

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

August 7, 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	4-202.03. Records Access	Action	Tab 2	Brent Johnson
12:20	Rules Back from Public Comment (already approved by JC on expedited basis) <ul style="list-style-type: none"> <li>• CJA 1-205. Standing and ad hoc committees</li> <li>• CJA 4-302. Uniform recommended fine/bail schedule</li> <li>• CJA 4-701. Failure to appear</li> <li>• CJA 4-704. Authority of court clerks</li> <li>• CJA 6-301. Authority of court commissioners as magistrate</li> <li>• CJA Appendix B. Justice court standards</li> <li>• CJA Appendix F. Utah state courts records retention schedule</li> </ul>	Action	Tab 3	Keisa Williams
12:25	Public Comment Period Extended <ul style="list-style-type: none"> <li>• CJA 3-101. Judicial performance standards</li> <li>• CJA 3-104. Presiding judges</li> <li>• CJA 3-111. Performance evaluation of senior judges and court commissioners</li> </ul>	Discussion	Tab 4	Keisa Williams
12:35	Rules Back from Public Comment for Final Approval <ul style="list-style-type: none"> <li>• CJA 3-402. Human resources administration</li> <li>• CJA 3-403. Judicial branch education</li> <li>• CJA 4-202.08. Fees for records, information, and services</li> <li>• CJA 4-106. Electronic conferencing</li> <li>• CJA 4-411. Courthouse attire</li> <li>• CJA 6-506. Procedure for contested matters filed in the probate court</li> <li>• CJA 9-101. Board of justice court judges</li> <li>• CJA 9-109. Presiding judges</li> </ul>	Action	Tab 5	Keisa Williams
1:00	Office of Fairness and Accountability	Discussion		Judge Pullan
1:50	Old Business / New Business	Action		Judge Pullan
2:00	Adjourn			Judge Pullan

**2020 Meetings:**

September 4, 2020

October 2, 2020

November 6, 2020 (9:00 a.m. to 5:00 p.m.)

December 4, 2020

# **TAB 1**

**Minutes - June 5, 2020**

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

WebEx Video Conferencing  
June 5, 2020 – 12. p.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:**

Brent Johnson  
Nancy Sylvester  
Paul Barron  
Geoff Fattah  
Nathanael Player  
Judge Dennis Fuchs  
Bart Olsen  
Michelle Wilkes

**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 May 11, 2020 meeting. Judge Cannell noted that, on page 3, he opposed the language change in the proposed amendments to rule 4-202.02 (Records classification) but voted to take the rule to the Judicial Council for discussion.

***With no other change to the minutes, Judge Chin moved to approve the draft minutes subject to amendment. Judge Cannell seconded the motion. The committee voted and the motion unanimously passed.***

**(2) 4-202.02. Records classification:**

Nathaneal Player reviewed his proposal to make a slight amendment to Code of Judicial Administration Rule 4-202.02. In most cases a minor's name is private in court records, however, the Court's practice is (and has been) to include a minor's name on public stalking injunctions. Subsection (4)(O) of 4-202.02 provides a list of district and justice court proceedings in which a minor's name is public, but it omits stalking injunctions. I believe that is an oversight and it should be changed to comport with Court practice. The omission was brought to our attention when a court patron contacted the Self-Help Center and was very upset that her child's name was listed on a stalking injunction.

Judge Pullan: Are minor's names public on protective orders?

Mr. Player: Yes. Minor's names are public on protective orders and those proceedings are listed in (4)(O) as an exception.

***Judge Evershed moved to approve the change as proposed and send it to the Judicial Council for approval for public comment. Mr. Rice seconded. The motion passed unanimously.***

**(3) 6-507. Court Visitor:**

Nancy Sylvester provided an overview of the rule amendments based on the Committee's feedback at its May 1<sup>st</sup> meeting:

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).

A request to waive the respondent's presence falls outside of Rule 3-101, but all other reports are subject to the timeline in Rule 3-101 (60 days). Section (2) now refers to Utah Code §75-1-201 defining appointment and the role of court visitors. Section (6) clarifies that court visitor reports must be filed and served on all parties and interested persons who requested appointment of the court visitor, with the exception of appointments made under paragraph (2)(e). Those appointments are exempt from service because it's often difficult to find those parties. In paragraph (3)(b)(ii), "...if the guardianship or conservatorship appointment is made" was added to clarify that it pertains to the appointment of a guardian/conservator.

Judge Pullan: Paragraph (8)(a) requires the court to make findings two (2) days in advance of the hearing. Is there a requirement that the court visitor program file a report a week before the hearing? Ms. Sylvester: The court visitor program's practice is to provide reports to the court about a week before the hearing. Usually the due date is in the court's order.

Judge Cannell: Will they file a proposed order as well? Ms. Sylvester: Yes.

Judge Pullan: I would prefer to include a requirement in the rule that the report be filed 5-7 days in advance of the hearing. Seven (7) days would make it consistent with the rules of civil procedure. That would provide judges with enough time to make findings at least 2 days in advance of the hearing. Is there a reason it has been done in advance of the hearing? The findings could be read at the hearing and if the request to waive appearance is denied a new hearing can be scheduled to ensure the respondent is present.

Ms. Sylvester: It's often difficult to get respondents to the courthouse, especially those who are disabled. If the court hasn't made a decision prior to the hearing respondents may appear unnecessarily, or visitors/parties may be held in contempt for not bringing the respondent to court. This has been an issue for court visitors. It's helpful to have clear instructions from the court. In the 3<sup>rd</sup> district, these hearings are scheduled a month out to provide the court visitor and the court with sufficient time to file the report and issue findings before the hearing.

Mr. Rice: Is the deadline programmed into CORIS so that judges receive an automatic reminder? Paul Barron: No, something would have to be built. We could allow the court visitor program to e-file reports and prioritize them so that they would be brought to the attention of the JAs.

Michelle Wilkes: Once the court visitor program receives a request, it takes 3-5 days to find a volunteer. The volunteer takes about 2-3 weeks to conduct interviews and gather information. The reports are filed 5 days before the hearing. I don't have an issue with including the 5-day requirement in the rule. In my experience some attorneys become upset or are inconvenienced when a hearing is continued.

Judge Cannell: A request to submit and proposed order should also be filed within 5 days. That would trigger a notice to the JA and judge that the report is in the record and ready to be reviewed.

***Mr. Rice moved to approve the proposed rule as amended and send it to the Judicial Council for approval for public comment. Judge Cannell seconded. The motion passed unanimously.***

**(4) Juvenile Drug Court Certification Checklist:**

Judge Fuchs: I propose that the Juvenile Drug Court Certification Checklist be amended, moving standard #25, "the Juvenile Drug Court has more than 15 but less than 125 active participants," from the Presumed Category to the Best Practices Category. Drug court participation numbers have dropped significantly with new juvenile justice reform. There's no longer any real incentive for juveniles to participate. I propose changing the participation numbers to a minimum of 8-10.

Judge Pullan: Are the drug courts able to function in a meaningful way if they don't have a minimal level of participation with 15 participants? We need to consider, as a matter of policy, whether we want to continue juvenile drug courts. Do the low numbers impact the success of juveniles who are participating? Do all of our juvenile drug courts have 15 right now? Do you know how many have less than 8?

Judge Fuchs: Best practices show that juvenile drug courts are most effective with 15 or more participants. That doesn't mean that they aren't effective with less, just that they are *most* effective with fifteen (15). Without at least 8-10, we may be wasting the judges' and treatment providers' time. Those juveniles could be treated in a different way without a separate court calendar. My inclination is to let drug courts operate when there are at least 8-10 participants. It's questionable when we drop below eight (8). There are only 5-6 juvenile drug courts in the state. Only one has less than 8 participants. Most others have somewhere between 8 and 10.

Judge Pullan: I believe this is a policy question for the Judicial Council. What do we know about the effect on treatment of having 15 participants? Is 15 a magic number? If we cut that in half, are we compromising outcomes, causing harm, or making no difference?

Judge Fuchs: I will make contact with the National Association of Drug Court Professionals (NADPC) about research regarding the effect on drug courts with fewer than 15 participants.

Judge Evershed: I will reach out to the juvenile court bench and juvenile court board of judges for input. They are meeting a week from today.

***Mr. Rice moved to send the issue to the Judicial Council for a discussion regarding the policy question of whether juvenile drug courts should wind down. Judge Evershed seconded. The motion passed unanimously.***

**(5) Rule amendments re HB206:**

**3-407. Accounting**

**4-609. Procedure for obtaining fingerprints...**

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

Ms. Williams: The proposed amendments are related to HB206 and the new definition of bail. Additional minor amendments, unrelated to HB206, were made to 3-407 at the request of the Finance Department.

***Mr. Rice moved to approve the proposed rules as amended and send it to the Judicial Council for approval for public comment. Judge Evershed seconded. The motion passed unanimously.***

**(6) 4-401.01. Electronic media coverage of court proceedings**

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

Mr. Johnson reviewed the proposed amendments. Rule 4-401.01 addresses electronic media coverage of court proceedings. The proposed change is intended to make it 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 remote proceedings they are viewing. And the proposal would eliminate the requirement of pool coverage in remote proceedings when there are multiple media requests. Anyone who asks could attend.

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. The IT Department set up the remote system so that all individuals and the media are required to click on a box saying they will abide by the rule. An open question is whether recording should be prohibited in remote proceedings?

Geoff Fattah: We brought this issue up with the media subcommittee of the Standing Committee on Judicial Outreach. The subcommittee includes media representatives from all of the media outlets and TV stations, in addition to judicial representatives from all levels of the court. The subcommittee discussed the upcoming use of WebEx events and how to make access a little easier for the public. The proposal was for IT to set up an automatic request process. Two issues surfaced:

- 1) The rule does not address live streaming. If it is the will of this body and the Management Committee and Judicial Council to continue to prohibit live streaming then the person will need to acknowledge that they will not live stream the proceeding. Even if live streaming is prohibited, it's possible they will find a way to circumvent the registration process and live stream the proceeding without us knowing about it.
- 2) The media is concerned that if we don't enforce the prohibition against live streaming and we allow other members of the public to share access or live stream, the media will be held to a more stringent standard than other members of the public.

Judge Pullan: The acknowledgement should require individuals to obey a court order and not just the rule. The order should state that the proceedings are not to be recorded without express permission of the court. In order to gain access to the hearing the person would have to check a box stating that they have read the order and agree to abide by it. When it comes to contempt proceedings and imposing sanctions, the court would need to find by clear and convincing evidence that the person was aware of the order, they understood the order, and they willfully failed to comply.

Mr. Johnson: That is worth exploring. I will talk to Heidi Anderson.

Mr. Fattah: There may also be a training component for the JAs. It is my understanding that when JAs set up the WebEx event they are in charge of adding the registration page for each calendar. We would need boiler plate language for them to copy and paste over.

Judge Pullan: Is it possible for the language to automatically show up when an event is scheduled?

Mr. Johnson: It may be possible for IT to program the system to allow people to go to a calendar and click on a link that takes them to the registration page where they would be required to submit certain information. Once submitted, they would receive an email with a link to the Webex hearing. The acknowledgement page would automatically pop up when they click on that link. They couldn't move to the next step or get into the hearing until they click on a button acknowledging their understanding and willingness to comply with the order.

