

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

Judicial Council Room (N301), Matheson Courthouse  
450 South State Street, Salt Lake City, Utah 84114  
November 2, 2018 – 9:00 a.m. to 5:00 p.m.

09:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Pullan
9:10	Rule 4-405 – Juror and Witness Fees and Expenses - <i>Revisions to comply with current business practices</i>	Discussion / Action	Tab 2	John Bell
9:20	Rule 3-403 – Judicial Branch Education - <i>State court staff must complete 20 hours of education each year</i> - <i>Local (i.e., justice) court staff must complete 10 hours of education each year</i> - <i>Should those amounts be the same? If so, what number of hours is appropriate?</i>	Discussion / Action	Tab 3	Jim Peters Tom Langhorn Kim Free
10:00	Commissioner Conduct Rules - <i>Rule 3-201.02 (and Rule 3-201, as necessary) – a working session to determine: a) are revisions necessary; and b) to draft proposed language.</i>	Discussion	Tab 4	Rick Schwermer Jacey Skinner
10:45	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 5	Brent Johnson Michael Drechsel
12:00	HR 590 – Interns and Work Conflicts - <i>New proposed HR policy to address intern conflicts.</i>	Discussion / Action	Tab 6	Nancy Sylvester Rob Parkes
2:00	Rule 3-413 – Judicial Library Resources - <i>Revise rule to reflect current practices</i> - <i>Prioritize electronic research resources over print research materials</i>	Discussion / Action	Tab 7	Jessica Van Buren Michael Drechsel

QUEUE PROCESSING				
10 min.	Rule 4-403 – Electronic Signatures and Signature Stamp Use <ul style="list-style-type: none"> <li>- <i>Use of judge signature stamp on writs of habeas corpus ad prosequendum for transport of federal prisoners.</i></li> <li>- <i>Use of judge signature stamp on Rule 109 orders.</i></li> </ul>	Discussion / Action	Tab 8	Michael Drechsel
5 min.	Rule 4-202.02 Table-format version to accompany text-format version of rule	Discussion / Action	Tab 9	Michael Drechsel
5 min.	Rule 4-202.09 - Miscellaneous <ul style="list-style-type: none"> <li>- <i>Remove requirement for “This is a Private Document” language from filings</i></li> </ul>	Discussion / Action	Tab 10	Michael Drechsel
5 min.	Rule 1-205 – Standing and Ad Hoc Committees <ul style="list-style-type: none"> <li>- <i>Adds Court Security Director as a member of the Court Facility Planning Committee</i></li> </ul>	Discussion / Action	Tab 11	Michael Drechsel
5 min.	Rule 4-508 - Guidelines for Ruling on a Motion to Waive Fees <ul style="list-style-type: none"> <li>- <i>Removes requirement to provide documentation supporting affidavit of impecuniosity. Authorizes judge to specifically request that such documentation be provided on a case by case basis.</i></li> </ul>	Discussion / Action	Tab 12	Michael Drechsel
CJA ANNUAL REVIEW ITEMS				
10 min.	Discussion of previously identified rules where no change is recommended: <ul style="list-style-type: none"> <li>- <i>CJA 3-417 – ADA Requirements</i></li> <li>- <i>CJA 3-302 and 3-303 – Clerks of Court</i></li> <li>- <i>CJA 3-202 – Court Referees Prohibited</i></li> </ul> Change is purely stylistic / correction of minor grammatical issues <ul style="list-style-type: none"> <li>- <i>CJA 3-102 – Assumption of Judicial Office (simple punctuation change)</i></li> </ul>	Discussion / Action		Michael Drechsel
10 min.	Rule 3-101(4) – Judicial Performance Standards <ul style="list-style-type: none"> <li>- <i>Clarification of standards</i></li> <li>- <i>Addition of definitions</i></li> <li>- <i>Revised intent</i></li> <li>- <i>Clarify what “response” from the judge is used to determine physical and mental competence</i></li> </ul>	Discussion / Action	Tab 13	Rob Rice Michael Drechsel

10 min.	Rules 3-103, 3-104, 3-111 – Justice Court Presiding Judge Amendments - <i>Assign responsibilities to justice court presiding judges, to conform with district court counterparts.</i>	Discussion / Action	Tab 14	Judge Pullan Michael Drechsel
10 min.	Rules 3-106 and 3-107 – Judicial Council Options on Legislative and Executive Matters - <i>Legislative Activities (CJA 3-106) - clarify options available to judicial council in response to legislative activities.</i> - <i>Executive Branch Policy Initiatives (CJA 3-107) - clarify options available to judicial council in response to executive initiatives.</i>	Discussion / Action	Tab 15	Judge Pullan Rob Rice Michael Drechsel
5 min.	Rule 2-208(2) – Publication and Distribution of Code of Judicial Administration - <i>remove requirement that AOC and TCEs maintain a physical copy of the CJA and make it available for inspection during business hours</i>	Discussion / Action	Tab 16	Judge Pettit Michael Drechsel
5 min.	Rule 3-501 – Insurance Benefits Upon Retirement - <i>Change “maternity leave” to “parental leave”</i>	Discussion / Action	Tab 17	Rob Rice Michael Drechsel
5 min.	Rule 3-109 – Ethics Advisory Committee - <i>change 30-day response time to 28-day response time (in keeping with many other “timing” rule changes over recent years so that events run in blocks of time divisible by 7)</i>	Discussion / Action	Tab 18	Judge Pullan Michael Drechsel
5:00	Adjourn	Action		Judge Pullan

**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):

December 7, 2018

January 4, 2019

February 1, 2019 – 2<sup>nd</sup> Floor Board Room (N231)

March 1, 2019 – 2<sup>nd</sup> Floor West Conference Room (N213)

April 5, 2019

May 3, 2019 – 1<sup>st</sup> 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 October 5, 2018**

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

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.

**DRAFT**

**MEMBERS:**

**PRESENT    EXCUSED**

Judge Derek Pullan, <i>Chair</i>	•	
Judge Augustus Chin		•
Judge Ryan Evershed	•	
Judge Kara Pettit	•	
Judge John Walton	•	
Mr. Rob Rice	•	

**GUESTS:**

Chris Palmer

**STAFF:**

Michael Drechsel

**(1) WELCOME AND APPROVAL OF MINUTES:**

Judge Pullan welcomed the committee to the meeting.

The committee considered the minutes from the September 7, 2018 meeting. No amendments were proposed to the draft minutes.

Mr. Rice moved to approve the draft minutes, with the previously identified amendment.

Judge Evershed seconded the motion.

The committee voted and the motion passed.

**(2) UPDATES:**

Judge Pullan updated the committee membership regarding the status of CJA 6-305 (working rule number for proposed new rule regarding consolidation of probation in district court criminal matters). Judge Pullan noted that the Judicial Council believed a legislative amendment to Utah Code § 77-18-1(12) was advisable prior to moving forward on this rule. No discussion occurred and no action was taken on this update item.

Judge Pullan updated the committee membership regarding a new project that will be addressed by the committee at the next meeting. This project is to amend CJA 3-201 / 3-201.02 as it relates to the Court Commissioner Conduct Committee. Ms. Jacey Skinner will be providing the committee with a proposed revision of the rules for future consideration. No discussion occurred and no action was taken on this update item.

### (3) UPDATE ON CJA 3-414 – BAILIFF STAFFING ISSUES

Mr. Chris Palmer updated the committee membership on the developments related to proposed revisions to CJA 3-414 regarding bailiff staffing issues. The committee had previously discussed amending language in CJA 3-414 to more clearly specify which hearings the sheriff would be required to bailiff. After further consideration between the last time this was addressed by the committee and now, Mr. Palmer has decided to recommend that the proposed revisions to CJA 3-414 be pulled for the time being so that a legislative solution can be pursued. Judge Pullan asked about whether the proposed legislative solution would be a joint request. It is not clear that it will (or won't) be. Mr. Palmer stated he would like the legislature to clarify the situation through amendments to the law. One of the primary issues to address is what the statute means when it says the sheriff shall "attend" court. The committee discussed the underlying issues and how the process would move forward. Mr. Palmer noted that the sheriffs are aware of the situation. Judge Pullan stated that this would be removed from the Policy and Planning work queue for the time being. No action was taken by the committee on this update item.

### (4) PRESENTATIONS REGARDING ANNUAL REVIEW OF CJA:

Michael Drechsel, Judge Pettit, Mr. Rice, and Judge Pullan presented their notes of their respective reviews of the sections of the Code of Judicial Administration that were previously assigned, recommending future work to amend the rules, as follows:

#### **Michael Drechsel – CJA 1-101 through 1-305:**

CJA 1-304("intent" (8)): "assure" should be changed to "ensure"

#### **Judge Pettit – CJA 2-101 through 2-212:**

CJA 2-208(2): amend rule to show that official version of Code of Judicial Administration is online?

CJA 2-212: Communication to Office of Legislative Research and General Counsel (*the committee agreed that no action should be taken on this particular rule at this time*)

#### **Mr. Rice – CJA 3-101 through 3-503:**

CJA 3-101(4): in regarding to physical and mental competence is established if "the response of the judge" is complete and accurate. The question is, the "response" to what? The rule doesn't specify what the judge is responding to.

CJA 3-101(5) (not an actual section of CJA yet – draft version from previous project): would allow Judicial Council to certify a judge even if not meeting performance standards . . . this had been previously proposed but was seen as potentially diminishing the role of JPEC.

CJA 3-106(3)(B): should the rule be narrowed from "any individual, group, or agency" to a smaller subset of people? Is that list too broad?

CJA 3-106(5)(A): should the rule include "the Court Administrator, or a designee" in order to bring the rule into conformity with current practice

CJA 3-106(1)(d) and 3-107(1)(B): "The Council may endorse, oppose, amend or take no position on proposed legislative initiatives" and "The Council may endorse, oppose, or take no position on proposed executive policy initiatives" (respectively): should these be amended for consistency to state "The Council may endorse, oppose, recommend amendment(s) to, or take no position on proposed legislative initiatives / executive policy initiatives."

CJA 3-202: what purpose is this rule serving? Should other rules be amended to remove references to "referee"?

CJA 3-302 and CJA 3-303: Should these two rules be combined or at least revised for consistency? Why do district court clerks have more duties than justice court clerks? There isn't anything wrong substantively with these rules, but shouldn't they at least be consistent?

CJA 3-413: should this rule be revised to reflect modern practice?

CJA 3-417: why was this rule enacted? Is it necessary in light of the requirements of federal and state law? Rob Rice noted that this rule is a good idea and there is nothing wrong with it, but why is this a rule when there are so many other obligations that employers have that have not been reduced to rule?

CJA 3-501: should this rule be amended to include parental leave? Many employers are adding this as a benefit to retain employees.

**Judge Pullan – CJA 3-101 through 3-307:**

CJA 3-103(2) and 3-104(3)(O) and 3-111(1)(D): because justice courts now have presiding judges, should these rules be amended to put the responsibility on those judges (consistent with their district court counterparts)?

CJA 3-106(1)(d) and 3-107(1)(B): *see notes above regarding these same rules*

CJA 3-201 and 3-201.02: these rules are the subject of another recently opened project and will be addressed by the committee when a proposed draft of the revisions is received from Jacey Skinner.

CJA 3-202: this rule may need to be amended if the recommendations of the domestic case management processing committee are adopted (for the person responsible for designating the “track” a case will follow).

**OTHER MINOR REVISIONS:**

CJA 3-102(1)(C): add commas

3-104(3)(E)(i): strike the word “total” from the rule (awkward usage)

CJA 3-109(7)(A): change 30 days to 28 days

After the committee members outlined the above rules for possible revision, the committee instructed Mr. Drechsel to contact any relevant court personnel to inquire regarding the need for change. Mr. Drechsel is to report back to the committee at the next meeting with any input from those individuals, and with draft rules prepared for further discussion, if warranted.

**(5) CJA 4-409 – COUNCIL APPROVAL OF PROBLEM SOLVING COURTS:**

Judge Pullan reintroduced the matter to the committee. At the conclusion of the last meeting, the committee had agreed that the certification criteria in CJA 4-409 should be moved to the certification checklist. After that meeting, Mr. Drechsel was presented with a list of items that it was believed should remain in the rule. Mr. Drechsel incorporated those into the proposed draft version of CJA 4-409 found in the meeting materials. Mr. Drechsel walked the committee through the proposed draft. The committee spent significant time discussing subsections (5) and (6) of the proposed draft.

The committee discussed what “structural inability” means, noting that it isn’t clear what would be a “structural” inability. Specific “presumed” criteria were reviewed and discussed as examples of what it might mean to have a “structural inability” to meet those criteria. The committee wasn’t certain that the use of “structural inability” is too broad or too narrow because the scope of the term isn’t easily comprehended. The committee discussed the other criteria that were included in this draft of the rule. After discussion of subsection (5), the committee determined that as many of the “requirements” that remained in the draft rule should be moved to the certification checklist and presented to the Judicial Council at the October 22 meeting. If there are contrary opinions about that approach, those can be expressed at that meeting.

The committee then spent significant time addressing subsection (6) “Certification.” The committee made significant revisions to the draft included in the materials, including reordering the options available to the Judicial Council, and providing a more specific process for determining de-certification (including notice, opportunity to be heard, specific identification of the deficiency, and time to correct.

After all of the consideration of this item, Judge Pettit moved to recommend to the Judicial Council that this rule be approved, subject to the changes discussed in this meeting being incorporated into the rule. Judge Evershed seconded that motion. The motion passed.

**(6) RECORDING / PHOTOGRAPHY IN COURTHOUSES:**

Mr. Drechsel reminded the committee that they began discussion on this topic at the last meeting. Mr. Drechsel explained the purpose behind the proposed rule 4-401. Judge Pettit asked why the proposed rule 4-401 is even necessary, since the existing rule 4-401.02 seems to already cover (or be capable of covering) the issue. The committee discussed First Amendment “auditors”, individuals who are recording in jury assembly areas, requests to

use the facilities for commercial purposes, and A/V Friendly areas in courthouses. Judge Pullan noted that he was very concerned about a person recording in the jury assembly areas, but is recording in the common areas of the courthouses a real problem. Judge Evershed noted that in some courthouses (i.e., Vernal) the common areas are indistinguishable from areas where people are directly entering and exiting courtrooms for hearings, waiting for hearings, etc. Mr. Drechsel also pointed out that with the resolution of cameras, a person could approach the counters with a camera recording and could capture sensitive information while someone is performing their work. Judge Pullan feels a rule like 4-401 would be impossible to enforce. Judge Walton pointed out that the rule would allow action to be taken when the recording does become an issue. Judge Pullan noted that a tourist who wanted to take a picture in the rotunda would be prohibited by the rule. Judge Evershed noted that the general orders could allow for that. Judge Pullan wanted to know why the rule itself couldn't be drafted to accommodate such behavior. Judge Evershed and Rob Rice noted that the general orders would be tailored to allow recording on a per site basis, rather than trying to make a rule that accommodates every location in the state. Judge Pullan worries that the rule would cause people to feel that the courts aren't transparent. Judge Pettit still believes that the existing rule 4-401.02(3) has capacity to already deal with these issues. Judge Pettit did not want there to be inconsistency between rules. Judge Evershed noted that he liked the intent of Rule 4-401.02 (allowing use of devices) as opposed to the intent of proposed Rule 4-401 (to restrict action). Rob Rice wondered whether the rule language could state that court security has discretion to prohibit recording if it is disruptive or threatens to undermine court operations, noting that appropriate use of photography and recording seems to be the norm and inappropriate behavior is the exception. Judge Pettit noted that such language, as suggested by Rob Rice, already exists in Rule 4-401.02(3)(B)(iii). The committee discussed whether the rule should have discretion because that might start down the path of content-related enforcement. Judge Pettit continued to point out that the current version of 4-401.02 is capable of dealing with this.

The committee asked Mr. Drechsel to invite Brent Johnson to come present to the committee on this particular proposal in November.

#### **(7) ADJOURN**

The meeting adjourned at approximately 2:00 p.m. The next meeting will be held on November 2nd, 2018, starting at 9:00 A.M.



