

Agenda
Policy and Planning Committee
 April 6, 2018
12:00 – 2:00 p.m.
Council Room – 3rd Floor, N31
 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	LawX Project – Update on OCAP form and MyCase	Discussion/ Action		Heidi Anderson Kim Allard
12:15	BDCJ Proposed Rule Change	Discussion/ Action	Tab 2	Shane Bahr Judge James Taylor
12:45	<u>Rules back from public comment:</u> <ul style="list-style-type: none"> • CJA 3-407, 4-202.02, 4-202.07, 4-202.09, 4-510.03, 7-303 	Discussion/ Action	Tab 3	Keisa Williams
12:55	CJA 4-202.09. Miscellaneous.	Discussion/ Action	Tab 4	Nancy Sylvester
1:15	CJA 3-111. Performance evaluation of senior judges and court commissioners.	Discussion/ Action	Tab 5	Nancy Sylvester
1:30	Human Resources Professional Appearance Policy	Discussion/ Action	Handout	Rob Parkes Rob Rice Judge Pettit
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:

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

Draft

**Judicial Council Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111**

**March 2, 2018
9:30 a.m. to 11:30 a.m.**

Members Present

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

Members Excused

Staff

Amber Vinson – Recording Secretary
Nancy Sylvester
Keisa Williams
Richard Schwermer- Court Administrator
Rob Parkes
Chris Palmer
Judge Dennis Fuchs
Jim Peters (by phone)

Guests

(1) Welcome and Approval of minutes.

Judge Derek Pullan welcomed the members to the meeting. Judge Pullan addressed the February 2, 2018 minutes. There being no changes, Judge Chin made a motion to approve the minutes as written. Mr. Rice seconded the motion and it passed unanimously.

(2) Human Resources Professional Appearance Policy

Judge Pullan welcomed Mr. Rob Parkes to the meeting and inquired about the genesis behind the new policy regarding professional appearance. Mr. Parke stated that the idea to change the policy came from the Trial Court Executives. The TCE's created a committee to address the professional appearance including court personnel from all levels of employment and court locations. The Professional Appearance Policy provides photographic depictions to help supervisors explain, and personnel understand the guidelines. The TCE's approved the draft policy and format. The policy is intended to be more gender neutral. The committee discussed issues regarding compliance and consistency in enforcement across the districts. Judge Noonan commented there has been feedback from staff in the Fourth District stating the visual aids are helpful. The committee discussed the reasoning behind having multiple standards for appearance, including

courtroom, non-courtroom business casual, and casual dress on Fridays. Jurisdictional flexibility allowed in the original policy has been eliminated in order to ensure the appearance standards are consistent across the state. Judge Pettit supported allowing more casual attire for employees not appearing in court. Judge Noonan stated that regardless of what policy is adopted, enforcement is critical. Judge Chin asked whether judges would be asked to enforce the policy in the absence of court administrators. If not, there may be discontent among staff when enforcement is inconsistently applied. Mr. Parkes stated that judges would not be asked to enforce the policy. The committee discussed how appearance may affect workplace morale, professional conduct, and public perception. Mr. Rice commented on the evolution of dress codes in private practice. Mr. Rice discussed the policy from an employment law perspective, and stated that the policy would be treated legally as a subjective guideline and does not create a contract between the employee and employer. The committee determined that the word “standard” should be changed to “guideline” throughout the policy, unless it would be grammatically impractical. Several members stated that they numerous suggestions regarding details of the policy, including: making the pictures more gender-neutral, adding men to the section on hair, and amending the section on tattoos to address language which should be prohibited, rather than location on the body. Judge Pullan suggested creating a subcommittee to conduct a detailed review/amendment of the policy. Judge Pettit, Mr. Rice and Mr. Parkes volunteered to make up the subcommittee and will report back to the committee at the next meeting.

(3) CJA 3-414 and HR 500. Code of Personal Conduct (Section 16. Court Security)

Judge Pullan welcomed Mr. Chris Palmer to the meeting. Mr. Palmer discussed his edits to the security section of HR 500. Ms. Williams noted that the committee previously approved edits to that section. Mr. Palmer simply added “except those [employees] identified in CJA 3-414” which would allow the Court Security Director to carry firearms in the courthouse. Mr. Palmer outlined the standards created in CJA 3-414 that the Court Security Director would be required to meet in order to carry a firearm. Mr. Schwermer expressed concern with proposed section 16.5 prohibiting employees from possessing firearms while acting within the scope of their employment outside the courthouse. Mr. Schwermer stated that if the section would apply to employees driving their personal vehicles for business purposes, it is too restrictive. Mr. Palmer stated the goal is to prevent untrained users from carrying a firearm around judges, court staff, and court patrons. Mr. Schwermer proposed amending the language in sections 16.3-16.5 to state clearly the court’s intent behind this policy. What exactly are we worried about? The committee amended the language in 16.3 to cover all of the potential issues and deleted sections 16.4 and 16.5.

