UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING AGENDA

March 5, 2021 – 12:00 p.m. to 2:00 p.m.

Webex

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Pullan
12:05	Grant project update	Discussion		Karl Sweeney
12:10	1-204. Executive Committees	Action	Tab 2	Karl Sweeney
12:20	Rules back from Public Comment: • CJA App. J. Ability-to-Pay Matrix	Action	Tab 3	Keisa Williams
12:30	2-103. Open and Closed Meetings	Action	Tab 4	Brent Johnson
12:40	Changing "mail" to "send": • 3-306.05. Interpreter removal, discipline, and formal complaints • 4-103. Civil calendar management • 4-202.04. Request to access or classify a record associated with a case • 4-202.05. Request to access or classify an administrative record • 4-202.06. Response to request to access or classify a court record • 4-202.07. Appeals • 4-510.05. Referral of civil actions • 4-701. Failure to appear	Action	Tab 5	Brent Johnson Keisa Williams
1:10	3-101. Judicial Performance Standards • Self-Declaration Forms o Justice Court o District & Juvenile Court o Court of Appeals o Supreme Court • JPEC Certification Letter	Action	Tab 6	Keisa Williams
2:00	Adjourn			

2021 Meetings:

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

TAB 1

Minutes

February 5, 2021

UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING MINUTES

Webex video conferencing
February 5, 2021: 12 pm -2 pm

DRAFT

MEMBERS:	**PRESENT**	**EXCUSED**
Judge Derek Pullan, *Chair*	•	
Judge Brian Cannell	•	
Judge Samuel Chiara	•	
Judge David Connors	•	
Judge Michelle Heward	•	
Mr. Rob Rice	•	

GUESTS:

Paul Barron
Bart Olsen
Jeremy Marsh
Jordan Murray
Judge Mary Noonan
Loni Page
Chris Palmer
Heidi Anderson
Karl Sweeney

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 January 8, 2021 meeting. Judge Connors noted a few typos omitting "Judge" in front of Judge Pullan and Judge Chiara's names. With no other changes, Judge Connors moved to approve the draft minutes subject to those amendments. Rob Rice seconded the motion and it passed unanimously.

(2) Proposed grant policies and procedures:

Judge Pullan: The lively discussion and close vote (7/6) on this issue demonstrates that the Judicial Council is a robust, policy-making body. The Council made this Policy and Planning's number one priority. Jordan Murray is the new grants coordinator. He will provide an overview of the memorandum, flowchart, and calendar to give us a general idea of the proposed policies. The plan today is for Policy and Planning to provide Mr. Murray with some feedback and direction.

Mr. Murray: The materials under tab 2 outline the steps we have accomplished thus far. The goal is to put guardrails in place to help guide the court's grant governance in the future, particularly as it relates to the new grant coordinator position. We've created a compliance calendar for the full calendar year that includes all of the active grants in the court's portfolio. We are working on a five-year retrospective review (or audit) of all grants to ensure that we've complied at every step along the way, and to identify any areas in which we need to double back and make sure we're appropriately following state and federal guidelines. The plan is to present those findings to the Judicial Council later this month.

We are working on a standardized process to solicit feedback within the court system to identify needs and determine how we can address those needs with grant funding. Beyond that, how do we present those needs to the Budget and Fiscal Management Committee and the Judicial Council, and how do we prioritize grants that should be pursued for the coming year? Mr. Sweeney and I met with the National Center for State Courts to

research practices in other states. We have materials from Maryland, Nevada, Kentucky, and a few others, and we are reaching out to them for more information. We don't want to reinvent the wheel, but we do want to identify best practices and tailor them to our unique needs in Utah.

Mr. Sweeney: There are no criteria for seeking grants. Up until now, if you wanted a grant and you had the time, you applied for it. We are seeking to enforce some of the same rigor that we impose on our budgets. How well does this grant accomplish the mission of the courts? You may not be able to accomplish your mission if you are pulled in too many directions, and with little results for the work. Ensuring the grant aligns with the courts' mission will become part of the vetting process. We also need to maintain flexibility. Prioritization decisions at the beginning of the year may change throughout the year. The policy should allow us to take an opportunistic approach if funding becomes available for a particular need that meets criteria, no matter where it was on the original prioritization list.

Judge Connors: I don't have any general issues with the memo as written, but I have some concerns about the three-day reporting deadline in Section 3. Is three days enough time to review and approve deliverables and get them filed in a timely manner?

Mr. Sweeney: That issue came up last week and we are considering increasing the deadline.

Judge Connors: In section (3)(e), I would use the words "will be used" rather than "sought". I wouldn't want to place an undue burden on our IT resources.

Mr. Sweeney: That section relates to a lesson learned. An employee obtained a grant that involved writing, research, and IT work. They went directly to the IT department to find an available contractor. However, the available contractor didn't have the entire skill set needed for that particular grant. Hiring the right contractor is critical. Rather than taking whoever is offered or available, it's much better to pay the appropriate amount and find the right person.

Mr. Rice: I'm having difficulty connecting the prioritization process in section (1)(a) with the criteria set forth in section (2). In section (1), it says the Supreme Court will prioritize grants that relate to Constitutional powers, but then it goes on to say in (2) that the Budget and Fiscal Management Committee will use different criteria to prioritize grants. Which of those sections control?

Mr. Murray: The language regarding prioritization in section (1)(a) may not be ideal. I don't think the intent was for (1)(a)(i-iv) to constitute the criteria by which the Supreme Court would make decisions, but rather it's meant to cover, generally, those things within the Supreme Court's jurisdiction. Section (2) outlines the criteria for how potential grant opportunities would be assessed.

Judge Pullan: I'm having a hard time reconciling the flowchart with the language in the memorandum. The box for grants within the Supreme Court's jurisdiction is sitting all by itself. There is no line suggesting Judicial Council involvement. The box for grants within the Judicial Council's jurisdiction is connected to a comprehensive process. Section (1)(a) of the memo suggests that Supreme Court requests will be subject to analysis by the grants coordinator. We should be clear that the Supreme Court intends to use the grants coordinator for at least some of this work.

CJA Rule 3-105 (effective May 1, 2021) outlines the procedures for issues raised in Judicial Council meetings that implicate the exclusive jurisdiction of either the Court or the Council. The body with exclusive jurisdiction takes ownership. Periodically, issues involve concurrent jurisdiction. In those instances, the rule outlines a process for negotiating whether one body will take primary ownership or whether those issues will be addressed via a joint effort. I have no problem with the Court using their own process for issues within their exclusive jurisdiction; however, I think that is going to be rare. At the very least, the grant money will run through accounting, so accounting and grant coordinator resources will be used. What if the grant requires hiring FTEs? The Council would

have to be involved. We need to ensure that the proposed rule is consistent with rule 3-105, and that the flowchart is amended to reflect the process contemplated in 3-105.

Judge Connors: What grants fall within the list in section (1)(a)? If you took an overly expansive view of what those words mean, you could say everything falls within the governance of the practice of law.

Mr. Sweeney: We received an email indicating that grants related to the regulatory sandbox would fall within that list. Grant funding for that project is imminent, it just hasn't made it on the list yet.

Mr. Rice: It would be helpful to have a list of the universe of grants out there so we understand what the topics are. For example, the regulatory sandbox, collecting data to assist our fairness and equity efforts, and pro bono activities. I'm looking for a list of representative examples that allow us to develop criteria in the real world.

Judge Cannell: I agree. One of the challenges I had at the Council meeting was a lack of information about what we may be losing if we didn't act quickly. This is a great start and the process is very helpful, but I think we need prior notice and direction about what is coming up and what's already in the bucket.

Mr. Sweeney: We have such a list ready. We will ensure it includes the Utah Bar Foundation and get it out to everyone.

Judge Connors: Is the grant for the Utah Office for Victims of Crime a court grant or one for the State of Utah?

Mr. Murray: It is a court grant. It renews each year through the Utah Office for Victims of Crime. It's not a traditional grant where we pursue and apply for the grant each year. The state gets an allotment of guaranteed funds from the federal government and is the administering body. The state makes an award to the court, but it is considered a grant for our purposes because it is subject to reporting and other requirements necessary to maintain compliance.

Judge Pullan: At what point should the Judicial Council be involved in this process? If the Council isn't presented with a grant proposal until after all of the application resources have been expended and there is a $1M dollars on the table, it will be hard for the Council to turn down. There will already be organizational momentum behind it. Because the application process itself is expending organizational resources, the Council should be authorizing the application at some point.

Mr. Murray: I agree. I hope we wouldn't encounter that situation routinely. If we do, then we need to reassess. It should be a rare exception. The ideal process would allow the Judicial Council an opportunity to review and approve a grant before court resources have been overly invested.

Judge Pullan: Under this proposal, grants can begin at the TCE level. That many cooks in the kitchen may be very hard to manage organizationally. It says the grant coordinator will meet with the Council annually. What happens at that meeting? Is that when the Council is presented with potential grants for that year or the next year, and we prioritize which ones we want to apply for?

Mr. Sweeney: Yes, that is the plan for now. We could also meet quarterly.

Judge Pullan: Rules vetted by stakeholders tend to be more broadly accepted and implemented. I don't want to leave anyone out. The boards of judges should probably review the final product and Mr. Murray should take a look at the list of stakeholders to see if anyone else in our organization should weigh in. Any proposed amendments to the accounting manual should be reviewed by the Accounting Manual Review Committee.

Judge Connors: When does the Executive Appropriations Committee or the Legislative Fiscal Analyst get involved?

Judge Noonan: The law requires that the legislature be notified of grants at certain amounts, usually after the fact. We need to be very careful about grants that involve hiring FTEs, or that put the legislature in a difficult position to continue funding for projects that become critical to operations. We could establish a preference for grants with some form of deliverable product that do not require additional staff or resources to implement that product on an ongoing basis. We should be able to absorb the costs because we've changed our business practices, or we've found additional capacity or efficiencies that allow us to continue to support the product in a way that does not impact the bottom line.

Judge Pullan: Is there a standard of practice for agencies to approach the legislature early on about federal grants? How does that work? As a matter of policy, I would like to approach the legislature even on medium Tier grants. They may have the same interest and I want to be respectful of the other branches.

Judge Noonan: That is a good question. We will have to do a deeper dive and report back.

Mr. Sweeney: The requirements in the flowchart come directly from the legislature. We cannot accept Tier 3 funds until the legislature has approved the grant in a general or special session. I agree that the judiciary could have a stricter policy than what the legislature imposes.

Judge Pullan: This cements the wisdom of not lifting the moratorium until we have a better understanding of these things. It also raises the question of the grant coordinator's job description. How will his time be best spent? The point at which he touches the grant applications seems important.

Judge Noonan: The moratorium will lapse by the next Council meeting, so the Council will need to readdress it or let it lapse.

Mr. Murray: Justice Himonas mentioned that a regulatory sandbox grant is urgent, and we just completed a grant assessment for an e-filing project at the appellate level. I am working with Larissa Lee and Nick Stiles to identify next steps. No timelines have been ironed out, but an e-filing grant may be an opportunity.

Judge Noonan: CARES funding may become available. Those funds are routed through the Bar Foundation so we wouldn't be administering it, but it could still be considered grant money.

Mr. Sweeney: Future CARES money will probably be handled the same way it was originally. The state is aware of our request and we are waiting to see how much we get.

After further discussion, the Committee agreed that this issue is too important to rush. It will remain the committee's first priority, but the rule must be well crafted and stakeholders must have input. The issue will be added to the February Council agenda as a separate item and Judge Pullan will provide a report on the Committee's progress. Mr. Murray and Mr. Sweeney will work on proposed changes to the Accounting Manual, and will work with Ms. Williams on a proposed rule draft, including the grant coordinator's duties. Mr. Murray and Mr. Sweeney will report back to Policy and Planning at its March 5th meeting.

(3) Rules back from public comment:

- CJA 3-101. Judicial Performance Standards
- CJA 3-108. Judicial Assistance

Ms. Williams: No comments were received on either rule. I reached out to Dr. Yim on rule 3-101. JPEC has no objection to 3-101 as drafted and is not recommending any changes. Dr. Yim expressed her hope that the court will amend its self-declaration forms to ensure compliance with 3-101.

Judge Pullan asked Ms. Williams to review the forms to ensure they comply with rule 3-101 and report back to the Committee.

Judge Heward moved to forward rules 3-101 and 3-108 as drafted to the Judicial Council for final approval. Mr. Rice seconded and the motion passed unanimously.

(4) CJA 4-206. Exhibits:

Ms. Williams: Rule 4-206 is on the agenda for feedback and direction, with a substantive discussion at the March 5th meeting.

Ms. Page: The rule seeks to address issues identified in the 2019 audit on exhibits. We added a section on digital exhibits and we've had success with it in district courts. In the seventh district, parties submit exhibits electronically via email, either on a drive or as PDF files. We dump everything into a Google drive folder that the judge can view. If an exhibit is admitted, it's moved to a separate "received" folder. We are using the same custodian in charge of physical exhibits to handle digital exhibits so there is no additional administrative burden. So far, we've received a lot of positive feedback from clerks and judges.

Mr. Palmer: The appellate court was involved in drafting the rule and they are changing their procedures for digital exhibits as well.

Judge Chiara: I follow the same process. I view the exhibits before the hearing and move them to a "received" folder. Judicial assistants drag and drop the exhibit into the folder and a notice is sent to parties that the file has been reviewed. Once the exhibit has been admitted, the folder is secured to prevent changes.

Ms. Anderson: I am in full support of this process from an IT standpoint. We just need to pay attention over the next few months to see if this impacts Google drive data or requires more support.

After further discussion, the Committee asked Ms. Page and Mr. Palmer to seek feedback on the rule draft from the boards of district, justice, and juvenile court judges, and bring it back to the Committee for substantive review.

