

**Agenda**  
**Policy and Planning Committee**  
 June 1, 2018  
**12:00 p.m. – 2:00 p.m.**  
**Council Room – 3rd Floor, N31**  
 Matheson Courthouse  
 450 S. State St., Salt Lake City, UT

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Derek Pullan
12:05	<u>Rules back from public comment:</u> • CJA 9-109. Presiding Judges	Discussion/ Action	Tab 2	Nancy Sylvester
12:35	CJA 3-414. Court Security	Discussion/ Action	Tab 3	Chris Palmer
1:00	BDCJ Proposed Rule Change	Discussion/ Action	Tab 4	Judge Derek Pullan
1:15	Human Resources Professional Appearance Policy	Discussion/ Action	Handout	Rob Parkes Rob Rice Judge Kara Pettit
1:50	Problem Solving Court Working Group Update	Discussion		Judge Walton
2:00	Adjourn	Action		Judge Derek Pullan

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

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

**2018 Meetings:**

June 1, 2018	October 5, 2018
August 3, 2018	November 2, 2018 (9:00 a.m. – 5:00 p.m.)
September 7, 2018	December 7, 2018

# Tab 1

**Policy and Planning Committee**

Council Room – N31  
Matheson Courthouse  
450 South State Street  
Salt Lake City, UT

**DRAFT**

May 4, 2018  
9:00 a.m. – 3:00 p.m.

**Members Present:**

Judge Derek Pullan, Chair  
Judge Mary Noonan  
Judge Kara Pettit  
Rob Rice  
Judge John Walton

**Members Excused:**

Judge Augustus Chin

**Staff:**

Keisa Williams  
Minhvan Brimhall

**Guests:**

Judge Dennis Fuchs  
Clayson Quigley  
Rob Parkes  
Judge James Taylor – via phone  
Nancy Sylvester

**(1) Welcome and Approval of Minutes**

Judge Pullan welcomed the members to the meeting. Judge Pullan addressed the March 2, 2018 minutes. There being no changes, Judge Noonan made a motion to approve the minutes as written. Judge Walton seconded the motion and it passed unanimously.

**(2) BDCJ Proposed Rule Change**

Judge Pullan welcomed Judge Taylor to the meeting via phone. Judge Taylor discussed the new rule proposal from the Board of District Court Judges. The proposed rule is intended to foster more effective probation supervision by consolidating the supervision of probation to a single judicial authority. It is not intended to create more work in any one location, but rather to avoid duplication of efforts and resources. When more than one judge is supervising the same individual, the number of hearings, transportation requirements, and costs are significantly multiplied. When an individual who has already been convicted and placed on probation is convicted and sentenced for another offense, the new rule would allow a judge to transfer authority for supervision and enforcement of probation for the subsequent conviction to any division of the District Court in any other District already managing probation for the first offense. The sending judge, prosecutor, and the defendant must agree to the transfer. The committee discussed whether parties should be allowed to prevent the transfer by objection or whether judges should get to make the final decision after argument by the parties. The receiving judge may also object to the transfer. Adult Probation and Parole was invited to provide input and they had no objections to the proposed changes. The Board of District Court Judges has approved this draft.

Judge Pullan asked if it would be beneficial for the Committee to allow stakeholders to attend the Committee's next meeting to provide input. Judge Taylor was not aware if prosecutors or defense counsel organizations (UACDL, SWAPP, etc.) were offered an opportunity for input. Judge Pullan expressed concern that defense counsel and prosecutors were not allowed to provide input. After discussion, the Committee agreed that more input is needed from other legal representatives prior to sending the rule out for public comment. Ms. Williams will draft a letter to UACDL, SWAPP, and the Utah Prosecution Council asking for feedback regarding the proposed changes. Ms. Williams will send the letter to Judge Pullan for final review before it is disseminated. The letter should request comments in writing due to Ms. Williams one week prior to the next meeting.

Judge Pullan asked that this item be on the agenda for the next Policy and Planning meeting.

### **(3) Rules back from public comment:**

#### CJA 3-407, 4-202.02, 4-202.07, 4-202.09, 4-510.03

All rules have come back from public comments. Only one comment was received for CJA 4-202.02. The Committee discussed the comment and Mr. Johnson's original request and ultimately determined that the rule would remain as amended by Mr. Johnson.

Judge Walton made a motion to recommend to the Judicial Council that CJA 4-202.02 be approved as final. Mr. Rice seconded the motion and it passes unanimously.

Mr. Rice made a motion to recommend to the Judicial Council that CJA 3-407, 4-202.07, 4-202.09, and 4-510.03 be approved as final. Judge Noonan seconded the motion and it passed unanimously.

#### 7-303

Originally, the Committee voted to repeal CJA 7-303 due to changes in HB 239 removing the court's jurisdiction over truanies. However, HB 132 gives truancy jurisdiction back to the juvenile court so the rule is still needed. Mr. Rice made an amendment to his previous motion recommending that CJA 7-303 remain in effect. Judge Noonan seconded the motion. With no further discussion, the rule was passed unanimously.

### **(4) Human Resources Professional Appearance Policy Update**

Rob Parkes was welcomed to the meeting. Mr. Parkes, Mr. Rice and Judge Pettit are still making adjustments to the policy. They will present their amendments at the next meeting.

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

Ms. Sylvester addressed proposed amendments to CJA 4-202.09. These amendments are in response to a recent records request in which a member of the public made a very broad request requiring the AOC to conduct email searches. The requester was unhappy with the search terms used by the AOC's Information Technology Department to locate relevant emails. This incident caused the AOC to expend a lot of unnecessary time and resources and identified a need for more definitive requirements for records requests in our rules.