Mr. Barron: That should be possible. It would require programming.

Judge Pullan: What pops up needs to be an order. It could be signed by the presiding judge of each district.

Mr. Fattah: I tested the system to see if I could circumvent the registration process. I registered for a WebEx hearing and sent the link to my nephew to see if he could access it. The system recognized that it was a different person and it took him to the registration page.

Mr. Rice: Is there a risk that the public will hijack or disrupt a hearing? Do we need to include that in the presiding judge's order? Mr. Fattah: Yes, that's always a risk and it wouldn't hurt to include it in the order. My understanding is that WebEx is more secure than other platforms. Judge Chin: I can limit individuals from entering the hearing

and prevent them from vocalizing. If they are a panel member, they are allowed to speak. There are stop gaps in to prevent the public from interfering in that way. Judge Pullan: I believe it is a crime to disrupt a government proceeding. If so, that might be something to include in the order.

Mr. Johnson: I can work on language for the order. The proposed change in 4-404.01 would be helpful to have in place now. We may not need (3)(C) in 4-401.02 if we have the order.

Mr. Barron: It isn't difficult for individuals to use portable devices. I would suggest removing the word "portable" from lines 58 and 60. Judge Pullan recommended adding language to lines 64 and 66 stating that access to proceedings is contingent on the person agreeing to comply with administrative and standing orders.

Mr. Johnson will work on a draft standing order and bring it back to Policy and Planning for review. Judge Pullan suggested that the order be standardized and used statewide. Mr. Johnson will take another look at the rules to clean up the language if needed.

***Mr. Rice moved to approve the proposed rules as amended by the Committee and send them to the Judicial Council for approval for public comment. Judge Chin seconded. The motion passed unanimously.***

**(7) HR Policy Revisions. Phase 1 - Employment:**

- **HR01 – Definitions**
- **HR02 – Administration**
- **HR03 – Classification**
- **HR04 – Filing Positions**
- **HR05 – Career Service Status & Probation**

Mr. Olsen: I propose that Policy and Planning postpone reviewing and approving sections 1-5 until the entire manual revision has been completed by the Human Resources Committee. I believe waiting will result in an improved review process, a better quality end product, timelier product delivery, and will be less of a heavy lift for Policy and Planning. Currently our HR policies reside on the intranet. A number of policies haven't been touched for years. This is not to discount the policies that are in place. They are extremely valuable and have guided the judiciary for years. There are a lot of excellent answers in there. However, it is difficult for employees to find the answers.

A search feature doesn't yield all of the results because of different formats in the policy; some are HDML coded into the intranet site while others are embedded PDF documents. Another challenge is that many of the widely shared practices are inconsistent with policy and some policies are inconsistent with employment law. Example: Our policy states that employee performance plans and evaluations will be conducted, but we have moved away from that practice. Another issue is that some policies are dated and dictate inefficient business practices.

The HR Committee is considering several factors while conducting the review. The Executive Branch HR rules guide many of the same systems used in the Judiciary. They don't govern the systems, but provide guidance about how they are governed. The Judiciary uses the same health insurance, retirement vendors, and HR and payroll systems. The Executive Branch HR policies undergo an annual refinement process through Risk Management, the Attorney General's office, and other agencies that provide continuous feedback and a thorough vetting process each year. The Committee is also working to ensure that any current judicial policies that work well and help the court accomplish its mission aren't excluded. Other factors include ensuring different sections in the policy are harmonious, the policy is accessible and clear, the policy provides transparent guidance for employees and management alike, and the content is searchable. The HR Committee is dedicated to ensuring the review process is transparent across the board. The Committee is looking at three sources; current internal HR policies, current DRHM rules, and proposed draft policies.

Policy and Planning didn't review sections 1-5. Mr. Olsen will bring the entire manual, sections 1-17, back to Policy and Planning once approved by the HR Committee.

**(8) 1-201. Rules for 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**

Mr. Drechsel: SB167 expanded membership of the Judicial Council from 14 to 16, with the addition of a district court member and a juvenile court member. Rule 6-102 is the district court rule. The Council determined that the district court seats would be filled by one member from 2<sup>nd</sup> district, two from 3<sup>rd</sup>, one from 4<sup>th</sup>, one from 1<sup>st</sup> or 5<sup>th</sup>, and one from 6<sup>th</sup>, 7<sup>th</sup> or 8<sup>th</sup>. Judges Shaughnessy and Pettit represent 3<sup>rd</sup>, Judge Pullan represents 4<sup>th</sup>, Judge Cannell represents 1<sup>st</sup>, and Judge Walton represents 5<sup>th</sup>. There is no representative from 2<sup>nd</sup> district or 6<sup>th</sup>/7<sup>th</sup>/8<sup>th</sup> districts.

Right now, two members are serving from 1<sup>st</sup> (Judge Cannell) and 5<sup>th</sup> districts (Judge Walton). Moving forward, these two districts will share a single seat. That could be resolved by electing a new member from either 2<sup>nd</sup> or 6<sup>th</sup>/7<sup>th</sup>/8<sup>th</sup> districts in September when Judge Walton rotates off. The remaining district would fill the newly created seat. Both changes could wait until the annual conference, but there is still a decision to be made about the rotation schedule in regard to terms.

The amendments to Rule 1-201 allow the Board of District Court Judges to fill vacancies until the next regular election. An important goal would be to create a rotation schedule with two judges rotating on and off the Council each year. At least until 2021, that will be a little tricky with the board electing someone for a period of time and the full bench holding elections at the annual conference and then re-electing that person.

Juvenile court is a little easier. Judge Evershed is from the 8<sup>th</sup> district and Judge May is from 3<sup>rd</sup> district. The way the juvenile court board is proposing to structure their rule is for the third member to be at-large. That member can be pulled in from any of the districts. Judge May rotates off in 2021 and Judge Evershed rotates off in 2022. The at-large member would be elected this year at the annual conference for 2020-2023. In 7-101, subsection (6)(B) is being removed to account for the increase from one to two members. Subsection (6)(D) is being removed because that language is covered in Rule 1-201.

An open question is whether you want the Board of District Court Judges to appoint the member from 2<sup>nd</sup> or 6<sup>th</sup>/7<sup>th</sup>/8<sup>th</sup> for 15 months until you get to the 2021 annual meeting, or do you want the full bench to conduct elections for both positions at this year's annual meeting to cover the 2020 and 2021 cycle.

Judge Pullan asked Mr. Drechsel to draft a memo and rule revisions addressing the issues discussed by the Committee for presentation to the Judicial Council in June.

***Judge Cannell moved to have Mr. Drechsel revise the rules to address the issues discussed by the Committee and present the rules along with a memo describing the options to the Judicial Council with a recommendation for expedited approval. Mr. Rice seconded. The motion passed unanimously.***

**(9) OLD BUSINESS/NEW BUSINESS:**

None

**(10) ADJOURN:**

With no further items for discussion, Judge Cannell moved to adjourn the meeting. Mr. Rice seconded the motion. The committee unanimously approved the motion. The meeting adjourned at 1:48 pm. The next meeting will be on August 7, 2020 at 12:00 pm via WebEx Video Conferencing.



# TAB 2

## CJA 4-202.03. Records Access

**NOTES:** (lines 109-110) As part of the application process when minors are seeking to be in the armed forces, military recruiters must obtain and review juvenile court legal records. The rule currently requires the recruiter to get a notarized release from the minor. However, the recruiters are rarely presenting notarized releases and get upset when their requests are rejected, putting some of our employees in an uncomfortable position.

The clerks of court would like to change the rule to permit recruiters to access a minor's case history if there is written consent from the minor, eliminating the need for the signature to be notarized. Court employees will continue to verify that the individual is in fact a military recruiter.

# Policy and Planning - Rule Amendment Request Form

The respondent's email address (**keisaw@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](mailto:keisaw@utcourts.gov).

Date of Request \*

MM DD YYYY

07 / 29 / 2020

Name of Requester \*

Brent Johnson

Requester Phone Number \*

801-578-3856

Name of Requester's Supervisor \*

Judge Noonan

Location of the Rule \*

Code of Judicial Administration ▼

CJA Rule Number or HR/Accounting Section Name \*

4-202.03

Brief Description of Rule Proposal \*

Allows military recruiters to access juvenile court legal records with a signed vs. notarized waiver from the minor.

Reason Amendment is Needed \*

Military recruiters are rarely obtaining notarized signatures on waivers and get extremely upset with court staff when their requests are denied on that basis. The clerks of court feel that accepting waivers without a notary's signature would be easier for staff and wouldn't be abused.

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.

Clerks of Court

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

Juvenile court

This form was created inside of Utah State Courts.

Google Forms

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

To identify who may access court records.

**Applicability:**

This rule applies to the judicial branch.

**Statement of the Rule:**

(1) **Public Court Records.** Any person may access a public court record.

(2) **Sealed Court Records.** An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. Otherwise, no one may access a sealed court record except by order of the court. A judge may review a sealed record when the circumstances warrant.

(3) **Private Court Records.** The following may access a private court record:

(3)(A) the subject of the record;

(3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;

(3)(C) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;

(3)(D) an interested person to an action under the Uniform Probate Code;

(3)(E) the person who submitted the record;

(3)(F) the attorney or licensed paralegal practitioner for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;

(3)(H) anyone by court order;

(3)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(3)(K) a governmental entity with which the record is shared under Rule 4-202.10.

