

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

October 2, 2020 – 12:00 p.m. to 2:00 p.m.

Webex

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Pullan
12:05	3-101. Judicial Performance Standards <ul style="list-style-type: none"> • 12:05-12:20: Judge Christine Johnson • 12:20-12:35: Justice Durham, Jennifer Yim, Bridget Romano • 12:35-12:50: Committee discussion 	Discussion/ Action	Tab 2	Judge Pullan
12:50	<u>Rules back from Public Comment:</u> <ul style="list-style-type: none"> • 3-104. Presiding Judges • 3-111. Performance Evaluation of senior judges and court commissioners • 4-202.02. Records Classification • 6-507. Court Visitor • 3-407. Accounting • 4-609. Procedure for obtaining fingerprints and OTNs on defendants not booked in jail • 10-1-404. Attendance and assistance of prosecutors in criminal proceedings • 4-401.01. Electronic media coverage of court proceedings • 4-401.02. Possession and use of portable electronic devices 	Action	Tab 3	Keisa Williams Brent Johnson Nancy Sylvester
1:10	4-202.02. Records Classification	Action	Tab 4	Keisa Williams
1:20	4-403. Electronic and Signature Stamp Usage 3-104. Presiding Judges	Action	Tab 5	Brent Johnson
1:35	3-419. Office of Fairness and Accountability	Action	Tab 6	Judge Pullan
2:00	Adjourn			

2020 Meetings:

November 6, 2020 (9:00 a.m. to 5:00 p.m.)
December 4, 2020

2021 Meetings:

January 1, 2021 (reschedule)	July 2, 2021 (reschedule)
February 5, 2021	August 6, 2021
March 5, 2021	September 3, 2021
April 2, 2021	October 1, 2021
May 7, 2021 (all day)	November 5, 2021 (all day)
June 4, 2021	December 3, 2021

TAB 1

Minutes

September 4, 2020

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

Webex video conferencing
September 4, 2020: 12 pm to 2 pm

DRAFT

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge Derek Pullan, <i>Chair</i>	•		Judge Ryan Harris
Judge Brian Cannell	•		Brent Johnson
Judge Augustus Chin	•		Paul Barron
Judge David Connors	•		Bart Olsen
Judge Michelle Heward	•		Michael Drechsel
Mr. Rob Rice	•		Shane Bahr
Judge John Walton		•	Jim Peters
			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 August 7, 2020 meeting. Rob Rice moved to approve the minutes as drafted. Judge Cannell seconded the motion. Judge Connors abstained. The motion passed with a majority vote.

(2) 3-201. Court commissioners

3-201.02. Court commissioner conduct committee:

Rule 3-201

Ms. Williams: Policy and Planning has been reviewing these two rules for a number of months. The proposed amendments to rule 3-201 were made by Policy and Planning in November 2019, primarily the change from “sanctions” to “corrective actions.”

Judge Pullan: The sentence starting at line 134 addresses negative comments received during a public comment period for a commissioner’s appointment or retention, but the language isn’t clear. If the comment will negatively affect a presiding judge’s decision to remove a commissioner, is it a positive comment?

Judge Connors: Does that mean the intent is to only disseminate comments if they are negative, presuming any negative comment would affect a presiding judge’s decision? Or is the intent to provide commissioners with all public comments, both positive and negative?

Judge Pullan: I recommend providing negative comments only. The intent is to give commissioners the opportunity to respond to any comments that are adverse to them.

Judge Connors recommended amending the sentence to state that if there are any negative comments, the negative comments will be provided to the commissioner with the names redacted and the commissioner shall have an opportunity to respond. The Committee agreed.

Rule 3-201.02

**Due to the extent of the proposed changes, Policy and Planning reviewed a clean version of the draft rule.*

Judge Pullan: I am concerned about the definition of misconduct starting at line 16. It appears to be self-defining - "...misconduct means: action that constitutes willful misconduct..." I'm also concerned about the addition of a mental state that would allow a commissioner to engage in all kinds of misconduct, with a defense that it was all a mistake.

Judge Harris: I have been the chair of the Court Commissioner Conduct Committee (CCCC) for about 6 months. In that time, the committee has identified a number of issues with this rule. A general overhaul of the rule has been in the works for a couple of years. In one of the drafts, the definition of misconduct was imported from the Rules of Professional Conduct (RPC), Rule 8.4, but that definition was removed because the CCCC isn't where people should go if they have a complaint about a commissioner's violation of the RPC. The RPC govern a commissioner's conduct as a lawyer, as opposed to the commissioner's actions as a commissioner. The CCCC's role is to address commissioners' alleged violations of the Code of Judicial Conduct.

Mr. Rice: I would propose eliminating (1)(A)(iii)(c) as well. It addresses performance failure, which is conduct that should be handled by a presiding judge and not the CCCC. One of the distinctions we were trying to make with these two rules is that issues of employee performance should be managed by the presiding judge, and violations of the code of judicial conduct should be handled by the CCCC.

Mike Drechsel: About a year ago, Judge Christiansen-Forster and I tried to create a system similar to the Judicial Conduct Commission (JCC) process because commissioners sit on the bench, they wear a robe, and to the public they appear to be the equivalent of a judge. The definition of misconduct in this rule is almost identical to the grounds for censure, reprimand, or removal of a judge in Utah Code section 78A-11-105(1). In the JCC's administrative rules, they define misconduct in the same circular way.

