



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

November 30, 2020

Hon. Mary T. Noonan
Interim State Court Administrator
Cathy Dupont
Deputy Court Administrator

MEMORANDUM

TO: Policy and Planning Committee

FROM: Brent M. Johnson

RE: Automatic expungement signing judges

As I was attempting to make amendments to rule 3-108 to reflect the Policy and Planning Committee's decision to have justice court presiding judges serve as the signing judges for automatic expungement cases within their districts, I realized there is a problem with amending rule 3-108. Rule 3-108 applies only to assignment of judges in courts of record. The rule is based in part on Utah Code § 78A-2-104(9)(a) which states that the Council "shall establish written procedures authorizing the presiding officer of the Council to appoint judges of courts of record by special general assignment to serve temporarily in another level of court in a specific court or generally within that level." The statute does not expressly permit the Council to enact a rule allowing assignment of one justice court judge to serve in another justice court. An argument could perhaps be made that the Council need not rely on authority from the legislature because the Council is established by the Constitution. But that would raise questions about the validity of many statutes in that same title and chapter. An argument could also be made that the statute would still permit the Judicial Council to assign a district court judge to sign justice court cases.

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

But there is another statute that undermines the argument. Section 78A-2-225 permits a judge of a court of record to “serve temporarily as a judge in another geographic division or in another court of record, in accordance with the Utah Constitution and the rules of the Judicial Council.” This suggests that district court judges may serve only in other courts of record.

There is an additional problem in assigning presiding justice court judges to other justice courts. Section 78A-7-208 states that “when necessary, the governing body may appoint any senior justice court judge, or justice court judge currently holding office within the judicial district or within an adjacent county, to serve as a temporary justice court judge.” This suggests that the local government governing bodies decide who will sign orders in their courts.

I therefore think that all the Judicial Council can do at this point is appoint presiding district court judges to sign expungement orders in district court cases. In order to have presiding justice court judges sign for all justice courts, a statutory change will be necessary. Otherwise, the system will have to be programmed for each justice court judge to sign their own cases.