

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

Large Conference Room (W19A), 1<sup>st</sup> Floor, Matheson Courthouse  
450 South State Street, Salt Lake City, Utah 84114  
May 3, 2019 – 9:00 a.m. to 5:00 p.m.

9:00 a.m.	Welcome and Approval of Minutes		Tab 1	Judge Pullan
9:05 a.m.	JPEC Basic Evaluation Pilot – Rule Exemption or Amendment <ul style="list-style-type: none"> <li>- Discussion regarding need for rule change to permit limited-time pilot program by JPEC involving recording in court for judicial evaluation purposes</li> <li>- <a href="https://judges.utah.gov/process/basic-evaluation-details/">https://judges.utah.gov/process/basic-evaluation-details/</a></li> </ul>	Discussion / Action	Tab 2	Judge Pullan Jennifer Yim
9:25 a.m.	CJA 6-305 – Consolidation of Probation Update <ul style="list-style-type: none"> <li>- Update regarding legislative change from SB0207 on “the court that authorized probation” language from 77-18-1(12)(b)</li> <li>- Discuss whether proposed rule should be transferred to Advisory Committee on Rules of Criminal Procedure</li> </ul>	Discussion / Action	Tab 3	Michael Drechsel
9:30 a.m.	CJA 4-903 – Uniform Custody Evaluations <ul style="list-style-type: none"> <li>- Review revision proposed by Committee on Children and Family Law</li> </ul>	Discussion / Action	Tab 4	Commissioner Russell Minas
9:40a.m.	Balance CJA 1-204(3) and CJA 3-402(5)(A)&(C) <ul style="list-style-type: none"> <li>- Both rules provide avenue for HR policies to go to JC . . . advisable?</li> </ul>	Discussion	Tab 5	Judge Noonan Judge Pullan
10:00 a.m.	CJA Appendix B – Justice court standards for recertification <ul style="list-style-type: none"> <li>- Board of Justice Court Judges’ request for revisions</li> </ul>	Discussion / Action	Tab 6	Board of Justice Court Judges (Jim Peters)
10:20 a.m.	New Probate Rules: CJA 4-1001 – Informal trial of probate disputes; CJA 6-506 – Procedure for contested matters filed in probate court	Discussion / Action	Tab 7	Probate Working Group of Advisory Committee on Rules of Civil Procedure (Nancy Sylvester)
10:40 a.m.	CJA 4-206(4) – Exhibits <ul style="list-style-type: none"> <li>- Tension between PCRA and disposal of exhibits after three months</li> <li>- See <a href="#">State v. Sandoval</a>, 2019 UT 13, ¶18</li> </ul>	Discussion / Action	Tab 8	Michael Drechsel
10:55 a.m.	CJA 7-302 – Court reports prepared for delinquency cases <ul style="list-style-type: none"> <li>- Final review . . . no public comments received</li> </ul>	Discussion / Action	Tab 9	Michael Drechsel
11:00 a.m.	CJA 3-201.02 – Court Commissioner Conduct Committee <ul style="list-style-type: none"> <li>- Discuss record access vs. notification (see notes)</li> </ul> CJA 3-201 – Court Commissioners <ul style="list-style-type: none"> <li>- Consider sanctions and removal amendments in subsection (7) in light of proposed revisions to 3-201.02 . . . no more distinction between “formal” and “informal” complaints</li> </ul>	Discussion / Action	Tab 10	Michael Drechsel

11:30 a.m.	HR 480 – Employee exercise policy	Discussion / Action	Tab 11	Wendell Roberts Neira Siaperas Kim Free
<b>Annual CJA Review – Chapter 4</b>				
12:00 p.m.	CJA 4-401.01 – Electronic media coverage of court proceedings.	Discussion	Tab 12	Judge Chin
	CJA 4-401.02 – Possession and use of portable electronic devices.	Discussion	Tab 13	Judge Chin
	CJA 4-103(3) – Civil calendar management.	Discussion	Tab 14	Judge Evershed
	CJA 4-110 – Transfer of juvenile cases from district and justice courts to the juvenile court.	Discussion	Tab 15	Judge Evershed
	CJA 4-202.03(6) – Records access.	Discussion	Tab 16	Judge Evershed
	CJA 4-202.09(3) – Miscellaneous.	Discussion	Tab 17	Judge Evershed
	CJA 4-501 – Expedited jury trial. <ul style="list-style-type: none"> <li>- <i>Rule should be repealed</i></li> <li>- <i>Rule created as part of HB0349 from 2011 session</i></li> <li>- <i>Bill resulted in enactment of Utah Code §§ 78B-3-901 et seq.</i></li> <li>- <i>Statute repealed January 1, 2017 (sunset clause included in HB0349)</i></li> <li>- <i>Court website needs to be updated to remove this page:</i>  <a href="https://www.utcourts.gov/howto/civil/expedited_jury_trial/">https://www.utcourts.gov/howto/civil/expedited_jury_trial/</a></li> <li>- <i>Court forms need to be deleted from website</i></li> </ul>	Discussion	Tab 18	Michael Drechsel
	CJA 4-902 – Limited scope investigation of domestic issues.	Discussions	Tab 19	Judge Evershed
	CJA 4-905 – Restraint of minors in juvenile court. <ul style="list-style-type: none"> <li>- <i>Correct internal citation (remove specific subsection reference?)</i></li> <li>- <i>Renumbering for consistency with other rules</i></li> </ul>	Discussion	Tab 20	Judge Evershed
	CJA 4-601 – Selection of indigent aggravated murder defense fund counsel.	Discussion	Tab 21	Judge Walton
	CJA 4-609 – Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail. <ul style="list-style-type: none"> <li>- <i>Is rule complied with in practice?</i></li> </ul>	Discussion	Tab 22	Judge Walton
	CJA 4-610 – Appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments. <ul style="list-style-type: none"> <li>- <i>Follow up on: Does AOC offer course mentioned in paragraph (4)?</i></li> </ul>	Discussion	Tab 23	Judge Walton

	Adjourn	Action		Judge Pullan
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**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):

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 – March 1, 2019 Meeting

**NOTES:**

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

Judicial Council Room (N301), Matheson Courthouse  
450 South State Street, Salt Lake City, Utah 84114  
March 1, 2019 – 12:00 p.m. to 2:00 p.m.

**DRAFT**

**MEMBERS:**

**PRESENT    EXCUSED**

Judge Derek Pullan, <i>Chair</i>	•	
Judge Kevin Allen		•
Judge Augustus Chin	•	
Judge Ryan Evershed	•	
Judge John Walton ( <i>via phone</i> )	•	
Mr. Rob Rice	•	

**GUESTS:**

Kim Free

**STAFF:**

Nancy Sylvester  
Minhvan Brimhall

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

Judge Pullan welcomed members to the meeting. The committee considered the minutes from the January 4, 2019 meeting. With no additional changes, Judge Chin motioned to approve the draft minutes. Rob Rice seconded the motion. The committee voted and the motion passed unanimously.

**(2) HR 480 – EMPLOYEE EXERCISE POLICY:**

Judge Pullan welcomed Kim Free, HR Interim Director, to the meeting. Judge Pullan provided an overview of the reason for the exercise policy and its current standing. The policy originated as a request by TCE's to allow for employees to participate in an exercise program during their work day. This committee reviewed exercise policies from other state agencies and asked the previous HR director to come up with a policy that would be meaningful, low cost, and attract employees to participate. The current policy was reviewed by the TCE's who questioned the specificity of the time frame permitted and asked for a more flexible program, allowing employees to participate during hours outside of the lunch hours. This committee also reviewed how the policy addresses an injury sustained by an employee while on their exercise time.

Ms. Free is currently on a committee addressing wellness in the legal profession. She reviewed the policy as currently written and observed that it is already antiquated in that it does not address wellness generally, nor does it inform an employee how to meaningfully apply the policy. The policy allows for 30 minutes, but does not account for time the employee will need to dress, location of where they may shower or clean up after exercise, or the facility where exercise may occur, i.e. a gym inside the work location, a gym at an outside location, park, etc. The policy also does not address resources like employee discounts or incentive programs.

Ms. Free requested additional time to create a new policy that would address the concerns of the Judicial Council, incorporate an appropriate workout policy, and meet many of the TCE's requests.

The committee unanimously granted Ms. Free's request. Judge Pullan asked that this policy be taken off the committee's queue until Ms. Free is ready. Ms. Free thanked the committee for time to work on this policy.

Judge Pullan reminded the committee that at the last Judicial Council meeting, the Council raised a concern that the HR policy manual had not been updated for several years. Rule 3-402 of the Judicial Administration states that the HR policy review committee should review and update the policies every 3 years. The HR policy committee consists of district court judges, court clerks, and staff from the HR department. Judge Pettit brought this rule to the attention of the Council and asked that the HR policy be reviewed and updated. Rob Rice mentioned that the National Center for State Court is a great place to start on information regarding court HR policies, and suggested looking at their model as a means to tailor and adapt a policy for the Utah State courts.

Ms. Free indicated that Judge Noonan is aware of the outdated policy and has scheduled a meeting in April to review and address these issues. Judge Pullan would like to be invited to the meeting if approved by Judge Noonan.

### **(3) COURT COMMISSIONER CONDUCT COMMITTEE:**

Ms. Sylvester reported that Michael Drechsel circulated rule 3-201.02 to the court commissioners, TCE's, and presiding judges for review. He did not receive any feedback on the revisions to the rule. Ms. Sylvester said the chair of the Court Commissioner Conduct Committee was involved in drafting the new language. She noted that JPEC has been receiving complaints on commissioners and has not known where to send them until now. JPEC is now aware of where to send them, but advertisement of this process has been lacking.

The committee noted that this rule is intended to conform to the Judicial Conduct Commission's processes as much as possible. The changes would preserve the ability of the chair to engage in an initial review of and recommendation on the complaint, and that review and recommendation will be forwarded on to the committee.

Ms. Sylvester recommended that amendments to Rule 4-202.02 be made in conformity with the confidentiality section of Rule 3-201.02 to address records access.

Judge Chin moved that Rule 3-201.02 and the accompanying amendments to Rule 4-202.02 be recommended to the Judicial Council for public comment. Mr. Rice seconded the motion. The motion passed unanimously.

Ms. Sylvester will discuss these recommendations with Mr. Drechsel.

### **(4) HR 500.11.2 – INTERN WORK CONFLICT:**

The committee continued discussion of Justice Himonas' concerns regarding the current work conflict policy for interns. The current policy forces interns to essentially choose between being employed with the courts, and being employed with a firm or organization outside of the courts. Interns are not allowed to work on court cases in which the firm may have a case before the court. If they do, could the case be challenged later down the road? Should cases that involve interns be screened out by the intern's employer outside of the courts?

Judge Pullan noted that it appears that this request came from Justice Himonas and Justice Pearce but not necessarily the appellate courts as a whole. He noted that the committee needs better understanding of Justice Himonas' concerns and how they may be addressed. For example, should this be a matter that is handled individually by the judge or justice on the case? Should this policy apply to all state courts or only to the appellate courts? Does there need to be a distinction in the rule?

Ms. Free shared that the idea behind an intern program is to provide the intern with an opportunity to learn and gain knowledge within their field of interest, and receive training in preparation to take on roles and duties that are associated with their field. Interns, wherever they are hired, are held to the same level of responsibility and accountability in their work ethics, job performance, and adherence to the rules, policies and procedures of that

employment. The question that needs to be asked is what are we asking of them and what do we provide for them to accomplish the things we ask of them. Are we training them to one day become a judge, or are we having them file papers all day? Ms. Free said that interns should be required to take ownership of their learning, but we need to provide the means and resources to assist in that learning.

Judge Pullan noted that one of the best learning experiences for any attorney, whether for a short period or long, is an internship that is meaningful and has the ability to impact the intern's growth and development.

The committee asked that Ms. Free review the request from Justice Himonas and see if a policy exists in other jurisdictions or if one is needed. If it exists, does it meet the current practical needs of an intern, while addressing the concerns raised by the committee?

Ms. Free will review the current HR onboarding policies for interns and see if changes need to be made. Ms. Free thanked the committee for allowing her time to review Justice Himonas' request and said she hopes to provide the committee with information that will address all of its concerns by the May meeting.

#### **(5) CJA 3-101 / 3-104 / 3-111 – JUDICIAL PERFORMANCE STANDARDS:**

The committee did not have concerns regarding the rule as it is written, but rather had concerns about how judges would receive notice under the new definitions for cases under advisement. The committee discussed concerns about cases are not getting reviewed in time, which becomes an issue for the public. Judge Evershed noted that juvenile court judges receive a notice when a case is nearing the timeframe for review. But district court judges do not necessarily receive a notice in their queues. On cases that are filed by a pro se litigant, the forms are printed and placed in the judge's box for review. Another issue that judges have noted is that they receive some items in their queue that do not need to be signed but that take up space. Those items can cause them to miss the items that do require a signature. Many judges would like to see a separate queue box, one for signatures and one for things that do not require a signature. Judge Pullan observed that the committee should work out some lingering questions about technology solutions regarding "submitted to the judge" or "submission."

The committee recommended the rule as written but recognized that Judge Noonan needed to have a talk with Jennifer Yim at JPEC before the rule goes on to the Council. Judge Pullan offered to go with Judge Noonan to that meeting.

Ms. Sylvester will discuss with Judge Noonan the committee's recommendation and schedule a meeting to resolve the technical concerns.

#### **(6) CJA 3-111 – PERFORMANCE EVALUATIONS OF SENIOR JUDGES AND COURT COMMISSIONERS:**

The committee reviewed rule 3-111 of the Judicial Performance standards for senior judges and court commissioners. The recommended change to the rule was submitted by the Forms Committee. The recommended amendment to the rule is to change the language for amount of time for submission from 60 days to two months. This rest of the rule amendments surrounding the 60 days to two months amendment are scheduled to move forward May 1, 2019.

As this rule is also on the agenda under the cases under advisement discussion, the committee recommended waiting to move it forward until Rule 3-101 is resolved.

**(7) CJA 2-207 – ANNUAL REVIEW – CHAPTER 4 RULES**

Ms. Sylvester reminded the committee members that for the April meeting they will need to review their assigned rules listed at the end of the materials packet and come prepared with a brief report. The review is to determine if the rule is still current as written, needs revision, or is no longer used in practice and should be removed.

As some members will be on vacation during the week of April 1, 2019, the committee agreed to cancel the April 5 meeting and reconvene the annual review at the May 3 meeting.

**(7) ADJOURN**

With no further items for discussion, Judge Evershed moved to adjourn the meeting. Judge Chin seconded the motion. The motion passed unanimously. The meeting adjourned at 1:50 PM. The April 5 meeting is canceled. The next meeting is scheduled for May 3, 2019, from 9 am to 5 pm, in the Judicial Council Conference Room (N31).



# TAB 2

## JPEC Basic Evaluation Pilot – Rule Exemption or Amendment

**NOTES:** The Judicial Performance Evaluation Commission (JPEC) is exploring a method of conducting Basic Evaluations of justice court judges using video recording / video transmission. The requirements for a Basic Evaluation can be found at:

<https://judges.utah.gov/process/basic-evaluation-details/>

Recording or transmitting video is currently prohibited in courtrooms by court rules. CJA 4-401.02 states that "(2)(A) A person may possess and use a portable electronic device anywhere in a courthouse, except as limited by this rule or directive of the judge." The rule continues to state that "(3)(B)(ii) A person may not use a portable electronic device to record or transmit images or sound of court proceedings except in accordance with CJA 4-401.01."

CJA 4-401.01 only permits recording of "electronic media coverage" by "news reporters." JPEC and the pilot program do not fit the definitions in the rule. Because 4-401.02 only authorizes a judge to limit or restrict the use of electronic devices (as opposed to expanding permissible uses), and because 4-401.01 only permits recording for "electronic media coverage" by "new reporters," JPEC is left to either:

- 1) seek an amendment to the rule(s);
- 2) seek a temporary waiver / exemption from the requirements of the rule in order to pursue this pilot program; or
- 3) not pursue this innovative pilot program.

Jennifer Yim, executive director of JPEC, has suggested that a temporary waiver / exemption may make more sense than a rule change in light of the unproven nature of this pilot program. In the event that the pilot program is not successful, an amended rule would have to be re-amended to remove the pilot program rule changes. In the event that a rule change is necessary, JPEC proposed the following language for CJA 4-401.02(2):

"(2)(D) The Judicial Performance Evaluation Commission is permitted to use portable electronic devices to record or transmit images or sound of court proceedings in the fulfillment of its duties as outlined in 78A-12-207."

**Rule 4-401.01. Electronic media coverage of court proceedings.****Intent:**

To establish uniform standards and procedures for electronic media coverage of court proceedings.

To permit electronic media coverage of proceedings while protecting the right of parties to a fair trial, personal privacy and safety, the decorum and dignity of proceedings, and the fair administration of justice.

**Applicability:**

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

This rule governs electronic media coverage of proceedings that are open to the public.

**Statement of the Rule:****(1) Definitions.**

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

(1)(B) “Proceeding” as used in this rule means any trial, hearing, or other matter that is open to the public.

(1)(C) “Electronic media coverage” as used in this rule means recording or transmitting images or sound of a proceeding.

(1)(D) “News reporter” as used in this rule means a publisher, editor, reporter or other similar person who gathers, records, photographs, reports, or publishes information for the primary purpose of disseminating news to the public, and any newspaper, magazine, or other periodical publication, press association or wire service, radio station, television station, satellite broadcast, cable system or other organization with whom that person is connected.

**(2) Presumption of electronic media coverage; restrictions on coverage.**

(2)(A) There is a presumption that electronic media coverage by a news reporter shall be permitted in public proceedings where the predominant purpose of the electronic media coverage request is journalism or dissemination of news to the public. The judge may prohibit or restrict electronic media coverage in those cases only if the judge finds that the reasons for doing so are sufficiently compelling to outweigh the presumption.

