

**UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING AGENDA**

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
October 5, 2018 – 12:00 p.m. to 2:00 p.m.

| | | | | |
|-------|--|------------------------|-------|------------------|
| 12:00 | Welcome and Approval of Minutes | Action | Tab 1 | Judge Pullan |
| 12:05 | Updates re: - <i>CJA 6-305 – Consolidation of Probation (Tab 2A)</i> - <i>CJA 3-201 – Court Commissioner Conduct Committee (Tab 2B)</i> | Update | Tab 2 | Judge Pullan |
| 12:10 | Update on 3-414 Bailiff Staffing Issues | Discussion | | Chris Palmer |
| 12:15 | Rule 2-207(2) Annual Review: CJA Chapter 1 – Judicial Council Organization | Discussion / Action | | Judge Pullan |
| 12:30 | Rule 2-207(2) Annual Review: CJA Chapter 2 – Judicial Council Procedure | Discussion / Action | | Judge Pettit |
| 12:45 | Rule 2-207(2) Annual Review: CJA Chapter 3 – Administration of the Judiciary | Discussion / Action | | Rob Rice |
| 1:00 | CJA 4-409 - Council Approval of Problem Solving Courts - <i>Continued discussion regarding revisions to 4-409(5) as it relates to the recertification checklist</i> - <i>Consideration of various options available to the Judicial Council when determining recertification</i> | Discussion / Action | Tab 3 | Michael Drechsel |
| 1:30 | Recording / photography in courthouses: - <i>Rule 4-401 - New rule to restrict still photography and audio/video recording in courthouses</i> - <i>4-401.02 – Clarifies scope of rule relates to “personal” use of portable electronic devices in various parts of courthouse.</i> - <i>Detailed local orders that define areas in each courthouse where recording is permitted</i> | Discussion / Action | Tab 4 | Michael Drechsel |
| 2:00 | Adjourn | | | |

COMMITTEE WEB PAGE: <https://www.utcourts.gov/utc/policyplan/>

UPCOMING MEETING SCHEDULE:

Meetings are held at the Matheson Courthouse in the Judicial Council Room (N301), on the first Friday of each month from 12:00 noon to 2:00 p.m. (unless otherwise specifically noted):

November 2, 2018 – **9:00 a.m. to 5:00 p.m.**

December 7, 2018

January 4, 2019

February 1, 2019 – **2nd Floor Board Room (N231)**

March 1, 2019 – **2nd Floor West Conference Room (N213)**

April 5, 2019

May 3, 2019 – **1st Floor Large Conference Room (W19A) – 9:00 a.m. to 5:00 p.m.**

June 7, 2019

August 2, 2019

September 6, 2019

October 4, 2019

November 1, 2019 – **9:00 a.m. to 5:00 p.m.**

December 6, 2019

TAB 1

Minutes from September 7, 2018 Meeting

NOTES:

**UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING MINUTES**

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
September 7, 2018 – 12:00 p.m. to 2:00 p.m.

DRAFT

MEMBERS PRESENT:

Judge Derek Pullan, Chair
Judge Augustus Chin
Judge Ryan Evershed
Judge John Walton

MEMBERS EXCUSED:

Rob Rice
Judge Kara Pettit

GUESTS:

Rob Parkes
Judge Dennis Fuchs
Shane Bahr

STAFF:

Michael Drechsel
Minhvan Brimhall

(1) WELCOME AND APPROVAL OF MINUTES

Judge Pullan welcomed the members to the meeting. The committee addressed the August 3, 2018 minutes. Judge Pullan noted that Rob Rice mentioned via email that: 1) he believed the committee, at the last meeting, approved language stating that ties are optional for in court appearance; and 2) this didn't appear to be reflected in the minutes. The committee members discussed the conversation from the previous meeting. Ultimately, the committee decided that no changes were necessary. Judge Chin made a motion to approve the minutes as written. Judge Walton seconded the motion. The motion passed unanimously.

(2) REVIEW OF RULES BACK FROM PUBLIC COMMENT:

The committee reviewed six rules that have now been published for public comment from June 25, 2018 through August 10, 2018. For the six published rules, only one public comment was received.

CJA 3-401 – Office of General Counsel – No public comments were received for this rule.

CJA 3-414 – Court Security – One comment was received for this rule, which the committee considered and discussed prior to taking action on the proposed rule. The committee determined that the comment received would not result in any further revisions to the rule prior to the rule being submitted to the Judicial Council.

CJA 4-403 – Electronic Signature and Stamp Use – No comments were received for this rule.

CJA 4-701 – Failure to Appear – No comments were received for this rule.

CJA 4-202.03 – Records Access – No comments were received for this rule.

CJA 4-202.09 – Miscellaneous – No comments were received for this rule.

Judge Walton motioned to recommend to the Judicial Council that the proposed revisions be adopted and published as final rules. Judge Chin seconded the motion. The motion was approved unanimously.