The proposed changes would require that a records access request for email correspondence provide specific search terms, dates of emails, and names of persons having access to emails. The proposal further requires that the person handling the request forward the request to the court's IT department to create search parameters for the emails requested.

The Committee discussed the need for the requests to be sufficiently detailed and narrowly tailored to allow the court to reasonably identify the subject of the emails so that the request is not unduly burdensome. The Committee discussed the requirement of a date range versus a specific date and determined that the internal process language should not be included in the rule.

Mr. Rice moved to approve the rule as amended for recommendation to the Judicial Council that it be published for public comment. Judge Walton seconded the motion. With no further discussion, the motion was passed unanimously.

**(6) CJA 3-111. Performance evaluation of senior judges and court commissioners**

Ms. Sylvester presented on CJA Rule 3-111. The rule has come back from a second round of public comments. Only one comment was received, but the comment was supportive and made no recommendations for amendments. The rule is ready for final action.

Judge Noonan moved to approve the rule as amended for recommendation to the Judicial Council that the rule be approved as final. Judge Walton seconded the motion. With no further discussion motion was passed unanimously.

**(7) Powers & Duties of Bail Commissioners under Utah Code § 17-32-1**

Ms. Williams stated that she wanted to bring an issue to the Committee's attention for consideration and guidance. During her travels around the state and communication with both law enforcement and judges surrounding the new probable cause system and PSA implementation, Ms. Williams discovered that most law enforcement agencies are setting bail on felony offenses and releasing arrestees able to post bail without a judge's review. This practice is in violation of Utah Code §17-32-1. The Code authorizes bail commissioners (typically jail staff) to "fix" and receive bail on misdemeanor offenses, provided they use the amounts listed on the Uniform Fine & Bail Schedule. The Code only authorizes bail commissioners to "receive" bail on felonies, expressly limiting their authority to "fix" bail on those offenses. Judges must "fix" bail on felonies. Many judges were unaware of this statutory provision and law enforcement agencies are interpreting the provision as authorizing them to "fix" bail on felonies as long as they use the Uniform Fine & Bail Schedule amounts. According to law enforcement, this has been the practice for "decades" and a change would significantly affect their ability to perform their duties and manage jail overcrowding.

Judge Pettit stated that the Code is very clear. After discussion, the Committee determined that because this is a statewide issue and there may be significant push back from stakeholders, this body may not be the right forum. The Committee determined that Brent Johnson should discuss the issue with Rick Schwermer and the Chief Justice. Ms. Williams will notify Mr. Johnson and Mr. Schwermer of the Committee's direction.

**(8) CJA 4-202.03. Records Access (for Juveniles)**

Ms. Williams presented proposed changes to CJA 4-202.03 which would allow access to juvenile court social records by public or private agencies or individuals providing services to juveniles and/or their families, including services pursuant to non-judicial adjustments. The issue was raised by a juvenile court TCE. Ms. Williams presented and received approval of the rule amendment from Chief Probation Officers, Juvenile Court TCEs, the Juvenile Court Administrator, and the Board of Juvenile Court Judges. The rule requires a determination by a probation officer that access is necessary for the provision of effective services. The Juvenile Court Administrator will be working with appropriate stakeholders to craft internal policies for probation officers in making that determination.

Judge Noonan provided examples of the need for this access. The Committee determined that internal policies for probation officers should be in place before this rule goes into effect. The Committee discussed whether HIPPA would prohibit access to medical information. Mr. Johnson stated that HIPPA does not apply to the Court.

A probation officer's report may be shared between providers; however, mental health records fall under the HIPPA rule are protected and could only be accessed under certain circumstances under subsection 5.

Judge Noonan moved to approve the rule as amended for recommendation to the Judicial Council that it be published for public comment. Judge Pettit seconded the motion. With no further discussion, the motion was passed unanimously.

**(9) CJA 4-202.03. Records Access (for LPPs)**

Mr. Johnson presented proposed amendments to CJA 4-202.03 allowing access to various classifications of records for Licensed Paralegal Practitioners (LPPs) similar to that of attorneys. These changes are to accommodate the new LPP program. The committee discussed whether it is within the scope of an LPP's authority to create powers of attorney. After discussion, the Committee removed the language describing who created the power of attorney at issue in each relevant subsection.

Judge Noonan moved to approve the rule as amended for recommendation to the Judicial Council that it be published for public comment. Judge Walton seconded the motion. With no further discussion, the motion was passed unanimously.

**(10) CJA 3-401. Office of General Counsel**

Mr. Johnson presented proposed amendments to CJA 3-401 deleting certain requirements under the rule to bring it in line with current practice. In reviewing records access requests, the Office of General Counsel has discovered that certain requirements under this rule have not been followed for quite some time. A requester has asked for a copy of the AOC's agreement with the AG's office. To Mr. Johnson's knowledge, the agreement no longer exists. An agreement does not make sense since everything is covered by statute and rule. The Committee added a reference under subsection (4) to the relevant rule and statute. Proposed changes also include removing involvement of the Chief Justice regarding workload issues, requiring judicial officers

to send copies of requests for legal representation to the AG's office, and requiring Judges to send written requests for legal advice on the Code of Judicial Conduct.

The Committee discussed the various provisions. Judge Pullan expressed concern that when this rule is published for comment, parties may look at the deletion of the last line in subsection 3(A)(ii)(a) which states, "General Counsel shall not provide legal counsel or advice to judicial officers on issues which are pending before the court for resolution," and be concerned that the deletion will now allow judges to relying heavily on or allow the General Counsel's Office to make decisions regarding pending actions. Mr. Johnson stated that judges will call about ethics issues regarding cases pending before them and may bounce ideas off the General Counsel's Office the same way they would a law clerk or colleague. Those discussions are authorized. We are just acting as a sounding board and not giving legal advice. Mr. Johnson provided examples of questions he has received and how his office has responded.

