

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

2nd Floor West Conference Room (N213), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
March 1, 2019 – 12:00 p.m. to 2:00 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Pullan
12:05	HR 480 – Employee Exercise Policy - <i>Explanation of policy limits on exercise time scheduling flexibility</i> - <i>Presentation of other agency policies</i>	Discussion / Action	Tab 2	Nancy Sylvester
12:20	Court Commissioner Conduct Committee - <i>Rule 3-201.02 (and Rule 3-201 and 2-211, as necessary) – review new draft language prepared as a result of direction from December 2018 meeting</i>	Discussion / Action	Tab 3	Nancy Sylvester
12:50	HR 500.11.2 – Intern Work Conflicts - <i>Discuss revisions outlined by Judicial Council</i> - <i>Add language for supervising judge to consent to the secondary employment?</i> - <i>Define "conflict of interest" and "appearance of conflict of interest"</i> - <i>Standardization of intern on-boarding process through HR</i> - <i>Review how other state / federal courts handle this issue</i>	Discussion / Action	Tab 4	Nancy Sylvester
1:25	CJA 3-101 / 3-104 / 3-111 – Judicial Performance Standards	Discussion / Action	Tab 5	Nancy Sylvester
1:45	Rule 3-111 - Performance evaluation of senior judges and court commissioners. - <i>AMEND - conforms reference of "60 days" to "two months" as used in other similar rules.</i>	Discussion / Action	Tab 6	Nancy Sylvester
1:50	CJA 2-207 Annual Review – Chapter 4 Rules - <i>2019 Assignments to Committee Members and time frame for action</i>	Discussion / Action	Tab 7	Nancy Sylvester
2:00	Adjourn			

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

UPCOMING MEETING SCHEDULE:

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

April 5, 2019

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

June 7, 2019

August 2, 2019

September 6, 2019

October 4, 2019

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

December 6, 2019

TAB 1

Minutes – January 4th, 2019

NOTES: Because Policy & Planning didn't meet on February 1st, 2019, there are no minutes from that meeting. In addition, the minutes from the January 4th meeting did not have an opportunity to be approved.

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

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
January 4, 2019 – 12:00 p.m. to 2:00 p.m.

DRAFT

MEMBERS:

PRESENT EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Kevin Allen <i>* via phone starting at 12:45 p.m. until end of meeting</i>	•	
Judge Augustus Chin	•	
Judge Ryan Evershed <i>* via phone for entire meeting</i>	•	
Judge John Walton	•	
Mr. Rob Rice	•	

GUESTS:

Justice Himonas
Rick Schwermer
Nancy Sylvester
Rob Parkes
Brent Johnson

STAFF:

Michael Drechsel
Minhvan Brimhall

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the members to the meeting. Judge Allen and Judge Evershed participated via telephone conferencing. The committee considered the minutes from the December 7, 2018 meeting. The committee identified one area of correction directing that the words “If such equipment is” be removed from the draft. With no additional changes, Mr. Rice motioned to approve the amended draft minutes. Judge Walton seconded the motion. The committee voted and the motion was passed unanimously.

(2) HR 590 (500.11.2) – INTERNS AND WORK CONFLICTS:

The committee continued its consideration of a proposed new HR policy dealing with work conflicts and interns. This matter had previously been discussed by the committee at its December 7, 2018 meeting.

Justice Himonas was present at the meeting and presented his view of the proposal for this new HR policy regarding court interns and work conflicts. He reported that the Supreme Court has had a number of interns over the last few years who have had simultaneous employment with law firms. The court is exploring ways to avoid putting the interns into the position of having to choose between getting a job and getting educational experience through the court internship. Justice Himonas and the committee reviewed the draft HR policy included in the committee materials packet, which included some revisions proposed by the committee as a result of the December 2018 committee meeting discussion. Judge Pullan asked if there had been a lack of interns applying because of this problem. Justice Himonas stated that it hasn’t been a problem because the policy hasn’t been observed. Justice Himonas noted that the Supreme Court isn’t concerned about this creating an appearance of conflict if the intern is recused from matters.

Judge Pullan directed the conversation toward line 16 of the proposed policy, regarding drafting the policy to address conflict at both the “case” level and the “issue” level (where an issue may be raised in a non-conflict case that is similar to an issue raised in a conflict case . . . should the intern be recused on both). Justice

Himonas questioned such a prohibition for an intern, when law clerks don't have that same limitation. He explained that a law clerk might be hired after spending a year or two at a firm prior to coming to the court. During that time, the clerk might have been working on a particular issue, yet when they come to the court as a law clerk, they may end up working on that same type of issue, but not on any case that involves the firm. This is true even if they have an intent to go back to that same firm after clerking. Justice Himonas pointed out that the same is true for judges. Judge Pullan raised the hypothetical of two firms raising identical issues in the court, where an intern works at one of the two firms. The intern could work on that issue on a case unrelated to the intern's firm work, and then go to the intern's firm and report to the firm that a Justice feels a particular way about that issue relevant to the firm's case. Justice Himonas stated that an intern would not be able to do that. The intern would be recused on the separate case. And they couldn't do that regardless because any communication would be strictly off limits. The court makes it clear to interns that they take that information "to the grave" and if they violate that it would cost them their license. Justice Himonas reiterated that it would be odd to say a law clerk or a judge could do it, but an intern couldn't. Judge Pullan asked whether the "or issue" language should even remain in the proposed policy. Justice Himonas believed a heightened standard for an intern, that we don't have for anyone else, would be odd. Judge Walton noted that there isn't a policy for law clerks because they would be governed by the Rules of Professional Conduct. Judge Pullan noted that interns aren't. Justice Himonas pointed out that there would still be nothing to prevent the law clerk from working on a similar issue that they may have worked on as an attorney. Justice Himonas noted the language appears to be a solution in search of a problem and that this hasn't been something the court has ever had issue with. Justice Himonas thanked the committee and excused himself from the meeting.

The committee then continued its deliberations of the proposed rule. Judge Walton noted that he appreciates the committee's concerns, but also understands Justice Himonas' point about not have a rule that goes broader than it does with the law clerks. Mr. Rice wondered if "the issue" might be limited to one that would implicate a violation of the Rules of Professional Conduct. In other words, if an intern were working on an issue that wouldn't be a conflict for the lawyers at the firm, then it would be okay. The committee discussed the scope of the rule. Judge Pullan noted that he is worried about the perception of a policy like this because it creates an exception to the general prohibition against conflicts or the appearance of conflicts. The committee discussed the valid benefits to being an intern or law clerk, getting the internal experience of working at the courts, and that gaining that experience is one purpose for both working at the courts AND being hired to a firm afterward.

The committee further discussed whether it was a concern that the Rules of Professional Conduct do not apply to interns. What prohibits them from disclosing confidential information? Rob Parkes noted that the way this policy is presently drafted, it would apply to any interns who work at the courts (by implication noting that many of those will never be subject to the Rules of Professional Conduct or any restriction other than what is explicitly stated in the HR policies). Mr. Rice wondered if there were a way to make interns subject to the Rules of Professional Conduct via this HR policy. The committee discussed what the consequence would be for a violation (lose their internship?). Any remedy would only be able to be applied by the court.

The conversation turned to whether this is about actual conflicts or the appearance of conflict. The standard for the court is not only actual conflict, but even the appearance of conflict. Rob Parkes suggested that perhaps the policy could be narrowed to only address judicial interns. Judge Walton proposed the language "interns working under the supervision of a judge." Nancy Sylvester proposed the language "interns working in the same capacity as a law clerk." The committee agreed that the policy ought to be one that, after implementation, will actually be followed.

The committee invited General Counsel Brent Johnson to join the meeting. Judge Pullan presented the topic of discussion, explained the draft, summarized the various positions that had been presented, and sought Mr. Johnson's input on the "the issue" issue. Mr. Johnson noted that it is difficult even to know what "an issue" is. Mr. Johnson noted that it is the judge's obligation to ensure that the ethical standards are observed (including by interns working for the judge). The committee discussed what rules would guide the analysis of the policy

(Rules of Professional Conduct, Code of Judicial Conduct, etc.). Mr. Johnson noted that those rules weren't drafted with "the issue" issue in mind (they operate at "the case" level).

Judge Pullan circled back around to the idea of the perception of the conflict of interest, even where there is no actual conflict. Rick Schwermer noted that this policy only addresses the courts' obligations. What might be necessary is for the Rules of Professional Conduct to make clear that it is unethical for a lawyer or law firm to not screen an intern in the same way that a lawyer would be screen under similar circumstances. Judge Allen then joined the meeting via telephone. The committee continued to discuss the need to more clearly spell out the onus on the law firms involved with these interns. Mr. Rice noted that it may not solve the perception issue for the courts, but it does help address underlying issues. Some members of the committee continued to be concerned about potential ethical issues. Judge Walton suggested that the Judicial Council might be able to weigh in on the discussion, but it was determined by the group that taking an actual proposal to the Judicial Council would be the better course of action. The committee discussed whether a court policy should be formulated with hopes that the Rules of Professional Conduct might also be amended. The group agreed that any policy adopted by the courts should be sufficient on its own as a solid policy, without that sufficiency being dependent on action by some other body external to the courts.

The committee then turned to working on the actual language of the draft. The group agreed to include "the issue" issue, with an understanding that the concerns would be explained to the Judicial Council. Judge Walton proposed that "the issue" might be refined by including "a substantial issue" or "a materially related issue." Mr. Johnson suggested "an issue material to a case." Mr. Rice proposed "an issue material to the outcome of a case a firm is handling." These, and several other suggestions, were discussed by the committee. Mr. Johnson then left the meeting. Ultimately, after significant discussion, the committee settled on "material issue" as the language for the policy. The committee also added "immediately upon discovering the conflict" to clarify that notification is required when the intern knows there is a conflict.

The committee then discussed whether the draft should not include that the policy is an exception to when there is an actual conflict. The committee agreed that if there is an actual conflict, then there is no exception; the intern will be screened. So this policy really only speaks to an exception for circumstances where there is an "appearance" of conflict. The committee looked to the other policies cited in the draft rule ("500.8" and "500.11"). The committee reviewed the secondary employment policy (500.11) and the conflict of interest policy (500.7) located in HR500. In making that review, the committee determined that this policy fit more naturally within secondary employment (HR500.11) as opposed to being a stand-alone policy numbered HR590, as the working drafts have been, or being tied to the conflict of interest policy (500.7).

Mr. Rice then suggested that the matter was ready for motion, with recommendation that the appropriate body consider a similar amendment to the Rules of Professional Conduct (as discussed earlier in the meeting). With those proposals, Judge Walton made a motion that the proposed policy, as amended in the meeting, be advanced to the Judicial Council for further consideration. Mr. Rice seconded the motion. The motion passed unanimously.

(3) RULE 7-302 – SOCIAL STUDIES:

Having spent so much time on the previous matter, the committee then took items from the agenda out of order so that priorities could be addressed.

Mr. Drechsel presented to the committee that Rule 7-302 was brought to this committee for review by Assistant Juvenile Court Administrator, Dennis Moxon. The proposed revisions modernize the rule, bringing the terminology and requirements up-to-date with current practice.

The most significant change to CJA Rule 7-302 is replacing the term “social study” with “court report.” In addition, the proposed revisions outline additional subjects that should be addressed in each court report, including victim impact information, substance use history, risk level (as determined by a validated assessment), risk-level-specific recommendations, and sentencing (disposition) guidelines. Finally, the revision clarifies that court reports are stored electronically in the minor’s file. These revisions have all been approved by the Board of Juvenile Court Judges.

Judge Evershed noted that these changes (as outlined in the revised rule) have been in practice for some time and agrees that the amended changes are appropriate and necessary. After the committee was provided an opportunity to discuss the matter, Judge Evershed motioned to approve and accept the changes as proposed. Judge Chin seconded the motion. The motion was unanimously approved.

(4) RULES BACK FROM PUBLIC COMMENT:

Mr. Drechsel noted that there were a number of rules back from public comment, as enumerated in the agenda. Of the rules that had been published for comment, one only had received any comments (the certification checklist that had been published with CJA 4-409).

- Certification checklist published with CJA 4-409 – Council Approval of Problem Solving Court:
One comment was received related to the checklist. That comment addressed three concerns with three items in the checklist.

First, concern was expressed in how the rule is written regarding the chain of custody in “Required Rule #28.” The committee considered this comment and then elected to not recommend any change to the checklist.

Second, the comment encouraged the court to avoid pejorative language in “Required Rule #31” using the word “clean” to indicate that a drug test result shows that the tested sample was negative for any forbidden substance (in other words, that the test result showed that the person was compliant with the drug-testing requirements). The committee agreed with this feedback and instructed Mr. Drechsel to amend the language to use non-pejorative language.

Finally, the comment expressed a concern over the size / number of participants on a drug court calendar (related to “Presumed Rule #36”). The committee discussed this comment and the reasons why the comment was made. Ultimately, the committee determined that no modification would be recommended to the Judicial Council.

With those changes, Judge Walton motioned to recommend that CJA 4-409 and the certification checklist as published (with the single change to “Required Rule #31”) be recommended to the Judicial Council for final approval. Judge Chin seconded the motion. The motion passed unanimously.

The committee then reviewed the remaining rules that were back from public comment.

- CJA 1-205 – Standing and Ad Hoc Committees.
No comments received.
- CJA 2-208 – Publication and Distribution
No comments received.
- CJA 3-103 – Administrative Role of Judges
CJA 3-104 – Presiding Judges

CJA 3-111 – Performance Evaluation of Senior Judges and Court Commissioners

No comments received.