# **TAB 2**

**Rule 4-405:**

**Juror and Witness Fees and Expenses**

**Rule 4-405. Juror and Witness Fees and Expenses.**

**Intent:**

To develop a uniform procedure for payment of juror and witness expenses.

**Applicability:**

This rule shall apply to all trial courts of record.

**Statement of the Rule:**

(1) Fees.

(1)(A) The courts shall pay the fee established by statute for all jurors of the courts of record. The courts shall pay the fee established by statute for witnesses subpoenaed by the prosecutor or by an indigent defendant in criminal cases in the courts of record and in actions in the juvenile court. The courts shall pay no fee to a witness appearing for a hearing that was canceled or postponed with at least 24 hours' notice to the parties, excluding Saturdays, Sundays, and holidays. The parties shall notify witnesses when a hearing is canceled or postponed. Upon request, a civil witness's necessary and reasonable parking expenses shall be reimbursed by the attorney who issued the subpoena.

(1)(B) A subsequent day of attendance shall be:

- (1)(B)(i) for a witness, attendance on a subsequent day of the hearing regardless of whether the hearing is continued to a contiguous business day, but only if the hearing was actually called on the first day; and
- (1)(B)(ii) for a juror, attendance on a subsequent day during the juror's term of availability, as defined in Rule 4-404(2)(B), regardless of whether attendance is for the same trial.

(1)(C) A witness requesting payment shall present a subpoena on which appears the certification of the attorney general, county attorney, district attorney or legal defender of the number of days the witness attended court, as defined in subsection (1)(B).

(2) Mileage. The courts shall reimburse the cost of travel at the rate established by statute for those jurors and witnesses to whom the court pays a fee. A witness in a criminal case or juvenile court case traveling from out of state to whom the court pays a witness fee shall

be reimbursed the cost of round trip airfare or round trip travel at \$.20 per mile, as determined by the court.

(3) Meals and refreshments.

(3)(A) Meals for jurors shall be provided if the case has been submitted to the jury and the jury is in the process of deliberating the verdict or if the jury is sequestered. A lunch meal may be provided to jurors impaneled to try a case if it is anticipated that the matter will not be concluded by 2:00 p.m. on the final day of trial and the trial judge finds that provision of a lunch meal will assist in expediting the conclusion of the trial.

(3)(B) A witness in a criminal case or a juvenile court case traveling from outside the county to whom the court pays a witness fee may be reimbursed for meals.

(3)(C) Payment for meals for jurors and eligible in-state witnesses shall not exceed the rates adopted by the Department of Administrative Services.

(3)(D) Refreshments may be provided to a jury during the course of trial, upon order of the judge. Payment for refreshments shall not exceed \$5.00 ~~\$4.00~~ per person per day.

(4) Lodging. Lodging for jurors shall be paid if the judge orders the jury sequestered, if the juror must travel more than 100 miles one-way from the juror's residence to the courthouse and the judge orders that lodging be paid, or if the judge orders that lodging be paid due to inclement weather. A witness in a criminal case or juvenile court case to whom the court pays a witness fee traveling from outside the county shall be provided lodging only upon a determination by the court executive that returning to the point of origin on the date in question places a hardship upon the witness or that the reimbursement for travel for repeat appearances is greater than the cost of lodging. Unless unavailable, lodging costs shall not exceed the rates adopted by the Department of Administrative Services.

(5) Method and record of payment.

(5)(A) The payment of juror and witness fees and mileage shall be by check made payable to the individual, or the court may reimburse the county or municipal government for the payment of the fee or mileage allowance.

(5)(B) The court shall pay eligible expenses of jurors directly to the vendor. Jurors shall not be required to incur the expense and seek reimbursement. The court may pay the eligible expenses of witnesses directly to the vendor or may reimburse the witness or the county or municipal government for the expense.

(5)(C) Jurors. Jurors must present a summons for payment for the first day of service. If a juror does not present a summons, the clerk may certify that the juror was summoned. The clerk shall file the summons and shall record the attendance of jurors for payment, including subsequent days of service.

(5)(D) Witnesses in criminal cases and juvenile court cases. Witnesses in criminal cases and juvenile court cases must present a subpoena for payment. If the subpoena is issued on behalf of an indigent defendant, it shall bear the certificate of defense counsel that the witness has appeared on behalf of the defendant at state expense, regardless of the number of days for which the witness is eligible for payment. If the subpoena is issued on behalf of the prosecution, the prosecutor shall certify the number of days and the number of miles for which the witness is eligible for payment. The clerk shall file the subpoena and record of attendance. If a witness does not present a subpoena, the clerk may record the witness' attendance and mailing address that is certified by the prosecutor or defense counsel.

(5)(E) The clerk of the court, or designee, shall enter the payment due the ~~juror or~~ witness in the State Accounting System (FINET) within 10 business calendar days after receipt of certification. ~~The state will mail the payment to the juror or witness within 3 days. The clerk of court shall maintain both a list of undeliverable juror and witness checks and the checks. A payment is considered abandoned one year after it became payable and will be sent to the Division of Unclaimed Property pursuant to the Utah Code.~~

(5)(F) The clerk of the court, or designee shall enter the payment due the juror into the Jury Management System within 10 business days from the last court date served.

(5)(G) The clerk of court shall maintain both a list of undeliverable juror and witness checks and the checks. State Finance reports all stale dated checks to the Unclaimed Property Division and the court destroys the checks. A payment is considered abandoned one year after it became payable and will be sent to the Division of Unclaimed Property pursuant to the Utah Code.

(6) ~~Audit of records. At least once per month, the clerk of the court or a designee shall compare the jurors summoned and the witnesses subpoenaed with the FINET log of payments. Any unauthorized payment or other irregularity shall be reported to the court executive and the audit department of the Administrative Office of the Courts. The~~

Commented [MCD1]: Per John Bell: Audit/reconciliation of payments will be mentioned in the accounting manual

**DRAFT: 06/11/2018**

100 Administrative Office of the Courts audit program shall include ~~the an~~ audit of juror and  
101 witness payments within the scope of their regularly scheduled audits.

102 *Effective May/November 1, 20\_\_*

# **TAB 3**

**Rule 3-403**

**Judicial Branch Education**

**Rule 3-403. Judicial Branch Education.**

**Intent:**

To establish the Judicial Branch Education Committee's responsibility to develop and evaluate a comprehensive education program for all judges, commissioners and court staff.

To establish education standards for judges, commissioners and court staff, including provisions for funding and accreditation for educational programs.

To ensure that education programs, including opportunities for job orientation, skill and knowledge acquisition, and professional and personal development, are available to all members of the judicial branch and that such programs utilize the principles of adult education and focus on participative learning.

To emphasize the importance of participation by all judicial branch employees in education and training as an essential component in maintaining the quality of justice in the Utah courts.

**Applicability:**

This rule shall apply to all judges, commissioners and court staff, except seasonal employees and law clerks.

**Statement of the Rule:**

(1) Organization.

(1)(A) Judicial branch education committee. The Judicial Branch Education Committee shall submit to the Council for approval proposed policies, standards, guidelines, and procedures applicable to all judicial branch education activities. It shall evaluate and monitor the quality of educational programs and make changes where appropriate within the approved guidelines for funding, attendance, and accreditation.

(1)(B) Responsibilities of members. Committee members shall propose policies and procedures for developing, implementing, and evaluating orientation, continuing skill development, and career enhancement education opportunities for all judicial branch employees; formulate an annual education plan and calendar consistent with the judicial branch education budget; and serve as advocates for judicial branch education, including educating the judiciary about the purpose and functions of the Committee.

(1)(C) Committee meetings.

(1)(C)(i) The Committee shall meet twice a year. Additional meetings may be called as necessary. A majority of voting members in attendance is required for official Committee action.

(1)(C)(ii) The chairperson may recommend to the Council that a Committee member be replaced if that member is absent without excuse from two consecutive Committee meetings or fails to meet the responsibilities of membership as outlined in paragraph (1)(B).

(2) Administration. Judicial Education Officer. The Judicial Education Officer, under the direction of the Court Administrator, shall serve as staff to the Committee and be responsible for the administration of the judicial education program consistent with this rule.

(3) Standards for judges and court commissioners.

(3)(A) Program requirements. All judges and court commissioners shall participate in the first designated orientation program offered after the date the judge is administered the oath of office, unless attendance is excused for good cause by the Management Committee. All judges, court commissioners, active senior judges, and active senior justice court judges shall complete 30 hours of pre-approved education annually, to be implemented on a schedule coordinated by the Committee. Judges of courts of record and court commissioners may attend a combination of approved local, state, or national programs. Active and inactive senior judges and retired judges may attend approved local or state programs and the annual Utah Judicial Conference, but an inactive senior judge or retired judge must pay all expenses.

(3)(A)(i) Active senior judge. If an active senior judge applies to be reappointed and will have completed at least 60 total education hours in the two years preceding the effective date of reappointment, the Management Committee may, for good cause shown, excuse the judge from having to complete the annual 30 hour education requirement.

(3)(A)(ii) Inactive senior judges and retired judges. If an inactive senior judge or a retired judge applies to be an active senior judge, the judge shall demonstrate that:

(3)(A)(ii)(a) less than three years has passed since he or she last complied with the continuing education requirements of an active senior judge;



(3)(A)(ii)(b) he or she has complied with the MCLE requirements of the Utah State Bar for at least three years before the application;

(3)(A)(ii)(c) he or she has attended 30 hours of approved judicial education within one year before the application; or

(3)(A)(ii)(d) he or she has attended the new judge orientation for judges of the courts of record within one year before the application. (3)(B)(i) Program components.

Education programs for judges and court commissioners shall include: a mandatory new judge orientation program; a variety of programs addressing substantive and procedural law topics, aimed at skill and knowledge acquisition; and programs geared to professional and personal development, to meet the continuing needs of judges and court commissioners over the long term. (3)(B) Annual conferences. Justice court judges and active senior justice court judges shall attend the annual justice court conference unless excused by the Management Committee for good cause. Because the annual judicial conference represents the only opportunity for judges to meet and interact as a group and to elect their representatives, judges, active senior judges and court commissioners of the courts of record are strongly encouraged to attend that conference.

(4) Standards for court staff.

(4)(A) State employees.

(4)(A)(i) Program requirements. All court staff employed by the state shall complete 20 hours of approved coursework annually.

(4)(A)(ii) Program components. Education programs for court staff employed by the state shall include: on-the-job orientation for new employees as well as semi-annual Orientation Academies; skill development programs that teach technical and job-related competencies; and

enhancement programs that promote personal and professional growth within the organization.

(4)(B) Local government employees.

(4)(B)(i) Program requirements. All court staff employed by the justice courts shall complete ~~10 hours of approved coursework annually. All other court staff employed by local government shall complete~~ 20 hours of approved coursework annually.

(4)(B)(ii) Program components. Education programs for court staff employed by ~~local government~~ the justice courts shall include: annual training seminar; skill development programs that teach technical and job-related competencies; and enhancement programs that promote personal and professional growth.

(5) Reporting.

(5)(A) Judges, commissioners and court staff governed by these standards shall report participation in education programs on a form developed by the Committee.

(5)(B) For court staff, compliance with judicial branch education standards shall be a performance criterion in the evaluation of all staff.

(5)(B)(i) Supervisory personnel are responsible to ensure that all staff have an opportunity to participate in the required education. Failure of a supervisor to meet the minimum education standards or to provide staff with the opportunity to meet minimum education standards will result in an unsatisfactory performance evaluation in the education criterion.

(5)(B)(ii) Failure of staff to meet the minimum education requirements will result in an unsatisfactory evaluation on the education criterion unless the employee provides documented reasons that the employee's failure to meet the education standards is due to reasons beyond the employee's control.

(6) Credit. Judicial education procedures shall include guidelines for determining which programs qualify as approved education within the meaning of these standards.

(7) Funding.

(7)(A) Budget. In preparing its annual request for legislative appropriations, the Council shall receive and consider recommendations from the Committee. The

Committee's annual education plan shall be based upon the Council's actual budget allocation for judicial education.

(7)(B) In-state education programs. Judicial branch funds allocated to in-state judicial education shall first be used to support mandatory in-state orientation programs for all judicial branch employees and then for other education priorities as established by the Committee with input from the Boards of Judges and Administrative Office.

(7)(C) Out-of-state education programs. To provide for diverse educational development, to take advantage of unique national opportunities, and to utilize education programs which cannot be offered in-state, the annual education plan shall include out-of-state education opportunities. The Committee shall approve national education providers and shall include in the education procedures, criteria to be applied by the Administrative Office to out-of-state education requests. Criteria shall include relevance to the attendee's current assignment and attendance at in-state programs. Disagreement with a decision to deny an out-of-state education request may be reviewed by a quorum of the Committee at the applicant's request.

(7)(D) Tuition, fees, and travel. The Committee shall develop policies and procedures for paying tuition, fees, per diem, and travel for approved programs. State funds cannot be used to pay for discretionary social activities, recreation, or spouse participation. The Committee may set financial limits on reimbursement for attendance at elective programs, with the individual participant personally making up the difference in cost when the cost exceeds program guidelines.

*Effective May/November 1, 20\_\_\_\_*

# **TAB 4**

**Rules 3-201.02 and 3-201:  
Commissioner Conduct Rules**

**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\_\_*

**Rule 3-201. Court Commissioners.****Intent:**

To define the role of court commissioner.

To establish a term of office for court commissioners.

To establish uniform administrative policies governing the qualifications, appointment, supervision, discipline and removal of court commissioners.

To establish uniform administrative policies governing the salaries, benefits and privileges of the office of court commissioner.

**Applicability:**

This rule shall apply to all trial courts of record.

**Statement of the Rule:**

(1) **Definition.** Court commissioners are quasi-judicial officers established by the Utah Code.

(2) **Qualifications.**

(2)(A) Court commissioners must be at least 25 years of age, United States citizens, Utah residents for three years preceding appointment and residents of Utah while serving as commissioners. A court commissioner shall reside in a judicial district the commissioner serves.

(2)(B) Court commissioners must be admitted to practice law in Utah and exhibit good character. Court commissioners must possess ability and experience in the areas of law in which the court commissioner serves.

(2)(C) Court commissioners shall serve full time and shall comply with Utah Code Section 78A-2-221.

(3) **Appointment - Oath of office.**

(3)(A) Selection of court commissioners shall be based solely upon consideration of fitness for office.

(3)(B) When a vacancy occurs or is about to occur in the office of a court commissioner, the Council shall determine whether to fill the vacancy. The Council may determine that the court commissioner will serve more than one judicial district.

(3)(C) A committee for the purpose of nominating candidates for the position of court commissioner shall consist of the presiding judge or designee from each court level and judicial district that the commissioner will serve, three lawyers, and two



members of the public. Committee members shall be appointed by the presiding judge of the district court of each judicial district. The committee members shall serve three year terms, staggered so that not more than one term of a member of the bench, bar, or public expires during the same calendar year. The presiding judge shall designate a chair of the committee. All members of the committee shall reside in the judicial district. All members of the committee shall be voting members. A quorum of one-half the committee members is necessary for the committee to act. The committee shall act by the concurrence of a majority of the members voting. When voting upon the qualifications of a candidate, the committee shall follow the procedures established in the commissioner nominating manual.

(3)(D) If the commissioner will serve more than one judicial district, the presiding judges of the districts involved shall select representatives from each district's nominating committee to form a joint nominating committee with a size and composition equivalent to that of a district committee, except that a maximum of two judges from each district shall serve on the joint nominating committee.

(3)(E) No member of the committee may vote upon the qualifications of any candidate who is the spouse of that committee member or is related to that committee member within the third degree of relationship. No member of the committee may vote upon the qualifications of a candidate who is associated with that committee member in the practice of law. The committee member shall declare to the committee any other potential conflict of interest between that member and any candidate as soon as the member becomes aware of the potential conflict of interest. The committee shall determine whether the potential conflict of interest will preclude the member from voting upon the qualifications of any candidate. The committee shall record all declarations of potential conflicts of interest and the decision of the committee upon the issue.

(3)(F) The administrative office of the courts shall advertise for qualified applicants and shall remove from consideration those applicants who do not meet minimum qualifications of age, citizenship, residency, and admission to the practice of law. The administrative office of the courts shall develop uniform guidelines for the application process for court commissioners.

