

Agenda
Policy and Planning Committee
 May 4, 2018
 9:00 a.m. – 5:00 p.m.
Council Room – 3rd Floor, N31
 Matheson Courthouse
 450 S. State St., Salt Lake City, UT

9:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Derek Pullan
9:05	BDCJ Proposed Rule Change	Discussion/ Action	Tab 2	Judge James Taylor Clayson Quigley
9:35	<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
9:45	Human Resources Professional Appearance Policy Update	Discussion/ Action		Rob Parkes Rob Rice Judge Pettit
10:00	CJA 4-202.09. Miscellaneous.	Discussion/ Action	Tab 4	Nancy Sylvester
10:30	CJA 3-111. Performance evaluation of senior judges and court commissioners.	Discussion/ Action	Tab 5	Nancy Sylvester
11:00	Powers & Duties of Bail Commissioners under Utah Code §17-32-1	Discussion/ Action	Tab 6	Keisa Williams
11:30	CJA 4-202.03. Records Access (for Juveniles)	Discussion/ Action	Tab 7	Keisa Williams
12:00	Lunch			
12:00	CJA 4-202.03. Records Access (for LPPs)	Discussion/ Action	Tab 8	Brent Johnson
12:15	CJA 3-401. Office of General Counsel	Discussion/ Action	Tab 9	Brent Johnson

12:45	CJA 4-403. Electronic Signature and Signature Stamp Usage	Discussion/ Action	Tab 10	Brent Johnson
1:15	CJA 4-701. Failure to Appear	Discussion/ Action	Tab 11	Brent Johnson
2:00	Break			
2:15	Appendix I to CJA – Classification of criminal investigations	Discussion/ Action	Tab 12	Keisa Williams
2:45	CJA 2-207. Annual rulemaking and periodic review of the Code <ul style="list-style-type: none"> • Assignments 	Discussion/ Action	Tab 13	Keisa Williams
3:00	CJA 4-409. Council Approval of Problem Solving Courts	Discussion/ Action	Tab 14	Judge Dennis Fuchs
4:00	July 6 meeting date change due to holiday?	Discussion/ Action		Judge Derek Pullan
5:00	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:

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);

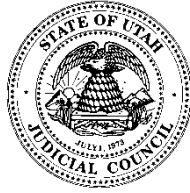
78 | (1~~19~~)(C)(ii) thirty days after the issuance of a non-appealable final order by the court, all records shall
79 | be public unless the court orders specific records to be classified as sealed, private, protected, or
80 | safeguarded pursuant to a motion made under Rule 4-202.04(3).

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.

Tab 6



Keisa Williams <keisaw@utcourts.gov>

Bail Commissioners

2 messages

Keisa Williams <keisaw@utcourts.gov>

Tue, Apr 17, 2018 at 9:25 AM

To: "Judge Derek P. Pullan" <dpullan@utcourts.gov>

Per our discussion yesterday...

Here's what the statute says: 17-32-1: "(2) A bail commissioner may:

- (a) receive bail for persons arrested in the county for a felony; and
- (b) fix and receive bail for persons arrested in the county for a misdemeanor under the laws of the state, or for a violation of any of the county ordinances in accordance with the uniform bail schedule adopted by the Judicial Council or a reasonable bail for county ordinances not contained in the schedule.

Here's how LE & some judges are interpreting that language: Jails can release individuals charged with felonies without a judge having to set bail as long as they use the uniform bail schedule. Essentially, the argument is that the jail isn't "fixing" it, they are just telling offenders what the court has already "fixed" in the bail schedule.

I disagree. The statute contemplates the use of the bail schedule in subsection (b). Subsection (a) is separate and distinct for a reason. If the legislature intended to allow bail commissioners to "fix" bail on the bail schedule for felonies, there would have been no need for separate subsections.

I talked to Brent about this and he agrees with my interpretation. He said the court tried to get rid of bail commissioners a few years ago and says we're already pushing it with the authority they have. He said to remember that the bail schedule is a recommendation. Bail commissioners are required to follow the recommendation but it is nevertheless only a recommendation.

I'm going to talk to Brent about what he suggests regarding the Judicial Council.

Thanks,
Keisa

--

Keisa Williams
Associate General Counsel
Administrative Office of the Courts
450 South State Street
P.O. Box 140241
Salt Lake City, UT 84114-0241
Phone: 801-578-3821
Fax: 801-578-3843
Email: keisaw@utcourts.gov

Judge Derek Pullan <dpullan@utcourts.gov>

Tue, Apr 24, 2018 at 9:24 AM

To: Keisa Williams <keisaw@utcourts.gov>

thank you
see you in Provo today

[Quoted text hidden]

Effective 5/12/2015

17-32-1 Powers and duties of bail commissioners.

- (1) The county executive, with the advice and consent of the county legislative body, may appoint one or more responsible and discreet members of the sheriff's department of the county as a bail commissioner.
- (2) A bail commissioner may:
 - (a) receive bail for persons arrested in the county for a felony; and
 - (b) fix and receive bail for persons arrested in the county for a misdemeanor under the laws of the state, or for a violation of any of the county ordinances in accordance with the uniform bail schedule adopted by the Judicial Council or a reasonable bail for county ordinances not contained in the schedule.
- (3) Any person who has been ordered by a magistrate, judge, or bail commissioner to give bail may deposit the amount with the bail commissioner:
 - (a) in money, by cash, certified or cashier's check, personal check with check guarantee card, money order, or credit card, if the bail commissioner has chosen to establish any of those options; or
 - (b) by a bond issued by a licensed bail bond surety.
- (4) Any money or bond collected by a bail commissioner shall be delivered to the appropriate court within three days of receipt of the money or bond.
- (5) The court may review the amount of bail ordered by a bail commissioner and may modify the amount of bail required for good cause.

Amended by Chapter 99, 2015 General Session

Tab 7

RULE AMENDMENT REQUEST

Policy and Planning

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

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:

Keisa Williams

E-mail:

keisaw@utcourts.gov

Phone Number:

801-578-3821

Date of Request:

05/02/2018

RULE AMENDMENT:

Rule Number:

4-202.03

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

Allows access to juvenile court social records to public or private agencies or individuals providing services to the subject of the record or the subject's family, if a probation officer determines that access is necessary to provide effective services.

Reason Amendment is Needed:

Juvenile probation officers across the state have been using various versions of consent forms in order to share juvenile social records with treatment providers. The use of consent forms is a violation of court access rules, but the need to share records remains, especially in the context of non-judicial adjustments and recent legislative changes focusing on treatment/services.

I presented the attached amendments to the Chief Probation Officers, Juvenile Court TCEs, and the Board of Juvenile Court Judges. Those entities recommend that the Policy & Planning Committee adopt these changes and ask that they be approved on an expedited basis due to the urgent need to share these records without obtaining a court order.

Is this proposal urgent?

☐ No

☒ Yes

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

Until these changes are made, probation officers will be required to obtain a court order to share records with treatment providers in every relevant case and NJ adjustment.

List all stakeholders:

Juvenile Court, Probation Officers

Select each entity that has approved this proposal:

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

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

Chief Probation Officers, Juvenile Court Administrator

Requester's Signature:

Keisa Williams

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 4-202.03. Records access.

Intent:

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

- (1) **Public Court Records.** Any person may access a public court record.
- (2) **Sealed Court Records.** An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. Otherwise, no one may access a sealed court record except by order of the court. A judge may review a sealed record when the circumstances warrant.
- (3) **Private Court Records.** The following may access a private court record:
 - (3)(A) the subject of the record;
 - (3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;
 - (3)(C) a party or attorney for a party to litigation in which the record is filed;
 - (3)(D) an interested person to an action under the Uniform Probate Code;
 - (3)(E) the person who submitted the record;
 - (3)(F) the attorney for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney;
 - (3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;
 - (3)(H) anyone by court order;
 - (3)(I) court personnel, but only to achieve the purpose for which the record was submitted;
 - (3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and
 - (3)(K) a governmental entity with which the record is shared under Rule 4-202.10.
- (4) **Protected Court Records.** The following may access a protected court record:
 - (4)(A) the person or governmental entity whose interests are protected by closure;
 - (4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;
 - (4)(C) the person who submitted the record;
 - (4)(D) the attorney for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;

(4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;

(4)(F) a party or attorney for a party to litigation in which the record is filed;

(4)(G) anyone by court order;

(4)(H) court personnel, but only to achieve the purpose for which the record was submitted;

(4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(4)(J) a governmental entity with which the record is shared under Rule 4-202.10.

(5) **Juvenile Court Social Records.** The following may access a juvenile court social record:

(5)(A) the subject of the record, if 18 years of age or over;

(5)(B) a parent or guardian of the subject of the record if the subject is an unemancipated minor;

(5)(C) an attorney or person with power of attorney for the subject of the record;

(5)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;

(5)(E) the subject of the record's therapists and evaluators;

(5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(H) the Department of Human Services, school districts and vendors with whom they or the courts contract (who shall not permit further access to the record), but only for court business;

(5)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(J) a governmental entity with which the record is shared under Rule 4-202.10;

(5)(K) the person who submitted the record;

(5)(L) public or private individuals or agencies providing services to the subject of the record or to the subject's family, including services provided pursuant to a nonjudicial adjustment, if a probation officer determines that access is necessary to provide effective services.

(5)(~~L~~M) anyone by court order.

(5)(~~M~~N) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations, psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical records may be accessed only by:

- 74 (5)(~~MN~~)(i) the subject of the record, if age 18 or over;
75 (5)(~~MN~~)(ii) an attorney or person with power of attorney for the subject of the record;
76 (5)(~~MN~~)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney, a
77 Guardian ad Litem, and an Attorney General involved in the litigation in which the
78 record is filed;
79 (5)(~~MN~~)(iv) a governmental entity charged with custody, guardianship, protective
80 supervision, probation or parole of the subject of the record including juvenile
81 probation, Division of Child and Family Services and Juvenile Justice Services;
82 (5)(~~MN~~)(v) court personnel, but only to achieve the purpose for which the record
83 was submitted;
84 (5)(~~MN~~)(vi) anyone by court order.