Policy and Planning discussed removing paragraph (1)(A) entirely. While the court isn't bound by the statutory provision or the JCC's rules, Policy and Planning determined that the definition of misconduct should remain in the rule as drafted to mirror the JCC.

Judge Pullan: In line 52, it says all actions and materials shall be kept confidential, but the Judicial Council can publicly censure a commissioner.

Mr. Rice: That is similar to the Utah Bar's process. Those complaints are kept confidential until a bar review committee makes the decision to publicly admonish someone.

Mr. Drechsel: This came up last year. At that time, Policy and Planning decided to leave out any reference to the confidentiality of records because it could create a conflict with the records classification and access rules, rules 4-202.02 and 4-202.03.

After further discussion, Policy and Planning amended lines 52-54 to read, "The confidentiality of all actions and materials related to a complaint, hearing, appeal, and Council review are governed by rule 4-202.02, other than any public censure by the Council."

Judge Harris: A new appellate process is outlined in paragraph (5). The lack of an appellate process was a concern, especially when the CCCC dismisses a complaint without a hearing. Now, if a complaint is dismissed without a hearing, the complainant can appeal to the Council for a de novo review of the file. The appeal can be heard by the Council as a whole, by a designated member of the Council, or by a committee of the Council.

After discussion, Judge Connors moved to approve rule 3-201 and rule 3-201.02 as amended. Judge Heward seconded. The motion passed unanimously.

(3) 4-202.08. Fees for records, information and services:

Ms. Williams: This summer the Council approved an increase in fees for Xchange, but the corresponding rule amendment was overlooked. The proposed changes starting at line 58 simply reflect what the Council has already approved. I recommend approving this rule on an expedited basis and sending it out for public comment.

Judge Connors: In line 8, it says the rule does not apply to the Self Help Center. Does that mean the fees are inapplicable to patrons receiving assistance from the Self-Help Center or to court staff in the Self Help Center? Do the charges apply to judges and court employees? We may need to add clarifying language to the Applicability paragraph.

Judge Pullan: I don't believe we are charging ourselves a fee so we probably don't need to address that issue today. I'm concerned that if we wait to approve the rule until we can seek confirmation, we will have a rule that is inconsistent with the Council's decision. Once the rule is approved, Ms. Williams can research Judge Connor's question and bring it back to the committee at a later date.

Judge Connors moved to approve the rule as proposed with an effective date of September 1, 2020, and to recommend to the Judicial Council that the rule be sent out for public comment. Judge Chin seconded. The motion passed unanimously.

(4) 4-403. Electronic signature stamp usage

3-104. Presiding judges

Brent Johnson was unable to participate. These items will be addressed at the October meeting.

(5) Back from public comment (already approved):

- 1-201. Membership – election
- 6-102. Election of district court judges to the Judicial Council
- 7-101. Juvenile Court Board, Executive Committee and Council Representatives

Ms. Williams: All three rules were approved by the Council on an expedited basis and subsequently went out for public comment. No comments were received.

After discussion, Policy and Planning made no changes to the rules. The rules remain in effect as drafted.

(6) Cases under advisement – tracking system:

At its August meeting, Policy and Planning asked Mr. Barron to develop a proposed technical solution to issues related to tracking and reporting on cases under advisement.

Paul Barron reviewed the proposal included in the meeting materials. A link would be added to CORIS that would allow judges to see all cases under advisement, similar to a process available in the juvenile system (CARE). Improvements are underway in CARE to enhance the quality and functionality of that process and the same could be done for the district court. Mr. Barron wasn't sure if the appellate court uses a similar tracking system. A webpage could be created that would open up immediately, allowing judges to run an under advisement report.

Judge Pullan: Would the report only include cases where tracking was initiated by a clerk? For example, when a notice to submit has been filed, the system asks whether you want the case to be tracked. The default setting is 60 days, but the judicial assistant or clerk is making the decision at that time whether to trigger the notice or not.

Mr. Barron: Yes, but court staff would have the ability to set up indicators manually as well. The documents would be called “requests for decision.” A box would never be checked; the document would sit where it was with an indicator that it is ready. If nothing happens, it will be presented again in 90 days.

Shane Bahr: The board of district court judges’ biggest concern was that something may be submitted, but it’s not really under advisement until it hits the judge’s desk. Right now that requires a lot of human interaction and we would want a way to ensure that what we’re reporting are cases truly under advisement.

Mr. Barron: No matter what we build, some monitoring will be required by the judge, judicial assistant, or clerk. The proposed solution would make it easier for judges to obtain information about, or monitor their own reports.

Judge Connors: I lose sleep over this. I require my case managers to send me a weekly list of the cases we are tracking as under advisement. I go through the report and address cases close to the deadline and make a note of decisions coming up. There is potential for human error in those reports. If a case was never brought to my attention, how would I know action needs to be taken? Is it fair to fault a judge if he or she didn’t know a case was sitting there past 90 days?

Judge Pullan: This issue is on Policy and Planning’s October agenda. Jennifer Yim, Justice Durham, and Bridget Romano from JPEC, and Judge Christine Johnson, the chair of the board of district court judges, will be addressing the committee. One of the concerns is that judges shouldn’t be penalized for missing a deadline if it was outside of their control, but our own system is grounded in human intervention and cases aren’t always being tracked accurately.

Judge Pullan will report to the Council on this discussion at its September meeting.