Mr. Rice asked if the language in 3(A)(ii)(a) was removed, is there was some provision in the Code of Judicial Conduct (CJC) outlining a judge's responsibility to be solely responsible for his or her decision. Mr. Johnson stated that CJC Canon 2.9(3) covers that responsibility. Judge Pettit recommended that the Committee include a note along with the publication of the rule draft noting that the removal of that language does not abdicate Judges' responsibility to make their own decisions under the CJC. Ms. Williams will include that note.

Judge Pullan asked if judges have ever made a written request for legal advice regarding the Code of Judicial Conduct for referral to the Ethics Advisory Committee as indicated in the language struck in lines 64-66. Mr. Johnson stated that CJA Rule 3-109 covers the requirements for submitting requests for informal ethics advisory opinions to the Ethics Advisory Committee.

After discussion, Mr. Rice moved to approve the rule as amended for recommendation to the Judicial Council that it be published for public comment, along with the note discussed. Judge Noonan seconded the motion. With no further discussion, the motion was passed unanimously.

#### **(11) CJA 4-403. Electronic Signature and Signature Stamp Usage**

Mr. Johnson presented proposed amendments to CJA 4-403. The proposal would add orders appointing a court visitor to the list of documents on which clerks are allowed to, with prior approval from a judge or commissioner, use an electronic signature or signature stamp in lieu of obtaining a signature directly from the judges/commissioners. This would bring the rule in line with current practice. This is a basic and fairly common order.

After discussion, Judge Walton moved to approve the rule as amended for recommendation to the Judicial Council that it be published for public comment. Mr. Rice seconded the motion. With no further discussion, the motion was passed unanimously.

#### **(12) CJA 4-701. Failure to Appear**

Mr. Johnson presented proposed amendments to CJA 4-701. The proposal deletes the reference to failures to appear as a separate offense. The legislature recently eliminated the crime of failure to appear on a citation. That law goes into effect May 8, 2018.

After discussion, Judge Noonan moved to approve the rule as amended for recommendation to the Judicial Council that it be published for public comment. Mr. Rice seconded the motion. With no further discussion, the motion was passed unanimously.

### **(13) Appendix I to CJA – Classification of criminal investigations**

Ms. Williams presented proposed amendments to Appendix I of the Code of Judicial Administration. The amendment changes the designation of Criminal Investigation case types from protected to public. This request was made by the Court Services Department. When updating their training documents for clerks, they noticed a discrepancy in the designation listed in the Appendix versus the designation in the training documents. This change would bring the Appendix in line with the court's records access rules under CJA 4-202.02(5)(J). Ms. Williams discussed the issue with Mr. Johnson who concurred with the recommended changes.

The Committee discussed the need for these case types to be protected and questioned whether the Application for Criminal Investigation filed by prosecutors includes identifying information. Ms. Williams explained the current process for filing those applications. When prosecutors file the application, if the information needs to be protected, they also file a Motion for Secrecy which seals the associated documents until a judge makes a determination. Ms. Williams noted that in her conversation with Mr. Johnson on this subject, he stated that the Motion for Secrecy itself is a public document so there should be at least one public document in every case. The judge might order only some of the documents to be made private, so the entire case does not automatically become private. The training document for clerks is very clear on that process/procedure. Judge Pullan asked if the individual's name is listed anywhere in the Application or Motion for Secrecy, or if it is de-identified with a heading of "Sate v. John Doe" for example. Ms. Williams stated that she did not know the answer to that question. Judge Pullan stated that he is uncomfortable approving this amendment without confirming that the documents and/or case types made public do not include identifying information that should otherwise be protected. After discussion, the Committee did not believe identifying information was included in the Application or Motion for Secrecy. Judge Pettit stated that the Motion for Secrecy is public under GRAMA, but that it need not include any identifying information. The Committee amended the Appendix to state "Public unless otherwise ordered."

After discussion, Judge Walton moved to approve the rule as amended for recommendation to the Judicial Council that it be published for public comment. Mr. Rice seconded the motion. With no further discussion, the motion was passed unanimously.

### **(14) CJA 2-207. Annual rulemaking and periodic review of the Code**

The Committee is charged conducting a periodic review of the Code of Judicial Administration in its entirety every 5 years. To the Committee's knowledge, that has never been done. The Committee reviewed the list of rules and assignments and made changes where appropriate. The Committee asked Ms. Williams to add an item on the Committee's October agenda for a report from the responsible member that year, and an item on the November agenda for the Committee to make substantive changes based on those recommendations. This should be a standing policy for the Committee every year. Ms. Williams will assist the members with their review and drafting efforts and will be responsible for the Appendices. Mr. Rice and Judges Pettit and



Pullan will continue their review for 2018. Ms. Williams will make the necessary changes and email an updated spreadsheet and instructions for review.

#### **(15) CJA 4-409. Council Approval of Problem Solving Courts**

The Committee continued their discussion from the March meeting regarding the Committee's charge from the Judicial Council to review the certification process for Problem Solving Courts. The Committee is to identify which items on the certification checklists are truly Requirements for decertification and which are best practices. The Judicial Council expressed concern that some Problem Solving Courts are not meeting all of the Requirements but are still being certified. The Committee discussed the importance of building a relationship with participants and accomplishing the respective court's goals, rather than just checking boxes (for example, the requirement that judges spend at least 3 minutes with each participant). Currently, the certification checklist for Adult Drug Court lists 53 Requirements, 30 Presumptions and 15 Best practice standards.