(3)(G) The nominating committee shall review the applications of qualified applicants and may investigate the qualifications of applicants to its satisfaction. The

committee shall interview selected applicants and select the three best qualified candidates. All voting shall be by confidential ballot. The committee shall receive public comment on those candidates as provided in paragraph (4). Any candidate may be reconsidered upon motion by a committee member and upon agreement by a majority of nominating committee members.

(3)(H) When the public comment period as provided in paragraph (4) has closed, the comments shall be given to the nominating committee. If any comments would negatively affect the committee's decision on whether to recommend a candidate, the candidate shall be given all comments with the commenters' names redacted and an opportunity to respond to the comments. If the committee decides not to recommend a candidate based on the comments, the committee shall select another candidate from the interviewed applicants and again receive public comment on the candidates as provided in paragraph (4).

(3)(I) The chair of the nominating committee shall present the names, applications, and the results of background investigations of the nominees to the judges of the courts the court commissioner will serve. The committee may indicate its order of preference.

(3)(J) The judges of each court level the court commissioner will serve shall together select one of the nominees by a concurrence of a majority of judges voting. If the commissioner will serve more than one judicial district, the concurrence of a majority of judges in each district is necessary for selection.

(3)(K) The presiding judge of the district the court commissioner will primarily serve shall present the name of the selected candidate to the Council. The selection shall be final upon the concurrence of two-thirds of the members of the Council. The Council shall vote upon the selection within 45 days of the selection or the concurrence of the Council shall be deemed granted.

(3)(L) If the Council does not concur in the selection, the judges of the district may select another of the nominees or a new nominating process will be commenced.

(3)(M) The appointment shall be effective upon the court commissioner taking and subscribing to the oath of office required by the Utah Constitution and taking any other steps necessary to qualify for office. The court commissioner shall qualify for office within 45 days after the concurrence by the Council.

(4) **Public comment for appointment and retention.**

- 99 (4)(A) Final candidates for appointment and court commissioners who are up for  
100 retention shall be subject to public comment.
- 101 (4)(B) For final candidates, the nominating committee shall be responsible for giving  
102 notice of the public comment period.
- 103 (4)(C) For court commissioners, the district in which the commissioner serves shall be  
104 responsible for giving notice of the public comment period.
- 105 (4)(D) The nominating committee or district in which the commissioner serves shall:
- 106 (4)(D)(i) email notice to each active member of the Utah State Bar including  
107 the names of the nominees or court commissioner with instructions on  
108 how to submit comments;
- 109 (4)(D)(ii) issue a press release and other public notices listing the names of the  
110 nominees or court commissioner with instructions on how to submit  
111 comments; and
- 112 (4)(D)(iii) allow at least 10 days for public comment.
- 113 (4)(E) Individuals who comment on the nominees or commissioners should be  
114 encouraged, but not required, to provide their names and contact information.
- 115 (4)(F) The comments are classified as protected court records and shall not be made  
116 available to the public.
- 117 (5) **Term of office.** The court commissioner shall be appointed until December 31 of the third  
118 year following concurrence by the Council. At the conclusion of the first term of office and  
119 each subsequent term, the court commissioner shall be retained for a term of four years  
120 unless the judges of the courts the commissioner serves vote not to retain the  
121 commissioner in accordance with paragraph (8)(B) or unless the Judicial Council does not  
122 certify the commissioner for retention under rule 3-111. The term of office of court  
123 commissioners holding office on April 1, 2011 shall end December 31 of the year in which  
124 their term would have ended under the former rule.
- 125 (6) **Court commissioner performance review.**
- 126 (6)(A) **Performance evaluations and performance plans.** The presiding judge of  
127 each district and court level the commissioner serves shall prepare an evaluation  
128 of the commissioner's performance and a performance plan in accordance with  
129 Rule 3-111. Court commissioners shall comply with the program for judicial  
130 performance evaluation, including expectations set forth in a performance plan.
- 131 (6)(B) **Public comment period results.** When the public comment period for a  
132 commissioner provided in paragraph (4) closes, the comments shall be given to

and reviewed by the presiding judge of each district and court level the commissioner serves. If any comments would negatively affect the presiding judge's decision of whether to sanction the commissioner or remove the commissioner from office in accordance with paragraph (7), the commissioner shall be provided all comments with the commenters' names redacted and the commissioner shall be given an opportunity to respond to the comments.

**(7) Sanctions or removal during a commissioner's term.**

**(7)(A) Sanctions.**

(7)(A)(i) The court commissioner may be sanctioned by the Council as the result of a formal complaint filed under rule 3-201.02.

(7)(A)(ii) If the commissioner's performance is not satisfactory, the commissioner may be sanctioned in accordance with paragraph (7)(A)(iii) by the presiding judge, or presiding judges if the commissioner serves multiple districts or court levels, with the concurrence of a majority of the judges in either district or court level the commissioner serves.

(7)(A)(iii) Sanctions may include but are not limited to private or public censure, restrictions in case assignments with corresponding reduction in salary, mandatory remedial education, and suspension without pay for a period not to exceed 60 days.

**(7)(B) Removal.**

(7)(B)(i) **Removal by Judicial Council.** During a commissioner's term, the court commissioner may be removed by the Council:

(7)(B)(i)(a) as part of a reduction in force;

(7)(B)(i)(b) for failure to meet the evaluation requirements; or

(7)(B)(i)(c) as the result of a formal complaint filed under rule 3-201.02 upon the concurrence of two-thirds of the Council.

**(7)(B)(ii) Removal by District or Court Level.**

(7)(B)(ii)(a) During a commissioner's term, if the commissioner's performance is not satisfactory, the commissioner may be removed by the presiding judge, or presiding judges if the commissioner serves multiple districts or court levels, only with the concurrence of a majority of the

judges in each district or court level the commissioner serves.

(7)(B)(ii)(b) If the commissioner serves multiple districts or court levels and one district or court level contests a commissioner removal decision made by the other district or court level, the Management Committee will review the decision, with final determination by the Judicial Council.

(7)(C) **Review of District or Court Level Decisions.** If the commissioner disagrees with a district or court level's decision to sanction or remove, the commissioner may request a review of the decision by the Management Committee of the Council.

(8) **Retention.**

(8)(A) The Council shall review materials on the commissioner's performance prior to the end of the commissioner's term of office and the Council shall vote on whether the commissioner is eligible to be retained for another term in accordance with rule 3-111.

(8)(B) At the end of a commissioner's term, the judges of each district and court level the commissioner serves may vote not to retain the commissioner for another term of office. The decision not to retain is without cause and shall be by the concurrence of a majority of the judges in each district and court level the commissioner serves. A decision not to retain a commissioner under this paragraph shall be communicated to the commissioner within a reasonable time after the decision is made, and not less than 60 days prior to the end of the commissioner's term .

(9) **Salaries and benefits.**

(9)(A) The Council shall annually establish the salary of court commissioners. In determining the salary of the court commissioners, the Council shall consider the effect of any salary increase for judges authorized by the Legislature and other relevant factors. Except as provided in paragraph (6), the salary of a commissioner shall not be reduced during the commissioner's tenure.

(9)(B) Court commissioners shall receive annual leave of 20 days per calendar year and the same sick leave benefits as judges of the courts of record. Annual leave not used at the end of the calendar year shall not accrue to the following year. A

201 commissioner hired part way through the year shall receive annual leave on a  
202 prorated basis. Court commissioners shall receive the same retirement benefits  
203 as non-judicial officers employed in the judicial branch.

204 (10) **Support services.**

205 (10)(A) Court commissioners shall be provided with support personnel, equipment, and  
206 supplies necessary to carry out the duties of the office as determined by the  
207 presiding judge.

208 (10)(B) Court commissioners are responsible for requesting necessary support services  
209 from the presiding judge.

210 *Effective May/November 1, 20\_\_\_\_*

# **TAB 5**

**Rules 4-401 and 4-401.02**

1 **Rule 4-401. Media in Courthouses.**

2 **Intent:**

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

5 **Applicability:**

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

7 **Statement of the Rule:**

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

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

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

14 Effective May/November 1, 20



**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\_\_*

# **TAB 6**

**HB 590 – Interns and Work Conflicts**

## **INTERNS AND WORK CONFLICTS POLICY 580**

### **Purpose**

The purpose of this policy is to define how the courts treat interns who are engaged in secondary employment and other volunteer activities.

### **Scope**

This policy establishes an exception to the general rule that an individual working for the courts may not engage in other employment and volunteer activities that conflict with the interests of the courts or create the appearance of a conflict of interest.

### **Policy and Procedure**

For purposes of this policy, an extern is the same as an [intern](#).

Interns may engage in other employment and volunteer activities that conflict with the interests of the courts or create the appearance of a conflict of interest as defined in [Sections 500.8](#) and [500.11](#), subject to the following conditions:

1. If an intern has worked or is working on a case currently before the court in the intern's other employment or volunteer work, the intern shall recuse and be screened from the case.
2. If an intern is currently working or volunteering for a law firm or entity that has appeared or is appearing before the court, the intern shall recuse and be screened from any cases involving that law firm or entity.

# **TAB 7**

**Rule 3-413:**

**Judicial Library Resources**

**Rule 3-413. Judicial Library Resources.**

**Intent:**

To establish minimum standards for legal reference materials to be provided to judicial and quasi-judicial officers and court employees.

To establish acquisition, distribution and budgetary responsibilities for the legal reference materials identified in this rule for the state law librarian.

To realize financial advantages through the use of high volume purchases of regularly used legal reference materials

**Applicability:**

This rule shall apply to the state law library, all judges and commissioners of courts of record and all court employees.

**Statement of the Rule:**

**(1) State Law Library.**

(1)(A) The State Law Library shall be supervised and administered by the state law librarian under the general supervision of the Appellate Court Administrator.

(1)(B) The state law librarian shall facilitate the purchase of the electronic research resources and print publications authorized by this rule and arrange to have them distributed in accordance with this rule.

**(2) Responsibility for providing judicial library resources.**

**(2)(A) Electronic research resources.**

(2)(A)(i) The state court administrator shall ensure access to electronic research resources. Once such access is adequately developed, subscriptions to duplicative hard copy publications shall be discontinued.

(2)(A)(ii) All justices, judges of courts of record, judges of courts not of record, commissioners, and staff attorneys shall have access to these electronic research resources. Other employees may receive access to these resources based upon a demonstrated need and supervisor authorization.

(2)(B) **Print publications.** The following officials or locations are authorized to receive print publications, which shall be provided by the state court administrator, subject to the availability of adequate funds, as follows:

(2)(B)(i) **Justices and judges of record:**

(2)(B)(i)(a) one set of the Utah Code Annotated, one set of the Utah Code Unannotated, and one set of the Utah; and one set of the Utah Court Rules Annotated; or

(2)(B)(i)(b) two sets of the Utah Code Unannotated, and one set of the Utah Court Rules Annotated.

(2)(B)(ii) **Court commissioners:** two sets of the Utah Code Unannotated and one set of Utah Court Rules Annotated.

(2)(B)(iii) **Active senior judges:** one set of the Utah Code Unannotated, paid for by the Administrative Office of the Courts.

(2)(B)(iv) **Staff attorneys:** one set of the Utah Code Unannotated and one set of Utah Court Rules Annotated.

(2)(B)(v) **Courts without a permanently-sitting judge:** two sets of the Utah Code Unannotated and one set of Utah Court Rules Annotated.

(2)(C) **Publisher's complimentary copies.** The publisher of the Pacific Reporter currently provides complimentary volumes to appellate judges as of the date of the judge's appointment to the appellate court. The state law librarian shall coordinate the distribution of these materials with the judges and the publisher.

(2)(D) **Counties.** Each county shall provide a current copy of either the Utah Code Annotated with annual updates or the softbound Utah Code Unannotated to each county justice court judge serving within that county. Each county operating a court of record under contract with the administrative office of the courts shall provide the judge with access to the local law library pursuant to Section 78A-5-111.

(2)(E) **Municipalities.** Each municipality shall provide a current copy of either the Utah Code Annotated with annual updates or the softbound Utah Code Unannotated to each municipal justice court judge serving within that municipality. Each municipality operating a court of record under contract with the administrative office of the courts shall provide the judge with access to the local law library pursuant to Section 78A-5-111.

(2)(F) Counties and municipalities contracting with justice court judges.

(2)(G) Administrative office of the courts. The administrative office of the courts shall provide a Justice Court Manual, updated biannually, to each judge of a court not of record.

(3) **Budget Procedures.**

(3)(A) The state law librarian shall separately account for:

(3)(A)(i) the operating budget for the state law library;

(3)(A)(ii) the costs associated with access to electronic research resources in subsection (2)(A); and

(3)(A)(iii) the costs associated with the purchase of print publications in subsection (2)(B).

(3)(B) Funds appropriated or allocated for purchasing in accordance with subsections (2)(A) and (2)(B) shall not be used to supplement the appropriation to the state law library.

(3)(C) The purchase of electronic research resources and print publications to fully implement the provisions of this rule shall be limited by the availability of funds.

(3)(D) Any publication purchased with public funds shall be the property of the court and not the property of any official. Publications provided to an official without charge to the state shall be the personal property of the official.

*Effective May/November 1, 20\_\_*



1 **Rule 3-413. Judicial Library Resources.**

2 **Intent:**

- 3 To establish minimum standards for legal reference materials to be provided to judicial and  
4 quasi-judicial officers and court employees.  
5 To establish acquisition, distribution and budgetary responsibilities for the legal reference  
6 materials identified in this rule for the state law librarian.  
7 To realize financial advantages through the use of high volume purchases of regularly used  
8 legal reference materials

9 **Applicability:**

- 10 This rule shall apply to the state law library, all judges and commissioners of courts of record  
11 ~~and not of record~~ and all court employees.

12 **Statement of the Rule:**

13 **(1) State Law Library.**

- 14 (1)(A) The State Law Library shall be supervised and administered by the state law  
15 librarian under the general supervision of the Appellate Court Administrator.  
16 (1)(B) The state law librarian shall facilitate the purchase of the electronic research  
17 resources and print publications authorized by this rule and arrange to have them  
18 distributed in accordance with this rule.

19 **(1)(2) Responsibility for providing judicial library resources.**

20 **(2)(A) Electronic research resources.**

- 21 (2)(A)(i) The state court administrator shall ensure access to electronic  
22 research resources. Once such access is adequately developed,  
23 subscriptions to duplicative hard copy publications shall be  
24 discontinued.

- 25 (2)(A)(ii) All justices, judges of courts of record, judges of courts not of record,  
26 commissioners, and staff attorneys shall have access to these  
27 electronic research resources. Other employees may receive access  
28 to these resources based upon a demonstrated need and supervisor  
29 authorization.

- 30 **(2)(B) Authorized Print publications.** The following officials or locations are  
31 authorized to receive ~~the print~~ publications, which shall be provided by the state

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court administrator, subject to the availability of adequate funds, as indicated follows:

**(2)(B)(i) Justices and judges of courts of record:**

(2)(B)(i)(a) one set of the Utah Code Annotated, one set of the Utah Code Unannotated, and one set of the Utah; and one set of the Utah Court Rules Annotated; or

(2)(B)(i)(b) two sets of the Utah Code Unannotated, and one set of the Utah Court Rules Annotated.

**(2)(B)(ii) Court commissioners;** two sets of the Utah Code Unannotated and one set of Utah Court Rules Annotated.

**(2)(B)(iii) Active senior judges;** one set of the Utah Code Unannotated, paid for by the Administrative Office of the Courts.

**(2)(B)(iv) Staff attorneys;** one set of the Utah Code Unannotated and one set of Utah Court Rules Annotated.

**(1)(A)(i)(a)(2)(B)(v) Courts without a permanently-sitting judge;** two sets of the Utah Code Unannotated and one set of Utah Court Rules Annotated.

