

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

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
November 1, 2019 – 9:00 a.m. to 12:00 p.m.
Conference Line: 877-820-7831, Code: 897882#

9:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Pullan
9:05	CJA Appendix F. Utah State Court Records Retention Schedule <ul style="list-style-type: none"> Eliminates requirement to retain enhancement forms permanently Changes the retention for DV cases to 10 years to reflect statutory change 	Action	Tab 2	Brent Johnson
9:25	Rules back from Public Comment <ul style="list-style-type: none"> CJA 4-410 (New) Courthouse closure 	Action	Tab 3	Keisa Williams
10:35	1-204. Executive Committees <ul style="list-style-type: none"> Adds Ad Hoc Budget Committee 1-205 already accounts for Ad Hoc Committees 	Action	Tab 4	Keisa Williams
11:05	4-905. Restraint of Minors in Juvenile Court <ul style="list-style-type: none"> Format heading to be consistent with other rules Remove subsection from statutory citation to avoid continuous changes 	Action	Tab 5	Keisa Williams
11:15	3-201. Court Commissioners <ul style="list-style-type: none"> Removes "formal" complaint distinction Changes "sanction" to "corrective action" 3.201.02. Court Commissioner Conduct Committee <ul style="list-style-type: none"> Removes informal complaint process Requires complaints to be reviewed by committee vs. single person 	Action	Tab 6	Keisa Williams
11:45	3-111. Performance Evaluation of Active Senior Judges and Court Commissioners <ul style="list-style-type: none"> Change "60 days" to "two months" to be consistent with 3-101 and 78A-2-223 	Action	Tab 7	Keisa Williams
11:50	Annual Review Project <ul style="list-style-type: none"> 2020 Assignments 	Action	Tab 8	Keisa Williams
12:00	Adjourn			

2019 Meetings:
December 6, 2019

2020 Meetings:
January 3, 2020
February 7, 2020
March 6, 2020
May 1, 2020 (9:00 a.m. to 5:00 p.m.)
June 5, 2020
July 3, 2020

August 7, 2020
September 4, 2020
October 2, 2020
November 6, 2020 (9:00 a.m. to 5:00 p.m.)
December 4, 2020

TAB 1

Minutes - October 4, 2019

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

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

DRAFT

MEMBERS:

PRESENT

EXCUSED

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

GUESTS:

Judge Mary Noonan
Brent Johnson
Nini Rich
Bart Olsen
Nancy Sylvester

STAFF:

Keisa Williams
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed members to the meeting. The committee considered the minutes from the September 6, 2019 meeting. With no additional changes, Judge Walton moved to approve the draft minutes. Rob Rice seconded the motion. The committee voted and the motion was unanimously passed.

(2) RULES BACK FROM PUBLIC COMMENT:

CJA 6-506:

Code of Judicial Administration rule 6-506 came back from public comment on August 8, 2019, having received three comments. Ms. Sylvester reviewed the public comments and her recommended changes based on those comments. The Rules of Civil Procedure Committee addressed the comments related to URCP 26.4. One comment suggested changing 6-506 to allow private mediators to mediate contested probate disputes, or allow the ADR program to contract with private mediators. Ms. Sylvester recommended no change because the court has an interest in using mediators vetted through the ADR program, and after talking to Ms. Rich; rule 4-510.05 permits the use of private mediators. Nini Rich, AOC ADR Director, reported that rule 4-510.05 does not prohibit private providers. The rule allows parties to select their own mediator and states that parties may choose from the court roster or a mediator pro tem with specialized skills. The court roster is provided as a resource, and is made up entirely of private providers vetted to ensure they possess the requisite skills, training, and experience. There are no district court staff mediators. Allowing use of a mediator pro tem opens it up even further.

Another commenter stated that estate litigation frequently involves complicated issues that cannot be easily addressed by mediation, so the mandatory nature of 6-506 is an obstacle to much-needed flexibility on the part of the court, and the time frames for response are much too short. Ms. Sylvester stated that the rule already does most of what the commenter asked for because the court can waive mediation,

however, subsection (1)(C) could be bolstered by adding a requirement that, as a part of the pre-mediation conference, judges must make a determination about whether the case contains complicated issues of fact and law better resolved in the ordinary course of litigation. Judge Pullan agreed that the more hands-on involvement of a judge early in the case, the more likely it will be resolved efficiently.

The ADR Committee proposed adding a provision in subsection (1)(C). During the pre-mediation conference, the new provision would require judges to select the mediator or determine the process and time frame for selecting the mediator, in accordance with Rule 4-510.05. The Committee agreed with that amendment. The Disability Law Center's first comment suggested adding language to URCP 26.4 clarifying that a court should offer assistance to a respondent filing an objection using his/her preferred method or means of communication. Judge Pullan expressed concern about any amendment that requires the court to offer assistance to one side of the litigation. In addition, he noted that the language allowing an individual to use their preferred method or means of communication to file an objection is unclear, and depending on the meaning, it may not be practical. Ms. Sylvester stated that the Rules of Civil Procedure Committee addressed the second issue in 26.4(c)(2) by removing the requirement that objections be made or reduced to writing. The Civil Procedure Committee's amendment allows the court, for good cause, to accept an objection using the person's preferred means of communication and requires documentation of the objection in the court record. Judge Pullan stated that as long as the objection is documented in a way that it could be docketed, his concern would be addressed.

The Disability Law Center also recommended that Rule 6-506 be amended to include the requirement of counsel found in 75-5-303(2)(b), and follow the process in 75-5-303(5)(d) if a respondent is not represented by counsel. The Center also commented that the requirement for parties to share mediation costs could be problematic or prohibitive for disabled individuals with very limited income. Ms. Sylvester suggested adding the provision of counsel as another factor for consideration at the pre-mediation conference. She noted that the rule already allows parties to request, and the court to grant, a waiver of mediation fees. The committee agreed with the change regarding provision of counsel.

After discussion, Mr. Rice moved to approve all redlined changes as discussed, and to recommend to the Judicial Council that the proposed amendments be approved as final. Judge Evershed seconded the motion. The motion was unanimously approved.

(3) (NEW) CJA 4-411. COURTHOUSE ATTIRE:

The Self-represented Parties Committee is proposing new rule 4-411 for consideration and adoption. The rule addresses appropriate courthouse attire for all parties conducting business at the courthouse and within a courtroom. The intent of the rule is to prevent court patrons from being turned away from the courthouse or a courtroom by court staff or bailiffs unless they fall within a few narrow exceptions.

Judge Noonan asked whether the term "judicial officer," defined as including both judges and commissioners, is consistent with other rules. Ms. Sylvester stated that she believes it is consistent. Judge Noonan recommended adding "consultation" to the role of bailiffs, court security, or court staff. As a practical matter, judges may need to consult with bailiffs and staff when making these types of decisions. Judge Noonan stated that the provision listing specific articles of clothing in subsection (2)(b) appears to target clothing traditionally worn by women and is unnecessary because the issue is addressed more broadly in subsection (2)(a). After discussion, the committee agreed with both of Judge Noonan's suggestions.

