

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

June 5, 2020 – 12:00 p.m. to 2:00 p.m.

Meeting held via WEBEX

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Pullan
12:05	4-202.02. Records Classification	Action	Tab 2	Nathanial Player
12:20	6-507. Court Visitor	Action	Tab 3	Nancy Sylvester
12:35	Juvenile Drug Court Certification Checklist	Action	Tab 4	Judge Dennis Fuchs
12:50	Rule Amendments re HB 206 : <ul style="list-style-type: none"> • 3-407. Accounting • 4-609. Procedure for obtaining fingerprints... • 10-1-404. Attendance and assistance of prosecutors in criminal proceedings 	Action	Tab 5	Keisa Williams
1:05	4-401.01. Electronic media coverage of court proceedings 4-401.02. Possession and use of portable electronic devices	Action	Tab 6	Brent Johnson Geoff Fattah
1:25	HR Policy Revisions. Phase I – Employment: <ul style="list-style-type: none"> • HR01 – Definitions • HR02 – Administration • HR03 – Classification • HR04 – Filling Positions • HR05 – Career Service Status & Probation 	Action	Tab 7	Bart Olsen
1:40	1-201. Rules for the Conduct of Council Meetings 6-102. Election of District Court Judges to the Judicial Council 7-101. Juvenile Court Board, Executive Committee and Council Representatives	Action	Tab 8	Mike Drechsel
1:50	Old Business / New Business	Action		Judge Pullan
2:00	Adjourn			Judge Pullan

2020 Meetings:

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 - May 1, 2020

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

WebEx Video Conferencing
May 1, 2020 - 9 a.m. – 2 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:

Marty Blaustein
Brent Johnson
Michael Drechsel
Nancy Sylvester
Jim Peters
Paul Barron

STAFF:

Keisa Williams
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the March 3, 2019 meeting. With no changes, Judge Chin moved to approve the draft minutes. Rob Rice seconded the motion. The motion passed unanimously.

(2) 4-202.02. RECORDS CLASSIFICATION:

Ms. Sylvester provided an overview. The proposed amendments to 4-202.02 would seal unlawful detainer actions in certain circumstances. When researching unlawful detainer actions, Utah Legal Services discovered several issues. Many cases are never prosecuted. Some cases were initiated in one district and then the same action was initiated in another district so it appeared the tenant had been evicted twice. Tenants should not have a searchable eviction action show up when they have not actually been evicted. This is causing the unlawful denial of housing to vulnerable populations.

Marty Blaustein: The idea behind this records classification amendment started around 3 years ago with tenants saying that they can't get into another unit or another apartment because of a bad credit history. In some cases we couldn't do much for them because the justification for the eviction was lawful. However, in other cases the tenant did what they were asked and still had an eviction show up on their credit report. Credit report data comes from the courts via public records, but that data is often missing critical information such as the disposition of the case. The tenant could have prevailed. We are seeing more and more cases where tenants' eviction records are showing up on their credit reports, and tenants have been black balled for hiring an attorney to address the issue. The Utah Legal Services Housing Task Force sent a letter to the Chief Justice on October 3, 2019 outlining our concerns. We researched cases going back to 2018 and found that 25% of cases in a one-month period seemed to be cases where the landlord did not proceed and there was no order for restitution, but the eviction sat on the record. When we did a background check, the records would show up on the report. We are proposing that eviction case be sealed when: 1) the plaintiff failed to serve the defendant within 120 days of filing, 2) the plaintiff failed to prosecute the

action, 3) the plaintiff failed to seek a default judgment within 60 days after such a judgment could have been entered, and 4) the plaintiff requested dismissal, whether or not any judgment or order was entered.

Mr. Rice: I am sensitive to this issue. Does the language sealing the records for the numerated reasons need to be restricted? Why not seal the records for substantive reasons as opposed to things in the nature of possible failures to prosecute? Mr. Blaustein: Our goal is to stay within the four corners of what we are proposing. I would suspect that we would still file motions to classify records as sealed outside of those four scenarios in a particular circumstance, but they wouldn't be sealed as a matter of course.

Ms. Sylvester: There is a concern regarding workload. After speaking to IT, sealing the records will have to be a manual process by the clerks. The IT department can generate monthly reports identifying cases that meet the requisite criteria. There may be some hesitancy in allowing a clerk to make decisions about whether or not to seal a record so that may require more thought. I suspect we would get pushback from legislators who are landlords asking why all of the records were sealed. That's another reason why we wouldn't want to seal more records than necessary.

Judge Pullan: In terms of political pushback, we would get less on cases that were dismissed on the merits. I think it would be a mistake to assume that the plaintiff's failure to prosecute was without merit. The landlord may have filed the lawsuit and shortly after the tenant conceded that he couldn't pay the rent and left. That is the outcome the landlord wanted so the case sits without further action. Sealing that record creates the false impression that the tenant was compliant with the lease. I too am sensitive to the issue and I agree that we are going to see a political response if these changes are made. This type of initiative is what drove the expungement statute. People were being unfairly hampered with an arrest on their record.

Judge Walton: I don't have a problem with the idea, but I think there are practical issues. Even if the record is sealed, can't you still see that a case was filed and the nature of the case? Ms. Sylvester: Once a case file is sealed you can't see it and it isn't searchable. It would be as if the case never existed. Mr. Rice: When a case has been sealed, would the tenants show up if a landlord is doing an Xchange search? Paul Barron: In CORIS, you can see that a case exists but you can't access it or look it up by name. It's the same in Xchange. The person's name would never show.

Judge Walton: I don't share the concern regarding making assumptions that the plaintiff filed without merit. If a file is sealed there shouldn't be an assumption one way or the other. I think it would be inappropriate to draw a conclusion unless the court wanted to do so.

Judge Cannell: If a case is dismissed for one reason or another, why wouldn't it be automatically sealed? I echo Mr. Rice. If a case was dismissed for any reason, then sealing it wouldn't matter much.

Mr. Rice: How widespread of a problem is this? Would we ever be asked to quantify it? Mr. Blaustein: In 2018, in one month, 25% of cases were eligible to be sealed based on the definitions in the proposed amendment.

Judge Pullan: One unintended consequence of this decision would be that landlords who otherwise would have been willing to let the case sit without action when a tenant agrees to move out, will now be incentivized to move the case to judgment. Judge Walton: I agree. That is not uncommon at all. I am surprised by how many times there is no further action in a case once the restitution judgment is entered. There is no request for judgment and the case ends up getting dismissed.

Mr. Blaustein: In this proposal, if an order of restitution has been issued the case would not be sealed because the order is in effect.

Judge Pullan: Under (3)(A)(v)(2) and (3), cases with a restitution order (without a request for judgement) would be sealed because they would be dismissed for failure to prosecute. The rule as it is drafted would seal them. We are creating an incentive for landlords to go in and get a judgment to create an accurate record. The tenant who

walked away because they couldn't pay the rent, who already has economic instability, is now shouldered with a judgment of unpaid rent, treble damages, and all that comes with it.

Ms. Sylvester: The purpose behind this is not failure to prosecute the action but failure to get a restitution order. If there is no restitution order it should be sealed. We could change the language to more clearly reflect that intent.

Mr. Blaustein: Looking at it from the standpoint of representing a tenant, I see the case as being prosecuted if an order of restitution judgment has been entered. I think the definition of prosecution is open to debate.

Judge Pullan: I think that "failure to prosecute" is a term of art within the court. An order of restitution is only a partial judgment. Judge Walton: We could add language to line 102 saying, "the plaintiff failed to prosecute the action and no order of restitution has been entered or issued."

Mr. Rice: What is the open records analysis on this? What is the constitutional question to be answered? Do we have a rational basis for this? Ms. Sylvester: The court is empowered under GRAMA to create its own access rules so I don't think this would run afoul of that.

Judge Pullan: Another area where we determine that records aren't being used for a legitimate purpose is expungements. When a person has an arrest on their record that never resulted in prosecution, it should be automatically expunged (line 107 – expunged records are sealed). However, that was a legislative policy. If we make the proposed amendments to this rule, I can see the legislature saying we are creating policy.

Judge Evershed: Is this something we can approach the legislature about? They reach out to us when they are proposing changes to the statute. This might be an opportunity for us to reach out to them. Ms. Sylvester: There is some merit to that. Typically when we have those discussions with the legislature, both sides are represented. Marty represents the tenant but we don't have the landlord's perspective. This could go to the Council for discussion with a request that the Chief reach out to legislative leadership to start a conversation. Judge Chin: I would suggest asking members of the legislative liaison committee to weigh in. They may have an idea about how the legislature might react.

Judge Pullan: We need to have a policy discussion with the Judicial Council before moving forward. I believe a legislative response is inevitable. We may be well served by bringing them to the table early on to have a discussion. I would like more direction from the Judicial Council. Judge Walton: I recommend taking the rule draft (with the change to line 102) to the Council for a discussion about how we move forward. At what point do we send it out for public comment?

Ms. Williams: I can ask that this issue be added to the Judicial Council's agenda as a separate item for discussion. Depending on the outcome of that discussion, we can send it out for public comment afterward.

Judge Cannell: There should be a mechanism in the rule allowing a tenant to expunge a file that affects their record.

Judge Walton moved to take the rule, with the edits to line 102, to the Judicial Council for discussion. Judge Evershed seconded the motion. Judge Cannell opposed. The motion passed.

(3) Rules 3-101, 3-104, 3-111:

- 3-101. Judicial Performance Standards – definition issue
- 3-104. Presiding Judges
- 3-111. Performance Evaluations of Senior Judges and Court Commissioners

Ms. Sylvester: These rule amendments have been circulating for a couple of years. The proposals originated from the Board of District Court Judges. The updates to Rule 3-101 establish a definition for "submitted" for purposes of

the case under advisement performance standard. The updates also provide discretion to the Council to excuse full compliance with the performance standards regarding cases under advisement and education hours for circumstances beyond the judge's control.

Judge Pullan: These amendments have been vetted by the boards of every level of the court. What drove this is the concern that a Notice to Submit can be filed and, solely due to clerical error, never be submitted to a judge. Back in September, two very similar motions were pending in my court. We received two Notices to Submit for signature (one for each motion) on the same day. My clerk assumed that both Notices were related to the same motion. I signed an order on one and she didn't catch that the second issue was still pending. It sat for six months and was never brought to my attention. Because Notices to Submit require human review they are subject to human error as well. Before this rule, the Judicial Council had no discretion. If you missed something, after 60 days it had to be reported to the Council. The Council was required to not recommend you for retention regardless of whether the issue had anything to do with the judge. The proposed rule amendment also clarifies what it means for something to be submitted for a decision. My view is to move these rule proposals forward in their current form. I think in general it is a good policy for us.

Judge Evershed moved to approve the proposed rule amendments to be sent to the Judicial Council with a recommendation that they be published for comment. Mr. Rice seconded and the motion carried unanimously.

(4) 6-506. PROCEDURE FOR CONTESTED MATTERS FILED IN THE PROBATE COURT:

Judge Pullan: This amendment changes one word, "may" to "will" in regard to scheduling pre-mediation conferences in probate cases. The fact that the rule said "will" is forcing all probate cases into pre-mediation conferences when that isn't necessary.

Judge Walton moved to approve the amendment to be sent to the Judicial Council with a recommendation that it be published for comment. Judge Cannell seconded and the motion carried unanimously.

(5) 6-507. COURT VISITORS (NEW):

Ms. Sylvester: This proposal originated with the probate subcommittee. It was meant to be part of a set of probate rules of procedure accompanied by legislation, but the bill didn't pass. The amendment sets forth the appointment and role of court visitors and establishes a process for reviewing court visitor reports. The court visitor program hasn't been codified yet and it doesn't have a mechanism for ensuring that judges see the visitors' reports and act on them where appropriate. This rule seeks to resolve those issues (see, e.g. paragraph (6)(b)).

The probate committee proposes adding this rule to the Code of Judicial Administration pending the creation of a probate rule. The committee doesn't want to wait for a probate rule because it isn't clear when that will happen and the court visitor program needs a way to ensure reports are making their way to judges. There have been instances when action was needed but the reports never made it to a judge. A Request to Submit is required, but court visitors are not parties to the case. They are an extension of the court. This rule would create a mechanism to get reports before judges. The Notice of Filing would trigger the clerk to send the report to the judge for review. (lines 49-51).

Judge Pullan: Is there a reason we can't call this a Request to Submit, rather than a Notice of Filing? My concern is that a Notice of Filing could just sit in the file unless clerks are adequately trained to treat it as a Request to Submit. If we are treating it like a Request to Submit, why not just call it that? If you call it a Notice of Filing, judges would need judicial training about how to treat the reports, which is another argument for calling them a Request to Submit.

Mr. Barron: It depends on the document type. If we call it a Request to Submit and it is submitted to the clerk for manual filing, a tracking record would be automatically created. If we call it something else, we would have to program the system to do the same thing. We could create a mechanism allowing court visitors to use the e-filing system, but right now they can scan the report and send it directly to the court.

Judge Pullan: The challenge is that not every report will be submitted to the judge for review. The filing of the court visitor report is not a paper asking the court to do anything. If there is a dispute about whether a protected person is being treated fairly or being taken advantage of, why wouldn't we leave this to the party to make a motion to do something? Ms. Sylvester: These cases are unique. The court has asked the court visitor to conduct an investigation. The court is proactively saying please go look into this. Many times the party is incapacitated and doesn't have a representative. If the report is negative about a proposed guardian, the guardian doesn't have an incentive to do anything. The court visitor program is a necessary protection mechanism, similar to juvenile cases. Many times court visitors submit detailed, multi-page reports and get concerned when a judge never sees it. When that happens, court visitors feel like the court doesn't value their work and they no longer want to participate in the program.

Judge Cannell: When I have a problem case and I request a court visitor report, I know that I am waiting for that report to determine whether I want a follow-up or hold a hearing. It doesn't matter to me if you call it a Notice of Filing or a Request to Submit. Judge Walton agreed. Judge Pullan: In the fourth district, our probate calendar is assigned to one judge to deal with undisputed matters. My fear is that one judge who is handling the probate calendar orders a court visitor to do something, the case is then disputed for other reasons and assigned to me. I would never know that the court visitor has been appointed. If the only thing in the docket is a Notice of Filing, it's just going to sit there.

The Committee changed the title of (6)(b) to "Notice to Submit for Decision," along with lines 50 and 57.

Mr. Rice: I suggest changing line 58 to say "and respond to the report" instead of issuing an order because someone could argue that the findings have to closely follow the report and the court can pick and choose items from the report. Judge Cannell: Normally I won't make any findings until I get to the hearing. Judge Walton: I don't know that we want to go down this road. Why don't we say the Notice to Submit brings it to the court's attention in any decision the court is considering? I'm not sure it requires any language that foresees some other action. It would be like any other Notice to Submit. Once a judge becomes aware that a Notice to Submit is filed, he becomes aware that a decision needs to be made. When a court visitor has filed a report with a Notice to Submit for Decision, the court will review and entertain the recommendations prior to making further decisions on the matter.

Judge Pullan: If we call it a Notice to Submit and the judge reviews it and thinks it looks fine, when does tracking end? Does the court need to submit an order that it has been reviewed and no further action is necessary to take it off tracking? Ms. Sylvester: That's what we were contemplating. The court visitor program was only going to file if it needs some kind of court response. Judge Pullan: Does the court visitor submit a proposed order, similar to the requirement in lines 52-53 involving motions to Excuse the respondent from the hearing? Ms. Sylvester: Yes, that has been part of the discussion. In cases where we are not excusing the respondent, the court visitor role is to observe and report. It would be up to the judge to call a hearing for all parties to respond. Judge Walton: Asking a non-lawyer to submit an order seems like a bad idea. Judge Pullan agreed. Judge Pullan: Whether we call this a Notice to Submit or a Notice to File, my 60 days starts running. What stops that? There needs to be an order to stop it, even an order that says I've reviewed this and no further action is needed. That may just be a training issue for the judge. Ms. Sylvester: It could be as simple as minute entry.

Judge Cannell: If all I need is basic information from the report, calling it a Request to Submit creates additional, unnecessary work because then I need to create an order. Ms. Sylvester: Under (6)(b), the Notice to Submit is only filed if the court needs to take some action. Judge Cannell: I will know when I have requested a report. The issue is after the fact and after the appointment of the guardian when a party objects to the motion or the order. If there is no pending motion, it doesn't fit the rule if I need to take an action within 60 days. Judge Walton: The more I

think about it the more I agree with Judge Cannell. Calling it a notice to submit is going to cause problems and make it more work.

Judge Pullan: My sense is that we send this back to the Probate subcommittee for further consideration. We may need a different treatment than when we are excusing a respondent from a hearing.

The Committee asked Ms. Sylvester to take the rule back to the Probate subcommittee for further consideration and bring it back to Policy and Planning in June.

(6) Rules 1-201, 3-403, 9-101, 9-109:

Jim Peters: Proposed changes to 1-201, 9-101 and 9-109 provide an alternative to conducting elections for leadership positions in the justice courts when the justice court conference is canceled. The proposed change to 3-403 authorizes the Board of Justice Court Judges to excuse judges from that conference (instead of the Management Committee). The Management Committee reviewed the proposals and recommended that the amendments be considered by Policy and Planning.