(2)(B) When determining whether the presumption of electronic media coverage has been overcome and whether such coverage should be prohibited or restricted beyond the limitations in this rule, a judge shall consider some or all of the following factors:

(2)(B)(i) whether there is a reasonable likelihood that electronic media coverage will prejudice the right of the parties to a fair proceeding;

(2)(B)(ii) whether there is a reasonable likelihood that electronic media coverage will jeopardize the safety or well-being of any individual;

(2)(B)(iii) whether there is a reasonable likelihood that electronic media coverage will jeopardize the interests or wellbeing of a minor;

(2)(B)(iv) whether there is a reasonable likelihood that electronic media coverage will constitute an unwarranted invasion of personal privacy of any person;

(2)(B)(v) whether electronic media coverage will create adverse effects greater than those caused by media coverage without recording or transmitting images or sound;

(2)(B)(vi) the adequacy of the court's physical facilities for electronic media coverage;

(2)(B)(vii) the public interest in and newsworthiness of the proceeding;

(2)(B)(viii) potentially beneficial effects of allowing public observation of the proceeding through electronic media coverage; and

(2)(B)(ix) any other factor affecting the fair administration of justice.

(2)(C) If the judge prohibits or restricts electronic media coverage, the judge shall make particularized findings orally or in writing on the record. Any written order denying a request for electronic media coverage shall be made part of the case record.

(2)(D) Any reasons found sufficient to prohibit or restrict electronic media coverage shall relate to the specific circumstances of the proceeding rather than merely reflect generalized views or preferences.

(3) Duty of news reporters to obtain permission; termination or suspension of coverage.

(3)(A) Unless otherwise ordered by the court, news reporters shall file a written request for permission to provide electronic media coverage of a proceeding at least one business day before the proceeding. The request shall be filed on a form provided by the Administrative Office of the Courts. Upon a showing of good cause, the judge may grant a request on shorter notice.

(3)(B) A judge may terminate or suspend electronic media coverage at any time without prior notice if the judge finds that continued electronic media coverage is no longer appropriate based upon consideration of one or more of the factors in Paragraph (2)(B). If permission to provide electronic media coverage is terminated or suspended, the judge shall make the findings required in Paragraphs (2)(C) and (2)(D).

(4) Conduct in the courtroom; pool coverage.

(4)(A) Electronic media coverage is limited to one audio recorder and operator, one video camera and operator, and one still camera and operator, unless otherwise approved by the judge or designee. All requests to provide electronic media coverage shall be made to the court's public information office. The news reporter whose request is granted by the court will provide pool coverage.

(4)(B) It is the responsibility of news reporters to determine who will participate at any given time, how they will pool their coverage, and how they will share audio, video or photographic files produced by pool coverage. The pooling arrangement shall be reached before the proceedings without imposing on the judge or court staff. Neither the judge nor court staff shall be called upon to resolve disputes concerning pool arrangements.

(4)(C) The approved news reporter shall be capable of sharing audio, video or photographic files with other news reporters in a generally accepted format. News reporters providing pool coverage shall promptly share their files with other news reporters. News reporters must be willing and able to share their files to be approved to provide coverage.

(4)(D) News reporters shall designate a representative with whom the court may consult regarding pool coverage, and shall provide the court with the name and contact information for such representative.

(4)(E) Tripods may be used, but not flash or strobe lights. Normally available courtroom equipment shall be used unless the judge or a designee approves modifications, which shall be installed and maintained without court expense. Any modifications, including microphones and related wiring, shall be as unobtrusive as possible, shall be installed before the proceeding or during recess, and shall not interfere with the movement of those in the courtroom.

- (4)(F) The judge may position news reporters, equipment, and operators in the courtroom. Proceedings shall not be disrupted. Equipment operators and news reporters in the courtroom shall:
- (4)(F)(i) not use equipment that produces loud or distracting sounds;
  - (4)(F)(ii) not place equipment in nor remove equipment from the courtroom nor change location while court is in session;
  - (4)(F)(iii) conceal any identifying business names, marks, call letters, logos or symbols;
  - (4)(F)(iv) not make comments in the courtroom during the court proceedings;
  - (4)(F)(v) not comment to or within the hearing of the jury or any member thereof at any time before the jury is dismissed;
  - (4)(F)(vi) present a neat appearance and conduct themselves in a manner consistent with the dignity of the proceedings;
  - (4)(F)(vii) not conduct interviews in the courtroom except as permitted by the judge; and
  - (4)(F)(viii) comply with the orders and directives of the court.
- (5) Violations. In addition to contempt and any other sanctions allowed by law, a judge may remove from the proceeding anyone violating this rule or the court's orders and directives and terminate or suspend electronic media coverage.
- (6) Limitations on electronic media coverage. Notwithstanding an authorization to conduct electronic media coverage of a proceeding, and unless expressly authorized by the judge, there shall be no:
- (6)(A) electronic media coverage of a juror or prospective juror until the person is dismissed;
  - (6)(B) electronic media coverage of the face of a person known to be a minor;
  - (6)(C) electronic media coverage of an exhibit or a document that is not part of the official public record;
  - (6)(D) electronic media coverage of proceedings in chambers;
  - (6)(E) audio recording or transmission of the content of bench conferences; or
  - (6)(F) audio recording or transmission of the content of confidential communications between counsel and client, between clients, or between counsel.
- (7) Except as provided by this rule, recording or transmitting images or sound of a proceeding without the express permission of the judge is prohibited. This rule shall not diminish the

131 authority of the judge conferred by statute, rule, or common law to control the proceedings  
132 or areas immediately adjacent to the courtroom.

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

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

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

**Applicability:**

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

**Statement of the Rule:****(1) Definitions.**

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

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

**(2) Possession and use of portable electronic devices in a courthouse.**

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

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

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

**(3) Restrictions.**

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

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

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

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

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

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

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

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

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



# TAB 3

## CJA 6-305 — Consolidation of Probation Update

**NOTES:** Policy & Planning last reviewed this rule in October 2018. At that time, Policy & Planning and the Board of District Court Judges both felt that consideration of the rule should be paused in order to seek a legislative change to Utah Code § 77-18-1(12)(b)(i), which stated that the court “that authorized probation” shall review probation violation affidavits.

This language was submitted to the legislature as part of the judiciary’s housekeeping bill (SB0207). That bill passed during the session and the three words (“that authorized probation”) have been removed from the statute. That change will be effective May 14, 2019.

Since Policy & Planning last met, it has been suggested that this Consolidation of Probation rule is laden with enough procedure that it should more appropriately be placed in the Utah Rules of Criminal Procedure (URCrP), and NOT in the Code of Judicial Administration. The URCrP already contains a rule for consolidation of cases pre-adjudication (Rule 34). It has been suggested that the Consolidation of Probation rule could be Rule 34A.

This move from the Code of Judicial Administration (Policy & Planning) to the URCrP (Supreme Court Advisory Committee on Rules of Criminal Procedure) has been discussed by the Board of District Court Judges at their April 19th meeting. The Board agreed that the rule appears to be procedural in such a way that it more appropriately belongs in the URCrP.

Policy & Planning should review this rule in light of these developments to determine if the rule should be transferred to the Advisory Committee on Rules of Criminal Procedure for further action. If so, Policy & Planning should also consider whether the rule is presently in proper form to send to that committee.

**Rule 6-305. Consolidation of Probation.****Intent:**

To allow management by a single district court judge of multiple supervised probation cases involving a single defendant which were originally adjudicated in separate courts or districts. The purpose is to improve the effectiveness of supervised probation by consolidating probation supervision to the discretion of a single judge. Consolidation will result in greater clarity for probation orders to the defendant. It is also expected that significant administrative confusion will be eliminated for courts, prosecutors, and defense counsel, as probation actions will not be alleged and considered in more than one forum.

**Applicability:**

This rule applies only when all of the following conditions have been met (see “Definitions” below):

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

**Statement of the Rule:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# TAB 4

## CJA 4-903 – Uniform Custody Evaluations

**NOTES:** The Judicial Council's Committee on Children and Family Law is proposing a change to CJA 4-903 (Uniform custody evaluations). The proposed change would expand the categories of people who are authorized to conduct custody evaluations to include a "Licensed clinical mental health counselor." Commissioner Russell Minas will present the proposed rule change, and the thinking behind it, to Policy & Planning.



**Rule 4-903. Uniform custody evaluations.****Intent:**

To establish uniform guidelines for the performance of custody evaluations.

**Applicability:**

This rule shall apply to the district and juvenile courts.

**Statement of the Rule:**

(1) Custody evaluations shall be performed by professionals who have specific training in child development, and who are licensed by the Utah Department of Occupational and Professional Licensing as either a: ~~(a) Licensed Clinical Social Worker, (b) Licensed Psychologist, (c) Licensed Physician who is board certified in psychiatry, or (d) Licensed Marriage and Family Therapist.~~

(1)(A) Licensed Clinical Social Worker;

(1)(B) Licensed Psychologist;

(1)(C) Licensed Physician who is board certified in psychiatry;

(1)(D) Licensed Marriage and Family Therapist; or

(1)(E) Licensed Clinical Mental Health Counselor.

(2) Every motion or stipulation for the performance of a custody evaluation shall include:

(2)(A) the name, address, and telephone number of each evaluator nominated, or the evaluator agreed upon;

(2)(B) the anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation;

(2)(C) specific factors, if any, to be addressed in the evaluation.

(3) Every order requiring the performance of a custody evaluation shall:

(3)(A) require the parties to cooperate as requested by the evaluator;

(3)(B) restrict disclosure of the evaluation's findings or recommendations and privileged information obtained except in the context of the subject litigation or other proceedings as deemed necessary by the court;

(3)(C) assign responsibility for payment from the beginning of the evaluation through the custody evaluation conference, as well as the costs of the written report if requested;

(3)(D) specify dates for commencement and completion of the evaluation;

- 32 (3)(E) specify any additional factors to be addressed in the evaluation;
- 33 (3)(F) require the evaluator to provide written notice to the court, counsel and parties
- 34 within five business days of completion (of information-gathering) or termination
- 35 of the evaluation and, if terminated, the reason;
- 36 (3)(G) require counsel and parties to complete a custody evaluation conference with the
- 37 court and the evaluator within 45 days of notice of completion (of information
- 38 gathering) or termination unless otherwise directed by the court so that evaluator
- 39 may issue a verbal report; and
- 40 (3)(H) require that any party wanting a written custody evaluation report give written
- 41 notice to the evaluator within 45 days after the custody evaluation conference.
- 42 (4) The purpose of the custody evaluation will be to provide the court with information it can
- 43 use to make decisions regarding custody and parenting time arrangements that are in the
- 44 child's best interest. Unless otherwise specified in the order, evaluators must consider and
- 45 respond to each of the following factors:
- 46 (4)(A) the developmental needs of the child (including, but not limited to, physical,
- 47 emotional, educational, medical and any special needs), and the parents'
- 48 demonstrated understanding of, responsiveness to, and ability to meet, those
- 49 needs.
- 50 (4)(B) the stated wishes and concerns of each child, taking into consideration the child's
- 51 cognitive ability and emotional maturity.
- 52 (4)(C) the relative benefit of keeping siblings together;
- 53 (4)(D) the relative strength of the child's bond with the prospective custodians, meaning
- 54 the depth, quality and nature of the relationship between a prospective custodian
- 55 and child;
- 56 (4)(E) previous parenting arrangements where the child has been happy and well
- 57 adjusted;
- 58 (4)(F) factors relating to the prospective custodians' character and their capacity and
- 59 willingness to function as parents, including:
- 60 (4)(F)(i) parenting skills
- 61 (4)(F)(ii) co-parenting skills (including, but not limited to, the ability to facilitate
- 62 the child's relationship with the other parent, and to appropriately
- 63 communicate with the other parent);
- 64 (4)(F)(iii) moral character;
- 65 (4)(F)(iv) emotional stability;

- (4)(F)(v) duration and depth of desire for custody and parent-time;
- (4)(F)(vi) ability to provide personal rather than surrogate care;
- (4)(F)(vii) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;
- (4)(F)(viii) reasons for having relinquished custody or parent-time in the past;
- (4)(F)(ix) religious compatibility with the child;
- (4)(F)(x) the child's interaction and relationship with the child's step-parent(s), extended family members, and/or any other person who may significantly affect the child's best interest;
- (4)(F)(xi) financial responsibility;
- (4)(F)(xii) evidence of abuse of the subject child, another child, or spouse;
- (4)(G) factors affecting a determination for joint legal and/or physical custody as set forth in Utah Code 30-3-10.2; and
- (4)(H) any other factors deemed important by the evaluator, the parties, or the court.
- (5) In cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall take into consideration the potential danger posed to the child's custodian and the child(ren).
- (6) In cases in which psychological testing is employed as a component of the evaluation, it shall be conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with adults and/or children, it shall be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes.

# TAB 5

## Balance CJA 1-204(3) and CJA 3-402(5)(A)&(C)

**NOTES:** The Judicial Council has discussed the need to make a through review of the courts' Human Resources Policies and Procedures. As part of that discussion, it was observed that the Code of Judicial Administration creates a "Human Resources Policy and Procedure Review Committee." This is found in CJA 3-402. This committee has not been active in recent history, but is currently being reconstituted to address the Judicial Council's requested review of the HR procedures.

The rules related to the charge of the HR committee overlap with the rules related to the charge to Policy & Planning. Both bodies have been tasked by rule with recommending HR rules to the Judicial Council.

Policy & Planning should review the two rules to ensure that the rules are consistent and coordinate a clear path for creation of new or amended HR rules.

**Rule 1-204. Executive committees.****Intent:**

- To establish executive committees of the Council.
- To identify the responsibility and authority of the executive committees.
- To identify the membership and composition of the executive committees.
- To establish procedures for executive committee meetings.

**Applicability:**

- This rule shall apply to the judiciary.

**Statement of the Rule:**

- (1) The following executive committees of the Council are hereby established: (a) the Management Committee; (b) the Policy and Planning Committee; and (c) the Liaison Committee.
- (2) The Management Committee shall be comprised of at least four Council members, one of whom shall be the Presiding Officer of the Council. Three Committee members constitute a quorum. The Presiding Officer of the Council or Presiding Officer's designee shall serve as the Chair. When at least three members concur, the Management Committee is authorized to act on behalf of the entire Council when the Council is not in session and to act on any matter specifically delegated to the Management Committee by the Council. The Management Committee is responsible for managing the agenda of the Council consistently with Rule 2-102 of this Code. The Management Committee is responsible for deciding procurement protest appeals.
- (3) The Policy and Planning Committee shall recommend to the Council new and amended rules for the Code of Judicial Administration and, when referred by the Management Committee or the Council, the Human Resource Policies and Procedures Manual. The committee shall recommend to the Council periodic and long term planning efforts as necessary for the efficient administration of justice. The committee shall research and make recommendations regarding any matter referred by the Council.
- (4) The Liaison Committee shall recommend to the Council legislation to be sponsored by the Council. The committee shall review legislation affecting the authority, jurisdiction, organization or administration of the judiciary. When the exigencies of the legislative

process preclude full discussion of the issues by the Council, the Committee may endorse or oppose the legislation, take no position or offer amendments on behalf of the Council.

(5) Members of the executive committees must be members of the Council. Each executive committee shall consist of at least three members appointed by the Council to serve at its pleasure. The members of the Policy and Planning Committee and the Liaison Committee shall elect their respective chairs annually and select a new chair at least once every two years.

(6) Each committee shall meet as often as necessary to perform its responsibilities, but a minimum of four times per year. Each committee shall report to the Council as necessary.

(7) The Administrative Office shall serve as the secretariat to the executive committees.

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

1 **Rule 3-402. Human resources administration.**

2 **Intent:**

3 To establish guidelines for the administration of a human resources system for the judiciary.

4 **Applicability:**

5 This rule shall apply to all state employees in the judicial branch.

6 **Statement of the Rule:**

- 7 (1) A department of human resources is established within the Administrative Office to direct  
8 and coordinate the human resources activities of the judiciary.
- 9 (2) The department of human resources shall provide the necessary human resources  
10 services to the judiciary in compliance with the state constitution, state statute and this  
11 Code. The department of human resources shall keep all state employees in the judicial  
12 branch informed of benefits, compensation, retirement and other human resources related  
13 matters.
- 14 (3) The human resources policies and procedures for non-judicial employees:
- 15 (3)(A) shall include classification of exempt and non-exempt positions, guidelines  
16 governing recruitment, selection, classification, compensation, working  
17 conditions, grievances and other areas deemed necessary; and
- 18 (3)(B) shall be based upon the following merit principles:
- 19 (3)(B)(i) The recruitment, selection and promotion of employees is based on  
20 relative ability, knowledge and skills, including open consideration of  
21 qualified applicants for initial appointment.
- 22 (3)(B)(ii) A salary schedule which provides for equitable and adequate  
23 compensation based upon studies conducted every three years of the  
24 salary levels of comparable positions in both the public and private  
25 sector and available funds.
- 26 (3)(B)(iii) Employee retention on the basis of adequate performance. Where  
27 appropriate, provision will be made for correcting inadequate  
28 performance and separating employees whose inadequate  
29 performance cannot be corrected.
- 30 (3)(B)(iv) Fair treatment in all aspects of human resources administration  
31 without regard to race, color, religion, sex, national origin, age, creed,

disability, political affiliation or other non-merit factors and proper regard for employees' constitutional and statutory rights as citizens.

(3)(B)(v) Notification to employees and an explanation of their political rights and prohibited employment practices.

(4) The state court level administrator shall be responsible for the day-to-day administration of the human resources system within that court level. A director of human resources, appointed by the State Court Administrator, shall be responsible for directing and coordinating the human resources activities of the human resources system and will assist the state level administrators and court executives with human resources related matters.

(5) Human resources policies and procedures and a Code of Ethics for non-judicial employees shall be adopted by the Council in accordance with the rulemaking provisions of this Code and shall be reviewed every three years.

(5)(A) There is established a human resources policy and procedure review committee responsible for making and reviewing proposals for repealing human resources policies and procedures and promulgating new and amended human resources policies and procedures. The committee shall consist of:

(5)(A)(i) the director of human resources;

(5)(A)(ii) two trial court executives, selected by the trial court executives;

~~(5)(A)(iii) a district court clerk of court;~~

~~(5)(A)(iv)~~ (5)(A)(iii) a juvenile court clerk of court; three clerks of court (one juvenile, one district, and one appellate), selected by the clerks of court;

~~(5)(A)(v)~~ (5)(A)(iv) a probation supervisor from the juvenile court, selected by the probation supervisors; and

~~(5)(A)(vi)~~ (5)(A)(v) an assistant clerk of court from the district court or circuit court; a case manager, selected by who?.

(5)(B) The chair of the committee shall be designated by the director in consultation with the state court administrator. Other members of the committee shall be appointed in a manner consistent with Rule 1-205. The department of human resources shall provide necessary support.