The committee removed "shirt, pants, and shoes or equivalent attire" from (2)(a). As long as the individual is wearing attire covering the body parts listed, it is sufficient. Use of the word "may" ensures judges still retain some discretion. Mr. Rice expressed concern with the language "special consideration"

in reference to breastfeeding mothers. He recommended amending (2)(c) to permit breastfeeding pursuant to Utah Code 13-7a-101.

Judge Noonan expressed concern about the health and safety provision. “Communicable disease” is a term of art. It is probably outside nearly everyone at the court’s expertise to correctly identify a communicable disease. It seems that what the rule is trying to accomplish is to provide the discretion to deny access when there is a reasonable appearance of a health concern. It is problematic to use a term of art; the language should be stated more broadly. Rob Rice asked for an example of the need for this provision. A committee member described an incident involving a defendant who appeared in court coughing terribly who told the court he had Mersa. Another individual entered the law library with an open, seeping wound. Other examples included lice and scabies. Mr. Rice asked whether there was another rule addressing health and safety, or another rule in which addressing health and safety would be more appropriate. Mr. Rice expressed concern that a rule discussing the “appearance” of a health issue could lead to disability discrimination. Judge Evershed referred to the Utah Communicable Disease Control Act which defines communicable disease. After discussion, the committee determined that the health and safety provision doesn’t belong in a rule addressing courtroom attire, but could be addressed in a courtroom security rule. Mr. Rice suggested that the provision might be a better fit in a rule describing accommodations for disabilities. Judge Pullan noted that if the committee were to take up the health and safety issue in another rule, it should review policies in other states.

The committee discussed the difference between the terms “court,” “courthouse,” and “courtroom.” Judge Pullan asked whether the terms were meant to be defined differently. He expressed a concern about judges getting involved in access to the “courthouse,” which appears to be entrance to the building itself, an issue he felt was better suited to security personnel. Ms. Sylvester stated that one of the main problems the Self-Represented Parties Committee is trying to avoid is court security at the door denying entrance to the building, and by extension the courtroom, without judicial input. The Self-Rep Committee feels that judges should be involved in access decisions to avoid violations of the open courts rule. Individuals might miss their court appearance and if it’s a criminal case, a warrant could be issued. Judge Evershed stated that criminal cases are different. In those instances, judges should be involved. Judge Cannell stated that the 1st District court staff and security personnel know what the courtroom attire rules are, but those decisions aren’t left up to them. If court staff are concerned, they notify the judge’s bailiff and the judge brings the person in and address it in the courtroom. Judges shouldn’t abdicate their role in making decisions as to what will be allowed in their courtroom, but many patrons visit the courthouse to pay a fine or file a case without ever entering a courtroom.

Judge Pullan provided the following example: A man in his twenties comes into the courthouse wearing a backpack and a t-shirt that says, “It’s a good day to die.” The court needs to empower security personnel to exercise some discretion when they have legitimate safety concerns. Security officers are trained to identify threats. They are much better suited than judges to make those kinds of determinations. Judge Pullan stated that when it comes to attire, subsection (2)(a) establishes the judicial standard for “courtrooms.” He does not feel that judges should be involved in making all “courthouse” decisions. Mr. Rice stated that he doesn’t believe Rule 4-411 prohibits security personnel from preventing access when there are legitimate security threats. In Judge Pullan’s example, security personnel wouldn’t be denying access on the basis of the t-shirt itself, but based on other factors indicating the man poses a threat. Ms. Sylvester stated that the intent is not to prevent security personnel from denying access on the basis of legitimate threats, but rather preventing them from making subjective decisions about the appropriateness of an individual’s attire. Another example: A large group of individuals wearing gang colors are attempting to enter a courthouse with an ongoing criminal trial involving a rival gang shooting in which threats to witnesses have been made.

The committee amended (1)(b) to clarify that “courtroom” access decisions regarding attire will be made by a judicial officer, and added a provision clarifying court security personnel’s authority to deny access to

a “courthouse” if a person’s attire raises a security concern. The Committee asked Ms. Sylvester to run the rule past Chris Palmer to ensure it does not conflict with court security rules or local court security plans.

The Committee determined that the rule, as revised, should be reviewed again by the Board of District Court judges, Board of Juvenile Court Judges, Board of Justice Court Judges, Board of Appellate Court Judges, and the Self-represented Parties Committee before being presented to the Council. The committee determined that it would be beneficial for a member of Policy & Planning to attend board meetings when this rule is discussed. Ms. Williams will email dates of the next board meetings to committee members to determine which members are available to attend. Ms. Sylvester will send the revised version of Rule 4-411 to the Self-represented Parties Committee for review and comment.

(4) CJA 1-205. STANDING AND AD HOC COMMITTEE:

The Online Court Assistance Committee (OCAP) has been dissolved. The Committee on Court Forms requested that the OCAP member be removed from their committee membership list. Ms. Sylvester stated that the Self-Represented Parties Committee’s concerns would be addressed by retaining the OCAP member under advisory or emeritus status so she had no objections to the proposed amendment.

With no further discussion, Mr. Rice moved to adopt and accept the changes as proposed. Judge Chin seconded the motion. The committee unanimously voted to approve the motion. The rule will be presented to the Judicial Council for approval for public comment.

5) CASELAW RE: ABILITY TO PAY ANALYSIS AND PROCEDURAL DUE PROCESS IN THE PRETRIAL CONTEXT:

Ms. Williams briefly reviewed the memo included in the packet. No action on the part of Policy and Planning is requested at this time. The purpose of the discussion is to notify the committee of emerging caselaw and the potential for precedent in the near future. Over the last several years, in both state and federal cases across the country, courts are consistently holding that it is an unconstitutional deprivation of due process and equal protection rights under the 14th Amendment to set monetary conditions of pretrial release without first considering an arrestee’s ability to pay. The majority of cases are requiring courts to hold a hearing with full due process protections within 24-48 hours of arrest. Utah does not currently have the funding or infrastructure in place to implement those changes.

None of the caselaw is precedential at this time, but Ms. Williams believes many cases are persuasive and precedent is imminent. Utah criminal defense attorneys have already begun making these arguments in court and Ms. Williams has been notified that some may be actively looking for a case to appeal. Implementing these changes would require a large statewide reform effort with an impact on all criminal justice stakeholders, including the court, legislature, counties, law enforcement, prosecutors, and public defenders. Such reforms would significantly impact court policies, procedures, staffing, and resources.

The Standing Committee on Pretrial Release and Supervision has identified this issue as critical and is working to develop a reform proposal for the Council including both short and long-term efforts. The committee hopes to have a proposal for review by early 2020. The committee is also working with the Rules of Criminal Procedure Committee on related amendments to Rules 9 and 9A. The Criminal Procedure Committee created a URCrP 9 and 9A subcommittee. Judge Pullan is a member. The first subcommittee meeting is October 30, 2019.

The Pretrial Committee has asked Ms. Williams to meet with all stakeholders to educate them about the caselaw, notify them of the Pretrial Committee’s work, and invite feedback and participation. Ms. Williams has already met with Board of District Court Judges, and is scheduled to meet with TCEs, CoCs, Board of Justice Court Judges, any juvenile judges assuming district court duties in criminal cases, and bench meetings for both district and justice court judges.