(5) HR policies:

- 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 Chiara

Mr. Olsen: Every committee member devoted time to each section. I recommend that we prioritize items flagged for discussion in the materials. Ms. Anderson is here to discuss HR 5-3 and 6-9 on career service and career service exempt status for employees of the IT department. In section 5, IT employees hired after January 1, 2019 who had already achieved career service status will be grandfathered. They will retain that status unless they choose to move into a different career service exempt position. That is an existing practice but it was never added to the HR policies. I think it's important to be transparent and spell out current practices in the policy. HR 6-9 is related. The policy comes from an Executive Branch rule created for the Department of Technology Services. It doesn't move any positions to career service exempt status, it outlines the process we would follow to get there.

Mr. Olsen explained the difference between career service status and career service exempt status.

Ms. Anderson: This is very important. IT employees are given administrative access to our networks, applications, systems, and buildings. An employee with that kind of access has the ability to take down the entire court system. I believe that security risk necessitates a higher level of scrutiny for those employees. In addition, technology changes rapidly and drastically. What is considered standard knowledge today may change in two years. My expectation is that my staff stay up to date and keep their skills current. If an individual hired as a group administrator doesn't have the desire to learn, or doesn't have the skill set to adapt, when we move to a new tool, I

need to hire someone else to meet that need. IT personnel must be willing and able to evolve their skill set with changes in technology.

Judge Chiara: I certainly understand the heightened risk with some of those positions, but I'm wondering why we wouldn't provide the same level of due process for those employees?

Mr. Olsen: We would still follow something similar to the due process procedures for career service status employees. The problem is that meeting the definition of due process can be very time consuming and we often get bogged down in the details. For a department like IT that has to move quickly and make decisions around changing technology, it is sometimes better to fall a little short of full due process in order to meet business needs. In the Executive Branch, the way this has played out in practice is that the Department of Technology Services implemented a process that resembles due process, but when there are cases that need to move quickly, they are able to do so without requirements that tie their hands. The concern early on when they made this change was that it would simply be a tool the department could use to get rid of a bunch of employees they didn't like. What actually happened is that most employees stayed, and the department was better equipped to respond to business needs and the timelines associated with those needs.

Mr. Rice: I am encouraged that this policy is modeled after the Executive Branch's rules and regulations. It surprises me that you can take away a property right with an administrative rule. Is a career service exempt position a common thing in the public sector?

Mr. Olsen: In the Department of Technology Services (DTS), just about every position is career service exempt. One way DTS got around the property right issue was to offer a monetary incentive for folks to convert to career service exempt. Employees could choose not to take the incentive and preserve their career service status. There are still a small handful of employees at DTS who chose not to convert.

Ms. Anderson: All new positions in IT are career service exempt, so 30% of my staff are already there. I am not suggesting that we force people to convert. We could offer an incentive like DTS. It also doesn't have to happen right now, but I am recommending that we move all IT positions to career service exempt.

After further discussion, Mr. Rice moved to approve HR05-3 as drafted. Judge Chiara seconded and the motion passed unanimously.

Ms. Olsen: In HR04-4(6), Judge Pullan recommended adding the full list of protected classes. My response was that including the full list could be daunting in practice. Gender is the easiest class to diversify, followed by age and race/ethnicity. The other classes are much more difficult to diversify on a hiring panel.

Judge Chiara: I think it's okay as is. I don't know that changing it would cause people setting up a hiring panel to go looking for members of another protected class. Religion is a protected class, but I don't think we want employees to ask someone about their religious beliefs to diversify a panel. Gender and race is a good place to start.

Judge Pullan: I don't want to create procedural obstructions every time we hire someone. As long as we're training employees to try to diversify interview panels, I am comfortable with that.

After further discussion, Judge Chiara moved to approve HR04-4(6) as drafted. Judge Heward seconded and the motion passed unanimously.

Mr. Olsen: I spoke to Brent Johnson about Judge Pullan's question on HR04-15(4)(a) and (c). This policy addresses when the results of a criminal background check may result in management deciding not to hire a candidate. Mr. Johnson and I replaced "crimes of financial turpitude" with "fraud." Neither of us knew what that meant. There are crimes of "moral" turpitude, but not "financial" turpitude. Judge Pullan's question to Mr. Johnson was whether adding references to the criminal code would clarify intent without making it too broad or too limiting. Mr. Johnson said he's comfortable with the code citations because it's prefaced by, "including but not limited to."

Judge Chiara: I am wondering about the necessity of it being a felony conviction. Many crimes are reduced to misdemeanors in a plea bargain. A hiring manager may not want to hire a candidate with a conviction for forgery or unlawful use of a financial transaction card, for example, which may have been reduced to a class A misdemeanor.

Judge Pullan: We might want to avoid creating discretion for hiring managers to disqualify an otherwise qualified candidate (who is now 30 years old) on the basis of a retail theft or infraction when he was 18 years old. There may be a good reason for a felony / misdemeanor distinction.

Mr. Rice: There is a body of law that arises in Title 7 cases where the EEOC takes the position that there is a distinction between felonies and misdemeanors, and that employers have a little bit more latitude to make employment decisions based on felonies. There is a pretty clear line drawn between misdemeanors and felonies and employers have less discretion to fire individuals because of misdemeanors. I think it warrants keeping the felony/misdemeanor distinction in the rule. I like using the term "may" with respect to not hiring people with felony convictions, because there may be circumstances when the law would say the fact that it's a felony isn't good enough. If someone has a 10-12 year old felony conviction (even something worse than a shoplifting conviction), that may not be a sufficient basis for firing them. It appears that the language in (c) was meant to characterize severe misdemeanors, where I think employers do have some increased latitude, but some of that language seems to be pulled from the felony section, which is a little bit troubling.

Mr. Olsen: The process HR typically follows is to consider the age of the offense and whether it is pertinent to the job. HR would coach hiring managers through these issues and would likely ask for Mr. Johnson's input before making a decision.

After further discussion, (a) remain unchanged, (b) was deleted, and (c) was amended to read, "A misdemeanor conviction involving crimes of violence against people or destruction of property, identity theft, fraud, or other similar offenses."

Judge Connors made a motion to approve the language as amended. Judge Chiara seconded the motion and it passed unanimously.

Mr. Olsen: Judge Chiara recommends including "political views" in HR 15-1(3)(a) addressing workplace harassment.

Mr. Rice: The legislature enacted a new statute with very specific language about protecting employees and their ability to engage in political discussions in the workplace, provided they were not disrupting the workplace. We should ensure the proposed language is consistent with that statute.

Mr. Marsh: I worry about adding political views here because it could contradict other protections listed in that section. Adding it would make it very difficult for us to enforce the policy. For example, someone's political view is that they support white supremacy and are against equality for other ethnicities or people with a different skin color, or someone says, "My political view is that every believer in Islam is a terrorist, so I believe you are a terrorist." That would be hard for HR to investigate from a practical perspective because those statements would be protected.

Judge Cannell: Doesn't the catchall at the end of the paragraph, "or any other category protected by federal, state or applicable local law," cover it?

Judge Pullan: I agree with Mr. Marsh. Adding political views may make it difficult to enforce other parts of the policy because political views may encompass discrimination against protected classes.

Judge Chiara: Being in one of these categories does not license you to harass another category. A religious person could attempt to hide behind the shield of religion in a similar way that they might try to hide behind the shield of a political view. My concern is someone coming into work and getting harassed for having a political bumper sticker. Regardless of persuasion, there is a lot of impetus right now to try to silence speech. I don't want to see

anyone harassed for their political views. Many people hold their political beliefs as closely as they do their religious beliefs. The original purpose of the first amendment was to protect political and religious speech.

Mr. Marsh: We don't have the resources to investigate all of the potential opposing views, or when someone is offended by a bumper sticker. Incorporating an exhaustive list in a code of ethics seems more appropriate than to tie it into this policy.

Mr. Rice: The categories enumerated in the policy are all statutorily recognized protected classes. That list is 100% risk free because Congress says you can't harass anyone on those bases. I agree with Judge Chiara, especially in this day and age, but political beliefs are not statutorily protected. In light of the legislature's recent announcement, it makes me a little nervous to expand statutorily recognized protected categories to another classification. Congress and the Utah legislature require us to have an anti-harassment policy in place to respond to what is, statutorily, a violation of the law. The law is driving this practice. I am concerned that by adding political beliefs, we would be bumping into state statute.

After further discussion, Judge Connors made a motion that "political beliefs" not be included in the policy. Mr. Rice seconded. Judge Chiara and Judge Cannell opposed. The motion passed by majority vote.

Judge Heward: No discussion is needed on HR07-1(10), I just wanted to make the Committee aware of it. Judge Cannell and I support the changes. It closes the loop for extensive use of leave.

Mr. Olsen: We have had a number of employees "gaming the system" by using their FMLA leave and then taking off again after enough leave has been accrued. Management was required to retain the employee, making it almost impossible to keep the business of the court moving forward. This policy is copied verbatim from an Executive Branch rule. After four months of cumulative leave in a 24-month period, the employee may be separated from employment regardless of paid leave status, unless prohibited by law. The law protects the three-month period of FMLA, so that would not count against the four-month cumulative leave count.

Judge Connors moved to send the HR Policies and Procedures Manual to the Judicial Council for approval. Judge Cannell seconded the motion and it passed unanimously.

Mr. Olsen will prepare a memorandum for the Judicial Council to help focus the discussion on significant items and rules that are a departure from the past, and will work with Judge Noonan to get on the Council's next meeting agenda.

(6) ADJOURN:

With no further items for discussion, the meeting adjourned at 2:55 pm. The next meeting will be March 5, 2021 at noon via Webex video conferencing.

TAB 2

CJA 1-204.Executive Committees

NOTES: The Budget and Fiscal Management Committee is requesting proposed amendments to 1-204 regarding the timeframe for electing chairs. The committee needs the flexibility to extend the term of the chair to at least 3 years because of the accounting and finance knowledge required of the chair. However, BFMC supports allowing each committee to determine what timing is appropriate for their respective committee. The proposed language in lines 49-52 is my attempt to capture BFMC's recommendation.

All other proposed amendments are unrelated to BFMC's request. I made those to clean up formatting and, in line 58, to match the language to other rules.

Policy and Planning - Rule Amendment Request Form

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

Instructions

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

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

Date of Request *

MM DD YYYY

02 / 24 / 2021

Name of Requester *

Karl Sweeney as representative of BFMC

Requester Phone Number *

8635597386

Name of Requester's Supervisor *

Mary T Noonan

Location of the Rule *

Code of Judicial Administration

CJA Rule Number or HR/Accounting Section Name *

1-204

Brief Description of Rule Proposal *

Add similar language on election of chair and required rotation so the rules is in harmony with other Executive Committees

Reason Amendment is Needed *

consistency and clarity

Is the proposed amendment urgent? *

- [ ] Yes
- [x] No

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

Select each entity that has approved this proposal. *

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

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

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

Budget and Fiscal Management Committee

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

Budget and Fiscal Management Committee

Rule 1-204. Executive committees.

Intent:

To establish executive committees of the Council.

To identify the responsibility and authority of the executive committees.

To identify the membership and composition of the executive committees.

To establish procedures for executive committee meetings.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) **Executive Committees.** The following executive committees of the Council are hereby established:

(1)(a) the Management Committee;

(1)(b) the Policy and Planning Committee;

(1)(c) the Liaison Committee; and

(1)(d) the Budget and Fiscal Management Committee.

(2) **Management Committee.** The Management Committee shall be comprised of at least four Council members, one of whom shall be the Presiding Officer of the Council. Three Committee members constitute a quorum. The Presiding Officer of the Council or Presiding Officer's designee shall serve as the Chair. When at least three members concur, the Management Committee is authorized to act on behalf of the entire Council when the Council is not in session and to act on any matter specifically delegated to the Management Committee by the Council. The Management Committee is responsible for managing the agenda of the Council consistently with Rule 2-102 of this Code. The Management Committee is responsible for deciding procurement protest appeals.

(3) **Policy and Planning Committee.** The Policy and Planning Committee shall recommend to the Council new and amended rules for the Code of Judicial Administration. The committee shall recommend to the Council new and amended policies, or repeals, for the Human Resource Policies and Procedures Manual, pursuant to Rule 3-402. The committee shall recommend to the Council periodic and long term planning efforts as necessary for the efficient administration of justice. The committee shall research and make recommendations regarding any matter referred by the Council.

(4) **Liaison Committee.** The Liaison Committee shall recommend to the Council legislation to be sponsored by the Council. The committee shall review legislation affecting the

authority, jurisdiction, organization or administration of the judiciary. When the exigencies of the legislative process preclude full discussion of the issues by the Council, the Committee may endorse or oppose the legislation, take no position or offer amendments on behalf of the Council.

(5) **Budget and Fiscal Management Committee.** The Budget and Fiscal Management Committee shall review court budget proposals, recommend fiscal priorities and the allocation of funds, and make recommendations to the Council regarding budget management and budget development in accordance with Rule 3-406.

(6) **Members.** Members of the executive committees must be members of the Council. Each executive committee shall consist of at least three members appointed by the Council to serve at its pleasure. The members of the Policy and Planning Committee, the Budget and Fiscal Management Committee, and the Liaison Committee shall elect their respective chairs ~~annually and select a new chair~~ on a schedule deemed appropriate by each Committee. ~~at least once every two years.~~

(7) **Meetings and Judicial Council Reports.** Each committee shall meet as often as necessary to perform its responsibilities, but a minimum of four times per year. Each committee shall report to the Council as necessary.

(8) **Staff.** The Administrative Office shall ~~serve as~~provide ~~the secretariat~~staff support to the executive committees.