(5)(C) New and amended policies and procedures recommended by the committee shall be reviewed by the court executives prior to being submitted to the Judicial Council. The Court Executives court executives may endorse or amend the draft

Commented [MCD1]: Who actually submits the policy to the Council? The TCEs or the HRPPRC? Does the policy go directly to the Council or to Policy & Planning?



- 65 policies and procedures or return the draft policies and procedures to the  
66 committee for further consideration.
- 67 (6) A grievance review panel is established within the grievance process to sit as a quasi-  
68 judicial body and review any action taken under the authority of the judiciary's human  
69 resources procedures and which pertains to employee promotions, dismissals, demotions,  
70 wages, salary, violations of human resources rules, benefits, reductions in force and  
71 disciplinary actions.
- 72 (7) An official human resources file for each employee shall be maintained in the  
73 Administrative Office and shall include the following records: leave records, education  
74 records, biographical information, performance plans and appraisals, records of official  
75 human resources action, records of official disciplinary action and supporting  
76 documentation, letters of commendation, job applications and payroll and benefits  
77 information.

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

# TAB 6

## CJA Appendix B —Justice court standards for recertification

**NOTES:** The Board of Justice Court Judges is recommending revisions to Appendix B.

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Jim Peters

E-mail:

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

Phone Number:

(801) 578-3824

Date of Request:

04/25/2019

### RULE AMENDMENT:

Rule Number:

Appendix B

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

Standards for the certification and recertification of justice courts are codified in Appendix B of the Code of Judicial Administration. The Board of Justice Court Judges is recommending that they be revised.

### Reason Amendment is Needed:

Rule 9-108(2)(B) of the Code of Judicial Administration requires that the operational standards for justice courts be reviewed and updated every two years. Before presenting them to the Judicial Council for approval, section (2)(A) of the same rule requires that they first "be distributed for comment to affected agencies and organizations..." The Board is seeking approval from Policy and Planning to do so.

Is this proposal urgent?

☐ No

☒ Yes

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

Recertification for all the municipalities with a justice court will commence in the next four months. The Board would like the new standards to be effective before then so that these municipalities can resolve to abide by them on a go-forward basis.

List all stakeholders:

Utah Judiciary and all counties and municipalities operating a justice court

Select each entity that has approved this proposal:

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

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

Requester's Signature:

/s/ James M. Peters

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
- ☐ No

Queue Priority Level:

- ☐ Red
- ☐ Yellow
- ☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

**Appendix B. Justice court standards for recertification.**

## Instructions to applicant for recertification:

As part of the ~~application-recertification~~ process, each entity should carefully review all requirements for the operation of ~~a Justice Courts~~justice court. In order to aid governing bodies in obtaining the necessary information regarding the continuing obligations of an entity with respect to the operations of the ~~Court~~justice court, the governing body of each entity must request and review a written opinion from its attorney advising the entity of all requirements for the operation of a ~~Justice Court~~justice court, and the feasibility of maintaining a ~~Justice Court~~justice court. In addition, prior to submission of this application, each entity must duly pass a resolution requesting recertification. The resolution must also affirm that the entity is willing to meet all requirements for the operation of the ~~Court~~justice court during the period of certification. A copy of the attorney's opinion and the resolution must accompany the application. ~~A representative of the entity may appear before the Committee to present the application and may present any additional information which the applicant desires to present to the Committee. In the event that additional information is deemed necessary, the Committee may request such additional information from the applicant. Certification will certify the court to process all cases which come within the jurisdiction of the court including criminal, civil and small claims cases pursuant to Section 78A-7-106.~~

Statutes of the State of Utah require that certain standards be met in the operation of a ~~Justice Court~~justice court. These statutory requirements include:

1. All official court business shall be conducted in a courtroom or an office located in a public facility which is conducive and appropriate to the administration of justice (Section 78A-7-213).
2. Each court shall be opened and judicial business shall be transacted every day as provided by law (Section 78A-7-213), although the judge is not required to be present during all hours that the court is open.
3. The hours that the justice court will be open shall be posted conspicuously at the court and in local public buildings (Section 78A-7-213).
4. The judge and the clerk of the justice court shall attend the court at regularly scheduled times (Section 78A-7-213).

- 31 5. The entity ~~creating-with~~ the ~~Justice-Court~~justice court shall provide and compensate a judge  
32 and sufficient clerical personnel to conduct the business of the court (Section 78A-7-103,  
33 Section 78A-7-206, and Section 78A-7-~~211~~207).
- 34 6. The entity ~~creating-with~~ a ~~Justice-Court~~justice court shall assume the expenses of travel,  
35 meals, and lodging for the judge of that court to attend required judicial education and  
36 training (Section 78A-7-~~205~~103).
- 37 7. The entity ~~creating-with~~ a ~~Justice-Court~~justice court shall assume the cost of travel and  
38 training expenses of clerical personnel at training sessions ~~conducted~~mandated by the  
39 Judicial Council ( Section 78A-7-~~211~~103).
- 40 8. The entity ~~creating-with~~ the ~~Justice-Court~~justice court shall provide a sufficient staff of public  
41 prosecutors to attend the court and perform the duties of prosecution (Section 78A-7-  
42 ~~209~~103).
- 43 9. The entity ~~creating-with~~ the justice court shall provide adequate funding for attorneys where  
44 persons are indigent as provided by law (Section 78A-7-~~209~~103).
- 45 10. The entity ~~creating-with~~ the justice court shall provide sufficient local law enforcement  
46 officers to attend court when required and provide security for the court (Section 78A-7-  
47 ~~209~~103).
- 48 11. Witnesses and jury fees as required by law shall be paid by the entity ~~which-creates-with~~ the  
49 Justice Court (Section 10-7-76 and 17-50-319).
- 50 12. Any fine, surcharge, or assessment which is payable to the State shall be forwarded to the  
51 State as required by law ( Section 78A-7-~~121~~120 and Section 78A-7-~~119~~121).
- 52 13. Every entity ~~creating-with~~ a justice court shall pay the judge of that court a fixed  
53 compensation within the range provided by statute (Section 78A-7-206).
- 54 14. Court shall be held within the territorial jurisdiction of the court, except as provided by law  
55 (Section 78A-7-212).
- 56 15. The entity ~~creating-with~~ the justice court shall provide and keep current for the court a copy  
57 of the ~~Motor Vehicle Laws of the State of Utah, appropriate copies of the~~ Utah Code, the  
58 Utah Court Rules Annotated, the ~~Justice-Court Manual~~justice court manual published by the  
59 state court administrator, state laws affecting local governments, local the county, city, or  
60 town ordinances, as appropriate, and other ~~necessary~~legal reference materials as  
61 determined to be necessary by the judge ( Section 78A-7-~~211~~103).

16. All required reports and audits shall be filed as required by law ~~or by rule of the Judicial Council pursuant to~~ (Section 78A-7-215).

17. All justice courts shall use a common case management system and disposition reporting system as specified by the Judicial Council (Section 78A-7-213).

~~17-18.~~ An audio recording system shall maintain ~~the verbatim a complete~~ record of all court proceedings. (Section 78A-7-103).

For Class I and Class II justice courts, the system must:

- (a) be a stand-alone unit that records and audibly plays back the recording;
- (b) index, back-up and archive the recording and enable the record to be retrieved.
- (c) have at least four recording channels;
- (d) have a one-step "on" and "off" recording function;
- (e) have conference monitoring of recorded audio;
- (f) have external record archiving from the unit with local access;
- (g) be capable of being integrated with the courts public address system; and

For Class III and Class IV justice courts, the system must, at a minimum:

- (h) be a stand-alone unit that records and audibly plays back the recording;
- (i) index, back-up and archive the recording and enable the record to be retrieved; and
- (j) have at least two recording channels.

The Board of Justice Court Judges may create a list of products that meet these criteria.

~~18-19.~~ The judge shall ensure that court personnel comply with applicable county and municipal rules and regulations related to personnel, budgets, and other administrative functions (Section 78A-7-210).

In addition to those requirements which are directly imposed by statute, Section 78A-7-103 directs the Judicial Council to promulgate minimum requirements for the creation and certification of Justice Courts. ~~Pursuant to statute~~Accordingly, the Judicial Council has adopted the following minimum requirements:

1. ~~That the~~The justice court shall be opened for at least one hour each day, ~~that the court is required to be open as provided by law except for Saturdays, Sundays, and state holidays~~ (Section 78A-7-213).
2. ~~That the~~The judge shall be available to attend court and conduct court business as needed.

93 3. The judge shall perform all duties and responsibilities required and shall exercise ultimate  
94 responsibility (including access control) for the administration of justice as an independent  
95 branch of government.

96 4. With the exception of hearings conducted electronically for remote participants, or unless  
97 otherwise authorized, all hearings shall be conducted in the courtroom.

98 3.5. ~~That the~~The minimum furnishings for a courtroom shall include: a desk and chair for the  
99 judge (on a six inch riser), a desk and chair for the court clerk, chairs for witnesses, separate  
100 tables and appropriate chairs for plaintiffs and defendants, a Utah State flag, a United States  
101 flag, a separate area and chairs for at least four jurors, a separate area with appropriate  
102 seating for the public, an appropriate room for jury deliberations, and an appropriate area or  
103 room for victims and witnesses which is separate from the public. ~~(A suggested courtroom~~  
104 ~~configuration is attached).~~

105 4.6. A judicial robe, a gavel, ~~current bail schedules, a copy of the Code of Judicial~~  
106 Administration, and necessary forms and supplies shall be provided to the judge.

107 5.7. Office space for the judge and clerk shall be provided (under certain circumstances this  
108 space may be shared, but if shared, the judge and clerk must have priority to use the space  
109 whenever needed). The office space shall include a desk for the judge and a desk for the  
110 clerk, secure filing cabinets for the judge and the clerk, a telephone for the judge and a  
111 telephone for the clerk, appropriate office supplies to conduct court business, a cash register  
112 or secured cash box for each clerk performing cashiering duties, ~~a typewriter or word~~  
113 processor at least one computer with access to the internet, and access to a scanner and a  
114 copy machine.

115 8. The justice court shall provide interpreters as required by CJA Rule 3-306.04.

116 9. The judge shall have the opportunity to concur in the appointment of the clerk(s) assigned to  
117 serve the court and participates in the personnel evaluation process for the clerk(s) as  
118 required by C.J.A. Rule 3-303.

119 10. ~~A~~At least one clerk ~~must~~ shall be present during the time the court is open each day and  
120 during court sessions, ~~as required by the judge.~~

121 6.11. Clerk education hours shall be tracked and reported to the judge on an annual basis.

122 7.12. The entity ~~must~~ shall have at least one peace officer (which may be contracted).

123 13. The entity shall comply with ~~A court security plan must be submitted consistent with~~ C.J.A.  
124 Rule 3-414 which requires, among other things, that a court security plan, and amendments



as they are made, be submitted to the Court Security Director at the Administration Office of the Courts.

8-14. Any interlocal agreement relating to court operations, as amended to date, shall be provided to the Justice Court Administrator at the Administrative Office of the Courts.

9-15. Each court ~~must~~ shall have at least one computer with access to the internet, and appropriate software and security/encryption technology to allow for electronic reporting and access to Driver License Division and the Bureau of Criminal Identification, as defined by the reporting and retrieval standards promulgated by the Department of Public Safety.

16. Each court shall report required case disposition information to DLD, BCI and the Administrative Office of the Courts electronically, as described in number 9-15 above.

10-17. The Court shall accept online payments through a method that retrieves and displays current balances and posts payments into the case management system in real time.

In establishing minimum requirements, the Judicial Council has determined that ~~Justice Courts~~ justice courts with higher case filings require greater support services. To accommodate the great differences in judicial activity between ~~Justice Courts~~ justice courts within the state, the Council has divided courts into four classes based upon the average monthly cases filed in that court. Minimum standards have been set for each classification.

Class IV Courts: Courts which have an average of less than 61 cases filed each month are classified as Class IV Courts. The minimum requirements for a Class IV Court are stated above. (These requirements are also attached as Class IV minimum requirements). These requirements include both the statutory requirements and requirements promulgated by the Judicial Council, and are sometimes hereinafter referred to as "base requirements."

Class III Courts: Courts which ~~have an~~ average ~~of~~ more than 60 but ~~less~~ fewer than 201 cases filed each month are classified as Class III Courts. In addition to the base requirements, a Class III Court must be open more hours each week (see attached Class III minimum requirements), and court must be scheduled at least every other week.

Class II Courts: Courts which ~~have an~~ average ~~of~~ more than 200 but ~~less~~ fewer than 501 cases filed each month are classified as Class II Courts. In addition to the base requirements, Class II Courts are required to be open additional hours (see attached Class II minimum requirements), the courtroom configuration is required to be permanent (although the courtroom may be used by another entity when the court is not in session), court must be scheduled at least weekly, the judge must be provided an appropriate office (chambers) for ~~his~~ the judge's own use, clerical space may not be shared, at least one full-time clerk must be provided (see attached Class II

minimum requirements), and the courtroom, judge's chambers, and clerk's office must be in the same building.

Class I Courts: Courts which ~~have an~~ average monthly filing of more than 500 cases are classified as Class I Courts. Class I Courts are considered to be full-time courts. In addition to the base requirements, a Class I Court must have a full-time judge, at least three clerks, it must be open during regular business hours, it must have a courtroom which is dedicated for the exclusive use as a court and which meets the ~~master plan~~ guidelines adopted by the Judicial Council, and the judge's chambers and clerk's office cannot be shared by another entity.

The State Legislature has provided that any ~~Justice Court~~ justice court which continues to meet the minimum requirements for its class is entitled to be recertified. However, the Judicial Council also has authority to waive any minimum requirement which has not been specifically imposed by the Legislature (i.e. requirements 1 - ~~10-17~~ above, which have been adopted by the Judicial Council pursuant to Section 78A-7-103). Waiver is at the discretion of the Judicial Council and will be based upon a demonstrated need for a court to conduct judicial business and upon public convenience. Any waiver will be for the entire term of the certification. A waiver must be obtained through the Judicial Council each time a court is recertified and, the fact that a waiver has been previously granted, will not be determinative on the issue of waiver for any successive application.

There is a great diversity in the needs of the ~~Justice Courts~~ justice courts. The needs of a particular ~~Court~~ justice court are affected by the type of cases filed (some courts have a high percentage of traffic matters, while others handle significant numbers of criminal and small claims matters), the location of the ~~Court~~ justice court, the number of law enforcement agencies served, the policies and procedures followed by each judge with respect to the operation of the ~~Court~~ justice court, and many other factors. Clerical resources and judicial time are particularly sensitive to local conditions. In order to adequately function it is anticipated that some courts will exceed minimum requirements for clerical resources and judicial time. Similarly, the particular circumstances of a justice court may allow it to operate efficiently with less than the minimum requirements in the above areas; and in such circumstances a waiver may be requested.

The statute also provides that the Judicial Council may grant an extension of time for any requirement which is not specifically required by statute. An extension may be granted at the discretion of the Judicial Council where individual circumstances temporarily prevent the entity from meeting a minimum requirement. An extension will be for a specific period of time and the certification of the justice court will terminate at the end of the extension period. In order for the justice court to continue to operate beyond the extension period, the justice court must be certified as meeting all requirements, obtain an additional extension, or obtain a waiver as provided above.

Applications for ~~existing courts for~~ recertification shall be accompanied by ~~a certificate of an~~  
~~affidavit from~~ the judge, on a form approved by the Judicial Council, certifying that the  
operational standards for the court have been met during the prior year. Any exceptions to  
compliance with the minimum requirements or operational standards shall be noted on the  
~~above form~~affidavit. In addition, individual ~~Justice Court Judges~~justice court judges must meet  
with the governing body of the entity which created the justice court at least once a year to  
review the budget of the justice court, review compliance with the requirements and operational  
standards of the justice court, ~~and~~ discuss other items of common concern, and shall certify that  
this meeting has been held, and that the operational standards for the court have been met  
during the prior year.

Upon submission of an application, the ~~Justice Court Standards Committee~~Board of Justice  
Court Judges ~~will may~~ conduct an appropriate independent investigation and notify the entity of  
its initial recommendations, whether in favor or against certification. If the ~~Committee Board~~  
intends to recommend against certification, it shall specify the minimum requirements which  
have not been met. The entity may then present additional information to the ~~Committee Board~~,  
request an extension, or request a waiver. After making an appropriate investigation based  
upon any additional information or request made by the entity, the ~~Committee Board~~ ~~will shall~~  
then submit its recommendations to the Judicial Council. The recommendations shall specify  
whether or not a waiver or extension should be granted, if either has been requested. If the  
recommendation is against recertification, or against waiver, or against extension, the entity  
may request that it be allowed to make an appearance before the Judicial Council. Any request  
to appear before the Judicial Council must be filed within 15 days of notification of the  
~~Committee's Board's~~ recommendations.

If you have any questions concerning ~~this application~~recertification, please contact: ~~Richard~~  
~~Schwerner, counsel to the Justice Court Standards Committee, at P. O. Box 140241, Salt Lake~~  
~~City, Utah 84114-0241, telephone: (801)578-3816.~~

Justice Court Administrator  
Staff to Board of Justice Court Judges  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241  
(801) 578-3816

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

# TAB 7

New Probate Rules:

CJA 4-1001 — Informal trial of probate disputes;

CJA 6-506 — Procedure for contested matters filed in probate court

**NOTES:** The Probate Working Group of the Supreme Court's Advisory Committee on Rules of Civil Procedure has been engaged in a project revising certain rules and procedures related to probate matters. The following materials describe the project and the proposed rules. Nancy Sylvester and at least one other member of the Probate Working Group will present the project to Policy & Planning.

Policy & Planning should review proposed new rules 4-1001 and 6-506 for recommendation to the Judicial Council.

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Judge Scott & Nancy Sylvester

E-mail:

nancyjs@utcourts.gov

Phone Number:

801-578-3808

Date of Request:

04/24/2019

### RULE AMENDMENT:

Rule Number:

6-506, 4-1001

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

6-506 is a new rule that establishes procedures for contested probate matters. It also establishes a state-wide mediation program.

4-1001 is a new rule that provides for the use of informal trials in probate cases. The rule is modeled from CJA Rule 4-904, Informal trial of support, custody and parent-time.

### Reason Amendment is Needed:

Rule 6-506 codifies and expands on a mediation pilot program that has run for 20 years in the Third District. It clarifies that probate objections should be in writing and filed within a specific time period, that a contested probate case is automatically referred to mediation, and that the court will hold a pre-mediation conference for purposes of, among other things, determining the issues for mediation and who will pay for it.