Judge Noonan noted that the cases referenced in the memo are appellate court decisions in other states. Utah has a choice to either be proactive and deliberate, or to wait for a state or federal appellate decision. There is energy in Utah right now to make some of these reforms and it would benefit the court to take advantage of it. Ms. Williams stated that Representative Hutchings is a member of the Pretrial Committee. At the last meeting, Rep. Hutchings indicated that he has discussed the issue with other legislators and there is an appetite to make changes. He recommended that the court not wait to pursue reforms, and has asked that we provide draft legislation, identify funding sources, and provide cost estimates, etc.

Judge Noonan stated that reforms would permeate every aspect of the criminal justice system. An example of a few areas of the court which would be significantly impacted include: workloads, judges' time, judicial assistance, use of buildings, security, and technology. Judge Noonan asked for guidance and recommendations about which committee should advance this conversation to the Council in a deliberate, heads-up sort of way. The Council should understand the enormity of the issue and the fast-moving pace with which we may be hit if we don't get out ahead. Judge Pullan requested that Ms. Williams report to the Council at its next meeting and let the Council decide whether the Pretrial Committee is the best vehicle. He stated that attempting to pass legislation this year is unrealistic and ill-advised. Judge Noonan suggested that Judge Pullan alert the Council during his P&P report at the October 28th meeting, and then she would include it on the November Council agenda for a more comprehensive discussion. Judge Pullan and the committee agreed. Ms. Williams will present to the Judicial Council at its November meeting for guidance and feedback.

6) EVIDENCE AUDIT STATUE REPORT (CJA 4-206):

Judge Noonan provided an update on the AOC's action plan in response to the August 2019 evidence audit. Judge Noonan and Mr. Palmer have worked with the Clerks of Court and Trial Court Executives to take immediate steps to secure their evidence holding areas as recommended by the audit.

After reviewing rules and policies from the federal system and other states, Brent Johnson recommended that Utah adopt the federal model and never take custody of large or sensitive exhibits. Mr. Johnson reviewed CJA 4-206 and Federal Rule of Civil Procedure 83-5, Custody and Disposition of Trial Exhibits. One of the main issues identified in the audit involved the court's failure to keep custody of tracking records. The revised rule should include a directive to maintain a good tracking system.

Individual parties introducing bulky or sensitive physical exhibits or evidence (controlled substances, firearms, jewelry, etc.) would be solely responsible for custody, transportation, chain of evidence protocols, storage, and preservation for future appeals. Utah could make this a hard and fast rule or allow some judicial discretion. The court could keep a photo of the physical item in the record once it has been introduced. Mr. Rice stated that this may be a good opportunity for the court to reach out to practitioners to assess their understanding of the rule and obtain feedback about what impact any proposed changes may have. Mr. Johnson pointed to proposed language requiring parties to retain exhibits which may be needed for any post-conviction relief. Law enforcement agencies are required to follow federal chain of custody standards making them better suited to retain certain exhibits.

Judge Pullan stated that if parties are going to retain custody, there should be some clear statutory duty to preserve exhibits. Once the executive branch obtains a conviction, the strongest incentive for preservation disappears. Imposing some statutory duty seems to make a lot of sense. In addition, the court should meet with law enforcement to identify the types of evidence that should be preserved for long periods of time. Judge Cannell stated that the statutory duty should be accompanied by an order making failure to comply contemptable to create an incentive to follow the law.

Mr. Johnson noted that the purpose of today's discussion is not to approve the rule, but to get approval from P&P on the direction that the court, in most instances, would not be the repository of physical

evidence. The AOC will then begin working on draft language, and will obtain feedback from clerks, practitioners, judges, law enforcement, and others who will be impacted by any changes. That process will take time. But there is a need right now to provide directives to judges about what to do between now and the time a new rule is in place. Mr. Johnson proposed advising judges to issue an administrative order, for example, that fills in the gaps in 4-206. The Committee agreed with the direction proposed by Mr. Johnson.

7) HR 440 – EDUCATION ASSISTANCE:

Mr. Johnson reviewed proposed amendments to HR 440. The Human Resources Department and Deputy State Court Administrator are requesting that the Deputy State Court Administrator's ability to approve education assistance requests over the capped maximum be revoked because overage requests reduce the amount of money available for all employees.

With no changes, Judge Cannell moved to approve the amendments as proposed. Judge Evershed seconded the motion. The motion was unanimously approved by the committee. HR 440 will proceed to the Judicial Council for further review and approval.

8) HR 550 – HARASSMENT POLICY:

Mr. Rice reviewed the Human Resource Review Committee's latest draft of HR 550. The Council asked the Review Committee to pay particular attention to the creation of a mechanism whereby employees would clearly understand to whom and how they are permitted to report allegations about judges, justices, and high-level directors or administrators. The language in subsection (1) definitively states that the policy applies to everyone, including judges, justices, and high-level administrators, with no exceptions, and subsection (5) provides very clear and detailed reporting procedures.

The Review Committee spent a lot of time on the reporting procedures section. It outlines to whom and how employees may report allegations. Employees may contact any supervisor or member of management with whom they feel comfortable reporting. They may also contact the HR director, AOC management, court-level administrator, state court administrator, deputy state court administrator, assistant state court administrator, a judge, justice, or commissioner.

Mr. Johnson identified three companion rules that he believes should be amended once HR 550 is approved. If approved, HR 550 would be the only policy in the Personnel Policy and Procedures Manual applicable to judges. To ensure judges are aware of their responsibilities, Mr. Johnson recommends incorporating a reference to HR 550, or language outlining specific duties, in the following rules:

- CJA 3-103. Administrative Role of Judges
- CJA 3-104. Presiding Judges
- Code of Judicial Conduct. Canon 2.3. Bias, Prejudice, and Harassment (amend protected categories to make it consistent with HR 550)

Once the Judicial Council approves HR 550, Policy and Planning will consider amendments to CJA 3-103 and CJA 3-104. Mr. Johnson will propose amendments to CJC Canon 2.3 to the Supreme Court for approval.

The Committee discussed the proposed amendments and made minor language changes. The committee recommended that the rule be forwarded to the Judicial Council for review, and circulated to the TCE's as an FYI. Ms. Williams will send the proposed version of HR 550 to the TCEs notifying them when it will be on the Council's agenda.

With no further changes, Judge Chin moved to adopt the rule as amended. Mr. Rice seconded the motion. The committee unanimously voted to adopt the rule as amended and to recommend to the Council that it be reviewed and approved as final.

9) ADJOURN

With no further items for discussion the meeting was adjourned at 2:05 p.m. without a motion. The next meeting will be held on November 1, 2019 at 9:00 a.m. This will be the bi-annual full day meeting.

TAB 2

CJA Appendix F. Utah State Court Records Retention Schedule

NOTES: The first proposal (line 108) is to eliminate the requirement that the enhancement forms previously required by rule 9-301 be retained permanently. Because the rule 9-301 was repealed, I suggest that the records should now be destroyed at the same time as the file to which the record pertains. Eliminating the specific reference in the schedule will default to that result.

The second proposal (lines 112-113, 116) is to change the retention for domestic violence cases to ten years to reflect the change in statute that makes these offenses enhanceable for ten years.

Appendix F. Utah State Court Records Retention Schedule**(A) Definitions.**

(A)(1) **Appellate proceedings.** As applicable to the particular case:

(A)(1)(a) expiration of the time in which to file an appeal;

(A)(1)(b) completion of the initial appeal of right;

(A)(1)(c) completion of discretionary appeals; or

(A)(1)(d) completion of trial court proceedings after remittitur.