As part of the discussion of these rules, Mr. Drechsel reported that (as an example) Rule 4-202.09 is frequently revised. Recently, the Publishers noted a difference between the current version of this rule to the new rule that has been submitted to them for final publication. This happened because different revisions of a single rule were running in parallel to each other, with each of the revisions taking place in separate documents that were not tracking consistently with each other. This results from the relatively long time frame for rule amendments (from first request to change, to Policy & Planning, to the Judicial Council for approval to publish for public comment, to the public comment period, to Policy & Planning for a second review, and then to the Judicial Council for final consideration prior to adoption. When a single rule is in multiple phases of that process for different revisions, the possibility arises that certain revisions will not be accurately reflected consistent in the final version(s) of the rule. Mr. Drechsel proposes that when rules are in revision process the rule be placed on "hold" until all proposals, amendments, and comments are completed before opening the rule back up for additional revisions. This would eliminate confusion and duplication of multiple amended versions.

Judge Pullan asked that Mr. Drechsel's proposal (and any other possible solutions to the problem) be placed on the next meeting's agenda for further discussion in this committee.

(3) RULE 4-202.02 RECORDS CLASSIFICATION:

Recent changes in the law affected the options available to victims in juvenile court matters to collect restitution. In district and justice court matters, the restitution order can be entered as a civil judgment and the victim has the ability to use the judgment collection methods available for civil judgments. While the law requires the juvenile court to enter restitution orders as civil judgments, the juvenile court was not able to provide a collection mechanism for victims. A solution was created to this issue, whereby an abstract of the juvenile court judgment could be filed in the district court, which would permit the victim to pursue restitution collection via civil process. Those abstracts would not, however, preserve the confidential nature of juvenile court proceedings. The proposed amendment would classify the abstracts issued in connection with juvenile court judgments as "private."

The committee discussed the process as it currently exists, as well as where the satisfaction of judgment might be filed. The committee discussed the proposed amended language to CJA 4-202.02(4)(A). No revisions to the proposed language were suggested or discussed by the committee.

With no further discussion, Judge Evershed made motion to recommend that this revision be approved by the Judicial Council to be published for public comment. Judge Walton seconded the motion. The motion was approved unanimously.

(4) HUMAN RESOURCES PROFESSIONAL APPEARANCE:

Mr. Parkes provided an update on revisions made to professional appearance policy. Since the previous meeting, and based upon the input of the committee at the August 3 meeting, Mr. Parkes revised the policy into a single "Standard Professional Attire Guideline," removing the distinction between courtroom attire and business attire. Under the current version of this policy, as presented to the committee today, collared polo-style shirts are only permitted as part of casual Friday dress standards, or when special occasion permits, i.e. department outing, training, or directed by a department manager.

This committee discussed additional minor languages to the proposed guidelines, including the addition of some language to the first sentence of the Casual Day Guideline page (additional language in bold and underlined): "The casual day guideline is applicable on Friday, for full day trainings, or, **as occasion requires**, on a day designated by district or administrative management."

After concluding the discussion, Judge Chin made motion to recommend to the Management Committee that this version of the professional appearance policy be adopted, with the corrections discussed by the committee during the meeting. Judge Evershed seconded the motion. The motion passed unanimously. Mr. Parkes will make those minor revisions prior to presenting the final version of the policy to the Management Committee.

(5) RECORDING/PHOTOGRAPHY IN COURTHOUSES:

The committee started (but did not finish) a discussion about rules related to recording and photography in the courthouses. Mr. Drechsel presented proposal for a new Rule 4-401. A proposed amendment was on the agenda for Rule 4-401.02, as well, but the committee did not undertake a discussion of that proposed amendment during this meeting. Rule 4-401 would provide a statewide policy regarding recording and photography in courthouses. This has been a topic of consideration by the AOC management committee and will be the subject of conversation at upcoming meetings and conferences.

The new rule may be drafted to allow (or require) each courthouse to identify a location within their respective building where recording and photography will be permitted. This proposed rule would not implicate recording or photography of actual court hearings by news media outlets as Rule 4-401.01 already addresses such activity and that rule appears to be functioning well.

The committee discussed whether the rule should authorize recording and photography which would allow law schools and/or educational entities to record for educational purposes (i.e., moot court, mock trial, etc.). The new rule, as presently drafted, allows presiding judges to authorize recording and photography for special purposes, i.e. adoptions, drug court graduation, etc.

Due to time constraints, discussion of the proposed Rule 4-401 for recording and photography in the courthouse will be continued at the next meeting. No action was taken by the committee as it relates to Rule 4-401 or 4-401.02 during this meeting.