(7) Office of Fairness and Accountability:

- CJA 3-419
- Office charter
- Director job description
- Research

Ms. Williams: The rule draft is based almost entirely on the office charter and director job description. I included a few things from my research of other states. I haven’t been involved in the Council’s discussions regarding the office, but from what I understand, the Council may want to create an independent advisory board in addition to the office. Most of the other states have an advisory council in some form or fashion so there is a lot to draw from.

Judge Chin: I think the rule is a good start, but I need time to conduct a more in-depth review of all of the materials before I could make any substantive recommendations.

Mr. Rice: The court’s objective is a diverse judiciary. Language stating that the office will support the promotion of diversity on the bench should be added to the Objectives section, and to the body of the rule.

Judge Pullan: The objectives need to reflect the multi-faceted way in which we intend to address that problem. Including it at the beginning of the rule makes sense to me. A general responsibility of the office should be outreach and recruitment, including diversity among court employees. The director will be a liaison to other branches of government. I like the idea that the director would be continuously examining our processes and policies, collecting and analyzing data, educating judges and employees, and making recommendations to the Council regarding improvements. The objectives should also state that the office shall strive to eliminate racial and ethnic unfairness in the judiciary.

Judge Connors: Recruitment of a diverse judiciary is really important. It's a long process and it requires continuous, dedicated efforts. It's also a topic of debate with the legislature so we should think carefully about how that objective is worded. The list in paragraph (1) should be identical to the list in paragraph (3)(C).

Judge Pullan: I agree. Recruitment is an important part of what this office does. One of the long term goals may begin with children in middle school and helping them visualize themselves as lawyers or judges. There are a host of barriers that we need to study and we should consider whether current requirements are necessary. In the short term, I am very concerned about defendants before me for a bail hearing and ensuring I'm making the right decision based on data collected by the office. Racial minorities are disproportionately represented. The rule is missing 80% of what the office is trying to accomplish. What data are we collecting about race in the judiciary? What judicial and court employee skills are we trying to improve?

Judge Connors: The question is where we want this office to direct its resources. Promotion of diversity on the bench and implicit bias in judicial decision making are two different things that need to be handled in very different ways. If we give the office too much to do, we may render them ineffective. Maybe the office should coordinate with other organizations already addressing judicial recruitment, and focus most of its resources on more proximate goals.

Mr. Rice: I agree with Judge Connors that the director shouldn't be doing the heavy lifting in regard to judicial recruitment. I have worked with the Utah Center for Legal Inclusion on ways to build a pipeline.

Ms. Williams: I am concerned about getting too detailed in the rule. As I was conducting my research, I became more and more aware of how much I don't know. We might be better served to keep the rule general in nature and wait until we hire a director with expertise in this area to provide guidance and recommendations about specific objectives and duties.

Judge Pullan: I agree that we should think about proximate and long term objectives and how the office's resources should be applied. I view this office as addressing both of those issues. I think we wait until the director is on board to help us determine how energy and resources can be applied to both. The director may be hired before we finalize a rule draft.

Bart Olsen: The director position has been posted for 2-3 weeks and it closes on Monday night.

Judge Connors: I recommend that we wait for input from the director in drafting objectives.

After further discussion, Judge Pullan asked committee members to send Ms. Williams their recommended amendments to the rule draft and asked Ms. Williams to incorporate those recommendations and bring the rule back to the committee in October.

(8) Old business/new business:

Judge Connors: A question came up at the board of district court judges' meeting about whether we should recommend that the Council consider modifying the administrative order regarding the requirement of consent by both parties on remote hearings. Isn't the presumption that everyone would be in favor of remote hearings? The wording of the current order seems backwards.

Mr. Bahr: That issue will be considered by the Management Committee next week.

Judge Connors: Another concern is dealing with motions to disqualify special masters. I discussed this with Brent Johnson but we haven't come to a conclusion on how best to deal with it. It falls under rule 63 of the rules of civil procedure. The policy question is whether we should consider special masters "judicial officers" for purposes of disqualification.

Judge Pullan: That may be a good issue for the civil rules committee to consider. Policy and Planning conducts research and makes policy recommendations to the Council, and is responsible for the Code of Judicial Administration rules. That is a policy question, but it seems to fall under the jurisdiction of the Supreme Court's advisory committee. Sometimes our work touches on rules of procedure and when that happens we send it to the appropriate advisory committee or coordinate with them when issues overlap. Let's think about that more and once we've defined the issue better we can discuss whether to send it to the advisory committee or up to the Council.

(9) ADJOURN:

With no further items for discussion, the meeting adjourned without a motion. The meeting adjourned at 2:05 pm. The next meeting will be on October 2, 2020 at 12 (noon) via Webex video conferencing.

TAB 2

3-101. Judicial Performance Standards

Notes: The Board of District Court Judges unanimously approved the modification of Rule 3-101 with alternative paragraph (6). JPEC does not support either paragraph (6) as circulated for comment, or alternative (6) (see attached memo from JPEC). JPEC did not take issue with the clarifying amendments of paragraph (2).

The Board expressed three thoughts on this:

1. the Judicial Council has the duty to certify compliance of our judges to JPEC and this language affirms that;
2. things happen that are beyond a judge's control and a judge should not have a public stain on their record because of that; and
3. a promise by JPEC to always treat our judges fairly is only as good as continuity in leadership or a rule.

The Board recognized that eventually JPEC leadership will change and preferred that the rule codify their concerns and protect against potential future unfair treatment.