Appellate proceedings do not include collateral review, such as a petition for post conviction relief or a petition for writ of habeas corpus, although these petitions may themselves be the subject of appellate proceedings.

(A)(2) **Case file.** The compilation of documents pertaining to a case in the district court and justice court. The compilation of documents pertaining to an individual under the jurisdiction of the juvenile court.

(A)(3) **Case history.** Includes the docket, judgment docket, registry of judgments, register of actions and other terms used to refer to a summary of the parties and events of a case.

(A)(4) **Clerk of the court.** Includes all deputy clerks.

(A)(5) **Confidential records.** Records classified in accordance with the Title 63G, Chapter 2, Government Records Access and Management Act and Rule 4-202 et seq. of the Judicial Council as private, protected, juvenile, or sealed.

(A)(6) **Critical documents.** As applicable to the particular case:

(A)(6)(a) **Civil.** Final amended complaint or petition; final amended answer or response; final amended counterclaims, cross claims, and third party claims and defenses; home study or custody evaluation; jury verdict; final written opinion of the court, including any findings of fact and conclusions of law; final trial court order, judgment or decree; interlocutory order only if reviewed by an appellate

court; orders supplemental to the judgment and writs that have not expired; notice of appeal; transcripts; appellate briefs; final order, judgment or decree or any appellate court; case history.

(A)(6)(b) **Child abuse, neglect or dependency.** In addition to that which is required of civil cases, shelter hearing order; adjudication orders; disposition orders; reports of the Division of Child and Family Services; psychological evaluations; reports from treatment providers; motion for permanency hearing; response to motion for permanency hearing; petition for termination of parental rights; and response to petition for termination of parental rights.

(A)(6)(c) **Divorce and domestic relations.** In addition to that which is required of civil cases, petitions to modify or enforce a final order, judgment or decree and the final order entered as a result of that petition.

(A)(6)(d) **Felonies, including offenses by a minor in juvenile court.** All documents other than duplicates, subpoenas, warrants, orders to show cause, presentence investigation reports and notices of hearings.

(A)(6)(e) **Misdemeanors and infractions, including offenses by a minor in juvenile court.** Final amended citation or information; jury verdict; final written opinion of the court, including any findings of fact and conclusions of law; final trial court order, judgment or decree; notice of appeal; appellate briefs; final order, judgment or decree or any appellate court; case history.

(A)(6)(f) **Probate.** In addition to that which is required of civil cases, will admitted to probate; trust instrument; final accounting; reports, findings and orders regarding the mental competence of a person.

(A)(7) **Document.** Any pleading or other paper filed with or created by the court for a particular case, regardless of medium.

(A)(8) **Off-site storage.** Storage at the State Records Center under the control of the Division of State Archives.

(A)(9) **On-site storage.** Storage at the courthouse or any secure storage facility under the control of the court.

(A)(10) **Retention period.** The time that a record must be kept. The retention period is either permanent or for a designated term of months or years.

(B) Case Records.

(B)(1) **Objectives.** The objective of the records retention schedule is to maintain convenient access to the documents of the case and to the case history as necessary to the activity in the case. Even in a case in which judgment has been entered there may be substantial activity. In criminal cases, the court can expect affidavits alleging violations of probation and petitions for post conviction relief. In civil cases, the court can expect to issue writs, orders supplemental to the judgment and to conduct other proceedings to collect the judgment. In divorce cases, the court can expect petitions to modify the decree or to enforce visitation and support. This may mean more immediate access in particular cases. The objective of the records retention schedule is to guide the transfer of permanent records to off-site storage and the destruction on non-permanent records.

(B)(2) **Storage medium.** The decisions of what storage medium to use and when to use it are left to local discretion, needs and resources of the clerk of the court.

With proper training or by the Division of State Archives the clerk of the court may microfilm records. Given the sensitive nature of identifying information contained in court records, such as name, address, telephone number, and social security number of parties, witnesses and jurors, microfilming of court records by Utah Correctional Industries is prohibited. All microfilming shall be in accordance with the standards adopted by the Division. All microfilm developing and quality assurance checks shall be done by the Division. The Division of State Archives shall keep the original film and return a copy to the court.

The clerk of the court may scan documents to a digital image based on local needs and resources. Once scanned to a digital image, the document may be destroyed. Electronic documents may be printed and maintained in the case file.

(B)(3) **Storage location.** The Administrative Office of the Courts shall maintain all computer records. The clerk of the court shall store on site pending cases, closed cases

with significant post judgment activity, and cases with a retention period of less than permanent.

The clerk of the court shall not store case files with significant activity off-site. Records in which there is an order of alimony or child support, visitation or custody shall not be stored off-site until at least three years has expired from the date of the last activity in the case. Within these parameters, the decision to store permanent records on-site or off-site is left to local discretion, needs and resources. The state court records officer and the Division of State Archives may evaluate exceptions for courthouses with critically short storage problems. Records stored off-site shall be prepared in accordance with standards and instructions of the Division of State Archives. If a record stored off-site is needed at the courthouse, the record will be returned to the court for the duration of the need. The clerk of the court shall not return a record in which there is an order of alimony or child support, visitation or custody to off-site storage until at least three years after the last activity in the case.

(B)(4) **Critical documents.** At any time after the completion of appellate proceedings, the clerk of the court may remove from the case file and destroy all documents other than critical documents.

(B)(5) **The retention period in a criminal case begins as of the completion of the sentence.** The level of offense is determined by the offense of which the defendant is convicted or to which the offense is reduced under Utah Code Section 76-3-402. The retention period in a civil or small claims case begins as of the expiration or satisfaction of the judgment. The retention periods are for the following terms.

(B)(5)(a) **Permanent.** All case types not governed by a more specific designation; ~~the record of arraignment and conviction required by Rule 9-301;~~ prosecution as a serious youth offender.

(B)(5)(b) **10 years.** Third degree felonies; violations of Utah Code Section 41-6a-502 or Section 41-6a-503, or of Section 41-6a-512 if the conviction is to a reduced charge as provided in that section; hospital liens; domestic violence misdemeanors within the scope of Utah Code Section 77-36-1.

(B)(5)(c) **5 years.** Administrative agency review; civil and small claims cases dismissed with prejudice; forcible entry and detainer; investigative subpoenas; ~~domestic violence misdemeanor within the scope of Utah Code Section 77-36-1;~~ post conviction relief or habeas corpus other than capital offenses and life without parole; tax liens; temporary separation; worker's compensation; probable cause statements and search and arrest warrants not associated with a case.

(B)(5)(d) **3 years.** Violations of Utah Code Section 53-3-231; violations of Utah Code Section 76-5-303.

(B)(5)(e) **1 year.** Civil cases with a judgment of money only; extraditions; misdemeanors and infractions classified as "mandatory appearance" by the Uniform Fine and Bail Schedule; petitions to expunge an arrest record in which no charges have been filed.

(B)(5)(f) **6 months.** Civil and small claims cases dismissed without prejudice; misdemeanors and infractions classified as "non-mandatory appearance" by the Uniform Fine and Bail Schedule; small claims cases with a judgment of money only.