85 (5)(~~NO~~) When records may be accessed only by court order, a juvenile court judge will
86 permit access consistent with Rule 4-202.04 as required by due process of law in a
87 manner that serves the best interest of the child.

88 **(6) Juvenile Court Legal Records.** The following may access a juvenile court legal record:

- 89 (6)(A) all who may access the juvenile court social record;
90 (6)(B) a law enforcement agency;
91 (6)(C) a children's justice center;
92 (6)(D) ~~a~~ public or private individuals or agencyies providing services to the subject of the
93 record or to the subject's family; and
94 (6)(E) the victim of a delinquent act may access the disposition order entered against the
95 defendant.

96 **(7) Safeguarded Court Records.** The following may access a safeguarded record:

- 97 (7)(A) the subject of the record;
98 (7)(B) the person who submitted the record;
99 (7)(C) the attorney for a person who may access the record or an individual who has a
100 written power of attorney from the person or the person's attorney;
101 (7)(D) an individual with a release from a person who may access the record signed and
102 notarized no more than 90 days before the date the request is made;
103 (7)(E) anyone by court order;
104 (7)(F) court personnel, but only to achieve the purpose for which the record was submitted;
105 (7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;
106 (7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and
107 (7)(I) a person given access to the record in order for juvenile probation to fulfill a probation
108 responsibility.

- 109 (8) Court personnel shall permit access to court records only by authorized persons. The court
110 may order anyone who accesses a non-public record not to permit further access, the violation
111 of which may be contempt of court.
- 112 (9) If a court or court employee in an official capacity is a party in a case, the records of the party
113 and the party's attorney are subject to the rules of discovery and evidence to the same extent
114 as any other party.

Tab 8

RULE AMENDMENT REQUEST

Policy and Planning

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

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

REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

bjohnson@utcourts.gov

Phone Number:

801-578-3884

Date of Request:

02/11/2018

RULE AMENDMENT:

Rule Number:

4-202.03

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

Grants access to Private, Protected, and Safeguarded records to Licensed Paralegal Practitioners.

Reason Amendment is Needed:

These changes are to accommodate the new LPP program.

Is this proposal urgent?

☐ No

☒ Yes

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

Somewhat urgent - These changes need to be in place before the LPP program goes into effect - anticipated around the end of 2018.

List all stakeholders:

All judiciary

Select each entity that has approved this proposal:

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

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

Requester's Signature:

Brent Johnson

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
☐ No

Queue Priority Level:

- ☐ Red
☐ Yellow
☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 4-202.03. Records access.

Intent:

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Any person may access a public court record.

(2) An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. Otherwise, no one may access a sealed court record except by order of the court. A judge may review a sealed record when the circumstances warrant.

(3) The following may access a private court record:

(3)(A) the subject of the record;

(3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;

(3)(C) a party, ~~or~~ attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;

(3)(D) an interested person to an action under the Uniform Probate Code;

(3)(E) the person who submitted the record;

(3)(F) the attorney or licensed paralegal practitioner for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;

(3)(H) anyone by court order;

(3)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(3)(K) a governmental entity with which the record is shared under Rule 4-202.10.

(4) The following may access a protected court record:

(4)(A) the person or governmental entity whose interests are protected by closure;

(4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;

(4)(C) the person who submitted the record;

(4)(D) the attorney or licensed paralegal practitioner for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;

(4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;

41 (4)(F) a party, attorney for a party or licensed paralegal practitioner representing a party to litigation in
42 which the record is filed;

43 (4)(G) anyone by court order;

44 (4)(H) court personnel, but only to achieve the purpose for which the record was submitted;

45 (4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

46 (4)(J) a governmental entity with which the record is shared under Rule 4-202.10.

47 (5) The following may access a juvenile court social record:

48 (5)(A) the subject of the record, if 18 years of age or over;

49 (5)(B) a parent or guardian of the subject of the record if the subject is an unemancipated minor;

50 (5)(C) an attorney or person with power of attorney for the subject of the record;

51 (5)(D) a person with a notarized release from the subject of the record or the subject's legal representative
52 dated no more than 90 days before the date the request is made;

53 (5)(E) the subject of the record's therapists and evaluators;

54 (5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an
55 Attorney General involved in the litigation in which the record is filed;

56 (5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or
57 parole of the subject of the record including juvenile probation, Division of Child and Family Services and
58 Juvenile Justice Services;

59 (5)(H) the Department of Human Services, school districts and vendors with whom they or the courts
60 contract (who shall not permit further access to the record), but only for court business;

61 (5)(I) court personnel, but only to achieve the purpose for which the record was submitted;

62 (5)(J) a governmental entity with which the record is shared under Rule 4-202.10;

63 (5)(K) the person who submitted the record;

64 (5)(L) anyone by court order.

65 (5)(M) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations,
66 psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical
67 records may be accessed only by:

68 (5)(M)(i) the subject of the record, if age 18 or over;

69 (5)(M)(ii) an attorney or person with power of attorney for the subject of the record;

70 (5)(M)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and
71 an Attorney General involved in the litigation in which the record is filed;

72 (5)(M)(iv) a governmental entity charged with custody, guardianship, protective supervision, probation or
73 parole of the subject of the record including juvenile probation, Division of Child and Family Services and
74 Juvenile Justice Services;

75 (5)(M)(v) court personnel, but only to achieve the purpose for which the record was submitted;

76 (5)(M)(vi) anyone by court order.

77 (5)(N) When records may be accessed only by court order, a juvenile court judge will permit access
78 consistent with Rule 4-202.04 as required by due process of law in a manner that serves the best interest of the
79 child.

80 (6) The following may access a juvenile court legal record:

81 (6)(A) all who may access the juvenile court social record;

82 (6)(B) a law enforcement agency;

83 (6)(C) a children's justice center;

(6)(D) a public or private agency providing services to the subject of the record or to the subject's family;
and

(6)(E) the victim of a delinquent act may access the disposition order entered against the defendant.

(7) The following may access a safeguarded record:

(7)(A) the subject of the record;

(7)(B) the person who submitted the record;

(7)(C) the attorney or licensed paralegal practitioner for a person who may access the record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(7)(D) an individual with a release from a person who may access the record signed and notarized no more than 90 days before the date the request is made;

(7)(E) anyone by court order;

(7)(F) court personnel, but only to achieve the purpose for which the record was submitted;

(7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;

(7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and

(7)(I) a person given access to the record in order for juvenile probation to fulfill a probation responsibility.

(8) Court personnel shall permit access to court records only by authorized persons. The court may order anyone who accesses a non-public record not to permit further access, the violation of which may be contempt of court.

(9) If a court or court employee in an official capacity is a party in a case, the records of the party and the party's attorney are subject to the rules of discovery and evidence to the same extent as any other party.

Tab 9

RULE AMENDMENT REQUEST

Policy and Planning

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

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

REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

brentj@utcourts.gov

Phone Number:

801-578-3884

Date of Request:

04/23/2018

RULE AMENDMENT:

Rule Number:

3-401

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

Deletes provision referencing an agreement with the AG's Office.

Deletes requirement of seeking coordination from Chief Justice regarding workload issues.

Deletes requirements for judicial officers to send copies of requests for legal representation to the AG's office.

Deletes requirement for judges to send written requests for legal advice on the Code of Judicial Conduct.

Reason Amendment is Needed:

In dealing with a records access request, we discovered there are things in the general counsel rule that aren't being followed. The requester asked for a copy of our agreement with the AG's Office as referenced in rule 3-401(4). I vaguely recall seeing an agreement when I first started working here more than 20 years ago but I haven't been able to find it. At this point an agreement does not make sense since everything is covered by statute and rule, so I propose eliminating that provision.

In making that change, I noted other things in the rule that aren't being followed and I don't think they are necessary. They are as follows:

There is no coordination that happens with the presiding officer of the council when there are workload issues. I don't see a reason to start bringing in the chief justice at this point.

The provision on providing counsel and advice on pending issues is a bit too broad. For example, we occasionally help judges resolve motions for disqualification. We don't specifically tell them what to do but it might be considered legal advice. Also, although we don't want to become law clerks to judges, there are times when judges contact us to bounce ideas around. Considering our experience and expertise I don't see a reason why we shouldn't be in the same position as other judges and law clerks with whom judges can discuss ideas.

Requests for representation sometimes occur orally. There is no need to send copies of the request to the AG. We communicate with the AG and they accept our requests. Local governments are not sending us copies of requests for assistance and I don't see why they should.

And (3)(D) is covered by another rule and does not need to be here, particularly considering we also deal with a lot of questions about the Code of Judicial Conduct that do not need to go to the ethics committee.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Judges, General Counsel

Select each entity that has approved this proposal:

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

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

Requester's Signature:

Brent Johnson

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
☐ No

Queue Priority Level:

- ☐ Red
☐ Yellow
☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 3-401. Office of General Counsel.

Intent:

To establish the office of General Counsel within the Administrative Office.

To identify the office of General Counsel as the primary authority for coordinating the provision of legal services to the judiciary.

To establish uniform procedures governing the provision of legal services to the judiciary.

To define the relationship between the office of General Counsel and the Office of the Attorney General.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) Establishment of office of general counsel. The office of General Counsel is established within the Administrative Office to provide legal services to the judiciary.