(6) PROPOSED NEW RULE – CONSOLIDATION OF PROBATION:

Judge Pullan stated that final changes have been made on the rule for probation consolidation. The rule changes have been reported to Board of District Court Judges at its most recent meeting on August 24. The Board provided some feedback to the committee. That feedback was communicated to the committee by Mr. Drechsel and Judge Pullan. Mr. Drechsel addressed a concern that was mentioned by the Board related to the statutory language in the language Utah Code § 77-18-1(12)(b)(i) (requiring “the court that authorized probation” to review the affidavit alleging violation of probation). The Board recommended that the rule not be implemented unless that language was addressed legislatively so that the rule does not have to work around that language. This was a sentiment that the committee shared. The committee also considered feedback that would result in the proposed rule being amended to require that restitution determination hearings would remain in the sending court, so victims and witnesses would not have to travel to a new court location to participate in such matters. Finally, the committee discussed adding specific language that states that a prosecutor could oppose consolidation if victim rights issues existed in the case. The committee recognized that the prosecutor is always able to object to consolidation for that, or any other, reason. In fact, any of the involved parties could, under the terms of the proposed rule, object to consolidation of probation for any reason or no reason at all. For these reasons, the committee did not believe that it was necessary to spell out in detail any particular reason for objecting to application of the rule in any particular case.

The committee recommends sending the proposed changes of this rule to the Judicial Council for further review (including possible publication for public comment). Mr. Drechsel is instructed to clearly inform the Judicial Council regarding the recommended legislative amendment to Utah Code § 77-18-1(12)(b)(i) prior to adopting a final version of this rule. Judge Chin motioned to approve the recommendations as proposed. Judge Walton seconds the motion. The motion was approved unanimously.

(7) PROBLEM SOLVING COURT WORKING GROUP UPDATE:

Judge Fuchs provided an update on the problem solving court working group's efforts regarding the certification checklist. It was reported that the working group had reviewed each item on the adult certification checklist to determine which of the checklist items should be "Required." The working group proposed that several of the previously "required" items be classified as "presumed to be required." Several other minor amendments were made to the existing version of the checklist. Judge Pullan noted that there remain 53 "Required" items, 41 "Presumed Required" items, and 15 "Best Practice" aspirational items. There was specific discussion by the committee of a number of the "Required" items to determine if those really need to be classified as required.

The committee then turned its attention to CJA 4-409. The working group reported that it had not undertaken a separate review of amendments to that rule as part of its efforts, though the rule was used as a guideline for drafting of the checklist. The committee discussed the reasons why the list of requirements in the rule is so much shorter than the list in the checklist. The committee reviewed several items on the checklist and rule 4-409 for language clarification and to determine if the rule was duplicative of the checklist. The committee recommends that the certification checklist be sent to the Judicial Council for modification, which would include amendment to the minimum requirements of rule 4-409. The proposed amendments to the rule included: 1) striking the majority of Rule 4-409(5) (as those items were perceived by the committee, based upon the discussion, to be duplicative of items on the checklist); and 2) providing greater detail in the rule regarding the Judicial Council's options when reviewing the certification of a problem solving court (i.e., certify, conditionally certify, or de-certify) and provide time for a problem solving court to remedy any deficiencies identified during the certification review process. Mr. Drechsel will draft language and proposal for the changes for presentation to the Judicial Council.

Judge Fuchs noted that because the certification checklist is needed quickly for review of some problem solving courts, the checklist is presently on the Judicial Council's September agenda for review and adoption. Once approved, other problem solving court certification checklists (mental health, juvenile dependency, etc.) will be updated to reflect the same underlying changes.

Judge Walton motioned to submit the checklist to the Judicial Council for review as amended by this committee. Judge Evershed seconded the motion. Judge Walton's motion was approved unanimously.

(8) REVIEW 2019 COMMITTEE MEETING DATES:

The committee voted unanimously to cancel the July 2019 due to holiday and summer schedules.

(9) ADJOURN

The next meeting is scheduled for October 5, 2018, in the Judicial Council room at 12:00 p.m. There being no other business the meeting was adjourned at 2:10 pm.

TAB 2

Updates Regarding Important Projects

NOTES: There are two items that Judge Pullan would like to bring to the attention of the committee.

First, Judge Pullan wants to discuss the proposed Consolidation of Probation Rule (tentatively numbered CJA 6-305). A final draft copy of this proposed rule has been attached, incorporating the changes and revisions from the last Policy and Planning meeting.

Second, Judge Pullan wants to discuss a future revision to CJA 3-201 (Court Commissioner Conduct Committee) in light of the conversation that was held at the last Judicial Council meeting.

TAB 2A

Proposed CJA 6-305: Consolidation of Probation

NOTES: Attached is the final draft of the proposed rule, incorporating all changes and feedback up to this point in time. This has not yet been submitted for public comment.

Rule 6-305. 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 or 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 (see “Definitions” below):

- A) The defendant is presently subject to an initial order of any supervising judge for probation, supervised by AP&P, for any non-petty offense; and
- B) The defendant is thereafter subject to a subsequent order of any sending judge for probation, also supervised by AP&P, for any non-petty offense; and
- C) The following individuals agree to the consolidation:
 - The defendant, in consultation with defense counsel (if represented);
 - The prosecutor involved in the case underlying both the initial order and the relevant subsequent order(s); and
 - The relevant sending judge.