- CJA 3-106 – Legislative Activities

CJA 3-107 – Executive Branch Policy Initiatives

No comments received.

- CJA 3-413 – Judicial Library Resources

No comments received.

- CJA 3-501 – Insurance Benefits Upon Retirement

No comments received.

- CJA 4-202.09 – Miscellaneous

No comments received.

- CJA 4-403 – Electronic Signature and Signature Stamp Use

No comments received. Mr. Drechsel informed the committee that the proposed amendment in this rule related to “domestic relations injunctions may not be ready for adoption at this time because it ties to URCP 109 which may not yet have been adopted. The committee instructed Mr. Drechsel to hold that specific amendment until URCP 109 is officially adopted.

- CJA 4-405 – Juror and Witness Fees and Expenses

No comments received.

- CJA 4-508 – Guidelines for Ruling on a Motion to Waive Fees

No comments received.

With no further discussions, Judge Walton motioned to move all rules, with the exception of that one portion of CJA 4-403, to the Judicial Council for final approval. Judge Chin seconded the motion. The motion was approved unanimously.

(5) HR 480 – EMPLOYEE EXERCISE POLICY:

HR 480 is a proposed court employee exercise policy that has been presented by the TCEs. The policy would allow approved employees the opportunity to break from their work day schedule for a 30-minute workout, up to three days a week. The policy has been reviewed and discussed several times as to the merits and context of the policy. Rob Parkes reported that the TCEs and others who had reviewed the proposed policy wanted to keep the exercise time tied to the lunch hour, whenever that lunch hour happens for a particular employee.

Due to time constraint of this meeting, this item was tabled and will be discussed at the February meeting.

(6) COURT COMMISSIONER CONDUCT COMMITTEE:

Due to time constraint of this meeting, this item was tabled and will be discussed at the February meeting.

(7) ADJOURN

With no further items for discussion, Judge Chin motioned to adjourn the meeting. Mr. Rice seconded the motion. The motion was approved unanimously. The meeting adjourned at 1:57 PM. The next meeting is scheduled for February 1, 2019, in the 2nd Floor Board Room (N231) at 12:00 noon.

TAB 2

HR 480 – Employee Exercise Policy

NOTES: This was last briefly discussed at the committee’s January 4th meeting. Here are the minutes from that meeting:

HR 480 is a proposed court employee exercise policy that has been presented by the TCEs. The policy would allow approved employees the opportunity to break from their work day schedule for a 30-minute workout, up to three days a week. The policy has been reviewed and discussed several times as to the merits and context of the policy. Rob Parkes reported that the TCEs and others who had reviewed the proposed policy wanted to keep the exercise time tied to the lunch hour, whenever that lunch hour happens for a particular employee. Due to time constraint of this meeting, this item was tabled and will be discussed at the February meeting.

The materials below this tab include the policies of a number of other agencies with similar exercise policies. Some of these policies have been in effect since the 1980’s. These policies find their origin in a Utah Administrative Rule ([Rule 477-8-3](#)) that was created to allow employee exercise policies in the executive branch.

Several provisions are highlighted in the various policies. These provisions relate to whether exercise that occurs during compensated time is subject to Workers’ Compensation and whether the exercise time should be contiguous to the lunch hour. Any mention of Workers’ Compensation was removed from the courts’ draft of the policy. This was because if an injury were to occur, there is a process in place for making such determinations; any pronouncement in the policy would not be outcome determinative. The TCEs have consistently requested that the courts’ policy keep the exercise time contiguous to the lunch hour (whenever that lunch hour is actually used).

Staff contacted the State Division of Risk Management back in October 2018. DRM noted that many other agencies have similar policies that have been working well. After reviewing a copy of the attached draft, DRM believed it would be permissible to proceed.

EXERCISE POLICY 480 (Draft)

PURPOSE

The purpose of this policy is to promote the general physical and emotional well being of Court employees by establishing an opportunity for employees to participate in an exercise program which will:

- A. Improve the overall health and well-being of employees;
- B. Encourage a personal commitment among employees to adopt healthy activities as a permanent lifestyle;
- C. Help reduce stress and the risk of cardiovascular disease factors in employees;
- D. Improve productivity in the workplace, which will benefit both the Court and the employees;
- E. Promote employee job satisfaction, and
- F. Attract and retain quality employees.

SCOPE

This policy establishes guidelines and procedures for an employee interested in starting or maintaining an exercise program.

This policy applies to all court employees.

POLICY AND PROCEDURE

I. General

I.1 Full-time employees are eligible for the option of using 30 compensated minutes a day for up to three days per week during their scheduled work hours to participate in an exercise program.

I.1.1 Employees working a 4/10 work schedule have the option of 30 compensated minutes a day for up to two days per week.

I.1.2 Employees working a 4/9 and a 4 work schedule have the option of 30 compensated minutes a day for up to two days per week.

I.1.3 Part time employees working 30 hours per week have the option of 30 compensated minutes a day for up to two days per week.

I.1.4 Part time employees working 20 hours per week have the option of 30 compensated minutes for one day a week.

I.2 This time is for an appropriate exercise program promoting physical fitness and is not intended to provide extra time for personal matters other than physical fitness exercise that consists of 30 consecutive minutes of cardiovascular, strength training, or conditioning.

I.3 Employees, with the approval of their supervisor, may use the 30 minutes in conjunction with their scheduled lunch hour.

I.4 Supervisors may not authorize employees to use the 30 minute period at the start of the workday to delay arrival, nor at the end of the workday to allow early departure.

1.5 Exercise time is not cumulative (that is, exercise time not used during the week cannot be carried over into any subsequent day or week).

1.6 Exercise time should not result in the accrual of excess hours.

2. Guidelines

2.1 Participation in the exercise program is neither an employee right nor a guaranteed benefit.

2.2 Exercise time must be pre-approved by the employee's immediate supervisor to ensure that normal operations will be maintained.

2.3 Authorization to participate in this program may be revoked if the provisions of the program are violated or if it interferes with the employee's ability to accomplish work assignments in a timely and accurate manner.

2.4 Employees are encouraged to consult with their personal physician to ensure they are physically capable of participating in this exercise program.

2.5 Employees participating in this program do so at their own risk. The Courts are not responsible for any and all injuries, illnesses, and other consequences suffered by the employee while participating in this program.

2.6 Authorization to participate in this program shall be revoked if the provisions of this policy are violated. This includes repeated violation of the basic intent of the program which is to adopt a regular program of exercise to enhance and improve physical conditioning. Policy violations may result in disciplinary action.

2.7 Authorization to participate in this program shall be revoked if the employee is subject to disciplinary action or placed on a Performance Improvement Plan (PIP), but may be reauthorized after successful completion of the PIP.

3. Procedures

3.1 An employee requests approval from the supervisor to participate in this program.

3.2 An employee approved to participate in this program completes the "Utah Courts Employee Fitness Agreement" and secures the signature of the supervisor.

3.3 An employee approved for participation in this program records exercise time as hours worked in ESS.

**UTAH COURTS
EMPLOYEE FITNESS AGREEMENT**

In accordance with Exercise Policy 480 the employee listed below agrees to comply with the policy and participate in an appropriate exercise program promoting physical fitness that is not intended to provide extra time for personal matters other than physical fitness exercise that consists of 30 consecutive minutes of cardiovascular, strength training, or conditioning.

Employee Name (please print) _____ **District** _____

The following time schedule will be observed:

Day(s) of the week: _____

Time(s): _____

Note: any modifications to the schedule stated above must be coordinated with and approved by your supervisor.

Employee Signature

Date

Supervisor Signature

Date

POLICIES FROM OTHER AGENCIES



Subject: EXERCISE AND HEALTH ACTIVITY

Date: June 13, 2014

Ref: Governor, State of Utah Memorandum dated 30 August 1993

Purpose:

The beneficial effects of regular exercise and other health related activities such as routine checkups and participation in health fairs is well documented. Such activities can be a significant factor in preventing disease, lowering stress, improving one's mental state and outlook on life as well as improving the general quality of life. In the job setting this equates to greater productivity and reduced absenteeism. Therefore, this policy is established to encourage participation in activities that promote a healthy lifestyle by employees within the Department of Administrative Services.

Policy:

1. The Department of Administrative Services encourages all employees to engage in a *regular program* of aerobic exercise and health improvement. Aerobic exercise is defined as follows:
 - a. Raising the heart and breathing rates
 - b. At least 25 to 30 continuous minutes of exercise
 - c. Exercise that increases the heart rate by 60 to 75 percent of its average maximum rate.
2. DAS employees may participate in an approved program of compensated exercise release time. Compensated exercise release time for employees with 4 -10 schedules shall be limited to 30 minutes a day for a maximum of two days per week. Compensated release time for employees with 5 - 8 schedules shall be limited to 30 minutes a day for a maximum of three days per week. Exceptions may be authorized by the division director should special circumstances warrant such action. The justification for granting the exception must be entered into Utah Performance Management (UPM). **Employees may not enter into exercise agreements that shorten their work day by allowing them to come into work late or leave work early.** Exercise agreements are subject to the following guidelines:
 - a. The anticipated program must include aerobic exercise as defined above
 - b. Employees are encouraged to seek medical advice regarding the type and vigor of their proposed exercise program. Exercise programs such as working out in a gym, structured aerobics, walking, jogging, or bicycling are examples of the types of exercise which qualify for approval
 - c. An agreement for exercise release time shall be documented by the employee and the employee's immediate supervisor in the Utah Performance Management (UPM) system. The exercise agreement must be renewed annually each June
 - d. The employee's immediate supervisor shall be responsible for obtaining approval for the agreement from the employee's manager and division director or designee prior to



implementing the exercise agreement

- e. Participation in this program should normally be accomplished as an extension of the normal lunch hour. Exceptions can be granted on a case-by-case basis to allow an employee to extend their morning or afternoon break to accomplish their exercise program. Exercise done before or after the work day is not authorized in this policy. Injuries incurred outside the timelines defined in this policy will not be considered a work related injury for purposes of workers compensation benefits
 - f. Exercise time is not cumulative. Time not used during the week cannot be carried over into another week
 - g. Participating employees shall maintain an exercise log indicating the date, time and type of exercise they engaged in during their exercise time. This information will be provided to their supervisor upon request
 - h. Authorization to participate in this program may be revoked if the provisions of this program are violated, including repeated violation of the basic intent of the program which is to adopt a regular program of exercise to enhance and improve physical conditioning
 - i. Authorization to participate in this program will be revoked if it interferes with an employee's ability to accomplish work assignments in a timely and accurate manner
 - j. Authorization to participate in this program will be revoked if the employee is placed on a corrective action plan, but may be reauthorized after successful completion of the corrective action plan
- 3. Only full-time employees with benefits are authorized to participate in this program.
 - 4. To ensure the department does not incur overtime costs unnecessarily, participation in this program will be suspended on weeks when an employee is working overtime.
 - 5. Exercise release time will be recorded as regular work time on time sheets. In the case of any disputes, the employee's exercise log will be used to document how much time was taken for an exercise program.
 - 6. Employees assume all risks associated with participating in the department's exercise program.
 - 7. Employees are urged to attend other health improvement activities including health assessment workshops such as Healthy Utah, stress management, smoking cessation seminars, and weight control programs. Division directors are encouraged to provide flexible scheduling and opportunities for employees to attend such programs. Employees may be authorized up to three hours release time annually for *Healthy Utah* assessments and workshops.



DEPARTMENT OF ADMINISTRATIVE SERVICES
INTERNAL POLICIES AND PROCEDURES

130 Exercise and Health Activity

Effective: June 13, 2014

Revised: April 11, 2018

References: Governor, State of Utah Memorandum dated 30 August 1993

Purpose:

The beneficial effects of regular exercise and other health related activities such as routine checkups and participation in health fairs is well documented. Such activities can be a significant factor in preventing disease, lowering stress, improving one's mental state and outlook on life as well as improving the general quality of life. In the job setting this equates to greater productivity and reduced absenteeism. Therefore, this policy is established to encourage participation in activities that promote a healthy lifestyle by employees within the Department of Administrative Services.

Policy:

1. The Department of Administrative services encourages all employees to engage in a *regular program* of physical exercise and health improvement of at least 30 minutes of continuous physical exercise per session.
2. DAS employees may participate in an approved program of compensated exercise release time. Approval for exercise time must be documented and acknowledged annually each June with DAS Form F130A, *Exercise and Health Activity Application*, a copy of which should be kept in the employee's Utah Performance Management (UPM) plan. Exercise agreements are subject to the following guidelines:
 - a. Compensated exercise release time for employees with four ten-hour schedules shall be limited to 30 minutes a day for a maximum of two days per week; Compensated release time for employees with five eight-hour schedules shall be limited to 30 minutes a day for maximum of three days per week;
 - b. The release time shall take place immediately adjacent to the employee's lunch period. Exceptions of this must be authorized by the division director should special circumstances warrant such action. The justification for granting the exception must be entered into the UPM;
 - c. The anticipated program must include physical exercise.
 - d. Employees are encouraged to seek medical advice regarding the type and vigor of their proposed exercise prior to the beginning of a program. Working out in a gym, structured aerobics, walking, jogging, or bicycling are examples of the types of exercise programs which qualify for approval;



- e. The employee's immediate supervisor shall be responsible for obtaining approval for the agreement from the employee's manager and division director or designee prior to implementing the exercise agreement;
 - f. Exercise release time is not cumulative. Time not used during the week cannot be carried over into another week;
 - g. Authorization to participate in this program shall be revoked if the provisions of this policy are violated, including repeated violation of the basic intent of the program which is to adopt a regular program of exercise to enhance and improve physical conditioning. Policy violations may result in disciplinary action;
 - h. Authorization to participate in this program shall be revoked if it interferes with an employee's ability to accomplish work assignments in a timely and accurate manner;
 - i. Authorization to participate in this program shall be revoked if the employee is placed on a Performance Improvement Plan (PIP), but may be reauthorized after successful completion of the PIP.
- 3. Only full-time employees with benefits are authorized to participate in this program.
 - 4. To ensure the department does not incur overtime costs unnecessarily, participation in this program will be suspended on weeks when an employee is working overtime.
 - 5. Exercise release time will be recorded as regular work time on time sheets.
 - 6. Employees assume all risks associated with participating in the department's exercise program. **Injuries incurred during the release time will not be considered a work related injury for purposes of workers' compensation benefits.**
 - 7. Employees are urged to attend other health improvement activities including health assessment workshops such as *Healthy Utah*, stress management, smoking cessation seminars, and weight control programs. Division directors are encouraged to provide flexible scheduling and opportunities for employees to attend such programs. Employees may be authorized up to three hours release time annually for *Healthy Utah* assessments and workshops.