Effective May/November 1, 20__

TAB 3

Rules back from Public Comment

- **CJA Appendix J. Ability-to-Pay Matrix**

Notes: Appendix J was approved by the Council on an expedited basis with a November 23, 2020 effective date, after which it went out for a 45-day comment period.

In January, the 2021 Federal Poverty Guidelines were published. Because the amounts in Appendix J are based on the federal poverty guidelines, those amounts were updated accordingly.

Following the public comment period, 30 comments were received. After review and discussion at its February 4, 2021 meeting, the Pretrial Release and Supervision Committee recommends that Policy and Planning adopt Appendix J as final without further amendment.

Because changes to the poverty guidelines chart were made after the appendix went out for comment, this will need to go back to the Judicial Council for final approval even if Policy and Planning makes no further amendments.

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.

Posted: November 25, 2020

Utah Courts

Code of Judicial Administration – Comment Period Closed January 9, 2021

CJA Appendix J. Ability-to-Pay Matrix (AMEND). In response to House Bill 206, the Uniform Fine and Bail Schedule has been replaced by the Uniform Fine Schedule and the Ability-to-Pay Matrix. The Ability-to-Pay Matrix provides recommended monetary bail amounts using the poverty guidelines and an individual's risk of failing to appear in court. Setting monetary bail is a highly fact dependent decision. The recommended amounts do not reflect the maximum amount a judge may order. Judges should ordinarily impose monetary bail based on a person's ability-to-pay. However, judges continue to have the same discretion to deviate from the recommended amounts as they had under the Uniform Fine and Bail Schedule, provided judges conduct an individualized assessment of ability-to-pay and risk.

This entry was posted in CJA_Appx_J.

« Rules of Professional Conduct – Comment Period Closes January 17, 2021

Rules Governing the Utah State Bar – Comment Period Closes December 17, 2020 »

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

CATEGORIES

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

UTAH COURTS

View more posts from this author

30 thoughts on “Code of Judicial Administration – Comment Period Closed January 9, 2021”

Lexie Wilson
January 1, 2021 at 7:53 pm

I am a concerned community member in Salt Lake County. The new Ability to Pay (ATP) matrix shows Utah’s awareness of many defendant’s inability to pay bail, but it is not enough. Cash bail remains an unjust method to incentivize court appearance, and cash bail should be abolished entirely. Until there is an end to money bail in Utah, we must continue to denounce the inadequacy of reforms like the ATP matrix to actually assist indigent defendants.

The recommended bail amount according to the ATP matrix is calculated based on two factors: #1 the defendant’s annual income in relation to the poverty level, and #2 the defendants FTA Risk Score. Both of these metrics are flawed data sources to determine someone’s ability to pay bail.

First, the Utah court system does not, as of today, have infrastructure in place to assess someone’s annual income prior to their initial appearance. When the judge does not have access to annual income information, the defendant becomes responsible to present their income information to the judge. Defendants are often unable to communicate with their public defender prior to the initial appearance, and these appearances are reported to be quite confusing and overwhelming, especially for first time offenders. The courts are obligated to remove this burden from the defendant. To provide the judge with accurate annual income information for defendants prior to the initial appearance is a large data infrastructure undertaking that would likely cost money and labor to the State. Instead, we argue that the ATP matrix itself is too simplistic for its intended purpose – that is, to incentivize further court appearances. The easiest, cheapest solution is to abolish cash bail and unsecured bonds altogether.

Second, the FTA Risk Score calculation is embedded with several harmful assumptions. The risk score is increased if the defendant has failed to appear at a court hearing within the last two years,

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
- CJA03-0105
- CJA03-0106
- CJA03-0106
- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06

failed to appear prior to two years ago, or if they have any prior misdemeanor or felony charges. These metrics are not a measure of flight risk. A person with a high FTA risk score is assumed to have intentionally skipped court or jumped bail, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court have reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they are required to appear. The ATP matrix punishes all missed court dates with higher recommended bail amounts, and it therefore systematically perpetuates harm especially against poor communities of color in Utah. Additionally, the FTA risk score is increased for any prior charges. We know that marginalized communities are over-policed and disproportionately charged with misdemeanors and felonies (https://www.sentencingproject.org/publications/un-report-on-racial-disparities/), and therefore, the ATP matrix only reinforces these systemic, racialized biases and further punishes our most vulnerable communities.

The ATP matrix claims to be more equitable for impoverished Utahns, but Utahns will not see justice until cash bail and risk assessment tools are abandoned by the courts. Utah courts will save costs by abolishing cash bail and risk assessments, and instead offering to provide services to defendants that will help them appear in court. These services might include free childcare, abolition of bench warrants for FTAs, free court date text reminders, and remote video courtrooms.

Thank you for your sincere consideration of this comment.

Liz Maryon
January 2, 2021 at 4:20 pm

I would like to add this public comment to emphasize my support for the following statement by Decarcerate Utah with regard to HB206:
“Decarcerate Utah would like to express our concerns with HB206 and suggest crucial steps that the state must take to ensure true community safety.
HB206 recommends that judges use the “ability to pay matrix” (which determines a bail amount based on income and past “failure-to-appear” incidents) in determining bail amounts. Although we appreciate the recognition that it is unethical to keep a legally innocent person in jail simply because they cannot afford to leave, this bill essentially does nothing to resolve this harm. First, judges are in no way obligated to follow the matrix or the suggestion of a $5000 maximum bail, which then continues the same historical discrimination against marginalized and impoverished communities based on a judge’s “discretion”. Second, the ability-to-pay matrix does not consider the systemic

- CJA03-0112
- 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
- CJA03-0306.04
- CJA03-0306.05
- CJA03-0401
- CJA03-0402
- CJA03-0403
- CJA03-0404
- CJA03-0406
- CJA03-0407
- CJA03-0408
- CJA03-0410
- CJA03-0411
- CJA03-0412
- CJA03-0413
- CJA03-0414
- CJA03-0418
- CJA03-0501
- CJA04-0103
- CJA04-0106
- CJA04-0110
- CJA04-0201
- CJA04-0202
- CJA04-0202.01
- CJA04-0202.02
- CJA04-0202.03
- CJA04-0202.04
- CJA04-0202.05
- CJA04-0202.06
- CJA04-0202.07
- CJA04-0202.08
- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206
- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03

barriers and lack of resources which underlie defendants' difficulties in attending their court dates. This oversight continues to punish, rather than assist defendants in reappearance, and disproportionately impacts victims of systemic oppression.

Instead of trying to reform a system which is inherently corrupt, we should follow LA County's lead and abolish cash bail entirely. The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them. A defendant designated as high risk by the ability to pay matrix is assumed to have intentionally skipped court or jumped bail in the past, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they were required to appear. When we acknowledge that most crime and inability to make it to court appearances is the result of systemic barriers like lack of access to communication technologies (including internet access, translation barriers, etc.), reliable transportation, medical and mental health care, housing insecurity, child-care, food/water, etc., then we can see that guaranteeing justice and safety is not about locking people in cages because they are poor, but providing these resources in the community to actually heal harm at its source. If the courts were interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail.

Utah taxpayers are already paying to provide basic resources (shelter, food, medical care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? Courts could also support defendant appearances by taking simple steps like sending text reminders about scheduled court appointments, which has been shown to increase court appearances to more than 95% (https://pretrialrisk.com/the-danger/criminal-justice-bias/failures-to-appear/). Decarcerate Utah also recommends increased options for virtual court hearings, accommodations for technological difficulties, and flexible schedules and/or options for rescheduling hearings. Giving defendants the ability to reschedule when emergencies of poverty arise, compensating them for unpaid leave, and providing child-care for court appointments would be much more effective in helping people show up to court, and also reduce the harm associated with pre-trial detention.

Researchers have found that the longer low-risk individuals are held in jail, the more likely they are to engage in criminal activity upon release (https://nicic.gov/hidden-costs-pretrial-detention). We know that harm begets more harm, so cash bail detention is certainly not keeping our communities safer. The ability-to-pay matrix does not resolve this harm because it continues to allow for the criminalization and punishment of the poor with toothless suggestions for "lower bail" and a reification of the cash bail system as an effective crime deterrent.

- CJA04-0402
- CJA04-0403
- CJA04-0404
- CJA04-0405
- CJA04-0408
- CJA04-0408.01
- CJA04-0409
- CJA04-0410
- CJA04-0411
- CJA04-0501
- CJA04-0502
- CJA04-0503
- CJA04-0508
- CJA04-0509
- CJA04-0510
- CJA04-0510.01
- CJA04-0510.02
- CJA04-0510.03
- CJA04-0510.04
- CJA04-0510.05
- CJA04-0510.06
- CJA04-0601
- CJA04-0602
- CJA04-0603
- CJA04-0609
- CJA04-0610
- CJA04-0613
- CJA04-0701
- CJA04-0702
- CJA04-0704
- CJA04-0801
- CJA04-0901
- CJA04-0902
- CJA04-0903
- CJA04-0904
- CJA04-0905
- CJA04-0906
- CJA04-0907
- CJA05-0101
- CJA05-201
- CJA06-0102
- CJA06-0303
- CJA06-0401
- CJA06-0402
- CJA06-0501
- CJA06-0503
- CJA06-0504
- CJA06-0505
- CJA06-0506
- CJA06-0506
- CJA06-0507
- CJA06-0601
- CJA07-0101
- CJA07-0102
- CJA07-0301
- CJA07-0302
- CJA07-0303
- CJA07-0304

HB206 does not meet the justice and safety needs of our community because it further strengthens the false validity of the cash bail system by reiterating that cash bail can be effective and just, when we know these claims are false. If HB206 mandated that an individual must be able to reasonably afford their bail, then we would have no inmates held on bail for pre-trial detention. HB206 clearly has not accomplished this, and so we continue to have criminalization of the poor through cash bail. The only way to "reform" cash bail is to abolish it. We demand true community safety which can only be achieved through community support, access to basic resources, restorative justice models, and an end to the current profit driven criminal justice system."

Alicia
January 2, 2021 at 4:31 pm

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Marie
January 2, 2021 at 7:09 pm

I am a community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. I applaud the Utah courts considering the devastating

- CJA07-0307
- CJA07-0308
- CJA09-0101
- CJA09-0103
- CJA09-0105
- CJA09-0107
- CJA09-0108
- CJA09-0109
- CJA09-0301
- CJA09-0302
- CJA09-109
- CJA10-1-203
- CJA10-1-602
- CJA11-0101
- CJA11-0102
- CJA11-0103
- CJA11-0104
- CJA11-0105
- CJA11-0106
- CJA11-0201
- CJA11-0202
- CJA11-0203
- CJA11-0301
- CJA11-0302
- CJA11-0303
- CJA11-0401
- CJA11-0501
- CJA14-0515
- CJA14-0721
- CJA_Appx_F
- CJA_Appx_I
- CJA_Appx_J
- CJC01
- CJC02
- CJC02.11
- CJC03
- CJC03.7
- CJC04
- CJC05
- CJCApplicability
- Fourth District Local Rule 10-1-407
- LPP1.00
- LPP1.01
- LPP1.010
- LPP1.011
- LPP1.012
- LPP1.013
- LPP1.014
- LPP1.015
- LPP1.016
- LPP1.017
- LPP1.018
- LPP1.02
- LPP1.03
- LPP1.04
- LPP1.05
- LPP1.06

impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for marginalized communities. How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the common biases found in Utah's criminal justice system.
Please consider abolishing cash bail and the FTA risk assessment altogether and expand Pretrial Services to help defendants through the court system.

Kev Nemelka
January 3, 2021 at 10:37 am

I'm commenting to support Decarcerate Utah regarding HB206, which is at its core a racist, classist piece of legislation that will only further marginalize communities that are already overpoliced and discriminated against. The ability-to-pay matrix parades as an objective/scientific guide to "make things easier" for judges, but it is absolutely reductive and baseless, ignoring circumstantial and systemic contexts we all know comprise a harsher reality for Black/Brown and/or poor members of our community.

Instead of having a business-as-usual, originality mindset when it comes to making laws that hurt people, you can take quantifiable steps to remedy the challenges that the ability-to-pay matrix claims to address but only exacerbates:

1. Set up text reminder technology to remind people about scheduled court appointments—this has been shown to increase court appearances to more than 95% (https://pretrialrisk.com/the-danger/criminal-justice-bias/failures-to-appear/)
2. Increase options for virtual court hearings, accommodations for technological difficulties and flexible schedules
3. Give defendants the ability to reschedule when emergencies of poverty arise, compensate them for unpaid leave and provide child care for court appointments
4. would be much more effective in helping people show up to court, and also reduce the harm associated with pre-trial detention.

These suggestions would be much more effective in helping people show up to court and reduce the harm associated with pre-trial detention. Please consider these ideas. Utah taxpayers already pay to provide basic resources (shelter, food, medical

- LPP1.07
- LPP1.08
- LPP1.09
- LPP15-0701
- LPP15-0702
- LPP15-0703
- LPP15-0704
- LPP15-0705
- LPP15-0706
- LPP15-0707
- LPP15-0708
- LPP15-0709
- LPP15-0710
- LPP15-0711
- LPP15-0712
- LPP15-0713
- LPP15-0715
- LPP15-0716
- LPP15-0717
- LPP15-0718
- LPP15-0719
- LPP15-0720
- LPP15.01001
- LPP15.01101
- LPP15.01102
- LPP15.01103
- LPP15.01104
- LPP15.01105
- LPP15.01106
- LPP15.01107
- LPP15.01108
- LPP15.01109
- LPP15.01110
- LPP15.01111
- LPP15.01112
- LPP15.01113
- LPP15.01114
- LPP15.01115
- LPP15.01116
- LPP15.01117
- LPP15.01118
- LPP15.01119
- LPP15.01120
- LPP15.0301
- LPP15.0501
- LPP15.0502
- LPP15.0503
- LPP15.0505
- LPP15.0506
- LPP15.0508
- LPP15.0509
- LPP15.0510
- LPP15.0511
- LPP15.0512
- LPP15.0513
- LPP15.0514
- LPP15.0515
- LPP15.0516

care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? We must stop criminalizing the impoverished community. HB206 feeds the false validity that cash bail can be effective and just, when we know empirically that these claims are statistically untrue. The only way to "reform" cash bail is to abolish it. We yearn for true community safety, which can only be achieved through community support, access to basic resources, restorative justice models and an end to the current profit-driven criminal justice system.
Thank you for considering my comments.