Statement of the Rule:

(1) **Definitions.** For the purpose of this rule, the following definitions apply:

- (1)(A) “Initial order” means the first-in-time order authorizing probation, supervised by AP&P, for a non-petty offense, issued by a district court judge for the State of Utah, unless a later order is designated as the “initial order” under subsection (10).
- (1)(B) “Subsequent order” means any order for probation, supervised by AP&P, for a non-petty offense, issued after the date of the initial order, by a district court judge other than the judge that issued the initial order.

(1)(C) “Consolidated order” means any subsequent order that is consolidated with the initial order, pursuant to this rule.

(1)(D) “Supervising judge” means the district court judge assigned to preside over the case underlying the initial order and any consolidated order.

(1)(E) “Sending judge” means a district court judge assigned to preside over a case underlying a subsequent order.

(1)(F) “Receiving judge” means a district court judge assigned to preside over a case underlying a subsequent order and, as a result, would not typically be considered the supervising judge, but, through agreement of all affected parties, becomes the supervising judge under subsection (10).

(1)(G) “Non-petty offense” means any class A misdemeanor or felony.

(1)(H) “AP&P” means the Adult Probation and Parole division of the Utah Department of Corrections.

(2) **Probation Consolidation. Agreement Required. Objection Process.** When the conditions outlined in the Applicability section of this rule have been met, a subsequent order may be consolidated with the initial order for supervision and enforcement of probation by the supervising judge. Such consolidation encompasses the authority for supervision and enforcement as outlined in subsection (5) below. Any time limits shall be computed pursuant to Rule 2 of the Utah Rules of Criminal Procedure. In order to consolidate a subsequent order pursuant to this rule, the following process shall be observed:

(2)(A) The sending judge shall inquire of the parties to the case underlying the relevant subsequent order whether there is any objection to consolidation. Any party to the case underlying the relevant subsequent order can object either: on the record (if the inquiry is raised during a hearing with all parties present); or by filing a written objection with the sending judge within seven days of the sending judge’s inquiry (if the inquiry is made under any other circumstances). If any party to the case underlying the relevant subsequent order objects, the subsequent order shall not be consolidated.

(2)(B) In the event that the parties to the case underlying the relevant subsequent order do not object as outlined above, the sending judge shall enter a probation consolidation agreement into the record of the sending judge’s case. The sending judge shall deliver a copy of that probation consolidation agreement to:

(2)(B)(i) the supervising judge;

- 65 (2)(B)(ii) the AP&P region office responsible for probation supervision on the
66 initial order;
- 67 (2)(B)(iii) the defendant, or if represented by counsel, the defendant's
68 attorney(s) in the cases underlying both the initial order and the
69 relevant subsequent order; and
- 70 (2)(B)(iv) the prosecutors for the cases underlying both the initial order and the
71 relevant subsequent order.
- 72 (2)(C) Upon receipt of the probation consolidation agreement, the prosecutor in the
73 case underlying the initial order and the defense attorney in the case underlying
74 the initial order (in consultation with the defendant) shall have seven days to file a
75 written objection to the consolidation. Such objection, if any, shall be delivered to
76 both the supervising judge and the sending judge. In the event that such an
77 objection is filed, the relevant subsequent order shall not be consolidated.
- 78 (2)(D) If no objection is filed within the allotted time, the supervising judge shall issue a
79 probation consolidation order, which shall include specific language authorizing
80 supervision of probation consistent with this rule and Utah Code section 77-18-1.
81 A copy of that probation consolidation order shall be delivered to:
- 82 (2)(D)(i) the sending judge;
- 83 (2)(D)(ii) the AP&P region office responsible for probation supervision on the
84 initial order;
- 85 (2)(D)(iii) the defendant, or if represented by counsel, the defendant's
86 attorney(s) in the cases underlying both the initial order and the
87 relevant subsequent order; and
- 88 (2)(D)(iv) the prosecutors for the cases underlying both the initial order and the
89 relevant subsequent order.
- 90 (2)(E) Once issued by the supervising judge, the probation consolidation order shall
91 continue in effect until such time as:
- 92 (2)(E)(i) probation on any consolidated order is terminated or revoked; or
- 93 (2)(E)(ii) the probation consolidation order is rescinded as outlined in
94 subsection (9) below.
- 95 (3) **Numbering and Venue.** Consolidation of a subsequent order with the initial order under
96 subsection (2) shall not result in any renumbering of any case.
- 97 (4) **Recordkeeping.** The following recordkeeping provisions apply to any case where a
98 probation consolidation order has been entered:

(4)(A) Any probation-related communication from AP&P, the prosecutor, or any defense attorney regarding the initial order or any consolidated order shall be directed only to the supervising judge.

(4)(B) Until such time as the supervising judge can directly enter data into the records of the sending judge, the supervising judge shall not be required to send any probation-related court records to any sending judge while the probation consolidation order remains in effect. When and where direct entry of data is possible, the supervising judge may enter probation-related court records into the sending judge's records.