DEPARTMENT OF AGRICULTURE AND FOOD 02.07 EXERCISE RELEASE TIME	
EFFECTIVE DATE: November 1, 2000	REVISION DATE: July 1, 2004
SUMMARY: Provides employees with release time during the day for physical activity.	

Aerobic exercise and other health improvement activities can be a significant factor in preventing disease and improving one's outlook on life. Some studies document that increased energy generated by aerobic exercise increases employee productivity. Therefore, in order to encourage employee participation in exercise and other health enhancing activities, the following policy is issued.

The UDAF encourages all of its employees to engage in a regular program of exercise and health improvement (unless existing medical conditions make such a program inadvisable).

With the written approval of the Division Director, employees who wish to exercise during the work day may be granted thirty minutes per day, for a maximum of three times per week (Employee Request for Exercise Time form). The time for this activity shall be determined by agreement between the employee and their immediate supervisor so as not to interfere with normal work requirements. Supervisors are encouraged to schedule working hours so that any employee who wishes to take an extended lunch hour or otherwise participate in an exercise program may do so. Examples of exercise programs that qualify for approval are structured aerobics, walking, jogging, running and bicycling. Work requirements may occasionally supersede this release from work time.

Supervisors may revoke the exercise program if the time allowed per week is abused or if the time is used for a purpose other than exercising.

DOH EXERCISE AND HEALTH ACTIVITY POLICY

A. PURPOSE:

Aerobic exercise and other health improvement activities can be a significant factor in preventing disease and improving one's outlook on life. Some studies document that increased energy generated by aerobic exercise increases employee productivity. Therefore, in order to encourage employee participation in exercise and other health enhancing activities, the following policy is issued.

B. POLICY:

1. The Utah Department of Health encourages all of its employees to engage in a regular program of exercise and health improvement (unless existing medical conditions make such a program inadvisable).
2. With the written approval of Bureau/Unit Director, employees who wish to exercise during the work day may be granted thirty minutes per day, for a maximum of three times per week (See Attachment #1 - Employee Request for Exercise Time). The time for this activity shall be determined by agreement between the employee and his/her immediate supervisor so as not to interfere with normal work requirements. Supervisors are encouraged, where possible, to schedule working hours such that any employee who wishes to participate in an exercise program may do so.
3. Exercise programs, such as structured aerobics, walking, jogging, swimming, and bicycling, and weight control programs, are examples of programs that qualify for approval. However, other appropriate exercise programs may be approved.
4. Supervisors are encouraged to contact the Healthy Utah Program if there is some concern regarding the appropriateness of activities for which approval is requested.
5. The immediate supervisor must approve schedule modifications or variations to the original Employee Request for Exercise and Health Activity Release Time.
6. Renewal or continuation of approval to participate in exercise and/or health activities subject to this policy shall be reviewed

annually, preferably during the employee's performance review.

7. Employees on formal corrective or disciplinary action are not eligible to participate in this program.
8. Employees needing information on exercise safety, personal exercise prescriptions and assessments are encouraged to call Healthy Utah at (801) 538-6261.

Attachment 1

**State of Utah
Department of Health**

**Employee Request For Exercise
And Health Activity Time**

In accordance with Department of Health Exercise and Health Activity Time Policy, I request permission to participate in the following health improvement program:

Health Activity	Location
_____	_____

The following time schedule will be observed:

Day(s) of the Week	_____	_____	_____
Times	_____	_____	_____

All terms of the Department policy on Exercise and Health Activity Time will be followed.

_____ Employee Signature	_____ Date
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_____ Print Name	_____ Employee ID #
---------------------	------------------------

*Approved: _____ Immediate Supervisor	_____ Date
--	---------------

*Approved: _____ Bureau/Unit Director	_____ Date
--	---------------

* Approval is an endorsement of policy intent and does not warrant or guarantee freedom from accident or injury.

cc: Personnel File

DEPARTMENT OF HUMAN SERVICES POLICY AND PROCEDURES		
Reference: 02-01	Effective Date: December 15, 1988 Revision Date: March 15, 2018	Page 1 of 2
SUBJECT: EXERCISE POLICY		
<p>RATIONALE: The purpose of this policy is to promote the general physical and emotional well being of the Department's employees by establishing an opportunity for employees to participate in a physical fitness exercise program which will:</p> <ol style="list-style-type: none"> Improve the overall physical health and well-being of employees Encourage a personal commitment among employees to adopt healthy activities as a permanent lifestyle Help reduce stress and the risk of cardiovascular disease factors in employees Improve productivity in the workplace, which will benefit both the Department and the employees Promote employee job satisfaction, and Attract and retain quality employees. 		

POLICIES

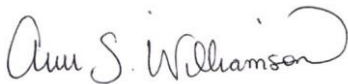
- The Department offers eligible employees the option of using 30 compensated minutes per day on scheduled work days, during scheduled work hours for up to three days per week to participate in this physical fitness exercise program.
- Only full time employees receiving benefits and in good performance standing are eligible to participate in an exercise program under this policy.
- Participation in the exercise program is neither an employee right nor a guaranteed benefit.
- Exercise time must be pre-approved by the employee's immediate supervisor to ensure that normal Department operations will be maintained. This time is expressly for any appropriate physical fitness or aerobic exercise (strengthens heart and lungs accomplished by raising heart and breathing rates). It is not intended in any way to provide extra time for personal matters other than physical fitness exercise that consists of 30 consecutive minutes.
- Approval to participate in this exercise program shall be documented in the Utah Performance Management system.
- Employees, with the approval of their supervisor, may use the 30 minutes in conjunction with their lunch and/or break time. 2011 version of the policy included an additional paragraph which has been removed in this more modern version of the policy: "Supervisors may not authorize employees to use the 30 minute period at the start of the workday to delay arrival nor at the end of the workday, thus allowing them to leave early."
- Authorization to participate in this program may be revoked if the provisions of the program are violated or if it interferes with the employee's ability to accomplish work assignments.
- Exercise time is not cumulative (that is, unused exercise time not used during the week cannot be carried over into any subsequent day or week).
- To ensure the Department does not incur unnecessary overtime costs, participation in this program shall be suspended on weeks when an employee is required to work overtime.

DEPARTMENT OF HUMAN SERVICES POLICY AND PROCEDURES		
Reference: 02-01	Effective Date: December 15, 1988 Revision Date: March 15, 2018	Page 2 of 2
SUBJECT: EXERCISE POLICY		

- J. Workload demands may cause this program to be suspended either for a specific period of time or indefinitely.
- K. Employees participating in this program do so at their own risk. The Department is not responsible for any and all injuries, illnesses, and other consequences suffered by the employee while participating in this program.
- L. Injuries or illnesses occurring to employees during exercise time may be submitted to the Workers' Compensation Fund for a determination of coverage as an on-the-job injury.
- M. Employees are encouraged to consult with their personal physician to ensure they are physically capable of participating in this exercise program.
- N. Exercise during work time that is a bona fide job requirement is not subject to this policy.

PROCEDURES

- A. An employee requests approval from the supervisor to participate in this program. Supervisors may grant approval if normal operations are maintained, there are no safety concerns and customers are adequately served. Supervisors may approve fewer than three days based on the impact to the services provided for the specific area and/or the performance of the employee.
- B. An employee approved to participate in this program completes the "Department of Human Services Employee Fitness Agreement" and secures the signature of the supervisor.
- C. The supervisor will document the approval to participate in this exercise program in the Utah Performance Management system.
- D. An employee approved for participation in this program records exercise time as hours worked on the State of Utah Bi-Weekly electronic or paper time sheet.



Ann Silverberg Williamson, Executive Director
Department of Human Services

DATE March 15, 2018

DEPARTMENT OF HUMAN SERVICES
Employee Fitness Agreement

THIS AGREEMENT is made and entered into by and between the Department of Human Services (hereinafter "Department"), and _____(hereinafter "Employee").

WHEREAS, the Department has established an Exercise Policy emphasizing exercise for the benefit of its employees, and

WHEREAS, the Employee has voluntarily decided to participate in a physical fitness exercise program,

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

Employee agrees to participate in an exercise activity up to three times a week, for a period not less than one year beginning the day this form is signed. This time is expressly for any appropriate physical fitness or aerobic exercise (strengthens heart and lungs accomplished by raising heart and breathing rates). It is not intended in any way to provide extra time for personal matters other than physical fitness exercise that consists of 30 consecutive minutes. The days and times in which the undersigned employee participates in aerobic or physical fitness is approved by his/her supervisor in advance. The 2011 version of this policy contained a table outlining the days, time, and "exercise activity" the employee would be engaging in.

Participation in the exercise program is neither an employee right nor a guaranteed benefit. The supervisor may approve temporary or permanent changes to the exercise schedule agreement as needed.

1. Department will allow Employee a maximum of 30 minutes of exercise release time per day during up to three times a week to engage in an exercise program. The 30 minutes must be taken during the employee's scheduled work hours if pre-approved by the supervisor. The agreed upon time for the exercise activity shall be a fixed schedule and shall not change unless approved by the supervisor. The agreed upon schedule will not interfere with normal work requirements nor will participation in this program be allowed on weeks when an employee is required to work overtime.
2. If the Employee is unable to continue with the said exercise program due to injury, illness, or other reason agreed to by the supervisor, Employee may terminate this agreement at any time by submitting a written statement to his/her immediate supervisor.
4. Employee's immediate supervisor may also terminate this agreement at any time for any reason by notifying Employee in writing.

Dated this _____ day of _____, 20_____.

Supervisor

Employee



State of Utah

GARY R. HERBERT

Governor

GREG BELL

Lieutenant Governor

NEAL T. GOOCH

Insurance Commissioner

Insurance Department

INSURANCE DEPARTMENT EXERCISE POLICY

Background:

The Insurance Department recognizes that health promotion programs may increase employee morale, decrease absenteeism, lower medical utilization rate and, most important, increase our employees' chances of living healthy and productive lives.

Policy:

Division Supervisors may allow their employees one and one half hours per week exercise time within the following guidelines:

- 1.) Time off is expressly for exercise time. It may be used for any appropriate physical fitness promoting exercise.
- 2.) **Exercise time is allowed only between the hours of 11:00 a.m. and 2:30 p.m.** It must be divided into three, one half hour segments over three days each week. It is not cumulative and cannot be carried forward.
- 3.) A written exercise plan must be submitted and approved by the division Supervisor before exercise time is taken. At a minimum, the plan must identify the days and times the exercise time is requested, the reason for the exercise, and what the employee intends to accomplish. The employee must immediately notify the Division Supervisor if the plan is voluntarily modified or discontinued.
- 4.) Exercise time must be used consistently from week to week or the approval will automatically terminate. The Department recognizes that some scheduled exercise will be missed as a result of work related assignments and appointments.

This policy is intended to promote good health which should result **in increased productivity and better quality of life for all employees. It is not intended in any way to provide extra time for personal matters or other than physical fitness promotion. It is hoped that the employees will commit themselves to a regular program of fitness and health to include the cessation of smoking, or other practices injurious to health.**

Effective date: 11/19/2012

Neal T. Gooch, Commissioner

I have reviewed the Insurance Department Exercise Policy with my supervisor and I agree to abide by the guidelines of the policy as written.

Date: _____

Name: _____

PHYSICAL FITNESS

154.1 PURPOSE AND SCOPE

To establish the Department of Public Safety's policy regarding a voluntary physical fitness program for employees.

The Department recognizes the benefits of an employee attaining and maintaining good physical condition. Therefore, the Department encourages its employees to be involved in a personal physical fitness program. Employees should see their personal physician to ensure they are physically capable of participating in a physical fitness program.

154.2 GENERAL PROVISIONS

- (a) **Non-sworn full-time** employees may use **30 minutes** of work time per day, three days each week for exercise.
- (b) **Non-sworn part-time** employees may use **30 minutes** of work time per day, one day each week for exercise.
- (c) **Sworn** employees may use **60 minutes** of work time per day, three days each week OR **45 minutes** per day four days a week for exercise.
- (d) The physical fitness time must be time an employee is actually engaged in physical activity.
 1. The exercise time authorized by this policy is a privilege granted by management and is not a right conferred upon an employee.
 2. Employees must coordinate this activity with their immediate supervisor and submit a written plan outlining the employee's participation in the physical fitness program. This plan must be mutually agreed upon and approved by the immediate supervisor.
 3. The written plan shall be submitted and approved on an **"Employee Request for Exercise Time"** form ([click to open form](#)) prior to participating in this physical fitness program. The plan must contain, at a minimum, the following information:
 - (a) Type of physical activity;
 - (b) Time the activity will be conducted in conjunction with the employee's regularly scheduled shift; and
 - (c) How the employee will document the activity.
 4. The use of exercise time granted is to be used on each of the authorized days and may not be accumulated and taken in a lump sum. If an employee fails to exercise on one of the authorized days each week, they may not carry the unused time forward for use on another day.