Judge Chin motioned to approve 3-403 as amended to send to the Council for approval for public comment. Judge Walton seconded and it passed unanimously.

Mr. Peters: The justice court Council member position is especially odd. The Board of Justice Court Judges elects that position at its spring conference, but the person doesn't take their seat until the annual conference in the Fall. There is a six-month lag until someone takes the position. Because the annual conference was canceled this year, we thought it might be a good time to align justice court elections with all of the others.

Judge Chin moved to approve rules 1-201, 9-101, and 9-109 as amended to send to the Council for approval for public comment. Mr. Rice seconded and the motion passed unanimously.

(7) 4-106. ELECTRONIC CONFERENCING (REPEAL):

Judge Pullan: The feeling of the Supreme Court is that this is a procedural matter and it should not be in the administrative code. The Rules of Civil Procedure Committee generally agrees given the degree that we are engaging in these kinds of conferencing efforts. Repealing this rule makes it solely a procedural question. The Rules of Civil Procedure Committee is aware that rule 4-106 will likely be repealed.

Mr. Rice moved to recommend to the Council that rule 4-106 be repealed. Judge Evershed seconded and the motion carried unanimously.

(8) SUBPOENA FORMS (POLICY QUESTION):

Judge Pullan: This issue has been bounced around amongst various parts of the judiciary and is now before us for a policy recommendation. When a subpoena goes out, the CJA requires that three forms be served along with the subpoena. A legislator approached court personnel asking why we are requiring that all of the paperwork be attached to the subpoena. According to the legislator, the county sheriffs have a hard time managing it and it makes more sense to just include hyperlinks to the three documents in the subpoena itself. The objection is that not everyone has access to a computer.

Mr. Rice: I issue a lot of subpoenas. It is not uncommon for me to get a call from people asking what they are supposed to do with them. I appreciate the cost issue and the need to tilt towards the paperless world, but I think the accompanying documents are really important pieces of information for someone not well versed in this area.

Judge Pullan: Would there be value in saying the forms don't have to be attached if the subpoena is going to a corporation, but they do if the subpoena is going to an individual? Mr. Rice: Anecdotally, these are probably routine documents for banks and schools but might not be for small businesses.

Judge Walton: I can see both sides of it. In 99% of the cases it would be sufficient to have a link in the subpoena directing people where to find more information, but I don't know that we're there yet. Judge Evershed: Even with internet access, training on how to use technology is an issue. I've had a lot of trouble with WebEx hearings. I can't explain to someone using an iPhone how to download WebEx to their phone. Some people don't even know how to access the internet.

Brent Johnson: The Forms Committee was unanimous that it was better customer service to provide all documents in paper form, at least for now. In moving to WebEx, we were surprised by the number of employees who don't have adequate access to or know how to access the internet. I would recommend not changing anything yet, keeping the status quo, and requiring that all papers be served. There isn't a huge outcry for change.

The Committee agreed and took no action.

(9) 4-208. AUTOMATIC EXPUNGEMENT OF CASES (NEW):

Judge Pullan: In March, we talked about moving forward with the easier group of automatic expungements (acquittals and dismissals with prejudice) in order to be timely in our response to legislation. The more difficult process is identifying clean slate eligible cases. Our biggest concern with all three expungement types is the accuracy of the system and whether we can measure the error rate. IT has assured us that they can conduct robust testing and they expressed a high degree of confidence in their ability to accurately identify acquittals and dismissals with prejudice. Mr. Johnson has indicated that we should adopt a rule of procedure as well. CJA rule 4-208 would cover the process by which the automated program is created and approved.

Mr. Johnson: There was some discussion at the last meeting about amending the language of the automated orders to ensure everyone was comfortable with the "findings." Judge Pullan: In the orders, the "finding" is that the requirements for automatic expungement have been met and expungement of the record is statutorily mandated. Ultimately, issuance of the auto-expungement order is authorized by the presiding judge in each district. We should set forth in the order how those findings were made and acknowledge that this is an automated process without judicial review. The Rules of Civil Procedure would be helpful in that regard. If the Supreme Court decides (like it did in rule 109) that this is the way we are going to do business, then this is how we will operate. In my opinion, this type of electronic review will always have to be supported by a rule of procedure.

Mr. Johnson: I don't know whether the Rules of Civil Procedure Committee is working on an auto-expungement rule. This might be a rule of criminal procedure. The standard could be considered civil. The rest of the Rules of Civil Procedure really don't apply. It would have to be narrowly focused. It might be better overall in the Rules of Criminal Procedure. We probably need a general expungement rule in the Rules of Criminal Procedure. Even in non-automated cases. Judge Pullan: Does rule 4-208 need to be adopted in order to comply with the statute or can we recommend that there be a Rule of Criminal Procedure instead and wait to review the forms? Mr. Johnson: In theory, you can have presiding judges start the process with standing orders until a rule is adopted. When we were addressing rule 109, one of my concerns was that the use of standing orders may conflict with the signature stamp rule. That may be an issue here as well. The Criminal Procedure Committee meets in two weeks.

Judge Pullan: I recommend that Mr. Johnson take this issue to the Rules of Criminal Procedure Committee with the understanding that Policy and Planning views this as procedure and it needs to be supported by rule. The issue can be re-addressed at the next meeting.

The Committee agreed and took no action on the rule.

(10)- Rules 1-201, 6-102, 7-101:

- 1-201. Rules for the Conduct of Council Meetings
- 6-102. Election of District Court Judges to the Judicial Council
- 7-101. Juvenile Court Board, Executive Committee and Council Representatives

During the legislative session, SB 167 passed (effective date = May 12, 2020). The bill expands the membership of the Judicial Council, adding a new district court judge member (for a total of six district court judges) and a new juvenile court judge member (for a total of three juvenile court judges). The proposed amendment to rule 1-201 would allow the seats to be filled prior to September 2020. Currently the rule reads that new members are elected if an existing member is “unable to complete a term,” which doesn’t contemplate a new seat to fill. Changing the language to “vacancy” allows for immediately filling the newly created seat via the Board’s process. In rules 6-102 and 7-101, the district and juvenile boards have identified how their seats would be allocated.

Judge Cannell: Rule 1-201 allows members to be selected prior to September when a vacancy exists. 6-102 says there will be only one representative from either 1st or 5th district. That creates a problem with the overlap between Judge Walton and me in First and Fifth districts. And there is some question about whether or not “vacancy” in the rule means a vacancy for a newly appointed seat, or a vacancy that exists for any other reason during a judge’s term.

Judge Walton’s term expires in September. I am fulfilling what’s left of Judge Allan’s term. In September I will be the continuing representative from First and Fifth, so that still works. The issue is in defining a “newly appointed member” or a “newly created” seat. If we fix that, it’s resolved in the short term but I don’t know how it will work as we make changes in the future. Mr. Rice: Including language that addresses a one-time issue is better than a constitutional challenge to a rule we make five years from now. Judge Pullan agreed stating that newly created seats are rare.

Judge Cannell: I think the change should be captured in a separate paragraph because it doesn’t fit the language proposed in (3)(A). It’s not a vacancy; it’s just a newly appointed seat. The first sentence in line 20, section (3)(A), should be changed to, “Election of Council members, to include newly appointed seats, shall take place at the Annual Judicial Conference.”

Judge Evershed: Are we anticipating that new members won’t join until September? If we are changing the rule to say that the election will be held at the annual meeting, then appointments won’t happen until the Fall. If we are changing the rule to say that we are adding new seats on the Judicial Council then I say we do it as soon as possible after the legislative session ends. Judge Cannell: The problem is that John and I are serving simultaneously in the First and Fifth District from now until September. It’s unclear whether the Council anticipated having new folks join at its May meeting or at the annual conference. My sense is that new members’ terms would start at the annual meeting. We need to try to be consistent with the old rule. As far as the new designations in 6-102, my expectation is that I will fulfill the original three-year term left over from Judge Allan and the fifth district representative would join when my term is finished. We can alternate from there. When there are multi-district seats, it can be resolved at the district level. My term ends in September 2021.

After discussion, the Committee decided to hold off on moving forward with Jim Peters’ proposals to 1-201 (lines 16-18 and 23-24) and Mike Drechsel’s proposal (lines 21-22) until all amendments are ready. Ms. Williams will let Mike Drechsel know about the committee’s concerns and ask that they be addressed in a new revised draft. All three rules will be back on the June agenda.

(11) OLD BUSINESS/NEW BUSINESS:

None

(12) ADJOURN:

With no further items for discussion, the meeting was adjourned without a motion. The meeting adjourned at 11:11 am. The next meeting will be on June 5, 2020 at 12 (noon) via WebEx Video Conferencing.

TAB 2

CJA 4-202.02. Records Classification

NOTES: The Self-Help Center is recommending that CJA 4-202.02 (4)(O) be amended to include stalking injunctions amongst the proceedings in which the name of a minor is public (line 168). This would bring the rule in line with existing court practice because a minor could be listed on a civil stalking injunction request and order, which are public documents.

The Self-Help Center will update the courts' self-help webpage on non-public information. While this implicates forms, it does not require any change to court forms.

Policy and Planning - Rule Amendment Request Form

The respondent's email address (**nathanaelp@utcourts.gov**) was recorded on submission of this form.

Instructions

Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before it will be considered by the Policy and Planning Committee.

To be considered, you must e-mail your proposed rule draft to Keisa Williams at keisaw@utcourts.gov.

Date of Request *

MM DD YYYY

05 / 26 / 2020

Name of Requester *

Nathanael Player

Requester Phone Number *

8012387921

Name of Requester's Supervisor *

Jessica Van Buren

Location of the Rule *

Code of Judicial Administration ▼

CJA Rule Number or HR/Accounting Section Name *

CJA 4-202.02 (4)(O)(iv)

Brief Description of Rule Proposal *

I suggest amending this provision to say "protective orders and stalking injunctions; and."

Reason Amendment is Needed *

CJA 4-202.02 (4)(O) says a name of a minor is private, with exceptions noted in the romanettes. The list of exceptions should include stalking injunctions, because a minor could be listed on a civil stalking injunction request and order, which are public documents. I became aware of this issue when a patron contacted the Self-Help Center and was upset that her minor child's name was listed on a stalking injunction.

Is the proposed amendment urgent? *

☐

Yes



No

If urgent, please provide an estimated deadline date and explain why it is urgent.

Select each entity that has approved this proposal. *

- ☐ Accounting Manual Committee
- ☐ ADR Committee
- ☐ Board of Appellate Court Judges
- ☐ Board of District Court Judges
- ☐ Board of Justice Court Judges
- ☐ Board of Juvenile Court Judges
- ☐ Board of Senior Judges
- ☐ Children and Family Law Committee
- ☐ Court Commissioner Conduct Committee
- ☐ Court Facility Planning Committee
- ☐ Court Forms Committee
- ☐ Ethics Advisory Committee
- ☐ Ethics and Discipline Committee of the Utah Supreme Court
- ☐ General Counsel
- ☐ Guardian Ad Litem Oversight Committee
- ☐ HR Policy and Planning Committee
- ☐ Judicial Branch Education Committee
- ☐ Judicial Outreach Committee
- ☐ Language Access Committee
- ☐ Law Library Oversight Committee
- ☐ Legislative Liaison Committee
- ☐ Licensed Paralegal Practitioner Committee
- ☐ Model Utah Civil Jury Instructions Committee
- ☐ Model Utah Criminal Jury Instructions Committee
- ☐ Policy and Planning member
- ☐ Pretrial Release and Supervision Committee

- ☐ Resources for Self-Represented Parties Committee
- ☐ Rules of Appellate Procedure Advisory Committee
- ☐ Rules of Civil Procedure Advisory Committee
- ☐ Rules of Criminal Procedure Advisory Committee
- ☐ Rules of Evidence Advisory Committee
- ☐ Rules of Juvenile Procedure Advisory Committee
- ☐ Rules of Professional Conduct Advisory Committee
- ☐ State Court Administrator
- ☐ TCE's
- ☐ Technology Committee
- ☐ Uniform Fine and Bail Committee
- ☐ WINGS Committee
- ☒ None of the Above
- ☐ Option 40

If the approving entity (or individual) is not listed above, please list it (them) here.

List all stakeholders who would be affected by this proposed amendment. *

This minor amendment would simply bring the rule in line with existing court practice. The courts' self-help page on non-public information would need to be updated (but we already changed our page to reflect what happens in practice). While this implicates forms, it does not require any change to court forms.

This form was created inside of Utah State Courts.

Google Forms

Rule 4-202.02. Records Classification.**Intent:**

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

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

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

- (2)(A) abstract of a citation that redacts all non-public information;
- (2)(B) aggregate records without non-public information and without personal identifying information;
- (2)(C) appellate filings, including briefs;
- (2)(D) arrest warrants, but a court may restrict access before service;
- (2)(E) audit reports;
- (2)(F) case files;
- (2)(G) committee reports after release by the Judicial Council or the court that requested the study;
- (2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;
- (2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;
- (2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;
- (2)(K) financial records;
- (2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:
 - (2)(L)(i) amount in controversy;
 - (2)(L)(ii) attorney name;
 - (2)(L)(iii) licensed paralegal practitioner name;
 - (2)(L)(iv) case number;
 - (2)(L)(v) case status;
 - (2)(L)(vi) civil case type or criminal violation;
 - (2)(L)(vii) civil judgment or criminal disposition;

- 36 (2)(L)(viii) daily calendar;
- 37 (2)(L)(ix) file date;
- 38 (2)(L)(x) party name;
- 39 (2)(M) name, business address, business telephone number, and business email
- 40 address of an adult person or business entity other than a party or a victim
- 41 or witness of a crime;
- 42 (2)(N) name, address, telephone number, email address, date of birth, and last
- 43 four digits of the following: driver's license number; social security number;
- 44 or account number of a party;
- 45 (2)(O) name, business address, business telephone number, and business email
- 46 address of a lawyer or licensed paralegal practitioner appearing in a case;
- 47 (2)(P) name, business address, business telephone number, and business email
- 48 address of court personnel other than judges;
- 49 (2)(Q) name, business address, and business telephone number of judges;
- 50 (2)(R) name, gender, gross salary and benefits, job title and description, number
- 51 of hours worked per pay period, dates of employment, and relevant
- 52 qualifications of a current or former court personnel;
- 53 (2)(S) unless classified by the judge as private or safeguarded to protect the
- 54 personal safety of the juror or the juror's family, the name of a juror
- 55 empaneled to try a case, but only 10 days after the jury is discharged;
- 56 (2)(T) opinions, including concurring and dissenting opinions, and orders entered
- 57 in open hearings;
- 58 (2)(U) order or decision classifying a record as not public;
- 59 (2)(V) private record if the subject of the record has given written permission to
- 60 make the record public;
- 61 (2)(W) probation progress/violation reports;
- 62 (2)(X) publications of the administrative office of the courts;
- 63 (2)(Y) record in which the judicial branch determines or states an opinion on the
- 64 rights of the state, a political subdivision, the public, or a person;
- 65 (2)(Z) record of the receipt or expenditure of public funds;
- 66 (2)(AA) record or minutes of an open meeting or hearing and the transcript of them;
- 67 (2)(BB) record of formal discipline of current or former court personnel or of a
- 68 person regulated by the judicial branch if the disciplinary action has been
- 69 completed, and all time periods for administrative appeal have expired, and
- 70 the disciplinary action was sustained;
- 71 (2)(CC) record of a request for a record;
- 72 (2)(DD) reports used by the judiciary if all of the data in the report is public or the
- 73 Judicial Council designates the report as a public record;
- 74 (2)(EE) rules of the Supreme Court and Judicial Council;

- 75 (2)(FF) search warrants, the application and all affidavits or other recorded
76 testimony on which a warrant is based are public after they are unsealed
77 under Utah Rule of Criminal Procedure 40;
78 (2)(GG) statistical data derived from public and non-public records but that disclose
79 only public data; and
80 (2)(HH) notwithstanding subsections (6) and (7), if a petition, indictment, or
81 information is filed charging a person 14 years of age or older with a felony
82 or an offense that would be a felony if committed by an adult, the petition,
83 indictment or information, the adjudication order, the disposition order, and
84 the delinquency history summary of the person are public records. The
85 delinquency history summary shall contain the name of the person, a listing
86 of the offenses for which the person was adjudged to be within the
87 jurisdiction of the juvenile court, and the disposition of the court in each of
88 those offenses.

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

- 90 (3)(A) records in the following actions:
91 (3)(A)(i) Title 78B, Chapter 6, Part 1 – Utah Adoption Act six months
92 after the conclusion of proceedings, which are private until
93 sealed;
94 (3)(A)(ii) Title 78B, Chapter 15, Part 8 – Gestational Agreement, six
95 months after the conclusion of proceedings, which are
96 private until sealed;
97 (3)(A)(iii) Section 76-7-304.5 – Consent required for abortions
98 performed on minors; and
99 (3)(A)(iv) Section 78B-8-402 – Actions for disease testing;
100 (3)(B) expunged records;
101 (3)(C) orders authorizing installation of pen register or trap and trace device under
102 Utah Code Section 77-23a-15;
103 (3)(D) records showing the identity of a confidential informant;
104 (3)(E) records relating to the possession of a financial institution by the
105 commissioner of financial institutions under Utah Code Section 7-2-6;
106 (3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;
107 (3)(G) records designated as sealed by rule of the Supreme Court;
108 (3)(H) record of a Children's Justice Center investigative interview after the
109 conclusion of any legal proceedings; and
110 (3)(I) other records as ordered by the court under Rule 4-202.04.