(4)(C) Upon termination or revocation of AP&P probation for any reason that would result in the defendant continuing on any type of probation with the sending court, the supervising judge shall deliver to the sending judge a copy of any probation-related court records that were received or generated by the supervising judge while the probation consolidation order was in effect. In the event that the termination of probation results in the original sentence(s) being imposed, the supervising judge shall send a copy of the final order to the sending judge.

(5) **Authority to Supervise and Enforce Subsequent Orders.** Following the issuance of a probation consolidation order:

(5)(A) The supervising judge shall be authorized to take any action outlined in Utah Code section 77-18-1 relating to the initial order and any consolidated order.

(5)(B) All other case authority for any purpose other than as stated in subsection (5)(A) remains with the sending judge, as outlined in subsection (7) below.

(6) **Representation by Counsel.** Regardless of how many subsequent orders are consolidated with the initial order, counsel for the State and the defendant will be expected to appear in all proceedings before the supervising judge regarding both the initial order and any consolidated order, as follows:

(6)(A) the State will be represented by whatever prosecution office represented the State in the case underlying the initial order;

(6)(B) the defendant will be represented by either:

(6)(B)(i) counsel of the defendant's choosing (if such counsel is privately retained);

- 131 (6)(B)(ii) the same counsel / defense service provider who represented the
 132 defendant in the case underlying the initial order, if the defendant
 133 qualifies for court-appointed counsel; or
- 134 (6)(B)(iii) if the defense attorney under (6)(B)(ii) is unavailable, any other
 135 defense attorney appointed by the supervising court, if the defendant
 136 qualifies for court-appointed counsel; and
- 137 (6)(C) any prosecutor / prosecutor office and defense attorney / defense service
 138 provider involved in any case underlying a consolidated order are not required to
 139 make any further appearances in probation-related matters, although they will
 140 continue to participate in matters before the sending judge for any litigation not
 141 affected by the consolidation, as described in subsection (7).
- 142 (7) **Litigation not Affected by Consolidation.** In cases where probation-related
 143 consolidation occurs, the following litigation will continue to be addressed by the sending
 144 judge in the court where the charges were initially resolved:
- 145 (7)(A) any action for post-conviction relief under the Post-Conviction Remedies Act,
 146 78B-9-101 et seq.;
- 147 (7)(B) any action initiated by remand from an appellate court for any purpose other than
 148 continued or modified probation;
- 149 (7)(C) any action to determine or correct an illegal sentence;
- 150 (7)(D) any action to withdraw a guilty plea, re-sentence, or otherwise modify or
 151 challenge the conviction;
- 152 (7)(E) any action to determine restitution under the Crime Victims Restitution Act, 77-
 153 38a-101 et seq.; and
- 154 (7)(F) any other action not specifically related to the supervision or enforcement of
 155 probation as outlined in subsection (5) above.
- 156 (8) **Notice of Renewed Litigation and Status of Continuing Probation.** When a sending
 157 judge exercises jurisdiction for any of the purposes described in subsection (7), the
 158 sending judge will notify the supervising judge by minute entry delivered to the supervising
 159 judge. Notice of such action does not terminate probation or affect consolidation under
 160 this rule, unless and until the probation consolidated order is modified as a result of
 161 litigation outlined in subsection (7).
- 162 (9) **Rescinding a Probation Consolidation Order.** Any party in the case underlying either
 163 the initial order or a consolidated order may request, by written motion, that the
 164 supervising judge review the matter to determine if the interests of justice and the

purposes of this rule are being served by continued consolidation. In the event that the supervising judge determines that there is good cause to rescind the probation consolidation order, the supervising judge may, after conferring with any affected sending judge, grant the motion. If the motion is granted, the authority to supervise and manage probation shall, by order from the supervising judge, return to the relevant sending judge.

(10) **Subsequent Order Designated as Initial Order.** In the event that all parties agree that probation consolidation should occur, but also agree that probation should be supervised by a receiving judge (as defined by this rule), any party may file with the supervising judge a stipulated motion to designate a subsequent order as the initial order. That motion requires the written consent of all affected parties, including the defendant (in consultation with counsel if represented), any affected prosecutor, and the receiving judge. Upon receiving such written agreement, the supervising judge shall consult with: i) the proposed receiving judge; and, if necessary to a determination of the issue, ii) any sending judge. If the supervising judge finds that granting the motion will serve the interests of justice, the supervising judge shall issue a probation consolidation order directing that the initial order, any relevant subsequent order(s), and any consolidated order(s) be supervised and enforced by the receiving judge. The supervising judge shall deliver a copy of the probation consolidation order to all signatories of the stipulated motion and any sending judge. Upon issuing the probation consolidation order under this subsection, that supervising judge will be designated as a sending judge, and the receiving judge will then be designated as the supervising judge.

Effective May/November 1, 20__

TAB 2B

CJA 3-201:

Court Commissioner Conduct Committee

NOTES: A copy of the current version of the rule is attached for convenience. The highlighted provisions are those that are the subject of future consideration.