Utah Department of Public Safety

Utah Dept of Public Safety Policy Manual

PHYSICAL FITNESS

5. Employee exercise periods authorized by this policy must not interfere with normal office functions or the organization's mission. Supervisors are encouraged to work cooperatively with employees in the scheduling of exercise times and should attempt to schedule this activity at a time that works well for the employee and has the least negative impact on the work environment. Sworn employees shall properly document physical activity in a daily activity log.
6. Employees who claim physical fitness time authorized under this policy and do not exercise during that time, will have their exercise privilege revoked by their supervisor, and may be subject to discipline.
7. Sworn members of the Department utilizing this exercise program privilege are required to participate in annual physical fitness evaluation testing.
8. Employees are encouraged to participate in an annual health assessment to help employees reach their fitness goals. This assessment can be completed through a family physician or the Healthy Utah program through PEHP insurance. Web link: <https://www.pehp.org/healthyutah>.

154.2.1 USE OF PHYSICAL FITNESS TIME FOR PHYSICAL THERAPY

- (a) Any employee functioning in a Temporary Transitional Assignment may be authorized to use the physical fitness hours allowed though this policy for physical therapy or rehab.
- (b) An employee engaged in physical therapy for a Workers Compensation Claim may be authorized physical fitness time as prescribed by a medical professional when the employee receives authorization from their chain of command prior to the physical therapy taking place.
- (c) Supervisors shall consult with Human Resource to ensure compliance with State Rules.
- (d) Any physical therapy or rehab that exceeds the authorized hours outlined in this policy shall take place on the employee's own time.

Document Information

Effective Date: August 27, 2008
Submitted By: Larene Wyss
Approved By: Michael Hussey
Section/Group: Human Resources

Categories

- [2000 - HR Policies](#)

Exercise Program

Document Revised: June 2, 2014

Document Description:

This policy and procedure is intended to encourage the development and maintenance of healthy lifestyles.

DTS POLICY 2000-0010

Document History

Next Review: June 2019
Reviewed Date: June 2018
Reviewed By: Cassandra Hart, DTS-HR
Authority: UCA 63F-1-106

1.0 Purpose

This policy and procedure is intended to encourage the development and maintenance of healthy lifestyles.

1.1 Background

The Department of Technology Services recognizes that worksite health promotion programs can increase employee morale, decrease absenteeism, lower medical utilization rates, and, most importantly, increase an employee's chances of living a healthy and productive life.

1.2 Scope

Full-time benefits-eligible employees of the Department of Technology Services (DTS) are eligible to participate in this program.

1.3 Exceptions

Employees on formal corrective or disciplinary action are not eligible to participate in this program.

2.0 Policy

DTS offers eligible employees the option of using a maximum of 30 minutes a day, three times weekly during their scheduled work hours, to participate in an exercise program. Participating employees, with the approval of their Supervisor, shall use the 30 minutes in conjunction with a lunch period which shall consist of a minimum of 30 minutes and a maximum of 60 minutes. Supervisors shall not authorize employees to use the 30-minute period at the start of the workday to delay arrival, nor at the end of the workday, thus allowing them to leave early.

2.1

Exercise time must be pre-approved by the employee's immediate Supervisor to ensure that normal department operations will be maintained. Authorization to participate in this program may be revoked if the provisions of the program are violated or if the program interferes with the employee's ability to complete work assignments.

2.2

This time is expressly for exercise and may be used for any appropriate physical fitness promoting exercise. It is not intended in any way to provide extra time for personal matters other than physical fitness exercise that consists of 30 consecutive minutes.

2.3

Exercise time is not cumulative (i.e., time not used during the week cannot be carried over into the next week, nor can an employee use more than 30 minutes on a given day).

2.4

Exercise time may not result in the accrual of Excess hours.

3.0 Procedure

3.1

An employee shall request permission from his or her Supervisor to participate in this program.

3.2

The supervisor and the employee approved to participate in this program shall complete an agreement in Utah Performance Management (UPM). Said agreement will be reviewed annually.

3.3

Exercise time under this program shall be recorded as administrative leave on an employee's timesheet.

Post Updated: August 27, 2018

Posted On: February 12, 2016

Physical Fitness

Effective: December 6, 1991

UDOT 05-74

Revised: February 9, 2015

Purpose

To define the policy of the Utah Department of Transportation (Department) regarding a voluntary physical fitness program for its employees.

Policy

The Department encourages its employees to participate in an appropriately prescribed physical fitness program. The Department may grant up to 90 minutes each workweek for an employee to participate in an exercise program to assist employees in this pursuit. An employee's participation in this program is not an implied right. The following will apply:

- A. Employees are encouraged to see their personal physician to ensure they are physically capable of participating in a physical fitness program.
- B. Employees must submit an approved Exercise Agreement Form (Form ADM-74) to the Region Administration group or Comptroller's Service Center prior to starting the program.
- C. Employees participating in the program may report compensated exercise time up to three days per week for 30 minutes each day, or up to two days per week for 45 minutes each day.
- D. Participation in this program will be suspended for FLSA non-exempt employees on weeks when the employee has more than 40 compensated hours, and for FLSA exempt employees on pay periods when the employee has more than 80 compensated hours.
- E. Exercise time is not cumulative. Exercise time not used cannot be saved or accumulated for later use.
- F. Employees on a formal corrective or disciplinary action process may not utilize the physical fitness program.
- G. Exercise time must be reported by using Activity 7G99.
- H. Employees assume all risks associated with participating in the Department's program. **Injuries incurred during compensated exercise time will not be considered work-related injuries for purposes of workers compensation benefits.**
- I. Exercise time may only be used during the employee's regularly scheduled workday.

- J. The Exercise Agreement form must be reviewed and renewed each fiscal year.

Utilization of the privileges granted by this policy will not interfere with normal work functions. Leaders may schedule working hours so that any employee who wishes to join an exercise program may do so where possible.

Background

This policy is in support of employees maintaining a healthy lifestyle consistent with Healthy Utah. The Department encourages employees to utilize Healthy Utah's resources, including seminars, health challenges, wellness programs, and annual testing sessions.

Rule R477-8-3 permits agencies to allow compensated release-time exercise for up to three days per week for 30 minutes, and requires participating agencies to maintain a written policy regarding exercise time.

Procedures

Physical Fitness

UDOT 05-74.1

Responsibility: Employee

Actions

1. Obtain approval from supervisor to participate in an exercise program during working hours. Approval must be given by use of the Department Exercise Agreement Form (Form ADM-74).

Responsibility: Immediate Supervisor

2. Approve or deny Form ADM-74.
3. Upload approved Form ADM-74 to Utah Performance Management system (UPM) as an attachment within the employee's current annual performance plan.
4. Send approved Form ADM-74 to the payroll support group (Region Administration group or Comptroller's Service Center).

Responsibility: Region Administration group, Comptroller's Service Center

5. Maintain original Form ADM-74 in payroll files until the end of the fiscal year.

Responsibility: Employee

6. Abide by all provisions of policy, including accurate time reporting using Activity 7G99.

Responsibility: Immediate Supervisor

7. Suspend participation in the program on weeks when the employee will have more than 40 compensated hours (if FLSA non-exempt) or on pay periods when the employee will have more than 80 compensated hours (if FLSA exempt).

Responsibility: Payroll accountants

8. Review payroll data and ensure that a valid Form ADM-74 is on file for employees who report exercise time, a maximum of 90 minutes per week of exercise time is reported, and that participation in the program has been suspended for FLSA non-exempt employees with over 40 compensated hours in the week and for FLSA exempt employees with over 80 compensated hours in the pay period.

Responsibility: Immediate Supervisor, Region or Group Leader

9. Revoke or suspend participation in the program if it is being abused, if it interferes with normal work functions, if it is not occurring during normal working hours, or if the employee is not using it for exercise.

Responsibility: Employee, supervisor

10. Repeat process at the start of each new fiscal year.

TAB 3

CJA 3-201.02

Court Commissioner Conduct Committee

NOTES: A new draft of Rule 3-201.02 is included in these materials. It was prepared as the result of instruction from this committee at the December 7, 2018 meeting. It was prepared in coordination with the Chair of the Court Commissioner Conduct Committee (“the CCCC”). The CCCC did not weigh in on the draft because the CCCC has not been organized in a number of years due to a lack of need. As a result, it was determined that the CCCC is not in a position to assess the value of these proposed changes.

The draft has been sent to all court commissioners and presiding judges of districts with court commissioners for input. Staff will provide to the committee at the meeting any feedback received.

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 is established to:

(1)(A)(i) receive, review, and investigate any complaint filed against a court commissioner;

(1)(A)(ii) conduct any hearing related to a complaint; and

(1)(A)(iii) make recommendations to the Council, the presiding judge, or both regarding sanctions or removal of the commissioner, pursuant to CJA 3-201, where the committee finds misconduct by a preponderance of the evidence. For purposes of this rule, "misconduct" means:

(1)(A)(iii)(a) action that constitutes willful misconduct in office;

(1)(A)(iii)(b) final conviction of a crime punishable as a felony under state or federal law;

(1)(A)(iii)(c) willful and persistent failure to perform commissioner duties; or

(1)(A)(iii)(d) conduct that is prejudicial to the administration of justice which brings the quasi-judicial office into disrepute.

~~(1)(A)(1)(B)~~ The ~~Court Commissioner Conduct C~~committee shall consist of the following members:

~~(1)(A)(i)(1)(B)(i)~~ as chair, the Court of Appeals member of the Ethics Advisory Committee, who shall serve as chair of the committee;

~~(1)(A)(ii)(1)(B)(ii)~~ two presiding judges from judicial districts with a court commissioner, which presiding judges shall be from districts other than the district the commissioner primarily serves;

Commented [MCD1]: This definition of "misconduct" is borrowed from the Judicial Conduct Commission statute (Utah Code § 78A-11-105).

~~(1)(A)(iii)~~(1)(B)(iii) the immediate past Bar Commissioner ~~member of~~ the Judicial Council; and

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

~~(1)(B)(1)(C)~~ Circumstances ~~which that would~~ require recusal of a judge shall require recusal of a committee member from participation in committee action.

(1)(C)(i) If the chair is recused, a majority of the remaining members shall select from among themselves a chair pro tempore.

(1)(C)(ii) If a presiding judge is recused, the chair shall temporarily appoint a presiding judge of another judicial district with a commissioner.

(1)(C)(iii) If the immediate past Bar Commissioner ~~member of~~ the Judicial Council is recused ~~or otherwise unable to serve~~, the chair shall temporarily appoint another past Bar Commissioner ~~member of~~ the Judicial Council.

(1)(C)(iv) If the chair of the Supreme Court Advisory Committee on Rules of Professional Conduct is recused ~~or otherwise unable to serve~~, the chair shall temporarily appoint another member of the Supreme Court Advisory Committee on Rules of Professional Conduct.

(1)(D) Three members of the committee constitute a quorum. Any action of a majority of the quorum constitutes the action of the committee. The chair shall vote only as necessary to break a tie vote. The committee shall be organized and meet only as often as necessary to resolve a complaint. Committee members may attend meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

(2) Complaint Submission and Investigation.

(2)(A) A person who has a complaint against a commissioner shall deliver a copy of the complaint to the committee chair.

(2)(B) Each complaint shall be in writing and shall contain:

(2)(B)(i) the complainant's name;

(2)(B)(ii) the complainant's preferred contact information;

(2)(B)(iii) the name of the involved commissioner; and

(2)(B)(iv) a description of the commissioner's actions in sufficient detail to inform the committee of the nature and date of the conduct.

- 64 (2)(C) All proceedings and materials related to a complaint shall be kept confidential.
65 The following individuals shall have access to the complaint, any preliminary
66 investigation report, any full investigation report, any final decision or
67 recommendation from the committee, and the hearing conducted in regard to the
68 complaint, as follows:
69 (2)(C)(i) the committee members;
70 (2)(C)(ii) the commissioner, if a full investigation is conducted;
71 (2)(C)(iii) the presiding judge of the district the court commissioner primarily
72 serves, if a full investigation is conducted;
73 (2)(C)(iv) the Presiding Officer of the Council, upon request or in connection
74 with the Judicial Council's authority and obligations under CJA Rules
75 2-211 or 3-201; and
76 (2)(C)(v) any other person upon approval of the committee or the Presiding
77 Officer of the Council.
- 78 (2)(D) Upon receiving a complaint, the chair shall make an initial review to determine if
79 the allegations raise any issue that would be appropriately addressed by the
80 committee. If a complaint should be addressed by another entity or individual,
81 the chair shall inform the complainant in writing, directing the complainant to the
82 appropriate entity or individual.
- 83 (2)(E) The chair, or a staff member designated by the chair, shall conduct a preliminary
84 investigation of the complaint. If the complaint is not sufficiently clear, the
85 investigator may request additional written information from the complainant.
86 (2)(E)(i) Upon completion of the preliminary investigation, the investigator shall
87 prepare a report. The report shall recommend a full investigation if
88 there is reasonable cause to support a finding of misconduct. In all
89 other cases, the report shall recommend that the complaint be
90 dismissed.
91 (2)(E)(ii) The investigator's report and recommendations shall be delivered to
92 the committee members for review. After review, a quorum shall vote
93 regarding whether the matter shall be the subject of a full
94 investigation. Any complaint not authorized for full investigation shall
95 be dismissed. The chair shall notify the complainant of the dismissal.
- 96 (2)(F) Within 10 days after a full investigation is authorized by the committee, the chair
97 shall notify the commissioner and the presiding judge of the district the

commissioner primarily serves that a full investigation has been authorized. The notice shall:

(2)(F)(i) inform the commissioner of the allegations;

(2)(F)(ii) invite the commissioner to respond to the allegations in writing within 20 days; and

(2)(F)(iii) include a copy of the complaint, the preliminary investigation report and recommendations, and any other information considered by the committee in determining whether to authorize a full investigation.