4-1001 recognizes that, just like domestic cases, probate cases involve families. It is designed to be one more tool that can assist families in resolving their disputes in a more informal manner.

Is this proposal urgent?

☐ No

☒ Yes

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

It is fairly urgent that this be done only because there are so many pieces to this effort that have developed over the past year and there are many stakeholders waiting on these changes. Additionally, this is phase 1 of the committee's work and the Supreme Court has asked that the committee move onto phase 2, which involves a legislative effort and the creation of another set of probate rules.

List all stakeholders:

Estate Planning Section of the Bar, Elder Law Section of the Bar, the ADR Committee, the Board of District Court Judges, the Third District Court

Select each entity that has approved this proposal:

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

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

Requester's Signature:

/s/Nancy Sylvester

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
- ☐ No

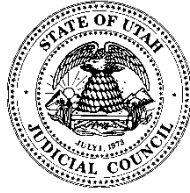
Queue Priority Level:

- ☐ Red
- ☐ Yellow
- ☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:



# 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 Committee

**From:** Nancy Sylvester

A handwritten signature in cursive script that reads "Nancy J. Sylvester".

**Date:** April 19, 2019

**Re:** Probate Rules

The Probate Subcommittee<sup>1</sup> has been meeting for purposes of recommending changes to how contested probate cases are litigated. The subcommittee's recommendations include the following:

- Making Third District's probate calendar a 2-year assignment, rather than a 6 month rotation;
- Adopting new Rule 26.4 of the Utah Rules of Civil Procedure. Provisions governing disclosure and discovery in contested proceedings under Title 75 of the Utah Code;
- Adopting new Rule 6-506 of the Utah Code of Judicial Administration. Procedure for contested matters filed in the probate court (dealing with mediation of probate disputes in the Third District);
- Adopting new form Order Regarding Mediation and Preliminary Matters; and
- Adopting new Rule 4-1001. Informal trial of probate disputes.

One of the primary catalysts for the subcommittee's formation was exploring making the Third District probate mediation pilot project permanent. That has now been accomplished as of February with the adoption of a new 2-year probate assignment. The package of rules and form order will support that effort.

The Civil Rules Committee has reviewed Rule 26.4 and recommended that the Supreme Court circulate the rule for comment. The rule has not yet gone to the Supreme Court. The package of recommendations is now before the Policy and Planning Committee for its review of the Code of Judicial Administration rules. The form will go next to the Standing Forms Committee.

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<sup>1</sup> The subcommittee consists of probate attorneys Allison Barger, Charles Bennett, David Parkinson, and Kathie Brown Roberts and Judge Scott and me.

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

**Rule 4-1001. Informal trial of probate disputes.**

**Intent:**

To allow interested persons and the judge to agree to a trial of select probate disputes in an informal manner. Rule 26.4 of the Utah Rules of Civil Procedure defines “interested persons” and “probate dispute.”

**Applicability:**

This rule applies to the district court.

**Statement of the Rule:**

(1) Upon waiver and stipulated motion of all interested persons and approval by the court, the court will conduct an informal trial of a probate dispute(s) during which the Utah Rules of Evidence will not apply. The waiver and motion must be made verbally on the record or in a signed writing. To qualify for an informal trial, the court must find that the interested parties have made a valid waiver of their right to a regular trial.

(2) If the court grants the motion, the informal trial will proceed as follows:

(2)(A) The party who bears the burden of proof on an issue speaks to the court under oath about the probate dispute, including his or her preferred resolution of the dispute. The party is not questioned by counsel or the other parties but may be questioned by the court.

(2)(B) That party may present any document or other evidence. The court will determine what weight to give any documents or other evidence. The court may order the record to be supplemented.

(2)(C) Counsel for that party may identify any other areas of inquiry, and the court may make the inquiry.

(2)(D) The process is repeated for the other interested parties.

(2)(E) If there is an expert, the expert’s report is entered into evidence as the court’s exhibit. The expert may be questioned by counsel, parties or the court upon request.

(2)(F) Each interested party is offered:

(2)(F)(i) the opportunity to respond to the statements, documents or other evidence of the other parties; and

(2)(F)(ii) the opportunity to make legal arguments.



32        (2)(G) The court will enter an order which has the same force and effect as if entered  
33        after a traditional trial. If the order is a final order, it may be appealed on any  
34        grounds that do not rely upon the Utah Rules of Evidence in accordance with  
35        Rules 4 and 5 of the Utah Rules of Appellate Procedure as applicable.

36        Effective May/November 1, 20

**Rule 6-506. Procedure for contested matters filed in the probate court.**

**Intent:**

To establish procedures for contested matters filed in the probate court.

**Applicability:**

This rule applies to matters filed under Title 75, Utah Uniform Probate Code when an objection is made orally or in writing upon the record (a “probate dispute”).

**Statement of the Rule:**

**(1) General Provisions.** When there is a probate dispute:

(1)(A) Rule 4-510.05 of the Utah Code of Judicial Administration and Rule 101 of the Utah Rules of Court-Annexed Alternative Dispute Resolution apply.

(1)(B) Upon the filing of a written objection with the court in accordance with Rule 26.4(c)(2) of the Utah Rules of Civil Procedure, all probate disputes will be automatically referred by the court to the Alternative Dispute Resolution (ADR) Program under Rule 4-510.05 of the Utah Code of Judicial Administration, unless the court waives mediation.

(1)(C) After an objection has been filed, and unless the court has waived mediation, the court will schedule the matter for a pre-mediation conference for purposes of the following:

(1)(C)(i) determining all interested persons who should receive notice of mediation,

(1)(C)(ii) determining whether any interested person should be excused from mediation,

(1)(C)(iii) determining the issues for mediation,

(1)(C)(iv) setting deadlines,

(1)(C)(v) modifying initial disclosures if necessary and addressing discovery,

(1)(C)(vi) determining how mediation costs will be paid; and

(1)(C)(vii) entering a mediation order.

(1)(D) The court will send notification of the pre-mediation conference to petitioner, respondent, and all interested persons identified in the petition at the hearing and any objection as of the date of the notification. The notification will include a statement that

(1)(D)(i) the interested persons have a right to be present and participate in the mediation, the interested persons have a right to consult with or by represented by their own counsel, and the interests of the interested persons cannot be negotiated unless the interested persons specifically waive that right in writing; and

(1)(D)(ii) unless excused by the court, an interested person who fails to participate after receiving notification of the mediation may be deemed to have waived their right to object to the resolution of the issues being mediated.

**(2) Procedure**

(2)(A) **Objections.** A party who files a timely written objection pursuant to Rule of Civil Procedure 26.4 is required to participate in the court-ordered mediation unless the court upon motion excuses the party's participation.

**(2)(B) Involvement of Interested Persons.**

(2)(B)(i) Any notice required under this rule must be served in accordance with Rule 5 of the Utah Rules of Civil Procedure.

(2)(B)(ii) Once mediation is scheduled, the petitioner must serve notice of the following to all interested persons:

(2)(B)(ii)(a) The time, date, and location of the scheduled mediation;

(2)(B)(ii)(b) The issues to be mediated as provided in the pre-mediation scheduling conference order;

(2)(B)(ii)(c) A statement that the interested persons have a right to be present and participate in the mediation, that the interested persons have a right to consult with or be represented by their own counsel, and that the interests of the interested persons cannot be negotiated unless the interested persons specifically waive that right in writing; and

(2)(B)(ii)(d) a statement that, unless excused by the court, an interested person who fails to participate after being served notice of the mediation may be deemed to have waived their right to object to the resolution of the issues being mediated.

66 (2)(B)(iii) Additional issues may be resolved at mediation as agreed upon by the  
67 mediating parties and the mediator.

68 (2)(B)(iv) Once the mediation has taken place, the petitioner must notify all  
69 interested persons in writing of the mediation's outcome, including any  
70 proposed settlement of additional issues.

71 (2)(B)(iv)(a) An excused person has the right to object to the  
72 settlement of any additional issue under (2)(B)(iii)  
73 within 7 days of receiving written notice of the  
74 settlement.

75 (2)(B)(iv)(b) Any objection to the settlement of additional issues  
76 must be reduced to a writing, set forth the grounds for  
77 the objection and any supporting authority, and be filed  
78 with the court and mailed to the parties named in the  
79 petition and any interested persons as provided in Utah  
80 Code § 75-1-201(24).

81 (2)(B)(iv)(c) Upon the filing of an objection to the settlement of  
82 additional issues, the case will proceed pursuant to  
83 paragraphs (2)(C) through (2)(I).

84 **(2)(C) Deadline for mediation completion.**

85 (2)(C)(i) Mediation must be completed within 60 days from the date of referral.

86 (2)(C)(ii) If the parties agree to a different date, the parties must file notice of  
87 the new date with the court.

88 **(2)(D) Mediation Fees.**

89 (2)(D)(i) If the estate or trust has liquid assets, and the personal  
90 representative, trustee, guardian, or conservator, as applicable, is a  
91 mediating party, the estate or trust must pay the mediator's fees.

92 (2)(D)(ii) Otherwise, the disputing parties will share the cost of the mediation  
93 but may later request reimbursement from the estate or trust if the  
94 estate or trust has liquid assets.

95 (2)(D)(iii) A party may petition the court for a waiver of all or part of the  
96 mediation fees if the party cannot afford mediator fees or for other  
97 good cause.

98 (2)(D)(iv) If the court grants a waiver of mediation fees, the party must contact  
99 the ADR Director who will appoint a pro bono mediator.

100 (2)(E) **Initial disclosures.** Within 14 days after a written objection has been filed, the  
101 parties must comply with the initial disclosure requirements of Rule 26.4 of the  
102 Rules of Civil Procedure.

103 (2)(F) **Discovery once a probate dispute arises.** Except as provided in Rule 26.4 of  
104 the Rules of Civil Procedure or as otherwise ordered by the court, once a probate  
105 dispute arises, discovery will proceed pursuant to the Rules of Civil Procedure,  
106 including the other provisions of Rule 26.

107 (2)(G) **Completion of mediation.** Upon completion of mediation, the parties will notify  
108 the Court of the mediation's resolution pursuant to Rule 101 of the Utah Rules of  
109 Court-Annexed Alternative Dispute Resolution.

110 (2)(H) **Written settlement agreement.** If mediation results in a written settlement  
111 agreement, upon a motion from any party, the court may enter orders consistent  
112 with its terms. The filing of an objection under paragraph (2)(B)(iv)(a) does not  
113 preclude the court from entering orders consistent with the resolved issues.

114 (2)(I) **Remaining issues.** If issues remain to be resolved after the conclusion of  
115 mediation, the parties must request a pretrial conference with the assigned judge  
116 to establish the deadlines for any supplemental initial disclosures, fact discovery,  
117 expert disclosures, expert discovery, and readiness for trial, and to inform the  
118 parties of the availability of an informal trial under Rule 4-1001.

119 Effective May/November 1, 20  
120

**Rule 26.4. Provisions governing disclosure and discovery in contested proceedings under Title 75 of the Utah Code.**

(a) **Scope.** This rule applies to all contested actions arising under Title 75 of the Utah Code.

(b) **Definition.** A probate dispute is a contested action arising under Title 75 of the Utah Code.

(c) **Designation of parties, objections, initial disclosures, and discovery.**

(c)(1) **Designation of Parties.** For purposes of Rule 26, the plaintiff in probate proceedings is presumed to be the petitioner in the matter, and the defendant is presumed to be any party filing an objection. Once a probate dispute arises, and based on the facts and circumstances of the case, the court may designate an interested person as plaintiff, defendant, or non-party for purposes of discovery. Only an interested person who has appeared will be treated as a party for purposes of discovery.

(c)(2) **Objection to the petition.**

(c)(2)(A) Any oral objection must be made at a scheduled hearing on the petition and then reduced to writing within 7 days, unless the written objection has been previously filed with the court..

(c)(2)(B) A written objection must set forth the grounds for the objection and any supporting authority, must be filed with the court, and must be mailed to the parties named in the petition and any interested persons as provided in Utah Code § 75-1-201(24).

unless the written objection has been previously filed with the court.(c)(2)(C) If the petitioner and objecting party agree to an extension of time to file the written objection, notice of the agreed upon date must be filed with the court.

(c)(2)(D) In the event no written objection is timely filed, the court will act on the original petition upon the petitioner's filing of a request to submit pursuant to Rule 7 of the Utah Rules of Civil Procedure.

(c)(3) **Initial disclosures in guardianship and conservatorship matters.**

(c)(3)(A) In addition to the disclosures required by Rule 26(a), and unless included in the petition, the following documents must be served by the party in possession or control of the documents within 14 days after a written objection has been filed.

(c)(3)(A)(i) any document purporting to nominate a guardian or conservator, including a will, trust, power of attorney, or advance healthcare directive, copies of which must be served upon all interested persons; and

(c)(3)(A)(ii) a list of less restrictive alternatives to guardianship or conservatorship that the petitioner has explored and ways in which a guardianship or conservatorship of the respondent may be limited.

This paragraph supersedes Rule 26(a)(2).

36 (c)(3)(B) The initial disclosure documents must be served on the parties named in the  
37 probate petition and the objection and anyone who has requested notice under Title 75 of the  
38 Utah Code:

39 (c)(3)(C) If there is a dispute regarding the validity of an original document, the proponent of  
40 the original document must make it available for inspection by the contesting party within 14 days  
41 of the date of referral to mediation unless the parties agree to a different date.

42 (c)(3)(D) The court may modify the content and timing of the disclosures required in this rule  
43 or in Rule 26(a) for any reason justifying departure from these rules.

44 **(c)(4) Initial disclosures in all other probate matters.**

45 (c)(4)(A) In addition to the disclosures required by Rule 26(a), and unless included in the  
46 petition, the following documents must be served by the party in possession or control of the  
47 documents within 14 days after a written objection has been filed: any other document purporting  
48 to nominate a representative after death, including wills, trusts, and any amendments to those  
49 documents, copies of which must be served upon all interested persons. This paragraph  
50 supersedes Rule 26(a)(2).

51 (c)(4)(B) The initial disclosure documents must be served on the parties named in the  
52 probate petition and the objection and anyone who has requested notice under Title 75 of the  
53 Utah Code.

54 (c)(4)(C) If there is a dispute regarding the validity of an original document, the proponent of  
55 the original document must make it available for inspection by the contesting party within 14 days  
56 of the date of referral to mediation unless the parties agree to a different date.

57 (c)(4)(D) The court may modify the content and timing of the disclosures required in this rule  
58 or in Rule 26(a) for any reason justifying departure from these rules.

59 **(c)(5) Discovery once a probate dispute arises.** Except as provided in this rule or as otherwise  
60 ordered by the court, once a probate dispute arises, discovery will proceed pursuant to the Rules of  
61 Civil Procedure, including the other provisions of Rule 26.

62 **(d) Pretrial disclosures, objections.** No later than 14 days prior to an evidentiary hearing or trial, the  
63 parties must serve the disclosures required by Rule 26(a)(5)(A).  
64

<b>IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY</b> <b>STATE OF UTAH</b>	
<b>IN THE MATTER OF:</b> <input type="checkbox"/> <b>THE ESTATE OF</b> _____  <input type="checkbox"/> <b>THE _____ TRUST.</b>	<b>ORDER REGARDING MEDIATION AND PRELIMINARY MATTERS</b>  <b>Case number</b> _____  <b>Judge</b> _____

The Court hereby enters the following Order Regarding Mediation and Preliminary Matters to govern the referral of this matter to mediation.

**Objection:**

☐ \_\_\_\_\_ shall file a written objection with the Court and provide a copy to each of the other parties on or before \_\_\_\_\_.

**Mediation:**

1. A mediation packet has been provided or made available to each of the parties.
2. The following parties to this action are the "mediating parties:"

\_\_\_\_\_  
\_\_\_\_\_



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The court has excused the following interested persons from participating in the mediation:

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3. The mediating parties shall agree on a mediator, conduct the mediation, and report the results of the mediation to the Court no later than

\_\_\_\_\_.

4. The cost of the mediation shall be:

☐ Paid by the estate or trust, subject to allocation among the mediating parties as determined by the Court.

☐ Split equally between the mediating parties.

☐ Other:

**Issues for Mediation**

5. The issues to be resolved at mediation shall include the following:

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6. Additional issues may be resolved at mediation as agreed upon by the mediating parties and the mediator.

7. An excused person has the right to object to the settlement of any additional issue within 7 days of receiving written notice of the settlement. Any objection to the the settlement of additional issues must be reduced to a writing, set forth the grounds for the objection and any supporting authority, and be filed with the court and mailed to the parties named in the petition and any interested persons as provided in Utah Code § 75-1-201(24).

**Disclosures:**

8. To the extent the following documents are in the possession of a mediating party, that mediating party is ordered to provide such documents to each mediating party and to each other interested person who requests the documents, on or before \_\_\_\_\_:
- ☐ copy of the most recent will of the decedent and any relevant prior wills or amendments to the will;
  - ☐ inventory of the estate of the decedent (required by § 75-3-705 within 3 months of appointment of personal representative), in substantially the form attached, as of \_\_\_\_\_;
  - ☐ accounting of the estate, disclosing estate assets, liabilities, receipts, and disbursements, including the amount of the personal representative's compensation, in substantially the form attached, from \_\_\_\_\_ to \_\_\_\_\_;
  - ☐ copy of the most recent trust document and any relevant prior trust documents or amendments to the trust;

- ☐ inventory of trust assets, in substantially the form attached, as of \_\_\_\_\_;
- ☐ report of the trustee (required by Utah Code Section 75-7-811(3)) disclosing trust assets, liabilities, receipts, and disbursements from \_\_\_\_\_ to \_\_\_\_\_, including the amount of the trustee's compensation, in substantially the form attached; and
- ☐ other documents: \_\_\_\_\_.

**Failure to Participate in Mediation**

Unless excused by the court, an interested person who fails to participate after receiving notification of the mediation may be deemed to have waived their right to object to the resolution of the issues being mediated.

DATED this \_\_\_ day of \_\_\_\_\_ 20\_\_.