Rule 3-201.02. Court Commissioner Conduct Committee.

Intent:

To establish a procedure for the review of complaints filed against court commissioners.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) Court Commissioner Conduct Committee.

(1)(A) The Court Commissioner Conduct Committee shall consist of the following members:

(1)(A)(i) as chair, the Court of Appeals member of the Ethics Advisory Committee;

(1)(A)(ii) two presiding judges from judicial districts with a court commissioner;

(1)(A)(iii) the immediate past Bar Commissioner on the Judicial Council; and

(1)(A)(iv) the chair of the Supreme Court Advisory Committee on Rules of Professional Conduct.

(1)(B) Circumstances which require recusal of a judge shall require recusal of a Committee member from participation in Committee action. If the chair is recused, a majority of the remaining members shall select from among themselves a chair pro tempore. If a presiding judge is recused, the chair shall temporarily appoint a presiding judge of another judicial district with a commissioner. If the immediate past Bar Commissioner on the Judicial Council is recused, the chair shall temporarily appoint another past Bar Commissioner on the Judicial Council. If the chair of the Supreme Court Advisory Committee on Rules of Professional Conduct is recused, the chair shall temporarily appoint another member of the Supreme Court Advisory Committee on Rules of Professional Conduct.

(2) Informal complaint. An informal complaint against a court commissioner may be filed with the presiding judge of the court the court commissioner serves. The presiding judge shall conduct such investigation and take such corrective action as warranted by the complaint.

(3) Formal complaint.

- (3)(A) A formal complaint against a court commissioner shall be in writing and filed with the presiding officer of the Council. The presiding officer shall refer the complaint to the committee and provide a copy of the complaint to the court commissioner and to the presiding judge of the court the commissioner serves.
- (3)(B) All proceedings and materials related to a formal complaint shall be kept confidential.
- (3)(C) The chair or the committee shall dismiss a frivolous complaint. The chair or the committee shall dismiss a complaint found to raise only issues of law or fact for which a remedy is the review of the case by the trial court judge or by an appellate court. The chair of the committee shall provide notice of and basis for the dismissal to the complainant, the presiding judge and the commissioner.
- (3)(D) The committee may investigate a complaint that is not dismissed under paragraph (3)(C). This investigation shall be conducted to determine whether dismissal or a hearing is appropriate.
- (3)(E) The committee may request that the state court administrator appoint a staff person within the administrative office to perform any investigation and make any presentations to the Committee or the Council.
- (3)(F) **Hearings of the Court Commissioner Conduct Committee.**
- (3)(F)(i) The hearings of the committee shall be closed to the public. The committee shall interview the complainant, the court commissioner, and any witnesses determined to have relevant information. The commissioner has the right to testify. The commissioner and complainant may be present at any hearing of the committee and have the assistance of counsel. The commissioner may present and examine and cross-examine witnesses. Testimony shall be presented under oath and a record of the proceedings maintained. The commissioner may obtain a copy of the record upon payment of any required fee.
- (3)(F)(ii) The committee shall make written findings concerning the merits of the complaint and provide a copy of the findings to the complainant, the court commissioner, and the presiding judges of the court the commissioner serves.

(3)(G) If the committee finds the complaint to have merit, the committee shall recommend to the Council that a sanction be imposed under CJA Rule 3-201(6). The committee shall dismiss any complaint found to be without merit.

(3)(H) **Council Review.**

(3)(H)(i) Complaints dismissed without a hearing. The chair of the committee shall report to the Council not less than annually on the committee's work including a general description of any complaint dismissed without a hearing.

(3)(H)(ii) Complaints with a committee hearing.

(3)(H)(ii)(a) The Council shall review the record of the committee hearing to determine the correct application of procedures and to determine the sanction to be imposed.

(3)(H)(ii)(b) The complainant, commissioner or presiding judges of the districts the commissioner serves shall file any objections to the committee's findings in writing with the Council. No person is entitled to attend the Council meeting at which the complaint is reviewed.

Effective May/November 1, 20__

TAB 3

CJA 4-409:

Council Approval of Problem Solving Courts

NOTES: Attached are two versions of a draft of proposed revisions to Rule 4-409. One version (Tab 3A) shows the changes from the existing rule (which are so numerous that it makes for a cluttered review experience). The other version (Tab 3B) is a clean copy of what the rule would be like if the proposed changes were adopted.

TAB 3A

CJA 4-409:

Council Approval of Problem Solving Courts

NOTES: Version of rule showing proposed changes.

1 **Rule 4-409. Council Approval of Problem Solving Courts.**

2 **Intent:**

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

5 **Applicability:**

6 This rule applies to all trial courts.

7 **Statement of the Rule:**

8 **(1) Definitions.**

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

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

Commented [MCD1]: Why is "these" rules
used here, when the previous section
(1)(A) references "this" rule?

