

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

December 4, 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	Reschedule January meeting	Action		Judge Pullan
12:10	<u>Rules back from Public Comment:</u> <ul style="list-style-type: none"> • 3-105. Administration of the Judiciary • 3-301.01. State Court Administrator – Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees • 3-201. Court Commissioners 	Action	Tab 2	Keisa Williams
12:20	3.201.02.Court Commissioner Conduct Committee	Action	Tab 3	Judge Ryan Harris
12:35	3-104. Presiding Judges 3-108. Judicial Assistance	Action	Tab 4	Brent Johnson
1:00	Senior Judge Program Update	Discussion/ Action		Judge Connors Cathy Dupont
1:15	HR Policies <ul style="list-style-type: none"> • HR 1-5 – Judge Pullan • HR 6-7 – Judge Cannell / Judge Heward • HR 8-9 – Rob Rice • HR 10-14 – Judge Connors • HR 15-17 – Judge Chin 	Action		Committee
2:00	Adjourn			

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

November 6, 2020

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

Webex video conferencing
November 6, 2020: 9 am – 5 pm

DRAFT

MEMBERS:

PRESENT

EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Brian Cannell	•	
Judge Augustus Chin	•	
Judge David Connors	•	
Judge Michelle Heward	•	
Mr. Rob Rice	•	

GUESTS:

Paul Barron
Brent Johnson
Justice Christine Durham
Judge Christine Johnson
Judge Barry Lawrence
Judge Heather Brereton
Dr. Jennifer Yim
Bridget Romano
Bart Olsen
Jeremy Marsh
Shane Bahr
Judge Judith Atherton
Cathy Dupont

STAFF:

Keisa Williams
Minhvan Brimhall

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the October 2, 2020 meeting. With no changes, Rob Rice moved to approve the minutes as drafted. Judge Heward seconded the motion. The motion passed unanimously.

(2) Proposed amendments to senior judge rules:

- 1-305. Board of Senior Court Judges
- 3-104. Presiding Judges.
- 3-108. Judicial Assistance
- 3-113. Senior Judges
- 3-501. Insurance Benefits Upon Retirement
- 11-201. Senior Judges
- 11-203. Senior Justice Court Judges

Judge Pullan welcomed Judge Atherton and Cathy Dupont.

Judge Atherton: The impetus behind the rule changes was to clean up and clarify a few technical issues like reappointments and how to appeal the denial of an appointment because the rules hadn't been reviewed in quite some time. There were no substantive changes. The appointment language was moved to rule 3-108.

Ms. Dupont: This started over a year ago when the Board of Senior Judges realized that some of the rules didn't match current practice. For example, there weren't enough senior judges to fill the board seats, and the board typically only meets annually at the judicial conference. The Board changed the organizational structure to just five board members and the meeting requirement to once a year (rule 1-305). They can meet more often if needed.

The more technical changes were made after receiving questions from TCEs and judges about when senior judges could be appointed and for what reasons. For example: When do TCEs/judges have to seek permission from the Management Committee if they think the need for a senior judge may exceed 14 days? When can TCEs/judges appoint a senior judge without first considering whether a sitting judge can cover the case or calendar? There was a lot of confusion because the answers were spread across three different rules. The Board marshaled all of those provisions into one rule (rule 3-108).

Another change stemmed from a request by the education department for the ability to pay senior judges to serve as mentors for newly appointed judges (3-113). The education department tried to make that change back in 2008, but the Council chose not to adopt it due to budget constraints. Unfortunately, COVID presents similar budget constraints, but with the backlog of jury trials, the circumstances may be different. Also in rule 3-113, is a proposed increase in compensation for senior judges for non-judicial service days, such as attending conferences and CLEs. Currently, the compensation is \$25 for a half-day and \$50 for a full day. The proposed increase is \$50 for a half-day and \$100 for a full day.

Pullan: In light of our current budgetary constraints, what is the impetus behind the request for an increase in compensation? That may need to go through the Budget and Fiscal Management Committee. Do we have the money and where would it come from?

Ms. Dupont: The impetus behind the increase was a request from a board member. The amounts haven't been adjusted in at least a decade.

Another proposed change relates to grand jury service. The statute allows an active senior judge to serve on a grand jury. Judge West currently serves on a grand jury and he has submitted a request for reimbursement under the "education and community service day" rate. Reimbursement for the higher "judicial service day" rate requires an order of appointment from a presiding judge, and the "judicial day" rate section in the rule doesn't contemplate grand jury service. Judge Davis is about to retire. He has a pending request for appointment as a senior judge because he also wants to serve on the grand jury. Grand jury service should be added to the list of things that qualify for reimbursement at the "judicial service day" rate. The other option is to pay those rates out of the grand jury budget, but that budget has historically been \$800 per year and is really only meant to cover travel. This is a policy consideration and it's not included in the proposed rule drafts for review today.

After discussion, the Committee voted to amend the rule to compensate grand jury service under the "judicial service day" rate. Ms. Dupont will make that change.

Judge Pullan: The Judicial Council has expressed concerns with the incentive benefit compensation. Right now, if someone applies for senior judge status and they meet the qualifications, the request is automatically granted. When the Council met in February 2020, they had concerns about that practice. Every time the Council approves a senior judge, there is cost associated with that decision. What is that cost?

Judge Atherton: After retirement, judges receive medical benefits for seven (7) years. At the end of 7 years, they become eligible for incentive benefits. The court pays half of the medical benefits and half of the incentive benefits for both the judge and their spouse. Currently, ten (10) judges fall in that category. The intent appears to be to ensure senior judges receive the same (or close to the same) compensation as sitting judges. For example, sitting judges receive their full salary when attending a conference, but senior judges only receive \$50. The incentive benefit seems to even things up a bit.

The only costs associated with senior judges in the first seven years of service is for bar dues and conferences. There is a small education fund of about \$900, but it is rarely used because it's traditionally reserved for out-of-state travel. It could be used to pay for bar conventions and dues.

Judge Connors: For senior judges in the first seven years, the cost seems de minimis. If so, it may be worth having more judges to draw from. The Council could conduct a detailed review of someone's senior judge status just prior to the end of that 7-year period before deciding whether to recertify that judge. The Council could look at the judge's individual record, conduct an interview, determine whether they had an equal opportunity to serve, and ask about the reason for declined assignments.

The Committee discussed incentive benefits and judicial days worked for current senior judges from 2016-2020, including the difference in appellate service.

Judge Pullan: Is there is a way to systemically and objectively determine the number of senior judges we need across the state? The Council could then make a decision about granting senior judge applications based on need, instead of automatically granting senior judge status and incurring unnecessary costs.

The data suggests that appellate senior judges are used so infrequently that we may not need them. As a district court judge, I have sat by assignment on the Supreme Court several times. Is that a better way to do it? There may be good reasons to have them. For example, after retirement it might make sense for a justice to remain on a pending case. Our data suggests we are not using them, but why? We need input from the appellate courts.

Ms. Dupont: This year the days worked numbers are way down, but when the pandemic restrictions ease up, the needs will rise again. It is also hard to predict when we might have a need due to death, illness, or unusual events. There is value in having senior judges ready to serve when unexpected things happens. I'm not sure how to plan for those circumstances.

In the rule for appointment, in most cases, TCEs must first attempt to use sitting judges to cover the case or calendar. If the TCE can't cover it with a sitting judge, they can then look to senior judges. At that point, the TCEs are in a hurry to find someone. An email is sent out to all of the active senior judges asking for help with coverage. Senior judges are saying it is a race and whoever answers the email first generally gets the appointment. Some of the senior judges aren't quick enough to respond so they never get appointed. No one is keeping a record of which judges are accepting or declining assignments.

Judge Atherton: Another difficulty is the lack of notice. Senior judges may have pre-existing plans when a need suddenly arises. Several times, I have accepted an assignment and then the morning of the event I'm notified that I'm no longer needed. There is a level of frustration when the parameters for "days worked" doesn't account for times when you've accepted an assignment but aren't needed at the last minute.

Judge Connors: There should be a rotating selection list to ensure all judges have an opportunity to accept or decline an assignment. TCEs or Presiding Judges would go down the list until someone accepts. A senior judge could explain the reason for declining an assignment.

Judge Pullan agreed. We ought to be keeping track of that data. Judge Connors' recommendation would also account for any conflicts of interest that require recusal. The list could be split into 3-4 sections covering various parts of the state. Another idea is for senior judges to designate their availability, for example, the second and fourth week of every month.

Judge Pullan: Another concern relates to qualification for those with minimal days worked. How do senior judges keep up with changing technology and changes in the law?

Judge Heward: Are there instances when a particular senior judge is targeted for a particular case or calendar based on their knowledge of a case or their area of expertise? Are some of the judges who haven't served in a long time not being asked because things have changed so much since they last served?