(2)(G) After the full investigation is completed, the committee shall review all relevant information to determine whether, upon reasonable cause to support a finding of misconduct, the matter should proceed to a hearing. Any matter that does not proceed to a hearing shall be dismissed. The chair shall notify the complainant, the commissioner, and the presiding judge of the dismissal.

~~(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.~~

~~(4)(3)~~ Hearings of the Court Commissioner Conduct Committee.

(3)(A) 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.

~~(4)(A)(3)(B)~~ At any time before final decision by the committee, the commissioner may waive the hearing, admit some or all of the allegations in the complaint, and enter into a stipulation with the committee regarding its findings and recommendations.

~~(4)(B)(3)(C)~~ Within 30 days after the hearing, the committee shall make written findings concerning the merits of the allegations in the complaint and provide a copy of the findings to the complainant, the ~~court~~ commissioner, and the presiding judges of the courts the commissioner serves.

(3)(D) If the committee finds ~~the complaint to have merit~~ misconduct by a preponderance of the evidence, the committee shall prepare written recommendations to the Council and the presiding judges that include proposed sanctions to be imposed under CJA Rule 3-201(6). ~~The committee shall dismiss any complaint found to be without merit. All other complaints shall be dismissed.~~

~~(4)(C)(3)(E)~~ At the conclusion of the committee's work, a copy of the complete file shall be delivered to the State Court Administrator, or designee.

~~(5)(4)~~ Council Review.

~~(5)(A)(4)(A)~~ **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.

~~(5)(B)(4)(B)~~ **Complaints with a committee hearing.**

(5)(B)(i)(4)(B)(i) Upon request, ~~T~~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.

(4)(B)(ii) ~~T~~Within 30 days of the committee's findings and recommendations being delivered to the Council, the complainant, ~~the~~ commissioner, or presiding judges of the districts the commissioner serves shall file any objections to the committee's findings in writing with the Council.

(5)(B)(ii)(4)(B)(iii) No person is entitled to attend the Council meeting at which the complaint, findings, or recommendations ~~is~~ are reviewed.

171 Effective May/November 1, 20__

TAB 4

HR 500.11.2 – Intern Work Conflicts

NOTES: On January 4th, 2019, the committee recommended the attached draft of this policy to the Judicial Council for further consideration. On January 28th, 2019, the Judicial Council considered the proposed draft. At that meeting, the following issues were identified:

- The policy should make clear that the supervising judge should know, and consent to, the intern's secondary employment.

- The policy should define what constitutes a "conflict of interest" and the "appearance of conflict of interest."

- There should be a formal process for on-boarding interns to ensure each intern understands attorney ethics and judicial ethics. That on-boarding process should also be used to clearly communicate this policy to each intern, with a signed agreement to abide by the HR policies (including this policy).

- The Judicial Council wanted to better understand how to other states or federal courts handle this very issue. Are policies like this prevalent? How has this same issue been resolved elsewhere? See "Code of Conduct for Judicial Employees" (attached).

- The Judicial Council wanted to better understand how frequent this policy will be at issue with internships. If the policy will be rarely implicated, should the policy be created in the first place?

At the conclusion of the Judicial Council meeting, the Council instructed that this draft be taken back to committee for further work.

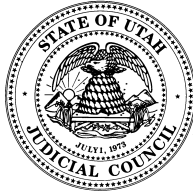
1 **Code of Personal Conduct 500 – Secondary Employment 500.11.2**

2
3 11.2 Other employment and volunteer activities must not conflict with the interests of the courts
4 the agency or the State of Utah or create the appearance of a conflict of interest.

5
6 11.2.1 As a limited exception to 11.2, an intern or extern working under the supervision
7 of a justice or a judge may engage in other employment and volunteer activities that
8 could create the appearance of a conflict of interest. This limited exception does not
9 apply to any actual conflict of interest, including but not limited to the following:

10
11 11.2.1.1 If an intern or extern has worked or is working on a case or material
12 issue currently before the court in the intern's or extern's other employment or
13 volunteer work, the intern or extern, immediately upon discovering the conflict,
14 shall notify the court and the court shall screen the intern or extern from the case
15 or material issue.

16
17 11.2.1.2 If an intern or extern has worked or volunteered for, or is currently
18 working or volunteering for, a law firm or entity that has appeared or is appearing
19 before the court, the intern or extern, immediately upon discovering the conflict,
20 shall notify the court, and the court shall screen the intern or extern from any
21 cases involving that law firm or entity.



Administrative Office of the Courts

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

Hon. Mary T. Noonan
Interim State Court Administrator

Ray Wahl
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council
FROM: Michael C. Drechsel, Associate General Counsel - AOC
DATE: Thursday, January 17, 2019
RE: HR 500.11.2 - Intern Work Conflicts

The Utah State Courts Personnel Policies and Procedures contains a "Code of Personal Conduct" (section 500), which applies to court employees, including interns and externs. One of the topics addressed by the Code of Personal Conduct is "Secondary Employment" (section 500.11). Currently, that section states that "[o]ther employment and volunteer activities must not conflict with the interests of the agency or the State of Utah"¹ (500.11.2) and "[a]n employee may engage in secondary employment or volunteer activity that does not conflict with the interests of the court or create the appearance of a conflict of interest . . ." (500.11.4).

Policy & Planning was presented with a proposed HR policy revision that would create a limited exception to these general principles for an intern or extern working under the supervision of a justice or a judge. The limited exception would not permit secondary employment that creates any actual conflict of interest, but would permit secondary employment that could create the *appearance* of a conflict of interest. In essence, some interns are put in the difficult situation of having to choose between interning for the court or working at a law firm. This proposed revision to the HR policies is an attempt to provide a way for interns to be able to both intern for the court and work for a law firm simultaneously.

The proposed policy continues to prohibit any actual conflicts of interest. If an intern has worked or is working on a case before the court as part of the intern's secondary

¹ As part of the proposed revision to this policy, Policy & Planning is also recommending that the terms "the agency or the State of Utah" be changed to "the courts." Policy & Planning was not able to determine how the existing language came to be included in the courts' policies and procedures in the first place.

employment, the intern would be screened from the case. Similarly, if the intern has worked or is working for a firm appearing before the court, the intern would be screened from those matters. This is not new and has been the existing practice for intern conflicts.

As Policy & Planning reviewed this proposed policy, the committee was concerned that case-level screening may not be sufficient. The committee proposes that in addition to case-level screening, an intern also be subject to issue-level screening, where the issue is a material issue. In other words, screening of the intern would be required where a material issue is raised in a non-conflict case that is similar to a material issue raised in a conflict case. The committee believes this is an appropriate restriction due to the simultaneous nature of an intern's involvement with both a law firm and the court. This dual status places an intern in a unique position that creates an increased potential for the appearance of conflict of interest. Unlike attorneys (including law clerks working for the court), interns are not subject to the Rules of Professional Conduct. There is no existing mechanism in place to sanction violations of conflict rules. As a result, a stringent policy appears to be warranted. In an effort to create a policy that allows intern flexibility and honors the integrity of the court, Policy & Planning recommends that the policy include a requirement for screening at both the case level and the issue level.

In addition to this policy revision, Policy & Planning has requested that the Advisory Committee on the Rules of Professional Conduct to explore recommending a corollary rule requiring the lawyers working at the firms or entities employing an intern to screen the intern and not encourage or permit the intern to disclose confidential information obtained while interning for the court.

Whether or not a rule change is recommended by that advisory committee does not affect Policy & Planning's proposal to the Judicial Council regarding the revisions to HR 500.11. While the committee hopes that a corollary amendment can be made to the Rules of Professional Conduct, Policy & Planning believes that the courts should enact a policy to address the situation so that it is clear when it is permissible for interns to engage in secondary employment that could create the appearance of conflict of interest.

Guide to Judiciary Policy

Vol 2: Ethics and Judicial Conduct
Pt A: Codes of Conduct

Available online at:

<https://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct/code-conduct-judicial-employees>

Ch 3: Code of Conduct for Judicial Employees

§ 310 Overview

§ 310.10 Scope

§ 310.20 History

§ 310.30 Definitions

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§ 320 Text of the Code

Canon 1: A Judicial Employee Should Uphold the Integrity and Independence of the Judiciary and of the Judicial Employee's Office

Canon 2: A Judicial Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities

Canon 3: A Judicial Employee Should Adhere to Appropriate Standards in Performing the Duties of the Office

Canon 4: In Engaging in Outside Activities, a Judicial Employee Should Avoid the Risk of Conflict with Official Duties, Should Avoid the Appearance of Impropriety, and Should Comply with Disclosure Requirements

Canon 5: A Judicial Employee Should Refrain from Inappropriate Political Activity

§ 310 Overview

§ 310.10 Scope

- (a) This Code of Conduct applies to all employees of the judicial branch, including interns, externs, and other volunteer court employees, except it does not apply to Justices; judges; and employees of the United States Supreme Court, the Administrative Office of the United States Courts, the Federal Judicial Center, the Sentencing Commission, and federal public defender offices.

- (b) Justices and employees of the Supreme Court are subject to standards established by the Justices of that Court. Judges are subject to the Code of Conduct for United States Judges (Guide, Vol 2A, Ch 2). Employees of the AO and the FJC are subject to their respective agency codes. Employees of the Sentencing Commission are subject to standards established by the Commission. Federal public defender employees are subject to the Code of Conduct for Federal Public Defender Employees (Guide, Vol 2A, Ch 4). Intermittent employees [HR Manual, Sec 5, Ch 4.7] are subject to canons 1, 2, and 3 and such other provisions of this code as may be determined by the appointing authority.
- (c) Employees who occupy positions with functions and responsibilities similar to those for a particular position identified in this code should be guided by the standards applicable to that position, even if the position title differs. When in doubt, employees may seek an advisory opinion as to the applicability of specific code provisions.
- (d) Contractors and other nonemployees not covered above who serve the judiciary are not covered by this code, but appointing authorities may impose these or similar ethical standards on such nonemployees, as appropriate.

§ 310.20 History

- (a) With the adoption of the Code of Conduct for Judicial Employees on September 19, 1995, the Judicial Conference repealed the Code of Conduct for Clerks (and Deputy Clerks), the Code of Conduct for United States Probation Officers (and Pretrial Services Officers), the Code of Conduct for Circuit Executives, the Director of the Administrative Office, the Director of the Federal Judicial Center, the Administrative Assistant to the Chief Justice, and All Administrative Office Employees Grade GS-15 and Above, the Code of Conduct for Staff Attorneys of the United States, the Code of Conduct for Federal Public Defenders, and the Code of Conduct for Law Clerks. [JCUS-SEP 95](#), p. 74.
- (b) This Code of Conduct for Judicial Employees took effect on January 1, 1996.
- (c) In March 2001, the Conference revised Canon 3F(4). [JCUS-MAR 01](#), pp. 10-12.
- (d) The Conference revised the following provisions in March 2013: "Scope" (§ 310.10(a) and (d)); "Definitions" (§ 310.30(a)); Canon 1; Canon 3F(2)(a)(ii); Canon 4A; and Canon 5B. [JCUS-MAR 13](#), p. 9.

§ 310.30 Definitions

- (a) Member of a Judge's Personal Staff

As used in this code in canons 3F(2)(b), 3F(5), 4B(2), 4C(1), and 5B, a member of a judge's personal staff means a judge's secretary or judicial assistant, a judge's law clerk, intern, extern, or other volunteer court employee, and a courtroom deputy clerk or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff.

- (b) Third Degree of Relationship

As used in this code, the third degree of relationship is calculated according to the civil law system to include the following relatives: parent, child, grandparent, grandchild, great grandparent, great grandchild, brother, sister, aunt, uncle, niece and nephew.

§ 310.40 Further Guidance

- (a) The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions concerning the application and interpretation of this code. Employees should consult with their supervisor and/or appointing authority for guidance on questions concerning this code and its applicability before a request for an advisory opinion is made to the Committee on Codes of Conduct.
- (b) In assessing the propriety of one's proposed conduct, a judicial employee should take care to consider all relevant canons in this code, the Ethics Reform Act, and other applicable statutes and regulations (e.g., receipt of a gift may implicate canon 2 as well as canon 4C(2) and the Ethics Reform Act gift regulations).
- (c) Should a question remain after this consultation, the affected judicial employee, or the chief judge, supervisor, or appointing authority of such employee, may request an advisory opinion from the Committee. Requests for advisory opinions may be addressed to the chair of the Committee on Codes of Conduct by email or as follows:

Chair of the Committee on Codes of Conduct
c/o Office of the General Counsel
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

§ 320 Text of the Code

Canon 1: A Judicial Employee Should Uphold the Integrity and Independence of the Judiciary and of the Judicial Employee's Office

An independent and honorable Judiciary is indispensable to justice in our society. A judicial employee should personally observe high standards of conduct so that the integrity and independence of the Judiciary are preserved and the judicial employee's office reflects a devotion to serving the public. Judicial employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this code should be construed and applied to further these objectives. The standards of this code do not affect or preclude other more stringent standards required by law, by court order, or by the appointing authority.