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

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

25 (3)(A) Each problem solving court shall annually report at least the following:

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26 (3)(A)(i) The number of participants admitted in the most recent year;

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27 (3)(A)(ii) The number of participants removed in the most recent year;

28 (3)(A)(iii) The number of participants that graduated or completed the program
29 in the most recent year; and

30 (3)(A)(iv) Recidivism and relapse statistics for as long a period of time as is
31 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.

- (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) Requirements to o~~**Operations of the a problem solving court.** All problem solving courts ~~must~~ shall be required to adhere to the following:

~~(5)(A)~~ Each problem solving court must adhere to the “Required Certification Criteria” outlined in the respective Certification Checklist applicable to that problem solving court, as promulgated and amended by the Judicial Council.

~~(5)(B)~~ Each problem solving court must adhere to the “Presumed Certification Criteria” outlined in the respective Certification Checklist applicable to that problem solving court, as promulgated and amended by the Judicial Council, unless:

~~(5)(B)(i)~~ the program can show sufficient compensating measures or a structural inability to meet the presumed requirement; and

~~(5)(B)(ii)~~ the Judicial Council specifically waives that requirement. ~~the following requirements~~

~~(5)~~ , unless specifically waived by the Judicial Council

~~(5)(A)(5)(C)~~ To commence participation in a problem solving court:

~~(5)(A)(i)(5)(C)(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)(5)(C)(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.

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~~(5)(C)~~(5)(D) 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)(F) —~~

~~(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.~~

(6) **Certification.** Each court must be certified by the Judicial Council every two years. Each problem solving court shall cooperate with the Judicial Council certification review process.

~~(6)(A) Certification requires all courts to meet the minimum requirements stated in this rule.~~ Upon review, the Judicial Council may:

~~(6)(A)(i) Certify a problem solving court that adheres to all requirements as outlined in this rule;~~

~~(6)(A)(ii) Conditionally certify a problem solving court that fails to adhere to one or more requirements as outlined in this rule; or~~

Commented [MCD2]: Checklist #20-21 – This is at odds with the checklist, which mandates review hearings no less than every two weeks for participants in phase one, and no less than every four weeks thereafter.

Commented [MCD3]: Checklist #18 – this is already covered by the checklist

Commented [MCD4]: Checklist #64 – this rule includes specific mention of DHS or other certifying entity; the checklist has no such information.

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Commented [MCD5]: Checklist #97-98 – checklist references this subsection of the rule explicitly “see CJA 4-409(5)(G)” As a result, if this is deleted from 4-409, the checklist should be modified to remove that reference.

Commented [MCD6]: Checklist #88 – checklist doesn’t include dependency court GAL.

Commented [MCD7]: Checklist #89 – checklist doesn’t include dependency court GAL.

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(6)(A)(iii) De-certify a problem solving court that fails to adhere to one or more requirements as outlined in this rule.

(6)(B) To conditionally certify a problem solving court, the Judicial Council shall:

(6)(B)(i) Inform the problem solving court of the requirement(s) that are not being adequately met;

(6)(B)(ii) Outline specific conditions necessary to be fully certified; and

(6)(B)(iii) Provide the problem solving court with a specific period of time in which to remedy any such deficiency.

~~(5)(J)~~ In the event that a conditionally certified problem solving court fails to meet the conditions outlined by the Judicial Council, or otherwise fails to remedy the deficiency with the time allotted by the Judicial Council, the problem solving court shall be de-certified.

~~(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)(6)(C) 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.

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TAB 3B

CJA 4-409:

Council Approval of Problem Solving Courts

NOTES: Clean version of proposed rule.

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 must agree to comply with the requirements of this rule. 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.

(3)(A) Each problem solving court shall annually report the following:

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

(3)(A)(ii) The number of participants removed in the most recent year;

(3)(A)(iii) The number of participants that graduated or completed the program in the most recent year; and

(3)(A)(iv) 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.

- (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) **Requirements to Operate a Problem Solving Court.** All problem solving courts shall be required to adhere to the following:
- (5)(A) Each problem solving court must adhere to the “Required Certification Criteria” outlined in the respective Certification Checklist applicable to that problem solving court, as promulgated and amended by the Judicial Council.
- (5)(B) Each problem solving court must adhere to the “Presumed Certification Criteria” outlined in the respective Certification Checklist applicable to that problem solving court, as promulgated and amended by the Judicial Council, unless:
- (5)(B)(i) the program can show sufficient compensating measures or a structural inability to meet the presumed requirement; and
- (5)(B)(ii) the Judicial Council specifically waives that requirement.
- (5)(C) To commence participation in a problem solving court:
- (5)(C)(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)(C)(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)(D) 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.