THIS ORDER IS HEREBY ENTERED BY THE COURT  
And is Effective on the Date the Court Stamp  
is Affixed to the First Page of This Order

# TAB 8

## CJA 4-206(4) – Exhibits

**NOTES:** On April 3, 2019, the Utah Supreme Court issued its opinion in *Sandoval v. State*, 2019 UT 13. In that case, the Defendant / Petitioner argued that "his due process rights under the Utah Constitution were violated when the evidence was destroyed and he became unable to seek post-conviction DNA testing under section 301 of the PCRA." The destruction of evidence was accomplished by operation of CJA 4-206(4)(B) which states:

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Disposal of exhibits. After three months have expired from final disposition of the case and no appeals have been filed or requests for new trials or rehearing have been made, the clerk shall dispose of the exhibits as follows: . . . (4)(B) Property having no value shall be destroyed by the clerk of the court who shall furnish the court with a certificate of destruction that may be maintained with the exhibit custody tracking record or noted in the computer record.

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In the *Sandoval* case, the evidence was actually not destroyed until nearly two years after the Court of Appeal upheld the underlying conviction. Even so, in paragraph 18 of its decision, the Supreme Court stated:

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¶18 Because we foresee a potential due process challenge in a future case we now wish to comment on rule 4-206. Subsection (4) prescribes the procedure for disposing of exhibits used in evidence after final disposition of a case. The three-month time limit functionally imposes a temporal bar on the rights afforded to the convicted by the PCRA because the preservation of their evidence is not guaranteed beyond three months. Additionally, there is no formal notice sent to the convicted aside from the publication of the rule. We note that the Judicial Council may wish to explore whether the three-month time limit imposed by the rule so limits the rights granted by the PCRA as to implicate due process concerns. Additionally, the Council may wish to examine the lack of formal notice directly to the convicted. We do not comment here on the due process implications of the time period imposed by rule 4-206 or the form of notice required by the Utah Constitution.

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Policy & Planning should review the rule to determine if changes should be made, in light of the Supreme Court's invitation in *Sandoval*.

2019 UT 13

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IN THE  
SUPREME COURT OF THE STATE OF UTAH

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BRANDON LEE SANDOVAL,  
*Appellant,*

*v.*

STATE OF UTAH,  
*Appellee.*

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No. 20150617  
Filed April 3, 2019

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On Direct Appeal

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Third District, Salt Lake  
The Honorable Randall N. Skanchy  
No. 130907469

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Attorneys:

Troy L. Booher, Freyja R. Johnson, Andrew G. Deiss,  
Jensie L. Anderson, Salt Lake City, for appellant  
Sean D. Reyes, Att’y Gen., Andrew F. Peterson, Aaron G. Murphy,  
Assts. Solic. Gen., Salt Lake City, for appellee

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JUSTICE HIMONAS authored the opinion of the Court in which  
CHIEF JUSTICE DURRANT, JUSTICE PEARCE, and JUSTICE PETERSEN  
joined.

ASSOCIATE CHIEF JUSTICE LEE filed a concurring opinion.

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JUSTICE HIMONAS, opinion of the Court:

**INTRODUCTION**

¶1 Brandon Sandoval appeals the district court’s summary judgment decision denying his petition for relief under Utah Code section 78B-9-101, *et seq.*, the Post-Conviction Remedies Act (PCRA). Having failed below to offer a viable theory of relief under the language of the PCRA, Sandoval attempts to launch an as-applied challenge to the PCRA and rule 4-206 of the Utah Code of Judicial

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Administration, arguing that the destruction of evidence in accordance with rule 4-206 violated his due process rights under the Utah Constitution. Because Sandoval did not properly present this standalone due process argument to the district court and, irrespective of that procedural defect, failed to satisfy his burden of persuasion on appeal, we affirm the grant of summary judgment.

**BACKGROUND**

¶2 Sandoval was arrested and charged with aggravated burglary, theft, and criminal mischief in 2006. A jury convicted him on all counts in 2008. The court of appeals affirmed his conviction in 2010, and this court denied his petition for writ of certiorari on June 11, 2011. No physical evidence linked Sandoval to the scene of the burglary. But a beanie, a bandana, and a duffle bag filled with stolen property were collected from a yard near the scene of the burglary. A bullet shell casing was also found at the scene. None of these items were ever tested for DNA.<sup>1</sup>

¶3 Rule 4-206(4)(B) of the Utah Code of Judicial Administration directs court personnel to dispose of valueless property from exhibits in evidence “[a]fter three months have expired from final disposition of the case.” Nearly two years after Sandoval’s conviction was upheld, on May 9, 2012, court personnel disposed of all physical evidence from his case, including a “black knit beanie cap, [a] blue and white bandana, and [a bullet] shell casing, all of which were likely touched by the perpetrators of the burglary.”<sup>2</sup> The Rocky Mountain Innocence Center (RMIC) began investigating Sandoval’s case in the fall of 2012. On October 24, 2012, RMIC was informed that the evidence used as trial exhibits had not been

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<sup>1</sup> As the case before us is not the direct criminal appeal and focuses on events that occurred after the trial, we only briefly highlight those facts from the underlying trial that are relevant to the disposition of this matter.

<sup>2</sup> Rule 4-206(2)(E) instructs the court clerk to “release . . . all exhibits . . . includ[ing] . . . firearms [and] ammunition” to the party which offered them at trial. We acknowledge that the bullet shell casing may qualify as ammunition and therefore should have been returned to the sponsoring party. And its destruction *may*, therefore, theoretically implicate due process protections. However, we do not explore this point as Sandoval has not carried his burden with regard to the due process claim.

Opinion of the Court

returned by the court. RMIC was notified by the court regarding the disposal of evidence when it received the actual certificate of destruction on November 2, 2012.

¶4 One year later, on October 30, 2013, Sandoval filed a petition for post-conviction relief under rule 65C of the Utah Rules of Civil Procedure. Sandoval made a number of arguments in the district court. Sandoval primarily argued that he is entitled to relief under Utah Code section 78B-9-104.<sup>3</sup> He argued that his conviction had been obtained in violation of the United States Constitution and Utah Constitution because of: (1) the State's failure to perform DNA testing on the evidence; (2) the failure to preserve the evidence such that Sandoval could avail himself of post-conviction DNA testing; and (3) the State's failure to investigate another suspect. He also argued that he received ineffective assistance of counsel at trial and on his direct appeal. Additionally, Sandoval argued that he is entitled to relief—independent of section 104—because the State violated his due process rights under the Utah Constitution when it

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<sup>3</sup> Section 104 provides myriad circumstances under which a court may vacate or modify a conviction, including the following in relevant part:

[A] person who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence upon the following grounds:

- (a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution;
- (b) the conviction was obtained or the sentence was imposed under a statute that is in violation of the United States Constitution or Utah Constitution, or the conduct for which the petitioner was prosecuted is constitutionally protected;
- (c) the sentence was imposed or probation was revoked in violation of the controlling statutory provisions;
- (d) the petitioner had ineffective assistance of counsel in violation of the United States Constitution or Utah Constitution

UTAH CODE § 78B-9-104(1)(a)–(d).

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disposed of the evidence and deprived him of the ability to seek post-conviction DNA testing, as provided in Utah Code section 78B-9-301. Both parties moved for summary judgment. The district court granted the State's motion and Sandoval appealed to this court.

¶5 On appeal, Sandoval has abandoned his claims seeking relief under section 104 of the PCRA. Instead, Sandoval focuses his appeal solely on whether his due process rights under the Utah Constitution were violated when the evidence was destroyed and he became unable to seek post-conviction DNA testing under section 301 of the PCRA.

¶6 We exercise jurisdiction under Utah Code section 78A-3-102(3)(j).

**STANDARD OF REVIEW**

¶7 We review for correctness constitutional and statutory interpretation issues, granting no deference to the district court. *Schroeder v. Utah Attorney Gen.'s Office*, 2015 UT 77, ¶ 16, 358 P.3d 1075; *Harvey v. Cedar Hills City*, 2010 UT 12, ¶ 10, 227 P.3d 256. Similarly, we review the district "court's 'legal conclusions and ultimate grant or denial of summary judgment' for correctness and view[] 'the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.'" *Orvis v. Johnson*, 2008 UT 2, ¶ 6, 177 P.3d 600 (citations omitted).

**ANALYSIS**

¶8 Sandoval has failed to articulate any relevant section of the PCRA under which he can seek relief. While his original petition alleged the potential for relief under section 104, he has dropped these claims on appeal. He does not present us with any constitutional or statutory violations of his rights that occurred at trial and he has dropped his claim for ineffective assistance of counsel. Accordingly, the PCRA itself offers him no relief.

¶9 Finding no relief in the PCRA, Sandoval presents a standalone state due process argument claiming that, by following rule 4-206(4) of the Utah Rules of Judicial Administration and disposing of the evidence two years after the final disposition of his case, the State violated his state due process rights by stripping him of the ability to exercise the right to post-conviction DNA testing created by section 301 of the PCRA. He additionally asserts that the lack of direct notice of the pending destruction of the evidence violated his due process rights. We do not pass on these due process claims for a number of reasons. First, these claims are improperly



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before us, having been shoehorned into Sandoval's rule 65C petition. Second, even if these claims were procedurally proper, Sandoval has not carried his burden in persuading us that (1) such a due process right exists and (2) if that right exists, the destruction of the evidence violated that right. We therefore affirm the district court's grant of summary judgment.

*Section 104 of the PCRA*

¶10 Once all legal remedies—including a direct appeal—have been exhausted, the PCRA is the sole statutory remedy for any person who challenges a conviction or sentence for a criminal offense. UTAH CODE § 78B-9-102. Rule 65C provides the procedural vessel by which a petition seeking post-conviction relief under the PCRA may be filed. Accordingly, a proper rule 65C petition must seek some form of relief under the PCRA. On appeal, Sandoval has abandoned all claims seeking relief under the PCRA. The reason for this is simple: the PCRA itself offers no remedy to Sandoval. As Sandoval's counsel candidly admitted at oral argument, "[t]he State is correct in noting that Mr. Sandoval's claim does not fall under any provision of the PCRA."

¶11 The relevant portions of section 104 require Sandoval to show either that his conviction was obtained or his sentence was imposed in the face of some constitutional or statutory violation or that he received ineffective assistance of counsel. *See supra* ¶ 4 n.3. Sandoval cannot demonstrate any such violation. He has dropped all appeals that pertain to any supposed due process violations at or before trial or during sentencing—as enumerated in subsections 104(1)(a)–(c)—and no longer asserts ineffectiveness of counsel under subsection 104(1)(d). The relief he now seeks is no longer rooted in section 104. Instead, he seeks relief on the basis that evidence was destroyed after his conviction was obtained and his sentence was imposed—a basis on which the PCRA offers no statutory remedy. *See* UTAH CODE § 78B-9-104(1) (enumerating the grounds for relief under the PCRA). In other words, Sandoval no longer asserts any claim for relief that would properly be brought in a rule 65C petition.

*Sandoval's as-applied challenge*

¶12 No doubt because Sandoval recognizes that the PCRA itself offers him no remedy, on appeal he has staged an as-applied challenge under section 301 of the PCRA, claiming that destruction of the evidence in accordance with rule 4-206 violated his due process rights under the Utah Constitution. Section 301 of the PCRA provides the right to a convicted felon to "file a petition for post-conviction DNA testing in the trial court that entered the judgment

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of conviction if the person asserts factual innocence under oath” and the petition meets several statutory requirements.<sup>4</sup> UTAH CODE § 78B-9-301(2) Such an avowal, if discovered to be fallacious, would risk a perjury charge and could harm Sandoval’s chances at parole and release. Sandoval argues that he has a substantive right under the Utah Constitution to avail himself of post-conviction DNA testing under section 301 and that this right was violated when the evidence was destroyed without actual notice nearly two years after the final disposition of his case. This claim fails for a number of reasons.

¶13 As an initial matter, a rule 65C petition is an improper procedural vessel for bringing standalone due process claims. Because rule 65C provides the procedure for filing a petition for post-conviction relief under the PCRA, a proper rule 65C petition must seek relief under specific provisions of the PCRA. While Sandoval presented this type of claim below, his appeal has abandoned any such claims. *See supra* ¶ 10. Sandoval’s standalone due process claim is therefore improperly before us. However, even if we allowed Sandoval to shift the focus of his rule 65C petition to a due process inquiry separated from the statutory rights granted by the PCRA, he has failed to carry his burden here in demonstrating a due process violation under the Utah Constitution.

¶14 Relying on a *federal* standard, *District Attorney’s Office for Third Judicial District v. Osborne*, 557 U.S. 52 (2009), Sandoval asserts that by enacting section 301 and providing procedures for post-conviction DNA testing the State created a substantive right to post-conviction DNA testing. Sandoval then asserts that this right to DNA testing creates a “liberty interest” in any procedures that are

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<sup>4</sup> Sandoval has never actually filed a petition for post-conviction DNA testing under section 301 and now cannot. Subsection 301(2)(a) requires the evidence to be “still in existence and . . . in a condition that allows DNA testing to be conducted.” UTAH CODE § 78B-9-301(2)(a) There is no evidence in existence to test. The evidence in question existed at the time of trial and was disposed of years later pursuant to Utah Code of Judicial Administration Rule 4-206. Additionally, Sandoval has never asserted his innocence under oath and so has not complied with the requirements of subsection 301(2). Because of his failure (and now inability) to comply with these clear statutory requirements, Sandoval cannot avail himself of post-conviction DNA testing under section 301.

## Opinion of the Court

“essential to the realization” of the right created by the PCRA and that the state-created right to DNA testing begets “yet other rights to procedures essential to the realization of the parent right.” *Osborne*, 557 U.S. at 68. Therefore he claims that, by following rule 4-206(4) and disposing of post-conviction evidence, the State violated his *state* due process rights by stripping him of the ability to exercise the right to DNA testing created by the PCRA. Sandoval has failed to do the requisite leg-work to persuade this court that (1) such a right exists under the Utah Constitution, and (2) even if such a right existed, the destruction of the evidence violated that right.

¶15 We have stated that “[t]here will be times when the legislature enacts laws that confer substantive rights . . . [and sometimes] the procedures attached to the substantive right cannot be stripped away without leaving the right or duty created meaningless.” *State v. Drej*, 2010 UT 35, ¶ 31, 233 P.3d 476. But Sandoval has not presented us with focused briefing on this issue. Instead, Sandoval simply argues that *Osborne*, a federal due process case, mandates the recognition of specific rights under the Utah Constitution. After citing *Osborne* for the proposition that such rights exists – an unclear proposition<sup>5</sup> – he turns to the *Tiedemann* standard, a state due process case discussing pre-trial destruction of evidence,<sup>6</sup>

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<sup>5</sup> The federal postconviction “right[s] to due process [are] not parallel to [ ] trial right[s], but rather must be analyzed in light of the fact that [the convicted] has already been found guilty at a fair trial, and has only a limited interest in postconviction relief.” *Osborne*, 557 U.S. at 69. We decline to explore the contours of any state due process rights unnecessarily and have not been asked to pontificate on federal due process guarantees.

<sup>6</sup> Sandoval asserts that *State v. Tiedemann*, 2007 UT 49, 162 P.3d 1106, provides the appropriate framework for determining whether his due process rights under the Utah Constitution were violated when the clerk destroyed evidence after the final disposition of his case. *Tiedemann* entails a lengthy discussion about the rights of criminal defendants with respect to any information possessed by the State which could aid in their defense at trial. In other words, *Tiedemann* addresses the pre-trial destruction of evidence. Sandoval has not demonstrated that *Tiedemann* should also apply in the post-trial context. And nothing in that opinion mentions the rights of appellants who are already convicted and Sandoval has not carried his burden in persuading us that its reasoning should extend to post-trial destruction of evidence.

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for application of that supposed right with no explanation as to why it should apply in the post-trial context. This is not enough.<sup>7</sup>

¶16 Sandoval cannot establish state constitutional rights to post-conviction DNA testing—and any procedural rights related thereto—by citing to a federal case. Instead, Sandoval would have to demonstrate that the due process clause of the Utah Constitution provides such rights. Such an argument would likely involve a thorough examination of Utah’s constitutional history in an attempt to show that the original public meaning of the due process clause considered and encompassed such a right. Sandoval has not made that argument. Accordingly, we decline to comment on whether state due process dictates that the PCRA, by providing the right to DNA testing, creates a substantive right to post-conviction evidence retention, noticing, or any procedures related thereto.

¶17 Furthermore, even if such a right existed, Sandoval has not carried his burden in explaining why the destruction of the evidence violated that right. Sandoval argues that his supposed due process right was violated when the State destroyed the evidence two years after the final disposition of the case without giving Sandoval actual notice. But Sandoval fails to adequately explain why he was entitled to actual notice or why two years was an insufficient amount of time for him to exercise his statutory right to post-conviction DNA testing. Although Sandoval was not given actual notice of the destruction of the evidence, he did have constructive notice—in the form of rule 4-206—that the evidence would only be retained for three months. Sandoval does not explain why this constructive notice was insufficient, instead opting to squeeze his notice arguments into the *Tiedemann* framework—which he has failed to demonstrate is the appropriate framework in these cases. Additionally, Sandoval fails to argue that the two years between the final disposition of his case and the destruction of the evidence was an insufficient amount of time for him to avail himself of the DNA

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<sup>7</sup> The concurrence criticizes us for “opining on matters of state constitutional law.” *Infra* ¶ 25. But we are expressly *not* opining on the merits of Sandoval’s attempt to articulate a state due process claim, which we have gone out of our way to stress; rather, we seek only to emphasize the problems with how Sandoval elected to brief this matter.

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testing statute for purposes of due process. For these reasons, Sandoval's standalone due process claim fails.<sup>8</sup>

*Rule 4-206*

¶18 Because we foresee a potential due process challenge in a future case we now wish to comment on rule 4-206. Subsection (4) prescribes the procedure for disposing of exhibits used in evidence after final disposition of a case. The three-month time limit functionally imposes a temporal bar on the rights afforded to the convicted by the PCRA because the preservation of their evidence is not guaranteed beyond three months. Additionally, there is no formal notice sent to the convicted aside from the publication of the rule. We note that the Judicial Council may wish to explore whether the three-month time limit imposed by the rule so limits the rights granted by the PCRA as to implicate due process concerns. Additionally, the Council may wish to examine the lack of formal notice directly to the convicted. We do not comment here on the due process implications of the time period imposed by rule 4-206 or the form of notice required by the Utah Constitution.<sup>9</sup>

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<sup>8</sup> To be clear, we do not mean to imply by “standalone” that Sandoval's alleged state due process claim is not grounded in the PCRA. As Sandoval has argued, it is section 301 of the PCRA that allegedly creates the liberty interest that may give rise to a state due process claim. As such, the “sole remedy” provision of section 102 of the PCRA, which the concurrence faults us for not invoking with respect to Sandoval's state due process claim, simply has no logical play. To say otherwise is to say that the PCRA creates a constitutional right that the PCRA itself forecloses: The metaphor of the serpent devouring its own tail is an apt one.