~~(1)(A)(ii) a current set of the softbound Utah Code Unannotated for each justice, judge, and commissioner of the courts of record for use in the justice's, judge's, or commissioner's principal courtroom or hearing room and additional sets as needed for actively used courtrooms and hearing rooms, the administrative office library, the Supreme Court and Court of Appeals chambers libraries, senior judges on active status, staff of the administrative office and other senior managers as determined by the state court administrator, and central staff attorneys;~~

~~(1)(A)(iii) one set of Utah Code Annotated 1953 with annual supplements, indexes, rules, and replacement volumes to justices, judges, and commissioners of the courts of record, staff of the administrative office and other senior managers as determined by the state court administrator, central staff attorneys, appellate court law clerks at a ratio of one set for two clerks, the administrative office library, and the Supreme Court and Court of Appeals chambers libraries;~~

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Second district (Morgan)  
Fourth District (Fillmore, Nephi, Heber Juvenile)  
Fifth district (Beaver)  
Sixth district (Junction, Kanab, Loa, Manti, Panguitch)  
Seventh district (Castle Dale, Monticello)  
Eighth district (Manila)

(1)(A)(iv)—one copy of the Utah Court Rules Annotated for senior judges on active status, staff of the administrative office and other senior managers as determined by the state court administrator, the administrative office library, and the Supreme Court and Court of Appeals chambers libraries; and

(1)(A)(v)—one set of the Utah Reporter to justices, judges, and central staff attorneys of the Supreme Court and Court of Appeals and a sufficient number for the research needs of the trial courts of record.

~~(1)(B)—The office of legislative printing. The current policy of the Office of Legislative Printing is to provide the set of Utah Code Annotated 1953 with annual supplements, indexes, rules, and replacement volumes to all justices and judges of courts of record referred to in paragraph (1)(A)(iv) of this rule. The state law librarian shall coordinate the distribution of these materials with the judges and the Office of Legislative Printing.~~

~~(1)(C)~~ **(2)(C) Publisher's complimentary copies.** The ~~current policy of the~~ publisher of the Pacific Reporter ~~is to provide~~ currently provides complimentary volumes to appellate judges as of the date of the judge's appointment to the appellate court. The state law librarian shall coordinate the distribution of these materials with the judges and the publisher.

~~(1)(D)—State law library. Except for copies furnished as indicated in paragraphs (1)(B) and (C) of this rule and the purchasing authority described in paragraphs (1)(E), (F), and (G), the state law librarian shall purchase the publications authorized by this rule and distribute them in accordance with this rule.~~

~~(1)(E)~~ **(2)(D) Counties.** Each county shall provide a current copy of either the Utah Code Annotated with annual updates or the softbound Utah Code Unannotated to each county justice court judge serving within that county. Each county operating a court of record under contract with the administrative office of the courts shall provide the judge with access to the local law library pursuant to Section 78A-5-111.

~~(1)(F)~~ **(2)(E) Municipalities.** Each municipality shall provide a current copy of either the Utah Code Annotated with annual updates or the softbound Utah Code Unannotated to each municipal justice court judge serving within that municipality. Each municipality operating a court of record under contract with the

administrative office of the courts shall provide the judge with access to the local law library pursuant to Section 78A-5-111.

~~(1)(G)(2)(F)~~ Counties and municipalities contracting with justice court judges. ~~Each county and municipality which contracts with a justice court judge pursuant to Utah Code Ann. Section 78A-7-202 shall provide, at the location used by the judge within the county or municipality, either the Utah Code Annotated with annual updates or the softbound Utah Code Unannotated.~~

~~(1)(H)~~ Administrative office of the courts. The administrative office of the courts shall provide a Justice Court Manual, updated biannually, to each judge of a court not of record.

~~(2)(-)(2)(G)~~ Law libraries.

~~(2)(A)~~ The State Law Library shall be supervised and administered by the state law librarian under the general supervision of the Appellate Court Administrator.

~~(2)(B)~~ The Appellate Courts' Chambers Library shall be maintained by the State Law Library, and the Appellate Courts shall pay for the materials in that collection.

~~(2)(C)~~ The Council may authorize the establishment of chambers law libraries for trial courts of record, provide update services consistent with funding limitations and adopt minimum standards for those libraries.

~~(2)(D)~~ For purposes of this rule, "chambers libraries" means those law libraries which are established and maintained for the exclusive use of judicial officers and employees and are not available for use by members of the public.

(3) **Budget Procedures.**

~~(3)(A)~~ The state law librarian shall separately account for:

~~(3)(A)(i)~~ the operating budget for the state law library;

~~(3)(A)(ii)~~ the costs associated with access to electronic research resources in subsection (2)(A); and

~~(3)(A)(iii)~~ the costs associated with the purchase of print publications in subsection (2)(B); trial court operations, appellate court operations, and administrative operations.

~~(3)(A)(3)(B)~~ Funds appropriated or allocated for purchasing in accordance with subsections (2)(A) and (2)(B) to the appellate court, trial court, or administrative operations shall not be used to supplement the appropriation to the state law library.

**Commented [MCD4]:** Utah Code § 78-5-134(7)(a) "At the conclusion of a term of office or when a vacancy occurs in the position of justice court judge, the appointing authority may contract with a justice court judge in the county or an adjacent county to serve as justice court judge.  
(b) The contract shall be for the duration of the justice court judge's term of office."

This provision was removed from the code in 2009, the year following the recodification of Title 78 (it was only part of 78A for seven months).

**Commented [MCD5]:** Why is this in the law library rule?

~~(3)(B)(3)(C)~~ The purchase of electronic research resources and print publications to fully implement the provisions of this rule shall be limited by the availability of funds.

~~(3)(C)(3)(D)~~ Any publication purchased with public funds shall be the property of the court and not the property of any official. Publications provided to an official without charge to the state shall be the personal property of the official.

~~(3)(D)~~ Upon request of a justice, judge, commissioner or court employee, the state law librarian shall make available legal reference publications or photocopies or facsimile copies thereof for the use of the requesting party. The state law librarian shall develop procedures for the control of publications removed from the library.

~~(3)(E)~~ The state court administrator shall notify the state law librarian whenever there is a change to the list of senior judges on active status. The court executive shall notify the state law librarian whenever there is a change in the personnel authorized by this rule to receive publications.

~~(4)~~ Electronic data base legal research. The state court administrator shall, as funds permit, develop access to legal reference materials stored on electronic data bases. As such access is developed subscriptions to duplicative hard copy publications shall be discontinued.

# **TAB 8**

**Rule 4-403:**

**Electronic Signatures and Signature Stamp Use**

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

2 **Intent:**

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

5 **Applicability:**

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

7 **Statement of the Rule:**

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

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

12 (1)(B) bench warrants;

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

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

16 (1)(E) orders to show cause;

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

18 (1)(G) summons;

19 (1)(H) supplemental procedure orders;

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

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

24 (1)(K) orders for transportation of a person in custody to a court hearing, including writs  
25 of habeas corpus ad prosequendum and testificandum;

26 (1)(L) orders appointing a court visitor; ~~and~~

27 (1)(M) domestic relations injunctions under URCP 109.

Commented [MCD1]: This change is in project  
20180912a.

Commented [MCD2]: This change is in project  
20181019a.

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

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

40 *Effective May/November 1, 20\_\_*



# TAB 9

**Rule 4-202.02:**

**Table-format version to accompany rule**



## 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:** Judicial Council  
**From:** Keisa L. Williams *KLW*  
**Date:** December 4, 2017  
**Re:** Adding a Table to CJA 4-202.02 for Clarification Purposes

---

Code of Judicial Administration Rule 4-202.02 outlines the court's policy on records classification. The rule undergoes numerous amendments, is very lengthy, and is difficult to read. For quite some time, the Policy and Planning Committee has discussed ways to make the rule more user-friendly and less cumbersome. The Committee drafted a table version of the rule that could be added as a link next to the heading. The Committee presents this proposal for discussion and consideration by the Judicial Council.

Encl. CJA 4-202.02 in table format

*Approved by JC*  
*- needs to be updated to reflect new rule changes*  
*- Review for accuracy*  
*- Add as link in rules next to heading*

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 4-202.02. Records classification.****Intent:**

To classify court records as public or non-public.

**Applicability:**

This rule applies to the judicial branch.

**Statement of the Rule:**

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

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

Section	TYPE OF RECORD	CLASSIFICATION	RESTRICTIONS/CLARIFICATION
(2)(A)	Abstract of a citation that redacts all non-public information	Public	
(2)(B)	Aggregate records without non-public information and without personal identifying information	Public	
(2)(C)	Appellate filings, including briefs	Public	
(2)(D)	Arrest warrants	Public	But a court may restrict access before service
(2)(E)	Audit reports	Public	
(2)(F)	Case files	Public	
(2)(G)	Committee reports	Public	After release by the Judicial Council or the court that requested the study
(2)(H)	Contracts entered into by the judicial branch and records of compliance with the terms of a contract	Public	
(2)(I)	Drafts that were never finalized but were relied upon in carrying out an action or policy	Public	
(2)(J)	Exhibits	Public	But the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure
(2)(K)	Financial records	Public	
(2)(L)	Indexes approved by the Management Committee of the Judicial Council, including the following: <ul style="list-style-type: none"> <li>• (2)(L)(i) amount in controversy</li> <li>• (2)(L)(ii) attorney name</li> <li>• (2)(L)(iii) case number</li> <li>• (2)(L)(iv) case status</li> <li>• (2)(L)(v) civil case type or criminal violation</li> <li>• (2)(L)(vi) civil judgment or criminal disposition</li> <li>• (2)(L)(vii) daily calendar</li> </ul>	Public	<ul style="list-style-type: none"> <li>• In courts other than the juvenile court</li> <li>• An index may contain any other index information</li> </ul>

	<ul style="list-style-type: none"> <li>• (2)(L)(viii) file date</li> <li>• (2)(L)(ix) party name</li> </ul>		
(2)(M)	For an adult person or business entity: <ul style="list-style-type: none"> <li>• name,</li> <li>• business address,</li> <li>• business telephone number, and business email address</li> </ul>	Public	Other than a party or a victim or witness of a crime
(2)(N)	For a party: <ul style="list-style-type: none"> <li>• name,</li> <li>• address,</li> <li>• telephone number,</li> <li>• email address,</li> <li>• date of birth, and</li> <li>• the last four digits of the following:               <ul style="list-style-type: none"> <li>◦ driver's license number;</li> <li>◦ social security number;</li> <li>or</li> <li>◦ account number</li> </ul> </li> </ul>	Public	
(2)(O)	For an appearing lawyer: <ul style="list-style-type: none"> <li>• name,</li> <li>• business address,</li> <li>• business telephone number, and</li> <li>• business email address</li> </ul>	Public	
(2)(P) & (2)(R)	For court personnel (not judges): <ul style="list-style-type: none"> <li>• name,</li> <li>• business address,</li> <li>• business telephone number,</li> <li>• business email address,</li> <li>• gender,</li> <li>• gross salary,</li> <li>• benefits,</li> <li>• job title and description,</li> <li>• number of hours worked per pay period,</li> <li>• dates of employment, and</li> <li>• relevant qualifications</li> </ul>	Public	Applies to both current and former court personnel
(2)(Q)	For judges: <ul style="list-style-type: none"> <li>• name,</li> <li>• business address, and</li> <li>• business telephone number</li> </ul>	Public	Not email addresses
(2)(S)	Name of a juror empaneled to try a case	Public	Unless classified by the judge as private or safeguarded to protect the personal safety of the juror or the juror's family and only 10 days after the jury is discharged
(2)(T)	Opinions and orders entered in open hearings	Public	Including concurring and dissenting opinions
(2)(U)	Order or decision classifying a record as not public	Public	
(2)(V)	Private record	Public	If the subject of the record has given written permission to make the record public

(2)(W)	Probation progress/violation reports	Public	
(2)(X)	Publications of the administrative office of the courts	Public	
(2)(Y)	Record in which the judicial branch determines or states an opinion on the rights of the state, a political subdivision, the public, or a person	Public	
(2)(Z)	Record of the receipt or expenditure of public funds	Public	
(2)(AA)	Record or minutes of an open meeting or hearing and the transcript of them	Public	
(2)(BB)	Record of formal discipline of current or former court personnel or of a person regulated by the judicial branch	Public	If the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained
(2)(CC)	Record of a request for a record	Public	
(2)(DD)	Reports used by the judiciary	Public	If all of the data in the report is public or the Judicial Council designates the report as a public record
(2)(EE)	Rules of the Supreme Court and Judicial Council	Public	
(2)(FF)	Search warrants, the application and all affidavits or other recorded testimony on which a warrant is based	Public	After they are unsealed under Utah Rule of Criminal Procedure 40
(2)(GG)	Statistical data derived from public and non-public records	Public	If they disclose only public data
(2)(HH)	Notwithstanding subsections (6) and (7), Petitions, indictments or informations, adjudication orders, disposition orders, and delinquency history summaries involving minors	Public	<ul style="list-style-type: none"> <li>Only when a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult</li> <li>The delinquency history summary shall contain: <ul style="list-style-type: none"> <li>the name of the person,</li> <li>a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and</li> <li>the disposition of the court in each of those offenses</li> </ul> </li> </ul>

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

Section	TYPE OF RECORD	CLASSIFICATION	RESTRICTIONS/CLARIFICATION
(3)(A)	<p>Records in the following actions:</p> <ul style="list-style-type: none"> <li>• (3)(A)(i) *Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of proceedings</li> <li>• (3)(A)(ii) *Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the conclusion of proceedings</li> <li>• (3)(A)(iii) Section 76-7-304.5, Consent required for abortions performed on minors</li> <li>• (3)(A)(iv) Section 78B-8-402, actions for disease testing</li> </ul>	Sealed	<p>*78B-6-1 records are private until sealed.</p> <p>*78B-15-8 records are private until sealed.</p>
(3)(B)	Expunged records	Sealed	
(3)(C)	Orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15	Sealed	
(3)(D)	Records showing the identity of a confidential informant	Sealed	
(3)(E)	Records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6	Sealed	
(3)(F)	Wills deposited for safe keeping under Utah Code Section 75-2-901	Sealed	
(3)(G)	Records designated as sealed by rule of the Supreme Court	Sealed	
(3)(H)	Record of a Children's Justice	Sealed	After the conclusion of any legal

	Center investigative interview		proceedings
(3)(l)	Other records as ordered by the court under Rule 4-202.04	Sealed	

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

Section	TYPE OF RECORD	CLASSIFICATION	RESTRICTIONS/CLARIFICATION
(4)(A)	<p>(4)(A) Records in the following actions:</p> <ul style="list-style-type: none"> <li>• (4)(A)(i) Section 62A-15-631, Involuntary commitment under court order</li> <li>• (4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database</li> <li>• (4)(A)(iii) *Title 78B, Chapter 6, Part 1, Utah Adoption Act</li> <li>• (4)(A)(iv) *Title 78B, Chapter 15, Part 8, Gestational Agreement</li> </ul>	Private	<p>*78B-6-1 records are private until sealed.</p> <p>*78B-15-8 records are private until sealed.</p>
(4)(B)	<p>(4)(B) Records in the following actions, including an action to modify or enforce a judgment in these cases</p> <p>(4)(B)(ix):</p> <ul style="list-style-type: none"> <li>• (4)(B)(i) *Title 30, Husband and Wife, including qualified domestic relations orders</li> <li>• (4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions</li> <li>• (4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property</li> <li>• (4)(B)(iv) Title 78B, Chapter 7, Protective Orders</li> <li>• (4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act</li> <li>• (4)(B)(vi) Title 78B, Chapter</li> </ul>	Private	<ul style="list-style-type: none"> <li>• In all of these records, the case history; judgments, orders and decrees; letters of appointment; and the record of public hearings are public records.</li> <li>• *In an action for consortium due to personal injury under Section 30-2-11 are public.</li> </ul>

	13, Utah Uniform Child Custody Jurisdiction and Enforcement Act <ul style="list-style-type: none"> <li>• (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act</li> <li>• (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act</li> </ul>		
(4)(C)	An affidavit supporting a motion to waive fees	Private	
(4)(D)	Aggregate records	Private	Other than public aggregate records under subsection (2)
(4)(E)	Alternative dispute resolution records	Private	
(4)(F)	Applications for accommodation under the Americans with Disabilities Act	Private	
(4)(G)	Jail booking sheets	Private	
(4)(H)	Citation	Private	But an abstract of a citation that redacts all non-public information is public
(4)(I)	Judgment information statement	Private	
(4)(J)	Judicial review of final agency action under Utah Code Section 62A-4a-1009	Private	
(4)(K)	The following personal identifying information about a <b>party</b> : <ul style="list-style-type: none"> <li>• driver's license number</li> <li>• social security number</li> <li>• account description and number</li> <li>• password</li> <li>• identification number</li> <li>• maiden name</li> <li>• mother's maiden name</li> <li>• similar personal identifying information</li> </ul>	Private	
(4)(L)	The following personal identifying	Private	