The following individuals will present to Policy and Planning on this issue:

- Judge Christine Johnson, Chair of the Board of District Court Judges
- JPEC:
 - Dr. Jennifer Yim
 - Justice Christine Durham
 - Bridget Romano

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

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

Applicability

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

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

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

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

~~(1)(C) Case under advisement standard. A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the 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.

~~(3)(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.~~

~~(3)(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.

Alternative: ^[P]_[SEP]

(6) Judicial Council discretion. ^[P]_[SEP]

(6)(a) The Judicial Council has discretion to find that a judge or justice is not compliant with judicial performance standards if it receives credible information challenging the judge's or justice's compliance.

(6)(b) The Judicial Council has discretion to find that a judge or justice is still compliant with judicial performance standards when the judge or justice fails to comply with paragraphs (2) or (3) for reasons beyond the judge's or justice's personal control, such as due to temporary disability or system failure.

(6)(c) The Judicial Council shall make a public record of its findings and provide those findings and any supporting materials to JPEC.

Commented [NS1]: Definition requested by the Board of District Court Judges.



Gary R. Herbert
Governor
Spencer J. Cox
Lieutenant Governor

State of Utah

Judicial Performance Evaluation Commission

Jennifer MJ Yim
Executive Director

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August 24, 2020

VIA EMAIL (CSJOHNSON@UTCOURTS.GOV)

Judge Christine S. Johnson, Chair
Board of District Court Judges

Dear Judge Johnson:

On behalf of Judicial Performance Evaluation Commission's (JPEC) executive committee, I would like to express my gratitude to you and the Board of District Court Judges for meeting with Bridget Romano and me to discuss the proposed amendments to CJA3-101.

The issue of cases taken under advisement is clearly one of significant concern to district court judges. JPEC appreciates the judges' candor and willingness to engage in an open and honest discussion. We found it helpful to hear the concerns, including those about establishing the starting time for when a judge may be considered to have taken a case under advisement and about judges' concerns for system failure and proper tracking.

Thank you for the Board's proposed alternative language, drafted by Nancy Sylvester. JPEC appreciates that the alternative takes into account a need for reciprocity in Judicial Council discretion. While not as expansive as proposed subsection (2), alternative subsection (6b) attempts to enumerate reasons why the Judicial Council would exercise its discretion to report favorably a judge who has otherwise failed to meet a minimum performance standard.

The full commission considered the Board's concerns, along with the proposed rule amendment and the alternative language. While we have a greater understanding of the reasons behind the proposed rule change, JPEC remains unable to support either the proposed rule amendment to subsection (6) or the proposed alternative.

As we mentioned at the Board meeting and in my initial letter to Chief Justice Durrant, across JPEC's history, the Commission has always voted to overcome the relevant presumption on the three (rare) occasions when a judge has failed only the case-under-advisement standard. Because no judge has been harmed by the case-under-advisement standard as currently drafted, JPEC remains unconvinced of the need for proposed subsection (6).

Sadly, none of the Commissioners is able to attend the next meeting of the Board of District Court Judges. However, JPEC remains engaged with this issue and wishes to continue this important discussion with the judiciary in the hope we may reach a mutual agreement regarding the case-under-advisement standard for judicial performance evaluation.

Again, please let me express my gratitude to the Board of District Court Judges for its willingness to meet with JPEC to discuss this important matter.

Sincere regards,

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

Jennifer MJ Yim

Cc: Chief Justice Matthew B. Durrant, Utah Judicial Council
Judge Mary T. Noonan, State Court Administrator
Derek P. Pullan, Policy and Planning Committee

TAB 3

Rules back from public comment

Notes: The following rules are back from a 45-day comment period. Comments were received on two rules:

No comments:

- 3-104. Presiding Judges
- 3-111. Performance Evaluation of senior judges and court commissioners
- 4-202.02. Records Classification
- 3-407. Accounting
- 4-609. Procedure for obtaining fingerprints and OTNs on defendants not booked in jail
- 10-1-404. Attendance and assistance of prosecutors in criminal proceedings
- 4-401.01. Electronic media coverage of court proceedings

3 Comments:

- 6-507. Court Visitor
 - 2 comments
- 4-401.02. Possession and use of portable electronic devices
 - 1 comment

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

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Posted: August 10, 2020

Utah Courts

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Code of Judicial Administration – Comment Period Closed September 24, 2020

CJA04-0202.02. Records Classification (AMEND). Minor’s names will be public in stalking injunctions. Reflects current practice.

CJA06-0507. Court Visitor (NEW). New rule outlining the appointment and role of court visitors, and establishing a process for review of court visitor reports.

CJA03-0407. Accounting (AMEND). Clarifies that “bail” refers to “monetary bail.” Amends examples of trust accounts to reflect the most common fund types.

CJA04-0609. Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail (AMEND). Clarifies that “bail” means release.

CJA010-01-0404. Attendance and assistance of prosecutors in criminal proceedings (AMEND). Clarifies that “bail” refers to “monetary bail.”

CJA04-0401.01. Electronic media coverage of court proceedings (AMEND). Clarifies that the rule applies to viewing proceedings by remote transmission. Eliminates the requirement for pool

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- -Alternate Dispute Resolution
- -Code of Judicial Administration
- -Code of Judicial Conduct
- -Fourth District Court Local Rules
- -Licensed Paralegal Practitioners Rules of Professional Conduct
- -Rules Governing Licensed Paralegal Practitioner
- -Rules Governing the State Bar

coverage. Any media who register may attend. Electronic access may be terminated for violations of the rule.