Judge Noonan inquired about the language allowing local security plans to limit the ability to carry firearms irrespective of this policy. Mr. Palmer stated it is important to allow local presiding judges to determine the security policies in their own jurisdictions, including imposing limitations on the possession of firearms. Judge Pullan asked about the badge access changes. Mr. Palmer discussed the need for a color-coded badge system to allow visual confirmation of clearance from a distance.

Judge Noonan made a motion to approve the policies as amended. CJA 3-414 will be recommended to the Judicial Council for public comment and HR 500 is approved for publication to court staff. Judge Chin seconded the motion and it passed unanimously.

(4) CJA 2-207. Annual Rulemaking and Periodic Review of Assignments

This item was held until the April meeting.

(5) LawX Project (Master List)

Ms. Williams detailed the master list she compiled pursuant to the committee's request at the last meeting. The list outlines and organizes the issues surrounding the request from regarding litigants' ability to email debt collection answers to the court for filing. Ms. Williams detailed the discussions she has had with the Self-Help center and Kimball Parker. The committee discussed the need for an initial policy decision about whether the court should consider this request at all given the pro se filing projects already in progress (i.e., MyCase). Mr. Schwermer stated that MyCase may be available as soon as the end of 2018, but he would need to talk to the IT Director, Heidi Anderson, about a more firm date. The committee discussed other programs available for pro se litigants in debt collection cases around the state. The committee discussed the issues, including substantive legal issues, surrounding accepting emails as filings. The committee discussed the ability to use what LawX has created to fast-track an OCAP version. The committee asked Ms. Williams to invite Heidi Anderson to the next meeting to discuss the MyCase completion date.

(6) CJA 9-109. Presiding Judges in Justice Courts

Judge Pullan welcomed Jim Peters. Mr. Peters reviewed the changes to CJA 9-109 suggested by the Board of Justice Court Judges. Mr. Peters stated that there were only three substantive changes. The first was to section (1)(D)(ii) on lines 55-55, which would allow a judge subject to a vote of removal to be eligible to participate in the vote. The second was to section (2)(A)(ii) giving judges more discretion about when to hold meetings. The third was to section (3)(G) which would give presiding judges the discretion to deny a motion to disqualify where appropriate.

Judge Chin made a motion to recommend to the Judicial Council that the rule, as amended, be published for public comment. Judge Pettit seconded the motion and it passed unanimously.

(7) CJA 4-409. Council Approval of Problem Solving Courts

Judge Pullan summarized the Judicial Council's discussion regarding problem solving courts. The Council asked this committee to review the certification process of problem solving courts and CJA 4-409. Judge Pullan noted that currently there are required, presumptive, and best practice standards in the court's checklists for certification. However, if the programs can show substantial compliance, they can be conditionally certified. Mr. Schwermer and Judge Fuchs provided an explanation of the way the certification process works now, how the checklists were created, and the work they are doing to help establish revised national best practice standards. Judge Fuchs discussed issues that continue to be a challenge around the state, such as drug testing, contracting for

services, and the amount of time judges spend with participants. Judge Pullan noted his concern that there are no real audits or data analysis, and compliance is evaluated primarily upon self-reporting. Judge Pullan also questioned whether the court should apply more resources to those issues. Mr. Schwermer stated that currently, only 0.5 FTE has been allocated for monitoring these programs. Indiana conducts actual audits and assessments with 3-day onsite visits for each court, but they allocate 4 FTEs. Judge Walton described his experience with drug court and recommended that the approach taken by the committee in identifying these procedures be supportive to judges, rather than punitive. The committee determined that the checklists should be reviewed to identify which standards are actually required. The committee asked Mr. Schwermer and Judge Fuchs to make those recommendations to the committee at the next meeting.

(8) Adjourn.

Judge Noonan made a motion to adjourn the meeting. Mr. Rice seconded the motion and it passed unanimously.

The next meeting is scheduled for April 6, 2018 in the Judicial Council room at 12:00 p.m. There being no other business the meeting was adjourned at 11:45 a.m.

Tab 2

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:

Shane Bahr

E-mail:

shaneb@utcourts.gov

Phone Number:

801-578-3971

Date of Request:

02/15/2018

RULE AMENDMENT:

Rule Number:

New

Location of Rule:

Brief Description of Proposed Amendment:

The Board of District Judges has developed a proposed rule which is intended to foster more effective probation supervision by consolidating the supervision of probation in non-petty offenses to a single judicial authority, without transferring or re-numbering those cases. The rule would apply only to cases where the Department of Adult Probation and Parole are supervising more than one non-petty offense and only to functions related to management of supervised probation. The rule would not apply over the objection of court, the prosecution or the defendant in a subsequent prosecution. A copy of the proposed rule is attached.