Both Judge Atherton and Judge Connors provided examples of instances in which specific judges have been requested based on that judge's experience with a particular case, or their expertise in a certain area of the law.

Ms. Dupont: Another question posed by the Council was whether there should be an age limit of 75 for senior judges. That is purely a policy question. Senior judges are certified once every three years until the age of 75, at which point they must be certified every year.

Mr. Rice: The rule states that senior judge appointments can be made to reduce a critical backlog. What does that mean? Who defines "critical backlog"? How would that be accounted for when determining the number of senior judges needed?

The Committee created a working group to study and make recommendations to Policy and Planning on rule drafts, policy issues, and overall improvements to the senior judge program, incorporating feedback from the appellate courts on their needs. The working group should provide a status report to Policy and Planning in December and final recommendations in January. The working group will consist of:

- Judge Atherton (senior judge representative)
- Rural TCE over both district and juvenile court
- Urban TCE
- Judge Connors (P&P and Council representative)
- Cathy Dupont will staff the working group

The working group's first task will be a recommendation to the Judicial Council about whether to consider approving pending applications for recent (or soon to be) retired judges, and whether to consider or wait to consider pending applications for recertification of senior judges past their first seven years.

(3) Proposed amendments to the following rules:

- 4-403. Electronic and Signature Stamp Use
- 3-104. Presiding Judges
- 3-108. Judicial Assistance

Mr. Johnson: The proposed rule amendments relate to automatic expungements. It's unclear whether this will work from a technological standpoint. How often do trial court judges use the words "dismissed with prejudice" or "dismissed without prejudice" when dismissing a case?

Judge Connors: We often use "dismissed without prejudice" early in a case when a prosecutor hasn't quite figured out if they have enough evidence to move forward.

Judge Pullan: The further you get into a case, if it were dismissed on the eve of trial for example, it might be "dismissed with prejudice," but that's very rare. The only time it might happen is if the prosecution files a case and then finds out that the information provided to them was false. There was no factual basis for the charge. In that case, the parties might stipulate to a dismissal with prejudice.

Judge Chin: It is the same at the justice court level. When the case is old and there are no witnesses to proceed, I remind prosecutors that the case may be dismissed with prejudice.

Mr. Johnson: Some judges don't believe the words "with prejudice" or "without prejudice" are appropriate in the criminal context because it's meaningless. It's ultimately a double jeopardy issue based on the statute of limitations. That may pose a problem. How do we accurately identify dismissals with and without prejudice? The

statute specifically identifies those cases “dismissed with prejudice” as eligible for automatic expungement. When you pull a list of cases using the magic phrase “dismissed with prejudice,” the number is surprisingly low. That may be because the practice isn’t necessarily consistent from court to court and judge to judge.

Judge Connors: There may be a serious case in which the prosecution decides it doesn’t have enough evidence to proceed that day. Usually the prosecution prepares an order of dismissal that says, “dismissed without prejudice.” If the prosecution finds better evidence, they will file again. In the interim, if the first case wasn’t prosecuted is it automatically expunged? The prosecution wouldn’t be prevented from filing the new case unless the statute of limitations has run or double jeopardy attaches.

Mr. Johnson: There is a question as to whether we should proceed with these kinds of data integrity issues. If/when those issues are resolved, a mechanism needs to be in place in the rule.

Judge Pullan: At the last meeting, the committee discussed whether justice court judges should be signing expungement orders for justice court matters.

Mr. Johnson: I understand that the committee feels technology shouldn’t be driving the decision. I agree that policy should be driving the programming and not vice versa. If the system can be programmed to identify a district court judge for district court cases, programming for the justice courts could probably work the same way. From a technological perspective, one area of concern is how to update the system when a signing judge has left the bench. It’s important to tie it to a presiding judge because if the presiding judge changes and we happen to miss it, that judge would still be on the bench.

Paul Barron: We have an administrative judge field in CORIS that assigns the presiding judge for each district and for each of the courts within that district. I don’t know how that is populated in the justice courts. It would certainly be possible to create additional tables and track a justice court presiding judge in the same way, but it would be a little bit more complex to implement because of the multitude of justice courts.

Mr. Johnson: The justice courts now have a single presiding judge in each district so there would only be eight (8) of them. From a legal standpoint, I think a district court judge could be the signing judge for both district and justice courts by assignment. The decision is a policy matter. That also goes back to the issue of whether the assignment should occur by rule or by administrative order from the Chief Justice on a regular basis.

I think we should fall back on the administrative order. In reviewing the statute, it provides for the assignment of judges by the Chief Justice as the presiding officer of the Council. You could argue that the statute shouldn’t control what the court does, but to make certain there aren’t any questions, we may want to use an administrative order.

Judge Pullan: Could the administrative order identify a presiding judge by position, rather than by name?

Mr. Johnson: There is potential for that, but the statute specifically requires that all assignment orders have a limited duration. We do something similar now in those districts where juvenile court judges cover district court cases. In December of every year, the Chief Justice signs a new order authorizing a juvenile judge, by name, to handle district court work. We could have the Chief sign orders every year authorizing presiding judges to sign automatic expungement orders for the district, but it may be best to assign them by name. There is an argument that the Chief Justice could at least appoint the presiding judge for that judge’s term because that would be of limited duration. Every time the presiding judge changed, the Chief could sign a new order. That might help keep track of the changes. I think the term for presiding judges may be different for every district.

My recommendation is to use administrative orders. The proposed amendment to rule 3-108 would remain the same, except presiding judges in justice courts would sign for all justice court cases in the district.

Judge Connors moved to approve the proposed changes to rule 3-108 with Mr. Johnson's amendment and for the Chief to appoint presiding judges by administrative order, with a recommendation to the Judicial Council that the rule be published for comment. Judge Chin seconded the motion and it passed unanimously.

(4) Abusive Conduct Policy:

- CJA 2-111. Compliance with the CJA and CJC
- CJC Chpt. 12. Terminology
- Canon 2.12. Supervisory Duties
- Canon 2.3. Bias, Prejudice, Harassment
- 67-26-202. Abusive conduct complaint, investigation, administrative review process

Mr. Johnson: In the last legislative session, the legislature mandated that certain policies apply to judges and court employees. It also mandated the incorporation of processes followed by other agencies. The approach I recommend is to add the abusive conduct policy to the Code of Judicial Conduct (CJC), and to amend CJA rule 2-111 slightly to allow all employees to report failures to comply with the CJC to the presiding judge of the Council. The Council does not have the authority to discipline judges. That authority resides solely with the Judicial Conduct Commission. By placing this in the CJC, it provides the JCC with a standard and the ultimate authority they need to terminate a judge who violates the abusive conduct policy in an egregious way. The Council's limited authority in addressing violations of the CJC, outlined in CJA rule 2-211, is to investigate and refer the issue to the JCC. Because we are in new territory with the legislature telling the Judicial Council to create a policy that is so specific to a particular topic, reasonable minds may differ as to whether this is the best approach.

If P&P agrees with that approach, the next step is to take to the proposed CJC changes to the Supreme Court.

Mr. Rice: I read it as a companion to the HR rule. I think it does a nice job of creating a complaint avenue for employees, and it seems like a reasonable solution.

Judge Heward motioned to approve the proposed amendments to rule 2-111 pending Supreme Court approval of the companion amendments to the CJC. Mr. Rice seconded the motion and it passed unanimously.

(5) Rules back from public comment:

- CJA 3-413. Judicial Library Resources (expedited effective date of 8/21/20)

Ms. Williams: After a 45-day comment period, no public comments were received. The rule was approved on an expedited basis. If there are no changes to the rule, no further action is needed.

After discussion, the Committee made no changes to the rule and took no further action.

(6) CJA Appendix J. Ability-to-Pay Matrix:

Ms. Williams: The Council adopted the Ability-to-Pay Matrix in response to HB 206, with an October 1, 2020 effective date. The Council's Standing Committee on Pretrial Release and Supervision has received feedback that the matrix appears to eliminate judicial discretion to set a monetary bail amount higher than an individual can afford to pay, and that it caps the maximum monetary bail amount at \$5,000. That is not the case. The matrix provides recommended monetary bail amounts using the poverty guidelines and an individual's risk of failing to appear in court, but judges have discretion to deviate from those amounts and can set an amount outside an individual's ability to pay. The Pretrial Release Committee added the proposed language in an effort to clear up any confusion. The new columns in the chart on the left-hand side of the page are not a substantive change. Those numbers still reflect the poverty guidelines. The changes were necessary to match the ranges listed in the columns in the chart on the right-hand side of the page for programming purposes.