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

- 113 (4)(A) records in the following actions:

- (4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;
- (4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;
- (4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed;
- (4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and
- (4)(A)(v) cases initiated in the district court by filing an abstract of a juvenile court restitution judgment.
- (4)(B) records in the following actions, except that the case history, judgments, orders, decrees, letters of appointment, and the record of public hearings are public records:
- (4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, except that an action for consortium due to personal injury under Section 30-2-11 is public;
- (4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;
- (4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;
- (4)(B)(iv) Title 78B, Chapter 7, Protective Orders;
- (4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;
- (4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;
- (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;
- (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- (4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);
- (4)(C) affidavit of indigency;
- (4)(D) an affidavit supporting a motion to waive fees;
- (4)(E) aggregate records other than public aggregate records under subsection (2);
- (4)(F) alternative dispute resolution records;
- (4)(G) applications for accommodation under the Americans with Disabilities Act;
- (4)(H) jail booking sheets;
- (4)(I) citation, but an abstract of a citation that redacts all non-public information is public;
- (4)(J) judgment information statement;
- (4)(K) judicial review of final agency action under Utah Code Section 62A-4a-1009;
- (4)(L) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;
- (4)(M) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email

address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(N) medical, psychiatric, or psychological records;

(4)(O) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(O)(i) name change of a minor;

(4)(O)(ii) guardianship or conservatorship for a minor;

(4)(O)(iii) felony, misdemeanor, or infraction;

(4)(O)(iv) protective orders and stalking injunctions; and

(4)(O)(v) custody orders and decrees;

(4)(P) nonresident violator notice of noncompliance;

(4)(Q) personnel file of a current or former court personnel or applicant for employment;

(4)(R) photograph, film, or video of a crime victim;

(4)(S) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

(4)(S)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(4)(S)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;

(4)(T) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(U) record submitted for in camera review until its public availability is determined;

(4)(V) reports of investigations by Child Protective Services;

(4)(W) victim impact statements;

(4)(X) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(Y) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(Z) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure; and

(4)(AA) other records as ordered by the court under Rule 4-202.04.

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

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in

- 201 anticipation of litigation or a judicial, quasi-judicial, or administrative
202 proceeding;
- 203 (5)(B) records that are subject to the attorney client privilege;
- 204 (5)(C) bids or proposals until the deadline for submitting them has closed;
- 205 (5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation
206 before issuance of the final recommendations in these areas;
- 207 (5)(E) budget recommendations, legislative proposals, and policy statements, that if
208 disclosed would reveal the court's contemplated policies or contemplated
209 courses of action;
- 210 (5)(F) court security plans;
- 211 (5)(G) investigation and analysis of loss covered by the risk management fund;
- 212 (5)(H) memorandum prepared by staff for a member of any body charged by law
213 with performing a judicial function and used in the decision-making process;
- 214 (5)(I) confidential business records under Utah Code Section 63G-2-309;
- 215 (5)(J) record created or maintained for civil, criminal, or administrative enforcement
216 purposes, audit or discipline purposes, or licensing, certification or
217 registration purposes, if the record reasonably could be expected to:
- 218 (5)(J)(i) interfere with an investigation;
- 219 (5)(J)(ii) interfere with a fair hearing or trial;
- 220 (5)(J)(iii) disclose the identity of a confidential source; or
- 221 (5)(J)(iv) concern the security of a court facility;
- 222 (5)(K) record identifying property under consideration for sale or acquisition by the
223 court or its appraised or estimated value unless the information has been
224 disclosed to someone not under a duty of confidentiality to the courts;
- 225 (5)(L) record that would reveal the contents of settlement negotiations other than the
226 final settlement agreement;
- 227 (5)(M) record the disclosure of which would impair governmental procurement or give
228 an unfair advantage to any person;
- 229 (5)(N) record the disclosure of which would interfere with supervision of an offender's
230 incarceration, probation, or parole;
- 231 (5)(O) record the disclosure of which would jeopardize life, safety, or property;
- 232 (5)(P) strategy about collective bargaining or pending litigation;
- 233 (5)(Q) test questions and answers;
- 234 (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- 235 (5)(S) record of a Children's Justice Center investigative interview before the
236 conclusion of any legal proceedings;
- 237 (5)(T) presentence investigation report;
- 238 (5)(U) except for those filed with the court, records maintained and prepared by
239 juvenile probation; and
- 240 (5)(V) other records as ordered by the court under Rule 4-202.04.
- 241
- 242 **(6) Juvenile Court Social Records.** The following are juvenile court social records:
- 243 (6)(A) correspondence relating to juvenile social records;

- (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;
- (6)(C) medical, psychological, psychiatric evaluations;
- (6)(D) pre-disposition and social summary reports;
- (6)(E) probation agency and institutional reports or evaluations;
- (6)(F) referral reports;
- (6)(G) report of preliminary inquiries; and
- (6)(H) treatment or service plans.

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

- (7)(A) accounting records;
- (7)(B) discovery filed with the court;
- (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;
- (7)(D) name of a party or minor;
- (7)(E) record of a court hearing;
- (7)(F) referral and offense histories
- (7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

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

- (8)(A) upon request, location information, contact information, and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
- (8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;
- (8)(C) location information, contact information, and identity information of prospective jurors on the master jury list or the qualified jury list;
- (8)(D) location information, contact information, and identity information other than name of a prospective juror summoned to attend court;
- (8)(E) the following information about a victim or witness of a crime:
 - (8)(E)(i) business and personal address, email address, telephone number, and similar information from which the person can be located or contacted;
 - (8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

288

289 *Effective November 1, 2019*

TAB 3

CJA 6-507. Court Visitors (NEW)

NOTES: Based on the Committee's feedback at its May 1st meeting, the Probate Subcommittee made the following amendments:

1. Used the term, "Request to submit for decision" for consistency in tracking;
2. Separately outlined the process for making court findings upon requests for waivers of a respondent's presence versus all other reports in paragraph (8);
3. Ensured that the rule does not conflict with Rule 3-101 in paragraph (8);
4. Added "interested person" to paragraph (2); and
5. Clarified service of a court visitor report language in paragraph (6).

1 **Rule 6-507. Court visitors.**

2 **Intent:**

3 To set forth the appointment and role of court visitors. To establish a process for the review of court
4 visitor reports.

5 **Applicability:**

6 This rule applies to court visitor reports in guardianship and conservatorship cases.

7 **Statement of the Rule:**

8 (1) **Definition.** A visitor is, with respect to guardianship and conservatorship proceedings, a person
9 who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court
10 with no personal interest in the proceedings.

11 (2) **Appointment and role of court visitor.** Upon its own initiative or motion of a party or an
12 “interested person,” as that term is defined in Utah Code section 75-1-201, the court may appoint a court
13 visitor in a guardianship or conservatorship proceeding to conduct an inquiry into the following:

14 (2)(a) whether to waive the respondent's presence at the hearing under Section 75-5-303(5)(a);

15 (2)(b) to confirm a waiver of notice submitted by the respondent in a guardianship or
16 conservatorship proceeding under Sections 75-5-309(3) or 75-5-405(1);

17 (2)(c) to investigate the respondent's circumstances and well-being, including when an attorney is
18 not appointed under 75-5-303(d);

19 (2)(d) to review annual reports from the guardian and conservator or gather additional financial
20 information;

21 (2)(e) to locate guardians, conservators, and respondents;

22 (2)(f) to investigate the proposed guardian's future plans for the respondent's residence under
23 Section 75-5-303(4); or

24 (2)(g) to conduct any other investigation or observation as directed by the court.

25 (3) **Motion to excuse respondent or confirm waiver of hearing.** The petitioner, the respondent, or
26 any interested person seeking to excuse the respondent or confirm a waiver of hearing, shall file an ex
27 parte motion at least 21 days prior to the hearing.

28 (3)(a) Upon receipt of the motion, the court shall appoint a court visitor to conduct an investigation
29 in accordance with paragraph (b) unless one is not required under Utah Code section 75-5-303.

30 (3)(b) Upon appointment to conduct an inquiry into whether to excuse the respondent from the
31 hearing, the court visitor will:

32 (3)(b)(i) interview the petitioner, the proposed guardian, and the respondent;

33 (3)(b)(ii) visit the respondent's present dwelling or any dwelling in which the respondent will
34 reside if the appointment is made;

35 (3)(b)(iii) interview any physician or other person who is known to have treated, advised, or
36 assessed the respondent's relevant physical or mental condition;

37 (3)(b)(iv) confirm a waiver of notice if submitted by the respondent; and

38 (3)(b)(iv) conduct any other investigation the court directs.

39 (4) **Other inquiries.** If the court appoints a visitor under paragraphs (2)(b) through (2)(g), the court
40 visitor will conduct the inquiry in accordance with the court's order or appointment.

41 (5) **Language access.** If the court visitor does not speak or understand the respondent's, proposed
42 guardian's, proposed conservator's, or petitioner's primary language, the court visitor must use an
43 interpretation service approved by the Administrative Office of the Courts to communicate with the
44 respondent, proposed guardian, proposed conservator, or petitioner.

45 (6) **Court visitor report.**

46 (6)(a) **Service of the court visitor report.** In accordance with [Rule 5](#) of the Utah Rules of Civil
47 Procedure, [the court visitor program must file and serve a court visitor report upon all parties and](#)
48 [upon any interested person who has requested the appointment of the court visitor.](#)

49 (6)(b) **Request to Submit for Decision.** [The court visitor program](#) will file with [each](#) court visitor
50 report a [request to submit for decision](#).

51 (6)(c) **Report on request to excuse respondent.** In cases involving a motion to excuse the
52 respondent from the hearing, the court visitor will file with the report a court-approved proposed order.

53 (7) **Termination of court visitor appointment.** The appointment of the court visitor terminates and
54 the court visitor is discharged from the court visitor's duties upon the date identified in the order of
55 appointment. The court may extend the appointment with or without a request from a party.

56 (8) **Court findings.**

57 (a) **Reports regarding waiver of respondent's presence.** When a court visitor has filed a report
58 [regarding a request to waive the respondent's presence at the hearing, the court will issue findings and](#)
59 [an order as to the waiver at least two days prior to the hearing upon which the request has been made.](#)

60 (b) **All other reports.** When a court visitor has filed a report involving matters other than the waiver of
61 [the respondent's presence, the court will issue findings and an order as to those matters in accordance](#)
62 [with the timelines of Rule 3-101.](#)

63
64 *Effective May/November 1, 20*

TAB 4

Juvenile Drug Court Certification Checklist (AMEND)

NOTES: Judge Fuchs is proposing that the Juvenile Drug Court Certification Checklist be amended, moving standard # 25 (page 6), "the Juvenile Drug Court has more than 15 but less than 125 active participants," from the Presumed Category to the Best Practices Category.

UTAH JUDICIAL COUNCIL JUVENILE DRUG COURT CERTIFICATION CHECKLIST

REVISED AND ADOPTED 2020

COURT LOCATION: _____
NAME: _____
REVIEW DATE: _____

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input type="checkbox"/>	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
<input type="checkbox"/>	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
<input type="checkbox"/>	<input type="checkbox"/>	3	The juvenile drug team does not apply subjective criteria or personal impressions to determine participants' suitability for the program.	I.A.
<input type="checkbox"/>	<input type="checkbox"/>	4	Candidates for the Juvenile Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population.	C
<input type="checkbox"/>	<input type="checkbox"/>	5	Candidates for the Juvenile Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	C
<input type="checkbox"/>	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	C
<input type="checkbox"/>	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Juvenile Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Juvenile Drug Court.	D
<input type="checkbox"/>	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Juvenile Drug Court.	D
<input type="checkbox"/>	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Juvenile Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	D
<input type="checkbox"/>	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
<input type="checkbox"/>	<input type="checkbox"/>	11	The Juvenile Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. R BPS II D	II D
<input type="checkbox"/>	<input type="checkbox"/>	12	Each member of the Juvenile Drug Court team attends up-to-date training events on recognizing implicit biases and correcting disparate impacts for members of historically disadvantaged groups. R BPS II F	II F
<input type="checkbox"/>	<input type="checkbox"/>	13	Participants ordinarily appear before the same judge throughout their enrollment in Juvenile Drug Court. R BPS III B	III B
<input type="checkbox"/>	<input type="checkbox"/>	14	The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for the performance are discussed by the Juvenile Drug Court team. R BPS III D	III D
<input type="checkbox"/>	<input type="checkbox"/>	15	Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program.	III E
<input type="checkbox"/>	<input type="checkbox"/>	16	Status hearings are scheduled no less frequently than every four weeks until participants graduates.	III E
<input type="checkbox"/>	<input type="checkbox"/>	17	The judge spends an average of at least three minutes with each participant.	III F
<input type="checkbox"/>	<input type="checkbox"/>	18	The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.	III G

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input type="checkbox"/>	<input type="checkbox"/>	19	If a participant has difficulty expressing him herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations.	IV B
<input type="checkbox"/>	<input type="checkbox"/>	20	The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.	III H VIII D
<input type="checkbox"/>	<input type="checkbox"/>	21	The judge makes these decisions after taking into consideration the input of other Juvenile Drug Court team members and discussing the matter in court with the participant or the participant's legal representative.	III H VIII D
<input type="checkbox"/>	<input type="checkbox"/>	22	The judge relies on the expert input of duly trained treatment professional when imposing treatment-related conditions.	III H
<input type="checkbox"/>	<input type="checkbox"/>	23	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members.	IV A
<input type="checkbox"/>	<input type="checkbox"/>	24	The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and legal collateral consequences that may ensue from graduation and termination.	IV A
<input type="checkbox"/>	<input type="checkbox"/>	25	The Juvenile Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV A
<input type="checkbox"/>	<input type="checkbox"/>	26	The goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only few infractions.	IV A
<input type="checkbox"/>	<input type="checkbox"/>	27	Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance.	IV F
<input type="checkbox"/>	<input type="checkbox"/>	28	Drug testing is performed at least twice a week.	VII G
<input type="checkbox"/>	<input type="checkbox"/>	29	Drug testing is random, and is available on weekend and holidays.	VII B
<input type="checkbox"/>	<input type="checkbox"/>	30	Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled.	VII B
<input type="checkbox"/>	<input type="checkbox"/>	31	Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration.	VII G
<input type="checkbox"/>	<input type="checkbox"/>	32	The Juvenile Drug Court utilizes scientifically and valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII G
<input type="checkbox"/>	<input type="checkbox"/>	33	Metabolite levels falling below industry-or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	VII I
<input type="checkbox"/>	<input type="checkbox"/>	34	Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII I

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input type="checkbox"/>	<input type="checkbox"/>	35	The program requires at least 90 days clean to graduate.	
<input type="checkbox"/>	<input type="checkbox"/>	36	The minimum length of the program is twelve months.	
<input type="checkbox"/>	<input type="checkbox"/>	37	Unless a participant poses an immediate risk to public safety, detention sanctions are administered after less severe consequences have been ineffective at deterring infractions.	IV J
<input type="checkbox"/>	<input type="checkbox"/>	38	Detention sanctions are definite in duration and typically last no more than three to five days.	IV J
<input type="checkbox"/>	<input type="checkbox"/>	39	Participants are given access to counsel and a fair hearing if a detention sanction might be imposed.	IV J
<input type="checkbox"/>	<input type="checkbox"/>	40	Participants are not terminated from Juvenile Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community.	IV K
<input type="checkbox"/>	<input type="checkbox"/>	41	If a participant is terminated from the Juvenile Drug Court because adequate treatment is not available, the participant does not receive an augmented disposition for failing to complete the program. R BPS* IV K	V.I.
<input type="checkbox"/>	<input type="checkbox"/>	42	Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services.	V B
<input type="checkbox"/>	<input type="checkbox"/>	43	Treatment providers are licensed or certified to deliver substance abuse treatment. R BPS V H	V H
<input type="checkbox"/>	<input type="checkbox"/>	44	Participants are not excluded from participation in DUI Court because they lack a stable place of residence.	VI.D.
<input type="checkbox"/>	<input type="checkbox"/>	45	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V J
<input type="checkbox"/>	<input type="checkbox"/>	46	At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement/probation and the judge attend each staffing meeting. R BPS VII A*	VI.I.*
<input type="checkbox"/>	<input type="checkbox"/>	47	At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement/probation and the judge attend each Juvenile Drug Court session.	VII A
<input type="checkbox"/>	<input type="checkbox"/>	48	Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case.	VIII B
<input type="checkbox"/>	<input type="checkbox"/>	49	Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements.	VII C
<input type="checkbox"/>	<input type="checkbox"/>	50	Court fees are reasonable and based on each participant's ability to pay.	
<input type="checkbox"/>	<input type="checkbox"/>	51	Treatment fees are based on a sliding fee schedule.	
<input type="checkbox"/>	<input type="checkbox"/>	52	A skilled and independent evaluator examines the drug Court's adherence to best practices and participant outcomes no less frequently than every five years.	X D
<input type="checkbox"/>	<input type="checkbox"/>	53	The Juvenile Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices.	X D