	<p>information about a <b>person other than a party or a victim or witness</b> of a crime:</p> <ul style="list-style-type: none"> <li>• residential address</li> <li>• personal email address</li> <li>• personal telephone number</li> <li>• date of birth</li> <li>• driver's license number</li> <li>• social security number</li> <li>• account description and number</li> <li>• password</li> <li>• identification number</li> <li>• maiden name</li> <li>• mother's maiden name</li> <li>• similar personal identifying information</li> </ul>		
(4)(M)	Medical, psychiatric, or psychological records	Private	
(4)(N)	Name of a minor	Private	<p>Except that the name of a minor party is public in the following district and justice court proceedings:</p> <ul style="list-style-type: none"> <li>• (4)(N)(i) name change of a minor</li> <li>• (4)(N)(ii) guardianship or conservatorship for a minor</li> <li>• (4)(N)(iii) felony, misdemeanor, or infraction</li> <li>• (4)(N)(iv) child protective orders; and</li> <li>• (4)(N)(v) custody orders and decrees</li> </ul>
(4)(O)	Nonresident violator notice of noncompliance	Private	
(4)(P)	Personnel file of a current or former	Private	

	court personnel or applicant for employment		
(4)(Q)	Photograph, film, or video of a crime victim	Private	
(4)(R)	Record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5	Private	<ul style="list-style-type: none"> <li>• (4)(R)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process</li> <li>• (4)(R)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure</li> </ul>
(4)(S)	Record submitted by a senior judge or court commissioner regarding performance evaluation and certification	Private	
(4)(T)	Record submitted for in camera review	Private	Until its public availability is determined
(4)(U)	Reports of investigations by Child Protective Services	Private	
(4)(V)	Victim impact statements	Private	
(4)(W)	Name of a prospective juror summoned to attend court	Private	Unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family
(4)(X)	Records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure	Private	Except briefs filed pursuant to court order
(4)(Y)	Records in a proceeding under Rule 60 of the Utah Rules of Appellate	Private	

	Procedure		
(4)(Z)	Other records as ordered by the court under Rule 4-202.04	Private	

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

Section	TYPE OF RECORD	CLASSIFICATION	RESTRICTIONS/CLARIFICATION
(5)(A)	Attorney's work product, including the mental impressions or legal theories concerning litigation of: <ul style="list-style-type: none"> <li>• an attorney, or</li> <li>• other representative of the courts</li> </ul>	Protected	
(5)(A)	Privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding	Protected	
(5)(B)	Records that are subject to the attorney client privilege	Protected	
(5)(C)	Bids or proposals	Protected	Until the deadline for submitting them has closed
(5)(D)	Budget analyses, revenue estimates, and fiscal notes of proposed legislation	Protected	Before issuance of the final recommendations in these areas
(5)(E)	Budget recommendations, legislative proposals, and policy statements	Protected	Only those that, if disclosed, would reveal the court's contemplated policies or contemplated courses of action
(5)(F)	Court security plans	Protected	
(5)(G)	Investigation and analysis of loss covered by the risk management fund	Protected	
(5)(H)	Memorandum prepared by staff for a member of any body charged by law with performing a judicial	Protected	If they were used in the decision-making process

	function		
(5)(I)	Confidential business records under Utah Code Section 63G-2-309	Protected	
(5)(J)	Records created or maintained for: <ul style="list-style-type: none"> <li>• civil</li> <li>• criminal</li> <li>• administrative enforcement purposes</li> <li>• audit or discipline purposes</li> <li>• licensing, certification or registration purposes</li> </ul>	Protected	If the record reasonably could be expected to: <ul style="list-style-type: none"> <li>• (5)(J)(i) interfere with an investigation</li> <li>• (5)(J)(ii) interfere with a fair hearing or trial</li> <li>• (5)(J)(iii) disclose the identity of a confidential source; or</li> <li>• (5)(J)(iv) concern the security of a court facility</li> </ul>
(5)(K)	Records identifying property under consideration for sale or acquisition by the court or its appraised or estimated value	Protected	Unless the information has been disclosed to someone not under a duty of confidentiality to the courts
(5)(L)	Record that would reveal the contents of settlement negotiations	Protected	Other than the final settlement agreement
(5)(M)	Record that, if disclosed, would impair governmental procurement or give an unfair advantage to any person	Protected	
(5)(N)	Record that, if disclosed, would interfere with supervision of an offender's incarceration, probation, or parole	Protected	
(5)(O)	Record that, if disclosed, would jeopardize life, safety, or property	Protected	
(5)(P)	Strategy about collective bargaining or pending litigation	Protected	
(5)(Q)	Test questions and answers	Protected	
(5)(R)	Trade secrets as defined in Utah Code Section 13-24-2	Protected	
(5)(S)	Record of a Children's Justice Center investigative interview	Protected	Before the conclusion of any legal proceedings
(5)(T)	Presentence investigation report	Protected	

(5)(U)	Records maintained and prepared by juvenile probation	Protected	Except those filed with the court
(5)(V)	Other records as ordered by the court under Rule 4-202.04	Protected	

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

Section	TYPE OF RECORD	CLASSIFICATION	RESTRICTIONS/CLARIFICATION
(6)(A)	Correspondence relating to juvenile social records	Juvenile Court Social Records	
(6)(B)	Custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations	Juvenile Court Social Records	
(6)(C)	Medical, psychological, psychiatric evaluations	Juvenile Court Social Records	
(6)(D)	Pre-disposition and social summary reports	Juvenile Court Social Records	
(6)(E)	Probation agency and institutional reports or evaluations	Juvenile Court Social Records	
(6)(F)	Referral reports	Juvenile Court Social Records	
(6)(G)	Report of preliminary inquiries	Juvenile Court Social Records	
(6)(H)	Treatment or service plans	Juvenile Court Social Records	

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

Section	TYPE OF RECORD	CLASSIFICATION	RESTRICTIONS/CLARIFICATION
(7)(A)	Accounting records	Juvenile Court Legal Records	
(7)(B)	Discovery filed with the court	Juvenile Court Legal Records	
(7)(C)	Pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, and decrees	Juvenile Court Legal Records	
(7)(D)	Name of a party or minor	Juvenile Court Legal	

		Records	
(7)(E)	Record of a court hearing	Juvenile Court Legal Records	
(7)(F)	Referral and offense histories	Juvenile Court Legal Records	
(7)(G)	Any other juvenile court record regarding a minor that is not designated as a social record	Juvenile Court Legal Records	

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

Section	TYPE OF RECORD	CLASSIFICATION	RESTRICTIONS/CLARIFICATION
(8)(A)	Upon request: location information, contact information, and identity information in proceedings under: <ul style="list-style-type: none"> <li>Title 77, Chapter 3a, Stalking Injunctions</li> <li>Title 78B, Chapter 7, Protective Orders</li> </ul>	Safeguarded	Other than: <ul style="list-style-type: none"> <li>name of a petitioner, and</li> <li>other persons to be protected</li> </ul>
(8)(B)	Upon request: location information, contact information and identity information in proceedings under: <ul style="list-style-type: none"> <li>Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act</li> <li>Title 78B, Chapter 14, Uniform Interstate Family Support Act</li> <li>Title 78B, Chapter 15, Utah Uniform Parentage Act</li> </ul>	Safeguarded	Other than: <ul style="list-style-type: none"> <li>name of a party, or</li> <li>the party's child</li> </ul> And only after showing, by affidavit, that the health, safety, or liberty of the party or child would be jeopardized by disclosure
(8)(C)	Location information, contact information, and identity information of prospective jurors on the master jury list or the qualified jury list	Safeguarded	
(8)(D)	Location information, contact information, and identity information other than name of a prospective juror summoned to attend court	Safeguarded	
(8)(E)	The following information about a victim or witness of a crime:	Safeguarded	

	<ul style="list-style-type: none"> <li>• (8)(E)(i) business and personal address</li> <li>• (8)(E)(i) email address</li> <li>• (8)(E)(i) telephone number</li> <li>• (8)(E)(i) similar information from which the person can be located or contacted</li> <li>• (8)(E)(ii) date of birth</li> <li>• (8)(E)(ii) driver's license number</li> <li>• (8)(E)(ii) social security number</li> <li>• (8)(E)(ii) account description and number</li> <li>• (8)(E)(ii) password</li> <li>• (8)(E)(ii) identification number</li> <li>• (8)(E)(ii) maiden name</li> <li>• (8)(E)(ii) mother's maiden name</li> <li>• (8)(E)(ii) similar personal identifying information</li> </ul>		
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# **TAB 10**

**Rule 4-202.09:  
Miscellaneous**



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

To set forth miscellaneous provisions for these rules.

**Applicability:**

This rule applies to the judicial branch.

**Statement of the Rule:**

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

(2) Fulfilling a records request.

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

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

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

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

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

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

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

(5) Subject to the Government Records Access Management Act (GRAMA) and Chapter 4, Article 2 of the Code of Judicial Administration, a request for email correspondence shall be sufficiently detailed to identify the email(s) sought with reasonable specificity. The request shall be narrowly tailored to yield a search that is not unduly burdensome. Requests shall include the subject matter of the email(s), the identity of individuals to

whom the email(s) were sent or received, if known, and the date, or approximate date(s) of email(s). Upon receipt of a request, the person handling the request will forward it to the Court Information Technology Department, a representative of which will develop the parameters of the search.

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

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

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

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

(10) Non-public information in a public record.

(10)(A) The person filing a public record shall omit or redact non-public information. ~~The person filing a private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social record shall identify the classification of the record at the top of the first page of a classified document or in a statement accompanying the record.~~

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

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

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

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

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

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

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

(10)(C)(vi) minor's name: initials.

- (10)(D) If it is necessary to provide the court with private personal identifying information, it must be provided on a cover sheet or other severable document, which is classified as private.
- (11) Tax-related records.
- (11)(A) Notwithstanding Rule 4-202.02, except as otherwise ordered by the court and except as provided in subsections (10)(B) and (10)(C), if a case involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, all records shall be classified as public records under Rule 4-202.02.
- (11)(B) Except as provided in subsection (10)(C), all records in a case that involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, shall be protected if the case also involves commercial information as that term is defined by Utah Code § 59-1-404.
- (11)(C) For a case described in subsection (10)(B):
- (11)(C)(i) if a request for a specific record, or access to all records in a case, is made to the court and notice is given to the taxpayer, such record or records shall be released within 14 days after notice is given to the taxpayer, except for specific records ordered by the court to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3);
- (11)(C)(ii) thirty days after the issuance of a non-appealable final order by the court, all records shall be public unless the court orders specific records to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3).
- (11)(C)(iii) The public shall have access to the case history, notwithstanding the limitations in this rule applicable to the underlying records.

*Effective May/November 1, 20\_\_*

# **TAB 11**

**Rule 1-205:**

**Standing and ad hoc Committees**

1 **Rule 1-205. Standing and Ad Hoc Committees.**

2 **Intent:**

3 To establish standing and ad hoc committees to assist the Council and provide  
4 recommendations on topical issues.

5 To establish uniform terms and a uniform method for appointing committee members.

6 To provide for a periodic review of existing committees to assure that their activities are  
7 appropriately related to the administration of the judiciary.

8 **Applicability:**

9 This rule shall apply to the internal operation of the Council.

10 **Statement of the Rule:**

11 (1) **Standing Committees.**

12 (1)(A) **Establishment.** The following standing committees of the Council are hereby  
13 established:

- 14 (1)(A)(i) Technology Committee;
- 15 (1)(A)(ii) Uniform Fine Schedule Committee;
- 16 (1)(A)(iii) Ethics Advisory Committee;
- 17 (1)(A)(iv) Judicial Branch Education Committee;
- 18 (1)(A)(v) Court Facility Planning Committee;
- 19 (1)(A)(vi) Committee on Children and Family Law;
- 20 (1)(A)(vii) Committee on Judicial Outreach;
- 21 (1)(A)(viii) Committee on Resources for Self-represented Parties;
- 22 (1)(A)(ix) Language Access Committee;
- 23 (1)(A)(x) Guardian ad Litem Oversight Committee;
- 24 (1)(A)(xi) Committee on Model Utah Civil Jury Instructions;
- 25 (1)(A)(xii) Committee on Model Utah Criminal Jury Instructions;
- 26 (1)(A)(xiii) Committee on Pretrial Release and Supervision; and
- 27 (1)(A)(xiv) Committee on Court Forms.

28 (1)(B) **Composition.**

- 29 (1)(B)(i) The Technology Committee shall consist of:
  - 30 (1)(B)(i)(a) one judge from each court of record;
  - 31 (1)(B)(i)(b) one justice court judge;

- 32 (1)(B)(i)(c) one lawyer recommended by the Board of Bar  
33 Commissioners;
- 34 (1)(B)(i)(d) two court executives;
- 35 (1)(B)(i)(e) two court clerks; and
- 36 (1)(B)(i)(f) two staff members from the Administrative Office.
- 37 (1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of:
- 38 (1)(B)(ii)(a) one district court judge who has experience with a  
39 felony docket;
- 40 (1)(B)(ii)(b) three district court judges who have experience with a  
41 misdemeanor docket;
- 42 (1)(B)(ii)(c) one juvenile court judge; and
- 43 (1)(B)(ii)(d) three justice court judges.
- 44 (1)(B)(iii) The Ethics Advisory Committee shall consist of:
- 45 (1)(B)(iii)(a) one judge from the Court of Appeals;
- 46 (1)(B)(iii)(b) one district court judge from Judicial Districts 2, 3, or 4;
- 47 (1)(B)(iii)(c) one district court judge from Judicial Districts 1, 5, 6, 7,  
48 or 8;
- 49 (1)(B)(iii)(d) one juvenile court judge;
- 50 (1)(B)(iii)(e) one justice court judge; and
- 51 (1)(B)(iii)(f) an attorney from either the Bar or a college of law.
- 52 (1)(B)(iv) The Judicial Branch Education Committee shall consist of:
- 53 (1)(B)(iv)(a) one judge from an appellate court;
- 54 (1)(B)(iv)(b) one district court judge from Judicial Districts 2, 3, or 4;
- 55 (1)(B)(iv)(c) one district court judge from Judicial Districts 1, 5, 6, 7,  
56 or 8;
- 57 (1)(B)(iv)(d) one juvenile court judge;
- 58 (1)(B)(iv)(e) the education liaison of the Board of Justice Court  
59 Judges;
- 60 (1)(B)(iv)(f) one state level administrator;
- 61 (1)(B)(iv)(g) the Human Resource Management Director;
- 62 (1)(B)(iv)(h) one court executive;
- 63 (1)(B)(iv)(i) one juvenile court probation representative;
- 64 (1)(B)(iv)(j) two court clerks from different levels of court and  
65 different judicial districts;

- (1)(B)(iv)(k) one data processing manager; and
- (1)(B)(iv)(l) one adult educator from higher education.
- (1)(B)(iv)(m) The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.
- (1)(B)(v) The Court Facility Planning Committee shall consist of:
- (1)(B)(v)(a) one judge from each level of trial court;
- (1)(B)(v)(b) one appellate court judge;
- (1)(B)(v)(c) the state court administrator;
- (1)(B)(v)(d) a trial court executive; ~~and~~
- (1)(B)(v)(e) two business people with experience in the construction or financing of facilities; ~~and~~
- (1)(B)(v)(f) the court security director.
- (1)(B)(vi) The Committee on Children and Family Law shall consist of:
- (1)(B)(vi)(a) one Senator appointed by the President of the Senate;
- (1)(B)(vi)(b) one Representative appointed by the Speaker of the House;
- (1)(B)(vi)(c) the Director of the Department of Human Services or designee;
- (1)(B)(vi)(d) one attorney of the Executive Committee of the Family Law Section of the Utah State Bar;
- (1)(B)(vi)(e) one attorney with experience in abuse, neglect and dependency cases;
- (1)(B)(vi)(f) one attorney with experience representing parents in abuse, neglect and dependency cases;
- (1)(B)(vi)(g) one representative of a child advocacy organization;
- (1)(B)(vi)(h) one mediator;
- (1)(B)(vi)(i) one professional in the area of child development;
- (1)(B)(vi)(j) one representative of the community;
- (1)(B)(vi)(k) the Director of the Office of Guardian ad Litem or designee;
- (1)(B)(vi)(l) one court commissioner;

Commented [MCD1]: This is the change that is the subject of this particular project (20180806a).