Judge Connors asked for clarification on the PSA FTA Risk Score. Judge Pullan asked for clarification on the percentages listed next to the FTA risk scores.

Ms. Williams: The failure to appear (FTA) numbers (1-6) correspond with the failure to appear risk score on the PSA. That does not reflect the number of times an individual has failed to appear. The score is determined using an algorithm that takes into account all 9 factors on the PSA and converts a raw score into the scaled 1-6 score.

The percentages listed next to the FTA score reflect the average rate of appearance for those individuals with the same risk score in the national PSA validation study. In creating the PSA, researchers studied 1.5 million cases across federal and state courts in both rural and urban jurisdictions. They then followed defendants for two years. For those individuals who scored an FTA1, they appeared (on average) 90% of the time. Those who scored an FTA2 appeared, on average, 85% of the time, etc. It's important to remember that these tools provide a statistical prediction. They cannot tell you what a specific individual will or won't do.

Judge Pullan: When a person fails to appear, their failure rate in my court is 100%. Do we really have to wait for that person's FTA score to reach a "4" to issue a warrant to get them back to court?

Ms. Williams: No. Judges can, and do, issue warrants following a single failure to appear and you have the discretion to deviate from the recommended amounts on the matrix. These are fact-based decisions and every circumstance will be different. It's difficult to determine what dollar amount or condition will adequately incentivize a particular individual to appear in court. The matrix is meant to provide guidance and assistance in conducting an ability-to-pay analysis and determining the least restrictive conditions necessary to ensure appearance.

Judge Connors: Putting this into practice is very difficult. It will take time to achieve consistency across the board.

After discussion, the committee made several amendments to the proposed language.

Judge Cannell motioned to approve the matrix, with the Committee's amendments, for recommendation to the Council that the matrix be approved on an expedited basis and sent out for public comment. Judge Connors seconded and the motion passed unanimously.

(7) Courthouse attire language in jury summons and CORE/CARE notices:

Ms. Williams: CJA rule 4-411 went into effect on November 1, 2020. The language on the jury summons (page 2) conflicts with the rule. Should that entire paragraph be removed, or should the language be amended?

Mr. Rice: If there haven't been any reports of related issues with prospective jury pools, I would delete it.

No jury pool issues were reported to Ms. Williams or Mr. Barron.

Judge Cannell: Rule 4-411 states that all contrary statements must be removed, so the paragraph should be deleted.

Judge Pullan: A jury summons is an order to appear. Do we place someone who does not have business attire in a position where they have to choose whether or not to comply with a judicial order? The existing language should be replaced with a statement that jurors must "dress appropriately," followed by a reference to CJA rule 4-411.

After further discussion, the Committee agreed.

Ms. Williams: Language regarding attire has already been centrally removed from all CARE notices, but a question remains as to CORIS.

Mr. Barron: Each court location can customize the language in their notices in CORIS. Currently, 10 district courts have a custom note addressing prohibited or required attire. Justice courts haven't been checked yet. We could send an email to courts with attire-related notes asking them to delete the language entirely, or require them to use specific language with a reference to the rule. I don't recommend having the IT Department delete the notes centrally because court locations have the ability to create them again.

Ms. Williams: This might be a training issue. Some clerks of court have already deleted the language from their notices.

After further discussion, the Committee determined that court locations should be instructed to either delete their notes entirely, or be directed to change the language to match the revised summons – “dress appropriately” with a rule reference.

Judge Connors moved to approve the change to the summons and the Committee's decision on the directive to all court locations. Mr. Rice seconded the motion and it passed unanimously.

Ms. Williams and Mr. Barron will work together to make the changes.

8) 3-101. Judicial Performance Standards:

Judge Pullan welcomed guests.

Judge Lawrence: The Board of District Court Judges' (BDCJ) intention behind the rule draft is not to skirt responsibility. The issue lies solely with circumstances beyond a judge's control. This came to the board's attention two years when, despite JPEC's recommendation of retention because the circumstances were outside of those judges' control, negative statements were posted publicly indicating that the judges hadn't complied with the cases under advisement standard.

Utah Code 78A-2-223 states that a trial judge shall decide all matters submitted for final determination within two months of submission, unless circumstances causing the delay are beyond the judge's control. The statute recognizes that judges shouldn't be penalized, or found non-compliant, for situations outside that judge's control. The rule should reflect that as well and the issue should be resolved by the Council before it goes to the Judicial Performance Evaluation Commission (JPEC). The Commission isn't aware of the court's processes, so the board feels that the Council should have the ability to excuse conduct that is beyond a judge's personal control. That is a pretty high standard. We are talking about cases that are sitting in a basket in the courthouse somewhere for 90 days before they are finally brought to the judge's attention. The argument that it's harmless error because no judge has been affected by it is unsatisfactory because we shouldn't wait for a judge to be unfairly not retained before the issue is addressed. It is unfair for a judge to have a blemish on their annual report when they didn't do anything wrong. The board feels very strongly about this issue.

With respect to Judge Pullan's proposed draft, I think it makes things more complicated than they need to be and I disagree that a judge should be deemed non-compliant (with an explanation) for things beyond their control. They are compliant under the statute. It's also a little internally inconsistent because paragraph (4) seems to indicate that a judge would be compliant, but paragraph (6)(D) says they wouldn't be compliant.

Judge Pullan: The new definition of “case under advisement” seems to get at the issue you discussed and the issue we all fear, that a notice to submit sits on a clerk's desk for 90 days before making it to a judge. Under the new definition, that case wouldn't be considered “under advisement” until it reached the judge. Would the new definition resolve the issue?

Judge Johnson: The board recommended the new definition and felt like it addressed the main problem, but there are always going to be circumstances that you don't foresee. For that reason, the board felt that paragraph (6) was an important catchall for unforeseen circumstances that the Council ought to be able to weigh in on.

Mr. Bahr: One example was a tax case that was heard in one district and then transferred to another district. It was already under advisement, so the receiving judge was penalized even though he didn't see it until after the 90 days.

Ms. Romano: We noticed the same inconsistency with subsection (4). JPEC doesn't have any concerns with respect to broadening the definition of what it means for a case to be under advisement. I think the new definition will capture most circumstances. Previously, we discussed circumstances when the clock is compromised. A judge may be aware that the clock is ticking, but is unable to respond because of circumstances beyond their control. We are struggling with how best to accommodate judges' desire for fairness and the Council's desire for the ability exercise some discretion, with JPEC's obligation to conduct an evaluation and make recommendations according to the statute.

Justice Durham: No one on JPEC thinks a judge should be unfairly penalized for circumstances outside of his or her control. The concerns we've raised have to do with where the discretion to determine compliance lies. I think there is a significant problem with the statute. The statute sets time standards for the judicial branch. The Constitution gives the judiciary the power to govern the administration of justice. The Council sets those standards. I don't think the Council is beholden to the statute. In addition, that statute contradicts the governing statutes for JPEC, which gives to the commission all the power with respect to final determinations regarding standards and recommendations to the voters.

We are not at all concerned with the Council's investigation and their opinion about what should be excused. The issue is whether it is the Council's role to excuse or whether it is JPEC's role to excuse. JPEC's adapted rule draft makes it clear that JPEC wants to hear from the Judicial Council and that we would give great deference to the Council's expertise with respect to the way the system works.

Dr. Yim: Concerning the situation with the two justice court judges that Judge Lawrence referred to, it is true that those judges were found to be non-compliant with the case under advisement standard. JPEC listened carefully to the situation with each of those judges and voted unanimously to recommend that the judges be retained. We published detailed information in our narratives explaining why we found the judges' conduct in both of those situations to be absolutely acceptable and that the public should not be concerned at all about that determination. I don't see any harm to those judges as result of that process. I do not see JPEC's evaluative process as retributive in any way. That is not what the commission sees as its role. The process is designed to help judges be the best judges they can be, to ensure Utah has the strongest possible judiciary, and to keep the public informed.

Judge Connors: The question is who decides the issue of compliance or non-compliance. If the statutory standard is that I have 60 days, except for matters that are beyond my personal control, isn't it the district court judge who ought to be the first one making the decision of compliance? That is what the declaration form is all about. After that, is it the Council or JPEC that gets to evaluate more carefully whether it was or was not within the judge's personal control? If the Judicial Council says it was not within their personal control, you do not have a non-compliant judge.

Justice Durham: The Judicial Council gets to investigate and offer a compliance recommendation and an explanation, but JPEC isn't bound by it. JPEC will do its own investigation and judges get a full hearing.

Ms. Romano: It is the judge's first obligation to view his or her calendar and his or her compliance and self-report. If the judge believes they have complied, with the exception of circumstances beyond their control, then they make the information available. If the Council agrees with the judge, who has the authority to "excuse" the non-compliance?