Michael
January 3, 2021 at 11:03 am

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.

The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.

Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Mariam
January 3, 2021 at 11:23 am

Hi, I am a community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings

- LPP15.0517
- LPP15.0518
- LPP15.0519
- LPP15.0520
- LPP15.0522
- LPP15.0523
- LPP15.0525
- LPP15.0526
- LPP15.0527
- LPP15.0528
- LPP15.0529
- LPP15.0530
- LPP15.0531
- LPP15.0532
- LPP15.0533
- LPP15.0601
- LPP15.0602
- LPP15.0603
- LPP15.0604
- LPP15.0605
- LPP15.0606
- LPP15.0607
- LPP15.0901
- LPP15.0901
- LPP15.0902
- LPP15.0903
- LPP15.0904
- LPP15.0904
- LPP15.0905
- LPP15.0906
- LPP15.0908
- LPP15.0909
- LPP15.0910
- LPP15.0911
- LPP15.0912
- LPP15.0913
- LPP15.0914
- LPP15.0915
- LPP15.0916
- LPP2.01
- LPP2.03
- LPP3.01
- LPP3.03
- LPP3.04
- LPP3.05
- LPP4.01
- LPP4.02
- LPP4.03
- LPP5.01
- LPP5.02
- LPP5.03
- LPP5.04
- LPP5.05
- LPP5.06
- LPP6.01
- LPP6.03
- LPP6.04
- LPP6.05

of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Katrina
January 3, 2021 at 4:16 pm

While it's great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants, ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

There are lots of reasons people would fail to appear in court, many of which are due to systemic and personal conditions that put marginalized communities at a disadvantage. The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.

Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.

I call on the courts to consider abolishing cash bail, like was done in LA County, and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Emilia Whitmer
January 3, 2021 at 4:59 pm

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.

The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.

Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I ask the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Thank you for considering my comments.

Bethany Gull
January 3, 2021 at 5:34 pm

As a resident of Utah County, I would like to voice my concerns about the proposed Ability-to-Pay (ATP) Matrix. While I'm very happy that as a state we are recognizing the damage the bail system has had on many low-income people, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
If we do not take into account the structural and individual conditions that cause a person to miss court, our bail system will continue to punish poverty. The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and

criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
A better solution would be to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Ethan Maryon
January 3, 2021 at 6:32 pm

I would like to add this public comment to emphasize my support for the following statement by Decarcerate Utah with regard to HB206:
"Decarcerate Utah would like to express our concerns with HB206 and suggest crucial steps that the state must take to ensure true community safety.
HB206 recommends that judges use the "ability to pay matrix" (which determines a bail amount based on income and past "failure-to-appear" incidents) in determining bail amounts. Although we appreciate the recognition that it is unethical to keep a legally innocent person in jail simply because they cannot afford to leave, this bill essentially does nothing to resolve this harm. First, judges are in no way obligated to follow the matrix or the suggestion of a $5000 maximum bail, which then continues the same historical discrimination against marginalized and impoverished communities based on a judge's "discretion". Second, the ability-to-pay matrix does not consider the systemic barriers and lack of resources which underlie defendants' difficulties in attending their court dates. This oversight continues to punish, rather than assist defendants in reappearance, and disproportionately impacts victims of systemic oppression.
Instead of trying to reform a system which is inherently corrupt, we should follow LA County's lead and abolish cash bail entirely. The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them. A defendant designated as high risk by the ability to pay matrix is assumed to have intentionally skipped court or jumped bail in the past, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they were required to appear. When we acknowledge that most crime and inability to make it to court appearances is the result of systemic barriers like lack of access to communication technologies (including internet access, translation barriers, etc.), reliable transportation, medical and mental health care, housing insecurity, child-care, food/water, etc., then we can see that guaranteeing justice and safety is not about locking people in cages because they are poor, but providing these resources in the community to actually heal harm at its source. If the courts were

- URAP008A
- URAP009
- URAP010
- URAP011
- URAP012
- URAP013
- URAP014
- URAP015
- URAP016
- URAP019
- URAP020
- URAP021
- URAP022
- URAP023
- URAP023B
- URAP023C
- URAP024
- URAP024A
- URAP025
- URAP025A
- URAP026
- URAP027
- URAP028A
- URAP029
- URAP030
- URAP033
- URAP034
- URAP035
- URAP036
- URAP037
- URAP038
- URAP038A
- URAP038B
- URAP039
- URAP040
- URAP041
- URAP042
- URAP043
- URAP044
- URAP045
- URAP046
- URAP047
- URAP048
- URAP049
- URAP050
- URAP051
- URAP052
- URAP053
- URAP054
- URAP055
- URAP056
- URAP057
- URAP058
- URAP059
- URAP060
- URCP001
- URCP004
- URCP005

interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail.
Utah taxpayers are already paying to provide basic resources (shelter, food, medical care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? Courts could also support defendant appearances by taking simple steps like sending text reminders about scheduled court appointments, which has been shown to increase court appearances to more than 95% (https://pretrialrisk.com/the-danger/criminal-justice-bias/failures-to-appear/). Decarcerate Utah also recommends increased options for virtual court hearings, accommodations for technological difficulties, and flexible schedules and/or options for rescheduling hearings. Giving defendants the ability to reschedule when emergencies of poverty arise, compensating them for unpaid leave, and providing child-care for court appointments would be much more effective in helping people show up to court, and also reduce the harm associated with pre-trial detention.
Researchers have found that the longer low-risk individuals are held in jail, the more likely they are to engage in criminal activity upon release (https://nicic.gov/hidden-costs-pretrial-detention). We know that harm begets more harm, so cash bail detention is certainly not keeping our communities safer. The ability-to-pay matrix does not resolve this harm because it continues to allow for the criminalization and punishment of the poor with toothless suggestions for "lower bail" and a reification of the cash bail system as an effective crime deterrent.
HB206 does not meet the justice and safety needs of our community because it further strengthens the false validity of the cash bail system by reiterating that cash bail can be effective and just, when we know these claims are false. If HB206 mandated that an individual must be able to reasonably afford their bail, then we would have no inmates held on bail for pre-trial detention. HB206 clearly has not accomplished this, and so we continue to have criminalization of the poor through cash bail. The only way to "reform" cash bail is to abolish it. We demand true community safety which can only be achieved through community support, access to basic resources, restorative justice models, and an end to the current profit driven criminal justice system."

Ruby Bates
January 3, 2021 at 11:48 pm

The ATP matrix claims to be more equitable for impoverished Utahns, but Utahns will not see justice until cash bail is abandoned by the courts. Utah courts will save costs by abolishing cash bail, and instead offering to provide services to defendants that will help them appear in court. These services might include free childcare, abolition of bench warrants for

- URCP006
- URCP007
- URCP007A
- URCP007B
- URCP008
- URCP009
- URCP010
- URCP011
- URCP013
- URCP015
- URCP016
- URCP017
- URCP023A
- URCP024
- URCP025
- URCP026
- URCP026.01
- URCP026.02
- URCP026.03
- URCP026.04
- URCP029
- URCP030
- URCP031
- URCP032
- URCP033
- URCP034
- URCP035
- URCP036
- URCP037
- URCP040
- URCP041
- URCP042
- URCP043
- URCP045
- URCP047
- URCP050
- URCP051
- URCP052
- URCP054
- URCP055
- URCP056
- URCP058A
- URCP058B
- URCP058C
- URCP059
- URCP060
- URCP062
- URCP063
- URCP063A
- URCP064
- URCP064A
- URCP064B
- URCP064C
- URCP064D
- URCP064E
- URCP064F
- URCP065C
- URCP066

FTAs, free court date text reminders, and remote video courtrooms, an especially important consideration given the pandemic numbers in Utah. Beyond that, cash bail, no matter how "equitable" the bail amount may be, indicates that people do not need to be held before sentencing. Cash bail allows wealthy people to buy freedom. Individuals who cannot afford to pay bail are placed in a dangerous situation given the pandemic. Social distancing is not possible in jail. Holding people unnecessarily in a pandemic is an issue public health, and should be avoided whenever possible as infection rates in jails and prisons are much higher than in the general population

Ruby Bates
January 3, 2021 at 11:49 pm

Cash bail, no matter how "equitable" the bail amount may be, indicates that people do not need to be held before sentencing. Cash bail allows wealthy people to buy freedom. Individuals who cannot afford to pay bail are placed in a dangerous situation given the pandemic. Social distancing is not possible in jail. Holding people unnecessarily in a pandemic is an issue public health, and should be avoided whenever possible as infection rates in jails and prisons are much higher than in the general population

Oskar Bates
January 4, 2021 at 12:55 am

End cash bail. This is a punishment that affects the poorest of us who are already struggling and is not a problem for rich 'criminals'. Unfair and unjust, and a scam.

Katie
January 4, 2021 at 10:02 am

I live in Salt Lake County and I am very concerned about continuing to have cash bail in Utah. How likely a person is to "fail to appear" is calculated in a discriminatory way, as it increases for prior charges (not convictions, just charges). We know from research that marginalized communities are more likely to be targeted by law enforcement and thereby face criminal charges, which means that it is members of these marginalized communities who will have to pay higher bail.

- URCP068
- URCP069
- URCP069A
- URCP069B
- URCP069C
- URCP071
- URCP073
- URCP074
- URCP075
- URCP076
- URCP083
- URCP084
- URCP086
- URCP100
- URCP101
- URCP103
- URCP105
- URCP106
- URCP108
- URCP109
- URCrP002
- URCrP004
- URCrP004A
- URCrP004B
- URCrP005
- URCrP006
- URCrP007
- URCrP007A
- URCrP007B
- URCrP007C
- URCrP008
- URCrP009
- URCrP009A
- URCrP010
- URCrP011
- URCrP012
- URCrP013
- URCrP014
- URCrP015.5
- URCrP015A
- URCrP016
- URCrP017
- URCrP017.5
- URCrP018
- URCrP021A
- URCrP022
- URCrP024
- URCrP026
- URCrP027
- URCrP027A
- URCrP027B
- URCrP028
- URCrP029
- URCrP029A
- URCrP033
- URCrP036
- URCrP038
- URCrP040

However, if cash bail is abolished, we don't even have to think about the details of what to charge someone! We know from research that the longer low-risk folks are held in jail, the more likely they are to engage in criminal activity after they are released, so what purpose does cash bail serve? It's not making communities any safer.

The courts should abolish cash bail and the "failure to appear" risk assessment, and instead expand pretrial services to help defendants make their court dates.

Brinley
January 5, 2021 at 10:00 am

I would like to express my concerns with HB206 and how it will be enacted to make sure that this community is working toward a more holistic and transformative sense of community safety.

Currently money bail is being arbitrarily used by judges as a form of ransom that keeps people locked up in a dangerous environment. The ability to pay matrix is supposed to take into account a person's income and failure to appear risk, but these measurements are incoherently and discretionally used to determine the amount of bail to set. Judges are not obligated to follow this matrix or the suggestion of the $5,000 max bail cap, which perpetuates racial and other discriminations against our marginalized and poor communities of Utah. This oversight continues to punish, rather than assist defendants in appearance or rehabilitate an individual, and disproportionately impacts victims of systemic oppression.

I would like to see us follow the lead of other counties that have abolished cash bail in its entirety. There are many reasons people may miss a court date, and setting a high bail amount does not resolve any of them. We must acknowledge that most crimes and inability to appear in court are the results of systemic barriers like lack of access to communication technologies (internet access, translation barriers, etc), reliable transportation, child care, time missed from work, quality healthcare including mental health, housing insecurity, and more.

We should instead shift our focus to providing resources in the community to create safer conditions of living. If the courts were interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail. Utah taxpayers are already paying to provide basic resources (shelter, food, medical care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? Giving defendants the ability to reschedule when emergencies of poverty arise, compensating them for unpaid leave, and providing child-care for court appointments would be much more effective in helping people

- URCrP041
- URE Restyled
- URE0404
- URE0407
- URE0412
- URE0416
- URE0504
- URE0507
- URE0509
- URE0511
- URE0512
- URE0608
- URE0616
- URE0617
- URE0701
- URE0702
- URE0703
- URE0803
- URE0804
- URE0807
- URE0902
- URE1101
- URE1102
- URJP002
- URJP003
- URJP004
- URJP005
- URJP007
- URJP007A
- URJP008
- URJP009
- URJP011
- URJP014
- URJP015
- URJP016
- URJP017
- URJP018
- URJP019
- URJP019A
- URJP019B
- URJP019C
- URJP020
- URJP020A
- URJP021
- URJP022
- URJP023
- URJP023A
- URJP025
- URJP025A
- URJP026
- URJP027
- URJP027A
- URJP029A
- URJP029B
- URJP031
- URJP032
- URJP033
- URJP034

show up to court, and also reduce the harm associated with pre-trial detention.

We know that harm begets more harm, so cash bail detention is certainly not keeping our communities safer. The ability-to-pay matrix does not resolve this harm because it continues to allow for the criminalization and punishment of the poor with toothless suggestions for "lower bail" and a reification of the cash bail system as an effective crime deterrent.