- (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.
- (6) **Certification.** Each court must be certified by the Judicial Council every two years. Each problem solving court shall cooperate with the Judicial Council certification review process.
- (6)(A) Upon review, the Judicial Council may:
- (6)(A)(i) Certify a problem solving court that adheres to all requirements as outlined in this rule;
 - (6)(A)(ii) Conditionally certify a problem solving court that fails to adhere to one or more requirements as outlined in this rule; or
 - (6)(A)(iii) De-certify a problem solving court that fails to adhere to one or more requirements as outlined in this rule.
- (6)(B) To conditionally certify a problem solving court, the Judicial Council shall:
- (6)(B)(i) Inform the problem solving court of the requirement(s) that are not being adequately met;
 - (6)(B)(ii) Outline specific conditions necessary to be fully certified; and
 - (6)(B)(iii) Provide the problem solving court with a specific period of time in which to remedy any such deficiency.
- (6)(C) In the event that a conditionally certified problem solving court fails to meet the conditions outlined by the Judicial Council, or otherwise fails to remedy the deficiency with the time allotted by the Judicial Council, the problem solving court shall be de-certified.
- (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.

TAB 4

Recording / Photography in Courthouses

NOTES: At our last meeting, we began a discussion about recording and photography in courthouses. We did not finish that discussion.

The first part of the discussion is regarding a new proposed rule, CJA 4-401 (Tab 4A). Based on the discussion at the last meeting, a few amendments have been made to incorporate committee feedback.

The second part of this agenda item was not previously discussed at the last meeting. Proposed changes to CJA 4-401.02 (Tab 4B) clarify that the rule applies to “personal” use of portable electronic devices (though the incorporation of that language doesn’t clarify what does not qualify as “personal” use . . . i.e., does it mean “personal, but not commercial,” “personal, but not on behalf of another individual or entity,” etc.). This will require discussion by the committee.

* Note that CJA 4-401.01 (Electronic Media Coverage of Court Proceedings) is not implicated in this discussion.

TAB 4A

Recording / Photography in Courthouses Proposed New Rule: CJA 4-401

NOTES:

Rule 4-401. Media in Courthouses.

Intent:

To restrict still photography, filming, and audio and video recording in courthouses except as permitted under rule 4-401.01 and 4-401.02.

Applicability:

This rule applies to the courts of record and not of record.

Statement of the Rule:

(1) Except as permitted under this rule and rules 4-401.01 and 4-401.02 still photography, filming, and audio and video recording in courthouses is prohibited.

(2) Still photography, filming, and audio and video recording for ceremonial, educational, or court-approved public information programs are permitted when arranged through the presiding judge of the court.

(3) Anyone violating this rule may be removed from the courthouse.

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TAB 4B

Recording / Photography in Courthouses Amend CJA 4-401.02

NOTES:

Rule 4-401.02. Possession and use of portable electronic devices.

Intent:

To permit ~~the personal~~ use of portable electronic devices in courthouses and courtrooms, subject to local restrictions.

Applicability:

This rule applies to the courts of record and not of record.

Statement of the Rule:

(1) Definitions.

(1)(A) “Judge” as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.

(1)(B) “Portable electronic device” as used in this rule means any device that can record or transmit data, images or sounds, or access the internet, including a pager, laptop/notebook/personal computer, handheld PC, PDA, audio or video recorder, wireless device, cellular telephone, or electronic calendar.

(2) Personal Possession and Use of Portable Electronic Devices in a Courthouse.

(2)(A) A person may possess and use a portable electronic device anywhere in a courthouse, except as limited by this rule or directive of the judge.

(2)(B) All portable electronic devices are subject to screening or inspection at the time of entry to the courthouse and at any time within the courthouse in accordance with Rule 3-414.

(2)(C) All portable electronic devices are subject to confiscation if there is reason to believe that a device is or will be used in violation of this rule. Violation of this rule or directive of the judge may be treated as contempt of court.

(3) Restrictions.

(3)(A) ~~Use~~ Personal use of portable electronic devices in common areas. The presiding judges may restrict the time, place, and manner of using a portable electronic device to maintain safety, decorum, and order of common areas of the courthouse, such as lobbies and corridors.

(3)(B) Use of portable electronic devices in courtrooms.

(3)(B)(i) A person may silently use a portable electronic device inside a courtroom.

(3)(B)(ii) A person may not use a portable electronic device to record or transmit images or sound of court proceedings except in accordance with Rule 4-401.01.

(3)(B)(iii) A judge may further restrict personal use of portable electronic devices in his or her courtroom. Judges are encouraged not to impose further restrictions unless use of a portable electronic device might interfere with the administration of justice, disrupt the proceedings, pose any threat to safety or security, compromise the integrity of the proceedings, or threaten the interests of a minor.

(3)(B)(iv) During trial and juror selection, prospective, seated, and alternate jurors are prohibited from researching and discussing the case they are or will be trying. Once selected, jurors shall not use a portable electronic device while in the courtroom and shall not possess an electronic device while deliberating.

(4) ~~Use~~ Personal use of portable electronic devices in court chambers. A person may not use a portable electronic device in chambers without prior approval from the judge.

(5) **Instruction to witnesses.** It should be anticipated that observers in the courtroom will use portable electronic devices to transmit news accounts and commentary during the proceedings. Judges should instruct counsel to instruct witnesses who have been excluded from the courtroom not to view accounts of other witnesses' testimony before giving their own testimony.

Effective May/November 1, 20__