Dr. Yim: I have learned that there is a real desire for the Council to be heard on these hard cases. I think that's reasonable. I suspect that JPEC would very much welcome information from the Council, including an explanation about circumstances beyond a judge's control. There is no desire to exclude the Council in any way from having input in this process, but it's important to consider the public optics. It shouldn't look to the voters like the judiciary is trying to cover up performance issues. In overcoming a presumption that a judge not be retained, JPEC has

always been willing to take the creditability hit from the perspective of voters that we are a legitimate group willing to fairly evaluate judges. That has been true even when a judge has a judicial sanction in their record that looks terrible to voters. We know that voters don't know enough about the judiciary to understand how the system works.

Judge Heward: I appreciate the system we have and appreciate that JPEC is taking the hit so that it doesn't sound self-serving on the part of the judiciary. I would suggest that voices are more impactful when there are more opinions. If the Council were to say a judge is compliant, but JPEC decides something different, that is pretty pointed and people are going to notice. None of our judges want to be in that position. If the Council makes the determination that the judge is compliant because of a circumstance outside of a judge's control and JPEC agrees, that is also powerful. The Board of Juvenile Court Judges fully supports the recommendations and concerns expressed by the Board of District Court Judges.

Judge Cannell: I understand the need for transparency and providing good information to voters, but if a determination is made that circumstances were beyond a judge's control, why find a judge non-compliant? It is not consistent with the statute, constitutional or not. The problem is the negative inference in a public record.

Judge Pullan: I have been persuaded that the Judicial Council ought to have the discretion by rule to determine that a judge is non-compliant, even if that judge's self-declaration says that they are. If the Judicial Council has credible information that the self-declaration isn't true, the Council ought to be able to determine that the judge is non-compliant. That would improve optics.

Another consideration is what the standard should be and how to incorporate the "beyond control" exception. If the Council says "non-compliant with explanation" and provides supporting materials to JPEC, JPEC would have more information and likely reach the same conclusion. Today, the Council simply says "non-compliant." I don't think the Council has any interest in certifying judges who are not meeting the standards. We ought to be thinking about how the systems function independent of one another, creating a check on powers.

The inconsistency in my proposed rule draft could be resolved by creating three (3) categories instead of four (4): compliant, non-compliant, and compliant with explanation.

Ms. Romano: JPEC proposed similar changes, but chose "non-compliant with explanation" to avoid the optics of conflicting determinations by the Council and JPEC.

Justice Durham: The judge is not compliant with the current standard and therefore it is excusable.

Judge Connors: According to the statute, if in fact the circumstances were beyond the judge's control, there is no technical non-compliance. There is no standard mandating that judges decide, within 60 days, things that are outside of their control. The Council could always set a different standard. Who gets to make the final determination is a different question.

The Committee discussed self-reporting and determined that the self-declaration form should be modified. If a judge declares a case wasn't decided within 60 days, there should be a section for the judge to explain whether and why it was beyond his or her control.

Ms. Romano: JPEC could potentially modify the form to get us closer to where you want to be. Subsection (4) of the rule could be modified to include a requirement that judges provide a written explanation and any supporting documentation to the Council for review, along with the self-declaration form.

Judge Brereton: The new proposed amendments to the rule haven't been reviewed by the BDCJ. I think the board would like an opportunity to weigh in.

Judge Johnson: “Compliance with an explanation” undermines the certification. It is an asterisk and will leave a mark. If the only reason a decision was past 60 days is due to something outside of a judge’s control, they are compliant. We shouldn’t undermine the judge’s credibility by putting an asterisk by their name and suggesting there is some story behind it.

Judge Cannell agreed with Judge Johnson. Making that information public doesn’t make the judge a better judge.

After further discussion, the Committee made no changes to the proposed amendments to subsection (2) and the definition of a case under advisement. Subsection (6) was amended to include three categories: Compliant, compliant with explanation, and non-compliant, which may include a judge who self-certified compliance but the Council has credible information inconsistent with that certification.

Dr. Yim: I like the draft. It takes everyone’s best interests into consideration and it’s not dissimilar from the changes we made. I will take it to the full commission at its December 15th meeting. Judge Pullan will attend on behalf of Policy and Planning.

Judge Pullan recommended that the comment period be extended to account for JPEC’s January meeting. Ms. Williams will include the rule draft on the Council’s November 23rd consent calendar.

Judge Connors moved to approve the rule draft as amended with a recommendation to the Council that the rule be published for a 60-day comment period. Judge Cannell seconded and the motion passed unanimously.

(9) HR Policies:

Mr. Olsen reviewed the memo he distributed to the Committee along with the proposed policy drafts, and his recommendation that the policies be considered as a whole, rather than piecemeal.

After discussion, the policies were assigned to each committee member for review as follows:

- HR 1-5 – Judge Pullan
- HR 6-7 – Judge Cannell / Judge Heward
- HR 8-9 – Rob Rice
- HR 10-14 – Judge Connors
- HR 15-17 – Judge Chin

Committee members will make any proposed amendments in the Google doc or send them to Mr. Olsen, and will report back to the Committee at the December meeting.

(10) ADJOURN:

With no further items for discussion, Judge Chin moved to adjourn the meeting. No seconded the motion. With no opposition, the meeting adjourned at 2:27 pm. The next meeting will be on December 4, 2020 at noon via Webex video conferencing.

TAB 2

Rules back from Public Comment

- 3-105. Administration of the Judiciary
- 3-301.01. State Court Administrator – Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees
- 3-201. Court Commissioners

Notes: The rules above are back from a 45-day comment period.

3-201 - No comments

3-105 - One positive comment

3-301.01. One positive and one negative comment. I do not recommend any amendments based on those comments.

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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Code of Judicial Administration – Comment Period Closed November 21, 2020

CJA03-0301.01. State Court Administrator—Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees (NEW)

Establishes the Management Performance Review Committee, outlines a process for reviewing the performance of the State Court Administrator, and creates an avenue by which complaints regarding the State Court Administrator, judicial officers, and state court employees can be received, reviewed, and investigated.

CJA03-0105. Administration of the Judiciary (NEW)

Sets forth the authority of judges, courts, the Supreme Court, and the Judicial Council to administer the functions of the judicial branch. Creates a process by which the Supreme Court and Judicial Council may assess and determine exclusive and predominate authority, and how those two bodies will communicate with each other when issues arise.

This entry was posted in [CJA03-0105](#), [CJA03-0301.01](#).

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.

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Period Closed December 10, 2020

Period Closed November 20, 2020 »

UTAH COURTS

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3 thoughts on “Code of Judicial Administration – Comment Period Closed November 21, 2020”

Joseph M. Bean
October 8, 2020 at 7:06 am

We already have JPEC evaluations and the Judicial Conduct Commission for judicial officers, why do we need more bureaucracy? Next we'll need commissions to oversee other commissions and committees. If there is a need to field complaints about the court administrator then narrow the committee to that inquiry. If the Judicial Conduct Commission is inadequate, then that process needs to be reformed.

Kara Wells
October 8, 2020 at 8:01 am

Thank you for reviewing this policy and creating much clearer direction.

Michael Zimmerman
October 8, 2020 at 10:34 am

CJA 03-0105

This seems an appropriate restatement of the roles of the Court and the Judicial Council, and institutionalization of means for noting and resolving situations where one might trench on an

- -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
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- CJA03-0111.01
- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112

other's prerogative. This can be an issue that at times lurks unseen.

- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0301.01
- CJA03-0302
- CJA03-0304
- CJA03-0304.01
- CJA03-0305
- CJA03-0306
- CJA03-0306.01
- CJA03-0306.02
- CJA03-0306.03
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- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03
- CJA04-0402

Rule 3-105. Administration of the Judiciary**Intent:**

To set forth the authority of individual judges, courts, the Supreme Court, and the Judicial Council to fairly and effectively administer the functions of the judicial branch, and to provide a process by which the Supreme Court and the Judicial Council (1) determine when a matter is predominantly within the exclusive authority of the Supreme Court or the Judicial Council such that referral to and independent action of either body is required; and (2) determine when a matter significantly implicates the exclusive authority of both the Supreme Court and the Judicial Council such that a coordinated effort is required.

Applicability:

This Rule applies to the judicial branch.

Statement of the Rule:**1. Individual Judges, Courts and Court Levels.**

- a. Individual judges are responsible for administering the cases assigned to them and to their courts for disposition consistent with Rule 3-103.
- b. Individual judges, courts, or court levels may adopt and apply policies, procedures, and practices applicable to them to ensure the fair, efficient, and timely administration of cases assigned to them, provided such policies, procedures, and practices conform to all applicable state and federal laws, to rules and orders promulgated by the Supreme Court, rules promulgated by the Judicial Council, and to applicable provisions of the Human Resources Policies and Procedures Manual.