- (1)(B)(vi)(m) two district court judges; and
- (1)(B)(vi)(n) two juvenile court judges.
- (1)(B)(vi)(o) One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The Committee on Judicial Outreach shall consist of:

- (1)(B)(vii)(a) one appellate court judge;
- (1)(B)(vii)(b) one district court judge;
- (1)(B)(vii)(c) one juvenile court judge;
- (1)(B)(vii)(d) one justice court judge; one state level administrator;
- (1)(B)(vii)(e) a state level judicial education representative;
- (1)(B)(vii)(f) one court executive;
- (1)(B)(vii)(g) one Utah State Bar representative;
- (1)(B)(vii)(h) one communication representative;
- (1)(B)(vii)(i) one law library representative;
- (1)(B)(vii)(j) one civic community representative; and
- (1)(B)(vii)(k) one state education representative.
- (1)(B)(vii)(l) Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.

(1)(B)(viii) The Committee on Resources for Self-represented Parties shall consist of:

- (1)(B)(viii)(a) two district court judges;
- (1)(B)(viii)(b) one juvenile court judge;
- (1)(B)(viii)(c) two justice court judges;
- (1)(B)(viii)(d) three clerks of court – one from an appellate court, one from an urban district and one from a rural district;
- (1)(B)(viii)(e) one member of the Online Court Assistance Committee;
- (1)(B)(viii)(f) one representative from the Self-Help Center;
- (1)(B)(viii)(g) one representative from the Utah State Bar;
- (1)(B)(viii)(h) two representatives from legal service organizations that serve low-income clients;



- (1)(B)(viii)(i) one private attorney experienced in providing services to self-represented parties;
- (1)(B)(viii)(j) two law school representatives;
- (1)(B)(viii)(k) the state law librarian; and
- (1)(B)(viii)(l) two community representatives.
- (1)(B)(ix) The Language Access Committee shall consist of:
- (1)(B)(ix)(a) one district court judge;
- (1)(B)(ix)(b) one juvenile court judge;
- (1)(B)(ix)(c) one justice court judge;
- (1)(B)(ix)(d) one trial court executive;
- (1)(B)(ix)(e) one court clerk;
- (1)(B)(ix)(f) one interpreter coordinator;
- (1)(B)(ix)(g) one probation officer;
- (1)(B)(ix)(h) one prosecuting attorney;
- (1)(B)(ix)(i) one defense attorney;
- (1)(B)(ix)(j) two certified interpreters;
- (1)(B)(ix)(k) one approved interpreter;
- (1)(B)(ix)(l) one expert in the field of linguistics; and
- (1)(B)(ix)(m) one American Sign Language representative.
- (1)(B)(x) The Guardian ad Litem Oversight Committee shall consist of:
- (1)(B)(x)(a) seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.
- (1)(B)(xi) The Committee on Model Utah Civil Jury Instructions shall consist of:
- (1)(B)(xi)(a) two district court judges;
- (1)(B)(xi)(b) four lawyers who primarily represent plaintiffs;
- (1)(B)(xi)(c) four lawyers who primarily represent defendants; and
- (1)(B)(xi)(d) one person skilled in linguistics or communication.
- (1)(B)(xii) The Committee on Model Utah Criminal Jury Instructions shall consist of:
- (1)(B)(xii)(a) two district court judges;
- (1)(B)(xii)(b) one justice court judge;
- (1)(B)(xii)(c) four prosecutors;
- (1)(B)(xii)(d) four defense counsel;

- (1)(B)(xii)(e) one professor of criminal law; and
- (1)(B)(xii)(f) one person skilled in linguistics or communication.
- (1)(B)(xiii) The Committee on Pretrial Release and Supervision shall consist of:
- (1)(B)(xiii)(a) two district court judges;
- (1)(B)(xiii)(b) one juvenile court judge;
- (1)(B)(xiii)(c) two justice court judges;
- (1)(B)(xiii)(d) one prosecutor;
- (1)(B)(xiii)(e) one defense attorney;
- (1)(B)(xiii)(f) one county sheriff;
- (1)(B)(xiii)(g) one representative of counties;
- (1)(B)(xiii)(h) one representative of a county pretrial services agency;
- (1)(B)(xiii)(i) one representative of the Utah Insurance Department;
- (1)(B)(xiii)(j) one representative of the Utah Commission on Criminal and Juvenile Justice;
- (1)(B)(xiii)(k) one commercial surety agent;
- (1)(B)(xiii)(l) one state senator;
- (1)(B)(xiii)(m) one state representative;
- (1)(B)(xiii)(n) one member of the Utah Indigent Defense Commission; and
- (1)(B)(xiii)(o) the court's general counsel or designee.
- (1)(B)(xiv) The Committee on Court Forms shall consist of:
- (1)(B)(xiv)(a) one district court judge;
- (1)(B)(xiv)(b) one court commissioner;
- (1)(B)(xiv)(c) one juvenile court judge;
- (1)(B)(xiv)(d) one justice court judge;
- (1)(B)(xiv)(e) one court clerk;
- (1)(B)(xiv)(f) one appellate court staff attorney;
- (1)(B)(xiv)(g) one representative from the Self-Help Center;
- (1)(B)(xiv)(h) the State Law Librarian;
- (1)(B)(xiv)(i) the Court Services Director;
- (1)(B)(xiv)(j) one member selected by the Online Court Assistance Committee;
- (1)(B)(xiv)(k) one representative from a legal service organization that serves low-income clients;

Commented [MCD2]: Out for public comment as of 20180928 (closes 20181112)

Commented [MCD3]: Out for public comment as of 20180928 (closes 20181112)

- (1)(B)(xiv)(l) one paralegal;
- (1)(B)(xiv)(m) one educator from a paralegal program or law school;
- (1)(B)(xiv)(n) one person skilled in linguistics or communication; and
- (1)(B)(xiv)(o) one representative from the Utah State Bar.

(1)(C) **Standing committee chairs.** The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

(1)(D) **Committee performance review.** At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

(1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.

(2) **Ad hoc committees.** The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.

(3) **General provisions.**

(3)(A) **Appointment process.**

(3)(A)(i) **Administrator's responsibilities.** The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:

(3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;

(3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;

(3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and

(3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.

(3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.

(3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.

(3)(C) **Expenses.** Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.

**DRAFT: 08/17/2018**

269 (3)(D) **Secretariat.** The Administrative Office shall serve as secretariat to the Council's  
270 committees.

271 *Effective May/November 1, 20\_\_*

# **TAB 12**

**Rule 4-508:**

**Guidelines for Ruling on a Motion to Waive  
Fees**

**Rule 4-508. Guidelines for Ruling on a Motion to Waive Fees.**

**Intent:**

To promote statewide consistency in deciding motions to waive fees in civil cases and in the expungement of criminal records in which the moving party is not a prisoner.

To promote statewide consistency in deciding motions to waive fees in juvenile court cases in which the moving party is not a prisoner.

Nothing in this rule should be interpreted as limiting the discretion of the judge to decide a motion to waive fees.

**Applicability:**

This rule applies to all civil and small claims cases and in the expungement of criminal records in which the moving party is not a prisoner.

This rule applies to all juvenile court cases in which the moving party is not a prisoner.

As used in this rule “fee waiver” and similar phrases include waiving the fee in full or in part, as may be ordered by the judge.

**Statement of the Rule:**

- (1) The moving party must complete a motion to waive fees and a financial affidavit approved by the ~~Board of District Court Judges or, in the juvenile court, by the Board of Juvenile Court Judges Judicial Council's Standing Committee on Court Forms.~~ If requested by the court, The the moving party must provide supporting documentation of the claims made in the affidavit. In juvenile court, the minor or a minor's parent, guardian or authorized representative may move to waive fees.
- (2) Upon the filing of a motion to waive fees and financial affidavit, the court, sheriff or any other provider of a service offered by or through a government entity shall do what is necessary and proper as promptly as if the fee had been fully paid.
- (3) A motion to waive fees may be decided without notice to the other parties, requires no response, request to submit for decision or hearing. The court will review the affidavit and make an independent determination whether the fee should be waived. The court should apply a common sense standard to the information and evaluate whether the information is complete, consistent and true. Section 78A-2-304 requires a party to pay a full or partial fee if the financial affidavit and any further questioning demonstrate the party is reasonably able to pay a fee.

**Commented [MCD1]:** This change is presently out for public comment (as of 20180928), which comment period closes 20181112. This change is project 20180606a.

**Commented [MCD2]:** This change is the new proposed amendment for this project. It is project 20181004a.

- 32 (4) In general, a party is reasonably able to pay a fee if:
- 33 (4)(A) gross monthly income exceeds 100% of the poverty guidelines updated
- 34 periodically in the Federal Register by the U.S. Department of Health and Human
- 35 Services under the authority of 42 U.S.C. 9902(2).
- 36 (4)(B) the moving party has liquid assets that can be used to pay the fee without
- 37 harming the party's financial position;
- 38 (4)(C) the moving party has credit that can be used to pay the fee without harming the
- 39 party's financial position;
- 40 (4)(D) the moving party has assets that can be liquidated or borrowed against without
- 41 harming the party's financial position;
- 42 (4)(E) expenses are less than net income;
- 43 (4)(F) Section 30-3-3 applies and the court orders another party to pay the fee of the
- 44 moving party; or
- 45 (4)(G) in the judge's discretion, the moving party is reasonably able to pay some part of
- 46 the fee.
- 47 (5) If the moving party is represented by private counsel, the motion to waive fees may be
- 48 granted in proportion to the attorney's discount of the attorney fee. The moving party's
- 49 attorney must provide an affidavit describing the fee agreement and what percentage of
- 50 the attorney's normal, full fee is represented by the discounted fee.
- 51 (6) A motion to waive fees should be ruled upon within ten days after being filed.
- 52 (6)(A) If the fee is fully waived, the court, sheriff or any other provider of a service
- 53 offered by or through a government entity shall do what is necessary and proper
- 54 as promptly as if the fee had been fully paid.
- 55 (6)(B) If the fee is not fully waived, the court, sheriff or any other provider of a service
- 56 offered by or through a government entity may require payment of the fee before
- 57 doing what is necessary and proper. If the service has already been performed,
- 58 the court, sheriff or service provider may do what is necessary and proper to
- 59 collect the fee, including dismissal of the case.
- 60 (6)(C) If the fee is not fully waived, the court shall notify the party in writing of the fee
- 61 amount, the procedure to challenge the fee: and the consequences of failing to
- 62 pay the fee.
- 63 (6)(D) If the motion is rejected because of a technical error, such as failure to complete
- 64 a form correctly or to attach supporting documentation, the court shall notify the



**DRAFT: 08/17/2018**

65 moving party, and the moving party may file a corrected motion and affidavit  
66 within 14 days after being notified of the decision.  
67 (7) In addition to any statutory remedies, an order granting a fee waiver may be reviewed at  
68 any time if the court has jurisdiction of the case. If the court determines, after waiving a  
69 fee, that the moving party is reasonably able to pay the fee, including from the proceeds of  
70 a judgment, the court may modify its previous order. The court may allocate the fee  
71 among the parties under Utah Rule of Civil Procedure 54, Utah Code Section 30-3-3, or  
72 as otherwise provided by law.

73 *Effective May/November 1, 20\_\_*

# **TAB 13**

**Rule 3-101:**

**Judicial Performance Standards**

**Rule 3-101. Judicial Performance Standards.**

**Intent:**

~~To establish standards of performance for application by the Judicial Performance Evaluation Commission.~~  
To establish standards of performance to be considered by the Judicial Council when determining whether to certify to the Judicial Performance Evaluation Commission that a justice or judge be retained.

**Applicability:**

This rule applies to all justices and judges of the courts of record and not of record.

**Statement of the Rule:**

(1) ~~Definitions.~~ Case under advisement standard.

(1)(A) "Under advisement" means ~~A case is considered to be under advisement when~~  
any instance where the entire case<sub>u</sub> or any issue in the case<sub>u</sub> has been submitted  
to the judge for final determination.

~~(1)(A)(1)(B) "Maximum exceptional cases" means . . . what?~~

(2) Case under advisement standard.

(2)(A) A justice of the Supreme Court demonstrates satisfactory performance by:

(2)(A)(i) circulating not more than an average of three principal opinions per  
calendar year more than six months after submission with no more  
than half of the maximum exceptional cases in any one calendar year.

(2)(B) A judge of the Court of Appeals demonstrates satisfactory performance by:

(2)(B)(i) circulating not more than an average of three principal opinions per  
calendar year more than six months after submission with no more  
than half of the maximum exceptional cases in any one calendar year;  
and

(2)(B)(ii) achieving a final average time to circulation of a principal opinion of  
not more than 120 days after submission.

(2)(C) A trial court judge demonstrates satisfactory performance by ~~holding:~~

(2)(C)(i) holding not more than an average of three cases per calendar year  
under advisement more than two months after submission with no

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more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(ii) holding no case under advisement more than six months after submission.

(3) **Education standard.** Satisfactory performance is established if the judge annually obtains 30 hours of judicial education, subject to the availability of in-state education programs.

(4) **Physical and mental competence standard.** Satisfactory performance is established if when inquiry is made of the judge, the response of the judge demonstrates physical and mental competence to serve in office, and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

Commented [MCD1]: "Response" to what? Nancy says there is a question posed to judges inquiring about physical and mental competence.

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AOC will pull all of that information. The Committee decided to revisit this issue at a later date.

In section (4)(F) (lines 205-207), Judge Pullen suggested that the language be changed to read, "At the request of the Council the senior judge or court commissioner challenging a non-certification decision shall meet with the Council in August." The committee agreed to that change.

A motion was made by Judge Chin to recommend to the Judicial Council that rule CJA 3-111 be published for public comment. The motion was seconded by Rob Rice and it passed unanimously.

**(4) CJA 3-101. Judicial Performance Standards.**

This came up in the last Council meeting. The Council felt that the rule was too harsh and didn't allow room for discretion of the Council and their ability to consider special circumstances. Ms. Sylvester proposed changes to the Rule's intent at lines 3-4. The language clarifies that the rule establishes standards of performance upon which the Council certifies judges for retention to JPEC.

Ms. Sylvester added paragraph 5, a good cause standard, which states, "For good cause, including excusable neglect, the Council may elect to certify a judge who does not meet all performance standards." Mr. Rice questioned whether the good cause and excusable neglect language is articulated elsewhere in the rules or whether it's just a general definition. Judge Walton suggested that there is an advantage to using similar language to that outlined in the statute requiring JPEC to provide reasoning for any deviation to the certification standards. Mr. Rice felt that "good cause" is an appropriate standard rather than just a detailed explanation for the deviation. Judge Walton noted that the "good cause" standard might be too strict because there may be circumstances in which a judge's issue doesn't rise to the level of good cause, but it was one minor issue over a short period of time that could be explained through the less strict JPEC deviation requirement.

Jaycee Skinner suggested a hybrid approach – where the court would keep the strict liability standard, either they met the criteria or they didn't, but make a finding of good cause to JPEC that overcomes the presumption. It would be helpful for JPEC to have the benefit of the court's reasoning. The court would be saying that the judge doesn't technically meet the certification requirements, but the court is, nonetheless, recommending that they be certified for the following reasons. JPEC makes the final decision about whether a judge has met the certification/performance standards, but it will now have the benefit of the Court's information. The committee expressed concern about whether the Council can certify a judge for retention who does not meet the minimum certification requirements. After a review of the statutory language and JPEC's administrative rules, the committee determined that the strict liability standard

for certification cannot be changed. The language was amended to state that the Council declines to certify the judge, but recommends retention.