HB206 does not meet the justice and safety needs of our community because it further strengthens the false validity of the cash bail system by reiterating that cash bail can be effective and just, when we know these claims are false. The only way to resolve the harms created by cash bail is to completely eliminate and abolish it.

Eve Rickles-Young
January 5, 2021 at 10:51 am

I am a resident of Salt Lake County and I believe there are problems with the Ability-to-Pay (ATP) Matrix.

While I appreciate that Utah courts are thinking about the impact cash bail has on low-income communities, relying on the FTA risk score means continuing to uphold an unfair system. How can we calculate "failure to appear" without accounting for the structural conditions that wouldn't allow them to appear? Rather than punishing folks who cannot appear for reasons beyond their control, the court should figure out a way to provide assistance, not penalty.

In addition, penalizing people for previous misdemeanor or felony charges completely ignores the structure of the criminal justice system in Utah that targets marginalized communities.

There is no justice within a cash bail system. The courts should abolish cash bail and the Failure to Appear system. The courts should expand pretrial services and the help they can provide to defendants going through the court system.

Adair Kovac
January 5, 2021 at 4:50 pm

No one who could afford their bail would choose to sit in jail instead, so any true reform to make cash bail cease to be primarily a way of discriminatorily jailing the poor without due process would necessarily abolish pre-trial detention. Additionally, most of the people who don't show up for their court appointments had some barrier in place to doing so. For

- URJP035
- URJP036
- URJP037
- URJP037A
- URJP037B
- URJP044
- URJP045
- URJP046
- URJP047
- URJP048
- URJP050
- URJP052
- URJP053
- URJP054
- URJP056
- URJP058
- URJP060
- URSCP002
- URSCP002A
- URSCP003
- URSCP004
- URSCP004A
- URSCP009
- URSCP010
- URSCP012
- URSCP013
- USB 14-0809
- USB14-0101
- USB14-0102
- USB14-0103
- USB14-0103
- USB14-0104
- USB14-0105
- USB14-0106
- USB14-0107
- USB14-0108
- USB14-0110
- USB14-0110
- USB14-0111
- USB14-0112
- USB14-0201
- USB14-0203
- USB14-0203
- USB14-0205
- USB14-0206
- USB14-0210
- USB14-0301
- USB14-0302
- USB14-0303
- USB14-0401
- USB14-0402
- USB14-0403
- USB14-0404
- USB14-0405
- USB14-0406
- USB14-0407
- USB14-0408
- USB14-0409

instance, I've talked to people living on the streets who have non-appearances on their records simply because they have no way to receive letters from the court. Punitive measures won't help that, we need constructive solutions to our communities' problems. A record of non-appearances when someone had insurmountable barriers to attending court isn't a "flight risk".

Cale Carthey
January 5, 2021 at 7:56 pm

I am a citizen of Salt Lake County and am writing regarding the proposed Ability To Pay (ATP) matrix.
While I am glad that we are working towards reform and hopefully an end to the cash bail system that inhumanely punishes people for being low-wealth, the proposed matrix is not the way to accomplish this. A person with a high Failure to Appear (FTA) risk score is assumed to have intentionally skipped court or jumped bail, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court have reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they are required to appear. This should not be used as the basis for bail amounts.
The Ability-to-Pay Matrix being proposed would increase bail amounts for over-policed, marginalized communities by using past charges (not convictions) as a factor in the amount of bail owed. This reinforces systemic racism and classism.
The concept of money bail is unjust, racist, classist, and puts people in unnecessary danger. This ATP matrix does not fix that.

Sandra Luo
January 6, 2021 at 9:10 am

Hello! I'm a Salt Lake County resident and wanted to add this public comment to emphasize my support for the following statement by Decarcerate Utah with regard to HB206:

"Instead of trying to reform a system which is inherently corrupt, we should follow LA County's lead and abolish cash bail entirely. The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them. A defendant designated as high risk by the ability to pay matrix is assumed to have intentionally skipped court or jumped bail in the past, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three

- USB14-0410
- USB14-0411
- USB14-0412
- USB14-0413
- USB14-0414
- USB14-0415
- USB14-0416
- USB14-0417
- USB14-0418
- USB14-0503
- USB14-0504
- USB14-0507
- USB14-0508
- USB14-0510
- USB14-0510
- USB14-0515
- USB14-0516
- USB14-0517
- USB14-0533
- USB14-0701
- USB14-0702
- USB14-0703
- USB14-0704
- USB14-0705
- USB14-0706
- USB14-0707
- USB14-0708
- USB14-0709
- USB14-0710
- USB14-0711
- USB14-0712
- USB14-0713
- USB14-0714
- USB14-0715
- USB14-0716
- USB14-0717
- USB14-0718
- USB14-0719
- USB14-0720
- USB14-0801
- USB14-0802
- USB14-0803
- USB14-0804
- USB14-0805
- USB14-0806
- USB14-0807
- USB14-0808
- USB14-0901
- USB14-0902
- USB14-0903
- USB14-0904
- USB14-0907
- USB14-0908
- USB14-0910
- USB14-0911
- USB14-0912
- USB14-0913
- USB14-0915

quarters of defendants showed up for all of their court dates. Those that missed court reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they were required to appear. When we acknowledge that most crime and inability to make it to court appearances is the result of systemic barriers like lack of access to communication technologies (including internet access, translation barriers, etc.), reliable transportation, medical and mental health care, housing insecurity, child-care, food/water, etc., then we can see that guaranteeing justice and safety is not about locking people in cages because they are poor, but providing these resources in the community to actually heal harm at its source. If the courts were interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail."

End cash bail!

- USB14-0916
- USB14-1001
- USB14-1101
- USB14-1102
- USB14-1103
- USB14-1105
- USB14-1107
- USB14-1108
- USB14-1112
- USB14-1113
- USB14-1114
- USB14-1115
- USB14-1116
- USB14-1117
- USB14-1118
- USB14-1119
- USB14-1120

Josh Kivlovitz
January 8, 2021 at 10:13 am

Instead of trying to reform a system which is inherently corrupt, we should follow LA County's lead and abolish cash bail entirely. The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them. A defendant designated as high risk by the ability to pay matrix is assumed to have intentionally skipped court or jumped bail in the past, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they were required to appear. When we acknowledge that most crime and inability to make it to court appearances is the result of systemic barriers like lack of access to communication technologies (including internet access, translation barriers, etc.), reliable transportation, medical and mental health care, housing insecurity, child-care, food/water, etc., then we can see that guaranteeing justice and safety is not about locking people in cages because they are poor, but providing these resources in the community to actually heal harm at its source. If the courts were interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail.

Utah taxpayers are already paying to provide basic resources (shelter, food, medical care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? Courts could also support defendant appearances by taking simple steps like sending text

reminders about scheduled court appointments, which has been shown to increase court appearances to more than 95% (https://pretrialrisk.com/the-danger/criminal-justice-bias/failures-to-appear/). Decarcerate Utah also recommends increased options for virtual court hearings, accommodations for technological difficulties, and flexible schedules and/or options for rescheduling hearings. Giving defendants the ability to reschedule when emergencies of poverty arise, compensating them for unpaid leave, and providing child-care for court appointments would be much more effective in helping people show up to court, and also reduce the harm associated with pre-trial detention.

Researchers have found that the longer low-risk individuals are held in jail, the more likely they are to engage in criminal activity upon release (https://nicic.gov/hidden-costs-pretrial-detention). We know that harm begets more harm, so cash bail detention is certainly not keeping our communities safer. The ability-to-pay matrix does not resolve this harm because it continues to allow for the criminalization and punishment of the poor with toothless suggestions for "lower bail" and a reification of the cash bail system as an effective crime deterrent.

HB206 does not meet the justice and safety needs of our community because it further strengthens the false validity of the cash bail system by reiterating that cash bail can be effective and just, when we know these claims are false. If HB206 mandated that an individual must be able to reasonably afford their bail, then we would have no inmates held on bail for pre-trial detention. HB206 clearly has not accomplished this, and so we continue to have criminalization of the poor through cash bail. The only way to "reform" cash bail is to abolish it. We demand true community safety which can only be achieved through community support, access to basic resources, restorative justice models, and an end to the current profit driven criminal justice system.

Sara B LoTemplio
January 8, 2021 at 11:44 am

Hi! My name is Sara and I'm a South Salt Lake resident.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or

felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Kathryn Van Sleen
January 8, 2021 at 11:44 am

I am a concerned community member in Salt Lake County who wants to speak out against the new Ability to Pay matrix, which may show Utah's awareness of many defendant's inability to pay bail, but it nowhere near enough. Cash is an inherently unjust and racist system and cash bail must be abolished entirely. Until there is an end to money bail in Utah, I will continue to denounce and critique the inadequacy of reforms like the ATP matrix.

The recommended bail amount according to the ATP matrix is calculated based on two factors: #1 the defendant's annual income in relation to the poverty level, and #2 the defendants FTA Risk Score. Both of these metrics are flawed data sources to determine someone's ability to pay bail.

First, the Utah court system does not, as of today, have infrastructure in place to assess someone's annual income prior to their initial appearance. When the judge does not have access to annual income information, the defendant becomes responsible to present their income information to the judge. Defendants are often unable to communicate with their public defender prior to the initial appearance, and these appearances are reported to be quite confusing and overwhelming, especially for first time offenders. The courts are obligated to remove this burden from the defendant. To provide the judge with accurate annual income information for defendants prior to the initial appearance is a large data infrastructure undertaking that would likely cost money and labor to the State. Instead, we argue that the ATP matrix itself is too simplistic for its intended purpose – that is, to incentivize further court appearances. The easiest, cheapest solution is to abolish cash bail and unsecured bonds altogether.

Second, the FTA Risk Score calculation is embedded with several harmful assumptions. The risk score is increased if the defendant has failed to appear at a court hearing within the last two years, failed to appear prior to two years ago, or if they have any prior misdemeanor or felony charges. These metrics are not a measure of flight risk. A person with a high FTA risk score is assumed to have intentionally skipped court or jumped bail, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S.

counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court have reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they are required to appear. The ATP matrix punishes all missed court dates with higher recommended bail amounts, and it therefore systematically perpetuates harm especially against poor communities of color in Utah. Additionally, the FTA risk score is increased for any prior charges. We know that marginalized communities are over-policed and disproportionately charged with misdemeanors and felonies (https://www.sentencingproject.org/publications/un-report-on-racial-disparities/), and therefore, the ATP matrix only reinforces these systemic, racialized biases and further punishes our most vulnerable communities.

The ATP matrix claims to be more equitable for impoverished and poor Utahns, but Utahns will not see justice until cash bail and risk assessment tools are abandoned by the courts. Utah courts will save costs by abolishing cash bail and risk assessments, and instead offering to provide services to defendants that will help them appear in court. These services could include free childcare, abolition of bench warrants for FTAs, free court date text reminders, lyft or public transportation credits, and remote video courtroom options.

Thank you for your consideration of this comment.

Alli
January 8, 2021 at 12:09 pm

I am a resident in Salt Lake County and I'm submitting this comment today to talk about the shortcomings of the Ability-to-Pay (ATP) Matrix.

I believe cash bail is already a harmful tool that affects our most marginalized communities and the ATP matrix further weaponizes this by being dependent on a defendants income and their FTA risk score, or how likely it is that they will appear in court. But how do we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them or make it unable to do so. This system only punishes the defendant rather than incentivizing them. The FTA risk score also increases for any prior charges — and research has shown that marginalized communities are far more likely to be targeted by police and criminally charged — thus directly affecting Utah's Black, Brown, Indigenous, poor, immigrant and LGBTQ communities.

I urge the courts to expand pretrial services to help defendants through the court system rather than punish them by setting inflated bail amounts. I also call on the courts to abolish the cash

bail and FTA risk assessment altogether as it has historically been a harmful tool in keeping people jailed.

Morgan Beh
January 8, 2021 at 1:18 pm

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Amanda Peterson
January 8, 2021 at 8:32 pm

Hello, I am a concerned community member in Salt Lake County and I'm submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.

The ATP matrix relies on a defendant's income and their FTA risk score. It is good that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so

by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.

The courts should abolish cash bail and the FTA risk assessment altogether and expand Pretrial Services to help defendants through the court system.

Eliza
January 8, 2021 at 9:07 pm

Thank you for considering public opinions about the ATP Matrix. While I am happy to see that fewer people will be held in jails pre-trial under this new system, I still have serious concerns about the equity of a cash bail system in general. Using the FTA Risk Score continues to place heavier burdens on people with lower incomes. People do not fail to appear in court because they are lazy or dangerous or don't care: it is extremely difficult to attend hearings when you do not have paid time off, child care, access to reliable transportation, or a reliable way to receive information from the courts. While judges are more than happy to reset court dates for lawyers who come unprepared, this same flexibility is not granted to defendants. Rather than using this as a metric to determine bail, I hope to see an expansion of supportive services for defendants. I would also like to see serious consideration of removing the cash bail system, and to stop needlessly incarcerating people pre-trial for reasons that can only be attributed to socioeconomic barriers. Thank you for your time.

Bonnie Cooper
January 8, 2021 at 10:23 pm

I am a resident of Salt Lake County and am submitting this comment to voice my dissatisfaction with the current plans to implement the Ability-to-Pay (ATP) Matrix.