CJA04-0401.02. Possession and use of portable electronic devices (AMEND). Defines court proceedings. Prohibits individuals from recording or photographing remote proceedings.

This entry was posted in [CJA010-01-0404](#), [CJA03-0407](#), [CJA04-0202.02](#), [CJA04-0401.01](#), [CJA04-0401.02](#), [CJA04-0609](#), [CJA06-0507](#).

« Rules Governing the State Bar – Comment Period Closed September 26, 2020

Supreme Court Rules of Professional Practice, Office of Professional Conduct – Comment Period Closed September 11, 2020 »

UTAH COURTS

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3 thoughts on “Code of Judicial Administration – Comment Period Closed September 24, 2020”

Tracy L. Olson
August 11, 2020 at 1:34 pm

CJA Rule 6-507 has a (5) missing in Section (2)(C) “to investigate the respondent’s circumstances and well-being, including when an attorney is not appointed under 75-5-303(d);” it appears that it should be 75-5-303(5)(d).

Additionally, (3)(B) may place an undue burden on the court visitor as it mandates that the court visitor “will” do certain things, which include interviewing the physician and anyone known to have treated the respondent and meeting with the respondent in person at their place of dwelling. Some physicians can be difficult to get a hold of and interview them and all know

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
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- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0114

treating physicians who may not have treated respondent for conditions relevant to the issues before the court may be a difficult thing to ask of a volunteer. Further, several facilities are not allowing outside visitors given the current situation with Covid-19 making a meeting with respondents at their place of dwelling impracticable. It may be better changed to “may” instead of “will” or to have that the court may order those particular duties be carried out, but that they are not mandated in every case.

Jim Hunnicutt
September 7, 2020 at 3:43 pm

Rule 04-0401.02 seems to be aimed at accomplishing two different things: (1) describing how cell phones, laptops, and other electronic devices can be used inside a courthouse, and (2) prohibiting any kind of recording of court proceedings, regardless of the type of device. However, this rule includes unnecessary qualifying language muddying that second message. For instance, line 41 implies you cannot record court proceedings while “us[ing] portable electronic devices in courtrooms,” and lines 58-59 imply you cannot record proceedings while “viewing court proceedings conducted by remote transmission.” Lines 44 and 60 indicate that recording a court proceeding is only prohibited if done with a “portable electronic device.” Several portions of this rule could be deleted and replaced with broader and simpler language such as: “Other than court clerks acting within the scope of their authority, no one may record any court proceedings whatsoever. This prohibition applies to any and all recordings, including, but not limited to, recording images, sounds, speech, and/or any other type of video or audio, and regardless of whether the recording is made inside or outside a courtroom.”

The proposed amendment changes the term “portable electronic device” in the Definitions section to “electronic device,” but throughout the rest of the rule, it keeps using the original term “portable electronic device.”

Section (1)(B) seems outdated respecting some of the different types of devices listed. Consider adding “tablet computer,” “smartphone,” and “smartwatch.”

Michael A Jensen
September 24, 2020 at 8:02 am

CJA Rule 6-507 is unnecessary. Currently, court visitors are routinely appointed and provide the courts with sufficient information for the court to act appropriately under the circumstances.

- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0302
- CJA03-0304
- CJA03-0304.01
- CJA03-0305
- CJA03-0306
- CJA03-0306.01
- CJA03-0306.02
- CJA03-0306.03
- CJA03-0306.04
- CJA03-0306.05
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- CJA04-0202
- CJA04-0202.01
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- CJA04-0202.07
- CJA04-0202.08
- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206
- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03
- CJA04-0402
- CJA04-0403
- CJA04-0404

This new rule will unduly financially burden Respondent's estate or Respondent's family. Even if the court visitor is a volunteer, the time required by the proposed guardian and conservator will generate an expense to Respondent if such guardian or conservator is a professional. This financial burden particularly arises from Subsections (2)(2)(D) and (2)(2)(F) where the court visitor is obligated to ascertain the guardian's or conservator's plans for Respondent's residence. Also, if included, this subsection should add the word "conservator" since it is generally the conservator who deals with Respondent's residence, not the guardian.

Subsection (2)(2)(A) is the most common use of the court visitor should present no problem, although the current system provides this without this new rule.

Subsection (2)(2)(C) is too vague and may create an implied obligation on the court visitor to become an advocate for Respondent although Respondent already has an attorney of Respondent's choice or by appointment of the court. This is subsection also may empower a court visitor beyond what it is intended, thereby resulting in an adversarial situation that escalates legal fees for Respondent. Remember, as a matter of law all of the legal fees incurred become the burden of Respondent, assuming the petition to appoint is not found to be without merit. There have been numerous cases where a court visitor feels so empowered they consider themselves the person who is to "protect" Respondent, despite the fact that Respondent already has an attorney advocate. In these instances, unnecessary legal fees are incurred in resolving the court visitor's improper advocacy. In effect, the court visitor becomes an adverse third party.

Subsection (3)(3)(B)(iii) is problematic, since it is often very difficult to actually 'interview' a physician. The common practice is to have a letter or report from a physician describing Respondent's condition sufficiently to opine about the need for a guardian and/or conservator. Such letter or report is generally competent evidence for the court to approve the appointment of a guardian and/or conservator. If there is a dispute over the cognitive status of Respondent, generally the court will appoint a physician to evaluate Respondent and issue a report. There is no need for a court visitor to interview the physician.