Canon 2: A Judicial Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

Canon 3: A Judicial Employee Should Adhere to Appropriate Standards in Performing the Duties of the Office

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following standards apply:

- A. A judicial employee should respect and comply with the law and these canons. A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.

Note: A number of criminal statutes of general applicability govern federal employees' performance of official duties. These include:

- [18 U.S.C. § 201](#) (bribery of public officials and witnesses);

- [18 U.S.C. § 211](#) (acceptance or solicitation to obtain appointive public office);
- [18 U.S.C. § 285](#) (taking or using papers relating to government claims);
- [18 U.S.C. § 287](#) (false, fictitious, or fraudulent claims against the government);
- [18 U.S.C. § 508](#) (counterfeiting or forging transportation requests);
- [18 U.S.C. § 641](#) (embezzlement or conversion of government money, property, or records);
- [18 U.S.C. § 643](#) (failing to account for public money);
- [18 U.S.C. § 798](#) and [50 U.S.C. § 783](#) (disclosure of classified information);
- [18 U.S.C. § 1001](#) (fraud or false statements in a government matter);
- [18 U.S.C. § 1719](#) (misuse of franking privilege);
- [18 U.S.C. § 2071](#) (concealing, removing, or mutilating a public record);
- [31 U.S.C. § 1344](#) (misuse of government vehicle);
- [31 U.S.C. § 3729](#) (false claims against the government).

In addition, provisions of specific applicability to court officers include:

- [18 U.S.C. §§ 153, 154](#) (court officers embezzling or purchasing property from bankruptcy estate);
- [18 U.S.C. § 645](#) (embezzlement and theft by court officers);
- [18 U.S.C. § 646](#) (court officers failing to deposit registry moneys);
- [18 U.S.C. § 647](#) (receiving loans from registry moneys from court officer).

This is not a comprehensive listing but sets forth some of the more significant provisions with which judicial employees should be familiar.

- B. A judicial employee should be faithful to professional standards and maintain competence in the judicial employee's profession.
- C. A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including the general public, and should require similar conduct of personnel subject to the judicial employee's direction and control. A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner. A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner that improperly favors any

litigant or attorney, nor should a judicial employee imply that he or she is in a position to do so.

- D. A judicial employee should avoid making public comment on the merits of a pending or impending action and should require similar restraint by personnel subject to the judicial employee's direction and control. This proscription does not extend to public statements made in the course of official duties or to the explanation of court procedures. A judicial employee should never disclose any confidential information received in the course of official duties except as required in the performance of such duties, nor should a judicial employee employ such information for personal gain. A former judicial employee should observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.

- E. A judicial employee should not engage in nepotism prohibited by law.

Note: See also [5 U.S.C. § 3110](#) (employment of relatives); [28 U.S.C. § 458](#) (employment of judges' relatives).

- F. **Conflicts of Interest**

- (1) A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the judicial employee's ability properly to perform official duties in an impartial manner.
- (2) Certain judicial employees, because of their relationship to a judge or the nature of their duties, are subject to the following additional restrictions:
 - (a) A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:
 - (i) he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

- (ii) he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law had served (during such association) as a lawyer concerning the matter (provided that the prohibition relating to the previous practice of law does not apply if he or she did not work on the matter, did not access confidential information relating to the matter, and did not practice in the same office as the lawyer), or he, she, or such lawyer has been a material witness;
 - (iii) he or she, individually or as a fiduciary, or the spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding;
 - (iv) he or she, a spouse, or a person related to either within the third degree of relationship (as defined above in § 310.40), or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of a party; (B) is acting as a lawyer in the proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding;
 - (v) he or she has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
- (b) A secretary to a judge, or a courtroom deputy or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff, should not perform any official duties in any matter with respect to which such secretary, courtroom deputy, or court reporter knows that he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person (i) is a party to the proceeding, or an officer, director, or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) has an interest that could be substantially affected by the outcome of the proceeding; or (iv) is likely to be a material witness in

the proceeding; provided, however, that when the foregoing restriction presents undue hardship, the judge may authorize the secretary, courtroom deputy, or court reporter to participate in the matter if no reasonable alternative exists and adequate safeguards are in place to ensure that official duties are properly performed. In the event the secretary, courtroom deputy, or court reporter possesses any of the foregoing characteristics and so advises the judge, the judge should also consider whether the Code of Conduct for United States Judges may require the judge to recuse.

- (c) A probation or pretrial services officer should not perform any official duties in any matter with respect to which the probation or pretrial services officer knows that:
 - (i) he or she has a personal bias or prejudice concerning a party;
 - (ii) he or she is related within the third degree of relationship to a party to the proceeding, or to an officer, director, or trustee of a party, or to a lawyer in the proceeding;
 - (iii) he or she, or a relative within the third degree of relationship, has an interest that could be substantially affected by the outcome of the proceeding.

(3) When a judicial employee knows that a conflict of interest may be presented, the judicial employee should promptly inform his or her appointing authority. The appointing authority, after determining that a conflict or the appearance of a conflict of interest exists, should take appropriate steps to restrict the judicial employee's performance of official duties in such matter so as to avoid a conflict or the appearance of a conflict of interest. A judicial employee should observe any restrictions imposed by his or her appointing authority in this regard.

- (4) A judicial employee who is subject to canon 3F(2)(a) should keep informed about his or her personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of a spouse or minor child residing in the judicial employee's household. For purposes of this canon, "financial interest" means ownership of a legal or equitable interest, however

small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (a) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the employee participates in the management of the fund;
 - (b) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
 - (c) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
 - (d) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (5) A member of a judge's personal staff should inform the appointing judge of any circumstance or activity of the staff member that might serve as a basis for disqualification of either the staff member or the judge, in a matter pending before the judge.

Canon 4: In Engaging in Outside Activities, a Judicial Employee Should Avoid the Risk of Conflict with Official Duties, Should Avoid the Appearance of Impropriety, and Should Comply with Disclosure Requirements

A. Outside Activities

A judicial employee's activities outside of official duties should not detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or office the judicial employee serves. Subject to the foregoing standards and the other provisions of this code, a judicial employee may engage in such activities as civic, charitable, religious, professional, educational, cultural, avocational, social, fraternal, and recreational activities, and may speak, write, lecture, and teach. If such outside activities concern the law,

the legal system, or the administration of justice, the judicial employee should first consult with the appointing authority to determine whether the proposed activities are consistent with the foregoing standards and the other provisions of this code. A judicial employee should not accept a governmental appointment that has the potential for dual service to and/or supervision by independent branches of government (including state courts) or different governments during judicial employment.

B. Solicitation of Funds

A judicial employee may solicit funds in connection with outside activities, subject to the following limitations:

- (1) A judicial employee should not use or permit the use of the prestige of the office in the solicitation of funds.
- (2) A judicial employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign. A member of a judge's personal staff should not solicit any court personnel to contribute funds to any such activity under circumstances where the staff member's close relationship to the judge could reasonably be construed to give undue weight to the solicitation.
- (3) A judicial employee should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, except as an incident to a general fund-raising activity.

C. Financial Activities

- (1) A judicial employee should refrain from outside financial and business dealings that tend to detract from the dignity of the court, interfere with the proper performance of official duties, exploit the position, or associate the judicial employee in a substantial financial manner with lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, provided, however, that court reporters are not prohibited from providing reporting services for compensation to the extent permitted by statute and by the court. A member of a judge's personal staff should consult with the appointing judge concerning any financial and business activities that might reasonably be interpreted as violating this code and should refrain from any activities that fail to conform to the foregoing standards or

that the judge concludes may otherwise give rise to an appearance of impropriety.

- (2) A judicial employee should not solicit or accept a gift from anyone seeking official action from or doing business with the court or other entity served by the judicial employee, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judicial employee may accept a gift as permitted by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder. A judicial employee should endeavor to prevent a member of a judicial employee's family residing in the household from soliciting or accepting any such gift except to the extent that a judicial employee would be permitted to do so by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder.

Note: See [5 U.S.C. § 7353](#) (gifts to federal employees). See also [5 U.S.C. § 7342](#) (foreign gifts); [5 U.S.C. § 7351](#) (gifts to superiors).

- (3) A judicial employee should report the value of gifts to the extent a report is required by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Note: See [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions).

- (4) During judicial employment, a law clerk or staff attorney may seek and obtain employment to commence after the completion of the judicial employment. However, the law clerk or staff attorney should first consult with the appointing authority and observe any restrictions imposed by the appointing authority. If any law firm, lawyer, or entity with whom a law clerk or staff attorney has been employed or is seeking or has obtained future employment appears in any matter pending before the appointing authority, the law clerk or staff attorney should promptly bring this fact to the attention of the appointing authority.

D. Practice of Law

A judicial employee should not engage in the practice of law except that a judicial employee may act pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal

work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:

- (1) in the case of pro se legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings);
- (2) in the case of family legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings) and does not involve the entry of an appearance in a federal court;
- (3) in the case of pro bono legal services, such work (a) is done without compensation; (b) does not involve the entry of an appearance in any federal, state, or local court or administrative agency; (c) does not involve a matter of public controversy, an issue likely to come before the judicial employee's court, or litigation against federal, state or local government; and (d) is reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards and the other provisions of this code.

Judicial employees may also serve as uncompensated mediators or arbitrators for nonprofit organizations, subject to the standards applicable to pro bono practice of law, as set forth above, and the other provisions of this code.

A judicial employee should ascertain any limitations imposed by the appointing judge or the court on which the appointing judge serves concerning the practice of law by a former judicial employee before the judge or the court and should observe such limitations after leaving such employment.

Note: See also [18 U.S.C. § 203](#) (representation in matters involving the United States); [18 U.S.C. § 205](#) (claims against the United States); [28 U.S.C. § 955](#) (restriction on clerks of court practicing law).

E. Compensation and Reimbursement

A judicial employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation and reimbursement is not prohibited or restricted by this code, the Ethics

Reform Act, and other applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the judicial employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a judicial employee and, where appropriate to the occasion, by the judicial employee's spouse or relative. Any payment in excess of such an amount is compensation.

A judicial employee should make and file reports of compensation and reimbursement for outside activities to the extent prescribed by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Notwithstanding the above, a judicial employee should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States, provided, however, that court reporters are not prohibited from receiving compensation for reporting services to the extent permitted by statute and by the court.

Note: See [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions); [28 U.S.C. § 753](#) (court reporter compensation). See also [5 U.S.C. App. §§ 501 to 505](#) (outside earned income and employment).

Canon 5: A Judicial Employee Should Refrain from Inappropriate Political Activity

A. Partisan Political Activity

A judicial employee should refrain from partisan political activity; should not act as a leader or hold any office in a partisan political organization; should not make speeches for or publicly endorse or oppose a partisan political organization or candidate; should not solicit funds for or contribute to a partisan political organization, candidate, or event; should not become a candidate for partisan political office; and should not otherwise actively engage in partisan political activities.

B. Nonpartisan Political Activity

A member of a judge's personal staff, lawyer who is employed by the court and assists judges on cases, clerk of court, chief probation officer,

chief pretrial services officer, circuit executive, and district court executive should refrain from nonpartisan political activity such as campaigning for or publicly endorsing or opposing a nonpartisan political candidate; soliciting funds for or contributing to a nonpartisan political candidate or event; and becoming a candidate for nonpartisan political office. Other judicial employees may engage in nonpartisan political activity only if such activity does not tend to reflect adversely on the dignity or impartiality of the court or office and does not interfere with the proper performance of official duties. A judicial employee may not engage in such activity while on duty or in the judicial employee's workplace and may not utilize any federal resources in connection with any such activity.

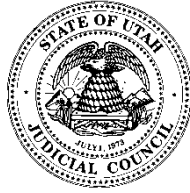
Note: See also [18 U.S.C. chapter 29](#) (elections and political activities).

TAB 5

CJA 3-101 / 3-104 / 3-111

Judicial Performance Standards

NOTES: This issue was first raised in November 2018, but required additional work. Since then significant efforts have been made to address the underlying issues. The materials beneath this tab include various memos and draft version of the three rules.



Administrative Office of the Courts

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

MEMORANDUM

Hon. Mary T. Noonan
Interim State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Policy and Planning
From: Nancy Sylvester and Shane Bahr
Date: February 19, 2019
Re: CJA Rule 3-101. Cases under advisement.

The attached memorandum from the Board of District Court Judges summarizes the discussions around Rule 3-101. Each board of trial court judges has now reviewed the attached rule and recommended its adoption. The Board of Justice Court Judges expressed some concerns about paragraph (2)(c)'s incongruity with Utah Code section 78A-2-223, but the Board's concerns are likely resolved by viewing the code section through a constitutional lens. The management of the court's docket is a core judicial function, so although the rule basically tracks the statute, the Judicial Council made the decision some time ago to allow for some flexibility in its application.

If the Judicial Council amends this rule as recommended by the boards, then [Rule 3-104](#) should also be updated, as well as the senior judge and court commissioner performance evaluation standards in [Rule 3-111](#).

The Management Committee approved this rule in concept at its February 19 meeting. Judge Noonan will meet with JPEC's Jennifer Yim to discuss the proposed amendments once Policy and Planning finishes its review.