I am pleased that Utah courts are attempting to address the crippling financial burden that cash bail unfairly imposes upon low-income defendants. Regrettably, use of the FTA risk score leaves open many loopholes for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

One major caveat is that "failure to appear" is an unjust metric to determine a defendant's "worthiness" for reduced bail. As a stay at home mom, with only one child at home, I often find myself at

the mercy of my toddler's sleep schedule, moods, and bodily functions. Despite my best efforts, occasionally a slew of small, but essential to address, unforeseeable events will cause me to be late, or miss an appointment altogether. Society is quick to condemn mothers and caregivers who fail in these regards, but it truly happens to everyone, and quite often. These burdens are only exacerbated when you factor in additional children and other members of a household who may require care, single parent households, socio-economic status, access to transportation as well as potential lack of effective public transportation depending on the neighborhood, ability to take time off work, the current limitations on finding childcare during a pandemic and many more variables. The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.

Additionally, Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.

I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Thank you for considering my comment.

Cesar Bojorquez
January 9, 2021 at 10:27 am

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA

risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Serving any jail time without ever being convicted of a crime is fundamentally wrong. The amount of lost work itself places strain on stable housing and supportive relationships of the individuals facing charges. If they are the source of financial income any money that would have been used for food, children, and rent go toward getting the individual out of the jail system to be able to retire to supporting themselves and their dependents.

Thank you for your consideration in this matter. I trust you will adjust procedure and sentiments to benefit all affected individuals.

Anne Charles
January 9, 2021 at 3:59 pm

I'm a Salt Lake City resident and am expressing my support for the Ability-to-Pay (ATP) Matrix. This would be a step towards a more equitable justice system. Imprisonment should not be determine by how much money one has. This would be a step towards equal accountability under the law. It is unfair that those with wealth and privilege can abide by different standards and rules to abide by.

Code of Judicial Administration, Appendix J.

ABILITY-TO-PAY MATRIX - PRETRIAL RELEASE

November 23, 2020

2021 Poverty Guidelines

ANNUAL INCOME	Poverty Level			
Family Size	≤ 100%	101% - 150%	151% - 199%	200+%
1	$ 12,880.00	$12,881 - $19,320	$19,321 - $25,759	$ 25,760
2	$ 17,420.00	$17,421 - $26,130	$26,131 - $34,839	$ 34,840
3	$ 21,960.00	$21,961 - $32,940	$32,941 - $43,919	$ 43,920
4	$ 26,500.00	$26,501 - $39,750	$39,751 - $52,999	$ 53,000
5	$ 31,040.00	$31,041 - $46,560	$46,561 - $62,079	$ 62,080
6	$ 35,580.00	$35,581 - $53,370	$53,371 - $71,159	$ 71,160
7	$ 40,120.00	$40,121 - $60,180	$60,181 - $80,239	$ 80,240
8	$ 44,660.00	$44,661 - $66,990	$66,991 - $89,319	$ 89,320
9	$ 49,200.00	$49,201 - $73,800	$73,801 - $98,399	$ 98,400
10	$ 53,740.00	$53,741 - $80,610	$80,611 - $107,479	$ 107,480
For each add'l person add $4,540				
78B-22-202				

If monetary bail is deemed a least restrictive, reasonably available condition necessary to ensure appearance, below is the recommended amount:

	Poverty Level:	≤ 100%	101% - 150%	151% - 199%	200+%
PSA FTA Risk Score (Appearance Rate**):	**FTA 1** (90%)	$0	$0	$0	$0
	FTA 2 (85%)	$0	$0	$0	$0
	FTA 3 (80%)	$0	$0	$0	$0
	FTA 4 (69%)	$100	$250	$750	$1,000
	FTA 5 (65%)	$250	$500	$1,250	$2,500
	FTA 6 (60%)	$500	$1,000	$2,500	*$5,000

***Avg appearance rate for individuals with the same risk score in the PSA validation study.*

Notes:

Utah Code §77-20-1(4)(c): "If the court determines a financial condition, other than an unsecured bond, is necessary to impose on an individual as part of the individual's pretrial release, the court shall consider the individual's ability to pay when determining the amount of the financial condition."

*Setting monetary bail is a highly fact dependent decision. The recommended amounts do not reflect the maximum amount a judge may order. Judges should ordinarily impose monetary bail based on a person's ability-to-pay. However, judges continue to have the same discretion to deviate from the recommended amounts as they had under the Uniform Fine and Bail Schedule, provided judges conduct an individualized assessment of ability-to-pay and risk. For example, if the defendant's income is higher than 200% of the poverty level and the circumstances surrounding the arrest or charge indicate a significant flight risk, a judge might determine that a higher monetary amount is necessary to incentivize that particular defendant to appear in court.

The purpose behind all forms of financial release (secured bond, unsecured bond, cash, etc.) is to incentivize an individual to appear in court. There is no rational relationship between money and public safety, so the criminal activity scores on the PSA are not factored into the recommended dollar amounts. No financial condition is recommended when the FTA score is below 4 because the likelihood of appearance for scores 1-3 is very high (1 = 90%, 2 = 85%, 3 = 80%), compared to a significant drop starting at FTA 4 (4 = 69%, 5 = 65%, 6 = 60%).

If the individual and/or the circumstances surrounding the case indicate a public safety risk, non-financial conditions should be considered in lieu of or in addition to financial conditions of release. If the individual poses a *significant* public safety risk, determine whether they are eligible for a no-bail hold under Utah Code §77-20-1(2). Under Utah Code §77-20-1(8), there is a presumption of detention if the individual is charged with criminal homicide or any offense for which the term of imprisonment may include life. Judges may delay issuing a pretrial status order if a prosecutor files a motion for detention under Utah Code §77-20-1(6).

Note: Surety bail agents are only liable for bringing a defendant to court. They are not liable if the defendant commits a new offense. In fact, if the defendant commits a new crime while out on a secured bond, the agent may be released from its obligations.

The maximum recommended amount is $5,000 because:

1. There is a presumption of own recognizance release;
2. The court is directed to determine the "least restrictive" condition necessary to "reasonably ensure" appearance in court;
3. Even for those with the highest FTA risk (FTA 6), the likelihood of appearance is still relatively high at 60%;
4. Collateral consequences of an over-reliance on money can include loss of housing, loss of jobs, loss of custody, car repossession, interruption in medication and medical care, etc.;
5. Holding low-risk defendants for even 2-3 days increases their risk of recidivism by almost 40% compared those held no more than 24 hours; and
6. Public safety risk will be considered separately and, in addition to, failure to appear risk.

The ability-to-pay matrix may be used to determine monetary bail amounts for every financial condition type including cash, credit/debit cards, secured bonds, and unsecured bonds.

TAB 4

CJA 2-103. Open and Closed Meetings

NOTES: After a recent Council meeting, Mr. Johnson was asked to review the form the Chief Justice uses when an executive session is held. The form was lacking a provision found in rule 2-103(4)(G). In looking at that provision, Mr. Johnson noticed that the rule had not been updated since the category of "safeguarded" was added to the Rules of Judicial Administration. Mr. Johnson is proposing that the rule be amended to include the "safeguarded" category (line 77).

Rule 2-103. Open and closed meetings.

Intent:
To establish the Council's responsibility for providing public notice of its meetings and to ensure the opportunity for public attendance at Council meetings.

To establish procedures consistent with the philosophy of the Utah Open and Public Meetings Act.

To provide the Council with sufficient flexibility to close meetings when discussing matters of a sensitive nature.

Applicability:
This rule shall apply to all meetings of the Council.

Statement of the Rule:
(1) **Definitions.** As used in this rule "meeting" means the gathering of a quorum of the Council, whether in person or by means of electronic communication, for the purpose of discussing or acting upon any matter over which the Council has jurisdiction, but does not include a chance or social meeting of Council members.

(2) **Public notice of meetings.**

(2)(A) After the Council has set its annual meeting schedule, the administrative office of the courts shall publish on the court's website and on the Utah Public Notice Website the date, time and place of the meetings. At least 24 hours before each meeting, the administrative office of the courts shall post on the websites the meeting agenda and notify at least one newspaper of general circulation within the state of the postings. The administrative office of the courts shall notify a media agency of the postings by email upon request for routine notice. The Council may address a matter not on the meeting agenda but will take no final action on the matter.

(2)(B) When, due to unforeseen circumstances, it is necessary for the Council to consider matters of an urgent nature, the requirement of public notice may be suspended and the best notice practicable given. No such meeting of the Council shall be held unless:

(2)(B)(i) an attempt has been made to notify all members;

(2)(B)(ii) at least a quorum is present; and

(2)(B)(iii) a majority of those present vote to hold the meeting.

(3) **Open meetings.** Meetings of the Council are open to the public unless closed as provided in this rule.

(4) **Reasons for closed meetings.** A closed meeting of the Council may be held for discussions regarding any of the following:

(4)(A) the character, professional competence, or physical or mental health of an individual;

(4)(B) collective bargaining or litigation;

(4)(C) the purchase, exchange or lease of real property if public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the Council from completing the transaction on the best possible terms;

(4)(D) the sale of real property if:

(4)(D)(i) public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the Council from completing the transaction on the best possible terms;

(4)(D)(ii) the Council has previously given public notice that the property would be offered for sale; and

(4)(D)(iii) the terms of the sale are publicly disclosed before the Council approves the sale;

(4)(E) deployment of security personnel or devices;

(4)(F) allegations of criminal misconduct; or

(4)(G) consideration of a private, protected, sealed, juvenile court social, ~~or~~ juvenile court legal, or safeguarded record as defined in Rule 4-202.02.

(5) **Procedure for closing a meeting.**

(5)(A) A closed meeting may be held only upon the affirmative vote of two-thirds of the members present at an open meeting for which public notice is given, provided a quorum is present.

(5)(B) The recording and minutes otherwise required by Rule 2-104 shall not be made if a meeting is closed to discuss the character, competence, or physical or mental health of an individual or to discuss the deployment of security personnel or devices. The

presiding officer shall sign a sworn statement, which is a public record, affirming that the sole purpose for closing the meeting is to discuss the character, competence, or physical or mental health of an individual or the deployment of security personnel, devices, or systems.

(6) **Limit on actions at a closed meeting.** No contract, appointment, rule or resolution may be approved at a closed meeting. A contract, appointment, rule or resolution approved at an open meeting may be based upon discussions had at a closed meeting.

(7) **Limit on discussions outside of closed meeting.** No one who attends a closed meeting may disclose information discussed or materials distributed outside of the closed meeting except with

(7)(A) others who participated in the closed meeting, and

(7)(B) a member of the Judicial Council.

(8) **Right of removal.** All or any part of an open meeting may be recorded by any person in attendance, provided the recording does not interfere with the conduct of the meeting. The Council may order the removal of any person who disrupts a meeting.

(9) **Training.** The administrative office of the courts shall annually train the members of the Council on the requirements of this rule and of Rule 2-104.

Effective May/November 1, 20__

TAB 5

- 3-306.05. Interpreter removal, discipline, and formal complaints
- 4-103. Civil calendar management
- 4-202.04. Request to access or classify a record associated with a case
- 4-202.05. Request to access or classify an administrative record
- 4-202.06. Response to request to access or classify a court record
- 4-202.07. Appeals
- 4-510.05. Referral of civil actions
- 4-701. Failure to appear

NOTES: The vast majority of court processes are now conducted electronically. Very few documents are mailed. Per Mr. Johnson's recommendation after his review of 4-103, I searched all CJA rules for references to "mail" or "mailing."

I amended most references to "send," allowing courts the discretion to mail or email. Several rules explicitly state that documents can be emailed, mailed, or hand-delivered. I removed all references to the use of fax machines. The language in rule 4-701 matches the language regarding citations in URCrP rule 4B.

I also cleaned up formatting and language where needed.

Rule 3-306.05. Interpreter removal, discipline, and formal complaints.

Intent:
To outline the procedures for interpreter removal and discipline.

Applicability:
This rule shall apply to the Language Access Program Manager, the Language Access Program Coordinator, the Language Access Committee, interpreter coordinators and contract interpreters.

Statement of the Rule:

(1) **Removal from legal proceeding.** The appointing authority may remove an interpreter from the legal proceeding for failing to appear as scheduled, for inability to interpret adequately, including a self-reported inability, and for other just cause.

(2) **Discipline.**

(2)(A) An interpreter may be disciplined for:

(2)(A)(i) knowingly making a false interpretation in a legal proceeding;

(2)(A)(ii) knowingly disclosing confidential or privileged information obtained in a legal proceeding;

(2)(A)(iii) knowingly failing to follow standards prescribed by law, the Code of Professional Responsibility and this rule;

(2)(A)(iv) failing to pass a background check;

(2)(A)(v) failing to meet continuing education requirements;

(2)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction;
(2)(A)(vii) failing to appear as scheduled without good cause;

(2)(A)(viii) unprofessional behavior toward a client, judge, court staff, court security, or Language Access Committee member; and

(2)(A)(ix) being charged with, or convicted of, a crime.

(2)(B) Discipline may include:

(2)(B)(i) permanent loss of certified or approved credentials;

(2)(B)(ii) temporary loss of certified or approved credentials with conditions for reinstatement;

(2)(B)(iii) suspension from the roster of certified or approved interpreters with conditions for reinstatement;

(2)(B)(iv) prohibition from serving as a conditionally approved interpreter;

(2)(B)(v) suspension from serving as a conditionally approved interpreter with conditions for reinstatement; and

(2)(B)(vi) reprimand.

(3) As long as he or she complies with rule 3-306.04, an interpreter coordinator has the discretion to decline to assign an interpreter listed on the statewide interpreter roster.

(4) **Filing of formal complaints**.

(4)(A) Any person may file a formal complaint about a matter for which an interpreter can be disciplined. A party, witness, victim or person who will be bound by a legal proceeding, may file a formal complaint about the misapplication of this rule.

(4)(B) A formal complaint shall be filed with the Language Access Program Coordinator. However, the Language Access Program Coordinator may file a formal complaint with the Language Access Program Manager, in which case, the program manager will fulfill the program coordinator's responsibilities under this rule.