Reason Amendment is Needed:

At present when multiple judges, often in multiple districts supervise a single defendant who has been placed on probation, any probation violation report must be sent to every judge involved who will then make an independent order. Hearings, transportation and costs to everyone involved are significantly multiplied in these circumstances. Most critically, the presence of multiple decision makers for a single defendant reduces the effectiveness of any judicial action regarding supervised probation.

The increased functionality of the statewide court computer system to link district court operations now makes it possible for any district court with proper authority to make orders that relate to cases in another district.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

County Attorney, Defense Counsel, Adult Probation and Parole, District Court.

Select each entity that has approved this proposal:

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

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

Requester's Signature:

Shane E. Bahr

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:

CJA Rule _____. Consolidation of Probation**Intent**

To allow management by a single District Court Judge of multiple supervised probation cases involving a single defendant which were originally adjudicated in separate courts and districts. The purpose is to improve the effectiveness of supervised probation by consolidating probation supervision to the discretion of a single judge. Consolidation will result in greater clarity for probation orders to the defendant. It is also expected that significant administrative confusion will be eliminated for courts, prosecutors and defense counsel as probation actions will not be alleged and considered in more than one forum.

Applicability

This rule applies only when all of the following conditions have been met:

- (1) The Defendant is presently subject to an order for supervised probation by a District Court following conviction of a class A misdemeanor or felony.
- (2) The Defendant has been convicted by plea or trial and has been sentenced in another case in a District Court for commission of another felony or class A misdemeanor, regardless of whether the second or subsequent conviction was for an offense that occurred before or after the base offense.
- (3) The order of sentence in the subsequent conviction includes an order that the defendant submit to probation supervised by the Department of Adult Probation and Parole.
- (4) The sentencing judge, prosecutor and defendant in the subsequent conviction do not object to the application of this rule for consolidation of probation before a single judge.

Statement of the Rule:

- (1) **Definitions.** For the purpose of this rule, the following definitions apply:
 - (1)(A) The “first offense” is the first in time conviction and order of supervised probation for a non-petty offense in a District Court for the State of Utah unless a later case is designated as a “first offense” under subsection (8)(C), below.
 - (1)(B) The “supervising judge” is the District Court judge assigned to preside over the first offense case.
 - (1)(C) A “sending court” or “sending judge” is a court in which a subsequent conviction for a non-petty offense results in an order for supervised probation.
 - (1)(D) The “sending prosecutor” is the prosecutor in any sending court.
 - (1)(E) A “non-petty offense” is a class A misdemeanor or felony with a potential term of incarceration of more than 6 months.
 - (1)(F) The “Department” is the Department of Adult Probation and Parole.
- (2) **Probation Transfer.** This rule applies when an individual who has already been convicted of a non-petty offense and has been placed on probation which is supervised by the Department of Adult Probation and Parole is then convicted and sentenced for another non-petty offense. In that circumstance, authority for supervision and enforcement of probation for the subsequent conviction may be transferred to any division of the District Court in any District of the State which is already managing probation for the first offense.
- (3) **Numbering and Venue.** Cases which are transferred for supervision are not to be renumbered. However, by order made by the sending judge and entered in both cases by the judicial assistant for that judge, the docket in both the first offense and the subsequent conviction shall reflect that consolidation for the purpose of probation management has occurred. Following such an order, all minute entries related to management of probation will be entered only in the first case at the direction of the supervising judge.
- (4) **Authority to Supervise probation.** Following an order of probation consolidation:

- 49 (4)(A) All decisions regarding management of probation, including requests to terminate, modify
50 or extend probation will be determined by the supervising judge.
- 51 (4)(B) Any communication from the Department to the Court shall be directed only to that judge.
- 52 (4)(C) Minute entries which reflect action of the court in relation to probation shall be entered only
53 in the first case except as limited below.
- 54 (4)(D) In the event probation is terminated:
- 55 (4)(D)(i) That action shall be reflected by minute entry in the first case and also by minute
56 entry in the subsequent conviction cases although the judicial assistant for the
57 judge of the first case is specifically authorized to enter that minute entry without
58 referral back to the sending court.
- 59 (4)(D)(ii) In the discretion of the supervising judge, termination of probation for all cases
60 supervised may be determined to be:
- 61 (4)(D)(ii)(1) "satisfactory termination" upon completion of probation time and
62 requirements;
- 63 (4)(D)(ii)(2) "unsatisfactory termination" upon failure to complete probation time
64 or requirements which may be followed by reinstatement with new or
65 re-emphasised conditions of probation for such term as the court
66 may determine;
- 67 (4)(D)(ii)(3) "unsatisfactory termination with imposition of the original sentence"
68 which might result in a commitment to jail or prison without further
69 order of probation; or,
- 70 (4)(D)(ii)(4) "termination of probation upon death of the probationer".
- 71 (5) **Representation of Counsel.** Counsel for the State and the Defendant will be expected to
72 appear as follows:
- 73 (5)(A) In all proceedings in the first case the State will be represented, for both the first case and
74 any subsequent cases by whatever prosecution office represents the State in the first case
75 prosecution.
- 76 (5)(B) Similarly, it will be expected that the Defendant will be represented for all matters before
77 the supervising judge by the same counsel who appears for the Defendant in the first
78 case, regardless of how many subsequent cases are transferred for supervision of
79 probation.
- 80 (5)(C) Original counsel in a sending case for both the State and the Defendant will not make
81 further appearances in probation matters although they will be expected to participate in
82 the sending court for any litigation not affected by the transfer as described in subsection
83 (6) below.
- 84 (6) **Litigation not Affected by Transfer.** Certain proceedings are not affected by consolidation
85 under this rule and will be determined in the court where conviction was obtained and the original
86 sentence was imposed. These proceedings include:
- 87 (6)(A) Any petition for post-conviction relief under the Post-Conviction Remedies Act, 78B-9-102
88 et seq.
- 89 (6)(B) Any proceeding initiated by remand from an appellate court for any purpose other than
90 continued or modified probation.
- 91 (6)(C) Any action to determine and correct an illegal sentence.
- 92 (6)(D) Any motion to withdraw a guilty plea, re-sentence or otherwise modify or challenge the
93 conviction.
- 94 (7) **Notice of Renewed Litigation, Status of Continuing Probation.** When a sending court
95 exercises jurisdiction for any of the purposes described in subsection (6), the supervising judge
96 will be notified of the pending action by minute entry made by the judge and the judicial assistant
97 in the sending court. Unless otherwise ordered by an appellate court, notice of such an action

98 does not terminate probation and continued supervision by the supervising judge unless and until
99 the order of conviction and probation is rescinded or modified as a result of the proceeding in the
100 sending court.

- 101 (8) **Agreement Required, Reverse Transfer Allowed.** Transfer of probation under this rule may
102 only occur when the sending prosecutor, the defendant and the sending court do not object to the
103 transfer.

104 (8)(A) An objection may be stated on the record or by written objection filed at any time before
105 entry of a minute entry to memorialize the transfer as described in subsection (3), above.

106 (8)(B) Once probation is transferred as noted in the minute entry, issues related to probation
107 management, including termination of probation, shall be determined only by the court
108 assigned to supervise probation under this rule.

109 (8)(C) In the event the parties do not agree to transfer supervision of probation under this rule,
110 the parties may agree to transfer supervision of a previously existing probation to be
111 supervised by the court where a new, or subsequent conviction and order of probation has
112 been made. Such a transfer would require written consent of all parties including both
113 judges, both prosecutors, the Defendant and both counsel. In such a circumstance to
114 promote consistency under this rule the court which receives authority to supervise
115 probation will then be designated the “first case” and the court relinquishing supervision of
116 probation will be designated the “sending court”.
117

Tab 3

Code of Judicial Administration – Comment Period Closed March 17, 2018

CJA03-0407. Accounting. Amend. Amends the membership of the Accounting Manual Review Committee to reflect current practice.

CJA04-0202.02. Records Classification. Amend. Allows a minor's full name to be listed on any type of protective order, rather than initials only on adult protective orders and a full name on child protective orders. Classifies affidavits of indigency as private record.

CJA04-0202.07.Appeals. Amend. Clarifies that a person may appeal a response that a record does not exist or is not maintained by the court and amends the timing for filing and responding to an appeal.

CJA04-0202.09.Miscellaneous. Amend. Strikes language requiring filers to certify that all non-public information has been omitted or redacted from public records.

CJA04-0510.03.Qualification of ADR Providers. Amend. Updates the language of the rule to reflect the broadened scope of the new ADR ethics exam

CJA07-0303 Repeal. Repeals the rule in its entirety due to changes in HB 239.

- Per Dawn Marie Rubio: HB 132 was signed by the Governor and is effective immediately. It gives truancy jurisdiction back to the juvenile court, so we still need CJA 7-303. It is possible that in a couple years this jurisdiction will be phased out and we will be back to discussions of repealing, but for now, we need this rule.