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.

INTEROFFICE MEMORANDUM

TO: POLICY AND PLANNING COMMITTEE

FROM: BOARD OF DISTRICT COURT JUDGES

SUBJECT: 60-DAY UNDER ADVISEMENT RULE

DATE: DECEMBER 21, 2018

We understand that the Management Committee has requested the various Boards to provide input to Policy and Planning regarding the need for clarification on the 60-day under advisement rule. We appreciate the opportunity.

In the District Board's view, there should be a clear definition of when a matter is "submitted" for purposes of the rule. Internal systems ought to monitor time under advisement consistent with that definition and the intent of the statute and rules. Finally, the Judicial Council should administer the rule intelligently, and not automatically determine a judge is out of compliance if, in circumstances beyond the judge's personal control, the under-advisement time is exceeded.

1. WHEN IS A MATTER SUBMITTED.

Both Statute and rule refer to a matter being "under advisement" once the matter is "submitted for final determination." Utah Code, § 78A-2-223; Utah Code Jud. Admin Rule 3-101. Nowhere does either statute or rule define what constitutes being "submitted." The rule at least clarifies that it means "submitted to the judge." And the statute at least recognizes that delays might be the result of "circumstances beyond the judge's personal control." Moreover, the rules do not contemplate that litigants may, on their own, submit a matter for decision, but rather provide for a "request to submit." This implies that the action of submitting a matter is a court function, and is not automatic. Rule 7(g), Utah Rules of Civil Procedure.

We suggest that a definition of submission can harmonize these approaches and provide clarity of when the under-advisement countdown is running. A matter should be deemed submitted and the full 60 day clock should begin at the later of:

- a) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession or equivalent;
- b) If a hearing is set, at the conclusion of all hearings held on the specific motion or other matter; or
- c) If further briefing is required after hearing, when all permitted briefing is completed and a further request to submit is filed indicating as much.

This approach is consistent with our general understanding of how the under-advisement time is calculated presently by judges. It is also consistent with the practical aspect that our current signing system is designed to shelter the judge from requests for action until after court staff reviews and determines the matter is appropriate for submission at that time. Finally, it is consistent with the statute in that it only starts the clock at a time when the matter is actually within the judge's personal control.

Without this clarification, the Board anticipates there will be misunderstandings regarding application of the 60-day rule. Adopting an express rule will provide clarity both to litigants and internally regarding when the rule is in play.

We understand, for instance, that our current software starts counting days and regards a matter as under advisement when a request to submit is filed. While we do not object to tracking how long it takes to submit a matter after request, it is important that our own internal systems not confuse a "request to Submit" with a "submission." The process of reviewing a notice to submit and determining whether a matter should actually be submitted to the judge requires human intelligence and is not susceptible to automation. Filing a request to submit does not give the judge notice of the fact, and there are many reasons that a request to submit might not result in a matter being submitted for the judge's decision. The request may be improper or premature. Opposing parties may disagree that a matter is ready for decision. A request may be directed to a commissioner and not a judge, or it may not be clear to whom it is directed. Litigants may not properly identify a request to submit as such, or staff error may prevent it from coming to the judge's attention. For this reason, court software ought to only track under-advisement time as such if the matter is actually within the judge's personal control. See Utah §78A-2-223(1).

Internal tracking needs to be clearly identified for what it is: days since a request to submit was filed. It does not necessarily measure the correct time period for under advisement: the time since a matter was actually submitted for final determination by the judge. It is important that our internal vocabulary correctly reflect what we are measuring. A metric misidentified as "under-advisement tracking" runs the risk of being misunderstood by the public if it becomes public, or supplanting the actual rule with an inaccurate proxy. Because failure to comply with the standard has significant impact on the judge's performance evaluation, it is essential that our tracking not sacrifice the practical realities recognized by the statute and Rule for the sake of automation. A judge should not be responsible for a failure to comply with an automated count when the failure is the result of system, counsel, or staff error.

While we are aware that the bar has concerns regarding the number of notices they receive through the e-filing system, we support some means of affirmatively indicating when a matter is actually submitted to the judge's personal attention. Counsel or self-represented parties who have mistakenly filed or believe they filed a request to submit should be able to confirm whether or not the matter is actually presented to the judge, and correct any errors (whether their own, or court staff or systematic) that have prevented the matter from reaching the judge.

2. THE JUDICIAL COUNCIL SHOULD CONSIDER WHETHER A MATTER IS WITHIN THE JUDGE'S PERSONAL CONTROL

Even with this clarification, the rules should provide the Council with authority to determine whether a matter under advisement longer than 60 days is beyond a judge's personal control. Our system is not failsafe. A decision could be filed incorrectly by court staff. A matter that is not signed by a judge might not be corrected, or staff might not communicate the need for correction. Illness on the part of key personnel or the judge or a family member might prevent a timely

decision. System failures, natural disasters. It is not possible to anticipate all the reasonable circumstances that might cause a conscientious judge to exceed the 60-day time period. The statutory performance standard recognizes this by incorporating the concept of circumstances beyond the judge's personal control, and the Council should mirror this approach in determining compliance. It is the Council that has the familiarity with court systems and rules, not the Judicial Performance Evaluation Commission. The Council should determine whether or not a judge is in compliance, and not defer this responsibility to the Commission.

Rule 3-101. Judicial performance standards.**Intent**

~~To establish standards of performance for application by the Judicial Performance Evaluation Commission.~~ To establish performance standards upon which the Judicial Council will certify judicial compliance to the Judicial Performance Evaluation Commission ("JPEC").

Applicability

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

Statement of the Rule**(1) Certification of performance standards.**

(1)(A) The Judicial Council will certify to JPEC judicial compliance with the following performance standards: cases under advisement, education, and physical and mental competence.

(1)(B) The Judicial Council will transmit its certification to JPEC by the deadline established in the Utah Administrative Code.

(1) **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 judge for final determination. For purposes of this rule, "submitted to the judge" or "submission" is the last of the following:

(1)(A) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;

(1)(B) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(1)(C) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

(2) Satisfactory Performance by a justice or judge.

(2)(A) **Supreme Court justice.** A justice of the Supreme Court demonstrates satisfactory performance by 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) **Court of Appeals judge.** 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) **Trial court judge.** A trial court judge demonstrates satisfactory performance by holding:

(2)(C)(i) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(2)(C)(ii) 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.** Satisfactory performance is established if 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.

(5) **Judicial Council discretion.** The Judicial Council has discretion to determine whether a judge or justice is otherwise compliant with judicial performance standards when the judge or justice has failed to comply with paragraphs (2) or (3) for reasons beyond the judge's or justice's personal control, or for other good cause as determined by the Judicial Council.

Comment [NS1]: The Board of Justice Court Judges expressed concern that this paragraph does not comply with [Section 78A-2-223](#). The paragraph is more permissive than the statute and it has been in existence for a while. The likely explanation for the difference is that the management of the court's docket is a core judicial function so the judiciary has built in some flexibility to the statutory standard.

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.

(2)(A)(i) Multi-judge courts shall have regular court en banc meetings, including all judges of the court and the court executive, to discuss and decide court business. The presiding judge has the discretion to excuse the attendance of the court executive from court en banc meetings called for the purpose of discussing the performance of the court executive. In single-judge courts, the judge shall meet with the court executive to discuss and decide court business.

(2)(A)(ii) The presiding judge shall call and preside over court meetings. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(2)(A)(iii) Each court shall have a minimum of four meetings each year.

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

(2)(A)(v) In addition to regular court en banc meetings, the presiding judge or a majority of the judges may call additional meetings as necessary.

40 (2)(A)(vi) Minutes of each meeting shall be taken and preserved.

41 (2)(A)(vii) Other than judges and court executives, those attending the meeting shall be by court
42 invitation only.

43 (2)(A)(viii) The issues on which judges should vote shall be left to the sound discretion and judgment
44 of each court and the applicable sections of the Utah Constitution, statutes, and this Code.

45 (2)(B) Absence of presiding judge. When the presiding judge and the associate presiding judge, if
46 any, are absent from the court, an acting presiding judge shall be appointed. The method of designating
47 an acting presiding judge shall be at the discretion of the presiding judge. All parties that must necessarily
48 be informed shall be notified of the judge acting as presiding judge.

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

50 (3)(A)(i) Generally. The presiding judge is charged with the responsibility for the effective operation of
51 the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and
52 directives of the Council as they pertain to the administration of the courts, orders of the court en banc
53 and supplementary rules. The presiding judge has the authority to delegate the performance of non-
54 judicial duties to the court executive. When the presiding judge acts within the scope of these
55 responsibilities, the presiding judge is acting within the judge's judicial office.

56 (3)(A)(ii) Caseload. Unless the presiding judge determines it to be impractical, there is a presumption
57 that the judicial caseload of the presiding judge shall be adjusted to provide the presiding judge sufficient
58 time to devote to the management and administrative duties of the office. The extent of the caseload
59 reduction shall be determined by each district.

60 (3)(A)(iii) Appeals. Any judge of the judicial district may ask the Chief Justice or Judicial Council to
61 review any administrative decision made by the presiding judge of that district.

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

63 (3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and
64 be responsible for an orderly plan of judicial absences from court duties.

65 (3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding
66 judge consistent with Rule 3-103(4).

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

68 (3)(C)(i) The presiding judge is authorized to use senior judge coverage for up to 14 judicial days if a
69 judicial position is vacant or if a judge is absent due to illness, accident, or disability. Before assigning a
70 senior judge, the presiding judge will consider the priorities for requesting judicial assistance established
71 in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule
72 11-201(6).

73 (3)(C)(ii) The presiding judge will notify the State Court Administrator when a senior judge assignment
74 has been made.

75 (3)(C)(iii) If more than 14 judicial days of coverage will be required, the presiding judge will promptly
76 present to the State Court Administrator a plan for meeting the needs of the court for the anticipated
77 duration of the vacancy or absence and a budget to implement that plan. The plan should describe the

78 calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget
79 should estimate the funds needed for travel by judges and for time and travel by senior judges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 (3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the court executive,
115 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. For purposes of this rule, "submitted to the judge" is defined as follows:

(3)(L)(i)(a) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;

(3)(L)(i)(b) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(3)(L)(i)(c) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

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 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, 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.**

(3)(C)(i) 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. For purposes of this rule, "submitted to the senior judge or court commissioner" or "submission" is defined as follows:

(3)(C)(i)(a) When a matter requiring attention is placed by staff in the senior judge's or court commissioner's personal electronic queue, inbox, personal possession, or equivalent;

(3)(C)(i)(b) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(3)(C)(i)(c) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the senior judge's or court commissioner's personal electronic queue, inbox, personal possession, or equivalent.

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

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

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

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

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

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

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

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

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

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

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

(4) **Judicial Council certification process**

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

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

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

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

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

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

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

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

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

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

(4)(E) **Overcoming presumptions.** A presumption against certification may be overcome by a showing of good cause to the contrary that a senior judge's or court commissioner's failure to comply with paragraphs (3)(C) and (3)(D) were beyond the senior judge's or court commissioner's personal control. A presumption in favor of certification may be overcome by:

(4)(E)(i) reliable information showing non-compliance with a performance standard, except as otherwise provided in paragraph (4)(E); 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.

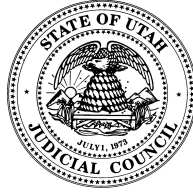
(4)(F) **August Council meeting.** At the request of the Council the senior judge or court commissioner challenging a non-certification decision shall meet with the Council in August. At the request of the Council the presiding judge shall report to the Council any meetings held with the senior judge 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.

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

229



Administrative Office of the Courts

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

April 26, 2018

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

MEMORANDUM

TO: Richard Schwermer, State Court Administrator

FROM: Cases Under Advisement Workgroup

RE: Cases Under Advisement Process

A workgroup was assigned to determine how the matters under advisement are being tracked and reported at each court level and to make recommendations to improve the process.

Appellate courts: Judges and court staff are well aware of the cases under advisement requirements. Cases are tracked individually and regularly by court staff using functionality built into the Appellate Information System (AIS). The appellate courts do not anticipate any improvements needed to their current system.

Juvenile courts: Judges and court staff are well aware of the cases under advisement tracking and reporting requirements. The juvenile court administrator receives a monthly report for all judges regarding cases under advisement for more than 60 days. Depending on the district, a cases under advisement form is completed by each presiding judge or individual juvenile court judge whether there are cases under advisement or not. The juvenile court administrator reports only a handful of cases under advisement for more than 60 days reported to her office in the last 5 years.

Tracking cases under advisement in juvenile court is manual. The juvenile court case management system, CARE, provides an in-court screen on which the date a matter is taken under advisement is entered. This initiates tracking. Staff have limited familiarity with the function and indicate there is no report that summarizes cases being tracked. Consequently, tracking and reporting is managed off-line in a variety of ways from hand records to Google sheets. It was agreed that the tracking and monitoring features available in CARE should be redesigned and is currently in process.

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

District and justice courts: District court judges and staff seem to be aware of the cases under advisement tracking and reporting requirements, however there are a number of new judges who may not yet understand the process fully. The district court administrator receives a report of cases under advisement more than 60 days from each presiding judge. (UCJA 3-101)

Justice court judges and staff have very limited understanding of the cases under advisement tracking and reporting requirements or the cases under advisement tracking features in CORIS. Intensive training is recommended.

The Process. In district and justice courts, a case is placed on under advisement tracking in two ways:

- 1) manually by staff when a matter is taken under advisement during a hearing
- 2) automatically when a Request to Submit for Decision is electronically filed.¹

This table shows the distribution of cases on under advisement tracking on March 13, 2018 and the process that initiated the tracking.