The Committee discussed Judge Fuchs' and Rick Schermer's proposal that a working group be created which includes a few judges who preside over Problem Solving Courts to reevaluate the checklists. The Committee agreed with that proposal, but created some guidelines and directives for the membership of the working group and its charge. The Board of District Court Judges shall appoint 3 and the Board of Juvenile Court Judges shall appoint 2 problem-solving court judges to the Committee's Problem-Solving Court Working Group (WG). The Committee will appoint one of its members. Staff to the WG will be Judge Fuchs and/or Rick Schwermer. The WG will elect its Chair.

The WG's mandate is to:

1. Identify national evidence-based practices for problem-solving courts, including review of recent research;
2. Limit the number of criteria which are Required for certification. Required criteria are those, without which, actual harm will occur and/or participants would be better served by disbanding the court altogether;
3. Simplify the certification checklists for all problem-solving courts;
4. Consider proposed amendments to CJA Rule 4-409(5);
5. Consider whether the Judicial Council should allocate more resources to the certification process; and
6. Complete its work no later than December 31, 2018.

The Committee discussed the timing of the adoption of the certification checklists in relation to the requirements set forth in CJA Rule 4-409(5). The Committee asked Ms. Williams to find out when the checklists became the standard for certification and superseded the requirements listed in the rule.

Judge Fuchs joined the meeting. He indicated that the drug court checklists were created from the 2015 NADCP guidelines for best practices. The 2017 version was a second volume and Rick was a member of the national organization who identified those standards. The rule was never changed to adopt evidence based practices. To Judge Fuch's knowledge, the checklists were

approved at a District Court conference and the Judicial Council then adopted those requirements.

The Committee intends to propose to the Management Committee and Judicial Council that the certification requirements to those outlined in CJA Rule 4-409(5) until the WG is able to complete its work. Ms. Williams will talk to Rick Schwermer about including this item on the Management Committee agenda. That body will determine whether the issue should be included on the Judicial Council agenda.

Judge Pullan asked Ms. Williams to talk to Shane Bahr and Dawn Marie Rubio to get Board recommendations for membership on the WG and asked that he be included on the next agenda for both Boards to discuss the Committee's intent. Ms. Williams will send an email to those staff with a cc to Judge Pullan, Judge Fuchs, and Rick Schwermer.

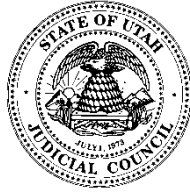
**(16) July 6 Meeting**

The Committee members moved to cancel the July 6<sup>th</sup> meeting for summer break.

**(17) Adjourn**

The next meeting is scheduled for June 1, 2018 in the Judicial Council room at 12:00 p.m. There being no other business the meeting was adjourned at 2:55 pm.

# Tab 2



# Administrative Office of the Courts

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

## MEMORANDUM

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

**To:** Policy and Planning Committee  
**From:** Nancy Sylvester  
**Date:** May 14, 2018  
**Re:** CJA Rule 9-109: Second Comment Period Complete

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The following rule has returned from [comment](#) and we received one comment.

**CJA09-0109 Presiding judges.** New. Establishes the procedure for election, term of office, role, responsibilities, and authority of presiding judges, associate presiding judges, and education directors for justice courts. This rule is effective April 1, 2018 pursuant to UCJA Rule 2-205 and this is the second request for comment.

The comment from "David" said, "The heading at (3)(D) 'Outside agencies and the media,' includes the word media, despite there being nothing in the subsections that follow dealing with the media." I believe it was intended that the paragraph include media, so I amended the paragraph as follows:

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

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

This is a minor change so the rule will not need to go out for comment again. A vote on this rule should include a recommendation that the Council adopt the language above effective immediately.

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

**Rule 9-109. Presiding judges.**

**Intent:**

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

**Applicability:**

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

**Statement of the Rule:**

**(1) Election and term of office.**

(1)(A) Presiding judge.

(1)(A)(i) A presiding judge in each judicial district shall be elected by a majority vote of the active judges present at the district meetings held at the 2018 Justice Court Conference. Thereafter, regular elections shall take place at the annual conference in odd years for odd-numbered districts and in even years for even-numbered districts. In the event that a majority vote cannot be obtained, the presiding judge shall be determined by the Board of Justice Court Judges. Interim elections, if necessary, shall take place as provided in this rule. A presiding judge shall be an active judge, currently appointed to at least one court within the district. Senior judges are ineligible to hold or vote for the office of presiding judge.

(1)(A)(ii) The presiding judge's term of office shall be from the time of his or her election or appointment until he or she resigns or until the next regular election, whichever occurs first. A presiding judge may serve successive terms.

(1)(B) Associate presiding judge.

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

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

(1)(C) District education director.

(1)(C)(i) The active judges of a district may, at their discretion, elect one judge of the district to the office of education director. An education director shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A). Senior judges are ineligible to vote for the office of district education director but may hold the office. If a district does not elect an education

36 director, the associate presiding judge, if there is one, shall serve as the education director. If the  
37 district elects neither an education director nor an associate presiding judge, the presiding judge shall  
38 serve as the education director.

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

42 (1)(D) Removal and Other Vacancies of Office.

43 (1)(D)(i) If the office of presiding judge becomes vacant, then the associate presiding judge shall  
44 serve the rest of the presiding judge's term. If there is no associate presiding judge, the district  
45 education director shall, if the education director is an active judge, serve the unexpired term.  
46 Otherwise, the Chair of the Board of Justice Court Judges shall appoint a judge to serve until the next  
47 district meeting.