(4)(C) The complaint shall allege an act or omission for which an interpreter can be disciplined or that violates this rule. The complaint shall be in writing and signed. The complaint may be in the native language of the complainant, which the AOC shall translate in accordance with this rule. The complaint shall describe the circumstances of the act or omission, including the date, time, location and nature of the incident, and the persons involved.

(5) **Investigation by program coordinator.**

(5)(A) The program coordinator may dismiss the complaint if it is plainly frivolous, insufficiently clear, or does not allege an act or omission for which an interpreter can be disciplined or that does not violate this rule.

(5)(B) If the complaint alleges that the court did not provide language access as required by this rule, the program coordinator shall investigate and recommend corrective actions that are warranted.

(5)(C) If the complaint alleges an act or omission for which the interpreter can be disciplined, the program coordinator shall ~~mail~~send a copy of the complaint to the interpreter at the email address on file with the administrative office of the courts and proceed as follows:

(5)(C)(i) The interpreter shall answer the complaint in writing within 30 days after the date the complaint is ~~mailed~~ sent or the allegations in the complaint will be deemed to be true and correct. The answer shall admit, deny or further explain each allegation in the complaint.

(5)(C)(ii) Unless the program coordinator determines the allegation in the formal complaint to be egregious, the interpreter shall remain on the court interpreter roster until a final decision on discipline has been made.

(5)(C)(iii) The program coordinator may review records and interview the complainant, the interpreter and witnesses. After considering all factors, the program coordinator may propose a resolution, which the interpreter may stipulate to. The program coordinator may consider aggravating and mitigating circumstances such as the severity of the violation, the repeated nature of violations, the potential of the violation to harm a person's rights, the interpreter's work record, prior discipline, and the effect on court operations.

(5)(C)(iv) When the investigation of the formal complaint is complete, the program coordinator shall notify the interpreter, in writing, of the proposed resolution. Within 15 days of the proposed resolution, the interpreter shall, in writing, either accept the discipline by consent or request a hearing by a panel of the Language Access Committee. If the interpreter fails to respond to the program coordinator's proposed resolution, or fails to request a hearing within 15 days, the interpreter will be deemed to have stipulated to the proposed resolution.

(6) **Hearing by panel.**

(6)(A) The program coordinator shall notify the chair of the Language Access Committee if the interpreter requests a hearing by a panel. The chair of the Language Access Committee shall assign three members of the Committee, including one interpreter, to serve on the panel for the hearing, and shall assign one of the panel members to chair the hearing. The chair of the panel is responsible for sending notice to the interpreter, the complainant and the program coordinator.

(6)(B) The hearing before the panel is private and closed to the public. The hearing shall be recorded. The hearing is informal and is not governed by the Rules of Civil Procedure and the Rules of Evidence. The interpreter, the complainant, and the program coordinator may attend the hearing. The interpreter and the program coordinator may each bring counsel to the hearing. The chair may limit others in attendance to those persons reasonably necessary to the proceedings. The program coordinator and the interpreter may submit exhibits and call witnesses. Panel members and staff may not disclose or discuss information or materials outside of the meeting except with others who participated in the meeting or with a member of the panel.

(6)(C) If any party fails to appear, the panel may proceed on the evidence before it. If the complainant fails to appear, the panel may dismiss the Formal Complaint.

(6)(D) The panel shall determine by a majority whether there is a preponderance of evidence of the alleged conduct or omission, and whether the alleged conduct or omission violates this rule or the Code of Professional Responsibility. Within 30 days, the panel chair will inform the program coordinator, the interpreter, and the complainant, in writing, of its decision and the findings of fact supporting it. The panel may discipline

the interpreter as provided under paragraph (2)(B), including permanently removing the interpreter's credentials.

(6)(E) The interpreter may appeal the decision to the Language Access Committee by sending a written request to the program coordinator within 15 days of the date of the panel's decision.

(7) **Appeal hearing before the Language Access Committee.**

(7)(A) The committee chair and at least one interpreter member shall attend the hearing before the Language Access Committee. If a committee member is the complainant or the interpreter, the committee member is recused. Members of the panel are also recused. The program coordinator shall ~~mail~~ send notice of the date, time and place of the hearing to the interpreter and the complainant. At least 6 days before the hearing, the interpreter and program coordinator may submit briefs and exhibits, which the committee shall review. The information the committee may consider is limited to information presented to the panel. The hearing is closed to the public. Committee members and staff may not disclose or discuss information or materials outside of the meeting except with others who participated in the meeting or with a member of the Committee. The committee may review records and interview the interpreter, the complainant and witnesses. A record of the proceedings shall be maintained but is not public.

(7)(B The committee shall decide whether the panel abused its discretion in making its decision. If the committee determines the panel abused its discretion, the committee may dismiss the Formal Complaint or discipline the interpreter differently as appropriate. If the committee determines that the panel did not abuse its discretion, the interpreter shall be disciplined according to the panel's decision. The chair of the committee, or the chair's designee, shall issue a written decision and analysis on behalf of the committee within 30 days after the hearing. The program coordinator shall ~~mail~~ send a copy of the decision to the interpreter. The committee's decision is final.

(7)(C) The interpreter may review and, upon payment of the required fee, obtain a copy of any records to be used by the committee. The interpreter may attend all of the hearing except the committee's deliberations. The interpreter may be represented by counsel and shall be permitted to make a statement, call and interview the complainant and witnesses, and comment on the claims and evidence. The interpreter may obtain a copy of the record of the hearing upon payment of the required fee.

(8) If the interpreter is certified in Utah under rule 3-306.03(1), the program coordinator, panel or committee may report any final findings and sanction to other agencies and certification authorities in other jurisdictions.

Effective May/November 1, 20__ ~~16~~

Rule 4-103. Civil calendar management.

Intent:

To establish a procedure that allows the trial courts to manage civil case processing.

To reduce the time between case filing and disposition.

Applicability:

This rule shall apply to the District Court.

Statement of the Rule:

(1) If a default judgment has not been entered by the plaintiff within 60 days of the availability of default, the clerk will ~~mail~~ send written notification to the plaintiff stating that absent a showing of good cause by a date specified in the notification, the court will dismiss the case without prejudice for lack of prosecution.

(2) If a certificate of readiness for trial has not been served and filed within 330 days of the first answer, the clerk will ~~mail~~ send written notification to the parties stating that absent a showing of good cause by a date specified in the notification, the court will dismiss the case without prejudice for lack of prosecution.

(3) Orders of dismissal entered under this rule must contain the language "without prejudice."

(4) Any party may, pursuant to the Utah Rules of Civil Procedure, move to vacate a dismissal entered under this rule.

Effective May/November 1, 20__ ~~19~~

Rule 4-202.04. Request to access a record associated with a case; request to classify a record associated with a case.

Intent:
To establish the process for accessing a court record associated with a case.

Applicability:
This rule applies to court records associated with a case.

Statement of the Rule:
(1) **Request to access a record.**

(1)(A) **Public records.** A request to access a public court record shall be presented in writing to the clerk of the court unless the clerk waives the requirement. The person making the request shall present identification.

(1)(B) **Non-public records – authorized access.** A request to access a non-public court record to which a person is authorized access shall be presented in writing to the clerk of the court. A written request shall contain the requester's name, email address, mailing address, daytime telephone number, and a description of the record requested. ~~If the record is a non-public record, t~~The person making the request shall present identification.

(1)(C) **Non-public records – unauthorized access.** A person not authorized to access a non-public court record may file a motion to access the record. If the court allows access, the court may impose any reasonable conditions to protect the interests favoring closure.

(2)~~(A)~~ **Denial by clerk of court.** If a written request to access a court record is denied by the clerk of court, the person making the request may file a motion to access the record.

~~(2)(B) A person not authorized to access a non-public court record may file a motion to access the record. If the court allows access, the court may impose any reasonable conditions to protect the interests favoring closure.~~

(3)~~(A)~~ **Requests to classify a record.**

(3)(A) **Court has jurisdiction.** If the court record is associated with a case over which the court has jurisdiction, a person with an interest in a court record may file a motion to classify the record as private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social; or to have information redacted from the record. The court shall deny access to the record until the court enters an order.

(3)(B) **Court does not have jurisdiction.** If the court record is associated with a case over which the court no longer has jurisdiction, a person with an interest in the record may file a petition to classify the record as private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social; or to have information redacted from the record. The court shall deny access to the record until the court enters an order.

(4) **Classification.** The court may classify the record as private, protected, ~~or~~ sealed, safeguarded, juvenile court legal, or juvenile court social, or may redact information from the record if the record or information:

(4)(A) is classified as private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social under Rule 4-202.02;

(4)(B) is classified as private, controlled, or protected by a governmental entity and shared with the court under the Government Records Access and Management Act;

(4)(C) is a record regarding the character or competence of an individual; or

(4)(D) is a record containing information the disclosure of which constitutes an unwarranted invasion of personal privacy.

(5) **Motions, Petitions, and Proceedings.** As appropriate for the nature of the case with which the record is associated, the motion or petition shall be filed and proceedings shall be conducted under the rules of civil procedure, criminal procedure, juvenile procedure, or appellate procedure. The person filing the motion or petition shall serve any representative of the press who has requested notice in the case. The court shall conduct a closure hearing when a motion or petition to close a record is contested, when the press has requested notice of closure motions or petitions in the particular case, or when the court decides public interest in the record warrants a hearing.

(6) **Considerations.** In deciding whether to allow access to a court record or whether to classify a court record as private, protected, or sealed, safeguarded, juvenile court legal, or juvenile court social, or to redact information from the record, the court may consider any relevant factor, interest, or policy, including but not limited to the interests described in Rule 4-202.

(7) **Rulings.** In ruling on a motion or petition under this rule the court shall:

(7~~6~~)(A) make findings and conclusions about specific records;

(7~~6~~)(B) identify and balance the interests favoring opening and closing the record; and

(7~~6~~)(C) if the record is ordered closed, determine there are no reasonable alternatives to closure sufficient to protect the interests favoring closure.

(8~~7~~)~~(A)~~ **Appellate briefs.**

(8)(A) If an appellate brief is sealed, the clerk of the court shall seal the brief under Rule 4-205.

(8)(B) If an appellate brief is classified as private, protected, safeguarded, juvenile court legal, or juvenile court social, the clerk of the court shall allow access only to persons authorized by Rule 4-202.03.

(8)(C) If the court orders information redacted from the brief, the clerk of the court shall remove the information and allow public access to the edited brief.

(8~~7~~)(D~~B~~) If the petitioner serves the order on the director of the State Law Library, the director shall comply with the order in the same manner as the clerk of the court ~~under paragraph (7)(A)~~.

(8~~7~~)(E~~C~~) Unless otherwise ordered by the court, the order is binding only on the court, the parties to the petition, and the state law library. Compliance with the order by any other person is voluntary.

(9~~8~~) A request under this rule is also governed by Rule 4-202.06. A motion or petition under this rule is not governed by Rule 4-202.07.

Effective date: May/November 1, 20__ ~~16~~

Rule 4-202.05. Request to access an administrative record; research; request to classify an administrative record; request to create an index.

Intent:
To establish the process for accessing an administrative court record, aggregate records and court records for the purpose of research.

Applicability:
This rule applies to court records associated with the administration of the judiciary, aggregate records and indexes, and requests to access non-public records for the purpose of research.

Statement of the Rule:
(1) **Request to access a record.**

(1)(A) **Public records.** A request to access a public court record shall be presented in writing to the custodian of the record unless the custodian waives the requirement. The person making the request shall present identification.

(1)(B) **Non-public records – authorized access.** A request to access a non-public court record to which a person is authorized access shall be presented in writing to the custodian of the record. A written request shall contain the requester's name, email address, mailing address, daytime telephone number, and a description of the record requested. ~~If the record is a non-public record, t~~The person making the request shall present identification.

(1~~2~~)(C~~A~~) **Non-public records – unauthorized access.** A request to access a private or protected court record, including aggregate records, to which the person is not authorized access shall be presented in writing to the state court administrator. The request shall contain the requester's name, email address, mailing address, daytime telephone number, a description of the record and a statement of facts, authority and argument in support of the request. The person making the request shall provide identification.~~If the state court administrator allows access, the state court administrator may impose any reasonable conditions to protect the interests favoring closure. The person making the request shall sign an agreement to be bound by the conditions.~~

(2)~~(B)~~ **Notice of access request by unauthorized person.** Except as outlined in subsection (4), b~~B~~efore allowing access to a private or protected record to someone not authorized access, the state court administrator shall ~~mail~~ send notice of the request for access to any person whose interests are protected by closure and allow 10 business days for that person to submit a statement of facts, authority and argument in support of closure.

(3) **Reasonable conditions.** If the state court administrator allows access to records under (1)(C), the state court administrator may impose any reasonable conditions to protect the

interests favoring closure. The person making the request shall sign an agreement to be bound by the conditions.

(~~2)(C)(i~~4) **Records access for research purposes.**

(4)(A) The state court administrator may disclose non-public court records, including records associated with a case other than sealed records, for research purposes without the notice required in ~~this rule~~subsection (2) if the state court administrator decides that the research is bona fide and cannot reasonably be completed without disclosure of the records, and the interests favoring the research are greater than or equal to the interests favoring closure.