Cases On Under Advisement Tracking on March 13, 2018			
	Total cases	Automatically Added by eFiler	Manually Added by Court Staff
District Courts	3640	3263	377
Justice Courts	362	315	43

The electronic filing of the Request to Submit places the case on under advisement tracking. When the order is signed, staff must remove the under advisement tracking report. This process was discussed at length. While removing automatically added tracking requires significant staff resources, at the present time, there does not appear to be a more effective approach to tracking these processes.

One option justice courts in particular might consider applies to criminal cases. Utah Rules of Criminal Procedure Rule 12 requires either a Request to Submit or that a motion be brought to the attention of the court. When a motion to continue is filed, most attorneys call the court to get the order signed and a new hearing date. Some submit a Request to Submit with their motion to continue. This practice appears to be attorney specific. Local policy on how best to handle motions like a motion to continue would greatly reduce the churn of motions to continue that are added to cases under advisement tracking and then removed.

¹ A case should be manually added to under advisement tracking when a Request to Submit for Decision is filed by paper.

Under Advisement Tracking, Monitoring, Management and Reporting Model

- 1) Staff manages tracking using the Tracking report. (Tracking code= TUA)
 - a) Motions for which a hearing is requested are removed from Under Advisement tracking.
 - b) Motions or matters taken under advisement from the bench for which an order or ruling is issued are removed from TUA tracking.
- 2) Staff provides judge the CORIS-generated Cases Under Advisement Report on a set schedule, typically weekly. This approach keeps judge informed of all cases with under advisement tracking. Some judges, however, prefer to be notified only when a case reaches 30 days under advisement.
- 3) Judges report any cases under advisement for more than 60 days to presiding judge.
- 4) Presiding judge forwards that information to the appropriate state court administrator.
- 5) State court administrators report any cases under advisement more than 90 days to the Judicial Council.

Changing the Reporting Model. The group discussed the utility and advisability of developing a statewide system of reporting; that is a report that shows all cases under advisement for each judge and how many of those have been under advisement more than 60 days. The consensus of the group was the current Under Advisement Tracking, Monitoring, Management and Reporting Model (shown above) works well when followed. A statewide report is not an accurate reflection because cases move on and off the Under Advisement report daily and cases that are not truly under advisement will inappropriately display on the report if staff is monitoring and managing tracking thoroughly.

Recommendations:

1. Tracking Process

- a. All courts: The processes for starting tracking of cases under advisement whether from the bench or by filing of a Request to Submit should be consistent within court levels and understandable to judges and staff. This requires training in the justice court and a standard form.
- b. District and justice courts: A Request to Submit is a document selection in district and justice court efilg. Filing a Request to Submit starts under advisement tracking. A Request to Submit may be misfiled by an attorney as another document selection that doesn't start tracking. Staff attempt to identify these errors and fix them, but are not always successful. Because only a Request to Submit initiates under advisement tracking, Requests to Submit filed as "Other" should not be considered as an event that places a case under advisement.
- c. Justice court: During our review of processes, we learned that CORIS recently added an option in Court Customizing to skip creation of automated tracking when a Request to Submit is filed. This "feature" has been disabled and courts using it have been notified.

2. Education/Awareness

- a. Justice courts: Training on tracking and monitoring tracking reports should be developed for justice court clerks.
- b. Justice courts: The Board of Justice Court Judges has requested a matters under advisement report be sent to all justice court judges monthly. This report has been developed and was shown at the recent staff conference. It will go into production June 1, 2018.
- c. District courts: The recommended training model should be reviewed with district management teams
- d. District and justice courts. The current under advisement tracking defaults to a 60 day time frame. It was observed that placing a case on under advisement tracking for 60 days does not allow enough time to resolve the matter before the time limit it reached. Training materials have been revised to emphasize that tracking reports should be run and reviewed every 7 days to proactively manage matters under advisement. Training materials also now reference an uncommon, but reported issue with staff ending tracking on all matters under advisement in a case when not all matters were resolved.
- e. All courts: The importance of managing and reporting cases under advisement should be regularly included in new judge orientation
- f. All courts: Judges should be reminded to announce during a hearing that a matter is being taken under advisement. Judicial assistants and clerks should be trained to initiate tracking when that announcement is made.

3. Reporting requirements

- a. District courts: UCJA 3-101 reporting requirements do not require a judge to report affirmatively each month that no cases are under advisement more than 60 days. This makes it difficult to know if there are no cases under advisement more than 60 days or if there are training or staff problems meeting the reporting requirements.
- b. All courts: Modify UCJA 3-101 to require monthly reporting whether a judge has cases under advisement or not. This will ensure all courts are monitoring cases.
- c. Justice courts: Amend the new justice courts presiding judge rule to include the same reporting requirements as other courts (UCJA 3-101).
- d. Juvenile courts: Cases taken under advisement in juvenile court should be trackable in CARE. This requires adding a report to CARE.

Cases Under Advisement workgroup members:

Brent Johnson
Shane Bahr
Dawn Marie Rubio
Jim Peters
Cathy Dupont
Brody Arishita
Paul Barron
Clayson Quigley
Kristene Laterza
Kim Allard

TAB 6

CJA 3-111 – Performance evaluation of senior judges and court commissioners

NOTES: A request was made by the Forms Committee (via Brent Johnson) to amend a discrepancy in this rule to bring it into conformity with other related rules and statutes, as follows:

The Forms Committee has been reviewing a new form for judges to report cases under advisement. As part of the review we noticed the rules have different standards for judges versus senior judges and commissioners. One rule (3-101) says judges must report cases over “two months” while the other rule (3-111) says senior judges and commissioners report cases over “60 days.” The statute (78A-2-223) sets a standard of “two months” for trial judges. In order for all judicial officers to be able to use the same form, we suggest that rule 3-111(4)(C)(i)(a) be amended to change “60 days” to “two months.” I’m attaching the rule with the proposed change.

This revision is presented separately from the last agenda item (which also involves CJA 3-111) in order to maintain project integrity and ensure that changes are tracked appropriately.

* There is currently a change that has been adopted by the Judicial Council (with a May 1 effective date) that is not reflected in, or relevant to, this proposed change.

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.

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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: at least 75% of the questions have a satisfactory score; and 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~~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

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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~~ **two months** after submission; and

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

Commented [MCD3]: This is the only change in this document that is relevant to this project (20190125a).

- (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 [MCD4]: Adopted change by Judicial Council (effective 20190501). Project: 20181005c

Commented [MCD5]: Adopted change by Judicial Council (effective 20190501). Project: 20181005c

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.**

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- (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

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

272 *Effective May/November 1, 20__*

TAB 7

CJA 2-207 Annual Review

NOTES: CJA 2-207(2) states:

(2) Periodic review of the Code.

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

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

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

Accordingly, the committee divided the Code of Judicial Administration into five segments to be addressed in turn over the next five years. In 2018, the committee reviewed Chapters 1, 2, and 3 of the Code of Judicial Administration. In 2019, the committee is scheduled to review Chapter 4 of the Code of Judicial Administration.

The following materials outline the assignments that were previously made for 2019. Chapter 4 should be reviewed so that the assigned committee members can report to the full committee at the April 5th meeting regarding potential modification. The full committee can determine at the April 5th meeting which of the proposed modifications, if any, warrant further attention from the committee by being included on the all-day working meeting agenda for May 3rd, 2019.

YEAR	CH.	ART.	RULE	TITLE	ASSIGNED TO	STATUS	LAST REVIEWED	NOTES
2019	4	1	Rule 4-103	Civil calendar management.	Judge Evershed			
2019	4	1	Rule 4-105	Designation of arraignment area as courtroom.	Judge Evershed			
2019	4	1	Rule 4-106	Electronic conferencing.	Judge Evershed			
2019	4	1	Rule 4-110	Transfer of juvenile cases from district and justice courts to the juvenile court.	Judge Evershed			
2019	4	1	Rule 4-111	Priority of post-conviction petitions in capital cases	Judge Evershed			
2019	4	2	Rule 4-201	Record of proceedings.	Judge Evershed			
2019	4	2	Rule 4-202	Purpose.	Judge Evershed			
2019	4	2	Rule 4-202.01	Definitions.	Judge Evershed			
2019	4	2	Rule 4-202.02	Records classification.	Judge Evershed			Recent revisions
2019	4	2	Rule 4-202.03	Records access.	Judge Evershed			
2019	4	2	Rule 4-202.04	Request to access a record associated with a case; request to classify a record associated with a case.	Judge Evershed			
2019	4	2	Rule 4-202.05	Request to access an administrative record; research; request to classify an administrative record; request to create an index.	Judge Evershed			
2019	4	2	Rule 4-202.06	Response to request to access or classify a court record.	Judge Evershed			
2019	4	2	Rule 4-202.07	Appeals	Judge Evershed			Recent revisions
2019	4	2	Rule 4-202.08	Fees for records, information, and services.	Judge Evershed			
2019	4	2	Rule 4-202.09	Miscellaneous.	Judge Evershed			Recent revisions
2019	4	2	Rule 4-202.10	Record Sharing.	Judge Evershed			
2019	4	2	Rule 4-203	Designating a case as historically significant.	Judge Evershed			
2019	4	2	Rule 4-205	Security of court records.	Judge Evershed			
2019	4	2	Rule 4-206	Exhibits.	Judge Evershed			
2019	4	3	Rule 4-301	Trust Accounts.	Judge Chin			
2019	4	3	Rule 4-302	Uniform recommended fine/bail schedule.	Judge Chin			
2019	4	3	Rule 4-303	Assessment and collection of filing fees in civil cases commenced by the state, its agencies, or political subdivisions.	Judge Chin			
2019	4	3	Rule 4-304	Assessment and collection of filing fees in matters not commenced by the filing of a complaint or petition.	Judge Chin			
2019	4	4	Rule 4-401.01	Electronic media coverage of court proceedings.	Judge Chin			
2019	4	4	Rule 4-401.02	Possession and use of portable electronic devices.	Judge Chin			
2019	4	4	Rule 4-401.03	Notice to public of recording.	Judge Chin			
2019	4	4	Rule 4-402	Clerical resources.	Judge Chin			
2019	4	4	Rule 4-403	Electronic signature and signature stamp use.	Judge Chin			
2019	4	4	Rule 4-404	Jury selection and service.	Judge Chin			
2019	4	4	Rule 4-405	Juror and witness fees and expenses.	Judge Chin			
2019	4	4	Rule 4-408	Locations of trial courts of record.	Judge Chin			
2019	4	4	Rule 4-408.01	Responsibility for administration of trial courts.	Judge Chin			
2019	4	4	Rule 4-409	Council approval of Problem Solving Courts.	Judge Chin			
2019	4	5	Rule 4-501	Expedited jury trial.	Judge Allen			

YEAR	CH.	ART.	RULE	TITLE	ASSIGNED TO	STATUS	LAST REVIEWED	NOTES
2019	4	5	Rule 4-503	Mandatory electronic filing.	Judge Allen			
2019	4	5	Rule 4-508	Guidelines for ruling on a motion to waive fees.	Judge Allen			
2019	4	5	Rule 4-509	Court-appointed parent coordinator.	Judge Allen			
2019	4	5	Rule 4-510.01	Alternative dispute resolution definitions	Judge Allen			
2019	4	5	Rule 4-510.02	Responsibilities of the Director and Administrative Office of the Courts.	Judge Allen			
2019	4	5	Rule 4-510.03	Qualification of ADR providers.	Judge Allen			Recent revisions
2019	4	5	Rule 4-510.04	ADR training.	Judge Allen			
2019	4	5	Rule 4-510.05	Referral of civil actions.	Judge Allen			
2019	4	5	Rule 4-510.06	Cases exempt from ADR rules.	Judge Allen			
2019	4	6	Rule 4-601	Selection of indigent aggravated murder defense fund counsel.	Judge Walton			
2019	4	6	Rule 4-603	Mandatory electronic filing.	Judge Walton			
2019	4	6	Rule 4-609	Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail.	Judge Walton			
2019	4	6	Rule 4-610	Appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments in felony cases.	Judge Walton			
2019	4	6	Rule 4-613	Jail prisoner transportation.	Judge Walton			
2019	4	7	Rule 4-701	Failure to appear.	Judge Chin			
2019	4	7	Rule 4-702	Electronic citations required.	Judge Chin			
2019	4	7	Rule 4-703	Outstanding citations and warrants.	Judge Chin			
2019	4	7	Rule 4-704	Authority of court clerks.	Judge Chin			
2019	4	7	Rule 4-705	Juvenile traffic and parking offenses.	Judge Chin			
2019	4	8	Rule 4-801	Filing small claims cases.	Judge Chin			
2019	4	9	Rule 4-901	Mandatory electronic filing in juvenile court.	Judge Evershed			
2019	4	9	Rule 4-902	Limited scope investigation of domestic issues.	Judge Evershed			
2019	4	9	Rule 4-903	Uniform custody evaluations.	Judge Evershed			
2019	4	9	Rule 4-904	Informal trial of support, custody and parent-time.	Judge Evershed			
2019	4	9	Rule 4-905	Restraint of minors in juvenile court.	Judge Evershed			
2019	4	9	Rule 4-906	Guardian ad litem program.	Judge Evershed			
2019	4	9	Rule 4-907	Divorce education and divorce orientation courses.	Judge Evershed			
2019	4	9	Rule 4-908	Committee on Children and Family Law.	Judge Evershed			