YES	NO	#	PRESUMED CERTIFICATION CRITERIA <i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	BPS
<input type="checkbox"/>	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I A
<input type="checkbox"/>	<input type="checkbox"/>	2	The program admits only participants who are high risk need as measure by a validated risk and need assessment tool.	I B
<input type="checkbox"/>	<input type="checkbox"/>	3	The Juvenile Drug Court attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, and evidence-based substance abuse and mental health treatment, behavior modification and community supervision.	III A
<input type="checkbox"/>	<input type="checkbox"/>	4	The judge presides over the Juvenile Drug Court for no less than two consecutive years.	III B
<input type="checkbox"/>	<input type="checkbox"/>	5	The Juvenile Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medially safe alternative treatments are available.	IV F
<input type="checkbox"/>	<input type="checkbox"/>	6	Phase promotion is predicted on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time	IV I
<input type="checkbox"/>	<input type="checkbox"/>	7	Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use.	IV I
<input type="checkbox"/>	<input type="checkbox"/>	8	Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day.	VII B
<input type="checkbox"/>	<input type="checkbox"/>	9	Drug Testing results are available within 48 hours.	VII H
<input type="checkbox"/>	<input type="checkbox"/>	10	Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population.	VII D
<input type="checkbox"/>	<input type="checkbox"/>	11	If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS).	VII G
<input type="checkbox"/>	<input type="checkbox"/>	12	Standardized patient placement criteria govern the level of care that is provided.	V A
<input type="checkbox"/>	<input type="checkbox"/>	13	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Juvenile Drug Court's programmatic phase structure.	V A
<input type="checkbox"/>	<input type="checkbox"/>	14	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V D
<input type="checkbox"/>	<input type="checkbox"/>	15	Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms.	V E
<input type="checkbox"/>	<input type="checkbox"/>	16	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V F
<input type="checkbox"/>	<input type="checkbox"/>	17	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V H
<input type="checkbox"/>	<input type="checkbox"/>	18	Participants suffering from mental illness receive mental health services beginning in the first phase of Juvenile Drug Court and continuing as needed throughout their enrollment in the program.	V I
<input type="checkbox"/>	<input type="checkbox"/>	19	Participants complete a brief evidence-based educational curriculum describing concrete	VI L

YES	NO	#	PRESUMED CERTIFICATION CRITERIA <i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	BPS
			measures they can take to prevent or reverse drug overdose.	
<input type="checkbox"/>	<input type="checkbox"/>	20	Clients are placed in the program within 50 days of screening for eligibility.	
<input type="checkbox"/>	<input type="checkbox"/>	21	Team members are assigned to Juvenile Drug Court for no less than two years.	
<input type="checkbox"/>	<input type="checkbox"/>	22	All team members use electronic communication to contemporaneously communicate about Juvenile Drug Court issues.	
<input type="checkbox"/>	<input type="checkbox"/>	23	Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Juvenile Drug Courts.	VIII F
<input type="checkbox"/>	<input type="checkbox"/>	24	New staff hires receive a formal orientation training on the Juvenile Drug Court model and best practices in DUI Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII F
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	25	The Juvenile Drug Court has more than 15 but less than 125 active participants.	IX C
<input type="checkbox"/>	<input type="checkbox"/>	26	The Juvenile Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions.	X A
<input type="checkbox"/>	<input type="checkbox"/>	27	New referrals, new arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Juvenile Drug Court.	X C
<input type="checkbox"/>	<input type="checkbox"/>	28	Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events.	X G
<input type="checkbox"/>	<input type="checkbox"/>	29	The program conducts an exit interview for self-improvement.	

YES	NO	#	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS <i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	BPS
<input type="checkbox"/>	<input type="checkbox"/>	1	The Juvenile Drug Court regularly monitor whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II B XE
<input type="checkbox"/>	<input type="checkbox"/>	2	The Juvenile Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, day treatment, intensive outpatient and outpatient services.	V B
<input type="checkbox"/>	<input type="checkbox"/>	3	Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program.	V E
<input type="checkbox"/>	<input type="checkbox"/>	4	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V E
<input type="checkbox"/>	<input type="checkbox"/>	5	Treatment providers administer behavioral or cognitive –behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the juvenile justice system.	V F

YES	NO	#	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS <i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	BPS
<input type="checkbox"/>	<input type="checkbox"/>	6	Treatment providers have substantial experience working with juvenile justice populations.	V H
<input type="checkbox"/>	<input type="checkbox"/>	7	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Juvenile Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), other major anxiety disorders.	VI E
<input type="checkbox"/>	<input type="checkbox"/>	8	Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety.	VI F
<input type="checkbox"/>	<input type="checkbox"/>	9	Female participants receive trauma-related services in gender-specific groups.	VI F
<input type="checkbox"/>	<input type="checkbox"/>	10	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI F
<input type="checkbox"/>	<input type="checkbox"/>	11	Participants prepare a continuing-care plan together with their counselor to endure they continue to engage in pro-social activities and remain connected with a peer support group, as appropriate, after their discharge from the Juvenile Drug Court.	VJ
<input type="checkbox"/>	<input type="checkbox"/>	12	For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated.	VJ
<input type="checkbox"/>	<input type="checkbox"/>	13	Before starting a Juvenile Drug Court, team members attend a formal pre-implantation training to learn from expert faculty about best practices in Juvenile Drug Courts and develop fair and effective policies and procedures for the program.	VII F
<input type="checkbox"/>	<input type="checkbox"/>	14	Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicted complementary services.	X
<input type="checkbox"/>	<input type="checkbox"/>	15	Information relating to the services provided and participant' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Juvenile Drug Court's adherence to best practices and in-program outcomes.	X F
<input type="checkbox"/>	<input type="checkbox"/>	16	Outcomes are examined for all eligible participants who entered the Juvenile Drug Court regardless of whether they graduated, withdrew, or were terminated from the program. B BPS X H	X H

TAB 5

3-407. Accounting (AMEND)

4-609. Procedure for obtaining fingerprints and offense tracking numbers on defendants who have not been booked in jail (AMEND)

10-1-404. Attendance and assistance of prosecutors in criminal proceedings (AMEND)

NOTES: In 77-20-1(1)(c) (line 275 of [HB 206](#)), "bail" is defined as "release of an individual charged with or arrested for a criminal offense from law enforcement or judicial custody during the time the individual awaits trial or other resolution of the criminal charges."

We've never really had a clear definition of bail in the statute until now. Unfortunately, many sections (outside those covered in HB206) still use "bail" interchangeably to mean both "money" and "release." The correct meaning of the word is "release," so it's nice to have that clarified in the code somewhere.

Many court rules also erroneously use "bail" to mean both "money" and "release," and it is used interchangeably in both pre- and post-disposition contexts. The following rule amendments would bring them in line with the correct definition of bail in HB 206:

3-407. Accounting.

- Amends "bail" to "monetary bail" (lines 72, 84-85).
- The Finance Department is recommending additional changes unrelated to HB 206:
 - Adds "or designee," to provide the State Court Administrator with the option of designating another person to appoint members of the Accounting Manual Review Committee. In practice, the Deputy State Court Administrator makes those appointment (line 37).
 - Updates examples of funds held in trust accounts, removing "child support" because we no longer receive or distribute those funds, and adding "attorney fees" because those funds make up a large percentage of trust account monies (line 72).

4-609. Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked into jail (AMEND)

- Under the requirements for booking personnel, replaces release the defendant "without bail" with "on their own recognizance." (line 40)

10-1-404. Attendance and assistance of prosecutors in criminal proceedings (AMEND)

- Amends "bail" to "monetary bail" (line 18)

Rule 3-407. Accounting.**Intent:**

To establish uniform procedures for the processing, tracking, and reporting of accounts receivable and trust accounts.

Applicability:

This rule applies to the judiciary.

Statement of the Rule:**(1) Manual of procedures.**

(1)(A) Manual of Procedures. The administrative office shall develop a manual of procedures to govern accounts receivable, accounts payable, trust accounts, the audit thereof, and the audit of administrative procedures generally. The procedures shall be in conformity with generally accepted principles of budgeting and accounting and shall, at a minimum, conform to the requirements of this Code and state law. Unless otherwise directed by the Judicial Council, the manual of procedures and amendments to it shall be approved by the majority vote of the state court administrator, the court administrators for each court of record, and the finance manager.

(1)(B) Accounting Manual Review Committee. There is established an accounting manual review committee responsible for making and reviewing proposals for repealing accounting policies and procedures and proposals for promulgating new and amended accounting policies and procedures. The committee shall consist of the following minimum membership:

(1)(B)(i) the director of the finance department, who shall serve as chair and shall vote only in the event of a tie;

(1)(B)(ii) four support services coordinators who will serve a three year term, and may repeat;

(1)(B)(iii) two accountants or clerks with accounting responsibilities from each of the trial courts of record who will serve a three year term, and may repeat;

(1)(B)(iv) a trial court executive who will serve a three year term;

(1)(B)(v) a clerk of court who will serve a three year term;

(1)(B)(vi) a clerk with accounting responsibilities from an appellate court who will serve a three year term, and may repeat;

(1)(B)(vii) one court services field specialist, who has an indefinite term;

(1)(B)(viii) the audit director or designee, who shall not vote; and

(1)(B)(ix) the director of the state division of finance or designee, who shall not vote.

(1)(C) **Member Appointments.** Unless designated by office, members of the committee shall be appointed by the state court administrator, or designee. The department of finance shall provide necessary support to the committee.

(1)(D) **Court Executive Review.** New and amended policies and procedures recommended by the committee shall be reviewed by the court executives prior to being submitted to the Judicial Council or to the vote of the administrators and the finance manager. The Court Executives may endorse or amend the draft policies and procedures or return the draft policies and procedures to the committee for further consideration.

(2) Revenue accounts.

(2)(A) **Deposits; transfers; withdrawals.** All courts shall deposit with a depository determined qualified by the administrative office or make deposits directly with the Utah State Treasurer or the treasurer of the appropriate local government entity. The Supreme Court, Court of Appeals, State Law Library, administrative office, district court primary locations and juvenile courts shall deposit daily, whenever practicable, but not less than once every three days. The deposit shall consist of all court collections of state money. District court contract sites and justice courts having funds due to the state or any political subdivision of the state shall, on or before the 10th day of each month, deposit all funds receipted by them in the preceding month in a qualified depository with the appropriate public treasurer. The courts shall make no withdrawals from depository accounts.

(2)(B) **Periodic revenue report.** Under the supervision of the court executive, the clerk of the court shall prepare and submit a revenue report that identifies the amount and source of the funds received during the reporting period and the state or local government entity entitled to the funds. Juvenile courts and primary locations of the district courts shall submit the report weekly to the administrative office. District court contract sites shall submit the report at least monthly, together with a check for the state portion of revenue, to the administrative office. Justice courts shall submit the report monthly, together with a check for the state revenue collected, to the Utah State Treasurer.

(2)(C) **Monthly reconciliation of bank statement.** The administrative office shall reconcile the revenue account upon receipt of the weekly revenue report from the courts and the monthly bank statements.

(3) Trust accounts.

(3)(A) **Definition.** Trust accounts are accounts established by the courts for the benefit of third parties. Examples of funds which are held in trust accounts include restitution, ~~child support~~ attorney fees, and monetary bail amounts.

(3)(B) **Accounts required; duties of a fiduciary.** District court primary locations and juvenile courts shall maintain a trust account in which to deposit monies held in trust for the benefit of the trustor or some other beneficiary. Under supervision of the court executive, the clerk of the court shall be the custodian of the account and shall have the duties of a trustee as established by law. All other courts of record and not of record may maintain a trust account in accordance with the provisions of this rule.

(3)(C) **Monthly reconciliation of bank statement.** Each court shall reconcile its ledgers upon receipt of the monthly bank statement and submit the reconciliation to the administrative office.

(3)(D) **Accounting to trustor.** The courts shall establish a method of accounting that will trace the debits and credits attributable to each trustor.

(3)(E) **Monetary Bail forfeitures; other withdrawals.** Transfers from trust accounts to a revenue account may be made upon an order of forfeiture of monetary bail or other order of the court. Other withdrawals from trust accounts shall be made upon the order of the court after a finding of entitlement.

(3)(F) **Interest bearing.** All trust accounts shall be interest bearing. The disposition of interest shall be governed by Rule 4-301.

(4) Compliance. The administrative office and the courts shall comply with state law and the manual of procedures adopted by the administrative office.

Effective November 1, ~~2018~~2020

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

Intent:

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

Applicability:

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

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

Statement of the Rule:

(1) The prosecutor shall indicate, on the face of the Information that is filed with the court, whether the defendant is appearing pursuant to a summons or a warrant of arrest, by inserting "Summons" or "Warrant" beneath the case number in the caption.

(2) The prosecutor shall cause the criminal summons form to include the following information:

- (A) the specific name of the court;
- (B) the judge's name;
- (C) the charges against the defendant;
- (D) the date the summons is issued;
- (E) a directive to the defendant to appear at the jail or other designated place for booking and release prior to appearing at court;
- (F) the address of the jail or other designated place; and
- (G) a space for booking personnel to note the date and time of booking and the Offense Tracking Number (formerly known as the CDR Number).

(3) Booking personnel shall:

- (A) complete the booking process, including fingerprinting and issuing an Offense Tracking Number;
- (B) record the date and time of booking and the Offense Tracking Number on the summons form;
- (C) return the summons form to the defendant;
- (D) instruct the defendant to take the summons form with him/her to the court at the time designated on the summons;
- (E) release the defendant without bail on their own recognizance unless the defendant has outstanding warrants; and
- (F) send the Offense Tracking Number to the prosecutor.

(4) Upon receipt of the Offense Tracking Number from booking personnel, the prosecutor shall forward the number immediately to the court.

(5) If the defendant appears at court and does not have the summons form with the date and time of booking and the Offense Tracking Number, court personnel shall instruct the defendant to go immediately, at the conclusion of the appearance, to the jail or other designated place for booking and release.

Effective May __, 2020

Rule 10-1-404. Attendance and assistance of prosecutors in criminal proceedings.

Intent:

To establish the responsibility of the prosecutor's office to attend criminal proceedings and to assist the court in the management of criminal cases.

Applicability:

This rule shall apply to the Fourth District Court.

Statement of the Rule:

(1) The prosecutor's office shall assist the court with criminal cases by attending the following court proceedings:

- (A) felony first appearance hearings;
- (B) arraignments on informations;
- (C) sentencings.

(2) The prosecutor in attendance shall be prepared to provide the court with information relevant to setting monetary bail and sentencing, including criminal history, and the factual basis for the offense charged.

(3) Unless specifically requested by the court, the prosecutor is not required to attend arraignments or sentencings for misdemeanants prosecuted on citations.

Effective: May __, 2020

TAB 6

CJA 4-401.01. Electronic media coverage of court proceedings

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

NOTES: **Rule 4-401.01** addresses electronic media coverage of court proceedings. The proposals are intended to make clear that the rule applies to viewing proceedings by remote transmission. In other words, the media still needs permission if they want to record or take photos of the proceedings they are viewing. And the proposal would eliminate the requirement of pool coverage when there are multiple media requests. Anyone who asks could attend and take pictures.

Rule 4-401.02 addresses use of electronic devices by others viewing court proceedings. The proposal would prohibit individuals from recording or photographing proceedings, just as they are prohibited from doing so in a courtroom. When a person is granted access to a proceeding they would be required to accept the terms of the rule, including acknowledging they could be held in contempt for violating the rule. This would obviously be very difficult to enforce but it is hoped the warning would stop most people.

Relevant to this discussion...Mr. Fattah has been approached by media outlets requesting assurances that they will not be held to more restrictive standards than other members of the public.

For example: if a member of the public signs up and receives a Webex event link, what is to stop them from publishing that link on social media for others? If that is permissive, media would then want to be able to publish the hearing link to their websites.

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

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

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

Applicability:

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

This rule governs electronic media coverage of proceedings that are open to the public, including proceedings conducted by remote transmission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Conduct in the courtroom; pool coverage.

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

(4)(B) It is the responsibility of news reporters to determine who will participate at any given time, how they will pool their coverage, and how they will share audio, video or photographic files produced by pool coverage. The pooling arrangement shall be reached before the proceedings without imposing on the judge or court staff. Neither the

judge nor court staff shall be called upon to resolve disputes concerning pool arrangements.

(4)(C) The approved news reporter shall be capable of sharing audio, video or photographic files with other news reporters in a generally accepted format. News reporters providing pool coverage shall promptly share their files with other news reporters. News reporters must be willing and able to share their files to be approved to provide coverage. (4)(D) News reporters shall designate a representative with whom the court may consult regarding pool coverage, and shall provide the court with the name and contact information for such representative.