(B)(6) **Retention period in Juvenile Court.** The retention period in a delinquency petition or referral begins as of the completion of the sentence. The retention period in other cases begins as of the expiration of the judgment. The retention periods are for the following terms.

(B)(6)(a) **Permanent.** Adoptions; civil cohabitant abuse; orders terminating parental rights; prosecution as serious youth offender; substantiation.

(B)(6)(b) **Until the youngest subject of the petition reaches age 28.** Abuse, neglect and dependency; felonies.

(B)(6)(c) **Until the subject of the petition reaches age 18 and jurisdiction of the court is terminated.** Misdemeanors and infractions other than non-judicial adjustments; interstate compact.

(B)(6)(d) **10 years.** Violations of Utah Code Section 41-6a-502 or Section 41-6a-503, or of Section 41-6a-512 if the conviction is to a reduced charge as provided in that section.

- 143 (B)(6)(e) **3 years.** Violations of Utah Code Section 53-3-231.
- 144 (B)(6)(f) **1 year.** Petitions to expunge an arrest record in which no charges have
145 been filed.
- 146 (B)(6)(g) **6 months.** Non-judicial adjustment of referrals; misdemeanors and
147 infractions classified as “non-mandatory appearance” by the Uniform Fine and Bail
148 Schedule, such as fish and game violations; cases dismissed without prejudice.
- 149 (B)(7) **Retention period in Supreme Court and Court of Appeals.** The retention
150 period for records in the Supreme Court and Court of Appeals is permanent.
- 151 (B)(8) **Special cases.**
- 152 (B)(8)(a) The retention period for foreign judgments, abstracts of judgment and
153 transcripts of judgment is the same as for a case of the same type filed originally in
154 Utah.
- 155 (B)(8)(b) The retention period for contempt of court is the same as for the underlying
156 case in which the contempt occurred.
- 157 (B)(8)(c) The retention period in the juvenile court for records of the prosecution of
158 adults is the same as for the corresponding offense in district or justice court.
- 159 (B)(9) **Case related records.** If the record is filed with the case file, it is treated as a
160 non-critical document unless it is specifically included within the definition of a critical
161 document. If the record is not filed with the case file then its retention period is
162 determined in accordance with the following schedule:
- 163 (B)(9)(a) **Audio and video tapes and tape logs; court reporter notes.** For
164 misdemeanors, infractions and small claims, 3 years from the date the record is
165 created. Otherwise, 9 years from the date the record is created. Tapes shall not be
166 reused.
- 167 (B)(9)(b) **Court calendars.** As determined by the clerk of the court based on local
168 needs.

169 (B)(9)(c) **Confidential records.** Confidential records are retained for the same
170 period as the case to which they apply, but they are filed and stored in such a
171 manner as to protect their confidentiality.

172 (B)(9)(d) **Depositions.** 6 months after the close of appellate proceedings.

173 (B)(9)(e) **Exhibits.** Three months after disposition of the exhibit in accordance with
174 Code of Judicial Administration 4-206.

175 (B)(9)(f) **Expunged records.** For the same time as though the record had not been
176 expunged.

177 (B)(9)(g) **Indexes.** Permanent.

178 (B)(9)(h) **Jury lists and juror qualification questionnaires.** 4 years from
179 completion of term of availability.

180 (B)(9)(i) **Case history.** Permanent.

181 (B)(10) **Record destruction.** Court records 50 years of age or older shall be reviewed
182 for historical significance by the Division of State Archives prior to destruction. If a record
183 is of historical significance, the Division will take possession. If a record is not of
184 historical significance, the court shall manage the record in accordance with this
185 schedule.

186 Paper documents shall be destroyed after expiration of the retention period or after
187 copying the document to microfilm, digital image, or electronic medium. If documents are
188 copied to microfilm, digital image, or electronic medium, the court may maintain the
189 paper documents until such later time that convenient access to the case file can be
190 achieved by means of microfilm or digital image. Each court is responsible for destroying
191 records or making arrangements for destroying records. The court must comply with all
192 laws applicable to the method of destruction. Confidential records must be shredded
193 prior to destruction. Recycling is the preferred method of destruction. In addition, the
194 court may destroy records by incineration or deposit in a landfill. If the court is unable to
195 destroy records by these means, the court may arrange through the state court records
196 officer to have records destroyed by the State Records Center, which may charge a fee.

(C) Administrative Records.

(C)(1) **Record storage, microfilming, imaging and destruction.** Administrative records shall be stored on-site. Administrative records may be microfilmed or scanned to a digital image based on local needs and resources.

(C)(2) **Retention period.** The retention period for administrative records is in accordance with the following schedule.

(C)(2)(a) **Accounting, audit, budget, and finance records.** 4 years from the date the record is created.

(C)(2)(b) **Final reports approved by the Judicial Council.** Permanent.

(C)(2)(c) **General counsel legal files.** 10 years from date the record is created.

(C)(2)(d) **Juror fee and witness fee payment records.** 4 years from date of payment.

(C)(2)(e) **Meeting minutes.** Permanent.

(C)(3) **Other Record Retention.** All administrative records not specifically listed in this record retention schedule will be retained, transferred or destroyed according to the appropriate court policy and procedure manual or the "Utah State Agency General Retention Schedule."

(D) Email retention.

(D)(1) **Incidental Personal Correspondence.** Correspondence that does not relate to the business of the courts. The sender and recipient should delete the email as soon as s/he has no more need for it.

(D)(2) **Transitory Correspondence.** Court-related correspondence that is transitory in nature and does not offer unique information about court functions or programs. These records include acknowledgment files and most day-to-day office and housekeeping correspondence. The sender and recipient should delete the email as soon as s/he has no more need for it.

(D)(3) **Policy and Program Correspondence.** Court-related correspondence that provides unique information about court functions, policies, procedures, or programs. These records document material discussions and decisions made regarding all court interests. The recipient should delete the email as soon as s/he has no more need for it. The sender must retain policy and program email for the same duration as the Utah State Archives Record Retention Schedule for a record of that type.

(D)(4) **The sender must retain policy and program correspondence in a reproducible medium separate from transitory messages.** The sender can do this by moving the email message to an electronic folder in the email system with an appropriate retention period or by copying the correspondence to another medium for retention, such as a web page, a saved file, or a printed document. If the sender copies the email to another medium for retention, s/he should delete the email.

(D)(5) **Email records of a terminated or transferred employee.**

(D)(5)(a) **Supervisor's or designee's responsibility.** If an employee is scheduled for termination or transfer, the employee's supervisor or designee will notify the Help Desk of the IT Division using the form provided by the Division. Upon termination or transfer, the supervisor or designee will review the employee's email. The supervisor or designee will retain policy and program correspondence of which the employee was the sender in accordance with paragraph (D)(3).

(D)(5)(b) **IT Division's responsibility.** If the employee is transferred, the IT Division will maintain the employee's email account at the new location. If the employee is terminated, the IT Division will:

~~1~~(D)(5)(b)(i) De-provision the user id and email account of the employee;

~~2~~(D)(5)(b)(ii) Remove authority to sign on to the court's computing network;

~~3~~(D)(5)(b)(iii) Remove authority to access the court's email account;

~~4~~(D)(5)(b)(iv) Remove the employee from group email lists; and

~~5~~(D)(5)(b)(v) Remove authority to access personal and network drives.