(4) **Protected Court Records.** The following may access a protected court record:

(4)(A) the person or governmental entity whose interests are protected by closure;

(4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;

(4)(C) the person who submitted the record;

(4)(D) the attorney or licensed paralegal practitioner for the person who submitted the record or for the person or governmental entity whose interests are protected by

- 37 closure or for the parent or guardian of the person if the person is an  
38 unemancipated minor or under a legal incapacity or an individual who has a  
39 power of attorney from such person or governmental entity;
- 40 (4)(E) an individual with a release from the person who submitted the record or from the  
41 person or governmental entity whose interests are protected by closure or from  
42 the parent or guardian of the person if the person is an unemancipated minor or  
43 under a legal incapacity signed and notarized no more than 90 days before the  
44 date the request is made;
- 45 (4)(F) a party, attorney for a party, or licensed paralegal practitioner for a party to  
46 litigation in which the record is filed;
- 47 (4)(G) anyone by court order;
- 48 (4)(H) court personnel, but only to achieve the purpose for which the record was  
49 submitted;
- 50 (4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and
- 51 (4)(J) a governmental entity with which the record is shared under Rule 4-202.10.
- 52 (5) **Juvenile Court Social Records.** The following may access a juvenile court social record:
- 53 (5)(A) the subject of the record, if 18 years of age or over;
- 54 (5)(B) a parent or guardian of the subject of the record if the subject is an  
55 unemancipated minor;
- 56 (5)(C) an attorney or person with power of attorney for the subject of the record;
- 57 (5)(D) a person with a notarized release from the subject of the record or the subject's  
58 legal representative dated no more than 90 days before the date the request is  
59 made;
- 60 (5)(E) the subject of the record's therapists and evaluators;
- 61 (5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian  
62 ad Litem, and an Attorney General involved in the litigation in which the record is  
63 filed;
- 64 (5)(G) a governmental entity charged with custody, guardianship, protective supervision,  
65 probation or parole of the subject of the record including juvenile probation,  
66 Division of Child and Family Services and Juvenile Justice Services;
- 67 (5)(H) the Department of Human Services, school districts and vendors with whom they  
68 or the courts contract (who shall not permit further access to the record), but only  
69 for court business;
- 70 (5)(I) court personnel, but only to achieve the purpose for which the record was  
71 submitted;
- 72 (5)(J) a governmental entity with which the record is shared under Rule 4-202.10;
- 73 (5)(K) the person who submitted the record;
- 74 (5)(L) public or private individuals or agencies providing services to the subject of the  
75 record or to the subject's family, including services provided pursuant to a

- 76 nonjudicial adjustment, if a probation officer determines that access is necessary  
77 to provide effective services; and  
78 (5)(M) anyone by court order.
- 79 (5)(N) Juvenile court competency evaluations, psychological evaluations, psychiatric  
80 evaluations, psychosexual evaluations, sex behavior risk assessments, and other  
81 sensitive mental health and medical records may be accessed only by:  
82 (5)(N)(i) the subject of the record, if age 18 or over;  
83 (5)(N)(ii) an attorney or person with power of attorney for the subject of the  
84 record;  
85 (5)(N)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney,  
86 a Guardian ad Litem, and an Attorney General involved in the  
87 litigation in which the record is filed;  
88 (5)(N)(iv) a governmental entity charged with custody, guardianship, protective  
89 supervision, probation or parole of the subject of the record including  
90 juvenile probation, Division of Child and Family Services and Juvenile  
91 Justice Services;  
92 (5)(N)(v) court personnel, but only to achieve the purpose for which the record  
93 was submitted;  
94 (5)(N)(vi) anyone by court order.
- 95 (5)(O) When records may be accessed only by court order, a juvenile court judge will  
96 permit access consistent with Rule 4-202.04 as required by due process of law in  
97 a manner that serves the best interest of the child.
- 98 (6) **Juvenile Court Legal Records.** The following may access a juvenile court legal record:  
99 (6)(A) all who may access the juvenile court social record;  
100 (6)(B) a law enforcement agency;  
101 (6)(C) a children's justice center;  
102 (6)(D) public or private individuals or agencies providing services to the subject of the  
103 record or to the subject's family;  
104 (6)(E) the victim of a delinquent act may access the disposition order entered against  
105 the minor; ~~and~~  
106 (6)(F) the parent or guardian of the victim of a delinquent act may access the disposition  
107 order entered against the minor if the victim is an unemancipated minor or under  
108 legal incapacity-; ~~and~~  
109 (6)(G) with written consent from the minor, a representative from any of the U.S. Armed  
110 Forces may receive a copy of a minor's offense history.
- 111 (7) **Safeguarded Court Records.** The following may access a safeguarded record:  
112 (7)(A) the subject of the record;  
113 (7)(B) the person who submitted the record;



- 114 (7)(C) the attorney or licensed paralegal practitioner for a person who may access the  
115 record or an individual who has a written power of attorney from the person or  
116 the person's attorney or licensed paralegal practitioner;
- 117 (7)(D) an individual with a release from a person who may access the record signed  
118 and notarized no more than 90 days before the date the request is made;
- 119 (7)(E) anyone by court order;
- 120 (7)(F) court personnel, but only to achieve the purpose for which the record was  
121 submitted;
- 122 (7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;
- 123 (7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and
- 124 (7)(I) a person given access to the record in order for juvenile probation to fulfill a  
125 probation responsibility.
- 126 (8) Court personnel shall permit access to court records only by authorized persons. The  
127 court may order anyone who accesses a non-public record not to permit further access,  
128 the violation of which may be contempt of court.
- 129 (9) If a court or court employee in an official capacity is a party in a case, the records of the  
130 party and the party's attorney are subject to the rules of discovery and evidence to the  
131 same extent as any other party.

132 *Effective November 1, 2019*

# TAB 3

## Rules back from public comment

**NOTES:** The following rules were approved by the Judicial Council on an expedited basis in May and subsequently went out for public comment. No comments were received.

- 1-205. Standing and Ad Hoc Committees
- 4-302. Uniform recommended fine/bail schedule
- 4-701. Failure to appear
- 4-704. Authority of court clerks
- 6-301. Authority of court commissioners as magistrate
- App. B. Justice Court Standards
- App. F. Utah State Courts Records Retention Schedule

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

**Intent:**

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

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

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

**Applicability:**

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

**Statement of the Rule:**

**(1) Standing Committees.**

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

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

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

(1)(B)(i) The Technology Committee shall consist of:

- (1)(B)(i)(a) one judge from each court of record;
- (1)(B)(i)(b) one justice court judge;

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

66 (1)(B)(v) The Court Facility Planning Committee shall consist of:

67 (1)(B)(v)(a) one judge from each level of trial court;

68 (1)(B)(v)(b) one appellate court judge;

69 (1)(B)(v)(c) the state court administrator;

70 (1)(B)(v)(d) a trial court executive;

71 (1)(B)(v)(e) two business people with experience in the construction or  
72 financing of facilities; and

73 (1)(B)(v)(f) the court security director.

74 (1)(B)(vi) The Committee on Children and Family Law shall consist of:

75 (1)(B)(vi)(a) one Senator appointed by the President of the Senate;

76 (1)(B)(vi)(b) the Director of the Department of Human Services or designee;

77 (1)(B)(vi)(c) one attorney of the Executive Committee of the Family Law  
78 Section of the Utah State Bar;

79 (1)(B)(vi)(d) one attorney with experience in abuse, neglect and dependency  
80 cases;

81 (1)(B)(vi)(e) one attorney with experience representing parents in abuse,  
82 neglect and dependency cases;

83 (1)(B)(vi)(f) one representative of a child advocacy organization;

84 (1)(B)(vi)(g) the ADR Program Director or designee;

85 (1)(B)(vi)(h) one professional in the area of child development;

86 (1)(B)(vi)(i) one mental health professional;

87 (1)(B)(vi)(j) one representative of the community;

88 (1)(B)(vi)(k) the Director of the Office of Guardian ad Litem or designee;

89 (1)(B)(vi)(l) one court commissioner;

90 (1)(B)(vi)(m) two district court judges; and

91 (1)(B)(vi)(n) two juvenile court judges.

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

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

97 (1)(B)(vii)(a) one appellate court judge;

98 (1)(B)(vii)(b) one district court judge;

99 (1)(B)(vii)(c) one juvenile court judge;

- (1)(B)(vii)(d) one justice court judge; one state level administrator;
- (1)(B)(vii)(e) a state level judicial education representative;
- (1)(B)(vii)(f) one court executive;
- (1)(B)(vii)(g) one Utah State Bar representative;
- (1)(B)(vii)(h) one communication representative;
- (1)(B)(vii)(i) one law library representative;
- (1)(B)(vii)(j) one civic community representative; and
- (1)(B)(vii)(k) one state education representative.

(1)(B)(vii)(l) Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.

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

- (1)(B)(viii)(a) two district court judges;
- (1)(B)(viii)(b) one juvenile court judge;
- (1)(B)(viii)(c) two justice court judges;
- (1)(B)(viii)(d) three clerks of court – one from an appellate court, one from an urban district and one from a rural district;
- (1)(B)(viii)(e) one representative from the Self-Help Center;
- (1)(B)(viii)(f) one representative from the Utah State Bar;
- (1)(B)(viii)(g) two representatives from legal service organizations that serve low-income clients;
- (1)(B)(viii)(h) one private attorney experienced in providing services to self-represented parties;
- (1)(B)(viii)(i) two law school representatives;
- (1)(B)(viii)(j) the state law librarian; and
- (1)(B)(viii)(k) two community representatives.

(1)(B)(ix) The Language Access Committee shall consist of:

- (1)(B)(ix)(a) one district court judge;
- (1)(B)(ix)(b) one juvenile court judge;
- (1)(B)(ix)(c) one justice court judge;
- (1)(B)(ix)(d) one trial court executive;
- (1)(B)(ix)(e) one court clerk;
- (1)(B)(ix)(f) one interpreter coordinator;
- (1)(B)(ix)(g) one probation officer;

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

- (1)(B)(xiii)(k) one commercial surety agent;
- (1)(B)(xiii)(l) one state senator;
- (1)(B)(xiii)(m) one state representative;
- (1)(B)(xiii)(n) the Director of the Indigent Defense Commission or designee;
- and
- (1)(B)(xiii)(o) the court's general counsel or designee.

(1)(B)(xiv) The Committee on Court Forms shall consist of:

- (1)(B)(xiv)(a) one district court judge;
- (1)(B)(xiv)(b) one court commissioner;
- (1)(B)(xiv)(c) one juvenile court judge;
- (1)(B)(xiv)(d) one justice court judge;
- (1)(B)(xiv)(e) one court clerk;
- (1)(B)(xiv)(f) one appellate court staff attorney;
- (1)(B)(xiv)(g) one representative from the Self-Help Center;
- (1)(B)(xiv)(h) the State Law Librarian;
- (1)(B)(xiv)(i) the Court Services Director;
- (1)(B)(xiv)(j) one representative from a legal service organization that serves low-income clients;
- (1)(B)(xiv)(k) one paralegal;
- (1)(B)(xiv)(l) one educator from a paralegal program or law school;
- (1)(B)(xiv)(m) one person skilled in linguistics or communication; and
- (1)(B)(xiv)(n) one representative from the Utah State Bar.

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

(1)(D) **Committee performance review.** At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the



Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

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

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

(3) **General provisions.**

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

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

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

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

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

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

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

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

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

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

250 *Effective May 1, 2020*

**Rule 4-302. ~~Uniform~~ Recommended ~~fine/bail~~ Uniform Fine Schedule.**

**Intent:**

To provide a guideline for courts in setting ~~bail-fines~~ in felony and misdemeanor cases in order to promote uniformity and consistency in setting ~~bail-fines~~ for similar offenses in all courts.

To assist the sentencing judge in determining the appropriate fine to be imposed as a condition of the sentence in a particular case, and to minimize disparity in sentencing for similar offenses and offenders.

**Applicability:**

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

**Statement of the Rule:**

(1) The Uniform Fine/~~Bail~~ Schedule Committee shall establish a uniform fine/~~bail~~ schedule setting forth recommended fine ~~and bail~~ amounts for all criminal and traffic offenses, pursuant to the Utah Code. The fine/~~bail~~ schedule shall be reviewed and approved by the Council. For automated courts, the committee shall oversee and monitor input to the computerized fine/~~bail~~ schedule to ensure that the fine/~~bail~~ amounts are consistent with the uniform fine/~~bail~~ schedule approved by the Council.

(2) The recommended fine for each offense shall be proportional to the seriousness of the offense and the offender's criminal history, and shall be consistent with the Utah Sentencing Guidelines developed by the Utah Commission on Criminal and Juvenile Justice.