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

53 (1)(D)(iii) A presiding judge, associate presiding judge or education director may be removed from  
54 that office by a two-thirds vote of the active justice court judges in the district. A successor presiding  
55 judge shall, or an associate presiding judge or education director may, then be elected to fill the  
56 unexpired term of the vacant office.

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

60 **(2) District meetings.**

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

63 (2)(A)(i) The presiding judge shall call and preside over a meeting of other justice court judges in  
64 the district at the annual Justice Court Conference.

65 (2)(A)(ii) Each district shall have at least one other meeting during the calendar year in which a  
66 majority of active justice court judges is present, including the presiding judge or associate presiding  
67 judge.

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

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

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

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

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

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

(3)(B) Coordination of required training.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

122 (3)(G) Reassignment.

123 (3)(G)(i) In the event that a motion to disqualify a judge or judges is filed and no appointed judge  
124 of the court is available or empowered to hear the motion, the presiding judge shall consider the  
125 motion and, if necessary, assign any judge duly appointed pursuant to Utah Code section 78A-7-208  
126 to serve as a temporary justice court judge.

127 (3)(G)(ii) In the event that all of the appointed judges of a court recuse themselves from a matter,  
128 the presiding judge shall assign any judge duly appointed pursuant to Utah Code section 78A-7-208  
129 to serve as a temporary justice court judge.

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

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



# Tab 3

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

J. Chris Palmer

E-mail:

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

Phone Number:

578-3835

Date of Request:

05/21/2018

### RULE AMENDMENT:

Rule Number:

CJA 3-414

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

Specification of types of hearing to which a bailiff are required to be to paragraph (5)(A)(iv)

~ (5)(A)(iv) provide court bailiffs at all criminal, civil, protective order hearings and those hearings deemed necessary by the judge or commissioner; and

### Reason Amendment is Needed:

To clearly specify to responsible law enforcement agencies which hearing require a bailiff be present.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

Judges, TCEs, Local Law Enforcement

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:

Judicial Council

Requester's Signature:

//SIGNED// John Christopher Palmer

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:

1    **Rule 3-414. Court security.**

2    **Intent:**

3    To promote the safety and well-being of judicial personnel, members of the bar and citizens  
4    utilizing the courts.

5    To establish uniform policies for court security consistent with Section 78A-2-203.

6    To delineate responsibility for security measures by the Council, the administrative office, local  
7    judges, court executives, and law enforcement agencies.

8    **Applicability:**

9    This rule shall apply to all courts.

10   Section (7) on weapons shall not apply to trial exhibits.

11   **Statement of the Rule:**

12   (1)   Definitions.

13   (1)(A) Court security. Court security includes the procedures, technology, and architectural  
14   features needed to ensure the safety and protection of individuals within the courthouse and the  
15   integrity of the judicial process. Court security is the joint effort of law enforcement and the  
16   judiciary to prevent or control such problems as, disorderly conduct, physical violence, theft,  
17   bomb threats, prisoner escapes, assassinations, and hostage situations.

18   (1)(B) A key manager is a person authorized by the court executive or Deputy State Court  
19   Administrator to issue, retrieve, activate, and deactivate keys and/or access cards to courthouses  
20   in their districts.

21   (1)(C) Presiding judge. As used in this rule, presiding judge includes the judge of a single-judge  
22   courthouse. The presiding judge may delegate the responsibilities of this rule to another judge.

23   (2)   Responsibilities of the Council.

24   (2)(A) The Council shall ensure that all design plans for renovation or new construction of court  
25   facilities are reviewed for compliance with The Utah Judicial System Design Standards.

26   (2)(B) As a condition for the certification of a new justice court or the continued certification of  
27   an existing justice court, the justice court shall file an acceptable local security plan with the  
28   Court Security Director and shall file amendments to the plan with the Court Security Director as  
29   amendments are made. The local security plan shall provide for the presence of a law  
30   enforcement officer or constable in court during court sessions or a reasonable response time by  
31   the local law enforcement agency upon call of the court.

32   (3)   Responsibilities of the Administrative Office.

(3)(A) The state court administrator shall appoint a Court Security Director who shall:

(3)(A)(i) review and keep on file copies of all local security plans; and

(3)(A)(ii) periodically visit the various court jurisdictions to offer assistance in the development or implementation of local security plans.

(3)(B) The state court administrator shall appoint a court executive in each judicial district to serve as a local security coordinator.

(3)(C) The Court Security Director shall promulgate general security guidelines to assist local jurisdictions in the development of court security plans.

(4) Responsibilities of the court executive.

(4)(A) The court executive designated as the local security coordinator shall:

(4)(A)(i) in consultation with the law enforcement administrator responsible for security and with the judges responsible for the security plan, develop and implement a local security plan for each court of record facility within the district;

(4)(A)(ii) annually review the local security plan with the presiding judge and the law enforcement administrator to identify deficiencies in the plan and problems with implementation;

(4)(A)(iii) file an acceptable local security plan with the Court Security Director; and

(4)(A)(iv) file amendments to the plan with the Court Security Director as amendments are made.

(4)(B) The local security plan for a courthouse and any amendments to it shall be approved by a majority of the judges of the district of any court level regularly occupying the courthouse. Voting shall be without regard to court level. As used in this subsection the term “judges of the district of any court level occupying the courthouse” shall include all judges of the district court of the district and all judges of the juvenile court of the district regardless of whether a particular judge occupies the courthouse so long as at least one judge of that court level occupies the courthouse. The term also includes the justices of the Supreme Court, the judges of the Court of Appeals and all justice court judges who actually occupy the courthouse.

(4)(C) The court executive shall provide a copy of the current local security plan and annual training on the plan to all court personnel, volunteers and security personnel.