- CJA04-0405
- CJA04-0408
- CJA04-0408.01
- CJA04-0409
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- CJA04-0907
- CJA05-0101
- CJA05-201
- CJA06-0102
- CJA06-0303
- CJA06-0401
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- CJA06-0505
- CJA06-0506
- CJA06-0506
- CJA06-0507
- CJA06-0601
- CJA07-0101
- CJA07-0102
- CJA07-0301
- CJA07-0302
- CJA07-0303
- CJA07-0304
- CJA07-0307
- CJA07-0308
- CJA09-0101

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

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

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4)(W) victim impact statements;

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

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

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

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

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

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

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

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

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

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

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

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

288

289 *Effective November 1, 2019*

Rule 6-507. Court visitors.

Intent:

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

Applicability:

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

Statement of the Rule:

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

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

(2)(A) whether to waive the respondent’s presence at the hearing under Section [75-5-303\(5\)\(a\)](#);

(2)(B) to confirm a waiver of notice submitted by the respondent in a guardianship or conservatorship proceeding under Sections [75-5-309\(3\)](#) or [75-5-405\(1\)](#);

(2)(C) to investigate the respondent’s circumstances and well-being, including when an attorney is not appointed under [75-5-303\(d\)](#);

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

(2)(E) to locate guardians, conservators, and respondents;

(2)(F) to investigate the proposed guardian’s future plans for the respondent’s residence under Section [75-5-303\(4\)](#); or

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

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

(3)(A) Upon receipt of the motion, the court shall appoint a court visitor to conduct an investigation in accordance with paragraph (2) unless a court visitor is not required under Utah Code section [75-5-303](#).

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

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

(3)(B)(ii) visit the respondent's present dwelling or any dwelling in which the respondent will reside if the guardianship or conservatorship appointment is made;

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

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

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

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

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

(6) **Court visitor report.**

(6)(A) **Service of the court visitor report.** Except for court visitor appointments made under paragraph (2)(E), in accordance with [Rule 5](#) of the Utah Rules of Civil Procedure, the court visitor program must file and serve a court visitor report upon all parties and upon any interested person who has requested the appointment of the court visitor.

(6)(B) **Request to Submit for Decision.** The court visitor program will file with each court visitor report a request to submit for decision.

(6)(C) **Report regarding waiver of respondent's presence.** In cases involving a motion to excuse the respondent from the hearing, the court visitor will file with the report a court-approved proposed order. The report, a request to submit for decision, and a proposed order will be filed five days before the hearing.

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

90
91 **(8) Court findings.**

92
93 **(8)(A) Reports regarding waiver of respondent's presence.** When a court visitor has
94 filed a report regarding a request to waive the respondent's presence at the hearing, the
95 court will issue findings and an order as to the waiver at least two days prior to the
96 hearing upon which the request has been made.

97
98 **(8)(B) All other reports.** When a court visitor has filed a report involving matters other
99 than the waiver of the respondent's presence, the court will issue findings and an order
100 as to those matters in accordance with the timelines of Rule 3-101.

101
102 Effective May/November 1, 20

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

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

Applicability:

This rule applies to the judiciary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Revenue accounts.

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

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

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

(3) Trust accounts.

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

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

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

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

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

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

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

Effective November 1, ~~2018~~ 2020

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

Intent:

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

Applicability:

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

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

Statement of the Rule:

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

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

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

(3) Booking personnel shall:

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

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

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

Effective May __, 2020

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

Intent:

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

Applicability:

This rule shall apply to the Fourth District Court.

Statement of the Rule:

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

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

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

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

Effective: May __, 2020

Rule 4-401.01 Electronic media coverage of court proceedings.

Intent:

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

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

Applicability:

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

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

Statement of the Rule:

(1) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Conduct in the courtroom; pool coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6)(D) electronic media coverage of proceedings in chambers;

(6)(E) audio recording or transmission of the content of bench conferences; or

(6)(F) audio recording or transmission of the content of confidential communications between counsel and client, between clients, or between counsel.

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

Effective May/November 1, __20

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

Intent:

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

Applicability:

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

Statement of the Rule:

(1) Definitions.

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

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

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

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

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

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

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

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

(3) Restrictions.

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

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

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

(3)(B)(ii) A person may not use a portable electronic device to record or transmit images or sound of court proceedings, except in accordance with Rule 4-401.01 or subsection (2)(D) above.

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

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

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

(3)(C)(i) A person may not use a portable electronic device to record, photograph, or transmit images or sound of court proceedings, except in accordance with rule 4-401.01 or subsection (2)(D) above. Access to court proceedings will be contingent on the person agreeing to comply with the provisions in this rule and any administrative or standing orders that supplement this rule.

(3)(C)(ii) A violation of an administrative or standing order may be treated as contempt of court.

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

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

Effective May/November 1, 20__

TAB 4

4-202.02. Records Classification

Notes: HB 206 goes into effect on October 1, 2020. That bill requires judges to consider an individual's ability to pay a monetary bail amount any time a financial condition of release is ordered. The Judicial Council recently adopted a new matrix that recommends affordable monetary bail amounts based on an individual's gross household income and number of dependents. In order to provide judges with that information at the time an initial release decision is required, law enforcement will begin asking defendants those two questions and submitting the answers to the court electronically via the probable cause system.

Rule 4-202.02 classifies affidavits of indigency as Private records, but as it is currently written, the rule would not cover the two data elements because the answers would not be submitted as part of an affidavit. The proposed amendment at line 142 would cover both affidavits of indigency and the financial data elements as Private records.