250 Upon receipt of notice of termination or transfer, the IT Division will retain the employee's
251 email in its original form for 180 days from the date of termination or transfer. After 180
252 days, the IT Division may back up the employee's email, delete the email account and
253 recover and reuse the disk space. The IT Division will retain the back-up off site for one
254 year from the date of deletion. If a terminated or transferred employee returns within 180
255 days after the date of termination, the IT Division will reactivate the employee's email
256 account.

257 (D)(6) **Litigation.** Upon notice of pending or potential litigation, the IT Division will retain the
258 employee's email in the current format until notice that the litigation is complete or is no
259 longer contemplated. At such time, the employee's email will be subject to this section (D).

260 *Effective: May/November 1, 20*

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TAB 3

CJA 4-410. (New) Courthouse closure.

NOTES: This is a new rule. The purpose is to establish protocols to which presiding judges, court staff, and other affected stakeholders may turn in the event that a courthouse needs to be closed or its opening delayed.

On August 2, 2019, Policy & Planning reviewed the proposed rule and, after making some additional changes, unanimously voted in favor of recommending the rule to the Judicial Council for public comment.

The rule is back from public comment. No comments were received. Next steps are to recommend to the Judicial Council that this rule be adopted as final, with an effective date of May 1, 2019.

Rule 4-410. Courthouse closure.

Intent:

To establish protocols surrounding the closure of a court's physical building in the event that extreme weather or other emergency situation prevents the safe arrival to, or the ability to safely conduct business in, the courthouse.

Applicability:

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

Statement of the Rule:

(1) Definitions.

(1)(A) In courts of record:

(1)(A)(i) "Presiding judge" refers to the judge who presides over the district or court level.

(1)(A)(ii) "Court executive" refers to the trial court executive in the district and juvenile courts and the Appellate Court Administrator in the appellate courts.

(1)(B) In courts not of record:

(1)(B)(i) "Presiding judge" refers to the local justice court presiding judge, not the district level presiding judge.

(1)(B)(ii) "Court executive" refers to the local justice court administrator.

(2) In the event the presiding judge determines that a courthouse is not safe or is not capable of supporting the core mission of the court due to extreme weather conditions or other emergency situation, the presiding judge has the discretion to determine, in consultation with the court executive, court security, and authority responsible for the building's operation and maintenance, how to continue supporting the core mission of the court.

(3) The presiding judge(s) may order:

(3)(A) the time-limited partial closure of the courthouse;

(3)(B) the time-limited complete closure of the courthouse; or

(3)(C) the indefinite complete closure of the courthouse.

(4) If the presiding judge orders a complete or partial building closure that in any way affects the public's ability to conduct court business in that location,

(4)(A) the presiding judge may order that operations resume in an alternate location;
and

(4)(B) the presiding judge shall ensure that notice is posted in at least two conspicuous
places informing the public of:

(4)(B)(i) the building's physical closure;

(4)(B)(ii) the anticipated length of time the building will be closed; and

(4)(B)(iii) the procedures for conducting court business, including where cases
will be heard and how to file court documents.

(5) Communication of decision to close the courthouse.

(5)(A) In courts of record, the presiding judge shall as soon as possible inform the State
Court Administrator, the Chief Justice, the Court Communications Director, the
Court Security Director, the Court Facilities Director, the Sheriff whose
jurisdiction covers the affected courthouse, and the other organizations or
lessees occupying the building of the presiding judge's decision to close the
courthouse.

(5)(B) In courts not of record, the presiding judge shall as soon as possible inform the
court executive, the Justice Court Administrator, the Court Communications
Director, the Court Security Director, the law enforcement agency whose
jurisdiction covers the affected courthouse, and the other building occupants of
the presiding judge's decision to close the courthouse.

(6) The Court Communications Director shall immediately inform the media and public of the
closure.

(7) If the presiding judge determines that there is a need to extend a court closure order, the
presiding judge shall so order and the steps of paragraphs (1) through (4) shall repeat.

(8) For all courthouses that house more than one level of court, the presiding judges of each
court level shall confer and come to a consensus decision regarding action pursuant to
subsection (3) above.

(8)(A) In the event that a closure is ordered by consensus, the presiding judges of the
closed courthouse shall all sign the closure order.

(8)(B) In the event there is not consensus among the presiding judges, the Chief
Justice shall determine whether to issue and sign the closure order.

Effective May/November 1, 20

TAB 4

CJA 1-204. Executive Committees.

NOTES: At its June 24, 2019 meeting, the Judicial Council created an "Interim Ad Hoc Budget Committee." Because this is an ad hoc committee, it may not need to be in 1-204. Rule 1-204 establishes the three Executive Committees. Rule 1-205(2) addresses the Council's general authority to create and terminate ad hoc committees. Amendments wouldn't be required. If the Budget Committee is no longer ad hoc, it clearly needs to be added to 1-204.

The June 24th Council minutes didn't contain any detail about what the committee is tasked with, so the proposed language (lines 34-36) is just a starting point for discussion and potential direction for Keisa. Mike Drechsel noted that the Legislative Liaison Committee considers fiscal impacts in its legislative capacity. He recommended crafting language that would provide some clarity about which group attends to what issues.

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. The committee shall recommend to the Council new and amended policies, or repeals, for the Human Resource Policies and Procedures Manual, pursuant to Rule 3-402. 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)~~ The interim ad hoc Budget Committee shall review court budget proposals and make recommendations to the Council regarding budget priorities.

~~(5)(6)~~ 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)(7)~~ 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)(8)~~ The Administrative Office shall serve as the secretariat to the executive committees.

Effective May/November 1, 20____

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Rule 1-205. Standing and Ad Hoc Committees.

Intent:

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

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

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

Applicability:

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

Statement of the Rule:

(1) Standing Committees.

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

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

(1)(B) Composition.

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

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- (1)(B)(i)(c) one lawyer recommended by the Board of Bar Commissioners;
 - (1)(B)(i)(d) two court executives;
 - (1)(B)(i)(e) two court clerks; and
 - (1)(B)(i)(f) two staff members from the Administrative Office.
- (1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of:
 - (1)(B)(ii)(a) one district court judge who has experience with a felony docket;
 - (1)(B)(ii)(b) three district court judges who have experience with a misdemeanor docket;
 - (1)(B)(ii)(c) one juvenile court judge; and
 - (1)(B)(ii)(d) three justice court judges.
- (1)(B)(iii) The Ethics Advisory Committee shall consist of:
 - (1)(B)(iii)(a) one judge from the Court of Appeals;
 - (1)(B)(iii)(b) one district court judge from Judicial Districts 2, 3, or 4;
 - (1)(B)(iii)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
 - (1)(B)(iii)(d) one juvenile court judge;
 - (1)(B)(iii)(e) one justice court judge; and
 - (1)(B)(iii)(f) an attorney from either the Bar or a college of law.
- (1)(B)(iv) The Judicial Branch Education Committee shall consist of:
 - (1)(B)(iv)(a) one judge from an appellate court;
 - (1)(B)(iv)(b) one district court judge from Judicial Districts 2, 3, or 4;
 - (1)(B)(iv)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
 - (1)(B)(iv)(d) one juvenile court judge;
 - (1)(B)(iv)(e) the education liaison of the Board of Justice Court Judges;
 - (1)(B)(iv)(f) one state level administrator;
 - (1)(B)(iv)(g) the Human Resource Management Director;
 - (1)(B)(iv)(h) one court executive;
 - (1)(B)(iv)(i) one juvenile court probation representative;
 - (1)(B)(iv)(j) two court clerks from different levels of court and different judicial districts;
 - (1)(B)(iv)(k) one data processing manager; and