One Comment:

February 2, 2018 at 6:16 pm

David Reay

CJA04-0202.02. In the interest of protecting minors, I oppose this rule change. If there is a need to disclose the name of the minor, other avenues should be explored. It is unfair for a victim, particularly a minor, to have their name published on a public document.

It seems that the subject of the protective order would know the minor, and if said subject or any other requires the full name of the minor there should be a special request form where the request can be made. This request form should require the party requesting the minor's name to disclose their own identity and purpose of requesting the name.



Keisa Williams <keisaw@utcourts.gov>

Rule change

1 message

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

Thu, Aug 24, 2017 at 5:57 PM

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

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

Let me know if you have questions.

Thank you.



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

Rule 4-202.02. Records classification.

Intent:

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Presumption of Public Court Records.** Court records are public unless otherwise classified by this rule.

(2) **Public Court Records.** Public court records include but are not limited to:

(2)(A) abstract of a citation that redacts all non-public information;

(2)(B) aggregate records without non-public information and without personal identifying information;

(2)(C) appellate filings, including briefs;

(2)(D) arrest warrants, but a court may restrict access before service;

(2)(E) audit reports;

(2)(F) case files;

(2)(G) committee reports after release by the Judicial Council or the court that requested the study;

(2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;

(2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;

(2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;

(2)(K) financial records;

(2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:

(2)(L)(i) amount in controversy;

(2)(L)(ii) attorney name;

(2)(L)(iii) case number;

(2)(L)(iv) case status;

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

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

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

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

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

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

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

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

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

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

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

(2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury is discharged;

(2)(T) opinions, including concurring and dissenting opinions, and orders entered in open hearings;

(2)(U) order or decision classifying a record as not public;

(2)(V) private record if the subject of the record has given written permission to make the record public;

(2)(W) probation progress/violation reports;

(2)(X) publications of the administrative office of the courts;

(2)(Y) record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person;

(2)(Z) record of the receipt or expenditure of public funds;

(2)(AA) record or minutes of an open meeting or hearing and the transcript of them;

(2)(BB) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;

(2)(CC) record of a request for a record;

(2)(DD) reports used by the judiciary if all of the data in the report is public or the Judicial Council designates the report as a public record;

(2)(EE) rules of the Supreme Court and Judicial Council;

(2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;

(2)(GG) statistical data derived from public and non-public records but that disclose only public data;

(2)(HH) Notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

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

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

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

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

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

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

(3)(B) expunged records;

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

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

(4)(C) affidavit of indigency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4)(U)(V)~~ reports of investigations by Child Protective Services;

(4)(~~V~~)(W) victim impact statements;

(4)(~~W~~)(X) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(~~X~~)(Y) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(~~Y~~)(Z) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure; and

(4)(~~Z~~)(AA) other records as ordered by the court under Rule 4-202.04.

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

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

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

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

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

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

(5)(F) court security plans;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 ~~Intent:~~

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

4 ~~-~~

5 **~~Applicability:~~**

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

7 ~~-~~

8 **~~Statement of the Rule:~~**

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

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

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

17

Tab 4

RULE AMENDMENT REQUEST

Policy and Planning

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

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

REQUESTER CONTACT INFORMATION:

Name of Requester:

Nancy Sylvester

E-mail:

nancyjs@utcourts.gov

Phone Number:

801-578-3808

Date of Request:

03/30/2018

RULE AMENDMENT:

Rule Number:

4-202.09

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

A records access request for email correspondence shall include exact search terms, dates of emails, and names of the persons having access to the emails. Upon receipt of those elements, the person handling the request will forward it to the courts' Information Technology Department, a representative of which will develop the parameters upon which the named persons will search their emails for the requested records.

In the event that the person handling a request for email correspondence determines in consultation with the Human Resources Department or Office of General Counsel that a named person or persons should not engage in their own email search, he or she will advise the person or persons not to delete any emails until further notice and to supply the person's email password to a designated Information Technology Department representative.

Reason Amendment is Needed:

This proposed amendment is in response to a recent records access request in which a member of the public requested the following: all records from 01/01/2015 through 12/31/2016 that "in any way pertain to, mention, or refer to the audio, video or recording systems of the Morgan District Courthouse." Several issues arose from this: 1) Who is responsible for conducting the email search; 2) what if there are circumstances in which the person whose emails are the subject of the request should not conduct their own search; and 3) how can the courts be more responsive to a request that does not include search terms?

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Anyone in the court system can be the subject of a records access request, so basically the entire judiciary.

Select each entity that has approved this proposal:

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

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

IT Department; Brent has also seen this and I will come prepared with more comments from him.