2. The Supreme Court.

- a. The Supreme Court has exclusive authority to adopt rules of procedure and evidence to be used in courts of the State, to manage the appellate process, to authorize retired justices, judges, and judges pro tempore to perform judicial duties, and to govern the practice of law in the State.
- b. To the extent matters arise or come before the Judicial Council that are within the exclusive authority of the Supreme Court, the Judicial Council shall refer all such matters to the Supreme Court by notice to the Chief Justice.

3. The Judicial Council.

- a. Except as provided in paragraphs (1) and (2), the Judicial Council has exclusive authority for the administration of the judiciary, including authority to establish and manage the budget, adopt administrative policies and rules, and oversee the Administrative Office of the Courts.

- b. The Chief Justice, as presiding officer of the Judicial Council and chief administrative officer of the judiciary, shall supervise the State Court Administrator and shall implement rules and policies adopted by the Judicial Council.
- c. To the extent matters arise or come before the Supreme Court that are within the exclusive authority of the Judicial Council, the Supreme Court shall refer all such matters to the Judicial Council by notice to the Management Committee.

4. **Concurrent Authority of the Supreme Court and Judicial Council.** The Supreme Court and the Judicial Council are each independently responsible for the removal of the State Court Administrator as provided in statute and Rule 3-301, but shall exercise that independent authority consistent with Rule 3-308.

5. **Coordination and Referral of Activities Implicating Exclusive Authority of the Supreme Court and Judicial Council.**

- a. When the Supreme Court begins considering a matter which implicates both the Court's and the Council's exclusive authority, or when there is uncertainty about whether the Court or the Council has authority over such a matter, the Supreme Court or a designated member of the Supreme Court, shall promptly meet and confer with the Management Committee.
- b. When the Judicial Council begins considering a matter which implicates both the Council's and the Court's exclusive authority, or when there is uncertainty about whether the Council or the Court has authority over such a matter, the Management Committee shall promptly meet and confer with the Chief Justice.
- c. In the meeting required under subsections (5)(a) and (5)(b), the Supreme Court (acting through its designated member) and the Judicial Council (acting through its Management Committee) shall:
 - i. Decide whether the matter is predominantly within the exclusive authority of the Supreme Court or predominantly within the exclusive authority of the Judicial Council, and then refer the matter to the body with the predominating authority to act;
 - ii. Decide whether the matter substantially implicates both the exclusive authority of the Supreme Court and the exclusive authority of the Judicial Council, and then act in a coordinated effort to address the matter.
- d. If after a meeting required under subsections 5(a) and 5(b), no decision can be reached about predominant authority, substantial implication of authority, referral of the matter, or coordination of action, the Supreme Court and the Judicial Council shall meet in a joint session to make the decision.
- e. The designated member of the Supreme Court shall consult with and report to the Supreme Court regarding any meeting required under this rule.

- 71 f. The Management Committee shall consult with and report to the Judicial Council
72 regarding any meeting required under this rule.

73 Effective May 1, 2020

74 Note: All previous versions of CJA 3-105 have been repealed.

CJA Rule 3-201

1 **Rule 3-201. Court Commissioners.**

2 **Intent:**

3 To define the role of court commissioner.

4 To establish a term of office for court commissioners.

5 To establish uniform administrative policies governing the qualifications, appointment,
6 supervision, discipline and removal of court commissioners.

7 To establish uniform administrative policies governing the salaries, benefits and privileges of the
8 office of court commissioner.

9 **Applicability:**

10 This rule shall apply to all trial courts of record.

11 **Statement of the Rule:**

12 (1) **Definition.** Court commissioners are quasi-judicial officers established by the Utah Code.

13 (2) **Qualifications.**

14 (2)(A) Court commissioners must be at least 25 years of age, United States citizens,
15 Utah residents for three years preceding appointment and residents of Utah while
16 serving as commissioners. A court commissioner shall reside in a judicial district
17 the commissioner serves.

18 (2)(B) Court commissioners must be admitted to practice law in Utah and exhibit good
19 character. Court commissioners must possess ability and experience in the areas
20 of law in which the court commissioner serves.

21 (2)(C) Court commissioners shall serve full time and shall comply with Utah Code
22 Section 78A-2-221.

23 (3) **Appointment - Oath of office.**

24 (3)(A) Selection of court commissioners shall be based solely upon consideration of
25 fitness for office.

26 (3)(B) When a vacancy occurs or is about to occur in the office of a court commissioner,
27 the Council shall determine whether to fill the vacancy. The Council may
28 determine that the court commissioner will serve more than one judicial district.

29 (3)(C) A committee for the purpose of nominating candidates for the position of court
30 commissioner shall consist of the presiding judge or designee from each court
31 level and judicial district that the commissioner will serve, three lawyers, and two
32 members of the public. Committee members shall be appointed by the presiding

judge of the district court of each judicial district. The committee members shall serve three year terms, staggered so that not more than one term of a member of the bench, bar, or public expires during the same calendar year. The presiding judge shall designate a chair of the committee. All members of the committee shall reside in the judicial district. All members of the committee shall be voting members. A quorum of one-half the committee members is necessary for the committee to act. The committee shall act by the concurrence of a majority of the members voting. When voting upon the qualifications of a candidate, the committee shall follow the procedures established in the commissioner nominating manual.

(3)(D) If the commissioner will serve more than one judicial district, the presiding judges of the districts involved shall select representatives from each district's nominating committee to form a joint nominating committee with a size and composition equivalent to that of a district committee, except that a maximum of two judges from each district shall serve on the joint nominating committee.

(3)(E) No member of the committee may vote upon the qualifications of any candidate who is the spouse of that committee member or is related to that committee member within the third degree of relationship. No member of the committee may vote upon the qualifications of a candidate who is associated with that committee member in the practice of law. The committee member shall declare to the committee any other potential conflict of interest between that member and any candidate as soon as the member becomes aware of the potential conflict of interest. The committee shall determine whether the potential conflict of interest will preclude the member from voting upon the qualifications of any candidate. The committee shall record all declarations of potential conflicts of interest and the decision of the committee upon the issue.

(3)(F) The administrative office of the courts shall advertise for qualified applicants and shall remove from consideration those applicants who do not meet minimum qualifications of age, citizenship, residency, and admission to the practice of law. The administrative office of the courts shall develop uniform guidelines for the application process for court commissioners.

(3)(G) The nominating committee shall review the applications of qualified applicants and may investigate the qualifications of applicants to its satisfaction. The committee shall interview selected applicants and select the three best qualified

candidates. All voting shall be by confidential ballot. The committee shall receive public comment on those candidates as provided in paragraph (4). Any candidate may be reconsidered upon motion by a committee member and upon agreement by a majority of nominating committee members.

(3)(H) When the public comment period as provided in paragraph (4) has closed, the comments shall be given to the nominating committee. If any comments would negatively affect the committee's decision on whether to recommend a candidate, the candidate shall be given all comments with the commenters' names redacted and an opportunity to respond to the comments. If the committee decides not to recommend a candidate based on the comments, the committee shall select another candidate from the interviewed applicants and again receive public comment on the candidates as provided in paragraph (4).

(3)(I) The chair of the nominating committee shall present the names, applications, and the results of background investigations of the nominees to the judges of the courts the court commissioner will serve. The committee may indicate its order of preference.

(3)(J) The judges of each court level the court commissioner will serve shall together select one of the nominees by a concurrence of a majority of judges voting. If the commissioner will serve more than one judicial district, the concurrence of a majority of judges in each district is necessary for selection.

(3)(K) The presiding judge of the district the court commissioner will primarily serve shall present the name of the selected candidate to the Council. The selection shall be final upon the concurrence of two-thirds of the members of the Council. The Council shall vote upon the selection within 45 days of the selection or the concurrence of the Council shall be deemed granted.

(3)(L) If the Council does not concur in the selection, the judges of the district may select another of the nominees or a new nominating process will be commenced.

(3)(M) The appointment shall be effective upon the court commissioner taking and subscribing to the oath of office required by the Utah Constitution and taking any other steps necessary to qualify for office. The court commissioner shall qualify for office within 45 days after the concurrence by the Council.

(4) **Public comment for appointment and retention.**

(4)(A) Final candidates for appointment and court commissioners who are up for retention shall be subject to public comment.

CJA Rule 3-201

(4)(B) For final candidates, the nominating committee shall be responsible for giving notice of the public comment period.

(4)(C) For court commissioners, the district in which the commissioner serves shall be responsible for giving notice of the public comment period.

