules which are outdated or inconsistent with other rules, legislation or preferred practice shall be modified, amended or repealed.

Judicial Council Code of Judicial Administration

- Ch 1: Judicial Council Organization
- Ch 2: Judicial Council Procedure
- Ch 3: Administration of the Judiciary
- Ch 4: Operation of the Courts
- Ch 5: Appellate Court Operations
- Ch 6: District Court Operations
- Ch 7: Juvenile Court Operations
- Ch 8: Circuit Court Operations [Repealed]
- Ch 9: Justice Court Operations
- Ch 10: Local Supplemental Rules
- Appendices

Chapter 1 Judicial Council Organization.

Article 1. General Provisions

- Rule 1-101 General definitions - Rules of construction.
- Rule 1-102 Role and objectives of the Council.

Article 2. Judicial Council Organization

- Rule 1-201 Membership - Election.
- Rule 1-202 Officers - Secretariat.
- Rule 1-203 Responsibilities of the presiding officer.
- Rule 1-204 Executive committees.
- Rule 1-205 Standing and ad hoc committees.

Article 3. Boards of Judges

- Rule 1-301 Established - Composition.
- Rule 1-302 Membership - Officers - Secretariat.
- Rule 1-303 Internal procedures and organization.
- Rule 1-304 General authority and duties.
- Rule 1-305 Board of Senior Judges.

Chapter 2 Judicial Council Procedure.

Article 1. Council Meetings

- Rule 2-101 Rules for the conduct of Council meetings.
- Rule 2-102 Council agenda.

- Rule 2-103 Open and closed Council meetings.
- Rule 2-104 Minutes of Council meetings.
- Rule 2-105 Referral to committee or Board.
- Rule 2-106-01 REPEALED.
- Rule 2-106-02 REPEALED.
- Rule 2-106-03 REPEALED.
- Rule 2-106-04 REPEALED.
- Rule 2-106-05 REPEALED.

Article 2. Rulemaking Procedure

- Rule 2-201 Purpose of rules and resolutions.
- Rule 2-202 Format for rules.
- Rule 2-203 Forty-five day comment period.
- Rule 2-204 Local supplemental rules.
- Rule 2-205 Expedited rulemaking procedure.
- Rule 2-206 Effective date of rules.
- Rule 2-207 Annual rulemaking and review of the Code.
- Rule 2-208 Publication and distribution.
- Rule 2-209 Suspension of procedures.
- Rule 2-210 Failure to comply with procedures.
- Rule 2-211 Compliance with the Code of Judicial Administration and the Code of Judicial Conduct.
- Rule 2-212 Communication with the Office of Legislative Research and General Counsel.

Chapter 3 Administration of the Judiciary.

Article 1. Judicial Office

- Rule 3-101 Judicial performance standards.
- Rule 3-102 Assumption of judicial office.
- Rule 3-103 Administrative role of judges.
- Rule 3-104 Presiding judges.
- Rule 3-105 REPEALED.
- Rule 3-106 Legislative activities.
- Rule 3-107 Executive branch policy initiatives.
- Rule 3-108 Judicial assistance.
- Rule 3-109 Ethics Advisory Committee.
- Rule 3-110 Repealed and replaced with 2-106.01 through 2-106.05.
- Rule 3-111 Performance evaluation of senior judges and court commissioners.
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- Rule 3-111-03 REPEALED.
- Rule 3-111-04 REPEALED.
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- Rule 3-112 REPEALED.
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- Rule 3-201.6 REPEALED.
- Rule 3-202 Court referees prohibited.

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