Requester's Signature:

Nancy Sylvester

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
- ☐ No

Queue Priority Level:

- ☐ Red
- ☐ Yellow
- ☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 4-202.09. Miscellaneous.**Intent:**

To set forth miscellaneous provisions for these rules.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) The judicial branch shall provide a person with a certified copy of a record if the requester has a right to inspect it, the requester identifies the record with reasonable specificity, and the requester pays the fees.

(2)(A) The judicial branch is not required to create a record in response to a request.

(2)(B) Upon request, the judicial branch shall provide a record in a particular format if:

(2)(B)(i) it is able to do so without unreasonably interfering with its duties and responsibilities; and

(2)(B)(ii) the requester agrees to pay the additional costs, if any, actually incurred in providing the record in the requested format.

(2)(C) The judicial branch need not fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(3) If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the judicial branch may provide the requester with the facilities for copying the requested records and require that the requester make the copies, or allow the requester to provide his own copying facilities and personnel to make the copies at the judicial branch's offices and waive the fees for copying the records.

(4) The judicial branch may not use the form in which a record is stored to deny or unreasonably hinder the rights of persons to inspect and receive copies of a record.

(5)(A) A request for email correspondence shall include exact search terms, dates of emails, and names of the persons having access to the emails. Upon receipt of those elements, the person handling the request will forward it to the courts' Information Technology Department, a representative of which will develop the parameters upon which the named persons will search their emails for the requested records. The Information Technology Department will be responsible for working with the named persons to produce the records.

(5)(B) In the event that the person handling a request for email correspondence determines in consultation with the Human Resources Department or Office of General Counsel that a named person or persons should not engage in their own email search, he or she will advise the person or persons not to delete any emails until further notice and to supply the person's email password to a designated Information Technology Department representative.

~~(6)~~ Subpoenas and other methods of discovery under state or federal statutes or rules of procedure are not records requests under these rules. Compliance with discovery shall be governed by the applicable statutes and rules of procedure.

~~(7)~~ If the judicial branch receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, it shall

allow access to the information in the record that the requester is entitled to inspect, and shall deny access to the information in the record the requester is not entitled to inspect.

~~(87)~~ The Administrative Office shall create and adopt a schedule governing the retention and destruction of all court records.

~~(98)~~ The courts will use their best efforts to ensure that access to court records is properly regulated, but assume no responsibility for accuracy or completeness or for use outside the court.

~~(109)~~(A) Non-public information in a public record. The person filing a public record shall omit or redact non-public information. The person filing the record shall certify that, upon information and belief, all non-public information has been omitted or redacted from the public record. The person filing a private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social record shall identify the classification of the record at the top of the first page of a classified document or in a statement accompanying the record.

~~(109)~~(B) A party may move or a non-party interested in a record may petition to classify a record as private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social or to redact non-public information from a public record.

~~(109)~~(C) If the following non-public information is required in a public record, only the designated information shall be included:

~~(109)~~(C)(i) social security number: last four digits;

~~(109)~~(C)(ii) financial or other account number: last four digits;

~~(109)~~(C)(iii) driver's license number: state of issuance and last four digits;

~~(109)~~(C)(iv) address of a non-party: city, state and zip code;

~~(109)~~(C)(v) email address or phone number of a non-party: omit; and

~~(109)~~(C)(vi) minor's name: initials.

~~(109)~~(D) If it is necessary to provide the court with private personal identifying information, it must be provided on a cover sheet or other severable document, which is classified as private.

~~(119)~~(A) Notwithstanding Rule 4-202.02, except as otherwise ordered by the court and except as provided in subsections (B) and (C), if a case involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, all records shall be classified as public records under Rule 4-202.02.

~~(119)~~(B) Except as provided in subsection (C), all records in a case that involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, shall be protected if the case also involves commercial information as that term is defined by Utah Code § 59-1-404.

~~(119)~~(C) For a case described in subsection (B):

~~(119)~~(C)(i) if a request for a specific record, or access to all records in a case, is made to the court and notice is given to the taxpayer, such record or records shall be released within 14 days after notice is given to the taxpayer, except for specific records ordered by the court to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3);

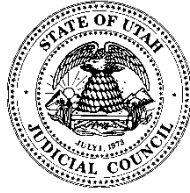
78 | (1~~19~~)(C)(ii) thirty days after the issuance of a non-appealable final order by the court, all records shall
79 | be public unless the court orders specific records to be classified as sealed, private, protected, or
80 | safeguarded pursuant to a motion made under Rule 4-202.04(3).

81 | (1~~19~~)(C)(iii) The public shall have access to the case history, notwithstanding the limitations in this
82 | rule applicable to the underlying records.