(2) Responsibility. The office of General Counsel shall have primary responsibility for providing the following legal services:

(A) informal advice and counsel;

(B) written opinions;

(C) legislative drafting;

(D) legal representation in administrative and judicial proceedings where the claimant is seeking declaratory, injunctive, or extraordinary relief or where risk management coverage is not provided;

(E) negotiation, drafting, and review of contracts and leases;

(F) consultation, drafting, and review of judicial policies and procedures;

(G) staff support to committees established by the Council and the Supreme Court; and

(H) coordination of and arrangement for legal representation by the Attorney General's Office or outside counsel in appropriate cases.

(3) Protocol for requesting legal assistance.

(A) Courts of record.

(i) Non-judicial officers and employees of the state.

(a) All requests for legal assistance, other than requests for informal advice or counsel, shall be in writing and directed to the appropriate state level administrator, who shall refer appropriate requests to the office of General Counsel.

(b) All requests for legal representation and indemnification shall be made in writing by the employee or officer who is named as a defendant. The request shall be made within ten days of service and directed to the office of General Counsel. A copy of the request shall be sent by the individual officer or employee to the Office of the Attorney General at that time. General Counsel shall be responsible for coordinating the legal representation of non-judicial officers and employees with the Attorney General's Office.

(ii) Judicial officers.

(a) All requests for legal assistance from judicial officers, other than requests for informal advice or counsel, shall be in writing and directed to General Counsel. ~~In cases where there are conflicts, time constraints or other judicial priorities, General Counsel shall consult with the presiding officer of the Council prior to responding to such requests. General Counsel shall not provide legal counsel or advice to judicial officers on issues which are pending before that court for resolution.~~

(b) All requests for legal representation and indemnification shall be made ~~in writing~~ by the judicial officer who is named as a defendant. The request shall be made within ten days of service and directed to General Counsel. ~~A copy of the request shall be sent by the judicial officer to the Office of the Attorney General at that time.~~ General Counsel shall be responsible for coordinating the legal representation of judicial officers with the Attorney General's Office.

(B) Courts not of record. All requests for legal assistance, representation and indemnification shall be made in writing by the officer or employee seeking assistance and directed to the appropriate governmental entity. ~~A copy of the request for assistance shall be sent by the officer or employee to the Office of General Counsel at that time.~~

(C) Judicial council, boards of judges, committees and task forces. All requests for legal assistance from the Council, the Boards, committees or task forces established by the Council or the Supreme Court shall be in writing and directed to General Counsel from the presiding officer of the Council, Board, committee or task force.

~~(D) Code of judicial conduct. All requests for legal advice concerning the Code of Judicial Conduct shall be made by individual judges in writing and directed to the Office of General Counsel for referral to the Ethics Advisory Committee.~~

(4) Relationship to attorney general's office. The provision of legal services to the judiciary by the Office of General Counsel and the Office of the Attorney General shall be governed by ~~the Memorandum of Understanding entered into between the Council and the Attorney General's office which shall be reviewed and updated annually if appropriate~~ this rule and Utah Code section 63G-7-901.

Tab 10

RULE AMENDMENT REQUEST

Policy and Planning

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

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

REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

brentj@utcourts.gov

Phone Number:

801-578-3884

Date of Request:

04/23/2018

RULE AMENDMENT:

Rule Number:

4-403

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

Adds "orders appointing a court visitor" to the list of documents on which a clerk may use a judge's signature stamp.

Reason Amendment is Needed:

Apparently many courts are already allowing this. Technically I don't think it is allowed under the current rule, so this change will conform the rule with the practice. I don't think the change should be controversial. It is a basic and fairly common order.

Is this proposal urgent?

- ☒ No
☐ Yes

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

List all stakeholders:

Judges and clerks

Select each entity that has approved this proposal:

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

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

Requester's Signature:

Brent Johnson

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
☐ No

Queue Priority Level:

- ☐ Red
☐ Yellow
☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 4-403. Electronic signature and signature stamp use.

Intent:

To establish a uniform procedure for the use of judges' and commissioners' electronic signatures and signature stamps.

Applicability:

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

Statement of the Rule:

(1) A clerk may, with the prior approval of the judge or commissioner, use an electronic signature or signature stamp in lieu of obtaining the judge's or commissioner's signature on the following:

(1)(A) bail bonds from approved bondsmen;

(1)(B) bench warrants;

(1)(C) civil orders for dismissal when submitted by the plaintiff in uncontested cases or when stipulated by both parties in contested cases;

(1)(D) civil orders for dismissal pursuant to Rule 4-103, URCP 3 and URCP 4(b);

(1)(E) orders to show cause;

(1)(F) orders to take into custody;

(1)(G) summons;

(1)(H) supplemental procedure orders;

(1)(I) orders setting dates for hearing and for notice;

(1)(J) orders on motions requesting the Department of Workforce Services (DWS) to release information concerning a debtor, where neither DWS nor the debtor opposes the motion; ~~and~~

(1)(K) orders for transportation of a person in custody to a court hearing; and

(1)(L) orders appointing a court visitor.

(2) When a clerk is authorized to use a judge's or commissioner's electronic signature or signature stamp as provided in paragraph (1), the clerk shall sign his or her name on the document directly beneath the electronic signature or stamped imprint of the judge's or commissioner's signature.

(3) All other documents requiring the judge's or commissioner's signature shall be personally signed by the judge or commissioner, unless the judge or commissioner, on a document by document basis, authorizes the clerk to use the judge's or commissioner's electronic signature or signature stamp in lieu of the judge's or commissioner's signature. On such documents, the clerk shall indicate in writing that the electronic signature or signature stamp was used at the direction of the judge or commissioner and shall sign his or her name directly beneath the electronic signature or stamped imprint of the judge's or commissioner's signature.

Tab 11

RULE AMENDMENT REQUEST

Policy and Planning

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

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

REQUESTER CONTACT INFORMATION:

Name of Requester:

Brent Johnson

E-mail:

brentj@utcourts.gov

Phone Number:

801-578-3884

Date of Request:

04/23/2018

RULE AMENDMENT:

Rule Number:

4-701

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

Deletes reference to Failures to Appear as a separate offense.

Reason Amendment is Needed:

The legislature recently eliminated the crime of failure to appear on a citation. Rule 4-701 references the crime so I simply suggest that the reference be removed. I've done a search of other rules and as far as I can tell this is the only one that needs to be changed.

The law goes into effect May 8. An immediate change is not critical but it should have some priority.

Is this proposal urgent?

☐ No

☒ Yes

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

Law goes into effect May 8th.

List all stakeholders:

Judges

Select each entity that has approved this proposal:

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

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

Requester's Signature:

Brent Johnson

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
☐ No

Queue Priority Level:

- ☐ Red
☐ Yellow
☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 4-701. Failure to appear.

Intent:

To establish a procedure for handling cases in which the defendant fails to appear and fails to forfeit bail.

Applicability:

This rule shall apply to cases in which the defendant's appearance is not required.

Statement of the Rule:

(1) When a case is filed, the clerk may mail to the defendant a notice indicating the bail amount. If the defendant fails to appear or forfeit the bail amount within fourteen days after receiving a citation, the clerk may increase the bail amount by \$50 and mail the defendant a delinquency notice.

(2)(A) If the defendant fails to appear or forfeit the bail amount within forty days after receiving a citation, the court may increase the bail amount by \$75 and issue a warrant for failure to appear; ~~a separate offense of Failure to Appear need not be filed.~~

(2)(B) If the defendant is a juvenile, the court may issue a bench warrant or order to take the defendant into custody. If a bench warrant is issued, a special designation or "flag" shall be placed on the warrant indicating that the defendant is a juvenile.

(3) If a minor fails to appear in juvenile court on a charge which would constitute an infraction if committed by an adult:

(3)(A) The court shall not issue an Order for Detention.

(3)(B) The court may authorize the probation department to file an order to show cause.

Tab 12

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:

Keisa Williams

E-mail:

keisaw@utcourts.gov

Phone Number:

801-578-3821

Date of Request:

05/02/2018

RULE AMENDMENT:

Rule Number:

Appendix I

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

Changes the designation of Criminal Investigation case records to public versus protected.

Reason Amendment is Needed:

This request was made by the Court Services Department. When updating their training documents for clerks, they noticed that this designation was incorrect. This change will bring Appendix I in line with CJA 4-202.02(5)(J).

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Court Services Department, Court Clerks

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:

Keisa Williams

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:

APPENDIX I. SUMMARY OF CLASSIFICATION OF COURT RECORDS

This chart is intended for use as a summary of how case record series are treated given classification of the case. “Public,” “Private,” “Protected,” and “Sealed” have the meanings given them by Rule 4-202.03.

“Semi-private” is an administrative description of a case in which the documents generally are private, but case identification is a matter of public record, as are the case history and the orders, judgments, and decrees. See Rule 4-202.02(4)(B)(i)-(ix).

Select documents and other records in a “public” or “semi-private” case may be otherwise classified by court order or because of the nature of the record or the nature of information within a record.