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

(4)(F) The judge may position news reporters, equipment, and operators in the courtroom. Proceedings shall not be disrupted. Equipment operators and news reporters in the courtroom shall:

(4)(~~GF~~)(i) not use equipment that produces loud or distracting sounds;

(4)(~~GF~~)(ii) not place equipment in nor remove equipment from the courtroom nor change location while court is in session;

(4)(~~GF~~)(iii) conceal any identifying business names, marks, call letters, logos or symbols;

(4)(~~GF~~)(iv) not make comments in the courtroom during the court proceedings;

(4)(~~GF~~)(v) not comment to or within the hearing of the jury or any member thereof at any time before the jury is dismissed;

(4)(~~GF~~)(vi) present a neat appearance and conduct themselves in a manner consistent with the dignity of the proceedings;

(4)(~~GF~~)(vii) not conduct interviews in the courtroom except as permitted by the judge; and

(4)(~~GF~~)(viii) comply with the orders and directives of the court.

(5) Violations. In addition to contempt and any other sanctions allowed by law, a judge may remove from or terminate electronic access to the proceeding anyone violating this rule or the court's orders and directives and terminate or suspend electronic media coverage.

(6) Limitations on electronic media coverage. Notwithstanding an authorization to conduct electronic media coverage of a proceeding, and unless expressly authorized by the judge, there shall be no:

(6)(A) electronic media coverage of a juror or prospective juror until the person is dismissed;

(6)(B) electronic media coverage of the face of a person known to be a minor;

(6)(C) electronic media coverage of an exhibit or a document that is not part of the official public record;

- (6)(D) electronic media coverage of proceedings in chambers;
(6)(E) audio recording or transmission of the content of bench conferences; or
(6)(F) audio recording or transmission of the content of confidential communications
between counsel and client, between clients, or between counsel.

(7) Except as provided by this rule, recording or transmitting images or sound of a proceeding without the express permission of the judge is prohibited. This rule shall not diminish the authority of the judge conferred by statute, rule, or common law to control the proceedings or areas immediately adjacent to the courtroom.

Effective May/November 1, __20

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

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

Applicability:

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

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

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

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

(1)(C) "Court proceeding" means any trial, hearing or other matter, including proceedings conducted by remote transmission.

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

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

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

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

(2)(D) For the limited purpose of conducting a pilot project to evaluate the performance of justice court judges using courtroom observation, the Judicial Performance Evaluation Commission may record and transmit video and sound of court proceedings. These recordings and transmissions are not public, pursuant to Utah Code sections 63G-2-201(3) and 78A-12-206.

(3) Restrictions.

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

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

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

- (3)(B)(ii) A person may not use a portable electronic device to record or transmit images or sound of court proceedings, except in accordance with Rule 4-401.01 or subsection (2)(D) above.
- (3)(B)(iii) A judge may further restrict use of portable electronic devices in his or her courtroom. Judges are encouraged not to impose further restrictions unless use of a portable electronic device might interfere with the administration of justice, disrupt the proceedings, pose any threat to safety or security, compromise the integrity of the proceedings, or threaten the interests of a minor.
- (3)(B)(iv) During trial and juror selection, prospective, seated, and alternate jurors are prohibited from researching and discussing the case they are or will be trying. Once selected, jurors shall not use a portable electronic device while in the courtroom and shall not possess an electronic device while deliberating.

(3)(C) Use of portable electronic devices while viewing court proceedings conducted by remote transmission.

- (3)(C)(i) A person may not use a portable electronic device to record, photograph, or transmit images or sound of court proceedings, except in accordance with rule 4-401.01 or subsection (2)(D) above. Access to court proceedings will be contingent on the person agreeing to comply with the provisions in this rule.**
- (3)(C)(ii) A violation of this directive may be treated as contempt of court.**

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

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

Effective May/November 1, 20__

TAB 7

Human Resources Policies and Procedures

NOTES: The Judicial Council requested HR policies undergo a head-to-toe revamp. The HR Policy & Planning Committee recognized early on in this process that many existing administrative HR rules in the Executive Branch already also apply to the Judicial Branch due to utilization of the same payroll system, HR system, and benefits providers.

Therefore, the subcommittee adopted an approach to:

1. Merge existing judiciary HR policies deemed to still be adding value with the structure/organization of the Executive Branch's DHRM rules,
2. Incorporate any content in DHRM rules that also apply already to the Judicial Branch but simply haven't been widely published, and
3. Add any appropriate proposed language to innovate and help the judiciary best prepare for the workforce of 2020 and 2030.

Drafts for Phase I: Employment (Sections 1-5) covering Definitions, Administration, Classification, Filling Positions, and Career Service Status/Probationary Period are ready for review and approval by Policy and Planning.

Policy and Planning - Rule Amendment Request Form

The respondent's email address (**barto@utcourts.gov**) was recorded on submission of this form.

Instructions

Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before it will be considered by the Policy and Planning Committee.

To be considered, you must e-mail your proposed rule draft to Keisa Williams at keisaw@utcourts.gov.

Date of Request *

MM DD YYYY

05 / 12 / 2020

Name of Requester *

Bart Olsen

Requester Phone Number *

801-578-3802

Name of Requester's Supervisor *

Cathy Dupont

Location of the Rule *

Human Resource Policies ▼

CJA Rule Number or HR/Accounting Section Name *

Sections 1-5 out of a total of 17 sections of new proposed HR policies.

Brief Description of Rule Proposal *

Draft sections of policy covering Definitions, Administration, Classification, Filling Positions, and Career Service Status/Probationary Period are the sections of policy ready for review and approval.

Reason Amendment is Needed *

The Judicial Council requested HR policies undergo a head-to-toe revamp. The HR Policy & Planning Committee recognized early in this process that many existing administrative HR rules in the Executive Branch already also apply to the Judicial Branch due to utilization of the same payroll system, HR system, and benefits providers. Therefore, this subcommittee adopted an approach to (1) merge existing judiciary HR policies deemed to still be adding value with the structure/organization of the Executive Branch's DHRM rules, (2) incorporate any content in DHRM rules that also apply already to the Judicial Branch but simply haven't been widely published, and (3) add any appropriate proposed language to innovate and help the judiciary best prepare for the workforce of 2020 and 2030.

Is the proposed amendment urgent? *

☐ Yes

☒ No

If urgent, please provide an estimated deadline date and explain why it is urgent.

Select each entity that has approved this proposal. *

- ☐ Accounting Manual Committee
- ☐ ADR Committee
- ☐ Board of Appellate Court Judges
- ☐ Board of District Court Judges
- ☐ Board of Justice Court Judges
- ☐ Board of Juvenile Court Judges
- ☐ Board of Senior Judges
- ☐ Children and Family Law Committee
- ☐ Court Commissioner Conduct Committee
- ☐ Court Facility Planning Committee
- ☐ Court Forms Committee
- ☐ Ethics Advisory Committee
- ☐ Ethics and Discipline Committee of the Utah Supreme Court
- ☒ General Counsel
- ☐ Guardian Ad Litem Oversight Committee
- ☐ Judicial Branch Education Committee
- ☐ Judicial Outreach Committee
- ☐ Language Access Committee
- ☐ Law Library Oversight Committee
- ☐ Legislative Liaison Committee
- ☐ Licensed Paralegal Practitioner Committee
- ☐ Model Utah Civil Jury Instructions Committee
- ☐ Model Utah Criminal Jury Instructions Committee
- ☐ Policy and Planning member
- ☐ Pretrial Release and Supervision Committee
- ☐ Resources for Self-Represented Parties Committee

- ☐ Resources for Self-Represented Parties Committee
- ☐ Rules of Appellate Procedure Advisory Committee
- ☐ Rules of Civil Procedure Advisory Committee
- ☐ Rules of Criminal Procedure Advisory Committee
- ☐ Rules of Evidence Advisory Committee
- ☐ Rules of Juvenile Procedure Advisory Committee
- ☐ Rules of Professional Conduct Advisory Committee
- ☐ State Court Administrator
- ☐ TCE's
- ☐ Technology Committee
- ☐ Uniform Fine and Bail Committee
- ☐ WINGS Committee
- ☐ None of the Above

If the approving entity (or individual) is not listed above, please list it (them) here.

HR Policy & Planning Committee

List all stakeholders who would be affected by this proposed amendment. *

All employees in the judiciary.

This form was created inside of Utah State Courts.

Google Forms

HR Policy & Planning Review Committee

Brent Johnson, Chair

Bart Olsen, Staffer

HR Policy Overhaul Timeline Proposal

The committee proposes the Courts HR Policies adopt the basic thematic organizational structure of the Department of Human Resource Management's (DHRM) [Administrative Rules](#) for ease of reference, comparison, and consideration in adopting content that supports the mission of the Courts. Existing DHRM Administrative Rule content that is *not* helpful in supporting the mission of the Courts will not be adopted and can easily be contrasted with HR Policies better suited for the Courts. The proposed organizational structure and accompanying subjects of content for the Courts HR Policies are found beginning on p.2 of this proposal document.

Using that Administrative Rule structure, the committee proposes the Courts HR Policy Overhaul project be accomplished in four phases. Each phase would go through the following steps:

1. HR Director (HRD) submits draft section of chapters to General Counsel (GC) for review and vetting
2. HRD and GC submit revised draft to HR Policy & Planning Review Committee (HRPPRC) for review and vetting
3. HRPPRC submits revised draft to Policy & Planning for review and approval

Phase I: Employment (Policy Chapters 1-5)

Target date of submission to Policy & Planning: June 2020

Phase II: Compensation & Benefits (Policy Chapters 6&7)

Target date of submission to Policy & Planning: August 2020

Phase III: Standards (Policy Chapters 8&9)

Target date of submission to Policy & Planning: October 2020

Phase IV: Management (Policy Chapters 10-16)

Target date of submission to Policy & Planning: December 2020

1. DEFINITIONS

2. ADMINISTRATION

APPLICABILITY

COMPLIANCE RESPONSIBILITY

FAIR EMPLOYMENT PRACTICE AND DISCRIMINATION

CONTROL OF PERSONAL SERVICE EXPENDITURES

RECORDS

RELEASE OF INFORMATION IN A REFERENCE INQUIRY

EMPLOYMENT ELIGIBILITY VERIFICATION

SUPERVISION OF A RELATIVE OR HOUSEHOLD MEMBER

ALTERNATIVE DISPUTE RESOLUTION

3. CLASSIFICATION

JOB CLASSIFICATION APPLICABILITY

JOB DESCRIPTION

ASSIGNMENT OF DUTIES

POSITION CLASSIFICATION REVIEW

POSITION CLASSIFICATION GRIEVANCES

POLICY EXCEPTIONS

4. FILLING POSITIONS

AUTHORIZED RECRUITMENT SYSTEM

CAREER SERVICE EXEMPT POSITIONS

CAREER SERVICE POSITIONS

RECRUITMENT AND SELECTION FOR CAREER SERVICE POSITIONS

TRANSFER AND REASSIGNMENT

REHIRE

EXAMINATIONS

HIRING LISTS

JOB SHARING

INTERNSHIPS

VOLUNTEER EXPERIENCE CREDIT

REORGANIZATION

CAREER MOBILITY PROGRAMS

ASSIMILATION

POLICY EXCEPTIONS

5. EMPLOYEE STATUS AND PROBATION

CAREER SERVICE STATUS

PROBATIONARY PERIOD

POLICY EXCEPTIONS

6. COMPENSATION

PAY PLANS

ALLOCATION TO PAY PLANS

APPOINTMENTS

SALARY

INCENTIVE AWARDS

EMPLOYEE BENEFITS

CONVERSION FROM CAREER SERVICE TO CAREER SERVICE EXEMPT

STATE PAID LIFE INSURANCE

SEVERANCE

7. LEAVE

CONDITIONS OF LEAVE

HOLIDAY LEAVE

ANNUAL LEAVE

SICK LEAVE

CONVERTED SICK LEAVE

SICK LEAVE RETIREMENT BENEFIT

ADMINISTRATIVE LEAVE

WITNESS AND JURY LEAVE

BEREAVEMENT LEAVE

MILITARY LEAVE

DISASTER RELIEF VOLUNTEER LEAVE

ORGAN DONOR LEAVE

LEAVE OF ABSENCE WITHOUT PAY

FURLOUGH

FAMILY AND MEDICAL LEAVE

WORKERS COMPENSATION LEAVE

LONG TERM DISABILITY LEAVE

LEAVE BANK

POLICY EXCEPTIONS

8. WORKING CONDITIONS

WORKWEEK

TELECOMMUTING

LUNCH, BREAK, AND EXERCISE RELEASE PERIODS

OVERTIME STANDARDS

COMPENSATORY TIME FOR FLSA NON-EXEMPT EMPLOYEES

COMPENSATORY TIME FOR FLSA EXEMPT EMPLOYEES

TIME REPORTING

HOURS WORKED

ON-CALL TIME

STANDBY TIME

COMMUTING AND TRAVEL TIME

EXCESS HOURS

DUAL STATE EMPLOYMENT
REASONABLE ACCOMMODATION
FITNESS FOR DUTY EVALUATIONS
TEMPORARY TRANSITIONAL ASSIGNMENTS
CHANGE IN WORK LOCATION
DISTRICT POLICIES AND EXEMPTIONS
BACKGROUND CHECKS
WORKERS COMPENSATION INTERFERENCE PROHIBITED
POLICY EXCEPTIONS

9. CODE OF CONDUCT

STANDARDS OF CONDUCT
OUTSIDE EMPLOYMENT
CONFLICT OF INTEREST
POLITICAL ACTIVITY
EMPLOYEE REPORTING PROTECTIONS
EMPLOYEE INDEBTEDNESS TO THE STATE
ACCEPTABLE USE OF INFORMATION TECHNOLOGY RESOURCES
PERSONAL BLOGS AND SOCIAL MEDIA SITES
POLICY EXCEPTIONS

10. PROFESSIONAL DEVELOPMENT

PERFORMANCE EXPECTATIONS AND EVALUATIONS
PERFORMANCE IMPROVEMENT
WRITTEN WARNINGS
EMPLOYEE DEVELOPMENT AND TRAINING
EDUCATION ASSISTANCE

11. DISCIPLINE

DISCIPLINARY ACTION
DISMISSAL OR DEMOTION
DISCRETIONARY FACTORS

12. SEPARATIONS

RESIGNATION
ABANDONMENT OF POSITION
REDUCTION IN FORCE
EXCEPTIONS

13. VOLUNTEER PROGRAMS

14. SUBSTANCE ABUSE AND DRUG-FREE WORKPLACE

RULES GOVERNING A DRUG-FREE WORKPLACE
MANAGEMENT ACTION

DRUG AND ALCOHOL TEST RECORDS
POLICY EXCEPTIONS

15.WORKPLACE HARASSMENT PREVENTION

WORKPLACE HARASSMENT PROHIBITED
RETALIATION
COMPLAINTS
INVESTIGATIONS
RECORDS
TRAINING

16.ABUSIVE CONDUCT PREVENTION

ABUSIVE CONDUCT PROHIBITED
COMPLAINTS
INVESTIGATIONS
RECORDS
TRAINING



UTAH STATE COURTS

Utah Judicial Branch Human Resource Policies

Section 1 - Definitions

The following definitions apply throughout these policies unless otherwise indicated within the text of each policy.

- (1) **Abandonment of Position:** An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.
- (2) **Actual FTE:** The total number of full-time equivalents based on actual hours paid in the state payroll system.
- (3) **Actual Hours Worked:** Time spent performing duties and responsibilities associated with the employee's job assignments.
- (4) **Actual Wage:** The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resources.
- (5) **Administrative Leave:** Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.
- (6) **Administrative Adjustment:** An adjustment to a job or salary range approved by the HR Director that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.
- (7) **Administrative Salary Decrease:** A decrease in the current actual wage based on non-disciplinary administrative reasons determined by a court

administrator.

- (8) **Administrative Salary Increase:** An increase in the current actual wage based on special circumstances determined by a court administrator.
- (9) **Appeal:** A formal request to a higher level for reconsideration of a grievance decision.
- (10) **Appointing Authority:** The person or group of persons authorized to make appointments in a district, court, or office.
- (11) **Break in Service:** A point at which an individual has an official separation date and is no longer employed by the State of Utah.
- (12) **Budgeted FTE:** The total number of full-time equivalents budgeted by the Legislature and approved by the Judicial Council.
- (13) **Bumping:** A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.
- (14) **Career Mobility:** A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.
- (15) **Career Service Employee:** An employee selected via a publicly competitive process and who has successfully completed a probationary period in a career service position.
- (16) **Career Service Exempt Employee:** An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.
- (17) **Career Service Exempt Position:** A position exempted

from provisions of career service as identified in HR05-4.

- (18) **Career Service Status:** Status granted to employees who successfully complete a probationary period for career service positions.
- (19) **Category of Work:** A job series within a district or work unit designated by the court administrator as having positions to be eliminated statewide through a reduction in force. Category of work may be further reduced as follows:
 - (a) unit number;
 - (b) cost centers;
 - (c) geographic locations;
 - (d) court programs.
 - (e) positions identified by a set of essential functions, including:
 - (i) position analysis data;
 - (ii) certificates;
 - (iii) licenses;
 - (iv) special qualifications;
 - (v) degrees that are required or directly related to the position.
- (20) **Change of Workload:** A change in position responsibilities and duties or a need to eliminate or create particular positions in an organization caused by judicial council action, financial circumstances, or administrative reorganization.
- (21) **Classification Grievance:** The approved procedure by which court administrator or a career service employee may grieve a formal classification decision regarding the classification of a position.
- (22) **Classification Study:** A classification review conducted by the HR department under HR03. A study may include single or multiple job or position reviews.
- (23) **Classified Employee:** An employee of the judiciary that is not a judge, justice, commissioner, or time-limited law clerk.
- (24) **Classified Service:** Category of work performed by a

classified employee.