(3) The uniform recommended fine schedule shall consist of a felony schedule ~~and~~, a misdemeanor schedule ~~and a youth offender schedule~~.

(4) The uniform recommended fine schedule shall include criteria for aggravating and mitigating circumstances, and shall not limit the authority of the court to impose a sentence deemed just in the discretion of the judge.

(5) Presentence investigation reports ~~prepared by the Department of Corrections in felony cases and the Juvenile Court Probation Department in juvenile cases~~ shall include a recommended disposition for each case based upon the individual's circumstances. The reports shall include a recommended fine based upon the schedule or a recommendation that no fine be imposed, and a recommendation of incarceration, probation or other alternative. In Class B misdemeanor cases, the presentence investigation report shall include such a recommended disposition for each case if specifically requested by the referring judge.

(6) The approved uniform fine/~~bail~~ schedule shall be published as an appendix to this Code and distributed to appropriate state and local law enforcement agencies.

(7) The committee shall meet at least once annually to review the uniform fine/~~bail~~ schedule and recommend adjustments in the schedule as necessary.

(8) Notice of the committee's meetings shall be provided to interested agencies, as designated by the committee, to provide such agencies an opportunity to appear before the committee and present proposals for changes to the uniform fine/~~bail~~ schedule.

(9) When imposing fines ~~and setting bail~~, courts should conform to the uniform fine/~~bail~~ schedule except in cases where aggravating or mitigating circumstances warrant a deviation from the schedule.

*Effective May 18, 2020*

**Rule 4-701. Failure to Appear.**

**Intent:**

To establish a procedure for handling cases in which the defendant fails to appear and fails to ~~forfeit bail~~remit a fine.

**Applicability:**

This rule shall apply to cases in which the defendant's appearance is not required.

**Statement of the Rule:**

(1) When a case is filed, the clerk may mail to the defendant a notice indicating the ~~bail~~fine amount. If the defendant fails to appear or ~~forfeit the bail~~remit the fine amount within fourteen days after receiving a citation, the clerk may increase the ~~bail~~fine amount by \$50 and mail the defendant a delinquency notice.

(2) If the defendant fails to appear or ~~forfeit the bail~~remit the fine amount within forty days after receiving a citation, the court may increase the ~~bail~~fine amount by \$75 and issue a warrant for failure to appear.

(3) If the defendant is a juvenile, the court may issue a bench warrant or order to take the defendant into custody. If a bench warrant is issued, a special designation or "flag" shall be placed on the warrant indicating that the defendant is a juvenile.

(4) If a minor fails to appear in juvenile court on a charge which would constitute an infraction if committed by an adult:

(4)(A) The court shall not issue an Order for Detention.

(4)(B) The court may authorize the probation department to file an order to show cause.

Effective ~~November 1, 2018~~May 18, 2020

**Rule 4-704. Authority of court clerks.**

**Intent:**

To establish the authority of court clerks to extend the time for payment of ~~bail~~fines, to dismiss citations issued for certain offenses, and to accept plea in abeyance agreements in certain limited circumstances.

**Applicability:**

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

**Statement of the Rule:**

(1) Unless otherwise ordered by the judge, the clerk of the court, for reasonable cause, is authorized to allow a defendant an extension of time to ~~post bail~~pay fines.

(2) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations as provided in the Appendix C, Uniform Fine/~~Bail~~ Schedule.

**(3) Plea in abeyance agreements.**

(3)(A) A judge—or if there is a presiding judge, the presiding judge—may direct the clerk of court to accept a plea in abeyance agreement in traffic offenses that are listed in Appendix C, Uniform Fine/~~Bail~~ Schedule as not requiring an appearance by the defendant. The clerk of court shall follow the procedures of Title 77, Chapter 2a, Pleas in Abeyance, including:

(3)(A)(i) the offer by the prosecutor for a plea in abeyance, including the conditions established under paragraph (3)(B), may be on a case-by-case basis or by a written standing offer;

(3)(A)(ii) the defendant's waiver of rights and acceptance of that offer shall always be in a writing signed by the defendant; and

(3)(A)(iii) the plea in abeyance order shall always be in a writing signed by the judge.

(3)(A)(iv) The writings required by the previous subsections may be included in the same document or record.

(3)(B) The conditions of a plea in abeyance authorized by this rule may include only payment of a plea in abeyance fee of no more than \$25.00 above the recommended ~~bail~~fine in the Uniform Fine/~~Bail~~ Schedule, a period of good behavior not to exceed one year, and, if the offense is a moving violation of Title 41, Chapter 6a, Traffic Code, successfully completing traffic school.

45 | (3)(C) If the defendant does not ~~forfeit bail~~remit a fine as established by the court, or  
46 | enter a plea in abeyance, the clerk of the court shall process the case for trial.

47 |  
48 | (3)(D)The defendant may file a written motion to withdraw a plea in abeyance within 30  
49 | days after entry of the plea. If the defendant timely moves to withdraw a plea, the clerk of  
50 | the court shall set the matter before the judge.

51 |  
52 | *Effective May 18, 2020*

**Rule 6-301. Authority of court commissioner as magistrate.**

**Intent:**

To provide for the authority of a court commissioner to act as a magistrate as required by § 77-1-3.

**Applicability:**

This rule shall apply to court commissioners.

**Statement of the Rule:**

A court commissioner may exercise the following authority conferred upon magistrates by the Legislature:

(1) issue warrants and summonses in traffic cases; and

(2) set bail-fines in traffic cases.

*Effective May 18, 2020*



## **Appendix B. Justice Court Standards For Recertification**

### **Instructions to applicant for recertification**

As part of the application process, each entity should carefully review all requirements for the operation of Justice Courts. In order to aid governing bodies in obtaining the necessary information regarding the continuing obligations of an entity with respect to the operations of the Court, the governing body of each entity must request a written opinion from its attorney advising the entity of all requirements for the operation of a Justice Court, and the feasibility of maintaining a Justice Court. In addition, prior to submission of this application, each entity must duly pass a resolution requesting recertification. The resolution must also affirm that the entity is willing to meet all requirements for the operation of the Court during the period of certification. A copy of the attorney's opinion and the resolution must accompany the application.

A representative of the entity may appear before the Committee to present the application and may present any additional information which the applicant desires to present to the Committee. In the event that additional information is deemed necessary, the Committee may request such additional information from the applicant. Certification will certify the court to process all cases which come within the jurisdiction of the court including criminal, civil and small claims cases pursuant to Section 78A-7-106.

**(1) Statutory Requirements.** Statutes of the State of Utah require that certain standards be met in the operation of a Justice Court. These statutory requirements include:

(1)(A) All official court business shall be conducted in a courtroom or an office located in a public facility which is conducive and appropriate to the administration of justice (Section 78A-7-213).

(1)(B) Each court shall be opened and judicial business shall be transacted every day as provided by law (Section 78A-7-213), although the judge is not required to be present during all hours that the court is open.

(1)(C) The hours that the court will be open shall be posted conspicuously at the court and in local public buildings (Section 78A-7-213).

(1)(D) The judge and the clerk of the court shall attend the court at regularly scheduled times (Section 78A-7-213).

(1)(E) The entity creating the Justice Court shall provide and compensate a judge and clerical personnel to conduct the business of the court (Section 78A-7-206 and Section 78A-7-211).

(1)(F) The entity creating a Justice Court shall assume the expenses of travel, meals, and lodging for the judge of that court to attend required judicial education and training (Section 78A-7-205).

(1)(G) The entity creating a Justice Court shall assume the cost of travel and training expenses of clerical personnel at training sessions conducted by the Judicial Council (Section 78A-7-211).

(1)(H) The entity creating the Justice Court shall provide a sufficient staff of public prosecutors to attend the court and perform the duties of prosecution (Section 78A-7-209).

(1)(I) The entity creating the court shall provide adequate funding for attorneys where persons are indigent as provided by law (Section 78A-7-209).

(1)(J) The entity creating the court shall provide sufficient local law enforcement officers to attend court when required and provide security for the court (Section 78A-7-209).

(1)(11) Witnesses and jury fees as required by law shall be paid by the entity which creates the Court.

(1)(K) Any fine, surcharge, or assessment which is payable to the State shall be forwarded to the State as required by law ( Section 78A-7-121 and Section 78A-7-119).

(1)(L) Every entity creating a court shall pay the judge of that court a fixed compensation (Section 78A-7-206).

(1)(M) Court shall be held within the jurisdiction of the court, except as provided by law (Section 78A-7-212).

(1)(N) The entity creating the court shall provide and keep current for the court a copy of the Motor Vehicle Laws of the State of Utah, appropriate copies of the Utah Code, the Justice Court Manual, state laws affecting local governments, local ordinances, and other necessary legal reference material ( Section 78A-7-214).

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

(1)(P) An audio recording system shall maintain the verbatim record of all court proceedings. Section 78A-7-103.

(1)(P)(i) For Class I and Class II justice courts, the system must:

(1)(P)(i)(a) be a stand-alone unit that records and audibly plays back the recording;

(1)(P)(i)(b) index, back-up and archive the recording and enable the record to be retrieved.

(1)(P)(i)(c) have at least four recording channels;

(1)(P)(i)(d) have a one-step "on" and "off" recording function;

(1)(P)(i)(e) have conference monitoring of recorded audio;

(1)(P)(i)(f) have external record archiving from the unit with local access;

(1)(P)(i)(g) be capable of being integrated with the courts public address system; and

(1)(P)(ii) For Class III and Class IV justice courts, the system must, at a minimum:

(1)(P)(ii)(a) be a stand-alone unit that records and audibly plays back the recording;

(1)(P)(ii)(b) index, back-up and archive the recording and enable the record to be retrieved; and

(1)(P)(ii)(c) have at least two recording channels.

(1)(P)(iii) The Board of Justice Court Judges may create a list of products that meet these criteria.

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

(2)(A) That the Court be opened for at least one hour each day that the court is required to be open as provided by law (Section 78A-7-213).

(2)(B) That the judge be available to attend court and conduct court business as needed.

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

(2)(D) A judicial robe, a gavel, current ~~bail~~-fine schedules, a copy of the Code of Judicial Administration, and necessary forms and supplies.

(2)(E) Office space for the judge and clerk (under certain circumstances this space may be shared, but if shared, the judge and clerk must have priority to use the space whenever needed). The office space shall include a desk for the judge and a desk for the clerk, secure filing cabinets for the judge and the clerk, a telephone for the judge and a telephone for the clerk, appropriate office supplies to conduct court business, a cash register or secured cash box, a typewriter or word processor, and access to a copy machine.

(2)(F) A clerk must be present during the time the court is open each day and during court sessions, as required by the judge.

(2)(G) The entity must have at least one peace officer (which may be contracted).

(2)(H) A court security plan must be submitted consistent with C.J.A. Rule 3-414.

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

(2)(J) Each court shall report required case disposition information to DLD, BCI and the Administrative Office of the Courts electronically, as described in number 9 above.

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

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

**(3)(B) Class III Courts.** Courts which have an average of more than 60 but less than 201 cases filed each month are classified as Class III Courts. In addition to the base requirements, a Class III Court must be open more hours each week (see attached

Class III minimum requirements), and court must be scheduled at least every other week.