<sup>9</sup> We have already noted the potential argument available to Sandoval related to rule 4-206(2)(E) but decline to explore what constitutes “ammunition” for the purposes of this rule or determining if a procedural violation occurred in the disposal of trial exhibits.

LEE, A.C.J., concurring in part and concurring in the result

### CONCLUSION

¶19 A convicted felon may seek to have their conviction modified or vacated through the rights and remedies provided by the PCRA. Sandoval has failed to comply with any relevant section of the PCRA that could offer him relief. Additionally, he has failed to properly bring a case that demonstrates that the disposal of evidence years after the final disposition of his trial violated his state due process rights. As a consequence, we do not here decide what, if any, procedures are called for by the state due process clause regarding the right to post-conviction DNA testing. We affirm the district court.

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ASSOCIATE CHIEF JUSTICE LEE, concurring in part and concurring in the judgment:

¶20 The case before us on appeal was filed in the district court under the Postconviction Remedies Act (PCRA), Utah Code section 104. Appropriately so, as Brandon Sandoval had previously challenged his conviction on direct appeal, and the PCRA provides “the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal.” UTAH CODE § 78B-9-102(1). This statutory remedy “replaces all prior remedies for review, including extraordinary or common law writs.” *Id.* The PCRA “does not apply” to “(a) habeas corpus petitions that do not challenge a conviction or sentence for a criminal offense; (b) motions to correct a sentence pursuant to Rule 22(e), Utah Rules of Criminal Procedure; or (c) actions taken by the Board of Pardons and Parole.” *Id.* § 78B-9-102(2). But except for these excluded proceedings, the PCRA forecloses any claim for relief not allowed by its terms. *See id.* § 78B-9-102(1). Such preclusion is “[t]he whole point of the sole remedy provision” of the PCRA. *Meza v. State*, 2015 UT 70, ¶ 43, 359 P.3d 592 (Lee, A.C.J., concurring in part and concurring in the judgment).

¶21 The majority gives some effect to this provision. In affirming the dismissal of the claims presented on appeal the majority notes that “Sandoval has abandoned all claims seeking relief under the PCRA” and correctly concludes that “[t]he relief he now seeks is [not] rooted in section 104.” *Supra* ¶¶ 10, 11. Sandoval’s remaining claim asserts that his right to due process was violated “when the evidence was destroyed without actual notice nearly two years after the final disposition of [this] case.” *Supra* ¶ 12. Because this claim seeks relief on “a basis on which the PCRA offers no statutory

LEE, A.C.J., concurring in part and concurring in the result

remedy,” the court rightly holds that this claim is foreclosed by the sole remedy provision of the PCRA and is thus not properly before us on this appeal. *Supra* ¶¶ 11, 13 (holding that “Sandoval’s standalone due process claim is therefore improperly before us”).

¶22 The majority fails to carry this conclusion to its logical end, however. Despite holding that Sandoval’s claim is foreclosed by the PCRA, the majority nonetheless proceeds to opine on the merits of an asserted due process right to postconviction DNA testing. *See supra* ¶¶ 14–17. I write separately because I respectfully disagree with this portion of the court’s opinion. By rejecting Sandoval’s due process claim the majority fails to give effect to the sole remedy provision of the PCRA. Importantly, the court also runs afoul of the doctrine of constitutional avoidance.<sup>1</sup>

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<sup>1</sup> The majority seeks to avoid this problem by framing its constitutional analysis as a response to an “as-applied” challenge to the constitutionality of the PCRA. *See supra* ¶ 12. Such a challenge admittedly would not—and could not—be foreclosed by the PCRA. But there is no as-applied challenge before us in this case. No such challenge was leveled in the district court, and none was presented in the briefs on appeal.

An as-applied challenge to the PCRA would identify a basis in the constitution for foreclosing the legislature’s authority to limit the grounds for postconviction review to those set forth by the legislature. Such challenges have been raised in recent cases before this court. In *Patterson v. State* (No. 20180108) for example, the petitioner asserts that the sole remedy provision of the PCRA is unconstitutional to the extent it forecloses the authority of the Utah courts to issue “extraordinary writs” under article VIII of the Utah Constitution. Brief for Petitioner at 34, *Patterson v. State* (No. 20180108). Sandoval would be free to raise this kind of challenge to the PCRA. He is entitled to show that the PCRA exceeds the legislature’s constitutional authority as applied to his case. But he has not attempted to do so—not in the district court, and not in the briefs on appeal.

Instead of raising an as-applied challenge to the constitutionality of the PCRA, Sandoval has simply asserted that he has a meritorious constitutional claim that is foreclosed by the PCRA. *See supra* ¶ 11 (noting that Sandoval “seeks relief on the basis that evidence was destroyed after his conviction was obtained and his sentence was imposed—a basis on which the PCRA offers no remedy”). But that is not an as-applied challenge to the constitutionality of the PCRA. It is

(continued . . .)

LEE, A.C.J., concurring in part and concurring in the result

¶23 The doctrine of constitutional avoidance is an important “principle of judicial restraint.” *Utah Stream Access Coal. v. VR Acquisitions LLC*, 2019 UT 7, ¶ 55, --- P.3d --- (concluding that disposition of constitutional claim was necessary because no non-constitutional claim was asserted). When a case may be decided on either constitutional or non-constitutional grounds, the doctrine of avoidance directs us to resolve the case on non-constitutional grounds.<sup>2</sup>

¶24 The majority overrides this doctrine. Despite its conclusion that Sandoval’s claims are statutorily barred, the court rejects Sandoval’s claims on the alternative ground that they fail on their merits. It states that “even if we allowed Sandoval to shift the focus of his rule 65C petition to a due process inquiry separated from the statutory rights granted by the PCRA, he has failed to carry his burden here in demonstrating a due process violation under the Utah Constitution.” *Supra* ¶ 13. In so doing the court proceeds to analyze the due process questions presented in this case—outlining a basis for a party to “demonstrate that the due process clause of the Utah Constitution” may establish a right to post-conviction DNA testing, *supra* ¶ 16, and adopting a standard for judging whether the

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the assertion of a purportedly meritorious constitutional claim. That is not the same thing. The constitutionality of the PCRA as applied to a particular claim cannot turn on whether the underlying claim is itself meritorious. (That would result in an odd scheme in which the threshold right to assert a claim would depend on whether the claim ultimately succeeds on its merits. I know of no constitutional principle that works like that; Sandoval certainly has not attempted to identify one.) It must instead depend on whether the legislature exceeded its constitutional authority in acting to foreclose a particular claim. Sandoval has raised no such as-applied challenge. And this accordingly cannot be a basis for overriding the doctrine of constitutional avoidance.

<sup>2</sup> See *State v. DeJesus*, 2017 UT 22, ¶ 33, 395 P.3d 111 (“[C]ourts will not pass upon a constitutional question . . . if there is also present some other ground upon which the case may be disposed of.” (internal quotation marks omitted) (quoting *Slack v. McDaniel*, 529 U.S. 473, 485 (2000)); *State v. Wood*, 648 P.2d 71, 82 (Utah 1982) (stating the “fundamental rule” that the courts should “avoid addressing a constitutional issue unless required to do so”).



LEE, A.C.J., concurring in part and concurring in the result

destruction of evidence would “violate[] that right” assuming “such a right existed.” *Supra* ¶ 17.<sup>3</sup>

¶25 We should not be opining on matters of state constitutional law in a case in which the constitutional claim is foreclosed by statute. Doing so ignores the sole remedy provision of the PCRA<sup>4</sup> and fails to honor the doctrine of constitutional avoidance.

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<sup>3</sup> The majority seeks to avoid this problem by insisting that it is not opining on the merits of Sandoval’s due process claim, but instead just “emphasiz[ing] the problems with how Sandoval elected to brief this matter.” *Supra* ¶ 17 n.8. That is a fair characterization of how the court frames some of its grounds for rejecting Sandoval’s claim. But the court also speaks in some detail about both federal and state cases of relevance to the due process claim propounded by Sandoval. And it ultimately concludes that “Sandoval’s standalone due process claim fails.” *Supra* ¶ 17. This is constitutional analysis set forth in a section of the opinion that is framed as an alternative ground for the court’s judgment. And it flows from a premise that is mistaken—that Sandoval has somehow asserted an as-applied challenge to the constitutionality of the PCRA. *See supra* ¶ 22 n.10.

<sup>4</sup> The majority seeks to distance itself from the PCRA’s sole remedy provision with the assertion that it has “no logical play” in a case in which the alleged right to DNA testing is itself rooted in the PCRA. *See supra* ¶ 15 n.7. But this misunderstands the nature of Sandoval’s claim. Sandoval seeks to establish a constitutional (not a statutory) right to postconviction DNA testing. Sandoval has pointed to statutory provisions (in the PCRA) that recognize a right to DNA testing as evidence of the constitutional right that he asserts. But he has not asserted that the PCRA establishes a right to the DNA testing he seeks. Instead he has asked us to establish a new constitutional right that is not prescribed by statute. And for that reason we cannot dismiss the applicability of the sole remedy provision on the ground that “otherwise” the PCRA would be viewed as “creat[ing] a constitutional right that the PCRA itself forecloses.” *Supra* ¶ 17 n.8.

**Rule 4-206. Exhibits.****Intent:**

To establish a uniform procedure for the receipt, maintenance and release of exhibits.

**Applicability:**

This rule shall apply to all trial court proceedings in courts of record and not of record, except small claims court.

**Statement of the Rule:****(1) Marking exhibits.**

(1)(A) All exhibits offered as evidence shall be marked with a label or tag, which shall contain, at a minimum, the exhibit number or alpha identification, the case number, the date received, and the initials of the clerk who received the exhibit.

(1)(B) The clerk shall designate the source of the exhibit by the letter "P" if it is received from plaintiff and "D" if it is received from defendant. In cases with multiple parties, the label shall further identify the parties, e.g. 1st D is the first named defendant in the pleadings, 3rd D is the third party defendant.

(1)(C) The clerk shall secure the label on the item and shall affix more than one identical label when necessary.

(1)(D) The court may order exhibits to be marked in advance of the date and time of trial or other hearing.

**(2) Exhibit custody and tracking.**

(2)(A) The exhibit custody tracking record means the CORIS computer system or a form approved by the Administrative Office of the Courts. If an approved form is used as the exhibit custody tracking record, it shall be placed in the case file.

(2)(B) Each person with custody of an exhibit shall identify herself or himself in the exhibit custody tracking record and record changes in the status of the exhibit contemporaneous with the event.

(2)(C) Prior to daily adjournment, the clerk, under the direction of the court, shall compare the exhibit custody tracking record with the exhibits in the custody of the clerk. The clerk shall keep the exhibits received at trial in a container. The container shall be numbered and shall identify the case name and number.

- 31 (2)(D) Each court location shall provide a locked facility for storing exhibits. The Clerk of  
32 the Court shall appoint an exhibit manager with responsibility for the security,  
33 maintenance and disposition of exhibits. Access to the exhibit storage area by  
34 anyone other than the exhibit manager and the clerk is prohibited without a court  
35 order.
- 36 (2)(E) Unless otherwise ordered by the court, at the conclusion of the trial or  
37 proceeding, the clerk shall release to the party offering them all exhibits not  
38 suitable for filing and transmission to the appellate court as part of a record on  
39 appeal. Such exhibits include, but are not be limited to: narcotics and other  
40 controlled substances, firearms, ammunition, explosive devices, jewelry, liquor,  
41 poisonous or dangerous chemicals, money or articles of high monetary value,  
42 counterfeit money, and exhibits of unusual bulk or weight. The clerk shall transfer  
43 the remaining exhibits to the exhibit manager. The exhibit manager shall record  
44 receipt and location of the exhibits.
- 45 (2)(F) The exhibit manager shall record the date of release of exhibits and to whom  
46 released, if applicable.
- 47 (3) Withdrawal of exhibits.
- 48 (3)(A) If the time for filing an appeal or requesting a rehearing or new trial has not  
49 expired, exhibits may be withdrawn only upon written order of the court.
- 50 (3)(B) If the time for filing appeals or requesting a rehearing or new trial has expired,  
51 exhibits may be withdrawn by filing a Notice of Intent to Withdraw Exhibits.
- 52 (3)(C) The clerk or exhibit manager shall record withdrawal of the exhibits.
- 53 (4) Disposal of exhibits. After three months have expired from final disposition of the case and  
54 no appeals have been filed or requests for new trials or rehearing have been made, the  
55 clerk shall dispose of the exhibits as follows:
- 56 (4)(A) Property having value shall be returned to its owner or, if unclaimed, shall be  
57 given to the sheriff of the county or other law enforcement agency to be sold in  
58 accordance with Utah Code Section 24-3-103. The agency receiving the property  
59 shall furnish the court with a receipt that may be maintained with the exhibit  
60 custody tracking record or noted in the computer record.
- 61 (4)(B) Property having no value shall be destroyed by the clerk of the court who shall  
62 furnish the court with a certificate of destruction that may be maintained with the  
63 exhibit custody tracking record or noted in the computer record.
- 64 (4)(C) The exhibit manager shall record disposition of the exhibits.

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

# TAB 9

## CJA 7-302 — Court reports prepared for delinquency cases

**NOTES:** This rule was published for public comment on January 29, 2019. The public comment period closed on March 15, 2019. No comments were received. This rule is now ready for final action by Policy & Planning.

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Dennis Moxon

E-mail:

denniskm@utcourts.gov

Phone Number:

801-578-3811

Date of Request:

07/25/2018

### RULE AMENDMENT:

Rule Number:

7-302

Location of Rule:

Code of Judicial Administration

### Brief Description of Proposed Amendment:

For example: the term "Social Studies" has not been commonly used to describe "Court Reports" for some time; written court reports are now required for all delinquency hearings to include adjudication, disposition and review hearings, regardless of the severity of the alleged offenses being heard; and changes to the organization of the rule have been proposed to clarify the necessary contents of court reports.

### Reason Amendment is Needed:

Amended language is being proposed consistent with changes in law promulgated by passage of HB239 during the 2017 Legislative Session. Those statutory changes have prompted amendments to this rule and Probation Policy in order to provide direction to probation officers in preparing written reports for all delinquency hearings.

NOTE: Amendment was vetted and recommended for approval by the Board of Juvenile Court Judges at their 13 July 2018 meeting.

Is this proposal urgent?

☐ No

☒ Yes

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

Statutory changes regarding court reports went into effect on July 1, 2018. The current rule is inconsistent with those changes.

**List all stakeholders:**

Juvenile Judges, Juvenile Probation Officers, Judicial Assistants, Prosecutors, Defense Attorneys, and others who rely on probation court reports.

**Select each entity that has approved this proposal:**

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

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

**Requester's Signature:**

s/s Dennis K. Moxon, Asst. Juv. Court Administrator for Delinquency

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**Date Committee Approved for Public Comment:**

**Date Committee Approved for Final Recommendation to Judicial Council:**

**Rule 7-302. ~~Social studies~~ Court Reports Prepared for Delinquency Cases.**

**Intent:**

To develop minimum standards for ~~social studies court reports to for~~ the Juvenile Court.

**Applicability:**

This rule shall apply to all ~~social studies court reports~~ prepared for ~~delinquent delinquency~~ cases in the Juvenile Courts.

**Statement of the Rule:**

- (1) The probation department or other agency designated by the court shall prepare a ~~social study court report~~ in writing in all cases in which a petition has been filed, ~~except:~~
  - ~~(1)(A) — traffic, fish and game, boating and parks and recreation cases; and~~
  - ~~(1)(B)(1)(A) — other minor cases, where the Board by rule has waived preparation of the social study.~~
- (2) The court can direct the probation department to prepare a ~~social study court report~~ on any matter referred to the court.
- (3) The contents of the ~~social study court report~~ shall include the following:
  - ~~(3)(A) — A summary of:~~
    - ~~(3)(A)(i) — the circumstances surrounding the matter before the court;~~
    - ~~(3)(A)(ii) — the minor's prior referral history, including prior actions taken by the probation department;~~
    - ~~(3)(A)(iii) — A record of any contacts and history the family has had with other agencies.;~~
    - ~~(3)(A)(iv) — the Victim Impact Statement and an itemized listing of losses or damages suffered by the victim with respect to the matter before the court;~~
    - ~~(3)(A)(v) — responses to the minor's compliant and non-compliant behavior;~~
    - ~~(3)(A)(vi) — A statement of the minor's academic performance and behavior in school and a statement of the minor's employment history if applicable;~~
    - ~~(3)(A)(vii) — A statement of any physical or emotional problems the minor may have that could affect behavior;~~
    - ~~(3)(A)(viii) — the minor's substance use history; and~~



- (3)(A)(i)(3)(A)(ix) ~~\A list of the strengths and weaknesses of the minor as perceived by the minor and the parents or guardian(s).~~
- (3)(B) ~~A statement of the circumstances surrounding the matter before the court.~~
- (3)(C) ~~An itemized listing of loss or damage suffered by the victim with respect to the matter before the court.~~
- (3)(D)(3)(B) ~~An assessment of:~~
- (3)(B)(i) ~~the minor's attitude towards the court and the minor's attitude and values in general;~~
- (3)(B)(ii) ~~A statement of the parents' attitude and what corrective action, if any, they took with respect to the minor's conduct and actions that which brought the minor before the court; and~~
- (3)(B)(iii) ~~A list of the strengths and weaknesses of the parents as they perceive them or guardian(s).~~
- (3)(E)(3)(C) ~~The minor's risk level as indicated by a validated risk and needs assessment, as well as a list of risk and protective factors.~~
- (3)(F)(3)(D) ~~Recommendations specific to the minor's risk level that consider restorative justice principles and evidence-based best practices.~~
- (3)(G)(3)(E) ~~Sentencing guideline results, including aggravating and mitigating factors. A statement of the minor's academic performance and behavior in school and a statement of the minor's employment history if applicable.~~
- (3)(H)(3)(F) ~~Any other relevant information. A record of any contacts the family has had with other agencies.~~
- (3)(I) ~~A list of strengths and weaknesses of the minor as perceived by the minor and the parents. A list of strengths and weaknesses of the parents as they perceive them.~~
- (3)(J) ~~A statement of any physical or emotional problems the minor may have that could affect behavior.~~
- (3)(K) ~~A dispositional recommendation based upon the information gathered.~~
- (4) All information contained in the social study court report should be verified whenever possible. Individuals providing information for the report should be identified and any opinions or unverified information should be identified as such.
- (5) No social information shall be gathered on a minor if the minor denies the allegations during the preliminary inquiry unless the minor and parent/guardian or custodian give their written consent for the information to be gathered.