Case Type	Summary Classification	Case Identification Is	Case History Is	Documents Are	Judgment Is
Abstract of Judgment	Public	Public	Public	Public	Public
Adjudication of Marriage/Common Law Marriage	Semi-private	Public	Public	Private	Public
Administrative Agency Review	Public	Public	Public	Public	Public
Administrative Search Warrant	Private until 20 days after filing	Private until 20 days after filing	Private until 20 days after filing	Private until 20 days after filing	
Adoption	Sealed within 6 months after decree	Private until Sealed	Private until Sealed	Private until Sealed	Private until Sealed
Asbestos	Public	Public	Public	Public	Public
Attorney Discipline	Public	Public	Public	Public	Public
Child Support Lien	Public	Public	Public	Public	Public
Civil Rights	Public	Public	Public	Public	Public
Civil Stalking	Semi-private	Public	Public	Private	Public
Cohabitant Abuse	Semi-private	Public	Public	Private	Public
Condemnation	Public	Public	Public	Public	Public
Conservatorship	Semi-private	Public	Public	Private	Public
Contract	Public	Public	Public	Public	Public
Criminal Investigations	Protected Public	Protected Public	Protected Public	Protected Public	Protected Public
Custody and Support	Semi-private	Public	Public	Private	Public
Debt Collection	Public	Public	Public	Public	Public
Deposit of Will	Sealed	Sealed	Sealed	Sealed	Sealed
Divorce	Semi-private	Public	Public	Private	Public
Estate/personal representative	Public	Public	Public	Public	Public
Eviction	Public	Public	Public	Public	Public
Extradition	Public	Public	Public	Public	Public
Felony	Public	Public	Public	Public	Public
Foreign Judgment	Public	Public	Public	Public	Public
Forfeiture of Property	Public	Public	Public	Public	Public
Gestational Agreement	Sealed within 6 months after decree	Private until Sealed	Private until Sealed	Private until Sealed	Private until Sealed
Grandparent Visitation	Semi-private	Public	Public	Private	Public
Guardianship	Semi-private	Public	Public	Private	Public

Hospital Lien	Public	Public	Public	Public	Public
Infraction	Public	Public	Public	Public	Public
Interpleader	Public	Public	Public	Public	Public
Involuntary Commitment	Private	Private	Private	Private	Private
Judgment By Confession	Public	Public	Public	Public	Public
Juvenile Court case types	Private	Private	Private	Private	Private
Lien Mortgage Foreclosure	Public	Public	Public	Public	Public
Malpractice	Public	Public	Public	Public	Public
Minors Settlement	Public	Public	Public	Public	Public
Miscellaneous	Public	Public	Public	Public	Public
Misdemeanor	Public	Public	Public	Public	Public
Name Change	Public	Public	Public	Public	Public
Other Civil	Public	Public	Public	Public	Public
Parking	Public	Public	Public	Public	Public
Paternity	Semi-private	Public	Public	Private	Public
Personal Injury	Public	Public	Public	Public	Public
Petition to modify	Determined by the classification of the case in which the petition is filed.				
Post Conviction Relief	Public	Public	Public	Public	Public
Probate	Public	Public	Public	Public	Public
Property Damage	Public	Public	Public	Public	Public
Property Rights	Public	Public	Public	Public	Public
Renew Judgment	Public	Public	Public	Public	Public
Separate Maintenance	Semi-private	Public	Public	Private	Public
Sexual Harassment	Public	Public	Public	Public	Public
Small Claims	Public	Public	Public	Public	Public
Small Claims Trial De Novo	Public	Public	Public	Public	Public
Subpoena for Deposition	Public	Public	Public	Public	Public
Supervised Administration	Public	Public	Public	Public	Public
Tax Court	Public	Public	Public	Public	Public
Tax Lien	Public	Public	Public	Public	Public
Tax Protest	Public	Public	Public	Public	Public
Traffic	Public	Public	Public	Public	Public
Trust	Public	Public	Public	Public	Public
UCCJA Action	Semi-private	Public	Public	Private	Public
UISFSA Action	Semi-private	Public	Public	Private	Public
Water Rights	Public	Public	Public	Public	Public
Workforce Services Liens	Public	Public	Public	Public	Public
Writs	Public	Public	Public	Public	Public
Wrongful Death	Public	Public	Public	Public	Public

Wrongful Termination	Public	Public	Public	Public	Public
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Tab 13

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

Intent:

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

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

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) Annual rulemaking procedure.

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

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

(2) Periodic review of the Code.

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

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

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

JUDICIAL COUNCIL CODE OF JUDICIAL ADMINISTRATION					
YEAR 1 (2018)	Ch 1: Judicial Council Organization				
			Assigned To:	Status	Notes
	Article 1. General Provisions				
	Rule 1-101	General definitions - Rules of construction.	Judge Pullan		
	Rule 1-102	Role and objectives of the Council.	Judge Pullan		
	Article 2. Judicial Council Organization				
	Rule 1-201	Membership - Election.	Judge Pullan		Recent revisions
	Rule 1-202	Officers - Secretariat.	Judge Pullan		
	Rule 1-203	Responsibilities of the presiding officer.	Judge Pullan		
	Rule 1-204	Executive committees.	Judge Pullan		
	Rule 1-205	Standing and ad hoc committees.	Judge Pullan		Recent revisions
	Article 3. Boards of Judges				
	Rule 1-301	Established - Composition.	Judge Pullan		
	Rule 1-302	Membership - Officers - Secretariat.	Judge Pullan		
	Rule 1-303	Internal procedures and organization.	Judge Pullan		
	Rule 1-304	General authority and duties.	Judge Pullan		
	Rule 1-305	Board of Senior Judges.	Judge Pullan		
YEAR 1 (2018)	Ch 2: Judicial Council Procedure				
			Assigned To:	Status	Notes
	Article 1. Council Meetings				
	Rule 2-101	Rules for the conduct of Council meetings.	Judge Pettit		
	Rule 2-102	Council agenda.	Judge Pettit		
	Rule 2-103	Open and closed Council meetings.	Judge Pettit		
	Rule 2-104	Minutes of Council meetings.	Judge Pettit		
	Rule 2-105	Referral to committee or Board.	Judge Pettit		
	Article 2. Rulemaking Procedure				
	Rule 2-201	Purpose of rules and resolutions.	Judge Pettit		
	Rule 2-202	Format for rules.	Judge Pettit		
	Rule 2-203	Forty-five day comment period.	Judge Pettit		
	Rule 2-204	Local supplemental rules.	Judge Pettit		
	Rule 2-205	Expedited rulemaking procedure.	Judge Pettit		
	Rule 2-206	Effective date of rules.	Judge Pettit		
	Rule 2-207	Annual rulemaking and review of the Code.	Judge Pettit		
	Rule 2-208	Publication and distribution.	Judge Pettit		
	Rule 2-209	Suspension of procedures.	Judge Pettit		
	Rule 2-210	Failure to comply with procedures.	Judge Pettit		
	Rule 2-211	Compliance with the Code of Judicial Administration and the Code of Judicial Conduct.	Judge Pettit		
	Rule 2-212	Communication with the Office of Legislative Research and General Counsel.	Judge Pettit		
	Ch 3: Administration of the Judiciary				
			Assigned To:	Status	Notes
	Article 1. Judicial Office				
	Rule 3-101	Judicial performance standards.	Rob Rice		
	Rule 3-102	Assumption of judicial office.	Rob Rice		
	Rule 3-103	Administrative role of judges.	Rob Rice		

YEAR 1
(2018)

Rule 3-104	Presiding judges.	Rob Rice		Recent revisions
Rule 3-106	Legislative activities.	Rob Rice		
Rule 3-107	Executive branch policy initiatives.	Rob Rice		
Rule 3-108	Judicial assistance.	Rob Rice		
Rule 3-109	Ethics Advisory Committee.	Rob Rice		
Rule 3-111	Performance evaluation of senior judges and court commissioners.	Rob Rice		Recent revisions
Rule 3-113	Senior judges.	Rob Rice		
Rule 3-114	Judicial outreach.	Rob Rice		
Rule 3-115	Committee on resources for self-represented parties.	Rob Rice		
Rule 3-116	Pretrial Release and Supervision Committee.	Rob Rice		
Rule 3-117	Committee on Court Forms	Rob Rice		
Article 2. Quasi-Judicial Officers				
Rule 3-201	Court commissioners.	Rob Rice		Recent revisions
Rule 3-201.02	Court Commissioner Conduct Committee.	Rob Rice		
Rule 3-202	Court referees prohibited.	Rob Rice		
Article 3.Non-Judicial Officers				
Rule 3-301	Court administrators.	Rob Rice		
Rule 3-302	Clerk of the Court.	Rob Rice		
Rule 3-303	Justice court clerks.	Rob Rice		
Rule 3-306.01.	Language access definitions.	Rob Rice		
Rules 3-306.02.	Language Access Committee.	Rob Rice		
Rule 3-306.03.	Interpreter credentialing.	Rob Rice		
Rule 3-306.04.	Interpreter appointment, payment, and fees.	Rob Rice		
Rule 3-306.05.	Interpreter removal, discipline, and formal complaints.	Rob Rice		
Rule 3-307	Court notaries.	Rob Rice		
Article 4. Administrative Services				
Rule 3-401	Office of General Counsel.	Rob Rice		
Rule 3-402	Human resources administration.	Rob Rice		
Rule 3-403	Judicial branch education.	Rob Rice		
Rule 3-404	Public information program.	Rob Rice		
Rule 3-405	Contract management.	Rob Rice		
Rule 3-406	Budget and fiscal management.	Rob Rice		
Rule 3-407	Accounting.	Rob Rice		Recent revisions
Rule 3-408	Inventory.	Rob Rice		
Rule 3-409.	Court facilities planning.	Rob Rice		
Rule 3-410	Automated information resource management.	Rob Rice		
Rule 3-411	Grant management.	Rob Rice		
Rule 3-412	Procurement of goods and services.	Rob Rice		
Rule 3-413	Judicial library resources.	Rob Rice		
Rule 3-414	Court security.	Rob Rice		
Rule 3-415	Auditing.	Rob Rice		
Rule 3-417	Administrative resolution of complaints filed pursuant to the Americans with Disabilities Act.	Rob Rice		
Rule 3-418	Model Utah Jury Instructions.	Rob Rice		
Article 5. Judicial Personnel Policies				
Rule 3-501	Insurance benefits upon retirement.	Rob Rice		