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

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

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

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

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

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

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

If you have any questions concerning this application, please contact James Peters, counsel to the Justice Court Standards Committee, at P. O. Box 140241, Salt Lake City, Utah 84114-0241, telephone: (801)578-3824.

*Effective May 18, 2020*

**Appendix F. Utah State Court Records Retention Schedule**

**(A) Definitions.**

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

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

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

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

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

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

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

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

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

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

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

(A)(6)(a) **Civil.** Final amended complaint or petition; final amended answer or response; final amended counterclaims, cross claims, and third party claims and defenses; home study or custody evaluation; jury verdict; final written opinion of the court, including any findings of fact and conclusions of law; final trial court order, judgment or decree; interlocutory order only if reviewed by an appellate court; orders supplemental to the judgment and writs that have not expired; notice of appeal; transcripts; appellate briefs; final order, judgment or decree or any appellate court; case history.

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

providers; motion for permanency hearing; response to motion for permanency hearing; petition for termination of parental rights; and response to petition for termination of parental rights.

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

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

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

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

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

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

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

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

## **(B) Case Records.**

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



schedule is to guide the transfer of permanent records to off-site storage and the destruction on non-permanent records.

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

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

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

(B)(3) **Storage location.** The Administrative Office of the Courts shall maintain all computer records. The clerk of the court shall store on site pending cases, closed cases with significant post judgment activity, and cases with a retention period of less than permanent.

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

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

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

(B)(5)(a) **Permanent.** All case types not governed by a more specific designation; prosecution as a serious youth offender.

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

(B)(5)(c) **5 years.** Administrative agency review; civil and small claims cases dismissed with prejudice; forcible entry and detainer; investigative subpoenas; post conviction relief or habeas corpus other than capital offenses and life without parole; tax liens; temporary separation; worker's compensation; probable cause statements and search and arrest warrants not associated with a case.

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

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

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

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

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

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

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

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

(B)(6)(e) **3 years.** Violations of Utah Code Section 53-3-231.

(B)(6)(f) **1 year.** Petitions to expunge an arrest record in which no charges have been filed.

(B)(6)(g) **6 months.** Non-judicial adjustment of referrals; misdemeanors and infractions classified as “non-mandatory appearance” by the Uniform Fine ~~and Bail~~ Schedule, such as fish and game violations; cases dismissed without prejudice.

(B)(7) **Retention period in Supreme Court and Court of Appeals.** The retention period for records in the Supreme Court and Court of Appeals is permanent.

(B)(8) **Special cases.**

(B)(8)(a) The retention period for foreign judgments, abstracts of judgment and transcripts of judgment is the same as for a case of the same type filed originally in Utah.

(B)(8)(b) The retention period for contempt of court is the same as for the underlying case in which the contempt occurred.

(B)(8)(c) The retention period in the juvenile court for records of the prosecution of adults is the same as for the corresponding offense in district or justice court.

(B)(9) **Case related records.** If the record is filed with the case file, it is treated as a non-critical document unless it is specifically included within the definition of a critical document. If the record is not filed with the case file then its retention period is determined in accordance with the following schedule:

(B)(9)(a) **Audio and video tapes and tape logs; court reporter notes.** For misdemeanors, infractions and small claims, 3 years from the date the record is created. Otherwise, 9 years from the date the record is created. Tapes shall not be reused.

(B)(9)(b) **Court calendars.** As determined by the clerk of the court based on local needs.

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

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

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

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

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

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

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

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

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

### **(C) Administrative Records.**

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

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

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

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

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

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

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

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

**(D) Email retention.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Effective: May 18, 2020*

# TAB 4

## Public Comment Period Extended

**NOTES:** The public comment period for the following rules expired on July 25th. During that time, JPEC sent a letter to Chief Justice Durrant (attached) expressing concerns with the proposed amendments to CJA 3-101. Ms. Sylvester will be seeking feedback from the boards of judges regarding JPEC's concerns and will bring the issue back to P&P in September.

- 3-101. Judicial Performance Standards
- 3-104. Presiding Judges
- 3-111. Performance Evaluation of Senior Judges and Court Commissioners



Gary R. Herbert  
Governor

Spencer J. Cox  
Lieutenant Governor

# State of Utah

## Judicial Performance Evaluation Commission

Jennifer MJ Yim  
*Executive Director*

Utah State Capitol Complex, Senate Building, Suite 330 • Salt Lake City, Utah 84114  
801-538-1652 • Fax: 801-538-1024 • [www.judges.utah.gov](http://www.judges.utah.gov)

July 10, 2020

**VIA EMAIL (MDURRANT@UTCOURTS.GOV)**

Chief Justice Matthew B. Durrant  
Utah Supreme Court

Dear Chief Justice Durrant:

I am writing this letter at the request of the Executive Committee of the Judicial Performance Evaluation Commission ("JPEC") with respect to the judiciary's proposed amendments to CJA03-101. Please consider this letter an initial inquiry about the rule amendment. This letter seeks to rule out potential misunderstanding before the Commission decides whether to file a public comment during the rule-making comment period, which ends July 25, 2020.

JPEC's communications with the Judicial Council had led it to believe that the concern surrounding the case under advisement standard was satisfactorily addressed by the implementation of an AOC tracking system to alert judges to cases that may be approaching the rule-established time limits. JPEC has heard nothing from the Utah State Courts to suggest otherwise. As no judges eligible for retention in November 2020 apparently failed to meet certification standards, JPEC assumed the tracking system was a helpful addition. Given these events, JPEC did not discern any dissatisfaction with the process.

The issue was triggered initially by the failure of the case under advisement standard by two judges in 2017. In both instances, the Commission overcame the presumption for an unfavorable recommendation because of the circumstances that resulted in the certification failures. Both judges went on to stand for the 2018 retention election and were retained at similar percentages as most other judges. Indeed, in the history of JPEC, the Commission has always chosen to overcome the relevant presumption when a judge has failed this standard.

Based on the history, JPEC suggests there is no evidence of a need for subsection 6 and recommends that the Judicial Council remove it from the amendments suggested to CJA03-101.

In the process of preparing this letter, JPEC reviewed the self-declaration forms for Judicial Council certification relevant to CJA03-101, both the current versions of the form, received from the AOC, and copies of the completed 2013 forms, contained in its historical records. Except for the standard of mental and physical competence, neither the forms nor the current rule articulates a process for consideration by the Council of issues beyond self-declaration.



Subsection 6 appears to carve out discretion for the Judicial Council to override the self-reporting of the judge when that reporting indicates the judge has failed a standard. The Executive Committee is concerned about the optics of this change and believes it is not in the public interest.

Should the Council not remove subsection 6, JPEC would encourage it to consider altering the subsection to read in a neutral manner. Written neutrally, subsection 6 would state that the Council has discretion to overturn a self-reported passage or failure, if additional data or circumstances exist. Further, the rule could be modified to clearly articulate the Council's meaning of "good cause" and "beyond the judge's or justice's personal control." Alternatively, the Council might consider using the standard of "complete and correct," established in subsection 5, to govern all three certification standards.

The Council's move to add subsection 6 prompts JPEC to request information about whether there are any judges eligible for retention in 2020 where the Judicial Council's certification results differed from the judge's self-reporting. If so, the Commission requests to know to which judges the Judicial Council applied the discretion, including the relevant certification standards and the reasoning behind the decisions.

On behalf of JPEC's Executive Committee, I look forward to hearing your thoughts about JPEC's understanding of the proposed changes to CJA3-101.

Sincere regards,

A handwritten signature in black ink, appearing to read 'JYim', with a long horizontal flourish extending to the right.

Jennifer Yim  
Executive Director

cc: Judge Mary Noonan, State Court Administrator  
Brent Johnson, General Counsel

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

**Intent**

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

**Applicability**

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

**Statement of the Rule**

**(1) Certification of performance standards.**

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

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

~~(42)~~ **Case under advisement standard.** A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. For purposes of this rule, "submitted to the judge" or "submission" is the last of the following:

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

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

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

**(3) Satisfactory Performance by a justice or judge.**

~~(23)~~ (A) Supreme Court justice. A justice of the Supreme Court demonstrates satisfactory performance by circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.

~~(23)~~ (B) Court of Appeals judge. A judge of the Court of Appeals demonstrates satisfactory performance by:

~~(23)~~ (B)(i) circulating not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

~~(23)~~ (B)(ii) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

~~(23)~~ (C) Trial court judge. A trial court judge demonstrates satisfactory performance by holding:

~~(23)~~ (C)(i) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

~~(23)~~ (C)(ii) no case under advisement more than six months after submission.

(3)(C)(iii) A case is no longer under advisement when the trial court judge makes a decision on the issue that is under advisement or on the entire case.

~~(34)~~ **Education standard.** Satisfactory performance is established if the judge annually obtains 30 hours of judicial education subject to the availability of in-state education programs.

~~(45)~~ **Physical and mental competence.** Satisfactory performance is established if the response of the judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(6) **Judicial Council discretion.** The Judicial Council has discretion to find that a judge or justice is otherwise compliant with judicial performance standards when the judge or justice has failed to comply with paragraphs (2) or (3) for reasons beyond the judge's or justice's personal control, or for other good cause as determined by the Judicial Council. The Judicial Council shall make a public record of its findings.

*Effective May/November 1, 2020*

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

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

**Applicability:**

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

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

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

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

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A).

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge or by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 (3)(C)(iii) If more than 14 judicial days of coverage will be required, the presiding judge will  
82 promptly present to the State Court Administrator a plan for meeting the needs of the court for  
83 the anticipated duration of the vacancy or absence and a budget to implement that plan. The  
84 plan should describe the calendars to be covered by judges of the district, judges of other  
85 districts, and senior judges. The budget should estimate the funds needed for travel by judges  
86 and for time and travel by senior judges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

126 (3)(G)(v) Pursuant to Council policy and the direction of the state level administrator, the  
127 court executive has the responsibility for the day-to-day supervision of the non-judicial support  
128 staff and the non-judicial administration of the court. The presiding judge, in consultation with  
129 the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the  
130 support staff and the general administration of the court including budget, facility planning, long-

range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

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

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

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

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

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

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

(3)(K) **Judicial officers.** In the event that another judge or commissioner of the court fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment or violates the Code of Judicial Conduct, the presiding judge may:

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

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

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

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

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

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

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

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

(3)(L)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. For purposes of this rule, "submitted to the judge" is defined as follows:

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

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

(3)(L)(i)(c) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is

placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

A case is no longer under advisement when the judge makes a decision on the issue that is under advisement or on the entire case.

The final determination occurs when the judge resolves the pending issue by announcing the decision on the record or by issuing a written decision, regardless of whether the parties are required to subsequently submit for the judge's signature a final order memorializing the decision.