66 (6) No social information shall be provided to the court before the minor's case is adjudicated.

67 (7) Once the ~~social study court report~~ is prepared, it shall be electronically filed in the minor's  
68 file~~placed in the minor's social file where it shall remain.~~

69 ~~(8) If a minor moves to another judicial district, the social file shall be forwarded to the new~~  
70 ~~district of residence.~~

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

# TAB 10

## CJA 3-201.02 – Court Commissioner Conduct Committee

### CJA 3-201 – Court Commissioners

**NOTES:** First, CJA 3-201.02 was considered and approved by Policy & Planning at the March 1 meeting. During that meeting, Policy & Planning had concern about one issue in the rule regarding records access. The previous draft of the rule outlined in subsection (2)(C) who would have “access” to what records or hearings. This records access provision did not take into account competing records access provisions in CJA 4-202.02 (“Records classification”) and 4-202.03 (“Records access”).

Upon further review of the proposed rule, it appears the language in (2)(C) is not necessary. Currently, under CJA 4-202.02(5)(J), the Court Commissioner Conduct Committee’s records would be “protected,” as follows:

-----  
(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:

- (5)(J)(i) interfere with an investigation;
  - (5)(J)(ii) interfere with a fair hearing or trial;
  - (5)(J)(iii) disclose the identity of a confidential source;
- 

Staff recommends that the access language in (2)(C) be removed from the proposed rule.

Second, the proposed changes to CJA 3-201.02, if adopted by the Judicial Council, would make language in CJA 3-201 obsolete or confusing. CJA 3-201(7)(A) describes how sanctions can be applied to a commissioner. CJA 3-201(7)(B) describes how a commissioner can be removed. In each section, the application of sanction or removal hinges on whether there was a “formal” complaint under CJA 3-201.02 and whether “the commissioner’s performance is not satisfactory.” The proposed amendments to CJA 3-201.02 removes the distinction between a “formal” and “informal” complaint. As a result, Policy & Planning will need to consider how the sanctions and removal language in CJA 3-201(7) should be modified to be harmonious with the new processes in CJA 3-201.02.

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

E-mail:

Phone Number:

Date of Request:

Judge Michelle Christiansen Forste

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

8015506455

October 4, 2018

### RULE AMENDMENT:

Rule Number:

Location of Rule:

3-201-02

Code of Judicial Administration

### Brief Description of Proposed Amendment:

To clarify the procedure related to the make up of the Court Commissioner Conduct Committee  
To either clarify the difference between an informal and a formal complaint to the committee or remove any reference to an informal complaint and make a single process for the handling of all complaints  
To clearly identify the jurisdiction or the scope of the committee's authority  
To clarify issues related to confidentiality and who gets notice when

### Reason Amendment is Needed:

The current rule is unclear and does not seem to align with what practice has traditionally been. Additionally, there are provisions in the rule that need to be readressed and updated.

Is this proposal urgent?

- ☐ No  
☒ Yes

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

It depends on what one calls urgent, but we believe the rule needs to be fixed to provide a fair process that navigable and understandable by those who may want to file a complaint and the committee who handles them.

**List all stakeholders:**

Court Commissioner Conduct Committee, Judicial Council, Court Commissioners, District Court Judges

**Select each entity that has approved this proposal:**

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

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

Judicial Council

**Requester's Signature:**

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

**FOR POLICY AND PLANNING USE ONLY**

**Proposal Accepted?**

- ☐ Yes  
☐ No

**Queue Priority Level:**

- ☐ Red  
☐ Yellow  
☐ Green

**Committee Notes/Comments:**

**Date Committee Approved for Public Comment:**

**Date Committee Approved for Final Recommendation to Judicial Council:**

**Rule 3-201.02. 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;

~~(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 submit 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 alleged misconduct.

- ~~(2)(G)~~ All proceedings and materials related to a complaint shall be kept confidential. The following individuals shall have access to the complaint, any preliminary investigation report, any full investigation report, any final decision or recommendation from the committee, and the hearing conducted in regard to the complaint, as follows:
- ~~(2)(C)(i)~~ — the committee members;
  - ~~(2)(C)(ii)~~ — the commissioner, if a full investigation is conducted;
  - ~~(2)(C)(iii)~~ — the presiding judge of the district the court commissioner primarily serves, if a full investigation is conducted;
  - ~~(2)(C)(iv)~~ — the Presiding Officer of the Council, upon request or in connection with the Judicial Council's authority and obligations under CJA Rules 2-211 or 3-201; and
  - ~~(2)(C)(v)~~ any other person upon approval of the committee or the Presiding Officer of the Council.
- ~~(2)(D)~~ Upon receiving a complaint, the chair shall make an initial review to determine if the allegations raise any issue that would be appropriately addressed by the committee. If a complaint should be addressed by another entity or individual, the chair shall inform the complainant in writing, directing the complainant to the appropriate entity or individual.
- ~~(2)(E)~~ The chair, or a staff member designated by the chair, shall conduct a preliminary investigation of the complaint. If the complaint is not sufficiently clear, the investigator may request additional written information from the complainant.
- ~~(2)(E)(i)~~ Upon completion of the preliminary investigation, the investigator shall prepare a report. The report shall recommend a full investigation if there is reasonable cause to support a finding of misconduct. In all other cases, the report shall recommend that the complaint be dismissed.
  - ~~(2)(E)(ii)~~ The investigator's report and recommendations shall be delivered to the committee members for review. After review, a quorum shall vote regarding whether the matter shall be the subject of a full investigation. Any complaint not authorized for full investigation shall be dismissed. The chair shall notify the complainant of the dismissal.
- ~~(2)(F)~~ Within 10 days after a full investigation is authorized by the committee, the chair 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, Tthe 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 ~~a~~-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, ~~the~~ 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)~~ Within 30 days of the committee's findings and recommendations being delivered to the Council, ~~the~~ the complainant, ~~the~~ 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 is reviewed.

Effective May/November 1, 20\_\_

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

To define the role of court commissioner.

To establish a term of office for court commissioners.

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

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

**Applicability:**

This rule shall apply to all trial courts of record.

**Statement of the Rule:**

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

(2) **Qualifications.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



167 judges in each district or court level the commissioner  
168 serves.

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

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

179 (8) **Retention.**

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

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

192 (9) **Salaries and benefits.**

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

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

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

204 (10) **Support services.**

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

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

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

# TAB 11

## HR 480 – Employee exercise policy

**NOTES:** Since the March 1st, 2019 Policy & Planning meeting, the proposed employee exercise policy has been the subject of considerable discussion among the trial court executives, the state court administrator, the human resources director, committee staff, and others. As a result of those discussions, Judge Pullan determined that the matter should be returned to Policy & Planning's agenda for further consideration. At the time this agenda packet was assembled, the trial court executives were still in process of revising the proposed policy into a final form for presentation to Policy & Planning. The most current working draft is included in these materials. Any revised version received prior to the meeting will be forwarded along to committee members via email update.

# RULE AMENDMENT REQUEST

## Policy and Planning

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

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

### REQUESTER CONTACT INFORMATION:

Name of Requester:

Rob Parkes

E-mail:

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

Phone Number:

8015783802

Date of Request:

10/29/2018

### RULE AMENDMENT:

Rule Number:

Proposed 480

Location of Rule:

Human Resources Policies and Procedures Manual

### Brief Description of Proposed Amendment:

The proposed Exercise Policy would allow staff to utilize 30 compensated minutes a day for up to 3 days a week to engage in physical exercise during their scheduled work hours. The 30 minutes must be taken as an extension of the employee's lunch hour. The attached policy draft provides a general overview, specific guidelines, procedures, and an agreement form.

### Reason Amendment is Needed:

The Exercise Policy has been drafted with the guidance and approval of the Trial Court Executives who endeavor to offer a benefit to court employees that has been commonly available to employees of the executive and legislative branches. The creation of the policy is the result of discussions on developing practices to engage and retain staff that have minimal impact to the operation of the court while maximizing the benefits to employees. The policy has the potential to benefit the health and wellness of employees, increase workplace productivity, and attract and retain employees.

Is this proposal urgent?

☒ No

☐ Yes

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

List all stakeholders:

All court employees.

Select each entity that has approved this proposal:

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

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

Requester's Signature:

Robert Parkes

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



FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
- ☐ No

Queue Priority Level:

- ☐ Red
- ☐ Yellow
- ☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

## EXERCISE POLICY 480 (Draft)

### PURPOSE

The purpose of this policy is to promote the general physical ~~and emotional well-being~~ fitness 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~~ Be one part of a more comprehensive wellness program for court 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

#### 1. General

1.1 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.

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

1.1.2 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.

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

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

1.2 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.~~

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

1.3.1 1.4 Supervisors may ~~not~~ authorize employees to use the 30 minute period at the start of the workday to delay arrival, ~~not or~~ at the end of the workday to allow early departure if the supervisor determines that the late arrival or early departure works better than a lunch time exercise program after considering the employee's individual circumstances and the needs of the court in maintaining operations.

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

1.56 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~~ health care provider 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**

I plan to take my exercise time \_\_\_\_\_ *(days and times).*

I will spend my time: \_\_\_\_\_ *(place(s)- like outside, courthouse, private gym, etc.)*

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



# **CJA 2-207**

# **ANNUAL REVIEW**

# **MATERIALS**

# TAB 12

## CJA 4-401.01 – Electronic media coverage of court proceedings

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Chin requests that Policy & Planning consider:

- 4-401.01(3)(A) - Is at least "one business day" notice reasonable and sufficient? I think 48 hours or 72 is more practical.
- 4-401.01(4)G(vii) - Discussion re allowing interviews to be conducted in courtroom- removing "except as permitted by the judge".

Staff inquired among AOC staff about this issues. An update will be provided to the committee at the meeting. No materials are included in the agenda packet in connection with this matter.

# TAB 13

## CJA 4-401.02 — Possession and use of portable electronic devices

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Chin requests that Policy & Planning consider:

4-401.02 (3)(b)(iii) - Discussion if we need to use the "further" rather than just state Judges are encouraged to not impose restrictions unless ....

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

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

**Applicability:**

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

**Statement of the Rule:****(1) Definitions.**

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

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

**(2) Possession and use of portable electronic devices in a courthouse.**

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

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

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

**(3) Restrictions.**

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

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

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

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

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

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

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

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

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

# TAB 14

## CJA 4-103(3) – Civil calendar management

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Evershed requests that Policy & Planning consider a revision to CJA 4-103 to bring consistency with Utah Rule of Civil Procedure 41 (referenced in CJA 4-103).

**Rule 4-103. Civil calendar management.****Intent:**

To establish a procedure that allows the trial courts to manage civil case processing.

To reduce the time between case filing and disposition.

**Applicability:**

This rule shall apply to the District Court.

**Statement of the Rule:**

(1) If a default judgment has not been entered by the plaintiff within 60 days of the availability of default, the clerk will mail written notification to the plaintiff stating that absent a showing of good cause by a date specified in the notification, the court will dismiss the case without prejudice for lack of prosecution.

(2) If a certificate of readiness for trial has not been served and filed within 330 days of the first answer, the clerk will mail written notification to the parties stating that absent a showing of good cause by a date specified in the notification, the court will dismiss the case without prejudice for lack of prosecution.

(3) Pursuant to Rule 41 of the Utah Rules of Civil Procedure, unless the order states otherwise, all orders of dismissal entered under this rule must contain the language “without prejudice.”

(4) Any party may, pursuant to the Utah Rules of Civil Procedure, move to vacate a dismissal entered under this rule.

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

# TAB 15

CJA 4-110 — Transfer of juvenile cases from district and justice courts to the juvenile court

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Evershed requests that Policy & Planning consider possible revisions to this rule. Judge Evershed will provide additional detail at the meeting.



**Rule 4-110. Transfer of juvenile cases from district and justice courts to the juvenile court.**

**Intent:**

To establish criteria and procedures for transferring juvenile cases from the district and justice courts to the juvenile court.

**Applicability:**

This rule applies to juvenile, district and justice courts.

**Statement of the Rule:**

(1) The justice court may transfer a criminal matter in which the defendant is a minor to the juvenile court under Section 78A-7-106.

(2) The district court may transfer a traffic matter in which the defendant is a minor to the juvenile court for post-judgment proceedings if:

(2)(A) the case has been adjudicated, either by the entry of a guilty plea or by a trial on the merits; and ;

(2)(B) there is an outstanding fine or restitution obligation or a compensatory service order; and

(2)(C) reasonable collection efforts have been made, including the issuance of an order to show cause or bench warrant; and

(2)(D) an order has been issued to the State Driver's License Division suspending the minor's driver's license; and

(2)(E) the minor is in contempt of court.

(3) Fine revenue generated by the juvenile court in cases transferred for post-judgment proceedings is state revenue.

(4) Cases transferred from the district or justice court shall be accompanied by an order of transfer and a mailing certificate verifying that a copy of the order was mailed to the minor and, where available, to the minor's parent, guardian or custodian.

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

# TAB 16

## CJA 4-202.03(6) — Records access

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Evershed requests that Policy & Planning consider amending this rule to allow victim access to disposition orders in juvenile court.

**Rule 4-202.03. Records Access.****Intent:**

To identify who may access court records.

**Applicability:**

This rule applies to the judicial branch.

**Statement of the Rule:**

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

- (4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;
  - (4)(C) the person who submitted the record;
  - (4)(D) the attorney or licensed paralegal practitioner for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;
  - (4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;
  - (4)(F) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;
  - (4)(G) anyone by court order;
  - (4)(H) court personnel, but only to achieve the purpose for which the record was submitted;
  - (4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and
  - (4)(J) a governmental entity with which the record is shared under Rule 4-202.10.
- (5) **Juvenile Court Social Records.** The following may access a juvenile court social record:
- (5)(A) the subject of the record, if 18 years of age or over;
  - (5)(B) a parent or guardian of the subject of the record if the subject is an unemancipated minor;
  - (5)(C) an attorney or person with power of attorney for the subject of the record;
  - (5)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;
  - (5)(E) the subject of the record's therapists and evaluators;
  - (5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

- (5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;
- (5)(H) the Department of Human Services, school districts and vendors with whom they or the courts contract (who shall not permit further access to the record), but only for court business;
- (5)(I) court personnel, but only to achieve the purpose for which the record was submitted;
- (5)(J) a governmental entity with which the record is shared under Rule 4-202.10;
- (5)(K) the person who submitted the record;
- (5)(L) public or private individuals or agencies providing services to the subject of the record or to the subject's family, including services provided pursuant to a nonjudicial adjustment, if a probation officer determines that access is necessary to provide effective services; and
- (5)(M) anyone by court order.
- (5)(N) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations, psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical records may be accessed only by:
  - (5)(N)(i) the subject of the record, if age 18 or over;
  - (5)(N)(ii) an attorney or person with power of attorney for the subject of the record;
  - (5)(N)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;
  - (5)(N)(iv) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;
  - (5)(N)(v) court personnel, but only to achieve the purpose for which the record was submitted;
  - (5)(N)(vi) anyone by court order.
- (5)(O) When records may be accessed only by court order, a juvenile court judge will permit access consistent with Rule 4-202.04 as required by due process of law in a manner that serves the best interest of the child.

- (6) **Juvenile Court Legal Records.** The following may access a juvenile court legal record:
- (6)(A) all who may access the juvenile court social record;
  - (6)(B) a law enforcement agency;
  - (6)(C) a children's justice center;
  - (6)(D) public or private individuals or agencies providing services to the subject of the record or to the subject's family; ~~and~~
  - (6)(E) the victim of a delinquent act may access the disposition order entered against the ~~defendant-minor~~; and
  - (6)(F) the parent or guardian of the victim of a delinquent act may access the disposition order entered against the minor if the victim is an unemancipated minor or under legal incapacity.
- (7) **Safeguarded Court Records.** The following may access a safeguarded record:
- (7)(A) the subject of the record;
  - (7)(B) the person who submitted the record;
  - (7)(C) the attorney or licensed paralegal practitioner for a person who may access the record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;
  - (7)(D) an individual with a release from a person who may access the record signed and notarized no more than 90 days before the date the request is made;
  - (7)(E) anyone by court order;
  - (7)(F) court personnel, but only to achieve the purpose for which the record was submitted;
  - (7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;
  - (7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and
  - (7)(I) a person given access to the record in order for juvenile probation to fulfill a probation responsibility.
- (8) Court personnel shall permit access to court records only by authorized persons. The court may order anyone who accesses a non-public record not to permit further access, the violation of which may be contempt of court.
- (9) If a court or court employee in an official capacity is a party in a case, the records of the party and the party's attorney are subject to the rules of discovery and evidence to the same extent as any other party.

# TAB 17

## CJA 4-202.09(3) – Miscellaneous

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Evershed requests that Policy & Planning consider modernizing a section of the rule related to making physical copies of records. The amendments would permit scanning of records and contemplate either physical or digital copies of records.

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

To set forth miscellaneous provisions for these rules.

**Applicability:**

This rule applies to the judicial branch.

**Statement of the Rule:**

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

(2) Fulfilling a records request.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(10)(A) The person filing a public record shall omit or redact non-public information.

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

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

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

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

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

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

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

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

(10)(D) If it is necessary to provide the court with private personal identifying information, it must be provided on a cover sheet or other severable document, which is classified as private.

(11) Tax-related records.

(11)(A) Notwithstanding Rule 4-202.02, except as otherwise ordered by the court and except as provided in subsections (11)(B) and (11)(C), if a case involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, all records shall be classified as public records under Rule 4-202.02.

(11)(B) Except as provided in subsection (11)(C), all records in a case that involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, shall be protected if the case also involves commercial information as that term is defined by Utah Code § 59-1-404.

(11)(C) For a case described in subsection (11)(B):

(11)(C)(i) if a request for a specific record, or access to all records in a case, is made to the court and notice is given to the taxpayer, such record or records shall be released within 14 days after notice is given to the taxpayer, except for specific records ordered by the court to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3);

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

(11)(C)(iii) The public shall have access to the case history, notwithstanding the limitations in this rule applicable to the underlying records.