	Rule 3-502	Insurance benefits for surviving spouses and dependent children of deceased justices, judges, and commissioners.	Rob Rice		
	Rule 3-503	Election to participate in deferred compensation plan.	Rob Rice		
YEAR 2 (2019)	Ch 4: Operation of the Courts				
			Assigned To:	Status	Notes
	Article 1. Calendar Management				
	Rule 4-103.	Civil calendar management.	Judge Noonan		
	Rule 4-105.	Designation of arraignment area as courtroom.	Judge Noonan		
	Rule 4-106.	Electronic conferencing.	Judge Noonan		
	Rule 4-110.	Transfer of juvenile cases from district and justice courts to the juvenile court.	Judge Noonan		
	Rule 4-111.	Priority of post-conviction petitions in capital cases	Judge Noonan		
	Article 2. Court Records, Exhibits and Files				
	Rule 4-201.	Record of proceedings.	Judge Noonan		
	Rule 4-202.	Purpose.	Judge Noonan		
	Rule 4-202.01.	Definitions.	Judge Noonan		
	Rule 4-202.02.	Records classification.	Judge Noonan		Recent revisions
	Rule 4-202.03.	Records access.	Judge Noonan		
	Rule 4-202.04.	Request to access a record associated with a case; request to classify a record associated with a case.	Judge Noonan		
	Rule 4-202.05.	Request to access an administrative record; research; request to classify an administrative record; request to create an index.	Judge Noonan		
	Rule 4-202.06.	Response to request to access or classify a court record.	Judge Noonan		
	Rule 4-202.07.	Appeals	Judge Noonan		Recent revisions
	Rule 4-202.08.	Fees for records, information, and services.	Judge Noonan		
	Rule 4-202.09.	Miscellaneous.	Judge Noonan		Recent revisions
	Rule 4-202.10.	Record Sharing.	Judge Noonan		
	Rule 4-203.	Designating a case as historically significant.	Judge Noonan		
	Rule 4-205.	Security of court records.	Judge Noonan		
	Rule 4-206.	Exhibits.	Judge Noonan		
	Article 3. Court Fees				
	Rule 4-301.	Trust Accounts.	Judge Chin		
	Rule 4-302.	Uniform recommended fine/bail schedule.	Judge Chin		
	Rule 4-303.	Assessment and collection of filing fees in civil cases commenced by the state, its agencies, or political subdivisions.	Judge Chin		
	Rule 4-304.	Assessment and collection of filing fees in matters not commenced by the filing of a complaint or petition.	Judge Chin		
	Article 4. Internal Court Operations				
	Rule 4-401.01.	Electronic media coverage of court proceedings.	Judge Chin		
	Rule 4-401.02.	Possession and use of portable electronic devices.	Judge Chin		
	Rule 4-401.03.	Notice to public of recording.	Judge Chin		
	Rule 4-402.	Clerical resources.	Judge Chin		
	Rule 4-403.	Electronic signature and signature stamp use.	Judge Chin		
	Rule 4-404.	Jury selection and service.	Judge Chin		
	Rule 4-405.	Juror and witness fees and expenses.	Judge Chin		

	Rule 4-408.	Locations of trial courts of record.	Judge Chin		
	Rule 4-408.01.	Responsibility for administration of trial courts.	Judge Chin		
	Rule 4-409.	Council approval of Problem Solving Courts.	Judge Chin		
	Article 5. Civil Practice				
	Rule 4-501.	Expedited jury trial.	Judge Pullan		
	Rule 4-503.	Mandatory electronic filing.	Judge Pullan		
	Rule 4-508.	Guidelines for ruling on a motion to waive fees.	Judge Pullan		
	Rule 4-509.	Court-appointed parent coordinator.	Judge Pullan		
	Rule 4-510.01	Alternative dispute resolution definitions	Judge Pullan		
	Rule 4-510.02	Responsibilities of the Director and Administrative Office of the Courts.	Judge Pullan		
	Rule 4-510.03	Qualification of ADR providers.	Judge Pullan		Recent revisions
	Rule 4-510.04	ADR training.	Judge Pullan		
	Rule 4-510.05	Referral of civil actions.	Judge Pullan		
	Rule 4-510.06	Cases exempt from ADR rules.	Judge Pullan		
	Article 6. Criminal Practice				
	Rule 4-601.	Selection of indigent aggravated murder defense fund counsel.	Judge Walton		
	Rule 4-603.	Mandatory electronic filing.	Judge Walton		
	Rule 4-609.	Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail.	Judge Walton		
	Rule 4-610.	Appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments in felony cases.	Judge Walton		
	Rule 4-613.	Jail prisoner transportation.	Judge Walton		
	Article 7. Parking, Traffic and Infraction Cases				
	Rule 4-701.	Failure to appear.	Judge Chin		
	Rule 4-702.	Electronic citations required.	Judge Chin		
	Rule 4-703.	Outstanding citations and warrants.	Judge Chin		
	Rule 4-704.	Authority of court clerks.	Judge Chin		
	Rule 4-705.	Juvenile traffic and parking offenses.	Judge Chin		
	Article 8. Small Claims Practice				
	Rule 4-801.	Filing small claims cases.	Judge Chin		
	Article 9. Domestic Relations and Juvenile Practice				
	Rule 4-901.	Mandatory electronic filing in juvenile court.	Judge Noonan		
	Rule 4-902.	Limited scope investigation of domestic issues.	Judge Noonan		
	Rule 4-903.	Uniform custody evaluations.	Judge Noonan		
	Rule 4-904.	Informal trial of support, custody and parent-time.	Judge Noonan		
	Rule 4-905.	Restraint of minors in juvenile court.	Judge Noonan		
	Rule 4-906.	Guardian ad litem program.	Judge Noonan		
	Rule 4-907.	Divorce education and divorce orientation courses.	Judge Noonan		
	Rule 4-908.	Committee on Children and Family Law.	Judge Noonan		
YEAR 3 (2020)	Ch 5: Appellate Court Operations				
			Assigned To:	Status	Notes
	Article 2. Court Operations				
	Rule 5-201	Requests for enlargement of time by court reporters and court transcribers.	Judge Walton		

	Rule 5-202	Official court transcribers.	Judge Walton		
	Rule 5-203	Transcript format.	Judge Walton		
YEAR 3 (2020)	Ch 6: District Court Operations				
			Assigned To:	Status	Notes
	Article 1. General				
	Rule 6-101	The Board of District Court Judges.	Judge Walton		
	Rule 6-102	Election of District Court judges to the Judicial Council.	Judge Walton		
	Rule 6-103	District court tax judges.	Judge Walton		
	Article 2. Civil				
	Rule 6-201	Distribution of trust funds.	Judge Walton		
	Article 3. Criminal				
	Rule 6-301	Authority of court commissioner as magistrate.	Judge Walton		
	Rule 6-303	Collection of fines and restitution.	Judge Walton		
	Rule 6-304	Grand jury panel.	Judge Walton		
	Article 4. Domestic Relations				
	Rule 6-401	Domestic relations commissioners.	Judge Walton		
	Rule 6-402	Records in domestic relations cases.	Judge Walton		
	Article 5. Probate				
	Rule 6-501	Reporting requirements for guardians and conservators.	Judge Walton		
	Article 6. Mental Health				
	Rule 6-601	Mental health commissioners.	Judge Walton		Recent revisions
YEAR 3 (2020)	Ch 7: Juvenile Court Operations				
			Assigned To:	Status	Notes
	Article 1. Juvenile Court Administration				
	Rule 7-101	Juvenile Court Board, Executive Committee and Council Representatives.	Judge Noonan		Work with Dawn Marie Rubio, Juvenile Court Admin
	Rule 7-102	Duties and authority of Juvenile Court Commissioners.	Judge Noonan		
	Article 2. Juvenile Court Records				
	Rule 7-202	Police access to computerized juvenile records.	Judge Noonan		Work with Dawn Marie Rubio, Juvenile Court Admin
	Article 3. Internal Operations				
	Rule 7-301	Intake.	Judge Noonan		Work with Dawn Marie Rubio, Juvenile Court Admin
	Rule 7-302	Social studies.	Judge Noonan		
	Rule 7-303	Truancy referrals.	Judge Noonan		Recent revisions to repeal in entirety. Waiting for public comment period to end.
	Rule 7-304	Probation supervision.	Judge Noonan		
	Rule 7-305	Reviews.	Judge Noonan		
	Rule 7-307	Use of money in the restitution fund.	Judge Noonan		
YEAR 4 (2021)	Ch 9: Justice Court Operations				
			Assigned To:	Status	Notes
	Article 1. General Provisions				
	Rule 9-101	Board of Justice Court Judges.	Judge Chin		Work with Jim Peters, Justice Court Administrator
	Rule 9-102	Caseload report requirements.	Judge Chin		
	Rule 9-103	Certification of educational requirements.	Judge Chin		
	Rule 9-104	Salary recommendations.	Judge Chin		
	Rule 9-105	Justice Court hours.	Judge Chin		
	Rule 9-106	New judge certification procedure.	Judge Chin		
	Rule 9-107	Justice court technology, security, and training account.	Judge Chin		