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

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

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

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

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

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

*Effective May/November 1, 2020*



**Rule 3-111. Performance evaluation of active senior judges and court commissioners.****Intent:**

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

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

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

**Applicability:**

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

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

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

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

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

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

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

(2)(A) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;

(2)(B) attentiveness to factual and legal issues before the court;

(2)(C) adherence to precedent and ability to clearly explain departures from precedent;

(2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's rulings, including the effect of delay and increased litigation expense;

(2)(E) ability to write clear judicial opinions;

(2)(F) ability to clearly explain the legal basis for judicial opinions;

(2)(G) demonstration of courtesy toward attorneys, court staff, and others in the commissioner's or senior judge's court;

(2)(H) maintenance of decorum in the courtroom;

44 (2)(I) demonstration of judicial demeanor and personal attributes that promote public trust  
 45 and confidence in the judicial system;

46 (2)(J) preparation for hearings or oral argument;

47 (2)(K) avoidance of impropriety or the appearance of impropriety;

48 (2)(L) display of fairness and impartiality toward all parties;

49 (2)(M) ability to clearly communicate, including the ability to explain the basis for written  
 50 rulings, court procedures, and decisions;

51 (2)(N) management of workload;

52 (2)(O) willingness to share proportionally the workload within the court or district, or regularly  
 53 accepting assignments;

54 (2)(P) issuance of opinions and orders without unnecessary delay; and

55 (2)(Q) ability and willingness to use the court's case management systems in all cases.

56 **(3) Standards of performance.**

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

58 (3)(A)(i) The Council shall measure satisfactory performance by a sample survey of the  
 59 attorneys appearing before the active senior judge or court commissioner during the period  
 60 for which the active senior judge or court commissioner is being evaluated. The Council  
 61 shall measure satisfactory performance based on the results of the final survey conducted  
 62 during a court commissioner's term of office, subject to the discretion of a court  
 63 commissioner serving an abbreviated initial term not to participate in a second survey under  
 64 Section (3)(A)(vi) of this rule.

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

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

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

74 (3)(A)(ii)(c) A court commissioner's performance is satisfactory if:

75 (3)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

76 (3)(A)(ii)(c)(2) the favorable responses when divided by the total number of all  
 77 responses, excluding "No Personal Knowledge" responses, is 70% or greater.

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

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

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

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

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

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

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

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

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

(3)(B)(i) **Surveys of presiding judges and court staff regarding non-appellate senior judges.** The Council shall measure performance of active senior judges by a survey of all presiding judges and trial court executives, or in the justice courts, the Justice Court Administrator, of districts in which the senior judge has been assigned. The presiding judge and trial court executive will gather information for the survey from anonymous questionnaires completed by court staff on the calendars to which the senior judge is assigned and by jurors on jury trials to which the senior judge is assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

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

(3)(C) **Case under advisement standard.**

(3)(C)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the senior judge or court commissioner for final determination. For purposes of this rule, “submitted to the senior judge or court commissioner” or “submission” is defined as follows:

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

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

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

A case is no longer under advisement when the senior judge or court commissioner makes a decision on the issue that is under advisement or on the entire case.

(3)(C)(ii) The Council shall measure satisfactory performance by the self-declaration of the senior judge or court commissioner or by reviewing the records of the court.

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

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

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

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

(3)(C)(iv)(a) circulating no more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

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

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

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

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

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

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

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

**(4) Judicial Council certification process**

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

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

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

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

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

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

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

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

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

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

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

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

except as otherwise provided in paragraph (4)(E); or

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

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

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

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

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

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

Effective May/November 1, 2020

# TAB 5

## Rules back from public comment - for final approval

**NOTES:** The public comment period for the following rules expired on July 25th. Five comments were received.

- 3-402. Human Resources Administration
  - 1 comment received
- 3-403. Judicial Branch Education
- 4-202.08. Fees for records, information, and services
- 4-106. Electronic Conferencing (Repeal)
- 4-411. Courthouse Attire (New)
  - 4 comments received
- 6-506. Procedure for contested matters filed in the probate court
- 9-101. Board of Justice Court Judges
- 9-109. Presiding Judges

**Kara Wells**

**May 1, 2020 at 8:42 am**

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In regard to CJA03-0402. Human Resources Administration:

79 (6) A grievance review panel is established within the grievance process to sit as a quasi

80 judicial body and review any action taken under the authority of the judiciary's human resources

81 (policies) procedures and which pertains to decisions regarding employee promotions, dismissals,

I am concerned with the removal of the language "employee promotions." Taking out this language suggests that an employee will have no venue for a grievance regarding promotions. Are the Courts really going to take away our right to challenge a promotion? This seems counterintuitive to the Courts mission for justice. Even when a grievance is not won, an employee is able to feel that their concerns were heard and the risk for retaliation is reduced. Taking out this language is a disservice to court employees of all levels.

**Michael Giboney**

**May 1, 2020 at 8:44 am**

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CJA04-0411. Insert "...health..." before "...safety..." in exceptions.

**John Murray**

**May 1, 2020 at 9:09 am**

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The rule states that no person having business in a court shall be denied access based on attire.

Exceptions found at rule 4-411(3)(a)(i,ii,ii) are limited to clothing that would be disruptive, prejudicial, or a safety concern.

A statement on <http://litigation.utahbar.org/> states the following:

"Lawyers are expected to dress appropriately. Men should wear a tie. Lawyers should advise clients and witnesses to also dress appropriately. No one in shorts or tank tops will be allowed in the courtroom."



(Statement)

It seems that the proposed rule 4-411 precludes any requirement that anyone wear a tie or a suit coat in court and that a comment should be added to specifically state that this is the case or a fourth exception should be added to paragraph 3 of the proposed rule. Further, without an explicit exception, it seems that 4-411 should explicitly state an exception or recognize that it supersedes any bar rules or courtroom rules requiring the wearing of a necktie or suit coat.

**Charles A. Stormont**

**May 1, 2020 at 9:43 am**

I want to applaud the Judicial Council for its proposed new rule CJA04-0411 regarding Courthouse Attire. This new rule makes clear that the courts are to be open to everyone, regardless of personal circumstances or means. Often parties to debt collection and landlord tenant proceedings (e.g., evictions) have lost everything, including access to their wardrobe. Others only have access to a wardrobe for their regular lives, which do not match expectations of some in society for what should be worn in a court proceeding, nor do they have the means to access resources to meet those unrealistic and arbitrary expectations. Although I do not work in the criminal field, I understand this is also a very serious challenge for many victims of domestic violence. Appearing in court costs them hours at work, which reduces their income and impacts their ability to meet basic needs. In my opinion, by appearing in court, they have shown the system tremendous respect because they have had to overcome obstacles to be there. Convincing a supervisor it is worth letting them have time off, arranging for alternative child care, finding transportation to the courthouse, and so on. These are all real obstacles for the parties to the most frequently filed cases in Utah. By overcoming those obstacles, these parties deserve their day in court, and their attire should not arbitrarily serve as an additional barrier. In my pro bono service, I have encountered clients with legitimate defenses who possess only the clothes on their back and the things in their pockets. This rule ensures they can have their day in court. So I applaud the proposed rule as a wonderful correction of the unjustified misconceptions of some about who deserves their day in court. Thank you for this proposed rule to promote increased access to justice.

**Randall N Skanchy**

**May 3, 2020 at 11:37 am**

Proposed new rule CJA04-0411

This issue was debated at the last District Court Judges

Annual meeting. I am surprised, based upon the pushback from judges from some jurisdictions, to see this as a proposed mandate upon each judge in the state . Each judicial district and each judge , has different opinions on this issue and it unfortunate that the Judiciary is mandating what an individual judge's view of what is or is not appropriate should be.

While I don't espouse turning people away, especially in eviction and debt collection calendars, we should continue to encourage people to show their best selves. Other calendars are less about what you can wear and more about the respect one might accord to a courtroom and the litigants in that room. It doesn't seem inappropriate to ask courtroom participants to look their best and be their best in a courtroom . The erosion of courtroom decorum might have some lesson to be learned from NYC's Broken Window Policy that visible signs of crime, anti-social behavior, dirty streets, and disorder create an environment that encourages further disorder Perhaps our policy makers might consider leaving courtroom decorum to individual judges and rather examine how to build respect for all stakeholders in the courtroom.

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

**Intent:**

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

**Applicability:**

This rule shall apply to all non-judicial officer ~~state~~ employees in the judicial branch.

**Statement of the Rule:**

(1) A department of human resources is established within the Administrative Office to guide ~~direct and coordinate~~ the human resources activities of the judiciary.

(2) The department of human resources shall provide the necessary human resources services to the judiciary in compliance with the state constitution, state statute, and this Code. The department of human resources shall provide ~~keep~~ all state employees in the judicial branch information regarding ~~informed of~~ benefits, compensation, retirement, and other human resources related matters.

(3) The human resources policies ~~and procedures~~ for non-judicial officer employees:

(3)(A) shall include classification of career service exempt (at-will) and non-exempt jobs, designation of FLSA exempt and non-exempt job positions, guidelines governing recruitment, selection, classification, compensation, working conditions, grievances and other areas deemed necessary; and

(3)(B) shall be based upon the following merit principles:

(3)(B)(i) the recruitment, selection and promotion of employees based upon relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment;

(3)(B)(ii) a salary schedule which provides for equitable and adequate compensation based upon current job market data gathered at least ~~studies conducted~~ every three years including ~~of the~~ salary levels of comparable positions in both the public and private sector, local labor market information and trends, other relevant data, and available funds;

(3)(B)(iii) employee retention on the basis of ~~adequate~~ performance that enhances and/or advances the mission of the judiciary—where appropriate, provision will be made for correcting ~~inadequate~~ performance and separating employees whose performance or

~~misconduct interferes with or fails to advance the mission of the judiciary; inadequate performance cannot be corrected;~~

(3)(B)(iv) fair treatment in all aspects of human resources administration without regard to sex, gender, age, ancestry, national origin, race, color, religious creed, mental or physical disability or medical condition, sexual orientation, gender identity or expression, marital status, military or veteran status, genetic information, or any other category protected by federal, state or applicable local law~~to race, color, religion, sex, national origin, age, creed, disability, political affiliation, sexual orientation, gender identity, or other non-merit factors and proper regard for employees' constitutional and statutory rights as citizens~~; and

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

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

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

(5)(A) There is established a ~~H~~human ~~R~~resources ~~P~~policy ~~and procedure~~ ~~R~~review ~~e~~Committee responsible for making and reviewing proposals for ~~repealing~~ human resources ~~policy amendments~~policies and procedures and promulgating new and amended human resources policies and procedures. The committee shall review human resource policies at least every three years. The committee shall consist of the following voting members, which, where indicated, must be selected by majority vote of the entire body of the specified group:

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

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

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

(5)(A)(iv) a chief probation officer from the juvenile court, selected by the chief probation officers; and

69 (5)(A)(v) a case manager, selected by the clerks of court.

70 (5)(B) The chair of the committee shall be designated by the state court  
71 administrator. Other members of the committee shall be appointed in a manner  
72 consistent with Rule 1-205. The department of human resources shall provide  
73 necessary support to the committee. Other non-voting members may be assigned  
74 by the Policy and Planning Committee, as necessary to assist the committee.

75 (5)(C) Pursuant to Rule 1-204, new and amended policies ~~and procedures~~, or  
76 repeals, recommended by the committee shall be reviewed by the Policy and  
77 Planning Committee prior to being submitted by the Policy and Planning Committee  
78 to the Judicial Council.