(4)(D) The nominating committee or district in which the commissioner serves shall:

(4)(D)(i) email notice to each active member of the Utah State Bar including the names of the nominees or court commissioner with instructions on how to submit comments;

(4)(D)(ii) issue a press release and other public notices listing the names of the nominees or court commissioner with instructions on how to submit comments; and

(4)(D)(iii) allow at least 10 days for public comment.

(4)(E) Individuals who comment on the nominees or commissioners should be encouraged, but not required, to provide their names and contact information.

(4)(F) The comments are classified as protected court records and shall not be made available to the public.

(5) **Term of office.** The court commissioner shall be appointed until December 31 of the third year following concurrence by the Council. At the conclusion of the first term of office and each subsequent term, the court commissioner shall be retained for a term of four years unless the judges of the courts the commissioner serves vote not to retain the commissioner in accordance with paragraph (8)(B) or unless the Judicial Council does not certify the commissioner for retention under rule 3-111. The term of office of court commissioners holding office on April 1, 2011 shall end December 31 of the year in which their term would have ended under the former rule.

(6) **Court commissioner performance review.**

(6)(A) **Performance evaluations and performance plans.** The presiding judge of each district and court level the commissioner serves shall prepare an evaluation of the commissioner's performance and a performance plan in accordance with Rule 3-111. Court commissioners shall comply with the program for judicial performance evaluation, including expectations set forth in a performance plan.

(6)(B) **Public comment period results.** When the public comment period for a commissioner provided in paragraph (4) closes, the comments shall be given to and reviewed by the presiding judge of each district and court level the commissioner serves. If there are any negative comments ~~would negatively~~

~~affect the presiding judge's decision of whether to sanction the commissioner take~~
~~corrective actions or remove the commissioner from office in accordance with~~
~~paragraph (7), the negative comments shall be provided to the~~ commissioner
~~shall be provided all comments~~ with the commenters' names redacted and the
commissioner shall be given an opportunity to respond to the comments.

(7) **Sanctions Corrective action or removal during a commissioner's term.**

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

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

(7)(A)(ii) If the commissioner's performance is not satisfactory, ~~the~~
~~commissioner may be sanctioned~~ corrective actions may be taken in
accordance with paragraph (7)(A)(iii) by the presiding judge, or
presiding judges if the commissioner serves multiple districts or court
levels, with the concurrence of a majority of the judges in either district
or court level the commissioner serves.

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

(7)(B) **Removal.**

(7)(B)(i) **Removal by Judicial Council.** During a commissioner's term, the
court commissioner may be removed by the Council:

(7)(B)(i)(a) as part of a reduction in force;

(7)(B)(i)(b) for failure to meet the evaluation requirements; or

(7)(B)(i)(c) as the result of a formal complaint filed under rule
3-201.02 upon the concurrence of two-thirds of the
Council.

(7)(B)(ii) **Removal by District or Court Level.**

(7)(B)(ii)(a) During a commissioner's term, if the commissioner's
performance is not satisfactory, the commissioner may
be removed by the presiding judge, or presiding judges if
the commissioner serves multiple districts or court levels,

only with the concurrence of a majority of the judges in each district or court level the commissioner serves.

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

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

(8) **Retention.**

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

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

(9) **Salaries and benefits.**

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

(9)(B) Court commissioners shall receive annual leave of 20 days per calendar year and the same sick leave benefits as judges of the courts of record. Annual leave not used at the end of the calendar year shall not accrue to the following year. A

CJA Rule 3-201

203 commissioner hired part way through the year shall receive annual leave on a
204 prorated basis. Court commissioners shall receive the same retirement benefits
205 as non-judicial officers employed in the judicial branch.

206 (10) **Support services.**

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

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

212 *Effective May/November 1, 20____*

Rule 3-301.01. State Court Administrator—Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees.

Intent:

The State Court Administrator serves at the pleasure of both the Supreme Court and the Judicial Council. The intent of this rule is to establish (1) the process for reviewing the performance of the State Court Administrator; (2) an avenue by which complaints regarding the State Court Administrator, judicial officers, and state court employees can be received, reviewed, and investigated; and (3) the confidentiality necessary to perform this work.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Definitions.

- a. “Performance Review Committee” means a committee consisting of one member of the Management Committee of the Judicial Council who is not a member of the Supreme Court, and one member of the Supreme Court. The Management Committee member shall be appointed by a majority vote of the Management Committee. The Supreme Court member shall be appointed by the Chief Justice.
- b. “Management Committee” means the standing committee of the Judicial Council established in Rule 1-204.

(2) Complaints Regarding and Performance Review of State Court Administrator.

- a. **Complaints—Receipt, Review, and Investigation.** The Supreme Court and the Management Committee are authorized to receive complaints regarding the conduct or performance of the State Court Administrator.
 - i. The Supreme Court or the Management Committee shall promptly disclose all such complaints to each other and to the Performance Review Committee. The Performance Review Committee shall convene promptly to review the complaint and to determine what investigation is appropriate.
 - ii. After the appropriate investigation is completed, the Performance Review Committee shall make recommendations to the Judicial Council and the Supreme Court. Recommendations may include: no further action, a performance or corrective action plan, discipline as a condition of continued employment, or termination.

- 33 b. **Annual Performance Review.** At least annually, the Performance Review Committee
34 shall review the performance of the State Court Administrator in accordance with the
35 standards set forth in the Human Resources Policies and Procedures Manual.
- 36 i. The Performance Review Committee shall report the results of the State Court
37 Administrator's annual performance review to the Judicial Council and Supreme
38 Court. After completion of the performance review, the Performance Review
39 Committee may make recommendations to the Judicial Council and the Supreme
40 Court. Recommendations may include: no further action, a performance or
41 corrective action plan, discipline as a condition of continued employment, or
42 termination.
- 43 ii. The Judicial Council and the Supreme Court shall meet in a joint executive
44 session to approve, reject, or modify any recommended performance or
45 corrective action plan.
- 46 c. **Action to Discipline or Terminate the State Court Administrator.**
- 47 i. If the Performance Review Committee recommends that the State Court
48 Administrator be disciplined as a condition of continued employment or be
49 terminated, the Performance Review Committee shall promptly report its
50 recommendation to the Judicial Council and the Supreme Court.
- 51 ii. The Judicial Council and the Supreme Court shall meet in a joint executive
52 session to consider the recommendation. After considering the recommendation,
53 the Judicial Council and the Supreme Court may undertake such additional
54 investigation as they jointly deem necessary. The Judicial Council and the
55 Supreme Court shall work together in good faith to exercise jointly and by
56 consensus their statutory rights regarding termination of the State Court
57 Administrator.
- 58 **(3) Complaints Regarding Judges and State Court Employees.**
- 59 a. **Judicial Officers.** The Management Committee is authorized to receive, review, and
60 investigate complaints regarding the conduct or performance of any judicial officer. After
61 completing the investigation it deems appropriate, the Management Committee may refer
62 the complaint and make recommendations to the appropriate presiding judge or to the
63 Judicial Council. The Judicial Council shall decide whether to refer the complaint to the
64 Judicial Conduct Commission.
- 65 b. **Other Court Employees.** The Management Committee is authorized to receive
66 complaints regarding the conduct or performance of any state court employee. For
67 complaints involving any employee other than the State Court Administrator or Human
68 Resources Director, the Management Committee shall refer the complaint to the Human
69 Resources Department consistent with its Policies and Procedures Manual. Complaints

70 involving the Human Resources Director shall be referred to the State Court
71 Administrator for review and investigation.

72 **(4) Consultation Regarding Personnel and Related Matters.**

- 73 a. The Management Committee shall be available to consult with any presiding judge on
74 personnel and related matters involving a judicial officer.
75 b. The Management Committee shall be available to consult with the State Court
76 Administrator on personnel and related matters involving any state court employee.

77 **(5) Confidentiality.**

- 78 a. The work performed by the Supreme Court, the Performance Review Committee or the
79 Management Committee pursuant to this rule shall be kept confidential and shall not be
80 disclosed until (1) disclosure is required by this rule, or (2) disclosure is required by
81 applicable law.

82 Effective May 1, 2020

TAB 3

CJA 3-201.02. Court Commissioner Conduct Committee

NOTES: The rule is back from a 45-day comment period. No comments were received. However, after further consideration, Judge Harris is recommending amendments to paragraphs (3)(A) and (3)(B) in lines 102-110. The proposed amendments remove the requirement that the Committee determine whether the allegations, if true, could support a finding of misconduct.