	Rule 9-108	Justice court standards.	Judge Chin		
	Article 3. Criminal Practice				
	Rule 9-302	Mandatory electronic filing.	Judge Chin		Work with Jim Peters, Justice Court Administrator
YEAR 4 (2021)	Ch 10: Local Supplemental Rules				
			Assigned To:	Status	Notes
	Article 1. District Court Rules				
	Second District				
	Rule 10-1-202	Verifying use of jury.	Judge Chin		PJ (Davis): Judge Connors, (Weber): Judge DiReda
	Third District				
	Rule 10-1-301	Probate.	Judge Pettit		PJ: Judge Schancy
	Rule 10-1-302	Limits on fax filing.	Judge Pettit		
	Rule 10-1-303	Parent-time enforcement mediation.	Judge Pettit		
	Rule 10-1-304	Blanket bonds.	Judge Pettit		
	Rule 10-1-305	Mediation in small claim appeals.	Judge Pettit		
	Fourth District				
	Rule 10-1-401	Management of criminal law and motion calendars.	Judge Pullan		PJ: Judge Brady
	Rule 10-1-402	Management of civil law and motion calendars.	Judge Pullan		
	Rule 10-1-403	Pre-trial conference settings in criminal cases.	Judge Pullan		
	Rule 10-1-404	Attendance and assistance of prosecutors in criminal proceedings.	Judge Pullan		
	Rule 10-1-405	Warrants of arrest in aid of commitment.	Judge Pullan		
	Fifth District				
	Rule 10-1-501	Orders to show cause.	Judge Walton		
	Sixth District				
	Rule 10-1-601	Central Utah Correctional Facility designated a public courtroom.	Judge Noonan		PJ: Judge Lee
	Rule 10-1-602	Orders to show cause.	Judge Noonan		
	Seventh District				
	Rule 10-1-701	Assignment of Judges	Judge Noonan		PJ: Judge Thomas
	Eighth District				
	Rule 10-1-801	Fax filings.	Judge Noonan		PJ: Judge Peterson
YEAR 5 (2022)	Appendices				
			Assigned To:	Status	Notes
	Appendix A.	Justice Court Nominating Commissions Procedure Manual			Work with Jim Peters, Justice Court Administrator
	Appendix B.	Justice Court Standards			Work with Jim Peters, Justice Court Administrator
	Appendix C.	Fine Bail Schedule			Work with Judge Brady, Chair of Bail Committee
	Appendix D.	Utah Sentence and Release Guidelines			Work with Shane Bahr, District Court Administrator
	Appendix F.	Utah State Courts Records Retention Schedule			Work with Heidi Anderson, IT Director and Kim Allard, Director of Court Services
	Appendix G.	Child Support Worksheets			
	Appendix H.	Code Of Professional Responsibility For Court Interpreters			Work with Kara Mann, Language Access Program Coordinator
	Appendix I.	Summary of Classification of Court Records.			Work with Kim Allard, Director of Court Services

Tab 14

Rule 4-409. Council approval of Problem Solving Courts.

Intent:

To establish criteria for the creation and operation of problem solving courts, and to create a process for ongoing reporting from and evaluation of problem solving courts.

Applicability:

This rule applies to all trial courts.

Statement of the Rule:

(1) Definitions.

(1)(A) Applicant. As used in this rule, an applicant is the problem solving court judge, court executive, or other representative of the problem solving court as designated by the problem solving court judge.

(1)(B) Problem solving court. As used in these rules, a problem solving court is a targeted calendar of similar type cases that uses a collaborative approach involving the court, treatment providers, case management, frequent testing or monitoring and ongoing judicial supervision. Examples include drug courts, mental health courts and domestic violence courts.

(2) Initial application. Prior to beginning operations, each proposed problem solving court must be approved by the Judicial Council and agree to comply with any published standards. An application packet, approved by the Judicial Council, shall be made available by the Administrative Office of the Courts. This packet must be submitted to the Council for approval by the applicant at least 90 days in advance of the proposed operation of a new court.

(3) Annual report. Existing problem solving courts must annually submit a completed annual report on a form provided by the Administrative Office of the Courts.

(4) Grants. In addition to complying with the requirements of CJA Rule 3-411, an applicant shall notify the Judicial Council of any application for funds to operate a problem solving court, whether or not the court would be the direct recipient of the grant. This notification should be made before any application for funding is initiated.

(5) Operation of the problem solving court. All problem solving courts must adhere to the following requirements, unless specifically waived by the Judicial Council:

(5)(A)(i) In a criminal proceeding, a plea must be entered before a person may participate in the court. Testing and orientation processes may be initiated prior to the plea, but no sanctions may be imposed until the plea is entered other than those which may be imposed in a criminal proceeding in which a person is released before trial. Prior to the acceptance of the plea, each participant must sign an agreement that outlines the expectations of the court and the responsibilities of the participant.

(5)(A)(ii) In juvenile dependency drug court, sanctions may not be imposed until the parent has signed an agreement that outlines the expectations of the court and the responsibilities of the participant.

(5)(B) Eligibility criteria must be written, and must include an assessment process that measures levels of addiction, criminality, and/or other appropriate criteria as a part of determining eligibility.

(5)(C) The frequency of participation in judicial reviews will be based on the findings of the assessments. In rural areas, some allowance may be made for other appearances or

administrative reviews when the judge is unavailable. Otherwise, judicial reviews should be conducted by the same judge each time.

(5)(D) Compliance testing must be conducted pursuant to a written testing protocol that ensures reliability of the test results.

(5)(E) Treatment must be provided by appropriately licensed or certified providers, as required by the Department of Human Services or other relevant licensure or certification entity.

(5)(F) Each problem solving court must have written policies and procedures that ensure confidentiality and security of participant information. These policies and procedures must conform to applicable state and federal laws, including the Government Records and Access Management Act, HIPAA, and 42 CFR 2.

(5)(G) Any fees assessed by the court must be pursuant to a fee schedule, must be disclosed to each participant and must be reasonably related to the costs of testing or other services.

(5)(H) Courts must conduct a staffing before each court session. At a minimum, the judge, a representative from treatment, prosecutor, defense attorney, and in dependency drug court a guardian ad litem, must be present at each court staffing.

(5)(I) At a minimum, the judge, a representative from treatment, prosecutor, defense attorney, and in dependency drug court a guardian ad litem, must be present at each court session.

(5)(J) Each court must be certified by the Judicial Council every two years. Certification requires all courts to meet the minimum requirements stated in this rule.

(6) Evaluation and Reporting Requirements. Each problem solving court shall annually report at least the following:

(6)(A) The number of participants admitted in the most recent year;

(6)(B) The number of participants removed in the most recent year;

(6)(C) The number of participants that graduated or completed the program in the most recent year; and

(6)(D) Recidivism and relapse statistics for as long a period of time as is available, but at least for one year. If the court has been in existence for less than one year, then for the amount of time the court has been in existence.

(7) DUI Courts. The following courts are approved as DUI Courts: Riverdale Justice Court and other courts as may be approved by the Judicial Council in the future.

(8) Communications. A judge may initiate, permit, or consider communications, including ex parte communications, made as part of a case assigned to the judge in a problem-solving court, consistent with the signed agreement.

Utah Adult Drug Court Certification Checklist

September, 2015 Draft

*Standards followed by an **R** are required features of a drug court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

Many of these standards are direct restatements of the Adult Drug Court Best Practice Standards, Volume I, copyright 2013, National Association of Drug Court Professionals. Those are indicated by a BPS following the standard, and the citation to the section of the document in which the standard is found. An asterisk indicates a modification of the NADCP standard.

1. Eligibility and exclusion criteria are defined objectively. **R BPS I A**
2. Eligibility and exclusion criteria are specified in writing. **R BPS I A**
3. Eligibility and exclusion criteria are communicated to potential referral sources.
P BPS I A
4. The Drug Court team does not apply subjective criteria or personal impressions to determine participants' suitability for the program. **R BPS I A**
5. The program admits only participants who are high risk high need as measured by the RANT. **R BPS* I B**
6. Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population. **R BPS I C**
7. Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction. **R BPS I C**
8. Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. **R BPS I C**

9. Current or prior offenses may disqualify candidates from participation in the Drug Court if empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court. **R BPS I D**
10. Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court. **R BPS I D**
11. If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication. **R BPS I D**
12. The program has a written policy addressing medically assisted treatment. **R**
13. The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. **R BPS II B, BPS X E**
14. The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. **R BPS II D**
15. Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
16. The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
17. The judge presides over the Drug Court for no less than two consecutive years. **P BPS III B**
18. Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court. **R BPS III C**
19. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team. **R BPS III D**
20. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. **R BPS III E**
21. Status hearings are scheduled no less frequently than every four weeks until participants graduate. **R BPS* III E**

22. The Judge spends an average of at least three minutes with each participant.
R BPS* III F
23. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. **R BPS III G**
24. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. **R BPS IV B**
25. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. **R BPS III H, BPS VIII D**
26. The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative. **R BPS III H, BPS VIII D**
27. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. **R BPS III H**
28. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members. **R BPS IV A**
29. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. **R BPS IV A**
30. The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**
31. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**

32. Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance. **R BPS IV F**
33. The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available. **P BPS IV F**
34. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time. **P BPS IV I**
35. Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use. **P BPS IV I**
36. Drug testing is performed at least twice per week. **R BPS VII A***
37. Drug testing is random, and is available on weekends and holidays. **R BPS VII B***
38. Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day. **P BPS VII B**
39. Drug test results are available within 48 hours. **P BPS VII H**
40. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. **R BPS VII B**
41. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population. **P BPS VII D***
42. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. **R BPS VII E*, F***
43. The Drug Court utilizes scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. **R BPS VII G**
44. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). **P BPS VII G**
45. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in

substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. **R BPS VII G***

46. Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.