83

84

Tab 5



Administrative Office of the Courts

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

MEMORANDUM

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

To: Policy and Planning Committee
From: Nancy Sylvester
Date: March 19, 2018
Re: CJA Rule 3-111. Performance evaluation of senior judges and court commissioners.

CJA Rule 3-111 is now back from comment. The rule received one comment from Senior Judge Gordon Low, who said he had no criticism of the proposals.

CJA03-0111. Performance evaluation of senior judges and court commissioners. Amend. 1) Clarifies when court commissioners' annual evaluations will be completed, by whom, and what the evaluation process will entail; 2) establishes when the presiding judge will prepare a performance plan versus a corrective action plan for a court commissioner; 3) moves the Judicial Council's certification process from August to July; and 4) replaces the active senior judge performance evaluation process in paragraph (1) with a new process in paragraph (3)(B). Amended (3)(B) provides that the surveys the Judicial Council collects from the trial court executives, the Court of Appeals Clerk of Court, the Justice Court Administrator, and the presiding judges on an active senior judge's performance will be informed by anonymous questionnaires completed each time the senior judge completes an assignment. In the trial courts, court staff and jurors will complete the questionnaires, and in the Court of Appeals, the other judges on the panel to which the senior judge is assigned and the law clerks with whom the senior judge works will complete the questionnaires. *This is the second request for comment due to the addition of the fourth category of amendments.*

As a reminder, this rule circulated for comment once before, but in the course of reviewing the rule after, the committee determined that it should be held back from

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.

final action. The reason for this is that during the Council's discussions last fall regarding certification of senior judges for retention, it was discovered that presiding judges and trial court executives have had no meaningful information upon which to evaluate the senior judges accepting assignments in their districts. As such, Policy and Planning amended paragraph (3)(B) to provide a process by which jurors and staff could provide input, specifically through the use of questionnaires on non-legal ability. These questionnaires would inform the presiding judges' and TCEs' responses to the surveys they are provided. In essence, the PJ and TCE survey responses that are provided to the Council prior to a senior judge's certification would be a distillation of the questionnaires. And because the questionnaires would provide ongoing feedback, any issues that arise during the course of a senior judge's term of office could be addressed early on, rather than at the end. Attorney feedback would then provide the Council with information on the judge's legal ability.

The questionnaire process will replace the senior judge performance evaluation process in paragraph (1). The performance evaluation process has not been a meaningful method of evaluating senior judges. Since paragraph (1)'s enactment several years ago, no district has evaluated a senior judge. There are at least a couple reasons for this. Senior judges can travel throughout the state, so they do not have a single district to call home that will take "ownership" of them. And because of that, no district is tracking when the senior judge is in their second or greater term, or when they are eighteen months into that term. So the Policy and Planning Committee recommended eliminating that process in favor of the ongoing questionnaires during senior judges' assignments.

This idea came from the senior judges and PJ's and is supported by the TCE's. It is a modified version of the process JPEC already uses to evaluate justice court judges in the smallest courts. Attached are clean and redlined versions of Rule 3-111.

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

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

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

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

Applicability:

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

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

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

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

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

(1)(B) Active senior judges. ~~On forms provided by the administrative office, the presiding judge of the Court of Appeals shall complete an evaluation of the appellate senior judge's performance every eighteen months starting after the senior judge's initial term. An active senior judge's performance shall be evaluated by attorneys as provided in paragraph (3)(A) and by presiding judges and court staff as provided in paragraph (3)(B).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2)(N) management of workload;

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

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

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

(34) Standards of performance.

(34)(A) Survey of attorneys.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(34)(B) **Non-attorney Surveys.**

(3)(B)(i) Surveys of presiding judges and court staff regarding non-appellate senior judges.

The Council shall measure performance of active senior judges by a survey of all presiding judges and trial court executives, or in the justice courts, the Justice Court Administrator, of districts in which the senior judge has been assigned. The presiding judge and trial court executive will gather information for the survey from anonymous questionnaires completed by court staff on the calendars to which the senior judge is assigned and by jurors on jury trials to which the senior judge is assigned.

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

(3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.** The Council shall measure performance of active appellate senior judges by a survey of the presiding judge and clerk of court of the Court of Appeals. The presiding judge and clerk of court will gather information for the survey from anonymous questionnaires completed by the other judges on each panel to which the appellate senior judge is assigned and by the appellate law clerks with whom the appellate senior judge works. The Administrative Office of the Courts shall distribute the survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

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

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

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

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

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

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

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

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

(34)(E) Substantial compliance with Code of Judicial Conduct. Satisfactory performance is established if the response of the senior judge or court commissioner demonstrates substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be

complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the court commissioner is in substantial compliance with the Code of Judicial Conduct. Under Rule 11-201 and Rule 11-203, any sanction of a senior judge disqualifies the senior judge from reappointment.