Rule 3-201.02. Court Commissioner Conduct Committee.**Intent:**

To establish a procedure for the review of complaints filed against court commissioners.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:**(1) Court Commissioner Conduct Committee.**

(1)(A) The Court Commissioner Conduct Committee is established to:

(1)(A)(i) receive, review, and investigate any complaint filed against a court commissioner;

(1)(A)(ii) conduct any hearing related to a complaint, and

(1)(A)(iii) make recommendations to the Council and the presiding judge(s) of the district(s) the commissioner serves regarding corrective actions or removal of the commissioner pursuant to CJA 3-201, where the Committee finds misconduct by a preponderance of the evidence. For purposes of this rule, "misconduct" means:

(1)(A)(iii)(a) action that constitutes willful misconduct in office;

(1)(A)(iii)(b) final conviction of a crime punishable as a felony under state or federal law;

(1)(A)(iii)(c) willful and persistent failure to perform commissioner duties; or

(1)(A)(iii)(d) violations of the Code of Judicial Conduct.

(1)(A)(1)(B) The ~~Court Commissioner Conduct~~ Committee ~~shall~~ consist of the following members:

(1)(A)(i)(1)(B)(i) as chair, the Court of Appeals member of the Ethics Advisory Committee, who shall serve as chair of the Committee;

(1)(A)(ii)(1)(B)(ii) two presiding judges from judicial districts with a court commissioner, which presiding judges shall be from districts other than the district the commissioner primarily serves;

(1)(A)(iii)(1)(B)(iii) the immediate past Bar Commissioner member of the Judicial Council; and

~~(1)(A)(iv)~~(1)(B)(iv) the chair of the Supreme Court Advisory Committee on the Rules of Professional Conduct.

(1)(C) Circumstances which require recusal of a judge shall require recusal of a Committee member from participation in Committee action.

(1)(C)(i) If the chair is recused, a majority of the remaining members shall select from among themselves a chair pro tempore.

(1)(C)(ii) If a presiding judge is recused, the chair shall temporarily appoint a presiding judge of another judicial district with a commissioner.

(1)(C)(iii) If the immediate past Bar Commissioner member of~~a~~ the ~~Judicial~~ Council is recused or otherwise unable to serve, the chair shall temporarily appoint another past Bar Commissioner member on of the ~~Judicial~~ Council.

(1)(C)(iv) If the chair of the Supreme Court Advisory Committee on the Rules of Professional Conduct is recused or otherwise unable to serve, the chair shall temporarily appoint another member of the Supreme Court Advisory Committee on the Rules of Professional Conduct.

(1)(D) Three members of the Committee constitute a quorum. Any action of a majority of the quorum constitutes the action of the Committee. The chair shall vote only as necessary to break a tie vote. The Committee shall be organized and meet only as often as necessary to resolve a complaint not previously dismissed by the chair pursuant to paragraph (2)(C) below. Committee members may attend meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

~~(1)(B)~~(1)(E) 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.

(2) Complaint submission and initial review.

(2)(A) A person who has a complaint against a commissioner shall submit a copy of the complaint to the Committee chair.

(2)(B) Each complaint shall be in writing and shall contain:

(2)(B)(i) the complainant's name;

(2)(B)(ii) the complainant's preferred contact information;

(2)(B)(iii) the name of the involved commissioner;

(2)(B)(iv) a description of the commissioner's actions in sufficient detail to inform the Committee of the nature and date of the alleged misconduct; and

(2)(B)(v) when possible, supporting documentation.

~~(1)(C) — Upon receiving a complaint, the chair shall conduct an initial review to determine if the allegations raise an issue that would be appropriately addressed by the full Committee. The chair shall dismiss frivolous complaints and complaints found to raise only issues of law or fact for which the remedy is the review of the case by the trial court judge or by an appellate court. If the chair dismisses a complaint following initial review, the chair shall provide notice of and basis for the dismissal to the complainant, the presiding judge(s) of the district(s) the commissioner serves, and the commissioner. The chair shall refer any complaint not dismissed following initial review to the full Committee.~~ **Informal complaint.**

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

~~(1)(D) —~~ **Formal complaint.**

~~(1)(E) — A formal complaint against a court commissioner shall be in writing and filed with the presiding officer of the Council. The presiding officer shall refer the complaint to the committee and provide a copy of the complaint to the court commissioner and to the presiding judge of the court the commissioner serves.~~

~~(1)(F) — All proceedings and materials related to a formal complaint shall be kept confidential.~~

~~(1)(G) — The chair or the committee shall dismiss a frivolous complaint. The chair or the committee shall dismiss a complaint found to raise only issues of law or fact for which a remedy is the review of the case by the trial court judge or by an appellate court. The chair of the committee shall provide notice of and basis for the dismissal to the complainant, the presiding judge and the commissioner.~~

~~(1)(H) — The committee may investigate a complaint that is not dismissed under paragraph (3)(C). This investigation shall be conducted to determine whether dismissal or a hearing is appropriate.~~

~~(1)(I) The committee may request that the state court administrator appoint a staff person within the administrative office to perform any investigation and make any presentations to the Committee or the Council.~~

~~(2)(C)~~

(3) Committee examination

(3)(A) The Committee shall examine any complaint referred to it by the chair under paragraph (2)(C) to determine whether dismissal or a hearing is appropriate. In connection with this examination, the committee may conduct an investigation of the allegations made in the complaint, including review of any relevant court file, hearing transcripts, and related materials.

(3)(B) If the Committee dismisses the complaint after examination, the chair shall provide notice of and basis for the dismissal to the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves.

(3)(C) If the Committee determines that the matter should proceed to a hearing, the chair shall send notice to the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves. The notice shall:

(3)(C)(i) inform the commissioner of the allegations and the canons allegedly violated;

(3)(C)(ii) invite the commissioner to respond to the allegations in writing within 30 days; and

(3)(C)(iii) include a copy of the complaint.

(3)(D) If the commissioner chooses to respond to the allegations, the commissioner shall send a copy of the response to the complainant, the Committee chair, and the presiding judge(s) of the district(s) the commissioner serves.

(3)(E) At any time prior to a hearing, the complainant may request to withdraw his or her complaint. If such a request is made, the Committee may grant the request and dismiss the complaint, or it may deny the request and proceed with the hearing.

(2)(4) Hearings of the Court Commissioner Conduct Committee.

(4)(A) If the Committee determines that a matter should proceed to a hearing under paragraph (3), a hearing shall be scheduled after receipt of the commissioner's response or expiration of the time to respond in paragraph (3)(C)(ii). Notice of the date, time, and place of the hearing shall be sent to the complainant, the

commissioner, and the presiding judge(s) of the district(s) the commissioner serves.

(4)(B) Hearings shall be closed to the public.

(4)(C) Not later than 20 days before the hearing, the commissioner and complainant shall exchange all proposed exhibits and a list of all potential witnesses. The commissioner and the complainant are not considered witnesses.

(4)(D) The commissioner and complainant may be present at the hearing and have the assistance of counsel.

(4)(E) The Committee shall interview the complainant, the commissioner, and any witnesses determined by the Committee to have relevant information. The commissioner and complainant have the right to testify.

(4)(F) The complainant may ask the Committee to pose specific questions to the commissioner, and the commissioner may ask the Committee to pose specific questions to the complainant. But ordinarily, neither the complainant nor the commissioner, whether acting on their own or through counsel, will be allowed to cross-examine the other unless, upon request, the Committee chair determines that cross-examination would materially assist the Committee in its deliberation.

(4)(G) The commissioner and complainant may present, examine, and cross-examine witnesses.

(4)(H) Testimony shall be presented under oath and a record of the proceedings maintained.

(4)(I) At any time before final decision by the Committee, the commissioner may admit some or all of the allegations in the complaint, and may stipulate to findings and recommendations by the Committee.

(4)(J) Within 30 days after the completion of the hearing, the Committee shall make written findings and conclusions concerning the allegations in the complaint and provide a copy to the complainant, the commissioner, the presiding judge(s) of the district(s) the commissioner serves, and the Council.

(4)(K) If the Committee finds misconduct by a preponderance of the evidence, the Committee shall recommend appropriate corrective actions under CJA Rule 3-201.

(4)(L) In making recommendations for corrective actions, the Committee shall consider the following non-exclusive factors:

(4)(L)(i) the nature of the misconduct;

- (4)(L)(ii) the gravity of the misconduct;
- (4)(L)(iii) the extent to which the misconduct has been reported to or is known by the presiding judge(s) of the district(s) the commissioner serves or the commissioner, and the source of the dissemination of information;
- (4)(L)(iv) the extent to which the commissioner has accepted responsibility for the misconduct;
- (4)(L)(v) the extent to which the commissioner has made efforts to avoid repeating the same or similar misconduct;
- (4)(L)(vi) the length of the commissioner's service with the courts;
- (4)(L)(vii) the effect the misconduct has had upon the confidence of court employees, participants in the judicial system, or the public in the integrity or impartiality of the judiciary;
- (4)(L)(viii) the extent to which the commissioner profited or satisfied his or her personal desires as a result of the misconduct; and
- (4)(L)(ix) the number and type of previous corrective actions against the commissioner.