- (25) **Compensatory Time:** Time off that is provided to an employee in lieu of monetary overtime compensation.
- (26) **Contractor:** An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.
- (27) **Court Executive:** Any Trial Court Executive or Appellate Court Administrator.
- (28) **Court Level Administrator:** A district court administrator, juvenile court administrator, appellate court administrator, assistant state court administrator, deputy court administrator, or the state court administrator.
- (29) **Critical Incident Drug or Alcohol Test:** A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.
- (30) **Day:** A business day unless otherwise specified. In computing any period of time prescribed by these policies, the day of the act or event from which the designated period of time begins to run is not included. The last business day of the period is included.
- (31) **Demotion:** A disciplinary action resulting in a reduction of an employee's current actual wage.
- (32) **Dishonest or Fraudulent Acts:** Acts which include but are not limited to theft; misappropriation of funds, securities, supplies, or any other assets; unauthorized alteration of court documents, unauthorized use of court equipment, unauthorized modification or release of computer equipment or software, etc.
- (33) **Detailed Position Record (DPR):** A unique number assigned to a position for FTE management and the accompanying description of specific tasks,

responsibilities, requirements, etc. of the position.

- (34) **Detailed Position Management Report:** A document that lists an organization's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.
- (35) **Direct Supervisor:** An employee's primary supervisor who normally directs day to day job activity such as assigning work, approving time records, and considering leave requests.
- (36) **Disability:** Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, [42 USC 12101 \(2008\)](#); Equal Employment Opportunity Commission regulation, [29 CFR 1630 \(2008\)](#); including exclusions and modifications.
- (37) **Disciplinary Action:** Action taken by management under authority of HR11.
- (38) **Dismissal:** A separation from state employment for cause under HR11.
- (39) **Dual State Employment:** Employees who work for another state agency in addition to the Courts and meet the employee criteria which is located in the Division of Finance accounting policy [11-18.00](#).
- (40) **Drug-Free Workplace Act:** A congressional act, [41 U.S.C. Section 8101](#), et seq., requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.
- (41) **Employee:** An individual occupying a position other than justice, judge, or court commissioner.
- (42) **Employee Personnel Files:** The files or records maintained by HR as required by Rule [3-402\(7\)](#). This does not include employee information maintained locally by supervisors.
- (43) **Employee's Family Member:** An employee's relative or household member as defined in Section [52-3-1](#) but also including, step-siblings, step-parents, and step-children.

- (44) **Employment Eligibility Verification:** A requirement of the Immigration Reform and Control Act of 1986, [8 USC 1324](#) that employers verify the identity and eligibility of individuals for employment in the United States.
- (45) **"Escalator" Principle:** Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.
- (46) **Excess Hours:** A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period. For example, excess hours are accrued in pay periods with state holidays as described in HR07-2.
- (47) **Ex-parte:** Communication with a party to an action without notice to the other party or parties.
- (48) **Examination:** a written and/or oral exercise designed to test an applicant's qualifications for hiring or promotion.
- (49) **Excusable neglect:** The failure to meet time requirements which results from an unexpected or unavoidable hindrance or accident, and not from the employee's carelessness, inattention, or willful disregard of the grievance process.
- (50) **Fitness for Duty Evaluation:** Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.
- (51) **Full-time Employee:** An employee scheduled to work 40+ hours per week if FLSA Nonexempt, or 80+ hours per pay period if FLSA Exempt.
- (52) **FLSA:** The federal Fair Labor Standards Act.

- (53) **FLSA Exempt:** Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.
- (54) **FLSA Non Exempt:** Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.
- (55) **Follow Up Drug or Alcohol Test:** Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.
- (56) **Furlough:** A temporary leave of absence from duty without pay for budgetary reasons or lack of work.
- (57) **Grievance:** A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification.
- (58) **Grievance Procedures:** The procedures established in HR11.
- (59) **Gross Compensation:** Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.
- (60) **Highly Sensitive Position:** A position approved by HR in consultation with management that includes the performance of:
- (a) safety sensitive functions:
 - i. directly related to law enforcement;
 - ii. involving direct access or having control over direct access to controlled substances;
 - iii. directly impacting the safety or welfare of the general public;
 - (b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:
 - i. financial assets, liabilities, and account information;

- ii. social security numbers;
- iii. wage information;
- iv. medical history;
- v. public assistance benefits; or
- vi. driver license

- (61) **Hiring List:** A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the HR approved recruitment and selection system.
- (62) **HR:** The Department of Human Resources in the Judiciary Branch.
- (63) **HR Approved Recruitment and Selection System:** The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.
- (64) **HRIS:** the state Human Resource Information System.
- (65) **Incompetence:** Inadequacy or unsuitability in performance of assigned duties and responsibilities.
- (66) **Inefficiency:** Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.
- (67) **Interchangeability of Skills:** Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah State Courts employment or for those positions which they have successfully supervised and for which they satisfy job requirements.
- (68) **Intern:** An individual working for the courts to fulfill an educational program's on-the-job requirement.
- (69) **Job:** A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

- (70) **Job Description:** A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.
- (71) **Job Family:** A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.
- (72) **Job Requirements:** Skill requirements defined at the job level.
- (73) **Job Share:** a working arrangement in which employees share the duties and responsibilities of one full-time position.
- (74) **Job Series:** Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.
- (75) **Judicial Council:** The policy-making body of the judiciary consisting of the Chief Justice as chair, a Supreme Court Justice, a Court of Appeals judge, five District Court judges, two Juvenile Court judges, three Justice Court judges, and a state bar representative.
- (76) **Judicial Officer:** A judge or justice appointed by the governor, or a commissioner appointed by the judicial council.
- (77) **Leave Benefit:** A benefit provided to an employee that includes annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited employees.
- (78) **Legislative Salary Adjustment:** A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

- (79) **Misfeasance:** Performance of a lawful action in an illegal or improper manner.
- (80) **Malfeasance:** Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.
- (81) **Management:** The state court administrator, deputy court administrator and all other non-judicial officers or employees who have responsibility and authority to establish, implement, and manage courts policies, practices, and programs.
- (82) **Market Based Bonus:** One-time lump sum monies given to a new hire or a current employee to encourage employment with the Judicial Branch.
- (83) **Market Comparability Adjustment:** An adjustment to a salary range approved by the Judicial Council that is based upon salary data and other relevant information from comparable jobs in the market that is collected by HR or from HR approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an organization.
- (84) **Merit Increase:** A legislature approved and funded salary increase for employees to recognize and reward successful performance.
- (85) **Misconduct:** Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing judicial branch practices or the best interest of the judicial branch.
- (86) **Misfeasance:** The improper or unlawful performance of an act that is lawful or proper.
- (87) **Nonfeasance:** Failure to perform either an official duty or legal requirement.
- (88) **Occasional Telecommuting:** Permission granted from management to an employee when warranted, to perform work from a location other than the normal work location - usually in the employee's home. Permission

is usually granted on an ad hoc basis due to an irregular need arising, and is not granted in connection with any required reimbursement or equipment setup to be provided by the judiciary.

- (89) **Pay for Performance Award:** A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.
- (90) **Pay for Performance:** A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.
- (91) **Performance Evaluation:** A evaluation of an employee's work performance.
- (92) **Performance Improvement Plan:** A documented administrative action to address substandard performance of an employee under HR10.
- (93) **Performance Management:** The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance which may inform a performance evaluation.
- (94) **Performance Plan:** A written summary of the standards and expectations required for the successful performance of job responsibilities. These standards may include completion dates and qualitative and quantitative levels of performance expectations.
- (95) **Performance Standard:** Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.
- (96) **Phased Retirement:** Employment on a half-time basis of a retiree immediately following the retiree's retirement date. During phased retirement a retiree

will receive a reduced retirement allowance.

- (97) **Political Activity:** Running for or holding political or elective public office; making or influencing governmental policy unrelated to the performance of official court responsibilities; or active support of a partisan or special interest public policy agenda.
- (98) **Position:** A unique set of duties and responsibilities identified by HR authorized job and position management numbers.
- (99) **Position Description:** A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.
- (100) **Post-Accident Drug or Alcohol Test:** A drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:
 - (a) the employee was performing safety-sensitive functions with respect to the vehicle the employee was operating and the accident involves the loss of human life;
 - (b) the driver receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involved:
 - i. the loss of human life or bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - ii. one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other vehicle; or
 - (c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.
- (101) **Preemployment Drug Test:** A drug test conducted on:
 - (a) final applicants who are not current employees;
 - (b) final candidates for a highly sensitive position;
 - (c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

- (d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.
- (102) **Probationary Employee:** An employee hired into a career service position who has not completed the required probationary period for that position.
- (103) **Probationary Period:** A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.
- (104) **Proficiency:** An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.
- (105) **Promotion:** An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.
- (106) **Protected Activity:** Opposition to discrimination or participation in proceedings covered by antidiscrimination statutes or the grievance process established in [Rule 3-402](#).
- (107) **Reappointment:** Return to work of an individual from the reappointment register after separation from employment.
- (108) **Reappointment Register:** A list of former career service employees of the judicial branch dismissed within the last 12 months as a result of a reduction in force, or after having accepted a career service exempt position were dismissed for reasons other than for cause.
- (109) **Reasonable Suspicion Drug or Alcohol Test:** A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

- (110) **Reassignment:** An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.
- (111) **Reclassification:** A reallocation of a single position or multiple positions from one job to another job to reflect management-initiated changes in duties and responsibilities.
- (112) **Reduction in Force (RIF):** Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.
- (113) **Reemployment:** Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.
- (114) **Retaliation:** Harassing behavior based on participation in a protected activity.
- (115) **Requisition:** Documentation of recruitment, selection and applicant tracking that includes specific information for a particular position, job seekers' applications, and a hiring list.
- (116) **Routine Telecommuting:** An arrangement made between management and an employee where the primary work location is somewhere other than a traditional office setting, or a combination of a traditional office setting and another location.
- (117) **Salary Range:** Established minimum and maximum rates assigned to a job.
- (118) **Separation:** An employee's voluntary or involuntary departure from state employment.
- (119) **Serious Health Condition:** A condition which requires either inpatient care or continuing treatment by a health care provider as defined in [Title 29, Part 825](#) of the Code of Federal Regulations.

- (120) **Settling Period:** A sufficient amount of time, determined by management, for an employee to fully assume new or higher-level duties required of a position when considering job and/or position classification decisions.
- (121) **Structure Adjustment:** An adjustment to a salary range approved by HR that is based upon salary data and other relevant information from comparable jobs in the market that is collected by HR or from HR approved justifiable sources.
- (122) **Substantial Evidence:** Evidence that a reasonable person would determine to be adequate to support a conclusion.
- (123) **Suspension:** A disciplinary action taken by management to place an employee on leave without pay for a specific period of time.
- (124) **Tangible Employment Action:** A significant change in employment status, such as dismissal, demotion, failure to promote, work reassignment, or a decision which changes benefits.
- (125) **Telecommute:** The performance of work duties from a location apart from the traditional or standard work location. (See also "Routine Telecommuting" and "Occasional Telecommuting.")
- (126) **Transfer:** An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.
- (127) **Time Limited Law Clerk:** A Law Clerk position intended for recent law school graduates, not intended for employment duration of more than about two years and not eligible for traditional leave accrual.
- (128) **Unclassified job:** A job in the judiciary exempt from classified service, including judge, justice, commissioner, and time-limited law clerk.

- (129) **Uniformed Services:** The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.
- (130) **Unlawful Discrimination:** An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.
- (131) **USERRA:** Uniformed Services Employment and Reemployment Rights Act of 1994 ([P.L. 103-353](#)), which requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.
- (132) **Veteran:** An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.
- (133) **Volunteer:** Any person who donates services to the judicial branch or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising

organization.

(134) **Wage:** The fixed hourly rate paid to an employee.

(135) **Work Week:** The period of time beginning at 12:00 am on Saturday and ending at 11:59 p.m. on the following Friday.

(136) **Work Period:** The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in [29 CFR 553.230](#).



UTAH STATE COURTS

Utah Judicial Branch Human Resource Policies

Section 2 – Administration

HR02-1 Policy Applicability.

These policies apply to all employees of Utah's judicial branch as established in [Rule 3-402\(3\)](#). These policies do not apply to judicial officers except where specifically noted, as authorized by the Judicial Council.

HR02-2. Compliance Responsibility.

Non-judicial officer employees shall comply with all of these policies. Judicial officers shall comply with policies specifically designated as applicable to judicial officers.

- 1) The HR Director may authorize exceptions to these policies where allowed, in consultation with the State Court Administrator and in communication with the Judicial Council, when:
 - a) applying the policy prevents the achievement of legitimate judicial branch objectives; or
 - b) applying the policy infringes on the legal rights of an employee.
- 2) Personnel records, practices, policies and procedures, employment and actions, shall comply with these policies and are subject to compliance audits by the Human Resource Department and/or the Internal Audit Department.

HR02-3. Fair Employment Practice and Discrimination.

Personnel actions shall provide equal employment opportunity for all individuals.

- 1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.
- 2) Employment actions may not be based on race, religion,

national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, or military status / affiliation.

- 3) An employee who alleges unlawful discrimination may:
 - a) submit a complaint to HR; and
 - b) file a charge with the Utah Labor Commission Antidiscrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.
- 4) Management may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

HR02-4. Control of Personal Service Expenditures.

- 1) Statewide control of personal service expenditures (including the funding of positions filled and related expenditures) is under the direction of the Judicial Council and is the shared responsibility of the employing district/office, the Human Resource Department, and the Finance Department.
- 2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the HR Director or HR Manager.
- 3) No person shall be placed or retained on the Judiciary Branch payroll unless that person occupies a position listed in the approved Detailed Position Record Management Report.

HR02-5. Records.

Access to and privacy of personnel records maintained by HR are governed by the Judicial Council Code [Rule 4-202.02](#) and applicable federal laws. HR shall respond to requests for employee records, in consultation with General Counsel as needed.

- 1) HR shall maintain an electronic record for each employee that contains the following, as appropriate:
 - a) Social Security number, date of birth, home address,

- and private phone number.
 - i) This information is classified as private under [Rule 4-202.02](#).
 - ii) HR may grant administrative and/or leadership access to this information for state business purposes. Those with access shall maintain the privacy of this information.
 - b) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.
- 2) HR shall maintain the official personnel files as described in the Judicial Council Code [Rule 3-402](#).
- 3) HR shall maintain a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private in accordance with [Rule 4-202.02](#).
- 4) An employee has the right to review the employee's personnel file, upon request, in the presence of an HR representative.
- a) An employee may request corrections, amendments to, or challenge any information in the HR electronic or hard copy personnel file, through the following process:
 - i) The employee shall request in writing to any person in the employee's direct line of management that changes occur.
 - ii) The recipient of the request shall be given an opportunity to respond.
 - iii) Disputes that are not resolved between management and the employee may be advanced in writing to the court executive or court level administrator, who will make a final decision in consultation with the HR Director and the State Court Administrator.
 - b) Management shall send records of the employee's written request, management's response, and the final decision to HR for preservation in the employee's personnel file.
- 5) When a disciplinary action is rescinded or disapproved upon appeal, records pertaining to the case shall be removed from the personnel file.
- 6) Upon employee separation, HR shall retain electronic

records for thirty years. Hard copy records shall be retained in HR for a minimum of two years, and then may be transferred to the State Record Center to be retained according to the record retention schedule.

- 7) When an employee transfers from district or office to another, the former district or office shall transfer the employee's local personnel file to the new district or office.
- 8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.
- 9) Records related to conduct for which an employee may be disciplined under 11-1(1) are classified as:
 - a) Private records under Subsection [Rule 4-202.02](#).
 - b) If disciplinary action under 11-1(4) has been sustained and completed and all time for appeal has been exhausted, the documents issued in the disciplinary process are classified as public records under [Rule 4-202.02](#).

HR02-6. Release of Information in a Reference Inquiry.

- 1) Reference checks or inquiries made requesting public records regarding current or former employees may be released by management upon request if the information is classified as public, or if the subject of the record has signed and provided a current reference release for information authorized under [Rule 4-202.03](#) governing Records Access.
- 2) Additional policy governing media and public relations is found in HR02-10.

HR02-7. Employment Eligibility Verification (Immigration Reform and Control Act -- 1986).

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

HR02-8. Supervising a Relative or Household Member.

Management may not appoint, directly supervise, or make salary, performance, disciplinary, or other employment matter decisions regarding a family member, including a household member.

- 1) A member of management supervising a family member, including a household member, shall make a complete written disclosure of any such relationship to the court executive or court level administrator.
- 2) The member of management identified in HR02-8(1) shall be recused from any and all employment matter discussions or decisions relating to the family member, including a household member.

HR02-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a lawsuit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his/her supervisor, HR, and to the Office of General Counsel. HR and/or the Office of General Counsel shall then coordinate with the Department of Administrative Services, Division of Risk Management.