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

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- (1)(B)(vi)(n) two juvenile court judges.
- (1)(B)(vi)(o) One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.
- (1)(B)(vii) The Committee on Judicial Outreach shall consist of:
 - (1)(B)(vii)(a) one appellate court judge;
 - (1)(B)(vii)(b) one district court judge;
 - (1)(B)(vii)(c) one juvenile court judge;
 - (1)(B)(vii)(d) one justice court judge; one state level administrator;
 - (1)(B)(vii)(e) a state level judicial education representative;
 - (1)(B)(vii)(f) one court executive;
 - (1)(B)(vii)(g) one Utah State Bar representative;
 - (1)(B)(vii)(h) one communication representative;
 - (1)(B)(vii)(i) one law library representative;
 - (1)(B)(vii)(j) one civic community representative; and
 - (1)(B)(vii)(k) one state education representative.
 - (1)(B)(vii)(l) Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.
- (1)(B)(viii) The Committee on Resources for Self-represented Parties shall consist of:
 - (1)(B)(viii)(a) two district court judges;
 - (1)(B)(viii)(b) one juvenile court judge;
 - (1)(B)(viii)(c) two justice court judges;
 - (1)(B)(viii)(d) three clerks of court – one from an appellate court, one from an urban district and one from a rural district;
 - (1)(B)(viii)(e) one member of the Online Court Assistance Committee;
 - (1)(B)(viii)(f) one representative from the Self-Help Center;
 - (1)(B)(viii)(g) one representative from the Utah State Bar;
 - (1)(B)(viii)(h) two representatives from legal service organizations that serve low-income clients;
 - (1)(B)(viii)(i) one private attorney experienced in providing services to self-represented parties;

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

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

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(1)(B)(xiv)(o) one representative from the Utah State Bar.

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

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

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

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

(3) **General provisions.**

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

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

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- (3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;
 - (3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;
 - (3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and
 - (3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.
- (3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.
- (3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.
- (3)(C) **Expenses.** Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.
- (3)(D) **Secretariat.** The Administrative Office shall serve as secretariat to the Council's committees.

Effective May 1, 2019

TAB 5

CJA 4-905. Restraint of Minors in Juvenile Court.

NOTES: This is left over from the 2019 annual review. The changes are minor. The heading was changed to make it consistent with other rules. The statute referenced in (1)(C) recently changed. The current subsection is 78A-6-105(45). The proposed amendment in line 13 is to eliminate the subsection entirely to avoid outdated citations in the future.

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~~(36)~~;

(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____

TAB 6

CJA 3-201. Court Commissioners

CJA 3-201.02. Court Commissioner Conduct Committee

NOTES: A rule amendment request was originally brought to Policy and Planning by the Court Commissioner Conduct Committee in November 2018, to: 1) remove the distinction between an informal and formal complaint, 2) clearly identify the jurisdiction or scope of the committee's authority, and 3) clarify issues related to confidentiality and notice.

Policy and Planning reviewed revised drafts in March and May 2019. At its May 3rd meeting, the committee asked Mike Drechsel to prepare edits in light of the committee's discussion as outlined briefly below:

- Rule 3-201:
 - Change "sanction" to "corrective action."
 - Make it clear that both the Judicial Council and Presiding Judges may take corrective actions as the result of a complaint and/or poor performance.
 - Include removal as a possible corrective action.
- 3-201.02
 - Remove the language in subsection (2)(C) regarding records access. CCCC records are considered protected under CJA 4-202.02(5)(J), and as subjects of the record, commissioners are authorized access. Commissioners are provided notice and copies of the records under subsection (2)(E).
 - Make "corrective action" terminology changes consistent with 3-201.

Next steps are to send the rules to the Council for approval for public comment.

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~~take corrective actions 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~~Corrective action or removal during a commissioner's term.

(7)(A) ~~Sanctions~~Corrective action.

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

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(7)(A)(ii) ~~If the commissioner's performance is not satisfactory, the commissioner may be sanctioned~~corrective actions may be taken 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.

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

(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~~formal complaint filed under rule 3-201.02 upon the concurrence of two-thirds of the Council.

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(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

167 be removed by the presiding judge, or presiding judges
168 if the commissioner serves multiple districts or court
169 levels, only with the concurrence of a majority of the
170 judges in each district or court level the commissioner
171 serves.

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

178 (7)(C) **Review of District or Court Level Decisions.** If the commissioner disagrees
179 with a district or court level's decision to ~~sanction-remove the commissioner or~~
180 ~~take corrective action~~er-remove, the commissioner may request a review of the
181 decision by the Management Committee of the Council.

182 (8) **Retention.**

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

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

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

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

201 (9)(B) Court commissioners shall receive annual leave of 20 days per calendar year
202 and the same sick leave benefits as judges of the courts of record. Annual leave
203 not used at the end of the calendar year shall not accrue to the following year. A
204 commissioner hired part way through the year shall receive annual leave on a
205 prorated basis. Court commissioners shall receive the same retirement benefits
206 as non-judicial officers employed in the judicial branch.

207 (10) **Support services.**

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

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

213 *Effective May/November 1, 20____*

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~~ corrective actions 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 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 ~~on~~ 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 ~~on~~ the Judicial Council is recused or otherwise unable to serve, the chair shall temporarily appoint another past Bar Commissioner member of ~~on~~ 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.

66 (2)(C) Upon receiving a complaint, the chair shall make an initial review to determine if
67 the allegations raise any issue that would be appropriately addressed by the
68 committee. If a complaint should be addressed by another entity or individual,
69 the chair shall inform the complainant in writing, directing the complainant to the
70 appropriate entity or individual.

71 (2)(D) The chair, or a staff member designated by the chair, shall conduct a preliminary
72 investigation of the complaint. If the complaint is not sufficiently clear, the
73 investigator may request additional written information from the complainant.

74 (2)(D)(i) Upon completion of the preliminary investigation, the investigator shall
75 prepare a report. The report shall recommend a full investigation if
76 there is reasonable cause to support a finding of misconduct. In all
77 other cases, the report shall recommend that the complaint be
78 dismissed.

79 (2)(D)(ii) The investigator's report and recommendations shall be delivered to
80 the committee members for review. After review, a quorum shall vote
81 regarding whether the matter shall be the subject of a full
82 investigation. Any complaint not authorized for full investigation shall
83 be dismissed. The chair shall notify the complainant of the dismissal.