Programming required to submit and capture the two data elements will not be complete on October 1st so there isn't a rush to approve the rule amendment at this time.

1 Rule 4-202.02. Records Classification.**2 Intent:**

3 To classify court records as public or non-public.

4 Applicability:

5 This rule applies to the judicial branch.

6 Statement of the Rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4)(W) victim impact statements;

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

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

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

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

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

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

Commented [KW1]: 5-22-20 change back from public comment period.

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

241

242 **(6) Juvenile Court Social Records.** The following are juvenile court social records:

- 243 (6)(A) correspondence relating to juvenile social records;

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

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

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

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

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

CJA 4-202.02

DRAFT: 10-2-20
(incorporates 5-22-20 change)

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289 *Effective November 1, 2019*

TAB 5

4-403. Electronic and Signature Stamp Usage

3-104. Presiding Judges

Notes: The proposed amendment to 4-403 authorizes judges' electronic signatures to be automatically affixed to automatic expungement orders. The proposed amendment to 3-104 makes the district court presiding judge the signing judge for all automatic expungement orders in the presiding judge's district, including both district and justice courts.

1 Rule 3-104. Presiding Judges.**2 Intent:**

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

5 Applicability:

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

8 Statement of the Rule:**9 (1) Election and term of office.**

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

16 (1)(B) Associate presiding judge.

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

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

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

29 (2) Court organization.**30 (2)(A) Court en banc.**

31 (2)(A)(i) Multi-judge courts shall have regular court en banc meetings, including
32 all judges of the court and the court executive, to discuss and decide
33 court business. The presiding judge has the discretion to excuse the
34 attendance of the court executive from court en banc meetings called
35 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.

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

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

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

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

(3)(A) **Generally.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(3)(E)(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic

organizations and other state agencies. The presiding judge shall be the primary representative of the court.

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

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

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

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

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

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

- (3)(F)(v) The district court presiding judge will be the signing judge for all automatic expungement orders in the presiding judge's district, including district and justice courts.

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

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

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

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

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

(3)(G)(v) Pursuant to Council policy and the direction of the state level administrator, the court executive has the responsibility for the day-to-day supervision of the non-judicial support staff and the non-judicial administration of the court. The presiding judge, in consultation with the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the support staff and the general administration of the court including budget, facility planning, long-range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

Commented [KW1]: Changes back from public comment.

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

227 appropriate state level administrator and indicate the reasons why the
228 case or issue continues to be held under advisement.
229 (3)(L)(iv) If a case or issue is held under advisement for an additional 30 days,
230 the state level administrator shall report that fact to the Council.
231 (3)(M) **Board of judges.** The presiding judge shall serve as a liaison between the court
232 and the Board for the respective court level.
233 (3)(N) **Supervision and evaluation of court commissioners.** The presiding judge is
234 responsible for the development of a performance plan for the Court
235 Commissioner serving in that court and shall prepare an evaluation of the
236 Commissioner's performance on an annual basis. A copy of the performance
237 plan and evaluation shall be maintained in the official personnel file in the
238 Administrative Office.
239 (3)(O) **Magistrate availability.** The presiding judge in a district court shall consult with
240 the presiding judge in the justice court of that judicial district and the justice court
241 administrator to develop a rotation of magistrates that ensures regular availability
242 of magistrates within the district. The rotation shall take into account each
243 magistrate's caseload, location, and willingness to serve.

244 *Effective May 1, 2019*

Rule 4-403. Electronic signature and signature stamp use.

Intent:

To establish a uniform procedure for the use of judges' and commissioners' electronic signatures and signature stamps.

Applicability:

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

Statement of the Rule:

- (1) A clerk may, with the prior approval of the judge or commissioner, use an electronic signature or signature stamp in lieu of obtaining the judge's or commissioner's signature on the following:
 - (1)(A) bail bonds from approved bondsmen;
 - (1)(B) bench warrants;
 - (1)(C) civil orders for dismissal when submitted by the plaintiff in uncontested cases or when stipulated by both parties in contested cases;
 - (1)(D) civil orders for dismissal pursuant to Rule 4-103, URCP 3 and URCP 4(b);
 - (1)(E) orders to show cause;
 - (1)(F) orders to take into custody;
 - (1)(G) summons;
 - (1)(H) supplemental procedure orders;
 - (1)(I) orders setting dates for hearing and for notice;
 - (1)(J) orders on motions requesting the Department of Workforce Services (DWS) to release information concerning a debtor, where neither DWS nor the debtor opposes the motion;
 - (1)(K) orders for transportation of a person in custody to a court hearing, including writs of habeas corpus ad prosequendum and testificandum; and
 - (1)(L) orders appointing a court visitor.
- (2) When a clerk is authorized to use a judge's or commissioner's electronic signature or signature stamp as provided in paragraph (1), the clerk shall sign his or her name on the document directly beneath the electronic signature or stamped imprint of the judge's or commissioner's signature.
- (3) ~~In a case where a domestic relations injunction must be issued under URCP 109, the electronic signature of the judge assigned to the case may be automatically attached to the domestic relations injunction form approved by the Judicial Council, without the need for specific direction from the assigned judge and without the need for a clerk's signature accompanying the judge's signature.~~ The electronic signature of a judge may be

36 automatically affixed to the following documents without the need for specific direction
37 from the assigned judge when issued using a form approved by the Judicial Council:

38 (3)(A) a domestic relations injunction issued under URCP 109;

39 and

40 (3)(B) an automatic expungement order issued under Utah Code § 77-40-114.