The committee expressed potential timing concerns of publishing this rule for comment because it may cause confusion about the court's intent. A decision on this is time-sensitive because Chief Justice Durrant will be meeting with JPEC and it might be helpful for him to discuss the potential rule amendment. Ms. Skinner suggested that the timing is less a problem for the legislative session and is more of an issue if it's changed in the middle of a retention election.

Ms. Skinner suggested that Ms. Sylvester speak to JPEC and get their opinion before putting this out for public comment. It was decided that the committee would submit the rule draft for discussion by the Council and not recommend that it be sent out for public comment until the Council has had time to address it and Ms. Sylvester can get JPEC's feedback.

A motion was made by Judge Chin to send this to the Judicial Council for discussion. The motion was seconded by Rob Rice and it passed unanimously.

#### **(5) CJA 7-303. Truancy Referrals.**

Dawn Marie Rubio addressed a proposal to repeal rule CJA 7-303 of the Code of Judicial Administration. The rule outlines the court's process for truancy referrals made to the juvenile court. Last year during the legislative session, HB 239 eliminated the jurisdiction of the juvenile court over habitual truancy matters. As such, this rule is no longer needed and similar efforts are being made by the Rules of Juvenile Procedure Committee to repeal URJP Rule 31. The proposal to repeal CJA 7-303 has been supported and vetted through the Board of Juvenile Court Judges.

A motion was made by Rob Rice to repeal rule CJA 7-303 and recommend to the Judicial Council that this be published for public comment. Judge Chin seconded the motion and it passed unanimously.

#### **(6) Policy on Naming Courthouses.**

Ms. Sylvester reviewed the Judicial Council's discussion at its last meeting regarding a request to name the Provo Courthouse. There were no competing proposals and the Council was concerned about acting upon it and suggested that a policy regarding naming courthouses be created. Nancy drafted a proposed policy and Justice Lee provided feedback and edits. Justice Lee wanted to make it clear that we're creating this policy because of a recent request. The proposal creates a presumption that the Council won't name any of their new courthouses, except for those that are named geographically. The Council would consider requests to name newly constructed or significantly remodeled courthouses. In order to have a courthouse named after a person (living or dead), the person must have strong ties to the community and have

# **TAB 14**

**Rules 3-103, 3-104, and 3-111**

**Justice Court Presiding Judge Amendments**

**Rule 3-103. Administrative Role of Judges.****Intent:**

To establish the administrative duties and responsibilities of individual judges.

**Applicability:**

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

**Statement of the Rule:**

- (1) It is the duty and responsibility of individual judges to cooperate with judges from all levels of courts, their presiding judges, their respective Boards, and the Council in the development and implementation of court policy, goals, and rules of administration.
- (2) In courts of record, it is the duty and responsibility of individual judges to consult with the presiding judge and to encourage court employees to consult with court executives on matters of judicial administration. In courts not of record, it is the responsibility of individual judges to consult with the presiding judge and to encourage court employees to consult with the justice court administrator on matters of judicial administration.
- (3) It is the duty and responsibility of individual judges to manage their court responsibilities consistently with the administrative goals of the Council and the fair and efficient administration of justice.
- (4) It is the duty and responsibility of individual judges to give prior notice of their absence from the court for vacation or education purposes to the presiding judge, to determine when additional administrative or judicial assistance is necessary, and to convey that need in a timely manner to the presiding judge.
- (5) In multi-judge jurisdictions, individual judges shall provide recommendations and directives to the court executive and the Administrative Office through the presiding judge.

*Effective May/November 1, 20\_\_\_\_*



**Rule 3-104. Presiding Judges.****Intent:**

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

**Applicability:**

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

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

(1)(A) **Presiding judge.** The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court. The presiding judge's term of office shall be at least two years. A district, by majority vote of the judges of the court, may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the presiding officer of the Council to serve for two years.

**(1)(B) Associate presiding judge.**

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court 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).

(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 or by the court.

(1)(C) **Removal.** A presiding judge or associate presiding judge may be removed as the presiding judge or associate presiding judge by a two-thirds vote of all judges in the district. A successor presiding judge or associate presiding judge shall then be selected as provided in this rule.

**(2) Court organization.****(2)(A) Court en banc.**

- 31 (2)(A)(i) Multi-judge courts shall have regular court en banc meetings,  
32 including all judges of the court and the court executive, to discuss  
33 and decide court business. The presiding judge has the discretion to  
34 excuse the attendance of the court executive from court en banc  
35 meetings called for the purpose of discussing the performance of the  
36 court executive. In single-judge courts, the judge shall meet with the  
37 court executive to discuss and decide court business.
- 38 (2)(A)(ii) The presiding judge shall call and preside over court meetings. If  
39 neither the presiding judge nor associate presiding judge, if any, is  
40 present, the presiding judge's designee shall preside.
- 41 (2)(A)(iii) Each court shall have a minimum of four meetings each year.
- 42 (2)(A)(iv) An agenda shall be circulated among the judges in advance of the  
43 meeting with a known method on how matters may be placed on the  
44 agenda.
- 45 (2)(A)(v) In addition to regular court en banc meetings, the presiding judge or a  
46 majority of the judges may call additional meetings as necessary.
- 47 (2)(A)(vi) Minutes of each meeting shall be taken and preserved.
- 48 (2)(A)(vii) Other than judges and court executives, those attending the meeting  
49 shall be by court invitation only.
- 50 (2)(A)(viii) The issues on which judges should vote shall be left to the sound  
51 discretion and judgment of each court and the applicable sections of  
52 the Utah Constitution, statutes, and this Code.
- 53 (2)(B) Absence of presiding judge. When the presiding judge and the associate  
54 presiding judge, if any, are absent from the court, an acting presiding judge shall  
55 be appointed. The method of designating an acting presiding judge shall be at  
56 the discretion of the presiding judge. All parties that must necessarily be informed  
57 shall be notified of the judge acting as presiding judge.
- 58 (3) **Administrative responsibilities and authority of presiding judge.**
- 59 (3)(A)
- 60 (3)(A)(i) Generally. The presiding judge is charged with the responsibility for  
61 the effective operation of the court. He or she is responsible for the  
62 implementation and enforcement of statutes, rules, policies and  
63 directives of the Council as they pertain to the administration of the  
64 courts, orders of the court en banc, and supplementary rules. The

presiding judge has the authority to delegate the performance of non-judicial duties to the court executive. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

- (3)(A)(ii) Caseload. Unless the presiding judge determines it to be impractical, there is a presumption that the judicial caseload of the presiding judge shall be adjusted to provide the presiding judge sufficient time to devote to the management and administrative duties of the office. The extent of the caseload reduction shall be determined by each district.
- (3)(A)(iii) Appeals. Any judge of the judicial district may ask the Chief Justice or Judicial Council to review any administrative decision made by the presiding judge of that district.

(3)(B) **Coordination of judicial schedules.**

- (3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.
- (3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge consistent with Rule 3-103(4).

(3)(C) **Authority to appoint senior judges.**

- (3)(C)(i) The presiding judge is authorized to use senior judge coverage for up to 14 judicial days if a judicial position is vacant or if a judge is absent due to illness, accident, or disability. Before assigning a senior judge, the presiding judge will consider the priorities for requesting judicial assistance established in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule 11-201(6).
- (3)(C)(ii) The presiding judge will notify the State Court Administrator when a senior judge assignment has been made.
- (3)(C)(iii) If more than 14 judicial days of coverage will be required, the presiding judge will promptly present to the State Court Administrator a plan for meeting the needs of the court for the anticipated duration of the vacancy or absence and a budget to implement that plan. The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should

estimate the funds needed for travel by judges and for time and travel by senior judges.

(3)(C)(iv) If any part of the proposed plan is contested by the State Court Administrator, the plan will be reviewed by the Management Committee of the Judicial Council for final determination.

(3)(D) **Court committees.** The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(3)(E) **Outside agencies and the media.**

(3)(E)(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court.

(3)(E)(ii) Generally, the presiding judge or, at the discretion of the presiding judge, the court executive shall represent the court and make statements to the media on matters pertaining to the ~~total~~ court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(3)(F) **Docket management and case and judge assignments.**

(3)(F)(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(3)(F)(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(3)(F)(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the State Court Administrator, request assistance of visiting judges or other appropriate resources when needed to handle the workload of the court.

(3)(F)(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

(3)(G) **Court executives.**

(3)(G)(i) The presiding judge shall review the proposed appointment of the court executive made by the State Court Administrator and must concur in the appointment before it will be effective. The presiding judge shall obtain the approval of a majority of the judges in that jurisdiction prior to concurring in the appointment of a court executive.

(3)(G)(ii) The presiding judge for the respective court level and the state level administrator shall jointly develop an annual performance plan for the court executive.

(3)(G)(iii) Annually, the state level administrator shall consult with the presiding judge in the preparation of an evaluation of the court executive's performance for the previous year, also taking into account input from all judges in the district.

(3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the court executive, including coordination of annual leave.

(3)(G)(v) Pursuant to Council policy and the direction of the state level administrator, the court executive has the responsibility for the day-to-day supervision of the non-judicial support staff and the non-judicial administration of the court. The presiding judge, in consultation with the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the support staff and the general administration of the court including budget, facility planning, long-range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

(3)(H) **Courtrooms and facilities.** The presiding judge shall direct the assignment of courtrooms and facilities.

(3)(I) **Recordkeeping.** Consistently with Council policies, the court executive, in consultation with the presiding judge, shall:

(3)(I)(i) coordinate the compilation of management and statistical information necessary for the administration of the court;

(3)(I)(ii) establish policies and procedures and ensure that court personnel are advised and aware of these policies;

(3)(I)(iii) approve proposals for automation within the court in compliance with administrative rules.

(3)(J) **Budgets.** The court executive, in consultation with the presiding judge, shall oversee the development of the budget for the court. In contract sites, the court executive shall supervise the preparation and management of the county budget for the court on an annual basis and in accordance with the Utah Code.

(3)(K) **Judicial officers.** In the event that another judge or commissioner of the court 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:

(3)(K)(i) Meet with and explain to the judge or commissioner the reasons for the directive given or the position taken and consult with the judge or commissioner.

(3)(K)(ii) Discuss the position with other judges and reevaluate the position.

(3)(K)(iii) Present the problem to the court en banc or a committee of judges for input.

(3)(K)(iv) Require the judge or commissioner to participate in appropriate counseling, therapy, education or treatment.

(3)(K)(v) Reassign the judge or commissioner to a different location within the district or to a different case assignment.

(3)(K)(vi) Refer the problem to the Judicial Council or to the Chief Justice.

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

(3)(L) **Cases under advisement.**

(3)(L)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. The final determination occurs when the judge resolves the pending issue by announcing the decision on the record or by issuing a written decision, regardless of whether the parties are

required to subsequently submit for the judge's signature a final order memorializing the decision.

(3)(L)(ii) Once a month each judge shall submit a statement on a form to be provided by the State Court Administrator notifying the presiding judge of any cases or issues held under advisement for more than two months and the reason why the case or issue continues to be held under advisement.

(3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than two months to the appropriate state level administrator and indicate the reasons why the case or issue continues to be held under advisement.

(3)(L)(iv) If a case or issue is held under advisement for an additional 30 days, the state level administrator shall report that fact to the Council.

(3)(M) **Board of judges.** The presiding judge shall serve as a liaison between the court and the Board for the respective court level.

(3)(N) **Supervision and evaluation of court commissioners.** The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

(3)(O) **Magistrate availability.** The presiding judge in a district court shall consult with the presiding judge in the justice court of that judicial district and the justice court administrator to develop a rotation of magistrates that ensures regular availability of magistrates within the district. The rotation shall take into account each magistrate's caseload, location, and willingness to serve.

**Rule 3-111. Performance Evaluation of Active Senior Judges and Court Commissioners.****Intent:**

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

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

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

**Applicability:**

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

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

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

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

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



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

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

- (2)(A) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;
- (2)(B) attentiveness to factual and legal issues before the court;
- (2)(C) adherence to precedent and ability to clearly explain departures from precedent;
- (2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's rulings, including the effect of delay and increased litigation expense;
- (2)(E) ability to write clear judicial opinions;
- (2)(F) ability to clearly explain the legal basis for judicial opinions;
- (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the commissioner's or senior judge's court;
- (2)(H) maintenance of decorum in the courtroom;
- (2)(I) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system;
- (2)(J) preparation for hearings or oral argument;
- (2)(K) avoidance of impropriety or the appearance of impropriety;
- (2)(L) display of fairness and impartiality toward all parties;
- (2)(M) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions;
- (2)(N) management of workload;
- (2)(O) willingness to share proportionally the workload within the court or district, or regularly accepting assignments;
- (2)(P) issuance of opinions and orders without unnecessary delay; and
- (2)(Q) ability and willingness to use the court's case management systems in all cases.

(3) **Standards of performance.**

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

- (3)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the active senior judge or court commissioner during the period for which the active senior judge or court commissioner is being evaluated. The Council shall measure

satisfactory performance based on the results of the final survey conducted during a court commissioner's term of office, subject to the discretion of a court commissioner serving an abbreviated initial term not to participate in a second survey under Section (3)(A)(vi) of this rule.

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

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

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

(3)(A)(ii)(c) A court commissioner's performance is satisfactory if: (3)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and (3)(A)(ii)(c)(2) the favorable responses when divided by the total number of all responses, excluding "No Personal Knowledge" responses, is 70% or greater.

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

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

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

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

resigned under discipline shall not be a respondent in the survey.

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

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

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

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

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

(3)(B)(i) **Surveys of presiding judges and court staff regarding non-appellate senior judges.** The Council shall measure performance of active senior judges by a survey of all presiding judges and trial court executives, or in the justice courts, all presiding justice court judges and the Justice Court Administrator, of districts in which the senior judge has been assigned. The presiding judge and trial court executive will gather information for the survey from anonymous questionnaires completed by court staff on the calendars to which the senior judge is assigned and by jurors on jury trials to which the senior judge is assigned. The Administrative Office of the Courts shall

distribute survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

(3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.**

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

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

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

- (3)(C)(i)(a) no more than three cases per calendar year under advisement more than 60 days after submission; and
- (3)(C)(i)(b) no case under advisement more than 180 days after submission.

- (3)(C)(ii) A senior judge in the court of appeals demonstrates satisfactory performance by:
- (3)(C)(ii)(a) circulating no more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and
- (3)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of no more than 120 days after submission.

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

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

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

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

- (3)(G)(i) The presiding judge of the district a court commissioner serves shall prepare a performance plan for a new court commissioner within 30 days of the court commissioner's appointment. If a court commissioner serves multiple districts or court levels, the presiding judge of each district and court level shall prepare a performance

Commented [MCD1]: "Response" to what?

plan. The performance plan shall communicate the expectations set forth in paragraph (2) of this rule.

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

(4) **Judicial Council certification process.**

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

- (4)(A)(i) survey scores;
- (4)(A)(ii) judicial education records;
- (4)(A)(iii) self-declaration forms;
- (4)(A)(iv) records of formal and informal sanctions;
- (4)(A)(v) performance evaluations, if the commissioner or senior judge received an overall rating of Needs Improvement; and
- (4)(A)(vi) any information requested by the Council.

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

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

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

court commissioner or withhold decision until after meeting with the senior judge or court commissioner.

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

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

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

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

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

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

**Rule 3-111**

**DRAFT: 10/30/2018**

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

271    *Effective May/November 1, 20\_\_*



# **TAB 15**

**Rules 3-106 and 3-107:**

**Judicial Council Options on Legislative and  
Executive Matters**

**Rule 3-106. Legislative Activities.****Intent:**

To identify the Council as the principal authority for establishing and representing the position of the judiciary in legislative matters.

To identify the role of other offices and entities within the judicial branch in legislative matters.

To establish a procedure for considering legislative initiatives by the judiciary.

To establish a procedure for agencies, groups, and individuals to seek Council review of legislative initiatives.

**Applicability:**

This rule shall apply to the legislative activities of the judiciary.

**Statement of the Rule:****(1) Authority and responsibility of the council.**

(1)(A) The Judicial Council or its Liaison Committee shall be the authority for establishing and representing the position of the judiciary in legislative matters.