(4)(M) At the conclusion of the Committee's work, a copy of the complete file shall be delivered to the State Court Administrator or designee.

(5) Council review of committee action.

(5)(A) Appeals from decisions without a hearing.

- (5)(A)(i) Complaints dismissed prior to hearing, either by the chair under paragraph (2)(C) or by the Committee under paragraph (3)(B), may be appealed by the complainant to the Judicial Council. All such appeals must be submitted in writing to the Chair of the Council, and must be received within 30 days of the notice of dismissal. In the appeal, the complainant must set forth the specific grounds on which the appeal is based. A copy of the appeal shall be provided to the Committee chair, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves.
- (5)(A)(ii) The Council, a designated Council member, or a committee of the Council shall conduct a de novo review of the file, and shall either affirm the dismissal, or shall require the Court Commissioner Conduct Committee to set the matter for hearing or re-hearing.

(5)(A)(iii) The Council's decision shall be in writing and a copy provided to the Committee chair, the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves.

(5)(A)(iv) If the dismissal is affirmed, the complainant has no other right of appeal.

(5)(B) Council review following a hearing.

(5)(B)(i) The Committee's findings, conclusions, and recommendations following a hearing will be reviewed by the Council, and considered at a meeting of the Council to be held at least 45 days after issuance of the Committee's decision.

(5)(B)(ii) The complainant, the commissioner, or presiding judge(s) of the district(s) the commissioner serves may file objections to the Committee's findings, conclusions or recommendations. Any such objections must be submitted in writing to the Council within 30 days of the date the Committee's findings, conclusions, and recommendations were issued.

(5)(B)(iii) No person other than the members of the Council are entitled to attend the Council meeting at which the Committee's decision is reviewed.

(5)(B)(iv) In conducting its review, the Council shall review the record of the Committee's hearing, and shall determine whether to adopt, modify, or reject the Committee's findings, conclusions, and recommendations, including any recommendations for corrective action.

(5)(B)(v) The Council's decision shall be in writing and provided to the Committee chair, the commissioner, the complainant, and the presiding judge(s) of the district(s) the commissioner serves.

(5)(B)(vi) The decision reached by the Council after review is final and is not appealable.

(5)(C) Annual Report. The chair of the Committee shall report to the Council not less than annually on the Committee's work including a general description of any complaint dismissed without a hearing.

~~(2)(A)(i) The hearings of the committee shall be closed to the public. The committee shall interview the complainant, the court commissioner,~~

and any witnesses determined to have relevant information. The commissioner has the right to testify. The commissioner and complainant may be present at any hearing of the committee and have the assistance of counsel. The commissioner may present and examine and cross-examine witnesses. Testimony shall be presented under oath and a record of the proceedings maintained. The commissioner may obtain a copy of the record upon payment of any required fee.

(2)(A)(ii) The committee shall make written findings concerning the merits of the complaint and provide a copy of the findings to the complainant, the court commissioner, and the presiding judges of the court the commissioner serves.

(2)(B) If the committee finds the complaint to have merit, the committee shall recommend to the Council that a sanction be imposed under CJA Rule 3-201(6). The committee shall dismiss any complaint found to be without merit.

(2)(C) **Council Review.**

(2)(C)(i) **Complaints dismissed without a hearing.** The chair of the committee shall report to the Council not less than annually on the committee's work including a general description of any complaint dismissed without a hearing.

(2)(C)(ii) **Complaints with a committee hearing.**

(2)(C)(ii)(a) The Council shall review the record of the committee hearing to determine the correct application of procedures and to determine the sanction to be imposed.

(2)(C)(ii)(b) The complainant, commissioner or presiding judges of the districts the commissioner serves shall file any objections to the committee's findings in writing with the Council. No person is entitled to attend the Council meeting at which the complaint is reviewed.

TAB 4

3-104. Presiding Judges

3-108. Judicial Assistance

Notes: At its November meeting, Policy and Planning voted to approve Mr. Johnson's proposed amendments to rule 3-108 with clarification that justice court presiding judges would sign orders for justice court cases. The committee also voted to recommend that the Chief Justice appoint presiding judges by administrative order, and recommended that rule 3-108 be published for comment

After further study, Mr. Johnson asked that 3-108 be pulled from the consent calendar. It hasn't been published for comment. In summary, Mr. Johnson's concerns are that the rule only applies to the assignment of judges in courts of record, based in part on sections of the Code that seem to limit the Chief's authority to appoint district court judges for general assignment only to other courts of record. The Code may also prohibit the Chief from authorizing district court judges to sign orders in justice court cases.

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 3-108. Judicial assistance.

Intent:

To establish the authority, procedure and criteria for judicial assistance.

Applicability:

This rule shall apply to judicial assistance provided by active senior judges and judges of courts of record.

Statement of the Rule:

(1) Criteria for requesting assistance. Judicial assistance shall be provided only for the following reasons:

(A) to prevent the occurrence of a backlog in the court's calendar;

(B) to reduce a critical accumulated backlog;

(C) to handle a particular case involving complex issues and extensive time which would have a substantial impact on the court's calendar;

(D) to replace a sitting judge who is absent because of assignment as a tax judge, illness or to replace the judges in that location because of disqualification in a particular case;

(E) to handle essential cases when there is a vacant judicial position;

(F) to handle high priority cases during vacation periods or during attendance at education programs by the sitting judge, following every effort by that judge to adjust the calendar to minimize the need for assistance and only to handle those matters which cannot be accommodated by the other judges of the court during the absence;

(G) to provide education and training opportunities to judges of one court level in the disposition of cases in another court level; ~~and~~

(H) in district court, to handle cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration; and

(I) to handle automatic expungement cases.

(2) Criteria for transferring or assigning judges. The transfer or assignment of judges shall be based upon the following priorities:

(A) experience and familiarity with the subject matter, including, in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, knowledge of the theory and practice of ad valorem, excise, income, sales and use, and corporate taxation;

(B) active judges before active senior judges with consideration of the following:

34 (i) active judges from a court of equal jurisdiction in a different geographical division
35 than the court in need, who are physically situated nearest and are most convenient to
36 that court;

37 (ii) active senior judges from a court of equal jurisdiction to the court in need who are
38 physically situated nearest and are most convenient to that court;

39 (iii) active judges from a court of different jurisdiction than the court in need whose
40 subject matter jurisdiction is most closely related to that court and who are in close
41 proximity to it;

42 (iv) active judges from a court of equal jurisdiction in a different geographical division
43 than the court in need who are far removed from that court;

44 (v) active or active senior judges from a court of different jurisdiction than the court in
45 need whose subject matter jurisdiction is similar to that court who are not in close
46 proximity;

47 (C) availability;

48 (D) expenses and budget.

49 (3) Assignment of active judges.

50 (A) Any active judge of a court of record may serve temporarily as the judge of a court
51 with equal jurisdiction in a different judicial district upon assignment by the presiding
52 judge of the district in which the judge to be assigned normally sits or, in district court
53 cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial
54 Administration, assignment by the supervising tax judge with the approval of the
55 presiding officer of the Council.

56 (B) Any active judge of a court of record may serve temporarily as the judge of a court
57 with different jurisdiction in the same or a different judicial district upon assignment by
58 the presiding officer of the Council or assignment by the state court administrator with
59 the approval of the presiding officer of the Council.

60 (C) The presiding officer of the Council may appoint a district court presiding judge as
61 the signing judge for automatic expungements in all courts within their district, including
62 district courts and justice courts. The length of the assignment may coincide with the
63 judge's term as presiding judge.

64 (C D) The assignment shall be made only after consideration of the judge's calendar.
65 The assignment may be for a special or general assignment in a specific court or
66 generally within that level of court and shall be for a specific period of time, or for the
67 duration of a specific case. Full time assignments in excess of 30 days in a calendar
68 year shall require the concurrence of the assigned judge. The state court administrator
69 shall report all assignments to the Council on an annual basis.

70 (D E) Requests for the assignment of a judge shall be conveyed, through the presiding
71 judge, to the person with authority to make the assignment under paragraphs (A) and

72 (B). A judge who is assigned temporarily to another court shall have the same powers
73 as a judge of that court.

74 (4) Notice of assignments made under this rule shall be made in writing, a copy of which
75 shall be sent to the state court administrator.

76 (5) Schedule of trials or court sessions. The state court administrator, under the
77 supervision of the presiding officer of the Council, may schedule trials or court sessions
78 and designate a judge to preside, assign judges within courts and throughout the state,
79 reassign cases to judges, and change the county for trial of any case if no party to the
80 litigation files timely objections to the change.