R BPS VII I

47. The program requires at least 90 days clean to graduate. **R**

48. The minimum length of the program is twelve months. **R**

49. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. **R BPS IV J**

50. Jail sanctions are definite in duration and typically last no more than three to five days. **R BPS IV J**

51. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed. **R BPS IV J**

52. Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community. **R BPS IV K**

53. If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program. **R BPS IV K**

54. The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services. **B BPS V A**

55. Standardized patient placement criteria govern the level of care that is provided. **P BPS V A**

56. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure. **P BPS V A**

57. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters. **R BPS V B**

58. Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction. **P BPS V D**
59. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. **P BPS V E**
60. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms. **P BPS V E**
61. Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators. **B BPS V E**
62. Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system. **P BPS V F, BPS VI G**
63. Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models. **P BPS V F**
64. Treatment providers are licensed or certified to deliver substance abuse treatment. **R BPS V H**
65. Treatment providers have substantial experience working with criminal justice populations. **B BPS V H**
66. Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices. **P BPS V H**
67. Participants regularly attend self-help or peer support groups in addition to professional counseling. **R BPS V I**
68. The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models. **R BPS V I**
69. There is a secular alternative to 12-step peer support groups. **R**
70. Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy. **P BPS V I**
71. Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care. **R BPS V J**

72. Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group after their discharge from the Drug Court. **P BPS V J**
73. For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
74. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Drug Court and continuing as necessary throughout their enrollment in the program. **P BPS VI D**
75. Participants are not excluded from participation in Drug Court because they lack a stable place of residence. **R BPS VI D**
76. Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders. **B BPS VI E**
77. Participants suffering from mental illness receive mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program. **R BPS VI E**
78. Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD). **P BPS VI F**
79. Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety. **B BPS VI F**
80. Female participants receive trauma-related services in gender-specific groups. **B BPS VI F**
81. All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. **P BPS VI F**
82. Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court. **R BPS VI I***

83. Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court. **P BPS VI I**
84. Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court. **B BPS VI I**
85. Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment. **B BPS VI J**
86. Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose. **P BPS VI L**
87. Clients are placed in the program within 50 days of arrest. **R**
88. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each staffing meeting. **R BPS VIII B***
89. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each Drug Court session. **R BPS VIII A***
90. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. **R BPS VIII B**
91. Team members are assigned to Drug Court for no less than two years. **P**
92. All team members use electronic communication to contemporaneously communicate about Drug Court issues. **P**
93. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. **R BPS VIII C**
94. Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. **B BPS VIII F**
95. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and

alcohol testing, team decision making, and constitutional and legal issues in Drug Courts. **P** BPS VIII F

96. New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. **P** BPS VIII F

97. Court fees are reasonable and based on each participant's ability to pay. **R**
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98. Treatment fees are based on a sliding fee schedule. **R**

99. The Drug Court has more than 15 but less than 125 active participants. **P** BPS
IX A*

100. Supervision caseloads do not exceed fifty active participants per supervision officer. **B** BPS IX B

101. Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services. **B** BPS IX C

102. The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P** BPS X A

103. The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. **B** BPS X B*

104. New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Drug Court. **P** BPS X
C

105. A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years. **R** BPS X D

106. The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. **R** BPS X D

107. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the

database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes. **B BPS X F**

108. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. **P BPS X G**
109. Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program. **B BPS X H**
110. The program conducts an exit interview for self- improvement. **P**

Utah Juvenile Drug Court Certification Checklist

October, 2015 Draft

*Standards followed by an **R** are required features of a drug court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

Many of these standards are direct restatements of the Adult Drug Court Best Practice Standards, Volume I, copyright 2013, National Association of Drug Court Professionals. Those are indicated by a BPS following the standard, and the citation to the section of the document in which the standard is found. An asterisk indicates a modification of the NADCP standard.

1. Eligibility and exclusion criteria are defined objectively. **R BPS I A**
2. Eligibility and exclusion criteria are specified in writing. **R BPS I A**
3. Eligibility and exclusion criteria are communicated to potential referral sources. **P BPS I A**
4. The Drug Court team does not apply subjective criteria or personal impressions to determine participants' suitability for the program. **R BPS I A**
5. The program admits only participants who are high risk high need as measured by a validated risk and need assessment tool. **P BPS* I B**
6. Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population. **R BPS I C**
7. Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction. **R BPS I C**
8. Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. **R BPS I C**

9. Current or prior offenses may disqualify candidates from participation in the Drug Court if empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court. **R BPS I D**
10. Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court. **R BPS I D**
11. If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication. **R BPS I D**
12. The program has a written policy addressing medically assisted treatment. **R**
13. The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. **R BPS II B, BPS X E**
14. The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. **R BPS II D**
15. Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
16. The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
17. The judge presides over the Drug Court for no less than two consecutive years. **P BPS III B**
18. Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court. **R BPS III C**
19. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team. **R BPS III D**
20. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. **R BPS III E**

21. Status hearings are scheduled no less frequently than every four weeks until participants graduate. **R BPS* III E**
22. The Judge spends an average of at least three minutes with each participant. **R BPS* III F**
23. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. **R BPS III G**
24. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. **R BPS IV B**
25. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. **R BPS III H, BPS VIII D**
26. The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative. **R BPS III H, BPS VIII D**
27. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. **R BPS III H**
28. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members. **R BPS IV A**
29. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. **R BPS IV A**
30. The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**
31. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or

attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**

32. Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance. **R BPS IV F**
33. The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available. **P BPS IV F**
34. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time. **P BPS IV I**
35. Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use. **P BPS IV I**
36. Drug testing is performed at least twice per week. **R BPS VII A***
37. Drug testing is random, and is available on weekends and holidays. **R BPS VII B***
38. Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day. **P BPS VII B**
39. Drug test results are available within 48 hours. **P BPS VII H**
40. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. **R BPS VII B**
- 41.
42. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population. **P BPS VII D***
- 43.
44. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. **R BPS VII E*, F***
- 45.
46. The Drug Court utilizes scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. **R BPS VII G**

47. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). P

BPS VII G

48. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. R BPS VII G*
49. Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing. R BPS VII I
50. The program requires at least 90 days clean to graduate. R
51. The minimum length of the program is twelve months. R
52. Unless a participant poses an immediate risk to public safety, detention sanctions are administered after less severe consequences have been ineffective at deterring infractions. R BPS* IV J
53. Detention sanctions are definite in duration and typically last no more than three to five days. R BPS* IV J
54. Participants are given access to counsel and a fair hearing if a detention sanction might be imposed. R BPS* IV J
55. Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community. R BPS IV K
56. If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented disposition for failing to complete the program. R BPS* IV K
57. The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, day treatment, intensive outpatient and outpatient services. B BPS* V A
58. Standardized patient placement criteria govern the level of care that is provided. P BPS V A

59. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure. **P BPS V A**
60. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services. **R BPS* V B**
61. Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction. **P BPS V D**
62. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. **B BPS V E**
63. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms. **P BPS V E**
64. Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators. **B BPS V E**
65. Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the juvenile justice system. **B BPS* V F**
66. Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models. **P BPS V F**
67. Treatment providers are licensed or certified to deliver substance abuse treatment. **R BPS V H**
68. Treatment providers have substantial experience working with juvenile justice populations. **B BPS V H**
69. Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices. **P BPS V H**
70. Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders. **B BPS VI E**

71. Participants suffering from mental illness receive mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program. **P BPS VI**
72. Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety. **B BPS VI F**
73. Female participants receive trauma-related services in gender-specific groups. **B BPS VI F**
74. All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. **P BPS VI F**
75. Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care. **R BPS V J**
76. Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose. **P BPS VI L**
77. Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group, as appropriate, after their discharge from the Drug Court. **B BPS* V J**
78. For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
79. Clients are placed in the program within 50 days of arrest. **R**
80. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement/probation and the judge attend each staffing meeting. **R BPS VIII B***
81. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement/probation and the judge attend each Drug Court session. **R BPS VIII A***

82. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. R BPS VIII B
83. Team members are assigned to Drug Court for no less than two years.
P
84. All team members use electronic communication to contemporaneously communicate about Drug Court issues. **P**
85. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. R BPS VIII C
86. Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. B BPS VIII F
87. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts. P BPS VIII F
88. New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. P BPS VIII F
89. Court fees are reasonable and based on each participant's ability to pay.
R
90. Treatment fees are based on a sliding fee schedule. **R**
91. The Drug Court has more than 15 but less than 125 active participants.
P BPS IX A*
92. Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services. B BPS IX C
93. The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. P BPS X A

94. The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. B BPS X B*
95. New referrals, new arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Drug Court. P BPS X C
96. A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years. R BPS X D
97. The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. R BPS X D
98. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes. B BPS X F
99. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. P BPS X G
100. Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program. B BPS X H
101. The program conducts an exit interview for self improvement. P

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Utah Dependency Drug Court Certification Checklist

October, 2015 Draft

*Standards followed by an **R** are required features of a drug court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

Many of these standards are direct restatements of the Adult Drug Court Best Practice Standards, Volume I, copyright 2013, National Association of Drug Court Professionals. Those are indicated by a BPS following the standard, and the citation to the section of the document in which the standard is found. An asterisk indicates a modification of the NADCP standard.