(4)(D) The local plan shall clearly delineate the responsibilities between court personnel and law enforcement personnel for all areas and activities in and about the courthouse.

(4)(E) The court clerk or probation officer, under the supervision of the court executive, shall provide timely notice to transportation officers of required court appearances and cancellation of appearances for individuals in custody. The court shall consolidate scheduled appearances whenever practicable and otherwise cooperate with transportation officers to avoid unnecessary court appearances.

(4)(F) To the extent possible, the clerk of the court shall establish certain days of the week and times of day for court appearances of persons in custody in order to permit transportation officers reasonable preparation and planning time. The court shall give priority to cases in which a person in custody appears in order to prevent increased security risks resulting from lengthy waiting periods.

(5) Responsibilities of law enforcement agencies.

(5)(A) The law enforcement agency with responsibility for security of the courthouse, through a law enforcement administrator, shall:

(5)(A)(i) coordinate all law enforcement activities within the courthouse necessary for implementation of the security plan and for response to emergencies;

(5)(A)(ii) cooperate with the court executive in the development and implementation of a local security plan;

(5)(A)(iii) provide local law enforcement personnel with training as provided in this rule;

(5)(A)(iv) provide court bailiffs at all criminal, civil, protective order hearings and those hearings deemed necessary by the judge or commissioner; and

(5)(A)(v) provide building and perimeter security.

(5)(B) The law enforcement agency responsible for court security shall be as follows:

(5)(B)(i) The Department of Public Safety for the Supreme Court and the Court of Appeals when they are in session in Salt Lake County. When convening outside of Salt Lake County, security shall be provided by the county sheriff. The Department of Public Safety may call upon the Salt Lake County Sheriff for additional assistance as necessary when the appellate courts are convening in Salt Lake County.

(5)(B)(ii) The county sheriff for district courts and juvenile courts within the county.

(5)(B)(iii) The county sheriff for a county justice court and the municipal police for a municipal justice court. The county or municipality may provide a constable to provide security services to the justice court. If a municipality has no police department or constable, then the law enforcement agency with which the municipality contracts shall provide security services to the justice court.

96 (6) Court bailiffs.

97 (6)(A) Qualifications. Bailiffs shall be “law enforcement officers” as defined in Section 53-13-  
98 103. At the discretion of the law enforcement administrator and with the consent of the presiding  
99 judge, bailiffs may be “special function officers” as defined by Section 53-13-105.

100 (6)(B) Training. Prior to exercising the authority of their office, bailiffs shall satisfactorily  
101 complete the basic course at a certified peace officer training academy or pass a waiver  
102 examination and be certified. Bailiffs shall complete 40 hours of annual training as established  
103 by the Division of Peace Officer Standards and Training. Bailiffs shall receive annual training on  
104 the elements of the court security plan, emergency medical assistance and the use of firearms.

105 (6)(C) Physical and mental condition. Court bailiffs shall be of suitable physical and mental  
106 condition to ensure that they are capable of providing a high level of security for the court and to  
107 ensure the safety and welfare of individuals participating in court proceedings. Bailiffs shall be  
108 capable of responding appropriately to any potential or actual breach of security.

109 (6)(D) Appointment. The appointment of a bailiff is subject to the concurrence of the presiding  
110 judge.

111 (6)(E) Supervision. The court bailiff shall be supervised by the appointing authority and perform  
112 duties in compliance with directives of the appointing authority.

113 (6)(F) Responsibilities. Court bailiff responsibilities shall include but are not limited to the  
114 following.

115 (6)(F)(i) The bailiff shall prevent persons in custody from having physical contact with anyone  
116 other than the members of the defense counsel’s team. Visitation shall be in accordance with jail  
117 and prison policies and be restricted to those facilities.

118 (6)(F)(ii) The bailiff shall observe all persons entering the courtroom, their movement and their  
119 activities. The bailiff shall control access to the bench and other restricted areas.

120 (6)(F)(iii) The bailiff shall search the interior of the courtroom and restricted areas prior to the  
121 arrival of any other court participants. Similar searches shall be conducted following recesses to  
122 ensure the room is clear of weapons, explosives, or contraband.

123 (6)(F)(iv) Bailiffs shall wear the official uniform of the law enforcement agency by whom they  
124 are employed.

125 (6)(F)(v) Bailiffs shall comply with the directives of the judge or commissioner with respect to  
126 security related activities and shall perform other duties incidental to the efficient functioning of  
127 the court which do not detract from security functions. Activities wholly unrelated to security or  
128 function of the court, including personal errands, shall not be requested nor performed.