- 1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.
- 2) Before defending an employee against a claim, the employee shall make a written request for a defense to the court executive or court level administrator within ten calendar days, under Subsection [63G-7-902\(2\)](#).

HR02-10. Media and Public Relations.

- 1) The public information officer or director of communications is the judiciary's liaison with the media to provide information on court-related matters with statewide application and significance.
- 2) Upon request other than a media request described in HR01-10(1), an employee shall provide general public information

and public data from court records as defined in the Utah Code of Judicial Administration Rules 3-301 (Court Administrators), 3-404 (Public Information Program), 4-202.01 through 4-202.10 (Court Records), and 4-401.01 through 4-401.03 (Internal Court Operations).

- 3) If an employee is concerned about a media request, the employee should refer the matter to management.
- 4) Media requests to photograph court proceedings, conduct interviews, or obtain information other than described in HR02-10(1) should be referred to the public information officer or communications director.
 - a) The court executive may refer media requests to the public information officer in the Administrative Office of the Courts or to the court level administrator.
 - b) All matters dealing with the media in the courtroom are governed by appropriate sections in the Code of Judicial Administration.
 - c) The court executive may determine a designee for media inquiry response during the court executive's absence, such as a clerk of court or a chief probation officer.

Authorizing, and Implemented or Interpreted Law or Code: UCA §52-3-1; UCA §67-18; UCJA §3-301, UCJA §3-402, UCJA §3-404, and UCJA §4-201 and 202.



UTAH STATE COURTS

Utah Judicial Branch Human Resource Policies

Section 3 – Classification

HR03-1. Job Classification Applicability.

- 1) The HR Department shall develop and implement the procedures and methods for classifying all positions in the judicial branch.
- 2) HR may designate specific job titles, job and position identification numbers, and other administrative information for all judicial officers exempted in HR02-1 for identification and reporting purposes only. Judicial officers and time limited law clerks are not considered classified employees.

HR03-2. Job Description.

HR shall maintain job descriptions, as appropriate.

- 1) Job descriptions shall contain:
 - a) job title;
 - b) purpose and distinguishing characteristics;
 - c) description of tasks commonly associated with most positions in the job;
 - d) statements of required knowledge, skills, and other requirements;
 - e) FLSA status and other administrative information as approved by HR.

HR03-3. Assignment of Duties.

- 1) Management may assign, modify, or remove any position, task or responsibility in order to accomplish reorganization, improve business practices or processes, or for any other reason deemed appropriate by management.
- 2) Significant changes in the assigned duties may require a position classification review as described in HR03-4.

HR03-4. Position Classification Review.

- 1) A formal classification review may be conducted under the following circumstances:
 - a) as part of a classification study;
 - b) at the request of management and with the approval of the HR Director or designee; or
 - c) as part of a classification grievance review.
- 2) HR shall determine if there have been sufficient or significant changes in the duties of a position to warrant a formal review within ten (10) business days of receipt of the written request.
 - a) If a classification review is conducted for an incumbent-filled position, it shall be completed within thirty (30) calendar days of the written request.
 - b) If a classification review is conducted for a vacant position, it shall be completed within fifteen (15) business days of receipt of the written request.
 - c) If HR determines there have not been sufficient or significant changes to warrant a formal review, the reasons for the decision to deny a review shall be articulated in writing to the requestor within ten (10) business days of receipt of the original written request.
 - d) If a request for a position classification review is denied, it may be resubmitted at a later date for reconsideration, especially if any circumstances for the request have changed.
 - e) The decision to deny a request for position classification review is not eligible for grievance review by the grievance review panel under HR11. However, the requestor may submit a written request to the State Court Administrator or Deputy State Court Administrator to have a second review within fifteen (15) business days of receipt of the written denial of review.
 - f) Within sixty (60) days of receipt of the request for a second review, the State Court Administrator or Deputy State Court Administrator shall make a written decision and send a copy of the decision to the requestor and to the HR Director.
- 3) When a district, office, or team is reorganized or positions are redesigned, classification reviews may be conducted after an appropriate settling period has occurred.

- 4) The HR Director or designee shall make final classification decisions unless overturned by a hearing officer or court.

HR03-5. Position Classification Grievances.

- 1) Under [UCJA §3-402\(6\)](#), an employee may grieve formal classification decisions regarding the classification of a position to the grievance review panel.
 - a) This policy refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.
 - b) An employee may only grieve a formal classification decision regarding the employee's own position.
- 2) Formal service for classification grievance communication to employees shall be made by:
 - a) certified mail to the employee's address of record, and
 - b) email to the employee's state email account.

HR03-6. Policy Exceptions.

The HR Director may authorize exceptions to this rule consistent with HR02-2(1).

Authorizing, and Implemented or Interpreted Law: [UCJA §3-402](#)



UTAH STATE COURTS

Utah

Judicial Branch Human Resource Policies

Section 4 – Filling Positions

HR04-1. Authorized Recruitment System.

- 1) Management shall use the HR approved recruitment and selection system unless an alternate system has been pre-approved by HR.
- 2) Management shall notify HR of the filling of any position at least 3 working days prior to the employee's start date.

HR04-2. Career Service Exempt Positions.

- 1) The HR Director may approve the creation and filling of career service exempt positions.
- 2) Management may use any process pre-approved through HR to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met. However, public announcement of career service exempt positions is encouraged.
- 3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.
- 4) Appointments made on a temporary basis shall be career service exempt and:
 - a) be in a position whose working title includes "PT-IN", in which the employee is hired to work part time indefinitely and shall work less than 1560 hours per fiscal year; or
 - b) be in a position whose working title includes "Time-Limited", in which the employee is hired to work on a time limited basis;
 - c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.
 - d) if the required work hours of the position meet or exceed 1560 hours per fiscal year for "PT-IN" or if the position exceeds anticipated time limits for "Time

Limited" positions, management shall consult with HR to review possible alternative options.

- 5) Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under Subsection HR04-8.
- 6) Management shall ensure that all new hires submit to a Bureau of Criminal Investigation (BCI) background check through HR.

HR04-3. Career Service Positions.

Selection of a career service employee shall be governed by the following:

- 1) HR business practices;
- 2) career service principles as outlined in HR02-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;
- 3) equal employment opportunity principles;
- 4) [UCA §52-3-1](#), employment of relatives;
- 5) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

HR04-4. Recruitment and Selection for Career Service Positions.

- 1) Prior to initiating recruitment, management may administer any of the following personnel actions:
 - a) reemployment of a veteran eligible under USERRA;
 - b) reassignment within the judicial branch initiated by an employee's reasonable accommodation request under the ADA;
 - c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
 - d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;
 - e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist

- management in meeting the organization's mission;
 - f) reclassification; or
 - g) conversion from career service exempt to career service as authorized by HR05-1(3).
- 2) If the personnel actions authorized by HR04-4(1) are undesirable or do not apply, management shall use the HR-approved recruitment and selection system for all career service position vacancies. This includes recruitments open within a team, office, or district, across multiple districts and/or to the entire Judicial Branch, or to the general public. Recruitments shall comply with federal and state laws, these HR policies, and applicable HR procedures.
- a) All recruitment announcements shall include the following:
 - i) Information about the HR-approved recruitment and selection system; and
 - ii) opening and closing dates.
 - b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.
- 3) Management may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointments may be made according to the following order:
- a) From the judiciary reappointment register, provided the applicant applies for the position and meets minimum qualifications;
 - b) From a hiring list of qualified applicants for the position
- 4) A job application may be rejected from further consideration if the applicant:
- a) does not meet minimum qualifications;
 - b) is unable to perform essential job functions with or without a reasonable accommodation under the Americans with Disabilities Act and other state and federal laws;
 - c) has falsified a material fact;
 - d) has failed to complete or submit the application in a timely manner;
 - e) has an unsatisfactory employment history or poor work references; or
 - f) does not meet requirements of the background check as

established in HR04-15.

- 5) Management may request assistance from the HR department for any portion of the recruitment or selection process.
- 6) Management is encouraged to build an interview panel of at least two or more subject matter expert panelists with as much diversity as reasonably possible in terms of gender, age, race/ethnicity, etc.

HR04-5. Transfer, Reassignment, Promotion, and Reciprocity Agreement.

- 1) Positions may be filled through an internal transfer, external transfer, promotion, or reassignment.
 - a) The receiving manager shall verify the employee's career service status and that the employee meets the job requirements for the position.
 - b) Managers receiving a transfer, promotion, or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.
 - c) A transfer may not include an increase but may include a decrease in actual wage.
 - d) A reassignment may not include a decrease in actual wage except as provided in federal or state law.
 - e) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and may not be eligible for a longevity increase. Employees may be eligible for a longevity increase only after they have been above the salary range maximum for 12 months and all other longevity criteria are met as established in HR06-6.
 - f) An employee with a wage that is above the salary range maximum because of a longevity increase, who is transferred or reassigned and remains at or above the salary range maximum, may receive their next longevity increase not earlier than three years from the date they received the most recent increase, unless job performance is unsatisfactory as determined by the employee's direct supervisor.
- 2) A reassignment or transfer may include assignment to:
 - a) a different job or position with an equal or lesser

- salary range maximum;
- b) a different work location; or
- c) a different organizational unit.

3) The Judicial Branch maintains a reciprocity agreement with the Utah Department of Human Resource Management (DHRM) which facilitates an employee's external transfer from one branch of state government to another by providing continuity of paychecks, health insurance and retirement benefits, eligible leave balances, and leave accrual rates.

a) External Applicants and External Transfers.

- i) Current employees of Utah's Executive or Legislative Branches may apply and compete for any position advertised with the Judicial Branch, and are considered external applicants. If hired, such employees are considered external transfers.
- ii) Employees applying from other branches of state government shall be subject to all provisions of HR04 governing the filling of positions.
- iii) External transfers to the Judicial Branch shall begin a new probationary period.

b) Benefits for External Transfers.

- i) An external transfer to a benefits eligible position with the Judicial Branch automatically transfers health insurance benefits through PEHP, leave accrual rate, annual leave balance, and all sick leave balances.
- ii) Compensatory time balances for FLSA non-exempt employee transfers and excess time balances must be paid out prior to the employee's transfer to the Judicial Branch.
- iii) An external transfer to a benefits eligible position with the Judicial Branch automatically transfers URS retirement benefits unless the employee is a current member of the Public Safety, Firefighters, Utah Governors & Legislators, or Judges' retirement plan. If this is the case, the external transfer's retirement plan is subject to change.
- iv) If an external transfer has been employed in more than one URS retirement plan and the employee's service is not concurrent, the employee may combine his/her service credits to determine his/her eligibility to retire from the system the employee is in at the time of his/her retirement. The service the employee rendered in any one year

cannot count for more than one year of service credit.

HR04-6. Rehire.

- 1) A former employee shall compete for career service positions through the HR-approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.
- 2) Employees rehired under the Phased Retirement Program pursuant to [Utah Code § 49-11-13](#) shall be:
 - a) Classified as "Time-Limited" consistent with HR04-2 for the duration of a phased retirement employment period; and
 - b) Placed at or below the employee's wage at the time of retirement. Employees must not be placed below the minimum of the established salary range of the job.

HR04-7. Examinations.

- 1) Examinations shall be designed to measure and predict applicant job performance and shall be developed by management in consultation with HR.
- 2) Examinations shall be based on documented job-related criteria and include the following:
 - a) an initial, impartial screening of the individual's qualifications;
 - b) an impartial evaluation and results; and
 - c) reasonable accommodation(s) for qualified individuals with disabilities.
- 3) Examinations and ratings shall remain confidential and secure.
- 4) Examination records for a position shall be sent from hiring managers to HR and shall be maintained by HR for at least two years after the position is filled.

HR04-8. Hiring Lists.

- 1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.
 - a) An individual shall be considered an applicant

when the individual applies for a particular position identified through a specific recruitment.

- b) Hiring lists shall be constructed using the HR-approved recruitment and selection system.
 - c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.
 - d) All applicants included on a hiring list shall be examined with the same examination or examinations.
- 2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.
- 3) The hiring manager shall demonstrate and document that equal consideration was given to all applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.
- 4) The hiring manager shall ensure that any employee hired meets the job requirements as outlined in the official job description.

HR04-9. Job Sharing.

Court executives and/or court level administrators may establish a job-sharing program as a means of increasing opportunities for part-time employment. In the absence of an existing program, individual employees may request approval for job sharing status through their direct line of management.

HR04-10. Internships.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

HR04-11. Volunteer Experience Credit.

Documented job-related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

- 1) Volunteer experience may not be substituted for required

licensure, certification, or other criteria for which there is no substitution in the requirements listed in the job description.

- 2) Court ordered community service experience may not be considered.

HR04-12. Reorganization.

When an organization or team is reorganized, but an employee's position does not change substantially, management may not require the employee to compete for his/her current position.

HR04-13. Career Mobility Programs.

- 1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.
- 2) Management may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.
- 3) An eligible employee or the employee's management may initiate a career mobility action in consultation with HR.
 - a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.
 - b) Career mobility assignments shall only become permanent if:
 - i) the position was originally filled through a competitive recruitment process; or
 - ii) a competitive recruitment process is used at the time the organization determines a need for the assignment to become permanent.
- 4) Managers shall use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.
- 5) A participating employee shall retain all rights, privileges, entitlements, career service status subject to HR05-2, and benefits from the previous position while on

career mobility.

- a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.
 - b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in HR06-6(10).
- 6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

HR04-14. Assimilation.

An employee assimilated by the state from another government career service system to fill a career service position shall receive career service status after completing a new probationary period if originally selected through a competitive examination process judged by the HR Director to be sufficiently similar to the process prescribed in HR04.

- 1) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.
- 2) An assimilated employee shall accrue leave at the same rate as other career service employees with the same seniority.

HR04-15. Background Checks.

Offers of employment and volunteer service should be made contingent upon the successful completion of a criminal background check through the Utah Bureau of Criminal Investigation only. The start date of employment or volunteer service shall not precede the completion of the background check process.

- (1) Background checks shall only be conducted with the written consent of the candidate(s) for a job.
- (2) Failure to provide consent to a background check shall disqualify an applicant for hiring.
- (3) Employees in the judiciary that hold responsibility to

receive background check information as part of a hiring or volunteer process shall do so in accordance with [UCA § 53-10-108\(4\)](#).

- (4) A hiring manager may choose not to hire a candidate if the background check contains any of the following:
 - a) A felony conviction within the past seven (7) years involving crimes of violence against people or property, illegal drug or alcohol use, identity theft, or crimes of financial turpitude such as embezzlement, theft, etc.
 - b) A misdemeanor conviction within the past four (4) years involving crimes of violence against people or property, illegal drug or alcohol use, identity theft, or crimes of financial turpitude.
- (5) Results of a background check shall be delivered to the Human Resources representative. The results shall not be stored or shared in writing with any other party.
- (6) Information relevant to a hiring decision such as those mentioned in (4)a) and (4)b) may be discussed only with individuals directly involved in a hiring decision in accordance with [UCA § 53-10-108\(4\)](#).
- (7) Factors that may be considered in the hiring decision include but are not limited to:
 - a) The relationship between the nature of the crime and the job for which the candidate has applied.
 - b) The number of convictions.
 - c) The amount of time since the candidate's conviction date(s) and/or the date(s) of the crime(s) committed.
 - d) The candidate's conduct and demonstration of public trust since the conviction.
 - e) False or misleading statements, verbal or written, made by the candidate regarding his/her criminal record.
- (8) Disagreements about how to proceed with a candidate's background check information among individuals involved in a hiring decision may be escalated to a court executive or court level administrator for a final hiring decision.

(9) All provisions of HR04-15 shall similarly apply to volunteers and/or volunteer service.

HR04-16. Policy Exceptions.

The HR Director may authorize exceptions to this rule consistent with HR02-2(1).

Authorizing, and Implemented or Interpreted Law or Code: [UCA §49-11-13](#), [UCA §52-3-1](#), [UCA §53-10-108](#), [UCA §67-20-8](#), [UCJA §3-402](#)



UTAH STATE COURTS

Utah Judicial Branch Human Resource Policies

Section 5 - Career Service Status and Probation

HR05-1. Career Service Status.

- 1) Only an employee hired through a competitive, pre-approved HR process shall be eligible for appointment to a career service position.
- 2) An employee shall complete the probationary period defined in the job description prior to receiving career service status.
- 3) Management may convert a career service exempt employee to career service status, in a position with an equal or lower salary range, when:
 - a) the employee previously held career service status with no break in service between the last career service position held and career service exempt status; or
 - b) the employee was hired from a public hiring list to a career service exempt position, in the same job title to which they would convert, as prescribed by HR04-8.

HR05-2. Probationary Period.

The probationary period allows management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period is considered part of the selection process.

- 1) An employee shall receive an opportunity to demonstrate competence in a career service position. Performance expectations shall be established and the employee should receive frequent feedback on performance in relation to those expectations.
 - a) During the probationary period, an employee may be

separated from state employment in accordance with HR11-2(1).