79 (6) A grievance review panel is established within the grievance process to sit as a quasi-  
80 judicial body and review any action taken under the authority of the judiciary's human resources  
81 ~~policies~~~~procedures~~ and which pertains to decisions regarding employee promotions, dismissals,  
82 demotions, suspensions, reductions in force, wages/salary if an employee is not placed within  
83 the salary range of the employee's current position, ~~salary~~, violations of human resources  
84 policies~~rules~~, and the equitable administration of insurance, retirement, or leave benefits,  
85 ~~reductions in force and disciplinary actions~~.

86 (7) An official human resources file for each employee shall be maintained in the  
87 Administrative Office and shall include the following records: ~~leave records, education records,~~  
88 biographical information, ~~performance plans and appraisals~~, records of official human resources  
89 action, standards of performance expectations, corrective actions, records of official disciplinary  
90 action and supporting documentation, ~~letters of commendation~~, job applications, and payroll and  
91 benefits information.

**Rule 3-403. Judicial branch education.****Intent:**

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

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

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

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

**Applicability:**

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

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

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

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

**(1)(C) Committee meetings.**

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

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

(2) **Administration.**

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

(3) **Standards for judges and court commissioners.**

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

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

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

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

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

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

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

(3)(B) ~~(A)~~ **Program components.** Education programs for judges and court commissioners shall include: a mandatory new judge orientation program; a variety of programs addressing substantive and procedural law topics, aimed at skill and knowledge acquisition; and programs geared to professional and personal development, to meet the continuing needs of judges and court commissioners over the long term.

(3) ~~(B)~~ ~~(C)~~ **Annual conferences.** Justice court judges and active senior justice court judges shall attend the annual justice court conference unless excused by the ~~Management Committee~~ Board of Justice Court Judges for good cause. Because the annual judicial conference represents the only opportunity for judges to meet and interact as a group and to elect their representatives, judges, active senior judges and

court commissioners of the courts of record are strongly encouraged to attend that conference.

**(4) Standards for court staff.**

**(4)(A) State employees.**

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

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

**(4)(B) Local government employees.**

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

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

**(5) Reporting.**

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

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

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

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

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



(7) **Funding.**

(7)(A) **Budget.** In preparing its annual request for legislative appropriations, the Council shall receive and consider recommendations from the Committee. The Committee's annual education plan shall be based upon the Council's actual budget allocation for judicial education.

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

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

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

**(8) Mentoring.**

(8)(A) Within seven business days after a new district or juvenile judge has been sworn in, the Presiding Judge shall appoint a mentor to the new judge.

(8)(B) Within fourteen business days after a new district or juvenile judge has been sworn in, the mentor and the new judge shall meet and review the Judicial Mentoring Guidelines and Best Practices Recommendations, complete the Mentors' Checklist contained therein and the mentor, within that same fourteen business day period, shall provide the completed Mentor's Checklist to the Judicial Education Officer.

*Effective November 1, 2020*

**~~Rule 4-106. Remote conferencing.~~**

**~~Intent:~~**

~~To authorize the use of conferencing from a different location in lieu of personal appearances in appropriate cases.~~

~~To establish the minimum requirements for remote appearance from a different location.~~

**~~Applicability:~~**

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

**~~Statement of the Rule:~~**

~~(1) If the requirements of paragraph (3) are satisfied, the judge may conduct the hearing remotely.~~

~~(2) If the requirements of paragraph (3) are met, the court may, for good cause, permit a witness, a party, or counsel to participate in a hearing remotely.~~

~~(3) The remote appearance must enable:~~

~~(3)(A) a party and the party's counsel to communicate confidentially;~~

~~(3)(B) documents, photos and other things that are delivered in the courtroom to be delivered previously or simultaneously to the remote participants;~~

~~(3)(C) interpretation for a person of limited English proficiency; and~~

~~(3)(D) a verbatim record of the hearing.~~

~~Effective May 1, 2016~~

**Rule 4-202.08. Fees for records, information, and services.**

**Intent:**

To establish uniform fees for requests for records, information, and services.

**Applicability:**

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts. This rule does not apply to the Self Help Center.

**Statement of the Rule:**

**(1) Fees payable.** Fees are payable to the court or office that provides the record, information, or service at the time the record, information, or service is provided. The initial and monthly subscription fee for public online services is due in advance. The connect-time fee is due upon receipt of an invoice. If a public online services account is more than 60 days overdue, the subscription may be terminated. If a subscription is terminated for nonpayment, the subscription will be reinstated only upon payment of past due amounts and a reconnect fee equal to the subscription fee.

**(2) Use of fees.** Fees received are credited to the court or office providing the record, information, or service in the account from which expenditures were made. Fees for public online services are credited to the Administrative Office of the Courts to improve data quality control, information services, and information technology.

**(3) Copies.** Copies are made of court records only. The term "copies" includes the original production. Fees for copies are based on the number of record sources to be copied or the means by which copies are delivered and are as follows:

(3)(A) paper except as provided in (H): \$.25 per sheet;

(3)(B) microfiche: \$1.00 per card;

(3)(C) audio tape: \$10.00 per tape;

(3)(D) video tape: \$15.00 per tape;

(3)(E) ~~floppy disk or compact disk~~ electronic storage medium other than of court hearings: \$1~~50~~.00 per ~~disk unit~~;

(3)(F) electronic copy of court reporter stenographic text: \$25.00 for each one-half day of testimony or part thereof;

(3)(G) electronic copy of audio record or video record of court proceeding: \$1~~50~~.00 for each one-half day of testimony or part thereof; and

(3)(H) pre-printed forms and associated information: an amount for each packet established by the state court administrator.

**(4)(A) Mailing.** The fee for mailing is the actual cost. The fee for mailing shall include necessary transmittal between courts or offices for which a public or private carrier is used.

**(4)(B) Fax or e-mail.** The fee to fax or e-mail a document is \$5.00 for 10 pages or less. The fee for additional pages is \$.50 per page. Records available on Xchange will not be faxed or e-mailed.

**(5) Personnel time.** Personnel time to copy the record of a court proceeding is included in the copy fee. For other matters, there is no fee for the first 15 minutes of personnel time. The fee for time beyond the first 15 minutes is charged in 15 minute increments for any part thereof. The fee for personnel time is charged at the following rates for the least expensive group capable of providing the record, information, or service:

- (5)(A) clerical assistant: \$15.00 per hour;
- (5)(B) technician: \$22.00 per hour;
- (5)(C) senior clerical: \$21.00 per hour
- (5)(D) programmer/analyst: \$32.00 per hour;
- (5)(E) manager: \$37.00 per hour; and
- (5)(F) consultant: actual cost as billed by the consultant.

**(6) Public online services.**

(6)(A) The fee to subscribe to public online services shall be as follows:

- (6)(A)(i) a set-up fee of \$25.00;
- (6)(A)(ii) a subscription fee of \$30.00 per month for any portion of a calendar month; and
- (6)(A)(iii) \$.10 for each search over 200 during a billing cycle. A search is counted each time the search button is clicked.

(6)(B) When non-subscription access becomes available, the fee to access public online services without subscribing shall be a transaction fee of \$5.00, which will allow up to 10 searches during a session.

(6)(C) The fee to access a document shall be \$.50 per document.

**(7) No interference.** Records, information, and services shall be provided at a time and in a manner that does not interfere with the regular business of the courts. The Administrative Office of the Courts may disconnect a user of public online services whose use interferes with computer performance or access by other users.

**(8) Waiver of fees.**

(8)(A) Fees established by this rule other than fees for public online services shall be waived for:

- (8)(A)(i) any government entity of Utah or its political subdivisions if the fee is minimal;
- (8)(A)(ii) any person who is the subject of the record and who is impecunious; and
- (8)(A)(iii) a student engaged in research for an academic purpose.

(8)(B) Fees for public online services shall be waived for:

- (8)(B)(i) up to 10,000 searches per year for a news organization that gathers information for the primary purpose of disseminating news to the public and that requests a record to obtain information for a story or report for publication or broadcast to the general public;
- (8)(B)(ii) any government entity of Utah or its political subdivisions;

86 (8)(B)(iii) the Utah State Bar;  
87 (8)(B)(iv) public defenders for searches performed in connection with their duties as  
88 public defenders; and  
89 (8)(B)(v) any person or organization who the XChange administrator determines offers  
90 significant legal services to a substantial portion of the public at no charge.

**Rule 4-411. Courthouse attire.**

**Intent:**

To ensure that Utah's courts are open in accordance with Article 1, Section 11 of the Utah Constitution while balancing the need for decorum in court proceedings and safety of all persons having business in Utah's courthouses.

**Applicability:**

This rule applies to all Utah justice courts, district courts, juvenile courts, and appellate courts.

**Statement of the Rule:**

**(1) Open courts, personal attire, and judicial officer decision-making.**

(1)(a) Except as provided in paragraphs (2), (3), and (4), no person having business in any court shall be denied access to a courtroom or courthouse based solely on the person's attire.

(1)(b) All courtroom access decisions based on a person's attire shall be made in accordance with this rule by a judicial officer on a case-by-case basis. "Judicial officer" is defined as a judge or court commissioner.

(1)(c) With respect to courtroom access decisions based on a person's attire, the role of a court bailiff, court security, or court staff is limited to answering questions and enforcing a judicial order.

**(2) Courthouse security.**

(2)(a) Court security personnel may deny access to a courthouse, if a person's attire raises a legitimate safety or security threat.

(2)(b) Court security personnel may deny access to a courtroom based on a person's attire to enforce a judicial order.

**(3) Integrity of court proceedings.**

(3)(a) A person may be denied access to a courtroom if a judicial officer decides that a person's attire would:

(3)(a)(i) disrupt the proceedings;

(3)(a)(ii) prejudice any victim or party to the proceedings; or

(3)(a)(iii) introduce a legitimate safety or security threat.

(3)(b) A judicial officer making a decision to deny access to a courtroom based on the factors in subsection (3)(a) shall make specific findings on the record justifying the decision.

**(4) Contrary statements.**

(4)(a) All statements contrary to this rule are hereby rescinded.

35           (4)(b) All statements contrary to this rule shall be removed, including statements  
36           expressed in any courthouse, courtroom, website, or policy manual.

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

**Intent:**

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

**Applicability:**

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

**Statement of the Rule:**

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

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

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

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

(1)(C)(i) determining whether there is good cause for the matter to not be referred to mediation;

(1)(C)(ii) ensuring that a guardianship respondent has been provided counsel or that the process provided in Utah Code section 75-5-303 has been followed;

(1)(C)(iii) determining all interested persons who should receive notice of mediation;

(1)(C)(iv) determining whether any interested person should be excused from mediation;

(1)(C)(v) selecting the mediator or determining the process and time frame for selecting the mediator, as provided in Code of Judicial Administration Rule 4-510.05;

(1)(C)(vi) determining the issues for mediation;

(1)(C)(vii) setting deadlines;

(1)(C)(viii) modifying initial disclosures if necessary and addressing discovery;

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

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

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

(1)(D)(i) the interested persons have a right to be present and participate in the mediation, the interested persons have a right to consult with or



be represented by their own counsel, and the interests of the interested persons cannot be negotiated unless the interested persons specifically waive that right in writing; and  
(1)(D)(ii) unless excused by the court, an interested person who fails to participate after receiving notification of the mediation may be deemed to have waived their right to object to the resolution of the issues being mediated.