1. Eligibility and exclusion criteria are defined objectively. **R BPS I A**
2. Eligibility and exclusion criteria are specified in writing. **R BPS I A**
3. Eligibility and exclusion criteria are communicated to potential referral sources. **P BPS I A**
4. The Drug Court team does not apply subjective criteria or personal impressions to determine participants' suitability for the program. **R BPS I A**
5. The program admits only participants who are high risk high need as measured by the RANT, or participants who are at high risk for re-abusing the children and they are addicted to or dependent on a substance. **R BPS* I B**
6. Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction. **R BPS I C**
7. Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. **R BPS I C**
8. Current or prior offenses may disqualify candidates from participation in the Drug Court if empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court. **R BPS I D**

9. Offenders with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court.
R BPS I D
10. If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication. **R BPS I D**
11. The program has a written policy addressing medically assisted treatment.
R
12. The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. **R BPS II B, BPS X E**
13. The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. **R BPS II D**
14. Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
15. The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
16. The judge presides over the Drug Court for no less than two consecutive years. **P BPS III B**
17. Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court. **R BPS III C**
18. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team. **R BPS III D**
19. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. **R BPS III E**
20. Status hearings are scheduled no less frequently than every four weeks until participants graduate. **R BPS* III E**
21. The Judge spends an average of at least three minutes with each participant.
R BPS* III F

22. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. **R BPS III G**
23. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. **R BPS IV B**
24. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. **R BPS III H, BPS VIII D**
25. The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative. **R BPS III H, BPS VIII D**
26. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. **R BPS III H**
27. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members. **R BPS IV A**
28. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. **R BPS IV A**
29. The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**
30. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**
31. Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana) and

prescription medications, regardless of the licit or illicit status of the substance. **R BPS IV F**

32. The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available. **P BPS IV F**
33. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time. **P BPS IV I**
34. Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use. **P BPS IV I**
35. Drug testing is performed at least twice per week. **R BPS VII A***
36. Drug testing is random, and is available on weekends and holidays. **R BPS VII B***
37. Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day. **P BPS VII B**
38. Drug test results are available within 48 hours. **P BPS VII H**
39. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. **R BPS VII B**
40. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population. **P BPS VII D***
41. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. **R BPS VII E*, F***
42. The Drug Court utilizes scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. **R BPS VII G**
43. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). **P BPS VII G**

44. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. R BPS VII G*
45. Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing. R BPS VII I
46. The program requires at least 90 days clean to graduate. B
47. The minimum length of the program is twelve months. B
48. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. R BPS IV J
49. Jail sanctions are definite in duration and typically last no more than three to five days. R BPS IV J
50. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed. R BPS IV J
51. Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community. R BPS IV K
52. If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented disposition for failing to complete the program. P BPS IV K*
53. The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services. B BPS V A
54. Standardized patient placement criteria govern the level of care that is provided. P BPS V A
55. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure. P BPS V A

56. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters. **R BPS V B**
57. Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction. **P BPS V D**
58. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. **P BPS V E**
59. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms. **P BPS V E**
60. Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators. **B BPS V E**
61. Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system. **B BPS V F, BPS VI G**
62. Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models. **P BPS V F**
63. Treatment providers are licensed or certified to deliver substance abuse treatment. **R BPS V H**
64. Treatment providers have substantial experience working with criminal justice populations. **B BPS V H**
65. Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices. **P BPS V H**
66. Participants regularly attend self-help or peer support groups in addition to professional counseling. **P BPS V I**
67. The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models. **R BPS V I**
68. There is a secular alternative to 12-step peer support groups. **R**

69. Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy. **P BPS V I**
70. Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care. **R BPS V J**
71. Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group after their discharge from the Drug Court. **P BPS V J**
72. For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
73. Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services. **B BPS IX C**
74. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Drug Court and continuing as necessary throughout their enrollment in the program. **P BPS VI D**
75. Participants are not excluded from participation in Drug Court because they lack a stable place of residence. **R BPS VI D**
76. Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders. **B BPS VI E**
77. Participants suffering from mental illness receive mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program. **R BPS VI E**
78. Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD). **P BPS VI F**
79. Female participants receive trauma-related services in gender-specific groups. **B BPS VI F**

80. All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. P BPS VI F
81. Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court. R BPS VI I*
82. Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court. P BPS VI I
83. Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court. B BPS VI I
84. Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment. B BPS VI J
85. Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose. P BPS VI
86. Clients are placed in the program within 50 days of shelter hearing. R
87. At a minimum, the attorney general, defense counsel, treatment representative, DCFS case worker, GAL and the judge attend each staffing meeting. R BPS VIII B*
88. At a minimum, the attorney general, defense counsel, treatment representative, DCFS caseworker, GAL and the judge attend each Drug Court session. R BPS VIII A*
89. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. R BPS VIII B
90. Team members are assigned to Drug Court for no less than two years. P
91. All team members use electronic communication to contemporaneously communicate about Drug Court issues. P
92. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. R BPS VIII C

93. Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. B BPS VIII F
94. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts. P BPS VIII F
95. New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. P BPS VIII F
96. Court fees are reasonable and based on each participant's ability to pay.
R
97. Treatment fees are based on a sliding fee schedule. **R**
98. The Drug Court has more than 15 but less than 125 active participants. P BPS IX A*
99. The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. P BPS X A
100. The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. B BPS X B*
101. The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. P BPS X A
102. A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years. R BPS X D
103. The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. R BPS X D

104. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes. B BPS X F
105. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. P BPS X G
106. Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program. B BPS X H
107. The program conducts an exit interview for self improvement. P

Utah Mental Health Court Certification Checklist

October, 2015 Draft

*Standards followed by an **R** are required features of a mental health court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

Many of these standards are direct restatements of the Adult Drug Court Best Practice Standards, Volume I, copyright 2013, National Association of Drug Court Professionals. Those are indicated by a BPS following the standard, and the citation to the section of the document in which the standard is found. An asterisk indicates a modification of the NADCP standard.

1. Eligibility and exclusion criteria are defined objectively. **R BPS I A**
2. Eligibility and exclusion criteria are specified in writing. **R BPS I A**
3. Eligibility and exclusion criteria are communicated to potential referral sources.
P BPS I A
4. The Mental Health Court team does not apply subjective criteria or personal impressions to determine participants' suitability for the program. **R BPS I A**
5. Candidates for the Mental Health Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population. **R BPS I C**
6. Candidates for the Mental Health Court are assessed for eligibility using a validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction and a validated clinical assessment tool that produces a mental health diagnosis. **R BPS* I C**
7. Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. **R BPS I C**
8. Current or prior offenses may disqualify candidates from participation in the Mental Health Court if empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Mental Health Court. **R BPS I D**

9. The Mental Health Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. **R BPS II B, BPS X E**
10. The Mental Health Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. **R BPS II D**
11. Each member of the Mental Health Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
12. The Mental Health Court judge attends current training events on legal and constitutional issues in Mental Health Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
13. The judge presides over the Mental Health Court for no less than two consecutive years. **P BPS III B**
14. Participants ordinarily appear before the same judge throughout their enrollment in the Mental Health Court. **R BPS III C**
15. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Mental Health Court team. **R BPS III D**
16. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. **R BPS III E**
17. Status hearings are scheduled no less frequently than every four weeks until participants graduate. **R BPS* III E**
18. The Judge spends an average of at least three minutes with each participant. **R BPS* III F**
19. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. **R BPS III G**
20. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the

participant's attorney or legal representative to assist in providing such explanations. **R BPS IV B**

21. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. **R BPS III H, BPS VIII D**
22. The judge makes these decisions after taking into consideration the input of other Mental Health Court team members and discussing the matter in court with the participant or the participant's legal representative. **R BPS III H, BPS VIII D**
23. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. **R BPS III H**
24. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Mental Health Court participants and team members. **R BPS IV A**
25. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. **R BPS IV A**
26. The Mental Health Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**
27. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**
28. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives. **P BPS IV I**
29. Drug testing is random, and is available on weekends and holidays. **R BPS VII B***
30. Drug test results are available within 48 hours. **P BPS VII H**
31. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. **R BPS VII B**

32. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Mental Health Court population. P BPS VII D*
33. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. R BPS VII E*, F*
34. The Mental Health Court utilizes scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. R BPS VII G
35. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). P BPS VII G
36. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. R BPS VII G*
37. Upon entering the Mental Health Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing. R BPS VII I
38. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. R BPS IV J
39. Jail sanctions are definite in duration and typically last no more than three to five days. R BPS IV J
40. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed. R BPS IV J
41. If a participant is terminated from the Mental Health Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program. R BPS IV K
42. The Mental Health Court offers a continuum of care for mental health treatment, and substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services. B BPS V A
43. Standardized patient placement criteria govern the level of care that is provided. P BPS V A

44. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Mental Health Court's programmatic phase structure. **P BPS V A**
45. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to mental health services, detoxification services or sober living quarters. **R BPS V B***
46. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. **B BPS V E**
47. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and psychiatric symptoms. **P BPS V E***
48. Participants with co-occurring substance abuse issues regularly attend self-help or peer support groups in addition to professional counseling. **R BPS V I**
49. For at least the first ninety days after discharge from the Mental Health Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
50. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Mental Health Court and continuing as necessary throughout their enrollment in the program. **P BPS VI D**
51. Participants are not excluded from participation in Mental Health Court because they lack a stable place of residence. **R BPS VI D**
52. Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD). **P BPS VI F**
53. Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety. **B BPS VI F**
54. Female participants receive trauma-related services in gender-specific groups. **B BPS VI F**
55. All Mental Health Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. **P BPS VI F**

56. Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment. B BPS VI J
57. Clients are placed in the program within 50 days of arrest. R
58. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each staffing meeting. R BPS VIII B*
59. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each Mental Health Court session. R BPS VIII A*
60. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. R BPS VIII B
61. Team members are assigned to Mental Health Court for no less than two years.
P
62. All team members use electronic communication to contemporaneously communicate about Mental Health Court issues. P
63. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. R BPS VIII C
64. Before starting a Mental Health Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. B BPS VIII F
65. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Mental Health Courts. P BPS VIII F
66. New staff hires receive a formal orientation training on the Mental Health Court model and best practices in Mental Health Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. P BPS VIII F
67. Court fees are reasonable and based on each participant's ability to pay. R

68. Treatment fees are based on a sliding fee schedule. **R**
69. The Mental Health Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P BPS X A**
70. The Mental Health Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. **B BPS X B***
71. New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Mental Health Court. **P BPS X C**
72. A skilled and independent evaluator examines the Mental Health Court's adherence to best practices and participant outcomes no less frequently than every five years. **R BPS X D**
73. The Mental Health Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. **R BPS X D**
74. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Mental Health Court's adherence to best practices and in-program outcomes. **B BPS X F**
75. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. **P BPS X G**
76. Outcomes are examined for all eligible participants who entered the Mental Health Court regardless of whether they graduated, withdrew, or were terminated from the program. **B BPS X H**
77. The program conducts an exit interview for self improvement. **P**