41 **[Alt]** (3) The Judicial Council hereby creates an artificially intelligent judge to be known as
42 Judge Pat Doe. [The Judicial Council creates the pseudonym of Judge Pat Doe to
43 represent the collective of all judge]. The electronic signature of Judge Doe may be
44 automatically affixed to the following documents when issued using a form approved by
45 the Judicial Council:

46 (3)(A) a domestic relations injunction issued under URCP 109; and

47 (3)(B) an automatic expungement order issued under Utah Code § 77-40-114.

48 (4) All other documents requiring the judge's or commissioner's signature shall be personally
49 signed by the judge or commissioner, unless the judge or commissioner, on a document
50 by document basis, authorizes the clerk to use the judge's or commissioner's electronic
51 signature or signature stamp in lieu of the judge's or commissioner's signature. On such
52 documents, the clerk shall indicate in writing that the electronic signature or signature
53 stamp was used at the direction of the judge or commissioner and shall sign his or her
54 name directly beneath the electronic signature or stamped imprint of the judge's or
55 commissioner's signature.

56 *Effective January 1, 2020*

TAB 6

Office of Fairness and Accountability

Notes: The Judicial Council created the Office of Fairness and Accountability and tasked Policy and Planning with identifying the purpose of the Office and creating a rule that defines the scope of the director's responsibilities.

At its September meeting, Policy and Planning asked Ms. Williams to incorporate member comments into the draft of Rule 3-419, and bring it back for consideration in October.

Rule 3-419. Office of Fairness and Accountability**Intent:**

To establish the Office of Fairness and Accountability within the Administrative Office of the Courts.

To identify the objectives of the Office of Fairness and Accountability.

To identify the duties of the Director of the Office of Fairness and Accountability.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) **Establishment of the Office.** The Office of Fairness and Accountability is established within the Administrative Office of the Courts to organize and lead the judiciary in examining and addressing processes and outcomes within the judicial system that contribute to or cause the unequal treatment of individuals based on factors such as race, gender, ethnicity, age, disability, socioeconomic status, religion, sexual orientation, marital status, veteran status, and any other status protected by law~~race, ethnicity, sexual orientation, or gender.~~

(2) Objectives.

(2)(A) The Office shall support the judiciary in its efforts to ensure that Utah courts are achieving the judiciary's mission to provide an open, fair, efficient, and independent system to advance access to justice under the law.

(2)(B) The Office shall work collaboratively with other offices, departments, judges, commissioners, court employees, boards of judges, and Judicial Council standing committees.

(2)(C) The Office shall advance efforts to eliminate bias from court operations, promote equal access to the court, support efforts to diversify the bench, and inspire a high level of trust and public confidence in the Judiciary.

(3) Director Duties. The Director of the Office of Fairness and Accountability shall:

(3)(A) Create and operationalize a strategic plan that includes the following areas of focus:

(3)(A)(i) Identifying and addressing racism and other forms of bias within the judicial system by:

(3)(A)(i)(a) Engaging in community outreach and serving as a liaison between the courts and other agencies and organizations;

(3)(A)(i)(b) Networking with community partners such as the Utah Commission on Criminal and Juvenile Justice, the Utah Center for Legal Inclusion, Diversity Offices, universities, and community organizations;

(3)(A)(i)(c) Partnering on access to justice initiatives and projects; and

(3)(A)(i)(d) Developing a speakers' bureau to reach K-12 schools statewide.

(3)(A)(ii) Conducting data collection and research through:

(3)(A)(ii)(a) Collaboration with national experts and thought leaders to identify, gather and analyze relevant data; and

(3)(A)(ii)(b) Coordination with Court Data Services and Information Technology Services to capture and report relevant data.

(3)(A)(ii)(c) A special area of focus shall be collecting and analyzing jury information, including juror selection, service, and pools.

(3)(A)(iii) Coordinating with the Judicial Education Department to develop education curriculum and training for judicial officers and employees on issues including but not limited to:

(3)(A)(iii)(a) cultural competency;

(3)(A)(iii)(b) implicit bias, institutional bias, and individual biases; and

(3)(A)(iii)(c) any other relevant issues.

(3)(A)(iv) Monitoring Human Resources implementation of best practices for recruitment and retention, and collaborating with Human Resources on:

(3)(A)(iv)(a) the recruitment and selection of court commissioners and employees; and

(3)(A)(iv)(b) obtaining and analyzing data.

(3)(A)(v) Collaborating with organizations such as the Utah State Bar, Utah Center for Legal Inclusion, and schools to encourage individuals from marginalized communities to apply for judicial openings.

(3)(B) Serve as a resource for minorities within the court system and work to increase cultural awareness, foster greater appreciation of racial and cultural diversity, and engender mutual respect in persons who deliver court services and represent our justice system

(3)(C) Make recommendations for improvement in court processes, procedures, and policies as they relate to race, gender, ethnicity, age, disability, socioeconomic status, religion, sexual orientation, marital status, veteran status, and any other status protected by law.

(3)(D) Oversee the interpreter and language access programs, and the communication and public information programs.

(3)(E) Review and report on the efficient allocation and fair application of available resources to addressing issues of disparity in the judiciary

(3)(F) Implement standards, policies, and rules as directed by the State Court Administrator and Judicial Council.

(3)(G) Report to the Judicial Council at least annually.

Effective May/November 1, 20__