84 (2)(E) Within 10 days after a full investigation is authorized by the committee, the chair
85 shall notify the commissioner and the presiding judge of the district the
86 commissioner primarily serves that a full investigation has been authorized. The
87 notice shall:

88 (2)(E)(i) inform the commissioner of the allegations;

89 (2)(E)(ii) invite the commissioner to respond to the allegations in writing within
90 20 days; and

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

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

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

~~(3) — **Formal complaint.**~~

~~(3)(A) — A formal complaint against a court commissioner shall be in writing and filed with the presiding officer of the Council. The presiding officer shall refer the complaint to the committee and provide a copy of the complaint to the court commissioner and to the presiding judge of the court the commissioner serves.~~

~~(3)(B) — All proceedings and materials related to a formal complaint shall be kept confidential.~~

~~(3)(C) — The chair or the committee shall dismiss a frivolous complaint. The chair or the committee shall dismiss a complaint found to raise only issues of law or fact for which a remedy is the review of the case by the trial court judge or by an appellate court. The chair of the committee shall provide notice of and basis for the dismissal to the complainant, the presiding judge and the commissioner.~~

~~(3)(D) — The committee may investigate a complaint that is not dismissed under paragraph (3)(C). This investigation shall be conducted to determine whether dismissal or a hearing is appropriate.~~

~~(3)(E) — The committee may request that the state court administrator appoint a staff person within the administrative office to perform any investigation and make any presentations to the Committee or the Council.~~

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

(3)(A) The hearings of the committee shall be closed to the public. The committee shall interview the complainant, the ~~court~~ commissioner, and any witnesses determined to have relevant information. The commissioner has the right to testify. The commissioner and complainant may be present at any hearing of the committee and have the assistance of counsel. The commissioner may present, ~~and~~ examine, and cross-examine witnesses. Testimony shall be presented under oath and a record of the proceedings maintained. The commissioner may obtain a copy of the record upon payment of any required fee.

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

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

(3)(D) If the committee finds ~~the complaint to have merit~~ misconduct by a preponderance of the evidence, the committee shall prepare written recommendations to the Council and the presiding judges that ~~a include~~ proposed sanctions corrective actions 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 Council shall review the record of the committee hearing to determine whether the correct application of proper -procedures were followed and to ~~determine the sanction to be imposed~~ identify corrective actions.

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

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

Effective May/November 1, 20__

TAB 7

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

NOTES: In March 2019, Policy and Planning approved this minor amendment (Line 161: changing "60 days" to "two months") as part of a larger packet of amendments proposed by Nancy Sylvester regarding judicial performance standards. However, that project is now on hold for a variety of reasons.

The request came from the Forms Committee in January 2019. As part of the Committee's review of new forms for judges to report cases under advisement, they noticed different standards in the rules for active judges versus senior judges and commissioners. One rule (3-101) says judges must report cases over two months while the other rule (3-111) says senior judges and commissioners must report cases over 60 days. The statute (78A-2-223) sets a standard of two months for trial judges. In order for all judicial officers to be able to use the same form, they recommend that the language in rule 3-111(4)(C)(i)(a) be changed from "60 days" to "two months."

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

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

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

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

Applicability:

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

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

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

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

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

- (1)(B) **Active senior judges.** An active senior judge's performance shall be evaluated by attorneys as provided in paragraph (3)(A) and by presiding judges and court staff as provided in paragraph (3)(B).
- (2) **Evaluation and certification criteria.** Active senior judges and court commissioners shall be evaluated and certified upon the following criteria:
- (2)(A) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;
 - (2)(B) attentiveness to factual and legal issues before the court;
 - (2)(C) adherence to precedent and ability to clearly explain departures from precedent;
 - (2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's rulings, including the effect of delay and increased litigation expense;
 - (2)(E) ability to write clear judicial opinions;
 - (2)(F) ability to clearly explain the legal basis for judicial opinions;
 - (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the commissioner's or senior judge's court;
 - (2)(H) maintenance of decorum in the courtroom;
 - (2)(I) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system;
 - (2)(J) preparation for hearings or oral argument;
 - (2)(K) avoidance of impropriety or the appearance of impropriety;
 - (2)(L) display of fairness and impartiality toward all parties;
 - (2)(M) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions;
 - (2)(N) management of workload;
 - (2)(O) willingness to share proportionally the workload within the court or district, or regularly accepting assignments;
 - (2)(P) issuance of opinions and orders without unnecessary delay; and
 - (2)(Q) ability and willingness to use the court's case management systems in all cases.
- (3) **Standards of performance.**
- (3)(A) **Survey of attorneys.**
 - (3)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the active senior judge or court commissioner during the period for which the active senior judge or court commissioner is being evaluated. The Council shall measure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4)(I) **Communication of certification decision.** The Judicial Council shall communicate its certification decision to the senior judge or court commissioner.

268 The Judicial Council shall communicate its certification decision for senior judges
269 to the Supreme Court and for court commissioners to the presiding judge of the
270 district the commissioner serves.

271 *Effective May/November 1, 20____*

TAB 8

2020 CJA Annual Review Schedule

NOTES: This discussion is to confirm the 2020 CJA Rules Annual Review Schedule.

YEAR	CH.	ART.	RULE	TITLE	ASSIGNED TO	STATUS	LAST REVIEWED	NOTES
2020	5	2	Rule 5-201	Requests for enlargement of time by court reporters and court transcribers.	Judge Walton			
2020	5	2	Rule 5-202	Official court transcribers.	Judge Walton			
2020	5	2	Rule 5-203	Transcript format.	Judge Walton			
2020	6	1	Rule 6-101	The Board of District Court Judges.	Judge Walton			
2020	6	1	Rule 6-102	Election of District Court judges to the Judicial Council.	Judge Walton			
2020	6	1	Rule 6-103	District court tax judges.	Judge Walton			
2020	6	2	Rule 6-201	Distribution of trust funds.	Judge Walton			
2020	6	3	Rule 6-301	Authority of court commissioner as magistrate.	Judge Walton			
2020	6	3	Rule 6-303	Collection of fines and restitution.	Judge Walton			
2020	6	3	Rule 6-304	Grand jury panel.	Judge Walton			
2020	6	4	Rule 6-401	Domestic relations commissioners.	Judge Walton			
2020	6	4	Rule 6-402	Records in domestic relations cases.	Judge Walton			
2020	6	5	Rule 6-501	Reporting requirements for guardians and conservators.	Judge Walton			
2020	6	6	Rule 6-601	Mental health commissioners.	Judge Walton			Recent revisions
2020	7	1	Rule 7-101	Juvenile Court Board, Executive Committee and Council Representatives.	Judge Evershed			Work with Juvenile Court Administrator
2020	7	1	Rule 7-102	Duties and authority of Juvenile Court Commissioners.	Judge Evershed			Work with Juvenile Court Administrator
2020	7	2	Rule 7-202	Police access to computerized juvenile records.	Judge Evershed			Work with Juvenile Court Administrator
2020	7	3	Rule 7-301	Intake.	Judge Evershed			Work with Juvenile Court Administrator
2020	7	3	Rule 7-302	Social studies.	Judge Evershed			Work with Juvenile Court Administrator
2020	7	3	Rule 7-303	Truancy referrals.	Judge Evershed			Work with Juvenile Court Administrator
2020	7	3	Rule 7-304	Probation supervision.	Judge Evershed			Work with Juvenile Court Administrator
2020	7	3	Rule 7-305	Reviews.	Judge Evershed			Work with Juvenile Court Administrator
2020	7	3	Rule 7-307	Use of money in the restitution fund.	Judge Evershed			Work with Juvenile Court Administrator