*Effective May 1, 2019*

# TAB 18

## CJA 4-501 — Expedited jury trial

**NOTES:** This rule should be repealed by the Judicial Council. During the 2011 legislative session, HB0349 was passed, which created Utah Code § 78B-3-901 et seq. That section of code created a pilot program for Expedited Jury Trials. Rule 4-501 is the result of that legislation directing the Judicial Council to create a rule to implement the law. On its original terms, HB0349 contained a repeal date for Utah Code § 78B-3-901 et seq. That date was set for January 1, 2017. Ultimately, the law was repealed on January 1, 2017, as designed. This rule is a vestigial remainder of that law. It is not longer necessary.

In addition to repealing the rule, the official Utah Courts' website needs to be updated to remove this page:

[https://www.utcourts.gov/howto/civil/expedited\\_jury\\_trial/](https://www.utcourts.gov/howto/civil/expedited_jury_trial/)

(including the deletion of some court forms).

## Rule 4-501

### 1 **Rule 4-501. Expedited jury trial.**

#### 2 **Intent:**

3 To implement the pilot program for expedited jury trial established by the Expedited Jury Trial  
4 Act.

#### 5 **Applicability:**

6 This rule applies in the district court.

#### 7 **Statement of the Rule:**

8 (1) Motion and agreement binding. If a jury trial is demanded under Rule of Civil Procedure  
9 38, the parties may agree to and move for an expedited jury trial at the close of discovery.  
10 All parties agreeing to participate in an expedited jury trial and, if represented, their  
11 counsel, shall sign a written agreement, filed with the motion, to participate in the  
12 expedited jury trial. The agreement is binding upon the parties and any insurance carrier  
13 responsible for coverage or defense on behalf of a party, unless all parties stipulate to end  
14 the agreement or the court finds, upon motion, good cause to end the agreement.

15 (2) Agreement requirements. The agreement must include the following stipulations:

16 (2)(A) Each named party and any insurance carrier responsible for providing coverage  
17 or defense on behalf of a party have been informed of the rules and procedures  
18 for an expedited jury trial, have agreed to take part in or, in the case of a  
19 responsible insurance carrier, not object to, the expedited jury trial, and have  
20 agreed to all provisions in the agreement.

21 (2)(B) Six jurors with no alternates will try the case, five of whom may render a verdict  
22 on any question, except that the parties may stipulate that a verdict or a finding of  
23 four jurors is the verdict or finding of the jury.

24 (2)(C) Each side will have no more than 30 minutes of voir dire.

25 (2)(D) Each side will exercise no more than one peremptory challenge.

26 (2)(E) Each side will have no more than three hours to present the case, including  
27 opening statements, closing arguments, examination and cross-examination. The  
28 parties will agree how to allocate that time.

29 (2)(F) The parties will agree to a minimum amount of damages that a plaintiff is  
30 guaranteed to receive, and a maximum amount of damages that a defendant will  
31 be liable for, regardless of the jury's verdict.

## Rule 4-501

- 32           (2)(G) The parties waive the right to file a motion for a directed verdict or motion to set  
33                   aside the verdict. The parties waive the right to file a motion for a new trial or file  
34                   an appeal, except:
- 35                   (2)(G)(i) for judicial misconduct or juror misconduct that materially affects a  
36                               substantive right;
- 37                   (2)(G)(ii) for corruption, fraud, or other undue means employed in the  
38                               proceedings, jury, or adverse party that prevented a fair trial; or
- 39                   (2)(G)(iii) to correct errors of law.
- 40           (2)(H) The parties waive the right to file post-trial motions except:
- 41                   (2)(H)(i) for costs and attorney fees;
- 42                   (2)(H)(ii) to correct a clerical error in the judgment; or
- 43                   (2)(H)(iii) to enforce the judgment.
- 44   (3) Agreement options. The agreement must also include:
- 45           (3)(A) any agreed change to the Rules of Civil Procedure regulating disclosure and  
46                   discovery;
- 47           (3)(B) any agreed change to the Rules of Evidence, except that the parties may offer at  
48                   trial only evidence that is relevant and material to the dispute;
- 49           (3)(C) any other agreements about evidence, including:
- 50                   (3)(C)(i) limits on the number of witnesses;
- 51                   (3)(C)(ii) statements of fact to be presented to the jury without evidence;
- 52                   (3)(C)(iii) evidence that will be admitted without foundation;
- 53                   (3)(C)(iv) what constitutes necessary or relevant evidence for any fact;
- 54                   (3)(C)(v) admissibility of testimony, exhibits, depositions or declarations;
- 55                   (3)(C)(vi) methods of presenting summary evidence, such as witness  
56                               narratives, diagrams, charts, summaries, photographs, slides,  
57                               overhead presentations, and audio or video presentations;
- 58                   (3)(C)(vii) methods of presenting written materials instead of live testimony,  
59                               including a verified written report of an expert and an affidavit of the  
60                               expert's resume, doctor reports, medical records, witness depositions,  
61                               and notebooks for jurors; and
- 62                   (3)(C)(viii) pretrial motions.
- 63   (4) Objectives. To expedite the trial the parties should:
- 64           (4)(A) stipulate to a joint form jury questionnaire;
- 65           (4)(B) limit the number of live witnesses;

## Rule 4-501

- 66 (4)(C) stipulate to factual and evidentiary matters; and
- 67 (4)(D) stipulate to methods of evidence presentation.
- 68 (5) Ruling on the motion. The court shall grant the motion, incorporating into the order the
- 69 agreement of the parties, unless the court finds good cause why the motion should not be
- 70 granted, in which case the court shall deny the motion in its entirety. If the court grants the
- 71 motion,
- 72 (5)(A) the case is exempt from statutes or rules requiring mediation, arbitration or other
- 73 forms of alternative dispute resolution,
- 74 (5)(B) the court will hold a case management conference within 14 days after entering
- 75 the order on the motion and may combine the case management conference with
- 76 the hearing on the motion, and
- 77 (5)(C) the court shall schedule the trial for a date certain within 60 days after the case
- 78 management conference, or as soon as possible thereafter, and the trial may not
- 79 be postponed, except in extreme circumstances that could not have been
- 80 foreseen. A party's failure to request or respond to discovery is not a basis for
- 81 postponing the trial.
- 82 (6) Case management conference. The case management conference will address the
- 83 following issues, if not previously agreed upon by the parties:
- 84 (6)(A) setting the dates for trial and final pretrial conference;
- 85 (6)(B) the scope, nature and timing of remaining disclosures and discovery; and
- 86 (6)(C) anything that might have been in the agreement but is not.
- 87 (7) Pretrial filings. The parties must file within the time for pretrial disclosures:
- 88 (7)(A) any proposed juror questionnaires, jury instructions and verdict forms;
- 89 (7)(B) a glossary, of technical or unusual terms to be used at trial; and
- 90 (7)(C) pretrial motions and other disputes.
- 91 (8) Final pretrial conference. The court will conduct a final pretrial conference, which may be
- 92 combined with the case management conference, no later than 7 days before trial. In
- 93 addition to the topics in Rule of Civil Procedure 16, the court shall:
- 94 (8)(A) rule on objections to the admissibility of evidence;
- 95 (8)(B) resolve the details of the agreement or the case management order that may
- 96 affect the trial;
- 97 (8)(C) rule on juror questionnaires, jury instructions and verdict forms; and
- 98 (8)(D) rule on pretrial motions or other disputes.
- 99 (9) Trial.

# **Rule 4-501**

- 100           (9)(A)   The jury shall not be advised of the agreed upon range of damages.
- 101           (9)(B)   The time to present the case does not include instructing the jury. This rule does
- 102                   not limit jury deliberations.
- 103           (9)(C)   If the verdict is within the agreed upon range of the damages, the court shall
- 104                   enter judgment in accordance with the verdict. If the verdict is less than the range
- 105                   of damages, including if the jury finds no cause of action or if the jury finds that
- 106                   the plaintiff bears at least 50% of the fault that caused the harm, the court shall
- 107                   enter judgment for the minimum agreed amount. If the verdict is greater than the
- 108                   range of damages the court shall enter judgment for the maximum agreed
- 109                   amount.

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

# TAB 19

## CJA 4-902 — Limited scope investigation of domestic issues

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Evershed requests that Policy & Planning consider amending this rule. More details will be provided by Judge Evershed at the meeting.



**Rule 4-902. Limited scope investigation of domestic issues..****Intent:**

To establish guidelines for referring select issues for investigation and report.

To give the court discretion to control the issues referred for investigation, the methods of gathering information relevant to the issues, and timely completion of the report consistent with the nature of the issues and the methods of information gathering.

**Applicability:**

This rule shall apply to family law cases in the district court.

**Statement of the Rule:**

(1) On motion or stipulation of the parties or on its own initiative, the court may refer select issues for investigation and report. Investigations and reports shall be performed by persons with the minimum qualifications required for a custody evaluation under Rule 4-903.

(2) The purpose of the investigation is to report to the court observations about the issues referred. The report shall not contain the investigator's recommendations, nor may the investigator testify about recommendations.

(3) Every motion or stipulation for an investigation and report shall include:

(3)(A) the name, address, and telephone number of each person nominated or agreed upon to conduct the investigation;

(3)(B) the anticipated dates of commencement of the investigation and completion of the report and the estimated cost;

(3)(C) the issues to be addressed in the report;

(3)(D) the methods of information gathering, which may include:

(3)(D)(i) review records from a variety of sources, (for example, court records, school records, healthcare records, childcare records and records from agencies and other institutions);

(3)(D)(ii) clinical observations;

(3)(D)(iii) observation of the child's current and proposed home;

(3)(D)(iv) interview parents, children, members of the extended family, friends and other collateral sources;

(3)(D)(v) psychological testing;

Commented [MCD1]: Judge Evershed comment:  
"Should change language if investigation includes more than custody evaluation."

- (3)(D)(vi) other information gathering methods; and
- (3)(E) the name, address, and telephone number of each person the investigator should interview or observe.
- (4) Every order for an investigation shall:
- (4)(A) require the parties to cooperate as requested by the investigator;
- (4)(B) restrict disclosure of the report except to the parties and to the court;
- (4)(C) assign responsibility for payment;
- (4)(D) specify dates for commencement of the investigation and completion of the report;
- (4)(E) specify the issues referred, which may include those described in Rule 4-903;
- (4)(F) specify the methods of information gathering, which may include those described in paragraph (3);
- (4)(G) require the investigator to file the report with the court and serve it on counsel or parties within 7 days after the report is completed;
- (4)(H) if the investigation or report is terminated, require the investigator to notify the court and counsel or parties of the reason within seven days after termination; and
- (4)(I) require counsel or parties to schedule a settlement conference with the court and the investigator within 45 days after receiving the report.
- (5) If it is the investigator's professional judgment that the scope of the investigation should be widened, the investigator shall seek the approval of the court before going beyond the court order.
- (6) If the investigator does not possess the training or experience necessary for the issue referred, the investigator shall notify the court and counsel or parties.
- (7) If psychological tests are administered, they shall be conducted by a licensed psychologist who is trained in the use of the tests and who adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice.

# TAB 20

## CJA 4-905 — Restraint of minors in juvenile court

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Evershed requests that Policy & Planning consider amending this rule to correct an inaccurate citation to the Utah Code.

**Rule 4-905. Restraint of minors in juvenile court.****Intent:**

To provide for proper restraint of minors in juvenile court proceedings.

**Applicability:**

This rule applies to the juvenile court.

**Statement of the Rule:**

(1) Absent exigent circumstances, a minor, while present in a juvenile courtroom, shall not be restrained unless the court finds by a preponderance of the evidence that:

(1)(A) restraints are necessary to prevent physical harm to the minor or a third party present in the courtroom;

(1)(B) the minor is a flight risk;

(1)(C) the minor is currently in jail, prison or a secure facility as defined by Utah Code section 78A-6-105(3645);

(1)(D) the seriousness of the charged offense warrants restraints; or

(1)(E) other good cause exists for the minor to be restrained.

(2) Any person with an interest in the case may move the court to restrain a minor during court proceedings. The court shall permit all persons with a direct interest in the case the right to be heard on the issue of whether to restrain the minor.

(3) If the court orders that a minor should be restrained, the court shall reconsider that order at each future hearing regarding the minor.

(4) Ex parte communications that provide information on the criteria listed in paragraph (a) are not prohibited. However, the judge or commissioner shall notify all other parties of the communication as soon as possible and shall give them an opportunity to respond.

Effective May/November 1, 20\_\_

**Commented [MCD1]:** Rule was renumbered to be consistent with numbering in most other rules. This rule started with (a) instead of (1).

**Commented [MCD2]:** Currently, this citation is accurate if changed to (45). However, once legislation goes into effect on May 14 (and again on July 1), the citation will be out of date (the numbering is changing again). I propose we simply eliminate the parenthetical part of the citation and leave it as simply 78A-6-105.

# TAB 21

## CJA 4-601 – Selection of indigent aggravated murder defense fund counsel

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Walton requests that Policy & Planning consider the following:

Does it make sense to introduce a geographic element to paragraph 2? Currently the list of potential murder defense fund attorneys is chosen from a RANDOM list of pre-contracted attorneys.

A random list of attorneys created for a case in rural Utah may (and has) omitted the names of ALL attorneys who RESIDE in the District where the case is filed.

**Rule 4-601. Selection of indigent aggravated murder defense fund counsel.****Intent:**

To establish the process to be used to select pre-contracted attorneys from the roster maintained by the Indigent Defense Funds Board in aggravated murder cases.

**Applicability:**

This rule shall apply to the district court.

**Statement of the Rule:**

After determining that a defendant is eligible for indigent defense counsel in an aggravated murder case, as provided in U.C.A. Title 77, Chapter 32, if the defense counsel is to be paid from the Indigent Aggravated Murder Defense Fund, the following process shall be used:

- (1) The judge responsible for assignment of defense counsel shall, as soon as practical upon determining eligibility, contact the member of the Indigent Defense Funds Board designated by the Administrative Office of the Courts.
- (2) That board member shall randomly identify, for each eligible defendant, five attorneys currently on the roster of qualified pre-contracted attorneys.
- (3) The board member shall then promptly contact each of those attorneys and determine if they would be willing to undertake the representation of the defendant. If fewer than three attorneys are willing to undertake the representation, additional pre-contracted attorneys should be contacted until there are at least three attorneys from which the judge can choose.
- (4) The judge shall then select one of the willing attorneys for appointment.

Commented [MCD1]: This rule should be renumbered so that the first paragraph has a reference

Commented [MCD2]: Should there be a geographical component to this provision?

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

# TAB 22

CJA 4-609 — Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Walton requests that Policy & Planning consider whether this rule is complied with in practice. Staff will provide an update to the committee during the meeting.

## **Rule 4-609**

### **Rule 4-609. Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail.**

#### **Intent:**

To establish a procedure for ensuring that fingerprints are obtained from, and an Offense Tracking Number is assigned to, defendants who have not been booked into jail prior to their first court appearance.

#### **Applicability:**

This rule shall apply to all prosecutors, law enforcement personnel, jail booking personnel, and trial courts.

This rule shall only apply to offenses which are not included on the Utah Bureau of Criminal Identification's Non-Serious Offense list.

#### **Statement of the Rule:**

- (1) The prosecutor shall indicate, on the face of the Information that is filed with the court, whether the defendant is appearing pursuant to a summons or a warrant of arrest, by inserting "Summons" or "Warrant" beneath the case number in the caption.
- (2) The prosecutor shall cause the criminal summons form to include the following information:
  - (2)(A) the specific name of the court;
  - (2)(B) the judge's name;
  - (2)(C) the charges against the defendant;
  - (2)(D) the date the summons is issued;
  - (2)(E) a directive to the defendant to appear at the jail or other designated place for booking and release prior to appearing at court;
  - (2)(F) the address of the jail or other designated place; and
  - (2)(G) a space for booking personnel to note the date and time of booking and the Offense Tracking Number (formerly known as the CDR Number).
- (3) Booking personnel shall:
  - (3)(A) complete the booking process, including fingerprinting and issuing an Offense Tracking Number;
  - (3)(B) record the date and time of booking and the Offense Tracking Number on the summons form;



**Rule 4-609**

- 32           (3)(C)   return the summons form to the defendant;  
33           (3)(D)   instruct the defendant to take the summons form with him/her to the court at the  
34                   time designated on the summons;  
35           (3)(E)   release the defendant without bail unless the defendant has outstanding  
36                   warrants; and  
37           (3)(F)   send the Offense Tracking Number to the prosecutor.  
38   (4)   Upon receipt of the Offense Tracking Number from booking personnel, the prosecutor  
39           shall forward the number immediately to the court.  
40   (5)   If the defendant appears at court and does not have the summons form with the date and  
41           time of booking and the Offense Tracking Number, court personnel shall instruct the  
42           defendant to go immediately, at the conclusion of the appearance, to the jail or other  
43           designated place for booking and release.

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

# TAB 23

CJA 4-610 - Appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments

**NOTES:** As part of the CJA 2-207 Annual Review assignment, Judge Walton requests that Policy & Planning consider whether the course identified in CJA 4-610 is offered by the Administrative Office of the Courts. Staff will provide an update to the committee at the meeting.

## Rule 4-610

### **Rule 4-610. Appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments.**

#### **Intent:**

To establish the criteria for the appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments.

#### **Applicability:**

This rule shall apply to the district and the justice courts.

#### **Statement of the Rule:**

(1) The presiding district court judge may appoint a justice court judge to preside at a first appearance, preliminary hearing or arraignment if:

(1)(A) the justice court judge consents to the appointment; and

(1)(B) the justice court judge has either completed a course in the conducting of first appearances, preliminary hearings and arraignments, or has presided over at least five first appearances, preliminary hearings and arraignments prior to the effective date of this rule.

(2) A justice court judge may only accept a plea of not guilty, or not guilty by reason of insanity.

(3) The Justice Court Administrator shall maintain a list of those justice court judges who meet the qualifications set forth in paragraph (1)(B) above.

(4) The administrative office shall offer courses in the conducting of first appearances, preliminary hearings and arraignments, and shall pay the expenses of justice court judges attending such courses not offered in conjunction with the annual justice court judges conference.

(5) Hearings conducted pursuant to this rule shall be conducted on the record.

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