- 129 (6)(F)(vi) Bailiffs shall perform responsibilities provided for in the local court security plan.
- 130 (6)(F)(vii) The bailiff shall maintain a clear line of sight of all courtroom participants and shall  
131 be between individuals who are in custody and courtroom exits.
- 132 (7) Weapons.
- 133 (7)(A) Weapons generally.
- 134 (7)(A)(i) A courthouse is presumed to be free of all weapons and firearms unless a local security  
135 plan provides otherwise in accordance with this rule. No person may possess an explosive device  
136 in a courthouse. Except as permitted by this rule, no person may possess a firearm, ammunition,  
137 or dangerous weapon in a courthouse.
- 138 (7)(A)(ii) All firearms permitted under this rule and a local security plan:
- 139 (7)(A)(ii)(a) and carried upon the person shall be concealed unless worn as part of a public law  
140 enforcement agency uniform;
- 141 (7)(A)(ii)(b) Shall remain in the physical possession of the person authorized to possess it and  
142 shall not be placed in a drawer, cabinet, briefcase or purse unless the person has physical  
143 possession of the briefcase or purse or immediate control of the drawer or cabinet or the drawer  
144 or cabinet is locked; and
- 145 (7)(A)(ii)(c) Shall be secured in a holster with a restraining device.
- 146 (7)(B) Persons authorized to possess a firearm or other weapon.
- 147 (7)(B)(i) The following officers may possess a firearm and ammunition in a courthouse if the  
148 firearm is issued by or approved by the officer's appointing authority, if possession is required or  
149 permitted by the officer's appointing authority and the local security plan, and if the officer  
150 presents valid picture identification:
- 151 (7)(B)(i)(a) "Law enforcement officer" as defined in Section 53-13-103;
- 152 (7)(B)(i)(b) "correctional officer" as defined in Section 53-13-104;
- 153 (7)(B)(i)(c) "special function officer" as defined in Section 53-13-105;
- 154 (7)(B)(i)(d) "Federal officer" as defined in Section 53-13-106; and
- 155 (7)(B)(i)(e) a private security officer, licensed under Utah Code Title 58, Chapter 63, Security  
156 Personnel Licensing Act, hired by the court or the court's banker to transport money.
- 157 (7)(B)(ii) A judge or law enforcement official as defined in Section 53-5-711 may possess in a  
158 courthouse a firearm and ammunition for which the judge or law enforcement official has a valid



certificate of qualification issued under Section 53-5-711 if possession is permitted by the local security plan.

(7)(B)(iii) A court commissioner may possess in a courthouse a firearm and ammunition for which the court commissioner has a concealed weapons permit, but only if the court commissioner has obtained the training and annual retraining necessary to qualify for a certificate issued under Section 53-5-711 and if possession is permitted by the local security plan.

(7)(B)(iv) The Court Security Director may possess in a courthouse a firearm and ammunition for which the court security director has a concealed weapons permit, but only if possession is permitted by the local security plan and the director has obtained the training and annual retraining necessary to:

(7)(B)(iv)(a) qualify for a certificate issued under Section 53-5-711,

(7)(B)(iv)(b) qualify as a Utah police officer firearms instructor in accordance with Utah Administrative Code R728-502-9(4), or

(7)(B)(iv)(c) qualify as a retired law enforcement officer in accordance with United States Code Title 18, Part I, Chapter 44, Section 926C.

(7)(B)(iv)(v) A person permitted under subsections (i), (ii), ~~or (iii)~~, or (iv) to possess a firearm nevertheless shall not possess a firearm in a courthouse if the person is appearing at the courthouse as a party to litigation. A person possessing a firearm in a courtroom shall notify the bailiff or the judge.

~~(7)(B)(v)~~ (vi) If permitted by the local security plan, court personnel and volunteers may possess in a courthouse an otherwise legal personal protection device other than a firearm. Court personnel and volunteers shall not possess a personal protection device while appearing as a party to litigation. Court personnel and volunteers shall not possess a firearm while on duty.

(7)(C) Firearm training requirements.

(7)(C)(i) To requalify for a certificate issued under Section 53-5-711 a judge shall annually complete with a passing score a range qualification course for judges and law enforcement officials established by the Department of Public Safety or a course established by any law enforcement agency of the state of Utah or its political subdivision for the requalification of its officers.

(7)(C)(ii) The cost of firearms, ammunition, initial qualification, requalification and any other equipment, supplies or fees associated with a certificate of qualification issued under Section 53-5-711 shall be the responsibility of the judge or court commissioner and shall not be paid from state funds.

193 (8) Security devices and procedures.

194 (8)(A) Metal detectors. The use of metal detectors or other screening devices, ~~W~~where present,  
195 shall be used by the law enforcement agency responsible for security/bailiff services.

196 (8)(B) Physical search. Searches of persons in or about the courthouse or courtroom shall be  
197 conducted at the discretion of the law enforcement agency responsible for security when the  
198 local law enforcement agency has reason to believe that the person to be searched is carrying a  
199 weapon or contraband into or out of the courthouse or when the court so orders. No other person  
200 is authorized to conduct such searches. Written notice of this policy shall be posted in a  
201 conspicuous place at the entrance to all court facilities.

202 (8)(C) All persons in custody shall be kept in a holding cell, restrained by restraining devices, or  
203 supervised at all times while in court unless otherwise specifically ordered by the judge in whose  
204 courtroom the individual appears.

205 (8)(D) Extra security. In anticipated high risk situations or a highly publicized case, the law  
206 enforcement agency responsible for security should, on its own initiative or in response to an  
207 order of the court, provide extra security including additional personnel, controlled access, etc. A  
208 written operational plan outlining and assigning security duties should be developed in  
209 conjunction with the presiding judge, the court executive and the Court Security Director.

210 (8)(E) Courthouse Access Control. Only judges, court staff, and security and maintenance staff  
211 assigned to the courthouse will be granted access card/keys and only to those areas of the  
212 courthouse to which the individual needs access. No access cards or keys shall be issued solely  
213 for convenience purposes. Any exceptions to this rule must be pre-approved, in writing, by the  
214 Deputy State Court Administrator.

215 (8)(E)(i) Access cards or keys will be issued by a key manager only with the prior written  
216 authorization of the court executive(s) or Deputy State Court Administrator. Detailed recording  
217 of all card/key transactions will be the responsibility of the key manager. Supervisors shall  
218 recover all issued keys/cards from court personnel who are terminated, suspended or transferred  
219 or if loss of privileges is part of an adverse personnel action. Supervisors will return the  
220 cards/keys to the court executive who will deactivate the access card. If the access card is not  
221 returned as required, the supervisor will immediately contact the key manager to deactivate the  
222 card.