(2) **Procedure**

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

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

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

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

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

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

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

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

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

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

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

(2)(B)(iv)(b) Any objection to the settlement of additional issues must be reduced to a writing, set forth the grounds for the objection and any supporting authority, and be filed

with the court and mailed to the parties named in the petition and any interested persons as provided in Utah Code § 75-1-201(24).

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

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

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

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

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

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

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

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

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

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

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

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

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

(2)(I) **Remaining issues.** If issues remain to be resolved after the conclusion of mediation, the parties must request a pretrial conference with the assigned judge to establish the deadlines for any supplemental initial disclosures, fact discovery, expert disclosures, expert discovery, and readiness for trial.

Effective ~~January 1~~, [May/November 1](#), 2020.

**Rule 9-101. Board of Justice Court Judges.**

**Intent:**

To prescribe the membership, method of selection, term of office and basic procedures of the Board.

**Applicability:**

This rule shall apply to the Board of Justice Court Judges.

**Statement of the Rule:**

(1) There is hereby established a Board of Justice Court Judges comprised of the chair, six at-large members, and the three Council representatives.

(2) Members of the Board shall be elected by the justice court judges in connection with the justice court business meeting at the annual judicial conference. For all elections contemplated by this rule, judges may vote in person or remotely. The Justice Court judges shall, by majority vote of those in attendance at the annual spring training conference, elect the members of the Board.

(3) The chair and the at-large members shall serve staggered two year terms. The Council representatives shall serve during the length of their term as Council representatives.

(4) The chair shall preside over all meetings of the Board and over the Justice Court judges' training conferences. The chair may not simultaneously serve as a Council representative.

(5) Members of the Board shall elect a vice-chair and an education liaison. The vice-chair shall serve as chair in the absence of the chair or upon request of the chair. Neither the vice-chair nor the education liaison may simultaneously serve as a Council representative.

(6) There shall be an Executive Committee comprised of the chair, vice-chair and one of the Council representatives designated by the chair. The Executive Committee may take necessary action on behalf of the Board between Board meetings.

(7) If vacancies occur for any reason on the Board between elections, the Board shall elect a replacement for the unexpired term of the vacancy.

(8) Should the chair resign or leave the Board for any reason, the vice-chair shall become chair for the remainder of the term.

(9) Should the vice-chair of the Board resign or leave 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.

(10) If a vacancy occurs for any reason among the representatives to the Council, the Board shall designate an interim representative to serve until the next annual training conference, at which time a representative shall be elected to fill the unexpired term.

(11) The Board shall meet at least quarterly to transact any and all business that is within its jurisdiction. The Board shall rule by majority vote. All members, except the three Council representatives, are voting members. Four voting members of the Board constitute a quorum. Board meetings shall be conducted generally in accordance with Robert's Rules of Order.

(12) All business conducted by the Board shall be conducted in accordance with this Code. (13) The Board shall be responsible for certifying new justice courts and recertifying existing justice courts to the Judicial Council as outlined in Rule 9-108.

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48       *Effective May/November 1, 2020*

**Rule 9-109. Presiding judges.****Intent:**

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

**Applicability:**

This rule shall apply to presiding judges, associate presiding judges, and education directors in the Justice Courts.

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

(1)(A)(i) A presiding judge in each judicial district shall be elected by a majority vote of the active judges present at the district meetings held at the 2018 Justice Court Conference. Thereafter, regular elections shall take place at the Justice Court annual eConference in odd years for odd-numbered districts and in even years for even-numbered districts. If the Justice Court Conference is canceled, presiding judges shall be elected at district meeting held no later than the last day of the Annual Judicial Conference that same year. In the event that a majority vote cannot be obtained, the presiding judge shall be determined by the Board of Justice Court Judges. Interim elections, if necessary, shall take place as provided in this rule. A presiding judge shall be an active judge, currently appointed to at least one court within the district. Senior judges are ineligible to hold or vote for the office of presiding judge.

(1)(A)(ii) The presiding judge's term of office shall be from the time of his or her election or appointment until he or she resigns or until the next regular election, whichever occurs first. A presiding judge may serve successive terms.

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

(1)(B)(i) The active judges of a district may, at their discretion, elect one judge of the district to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A). An associate presiding judge shall be an active judge, currently appointed to at least one court within the district. Senior judges are ineligible to hold or vote for the office of associate presiding judge.

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge.

**(1)(C) District education director.**

(1)(C)(i) The active judges of a district may, at their discretion, elect one judge of the district to the office of education director. An education director shall be elected in the

45 same manner and serve the same term as the presiding judge in paragraph (1)(A).  
46 Senior judges are ineligible to vote for the office of district education director but may  
47 hold the office. If a district does not elect an education director, the associate presiding  
48 judge, if there is one, shall serve as the education director. If the district elects neither an  
49 education director nor an associate presiding judge, the presiding judge shall serve as  
50 the education director.

51 (1)(C)(ii) The education director shall serve on the justice court education committee and  
52 shall work with the Education Department of the Administrative Office in developing,  
53 planning and presenting relevant judicial training at the district level.  
54

55 **(1)(D) Removal and Other Vacancies of Office.**

56 (1)(D)(i) If the office of presiding judge becomes vacant, then the associate presiding  
57 judge shall serve the rest of the presiding judge's term. If there is no associate presiding  
58 judge, the district education director shall, if the education director is an active judge,  
59 serve the unexpired term. Otherwise, the Chair of the Board of Justice Court Judges  
60 shall appoint a judge to serve until the next district meeting.

61 (1)(D)(ii) A presiding judge may appoint, on an interim basis, an eligible judge of the  
62 district to fill an unexpired term of associate presiding judge or education director until  
63 the next district meeting. At the district meeting, the active judges present shall ratify the  
64 appointment by majority vote. If they do not ratify the appointment, or if the presiding  
65 judge does not make an interim appointment, nominations and an election shall then be  
66 held at that meeting to fill the unexpired term.

67 (1)(D)(iii) A presiding judge, associate presiding judge or education director may be  
68 removed from that office by a two-thirds vote of the active justice court judges in the  
69 district. A successor presiding judge shall, or an associate presiding judge or education  
70 director may, then be elected to fill the unexpired term of the vacant office.

71 (1)(D)(iv) In extraordinary circumstances, to preserve confidence in the fair  
72 administration of justice, the Presiding Officer of the Judicial Council may remove a  
73 judge from any office described in this rule. Vacancies shall be filled as provided in this  
74 rule.  
75

76 **(2) District meetings.**

77 (2)(A) Each district shall have regular meetings to discuss and decide district business,  
78 receive training, or address issues and concerns specific to the district.

79 (2)(A)(i) The presiding judge shall call and preside over a meeting of other justice court  
80 judges in the district at the annual Justice Court Conference.

81 (2)(A)(ii) Each district shall have at least one other meeting during the calendar year in  
82 which a majority of active justice court judges is present, including the presiding judge or  
83 associate presiding judge.  
84

85 (2)(B) In addition to regular meetings, the presiding judge or a majority of the active judges  
86 may call additional meetings as necessary.  
87

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

(2)(D) Other than judges and the Justice Court Administrator, attendance at district meetings shall be by invitation of the presiding judge only.

(2)(E) The issues on which judges vote shall be left to the sound discretion and judgment of each district and the applicable sections of the Utah Constitution, statutes, and this Code.

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

(3)(A) **Generally.** The presiding judge is charged with the responsibility for the effective operation of the justice courts within a district. He or she is responsible for the implementation and enforcement of statutes, rules, policies, and directives of the Judicial Council and the Board of Justice Court Judges as they pertain to the administration of the courts. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

**(3)(B) Coordination of required training.**

(3)(B)(i) The presiding judge, associate presiding judge, or education director shall: (a) be responsible to see that judges in his or her district are appropriately trained, (b) assist in planning statewide trainings as part of the Education Committee, (c) plan district training to be held in connection with the meetings required by section (2), (d) recommend mentors for new judges, and (e) arrange for individual training, as needed.  
(3)(B)(ii) Presiding judges are encouraged to observe the hearings of judges within the district to assess training needs.

(3)(C) **Court committees.** The presiding judge shall, where appropriate, make use of committees composed of other judges and court personnel to investigate problem areas and improve the administration of justice.

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

(3)(D)(i) The presiding judge shall be available to meet with the media, outside agencies, such as prosecuting attorneys, city attorneys, county attorneys, public defenders or associations of defense counsel, sheriffs, police chiefs, bar association leaders, probation providers, government officials of cities or counties located within the district, civic organizations, and other state agencies.

(3)(D)(ii) The presiding judge shall be the primary judicial representative of the justice court judges in the district.

(3)(D)(iii) Nothing in this rule shall replace or interfere with the statutory and administrative responsibilities of an appointed judge to the appointing authority of a court.

(3)(E) **Judicial officers.** The presiding judge shall discuss significant concerns, problems or complaints regarding the judges in his or her district with the Justice Court Administrator,

who shall work together to resolve the concern. In the event that another judge in the district fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment, or violates the Code of Judicial Conduct, the presiding judge may, depending on the severity of the issue and consistent with legal and ethical obligations:

(3)(E)(i) Consult with appropriate staff at the Administrative Office of the Courts and/or discuss the issue with other presiding judges;

(3)(E)(ii) Meet with the judge to explain the reasons for the directive given or the position taken, consult with the judge about alternative solutions and reevaluate the directive or position, as appropriate;

(3)(E)(iii) Present the problem to the Board of Justice Court Judges for input;

(3)(E)(iv) Require the judge to participate in appropriate counseling, therapy, education or treatment; or

(3)(E)(v) Refer the problem to the Judicial Council, the Chief Justice, or the Judicial Conduct Commission, as appropriate.

(3)(F) **Liaison.** The presiding judge or his or her designee shall serve as a liaison between the justice courts of the district and (i) the Board of Justice Court Judges and (ii) the presiding judges of Juvenile Court and District Court.

(3)(G) **Reassignment.**

(3)(G)(i) In the event that a motion to disqualify a judge or judges is filed and no appointed judge of the court is available or empowered to hear the motion, the presiding judge shall consider the motion and, if necessary, assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

(3)(G)(ii) In the event that all of the appointed judges of a court recuse themselves from a matter, the presiding judge shall assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

(3)(H) **Compliance with standards.** The presiding judge shall monitor and ensure that judges are complying with performance standards established by the Council or as otherwise required by law.

(3)(I) **Performance evaluations.** Pursuant to Utah Code 78A-12-203, the presiding judge shall receive the midterm reports prepared by the Judicial Performance Evaluation Commission for the other justice court judges in his or her district. The presiding judge shall consult with the evaluated judge and the Justice Court Administrator to develop a plan for addressing the issues resulting in less than satisfactory scores.