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

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

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

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

(45) Judicial Council certification process

(4)(A) **July Council meeting.** At its meeting in ~~August~~ July, the Council shall begin the process of determining whether the senior judges and court commissioners whose terms of office expire that year meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 3-111. Performance evaluation of active senior judges and court commissioners.

Intent:

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

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

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

Applicability:

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

Statement of the Rule:

(1) Performance evaluations.

(1)(A) Court commissioners.

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

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

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

(1)(B) Active senior judges. An active senior judge's performance shall be evaluated by attorneys as provided in paragraph (3)(A) and by presiding judges and court staff as provided in paragraph (3)(B).

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

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

- 33 (2)(B) attentiveness to factual and legal issues before the court;
- 34 (2)(C) adherence to precedent and ability to clearly explain departures from precedent;
- 35 (2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's rulings,
36 including the effect of delay and increased litigation expense;
- 37 (2)(E) ability to write clear judicial opinions;
- 38 (2)(F) ability to clearly explain the legal basis for judicial opinions;
- 39 (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the commissioner's or
40 senior judge's court;
- 41 (2)(H) maintenance of decorum in the courtroom;
- 42 (2)(I) demonstration of judicial demeanor and personal attributes that promote public trust and
43 confidence in the judicial system;
- 44 (2)(J) preparation for hearings or oral argument;
- 45 (2)(K) avoidance of impropriety or the appearance of impropriety;
- 46 (2)(L) display of fairness and impartiality toward all parties;
- 47 (2)(M) ability to clearly communicate, including the ability to explain the basis for written rulings, court
48 procedures, and decisions;
- 49 (2)(N) management of workload;
- 50 (2)(O) willingness to share proportionally the workload within the court or district, or regularly
51 accepting assignments;
- 52 (2)(P) issuance of opinions and orders without unnecessary delay; and
- 53 (2)(Q) ability and willingness to use the court's case management systems in all cases.

54 **(3) Standards of performance.**

55 **(3)(A) Survey of attorneys.**

56 (3)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys
57 appearing before the active senior judge or court commissioner during the period for which the active
58 senior judge or court commissioner is being evaluated. The Council shall measure satisfactory
59 performance based on the results of the final survey conducted during a court commissioner's term of
60 office, subject to the discretion of a court commissioner serving an abbreviated initial term not to
61 participate in a second survey under Section (3)(A)(vi) of this rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3)(B) **Non-attorney surveys.**

(3)(B)(i) **Surveys of presiding judges and court staff regarding non-appellate senior judges.**

The Council shall measure performance of active senior judges by a survey of all presiding judges and trial court executives, or in the justice courts, the Justice Court Administrator, of districts in which the senior judge has been assigned. The presiding judge and trial court executive will gather information for the survey from anonymous questionnaires completed by court staff on the calendars to which the senior judge is assigned and by jurors on jury trials to which the senior judge is assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

(3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.** The Council shall measure performance of active appellate senior judges by a survey of the presiding judge and clerk of court of the Court of Appeals. The presiding judge and clerk of court will gather information for the survey from anonymous questionnaires completed by the other judges on each panel to which the appellate senior judge is assigned and by the appellate law clerks with whom the appellate senior judge works. The Administrative Office of the Courts shall distribute the survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

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

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

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

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

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

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

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

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

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

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

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

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

(3)(G)(ii) If a presiding judge issues an overall "Needs Improvement" rating on a court commissioner's annual performance evaluation as provided in paragraph (1), that presiding judge

shall prepare a corrective action plan setting forth specific ways in which the court commissioner can improve in deficient areas.

(4) Judicial Council certification process

(4)(A) July Council meeting. At its meeting in July, the Council shall begin the process of determining whether the senior judges and court commissioners whose terms of office expire that year meet the standards of performance provided for in this rule. The Administrative Office of the Courts shall assemble all evaluation information, including:

(4)(A)(i) survey scores;

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

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

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

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

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

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

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

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

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

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

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

(4)(F) August Council meeting. At the request of the Council the senior judge or court commissioner challenging a non-certification decision shall meet with the Council in August. At the request of the

Council the presiding judge shall report to the Council any meetings held with the senior judge or court commissioner, the steps toward self-improvement identified as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the July meeting, the Administrative Office of the Courts shall deliver to the senior judge or court commissioner being evaluated notice of the Council's action and any records not already delivered to the senior judge or court commissioner. The notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the senior judge or court commissioner is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the senior judge or court commissioner prior to the August meeting.

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

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

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