(1)(B) The Council shall be the principal authority for coordinating judicial participation in legislative matters.

(1)(C) The Council shall schedule time prior to the legislative session to consider those legislative items proposed for Council action by the Liaison Committee and the Boards.

(1)(D) The Council may endorse, oppose, ~~amend~~ recommend amendments to, or take no position on proposed legislative initiatives. The Council shall limit its consideration of legislative matters to those which affect the Constitutional authority, the statutory authority, the jurisdiction, the organization, or the administration of the judiciary.

**(2) Responsibility of presiding officer of council.**

(2)(A) The presiding officer shall be responsible for representing the interest of the judiciary through the presentation of "The State of the Judiciary" speech during the regular session of the legislature.

(2)(B) The presiding officer shall be responsible for overseeing the day to day legislative activities of the Court Administrator.

**(3) Authority and responsibility of liaison committee.**

(3)(A) The Liaison Committee shall meet periodically throughout the year and regularly during the legislative session to consider proposed legislative initiatives which affect the judiciary. The Liaison Committee shall recommend positions to the Council and is authorized to take positions on behalf of the Council when the exigencies of the legislative process preclude full discussion of the issues by the Council.

(3)(B) Any individual, group or agency may request that the Council consider proposed legislative initiatives by transmitting a copy of the legislation with their request to the State Court Administrator. The State Court Administrator shall submit the request to the Liaison Committee. The Liaison Committee shall review the legislative initiative, recommend whether the matter should be placed on the Council agenda, recommend whether a guest should be invited to explain the issues involved, and recommend a position to the Council.

**(4) Authority and responsibility of the boards.**

(4)(A) Boards may direct the staff of the Administrative Office to prepare legislation and may recommend that legislation to the Council. The Boards may also review legislative issues and recommend positions to the Council, but may not take public positions independent of the Council.

**(5) Authority and responsibility of the court administrator.**

(5)(A) Consistent with this Code and the policies and priorities of the Council, the Court Administrator shall act as the official spokesperson for the judiciary and is authorized to negotiate, on behalf of the Council, positions related to budget and legislative matters.

(5)(B) Under the direction of the Council, the Court Administrator is responsible for coordinating all interaction between the judiciary and the legislative branch including the following:

(5)(B)(i) scheduling meetings between the Council and the legislative branch;

(5)(B)(ii) meeting with legislators and other representatives of the legislative branch to convey the position of the judiciary; and

(5)(B)(iii) calling on individual judges to participate in legislative activities.

**Rule 3-107. Executive Branch Policy Initiatives.****Intent:**

To identify the Council or its designee as the sole authority for establishing and representing the position of the judiciary to the executive branch on policy initiatives.

To identify the role of other judicial offices and entities in executive branch policy making.

To establish a procedure for judicial consideration of executive branch policy initiatives.

To establish a procedure for agencies, groups, and individuals to seek Council review of executive branch policy initiatives.

**Applicability:**

This rule shall apply to the judiciary's involvement in executive branch policy making.

**Statement of the Rule:****(1) Authority and responsibility of the council and its liaison committee.**

(1)(A) The Council shall establish and represent the position of the judiciary to the executive branch on executive branch policy initiatives.

(1)(B) The Council may endorse, oppose, recommend amendments to, or take no position on proposed executive policy initiatives. The Council shall limit its consideration of executive action to that which affects the Constitutional authority, the statutory authority, the jurisdiction, the organization, or the administration of the judiciary.

**(2) Authority and responsibility of the boards.**

(2)(A) Boards may review proposed executive policy initiatives and recommend positions to the Council, but may not take public positions independent of the Council.

**(3) Authority and responsibility of the court administrator.**

(3)(A) Consistent with this Code and the policies and priorities of the Council, the Court Administrator shall act as the official spokesperson for the judiciary and is authorized to negotiate, on behalf of the Council, positions related to budget and other executive matters.

(3)(B) Under the direction of the Council, the Court Administrator is responsible for coordinating all interaction between the judiciary and the executive branch including the following:

- (3)(B)(i) scheduling meetings between the Council and the executive branch;
- (3)(B)(ii) meeting with representatives of the executive branch to convey the position of the judiciary;
- (3)(B)(iii) calling on individual judges to participate in executive branch activities; and
- (3)(B)(iv) receiving requests for Council consideration of executive initiatives from interested individuals, groups, or agencies.

(4) **Authority of individual judicial officers and employees.**

- (4)(A) Nothing in this rule shall be construed to prohibit individual judges, court administrators, or court executives from meeting with representatives of the executive branch on an individual basis to resolve local management or administrative issues consistently with Council policy and the provisions of this Code.

*Effective May/November 1, 20\_\_*

# **TAB 16**

**Rule 2-208:**

**Publication and Distribution of Code of Judicial  
Administration**

1 **Rule 2-208. Publication and Distribution.**

2 **Intent:**

3 To establish this Code as the official publication of all rules governing the administration of the  
4 judiciary.

5 **Applicability:**

6 This rule shall apply to the judiciary.

7 **Statement of the Rule:**

8 (1) All rules of the Council, the Boards, and the local courts, as amended, shall be published  
9 in this Code.

10 (2) The administrative office and all court executives shall, upon request:

11 (2)(A) direct any individual to the online publication of this Code on the court website;

12 and

13 (2)(B) provide electronic access to this Code during business hours, maintain a copy of

14 this Code and make it available for public inspection during business hours.

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15 *Effective May/November 1, 20\_\_*

# **TAB 17**

**Rule 3-501:**

**Insurance Benefits Upon Retirement**



**Rule 3-501. Insurance Benefits Upon Retirement.****Intent:**

To establish uniform policies regarding sick leave for justices, judges, and court commissioners and conversion of sick leave to paid up medical, dental and life insurance at the time of retirement.

**Applicability:**

This rule shall apply to all justices, judges, and court commissioners of courts of record.

**Statement of the Rule:****(1) Earned benefits.**

(1)(A) For each year of full-time employment that a justice, judge, or court commissioner uses less than four days of sick leave in a calendar year, the judge, justice, or court commissioner will be eligible for and accumulate eight months of paid up medical insurance, dental insurance, prescription drug insurance and life insurance benefits at the time of retirement. Upon retirement, the submission of an annual application and a showing that the judge, justice, or court commissioner is not otherwise covered by a comparable medical insurance policy, the judge, justice, or court commissioner shall be eligible for and receive the insurance benefits which have accrued.

(1)(B) Maternity leave and parental leave is considered sick leave for determining benefits under this rule.

(1)(C) Medical and dental insurance coverage provided will be the same as that carried by the justice, judge, or court commissioner at retirement, i.e., family, two party, single.

(2) **Automatic benefits.** Notwithstanding the provisions of paragraph (1), a justice, judge, or court commissioner who retires and who is eligible for retirement benefits at the time of retirement shall receive a maximum of five years medical insurance, dental insurance, prescription drug insurance and life insurance .

**(3) Duration of benefits.**

(3)(A) The duration of benefits shall be calculated from the effective date of the justice's, judge's or court commissioner's retirement. Earned benefits shall not

- 31 exceed seven years. Automatic benefits shall not exceed five years. Earned  
32 benefits and automatic benefits shall not exceed seven years.
- 33 (3)(B) Earned benefits and automatic benefits shall terminate when the justice, judge,  
34 or commissioner is eligible for Medicare, except that prescription drug insurance  
35 and supplemental Medicare insurance shall continue for the balance of the term  
36 of earned or automatic benefits.
- 37 (3)(C) If the spouse of the justice, judge, or court commissioner qualifies for medical  
38 insurance, prescription drug insurance or dental insurance under subsection  
39 (1)(C), such insurance shall continue for the period of earned or automatic  
40 benefits or until the spouse becomes eligible for Medicare, whichever is earlier,  
41 except that prescription drug insurance and supplemental Medicare insurance for  
42 the spouse shall continue for the balance of the term of earned or automatic  
43 benefits.
- 44 (3)(D) Benefits for dependents of the justice, judge, or court commissioner terminate  
45 when the justice, judge, or court commissioner reaches age 65.
- 46 (4) As authorized by Utah Code Section 78A-2-107(9), the Court Administrator will develop  
47 methods for recording sick leave use by justices, judges, and court commissioners and for  
48 recording sick leave conversion to paid up medical, dental and life insurance benefits.
- 49 (5) **Active Senior Judge incentive benefit.**
- 50 (5)(A) The judiciary will pay 50% of the cost of medical and dental insurance premiums  
51 for a qualifying senior judge and spouse until the qualifying senior judge is age  
52 65. The judiciary will pay 50% of the cost of supplemental Medicare insurance  
53 and prescription drugs for a qualifying senior judge and spouse if the senior  
54 judge is age 65 or older.
- 55 (5)(B) To qualify for the incentive benefit the senior judge must:
- 56 (5)(B)(i) qualify as an active senior judge pursuant to Rule 11-201;
- 57 (5)(B)(ii) have exhausted the other benefits provided for by this rule;
- 58 (5)(B)(iii) submit to the state court administrator or designee on or before July 1  
59 of each year a letter expressing an intent to participate in the incentive  
60 benefit program;
- 61 (5)(B)(iv) perform case work, subject to being called, for at least 6 days per  
62 fiscal year; and

63                   (5)(B)(v) show good cause to the Judicial Council why he or she should not be  
64                                   disqualified for the incentive benefit upon declining three times within  
65                                   any fiscal year to accept case work.

66           (5)(C) The State Retirement Office shall deduct from the active senior judge's  
67                   retirement benefit the portion of the cost payable by the active senior judge.

68   (6) This policy will be implemented subject to availability of funds.

69   *Effective May/November 1, 20\_\_*

# **TAB 18**

**Rule 3-109:**

**Ethics Advisory Committee**

**Rule 3-109. Ethics Advisory Committee.****Intent:**

To establish the Ethics Advisory Committee as a resource for judges to request advice on the interpretation and application of the Code of Judicial Conduct.

To establish a process for recording and disseminating opinions on judicial ethics.

**Applicability:**

This rule shall apply to all employees of the judicial branch of government who are subject to the Code of Judicial Conduct.

**Statement of the Rule:**

(1) The Ethics Advisory Committee is responsible for providing opinions on the interpretation and application of the Code of Judicial Conduct to specific factual situations.

(2) The Administrative Office shall provide staff support through the Office of General Counsel and shall distribute opinions in accordance with this rule.

**(3) Duties of the committee.**

(3)(A) Preparation of opinions.

(3)(A)(i) The Ethics Advisory Committee shall, in appropriate cases, prepare and publish written opinions concerning the ethical propriety of professional or personal conduct when requested to do so by the Judicial Council, the Boards of Judges, the Judicial Conduct Commission, judicial officers and employees, judges pro tempore or candidates for judicial office. The Committee may interpret statutes, rules, and case law as may be necessary to answer a request for an opinion.

(3)(A)(ii) The Committee shall respond to an inquiry into the conduct of others only if

(3)(A)(ii)(a) the inquiry is made by the Judicial Council, a Board of Judges, or the Judicial Conduct Commission; and

(3)(A)(ii)(b) the inquiry is limited to matters of general interest to the judiciary or a particular court level.

(3)(A)(iii) The Committee shall not answer requests for legal opinions or inquiries concerning conduct that has already taken place, unless it is of an ongoing nature.

(3)(B) The Committee may receive proposals from the Judicial Council, the Boards of Judges, the Judicial Conduct Commission, and judicial officers and employees or initiate its own proposals for necessary or advisable changes in the Code of Judicial Conduct and shall submit appropriate recommendations to the Supreme Court for consideration.

**(4) Submission of requests.**

(4)(A) Requests for advisory opinions shall be in writing addressed to the Chair of the Committee, through General Counsel, and shall include the following:

(4)(A)(i) A brief statement of the contemplated conduct.

(4)(A)(ii) Reference to the relevant section(s) of the Code of Judicial Conduct.

(4)(A)(iii) Citation to any relevant ethics opinions or other authority, if known.

(4)(B) The request for an opinion and the identity of the requesting party is confidential unless waived in writing by the requesting party.

**(5) Consideration of requests.**

(5)(A) As used in these rules, the term "informal opinion" refers to an opinion that has been prepared and released by the Committee. The term "formal opinion" refers to an opinion that has been considered and released by the Judicial Council. "Formal opinions" will usually be reserved for situations of substantial and general interest to the public or the judiciary.

(5)(B) Upon receipt of a request for an advisory opinion, General Counsel shall research the issue and prepare a preliminary recommendation for the Committee's consideration. The opinion request, preliminary recommendation and supporting authorities shall be distributed to the Committee members within 21 days of receipt of the request.

(5)(C) The Committee members shall review the request and recommendation and submit comments to General Counsel within 14 days of their receipt of the request and preliminary recommendation.

(5)(D) General Counsel shall review the comments submitted by the Committee members and, within 14 days of receipt of the comments, prepare a responsive informal opinion in writing which shall be distributed to the Committee members for approval.

(5)(E) A majority vote of the Committee members is required for issuance of an opinion and may be obtained by electronic means or, upon the request of a Committee member, the Chair may continue the vote until the next meeting of the Committee.

(5)(F) Informal opinions shall be released to the requesting party within 60 days of receipt of the request unless the chair determines that additional time is needed for the committee members to deliberate and finalize the opinion or the matter is referred to the Judicial Council.

(5)(G) Upon the written request of a party and for good cause, the Committee may issue a response to a request within a shorter period of time than provided for in these rules. The requesting party has the responsibility of establishing that the request is of an emergency nature and requires an abbreviated response time.

(6) **Referral to Judicial Council.** Upon an affirmative vote of a majority of the Committee members, a motion of the requesting party, or a motion by the Judicial Council, an opinion request and Committee recommendation shall be referred to the Judicial Council for consideration. Within 60 days of receipt of the referral, the Council shall consider the request and recommendation and take the following action:

(6)(A) Approve or modify the opinion and direct the Committee to release the opinion, as initially drafted or modified, to the requesting party as an informal opinion of the Committee, or

(6)(B) Approve or modify the opinion and release the opinion as a formal opinion of the Council.

(7) **Reconsideration of opinions.**

(7)(A) Within 14 days of the issuance of an opinion, the requesting party or a Committee member may request reconsideration. Within ~~30~~ 28 days of the issuance of the opinion, a Board of Judges may request reconsideration if the Board was not the requesting party and the opinion addresses matters of general interest to the judiciary or to a particular court level. Requests for reconsideration of informal opinions must be made in the first instance to the Committee and then to the Judicial Council. Requests for reconsideration of formal opinions shall be made to the Judicial Council. Requests for reconsideration shall be in writing addressed to the Chair of the Committee or the Presiding Officer of the Council, through General Counsel, and shall include the following:

(7)(A)(i) A brief statement explaining the reasons for reconsideration.

**Commented [MCD1]:** Is this originally set at 30 days to provide a full month so that the Board will have had a chance to meet (they meet monthly)? 28 days may cut that short if the board meets the day before an opinion is issued . . .

(7)(A)(ii) Identification of any new facts or authorities not previously submitted or considered.

(7)(B) The Committee or Council shall consider the request as soon as practicable and may take the following action:

(7)(B)(i) Approve the request for reconsideration and modify the opinion;

(7)(B)(ii) Approve the request for reconsideration and approve the opinion as originally published; or

(7)(B)(iii) Deny the request.

(7)(C) The Committee shall be kept advised of the status of any request to reconsider an opinion.

(8) **Recusal.** Circumstances that 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 a chair pro tempore. If a member is recused, the chair may appoint a judge of the same court and if applicable the same geographic division or a lawyer to assist the Committee with its deliberations. Preference should be given to former members of the Committee.

(9) **Publication.** All opinions of the Committee and the Judicial Council shall be numbered upon issuance, and published in a format approved by the Judicial Council. No published opinion rendered by the Committee or the Council shall identify the requesting party whose conduct is the subject of the opinion unless confidentiality of the requesting party is waived in writing.

(10) **Legal effect.** Compliance with an informal opinion shall be considered evidence of good faith compliance with the Code of Judicial Conduct. Formal opinions shall constitute a binding interpretation of the Code of Judicial Conduct.

*Effective May/November 1, 20\_\_*