- b) On or shortly before the end of the probationary period, management shall complete a formal, written evaluation of an employee's performance relative to established expectations.
 - c) At a minimum, the evaluation should indicate overall successful or unsuccessful completion of performance expectations during the probationary period.
 - d) Management shall give a copy of the written evaluation to the employee and to HR.
 - e) The evaluation shall be maintained in the personnel file.
- 2) Each career service position shall be assigned a probationary period consistent with its job.
- a) The probationary period may not be extended except for periods of unprotected leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, or donated leave from an approved leave bank; and extensions may only be granted in consultation with the court level administrator and the HR Director.
 - b) The probationary period for a position may not be reduced for an individual employee after the employee is hired into the position.
 - c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period for the Judicial Branch unless there is a break in service.
- 3) An employee in a career service position who works at least 50% of the regular work schedule or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.
- 4) An employee serving probation in a career service position may be transferred, reassigned or promoted to another career service position including a career mobility assignment. Each new appointment to a career service position shall include a new probationary period unless the court executive or court level administrator, in

consultation with the HR director, determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. The probationary period shall be the full probationary period defined in the job description of the new position.

HR05-3. Career Service Exempt Positions.

Unclassified jobs identified in HR06-3 are exempt from provisions of career service. In addition, the following list of classified jobs in the judicial branch are exempt from provisions of career service. Incumbents are considered to be appointed, serving at the will and pleasure of the judiciary.

- Appellate Clerk of Court (#10675)
- Appellate Court Administrator (#10840)
- Appellate Court Mediator (#10853)
- Assistant State Court Administrator (#10836)
- Assistant Juvenile Court Administrator (#10830)
- Attorney/Law Clerk (#10849)
- Capital Litigation Research Attorney (#10863)
- Central Staff Attorney (#10858)
- Chief Probation Officer (#10516)
- Clerk of Court (#10671)
- Deputy Court Administrator (#10844)
- Director, Alternative Dispute Resolution (ADR) Program (#10550)
- Director, Court Facilities (#10845)
- Director, Court Security (#10749)
- Director, Court Services (#10593)
- Director, Communications (#10822)
- Director, Finance (#10718)
- Director, Human Resources (#10818)
- Director, Information Technology (#10780)
- Director, Internal Audit (#10728)
- Director, State Law Library (#10570)
- Director, Utah Judicial Institute (#10806)
- District Court Administrator (#10838)
- Executive Assistant (#10616)
- Guardian ad Litem Attorney I-V (#10559, #10560, #10562, #10561, #10563)

TAB 8

CJA 1-201. Rules for the Conduct of Council Meetings

CJA 6-102. Election of District Court Judges to the Judicial Council

CJA 7-101. Juvenile Court Board, Executive Committee and Council Representatives

NOTES: During the legislative session, SB0167 passed (effective date = May 12, 2020). The bill expands the membership of the Judicial Council, adding a new district court judge member (for a total of six district court judges) and a new juvenile court judge member (for a total of three juvenile court judges).

GENERAL COUNCIL MEMBERSHIP (1-201):

This optional change will allow the seats to be filled prior to September 2020. Currently the rule reads that if a member is “unable to complete a term,” which doesn’t contemplate a new seat to fill. Changing the language to “vacancy” allows for immediately filling the newly created seat via the Board’s process.

DISTRICT COURT (6-102):

Ultimately, on October 28, 2019 the Judicial Council approved the following allocation of seats for district court judges:

- 2nd District = one seat
- 3rd District = two seats
- 4th District = one seat
- 1st, 5th Districts = one seat
- 6th, 7th, and 8th Districts = one seat

JUVENILE COURT (7-101)

The Board of Juvenile Court Judges proposes the following allocation of seats for juvenile court judges:

- One representative from the 2nd, 3rd, or 4th District
- One representative from the 1st, 5th, 6th, 7th, or 8th District
- One at-large member

At the May 1st meeting, the Committee had several concerns regarding the timing and overlap of the positions and terms. The Committee asked that the rule amendments be added to the next agenda so that Mike Drechsel could be available to answer questions.

**1-201 also includes the proposed amendments from Jim Peters in lines 16-18 that the Committee approved but suspended until the other amendments could be addressed.*

RULE AMENDMENT REQUEST

Policy and Planning

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

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

REQUESTER CONTACT INFORMATION:

Name of Requester:

Michael Drechsel

E-mail:

michaelcd@utcourts.gov

Phone Number:

4356218737

Date of Request:

04/14/2020

RULE AMENDMENT:

Rule Number:

See Below

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

See three proposed drafts that accompany this request form.

Reason Amendment is Needed:

During the legislative session, SB0167 passed. This bill expanded the membership of the Judicial Council, adding a new district court judge member (for a total of six district court judges) and a new juvenile court judge member (for a total of three juvenile court judges).

There are three rules in the Code of Judicial Administration that need attention to properly reflect the change in statute: 1-201 (Council membership generally), 6-102 (district court), and 7-101(6) (juvenile court). I've attached proposed draft copies of the three rules.

GENERAL COUNCIL MEMBERSHIP (1-201):

This change will allow the seats to be filled prior to September 2020.

DISTRICT COURT (6-102):

Ultimately, on October 28, 2019 the Judicial Council approved the following allocation of seats for district court judges:

- 2nd District = one seat
- 3rd District = two seats
- 4th District = one seat
- 1st, 5th Districts = one seat
- 6th, 7th, and 8th Districts = two seats

These details are not spelled out in statute, but are outlined in Rule 6-102. Shane may have additional input.

JUVENILE COURT (7-101):

The Judicial Council did not specify how this extra seat would be allocated, but instead deferred to the Juvenile Court Judges to make that determination (as currently exists in rule). The Board of Juvenile Court Judges may want to outline their approach in Rule 7-101 (I believe Judge Evershed reported to the Council at the October 28, 2019 meeting

Is this proposal urgent?

- ☐ No
☒ Yes

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

This is urgent only to the extent the Judicial Council wants to have these new positions filled quickly.

List all stakeholders:

Judicial Council
Juvenile Court Judges (and Board)
District Court Judges (and Board)

Select each entity that has approved this proposal:

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

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

Judicial Council (per October 28, 2019 meeting)

Requester's Signature:

Michael C. Drechsel

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

NA

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
☐ No

Queue Priority Level:

- ☐ Red
☐ Yellow
☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 1-201. Membership - Election.

Intent:

To establish the manner of election of Council members as authorized by statute.

To establish the procedure for filling a vacancy on the Council as authorized by statute.

Applicability:

This rule shall apply to all elected members of the Council. This rule shall not apply to the Chief Justice of the Supreme Court.

This rule shall apply to the Boards of Judges and the Board of Commissioners of the Utah State Bar.

As used in this rule, unless the context indicates otherwise, "Board" includes the Boards of Judges and the Board of Commissioners of the Utah State Bar.

Statement of the Rule:

(1) The composition of the Council, the term of office of elected Council members, and the electorate of elected Council members shall be as prescribed by law. The term of office of all elected Council members shall begin with the Council meeting immediately following the annual judicial conference.

(2) Election of Council members to include newly created seats, from courts of record shall take place at the annual judicial conference. ~~Election of Council members from courts not of record shall take place at the annual spring training conference of the justice court judges.~~ Election of the representative of the Utah State Bar shall take place at a regularly scheduled meeting of the Board of Commissioners.

Comment [KW1]: Jim Peters amendments

(3)(A) If a vacancy exists for a judicial member of the Council who represents a trial court ~~is unable to complete a term of office,~~ the Board for the court represented by that member shall appoint a judge to serve on the Council until the next judicial conference ~~or the next spring training conference as the case may be.~~ At such conference, the judges shall elect a member to the Council to serve for the unexpired portion of the original term. If a judicial member of the Council who represents an appellate court is unable to complete a term of office, the members of that court shall appoint a judge to serve on the Council until the expiration of the vacated term.

Comment [KW2]: Mike Drechsel amendments

(3)(B) If the representative of the Utah State Bar is unable to complete a term of office, the Board of Commissioners shall elect a member or ex officio member of the Board of Commissioners to serve for the unexpired portion of the original term.

Comment [KW3]: Jim Peters amendments

(3)(C) No person shall serve on the Judicial Council for more than two consecutive terms and the remainder of a predecessor's term.

(4) The Boards shall develop procedures for the nomination and election of Council members and shall certify to the Council the names of the members elected. The Boards shall give due regard to

geographic representation, security of the election, timely publication of Council vacancies or expired terms, and ease of administration.

(5) When a judicial member of the Council is unable to attend a Council meeting, that member may designate a judge from the same level of court to attend the Council meeting and observe the proceedings. When the representative of the Utah State Bar is unable to attend a Council meeting, that member may designate a member or ex officio member of the Board of Commissioners to attend the Council meeting and observe the proceedings. The designee shall be provided with a copy of the Council agenda and other meeting materials, and may attend the open and closed sessions of the meeting. The designee may participate in the general discussion of agenda items but may not make motions or vote on Council issues.

(6) Council members or their designated substitutes may be reimbursed for actual and necessary expenses incurred in the execution of their duties as Council members.

(7) Council members shall not be eligible to serve as voting members of a Board of Judges of a trial court or to serve as members of the standing committees of the Council. The representative of the Utah State Bar may vote at meetings of the Board of Commissioners if permitted to vote under rules governing the conduct of the Board of Commissioners.

Effective ~~May~~ September 1, 2018²⁰

Rule 6-102. Election of District Court judges to the Judicial Council.**Intent:**

To establish a procedure for the election of District Court judges to the Judicial Council as provided in this Code.

Applicability:

This rule shall apply to the election process of the District Court judges to the Judicial Council.

Statement of the Rule:

(1) The District Court has ~~five~~ six representatives on the Council. These representatives shall serve staggered three-year terms with ~~one or~~ two District Court judges being elected to the Council each year. The election of a District Court judge to the Council shall occur at the Annual Business Meeting of the State District Court Judges.

(2) District court positions on the Judicial Council shall be as follows:

(2)(A) one from the ~~First or~~ Second Judicial District;

(2)(B) two from the Third Judicial District;

(2)(C) one from the Fourth Judicial District; ~~and~~

(2)(D) one from the First or Fifth District; and, Sixth, Seventh, or Eighth Judicial District.

(2)(E) one from the Sixth, Seventh, or Eighth Judicial District.

(3) Nominations must come from a sitting District Court judge in the district or districts where the vacancy exists. Voting shall be by all District Court judges present at the annual business meeting. Those present at the business meeting will constitute a quorum.

Rule 7-101. Juvenile Court Board, Executive Committee and Council Representatives.**Intent:**

- To establish a Board of Juvenile Court Judges.
- To establish an Executive Committee of the Board.
- To establish the authority and duties of the Board and the Executive Committee.
- To establish the election procedure for Board members, Chair elect of the Board and the Judicial Council representatives.

Applicability:

- This rule shall apply to the Board of Juvenile Court Judges.

Statement of the Rule:

- (1) Juvenile court board.
 - (1)(A) Establishment. There is hereby established a Board of Juvenile Court Judges.
 - (1)(B) Membership. The Board shall be composed of seven juvenile court judges elected at the Annual Judicial Conference Juvenile Court business meeting by sitting Juvenile Court Judges.
 - (1)(C) Representation. Representation from each judicial district shall be as follows:
 - (1)(C)(i) Five Board members from the Second, Third and Fourth Judicial Districts with at least one representative from each District; and
 - (1)(C)(ii) Two Board members from the First, Fifth, Sixth, Seventh or Eighth Districts.
 - (1)(D) Election. The juvenile court judges present at the annual business meeting shall constitute a quorum. Nominations for board positions may be made by sitting Juvenile Court Judges only. Nominations must come from the Judicial District or Districts in which the vacancy exists. All sitting judges shall be entitled to vote for all members of the Board.
 - (1)(E) Terms. The terms of the initial Board members shall be determined by lot, with four members selected to serve three year terms and three members selected to serve two year terms. Successors shall be elected for three year terms.
 - (1)(F) Vacancies. If a vacancy occurs for any reason on the Board between Annual Judicial Conferences, the Board shall elect a replacement for the unexpired term

of the vacancy. In filling the vacancy, the Board shall adhere to and perpetuate the District representation in effect at the time of the vacancy.

(2) Chair and vice chair.

(2)(A) Establishment. There shall be a Chair and Vice Chair of the Board.

(2)(B) Chair's term. The Chair shall serve a one year term beginning immediately after the Annual Judicial Conference in the year following election as Vice Chair.

(2)(C) Responsibilities. The Chair shall preside over all meetings of the Board and the Juvenile Court Judges Meeting at the Annual Judicial Conference, and perform other duties as set forth in the Juvenile Court Act, this Code and as directed by the Board.

(2)(D) Vacancy in office of chair. In the event that the Chair resigns or leaves the Board for any reason, the Vice Chair shall become Chair, serving both the unexpired term of the Chair and the full term as Chair.

(2)(E) Election. The Vice Chair shall be elected by the Board members at the commencement of the first or second year of the Vice Chair's three year term on the Board. The Vice Chair shall serve as Chair in the absence of the Chair or at the request of the Chair.

(2)(F) Vice chair's term. The Vice Chair shall become Chair of the Board for a one year term immediately following the Annual Judicial Conference next succeeding his election as Vice Chair.

(2)(G) Vacancy in office of vice chair. In the event that the Vice Chair resigns or leaves the Board for any reason, a new Vice Chair shall be elected by the Board from among its members to serve the unexpired term of the Vice Chair and to succeed as Chair as otherwise provided in this rule.

(3) Meetings of the board.

(3)(A) The Board shall meet a minimum of once every two months to transact any and all business that is within its jurisdiction. This meeting shall be presided over by the Chair of the Board or the Vice Chair in the absence of the Chair or at the request of the Chair.

(3)(B) The Board shall rule by majority vote. All Board members have the right to vote. Four members of the Board constitute a quorum.

(3)(C) The Board meetings shall be conducted in accordance with Roberts' Rules of Order and this Code.

(3)(D) When a Board member is unable to attend a Board meeting, that member may designate a juvenile court judge to attend the meeting on behalf of the absent member. The substitute and the absent member must be from the same district group identified by paragraph (1)(C) above. The substitute judge shall be provided with a copy of the agenda and other meeting materials, may attend the open and closed sessions of the meeting, and may participate in the discussion of agenda items. The substitute judge may make motions and vote.

(4) Executive committee.

(4)(A) Membership. There is hereby established an Executive Committee of the Board. The committee shall be comprised of three members: the Chair of the Board, the Vice Chair and one member of the Board selected by the Board members to serve at large.

(4)(B) Duties and responsibilities of the executive committee. The duties and responsibilities of the Executive Committee are as follows:

(4)(B)(i) Assist the Board in establishing a planning capability in assessing and projecting needs, resources, and policies.

(4)(B)(ii) Act as liaison with other agencies and parties who seek contact with the Board.

(4)(B)(iii) Screen and reduce the number of matters presented to the full Board for its consideration to ensure that all matters referred to it require full Board consideration.

(4)(B)(iv) Review initiatives, proposals and questions that will be submitted to the full Board to ensure that information is complete and in proper form to facilitate expeditious handling by the Board.

(4)(B)(v) Assist the Administrative Office in staff work as assigned by the Board where judicial guidance may be required in carrying out Board policy.

(4)(B)(vi) Consult with the Administrative Office on matters requiring immediate attention or on matters needing judicial consideration but not requiring full Board consideration.

(4)(B)(vii) Accomplish all other assignments as may be directed by the Board.

(5) Procedures of the board.

(5)(A) The Chair of the Board shall serve as Chair of the Executive Committee. When the Chair of the Board is not available, the Chair elect shall act in the Chair's behalf.

(5)(B) All action taken by the Executive Committee shall be reported to the full Board in the form of minutes and reports and may be subject to ratification by the full Board.

(5)(C) A time and date certain shall be established for Executive Committee meetings. The juvenile court administrator or designee shall serve as secretariat to the Committee.

(6) Judicial council representatives.

(6)(A) The Juvenile Court shall have ~~two-three~~ representatives on the Council, one from the Second, Third, or Fourth Judicial District, one from First, Fifth, Sixth, Seventh, or Eight Judicial District, and one serving at-large. No two representatives may serve from the same judicial district.

~~(6)(B) The Juvenile Court judges shall elect one representatives to the Council at the Annual Judicial Conference Juvenile Court business meeting in September in those years when the term of office for a Council representative expires. Nominations can be made by any sitting judge for any Council representative.~~

~~(6)(C)~~ (6)(B) Council representatives shall serve staggered three--year terms beginning October 1 of the year in which elected beginning with the Council meeting immediately following the Annual Judicial Conference. The Juvenile Court judges shall elect no more than one representative to the Council per election, which shall be held at the Annual Judicial Conference Juvenile Court business meeting. Nominations can be made by any sitting judge for any Council representative.

~~(6)(D) A vacancy in the Council position resulting from resignation, retirement or other reasons shall be filled by election at the next Board of Judges meeting. The term shall begin immediately and terminate at the next annual Judicial Conference when the judges elect a new representative for the unexpired term.~~

Comment [KW1]: Request from the Juvenile Court Board

Comment [MCD2]: This conforms the language of the rule to Rule 1-201(1)

Comment [KW3]: Request from the Juvenile Court Board

Comment [MCD4]: This is covered in Rule 1-201(3)(A)