223 (8)(E)(ii) Locally produced proxy access cards and badges issued to non-court employees  
224 (excluding assigned DFCM and security) will incorporate a distinctive background color to  
225 visually identify personal access levels. Access badges issued to persons with an approved local  
226 background check will use an orange background and those without a locally approved  
227 background check will be issued a badge with a yellow background.

228 ~~(8)(E)(ii)(iii)~~ Court personnel shall possess their court-issued identification at all times when in  
229 the courthouse or staff parking area. Court personnel may not loan their identification cards,  
230 access cards or keys to others and must report any lost or missing identification or access card  
231 key to the key manager or their direct supervisor as soon as possible after the loss is discovered.  
232 Any lost access card will be deactivated before a replacement card is issued.

233 ~~(8)(E)(iii)(iv)~~ Court personnel with a court-issued identification card may bypass security  
234 screening only when they are assigned to that particular courthouse. Court personnel from other  
235 courthouses will be required to successfully pass through the security screening area before  
236 being allowed entry.

237 ~~(8)(E)(iv)(v)~~ The court executive will undertake a semiannual review of access card records to  
238 ensure that no unauthorized use is occurring.

239 (8)(F) In order to protect the safety and welfare of court customers, no one is permitted to block  
240 the entry or exit of a courthouse and no one is permitted to picket, parade, proselytize,  
241 demonstrate or distribute leaflets, pamphlets, brochures or other materials inside a courthouse.

242 (9) Transportation of persons in custody.

243 (9)(A) The federal, state, county or municipal agency with physical custody of a person whose  
244 appearance in court is required is responsible for transportation of that person to and from the  
245 courtroom.

246 (9)(B) The transportation officer shall:

247 (9)(B)(i) remain present at all times during court appearances;

248 (9)(B)(ii) be responsible for the custody of such persons;

249 (9)(B)(iii) Support the court bailiff in the preservation of peace in the courthouse and courtroom;

250 (9)(B)(iv) Provide advance notice of the transportation and of any extraordinary security  
251 requirements to the law enforcement agency responsible for court security, to the judge, and to  
252 the bailiff;

253 (9)(B)(v) Comply with any regulations of the county sheriff regarding the transportation of  
254 persons in custody to court; and

255 (9)(B)(vi) return the person in custody to the proper place of confinement.

256 (9)(C) The law enforcement agency responsible for court security shall provide assistance to the  
257 transportation officer as circumstances dictate.

# Tab 4



Keisa Williams &lt;keisaw@utcourts.gov&gt;

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**Fwd: Proposed Rule - Consolidation of Probation Cases**

6 messages

**Shane Bahr** <shaneb@utcourts.gov>

Thu, May 10, 2018 at 4:54 PM

To: Keisa Williams &lt;keisaw@utcourts.gov&gt;

Cc: Clayson Quigley &lt;claysonq@utcourts.gov&gt;, Judge James Taylor &lt;jrtaylor@utcourts.gov&gt;

Keisa,

In visiting with Clayson about the proposed Consolidation of Probation Rule presented to P&P while I was away he said the committee was concerned about the lack of outreach with stakeholders. Below is an email sent to UTCPD leadership and other defenders. A similar email was sent to the Jeff Buhman, president of SWAP and an email was also sent to the LDA. Hopefully, the P&P committee will find this information useful.

Thank you,

Shane

**Shane Bahr**

District Court Administrator

450 South State Street

Salt Lake City, UT, 84111

801-578-3971

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

----- Forwarded message -----

From: **Shane Bahr** <[shaneb@utcourts.gov](mailto:shaneb@utcourts.gov)>

Date: Thu, Oct 26, 2017 at 11:28 AM

Subject: Proposed Rule - Consolidation of Probation Cases

To: Shane Bahr <[shaneb@utcourts.gov](mailto:shaneb@utcourts.gov)>Cc: [mchristianson@sllda.com](mailto:mchristianson@sllda.com), [stewart@uacdl.org](mailto:stewart@uacdl.org), Richard Mauro <[rmauro@sllda.com](mailto:rmauro@sllda.com)>, [cara@tangarolaw.com](mailto:cara@tangarolaw.com), Tom Means <[tomm@utcpd.com](mailto:tomm@utcpd.com)>, [debbieh@utcpd.com](mailto:debbieh@utcpd.com)

Greetings,

The Board of District Court 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. The intent of this email is to seek feedback from stakeholders prior to presenting the proposed rule to the Judicial Council. Would you please forward this information to other Defense Lawyers?

Attached you will find a cover letter and proposed rule which goes into more detail about the concept. Please review the attached and provide feed back to Shane Bahr, District Court Administrator, at [shaneb@utcourts.gov](mailto:shaneb@utcourts.gov) no later than Monday, November 13th.

Best,

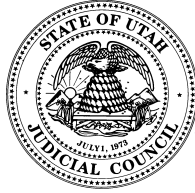
Shane

**Shane Bahr**

District Court Administrator

450 South State Street

Salt Lake City, UT, 84111



## Administrative Office of the Courts

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

May 25, 2018

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

Greetings,

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.

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. It would be possible in some cases to have an older case transferred to the site of a newer, perhaps more serious case for supervision as well. A copy of the proposed rule is attached.

Before the Board of District Judges sends the proposal to the Judicial Counsel for further action your input would be welcome. Please respond with any comments or suggestions to Shane Bahr at [shaneb@utcourts.gov](mailto:shaneb@utcourts.gov) before Monday, November 13.

Yours truly,

Shane Bahr  
District Court Administrator

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

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Shane Bahr

E-mail:

[shaneb@utcourts.gov](mailto: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
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- ☐ 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”.  
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