(4~~2~~)(~~C)(ii~~B) If the state court administrator discloses non-public court records for research purposes, the researcher shall sign a written statement acknowledging that violating the agreement may be grounds for criminal prosecution under Utah Code Section 63G-2-801. The agreement may include any reasonable condition to protect the interests favoring closure, including an agreement to:

(4~~2~~)(B~~C~~)(~~ii)(a~~i) maintain the integrity, confidentiality and security of the records;

(4~~2~~)(B~~C~~)(ii)~~(b)~~ return or destroy records from which a person can be identified as soon as the research has been completed;

(4~~2~~)(B~~C~~)(ii~~)(c~~i) not disclose the record, except for the purpose of auditing or evaluating the research and the auditor or evaluator agrees not to disclose the record;

(4~~2~~)(B~~C~~)(~~ii)(d~~iv) use the record only for the described research;

(4~~2~~)(B~~C~~)(~~ii)(e~~v) indemnify the courts for any damages awarded as a result of injury caused by the research; and

(4~~2~~)(B~~C~~)(~~ii)(f~~vi) if the research involves human subjects, comply with state and federal laws regulating research involving human subjects.

~~(2)(C)(iii) A request to access a court record under this rule is also governed by Rule 4-202.06 and Rule 4-202.07.~~

(5~~3~~) **Request to classify a record.** A request to classify a court record as private or protected shall be presented in writing to the state court administrator. The request shall contain the relief sought and a statement of facts, authority and argument in support of the request. The state court administrator may deny access to the record until the determination ~~is~~ has been made~~entered~~.

(64) **Considerations.** In deciding whether to allow access to a court record or whether to classify a court record as private or protected, the decision maker may consider any relevant factor, interest or policy presented by the parties, including but not limited to the interests described in Rule 4-202.

(75) **Requests to create an index.** A request to identify a data element as an index shall be presented in writing to the state court administrator. The request shall contain the relief sought and a statement of facts, authority and argument in support of the request. The state court administrator shall present the request to the Management Committee, which shall consider the request in the same manner as provided for appeals in Rule 4-202.07.

(8) Requests to access court records under this rule are also governed by Rule 4-202.06 and Rule 4-202.07.

Effective May/November 1, 20__

Rule 4-202.06. Response to request to access or classify a court record.

Intent:
To establish the steps required for responding to a request.

Applicability:
This rule applies to requests to access or to classify a court record other than a motion under Rule 4-202.04.

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

(1)(A) The court shall take all steps necessary for responding to a request for records as soon as reasonably possible.

(1)(B) The person to whom a written request is submitted shall respond within 10 business days, or within 5 business days if the request demonstrates that:

(1)(B)(i) an expedited response benefits the public rather than the requester; or

(1)(B)(ii) the record is for a story or report for publication or broadcast to the general public.

(1)(C) **Expedited responses.** If a requester claims the request qualifies for an expedited response, the person to whom the request is submitted shall, within 5 business days after receiving the request, respond to the request or notify the requester that they have not demonstrated that the request benefits the public rather than the person and that the response will not be expedited.

(1)(D) **Juror names.** The judge presiding over a trial may withhold the names of jurors for up to 5 business days after trial.

~~(2)~~

~~The person to whom a written request is submitted shall respond within 10 business days, or within 5 business days if the request demonstrates that:~~

~~(2)(A) an expedited response benefits the public rather than the requester; or~~

~~(2)(B) the record is for a story or report for publication or broadcast to the general public.~~

~~(3) If a requester claims the request qualifies for an expedited response, the person to whom the request is submitted shall, within five business days after receiving the~~

~~request, respond to the request or notify the requester that they have not demonstrated that the request benefits the public rather than the person and that the response will not be expedited.~~

(2~~4~~) **Responses.** All responses shall be sent to the requester in writing. The person to whom the request is submitted shall respond by:

(2~~4~~)(A) providing the record;

(2~~4~~)(B) denying the request; or

(2~~4~~)(C) notifying the requester that the court does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record.

(3~~5~~) **Extraordinary circumstances.** Under extraordinary circumstances, the person to whom the request is submitted may respond by identifying the circumstance that prevents the request from being timely approved or denied and the estimated date when the final response will be made. The following constitute extraordinary circumstances:

(3~~5~~)(A) another governmental entity is using the record;

(3~~5~~)(B) the request is for a large number of records;

(3~~5~~)(C) the court is currently processing a large number of requests for records;

(3~~5~~)(D) the court must locate the records;

(3~~5~~)(E) the court must separate records that the requester may access from records the requester may not access;

(3~~5~~)(F) the court must provide notice of the request to a person whose interests are protected by closure; or

(3~~5~~)(G) the court must seek legal advice on whether to allow access.

(4~~6~~) **Denials.**

(4)(A) A written request to access a court record or to classify a court record as private or protected is deemed denied if the initial response is not ~~mailed~~ sent within 10 business days after receiving the written request or the final response is not ~~mailed~~ sent within the time estimated in the initial or subsequent response.

(~~4~~7)(B) ~~The response shall be mailed to the requester.~~ If the request is denied, the response shall:

~~(7)(A)~~(4)(B)(i) describe the record or portions of the record to which access is denied in a manner that does not disclose information other than public information;

~~(7)(B)~~(4)(B)(ii) refer to the authority under which the request is being denied;

~~(7)(C)~~(4)(B)(iii) make findings and conclusions about specific records;

~~(7)(D)~~(4)(B)(iv) identify and balance the interests favoring opening and closing the record; and, if the record is closed, determine there are no reasonable alternatives to closure sufficient to protect the interests favoring closure;

~~(7)(E)~~(4)(B)(v) state that the requester may appeal or seek judicial review; and

~~(7)(F)~~(4)(B)(vi) state the time limits for filing an appeal or petition for judicial review and the name and address of the person to whom the appeal or petition must be directed.

(4)(C) The court shall retain custody of and keep safe any record to which access is denied until the period for an appeal has expired or the appeal process has concluded.

(~~8)(A~~5) **Adoption records.** If the request is to access an adoption record, the person to whom the request is submitted shall respond by providing only the case number.

(~~8)(B~~6) **Sealed records or records in which name is protected.** If the request is to access a sealed record or a record in which the name of a person is the interest protected by closure, the person to whom the request is submitted shall respond, without indicating whether the record exists, that such records are not accessible.

(~~8)(C~~7) **Investigative interviews.** If the request is to access a record of a Children's Justice Center investigative interview, the person to whom the request is submitted shall follow the procedures in Section 77-37-4.

~~(9) The court shall retain custody of and keep safe any record to which access is denied until the period for an appeal has expired or the appeal process has concluded.~~

(~~8~~10) **Form.** D~~A d~~ocument~~s required to be sent by mail~~ may be sent by email, ~~fax~~ mail, or hand-delivery.

Effective May/November 1, 20__

Rule 4-202.07. Appeals.

Intent:
To establish the rights and procedures in an appeal of a record request.

Applicability:
This rule applies to requests to access or to classify a court record other than a motion under Rule 4-202.04.

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

(1)(A) A person requesting access to a court record may appeal a denial of the request, a claim of extraordinary circumstances, or the time claimed necessary to address the extraordinary circumstances.

(1)(B) A person requesting that a court record be classified as private or protected may appeal a denial of the request.

(1)(C) A person whose interests are protected by closure may appeal a decision to permit access to a court record.

(2) **Content of Appeal.** An appeal shall be made in writing within 30 days after the decision giving rise to the appeal. The appeal shall contain the appellant's name, email address, daytime telephone number, mailing address, the relief sought, and a statement of facts, authority, and argument in support of the appeal.

(3) **Judicial Review.** A person described in ~~this~~ subsection (1) may petition for judicial review as provided by statute.

(4~~2~~) **Reviewing body.**

(4)(A) If the original request was to the custodian of the record, the appeal is to the state court administrator.

(4)(B) If the original request was to the state court administrator, the appeal is to the Management Committee of the Judicial Council.

(4)(C) The appeal of a decision by the state court administrator is to the Management Committee.

~~(3) The notice of appeal shall contain the appellant's name, mailing address, daytime telephone number, the relief sought, and a statement of facts, authority and argument in support of the appeal.~~

(54) **Denials.**

(5)(A) An appeal to the state court administrator is deemed denied unless a decision on the appeal is ~~mailed~~ sent within 5 business days after ~~receiving~~ the date the appeal was received, or within 15 business days after ~~mailing~~ the date the notice under Rule 4-202.05(2)(B) was sent.

(5)(B) An appeal to the Management Committee is deemed denied unless a decision on the appeal is ~~mailed~~ sent within 5 business days after the first meeting of the Committee that is held more than~~t~~ 15 business days after receiving the appeal.

(65) **Management Committee.**

(6)(A) **Participants.** The Management Committee may permit any person whose interests are substantially affected by a decision to participate in the meeting.

(6)(B) **Notice of meeting.** The state court administrator shall ~~mail~~ send notice of the Management Committee meeting to all participants at least 10 business days before the meeting.

(6)(C) **Participant response.** At least 7 business days before the meeting, all participants shall ~~mail~~ send to the state court administrator, and to the other participants, a written statement of facts, authority, and argument in support of or in opposition to the appeal.

(6)(D) **Public meeting – deliberations closed.** ~~The Management Committee may permit any person whose interests are substantially affected by a decision to participate.~~ The deliberations of the Management Committee are closed, but the balance of the ~~hearing~~ meeting on the appeal is an open and public meeting of which notice will be given in accordance with Rule 2-103.

(6)(E) **Presentation.** The Management Committee shall allow the participants a reasonable opportunity to present facts, authority, and argument in support of or in opposition to the appeal. The order of presentation shall be decided by the Management Committee. The Management Committee may review the record in a closed meeting. Discovery is prohibited, but the Management Committee may compel the production of evidence.

(7) **Decisions.** The state court administrator shall ~~mail~~ send the decision on an appeal to all participants in writing. The decision shall:

(7)(A) describe the record or portions of the record to which access is denied in a manner that does not disclose information other than public information;

(7)(B) refer to the authority under which the request is being denied;

(7)(C) make findings and conclusions about specific records;

(7)(D) identify and balance the interests favoring opening and closing the record; and, if the record is closed, determine there are no reasonable alternatives to closure sufficient to protect the interests favoring closure;

(7)(E) state that the requester may appeal or seek judicial review; and

(7)(F) state the time limits for filing an appeal or petition for judicial review, and the name and address of the person to whom the appeal or petition must be directed.

(8) The time periods in this rule may be extended by mutual agreement. ~~A d~~Documents ~~required to~~may be sent by mail, ~~may be sent by~~ email, ~~fax~~ or hand-delivery. The duties of the state court administrator may be delegated.

Effective May/November 1, 20__

Rule 4-510.05. Referral of civil actions.

Intent:
To establish procedures for the referral of civil actions to the ADR program

Applicability:
This rule applies in the district court.

Statement of the Rule:

(1) **General Provisions.**

(1)(A) Upon the filing of a responsive pleading, all cases subject to this rule shall be referred to the ADR program, unless the parties have participated in another ADR process, such as arbitration, collaborative law, early neutral evaluation or a settlement conference, or unless excused by the court.

(1)(B) Upon its own motion or the motion of a party, the court may excuse the parties from participating in the ADR program upon a showing of good cause.

(1)(C) Upon its own motion or the motion of a party, the court may refer an action or any issues in the action to the ADR program.

(1)(D) Upon its own motion or the motion of a party, the court may order that an action that has been referred to the ADR program be withdrawn and restored to the trial calendar upon a showing of good cause.

(1)(E) If a party believes that mediation is no longer productive, the party may terminate mediation by notifying the other party and mediator.

(1)(F) The judge to whom an action is assigned shall retain full authority to supervise the action consistent with the Utah Rules of Civil Procedure and these rules.

(2) **Non-binding arbitration.**

(2)(A) If the parties have timely filed an agreement to submit the case to non-binding arbitration under URCADR Rule 102, the action is stayed and the timelines of the Rules of Civil Procedure are tolled, except that discovery may continue under URCADR Rule 102(e). All subsequent proceedings shall be conducted in accordance with URCADR Rule 102 and a timetable established by the court to ensure the arbitration is completed without undue delay. The timelines of the Rules of Civil Procedure resume when the court is notified of the conclusion of ADR proceedings.

(2)(B) If a party unilaterally terminates non-binding arbitration after the hearing has begun, that party is responsible for the ADR provider fees and the reasonable attorney fees of the non-terminating party, unless the terminating party shows good cause for the termination.

(3) **Notice requirements.**

(3)(A) Upon conclusion of an ADR process, the plaintiff shall notify the court of the outcome of the ADR process on a form provided by the court.

(3)(B) When the case is ready for trial the parties shall certify in accordance with URCP 16.

(4) **Selection of ADR provider(s).**

(4)(A) Upon referral of a case or any issues therein to the ADR program, the parties shall choose the ADR provider(s) for the case. If mediation is the selected ADR process, one mediator shall be selected. If arbitration is the selected ADR process, one arbitrator shall be selected, unless the parties stipulate to or the court orders the use of a panel of three arbitrators.

(4)(B) The parties may select:

(4)(B)(i) An ADR provider from the roster on the Court's web site; or

(4)(B)(ii) An ADR provider pro tempore having specialized skill, training, or experience in relevant subject matter. Pro tempore providers must agree in writing to comply with this rule and the URCADR.

(4)(C) If the parties are unable to select a provider the parties shall return a copy of the court roster to the Director with the names of up to half of the members of the roster stricken. If there are more than two parties, each party shall be permitted to strike a proportion of names equal to or less than its proportion of the number of the parties. The Director shall select the provider(s) from among those providers not stricken by any party. The Director shall ~~mail~~ send notice of the selection to all parties and the selected ADR provider.

(4)(D) If a party, within 10 days of ~~mailing of~~of the date the notice of selection was sent, files a written request that the selected provider be disqualified under Canon II of URCADR Rule 104, or if the ADR provider requests to withdraw for good reason from participation in a particular case to which that provider was appointed, the Director shall select another available qualified ADR provider to participate in that case, giving deference to the expressed preferences of the parties, if any, as provided in these rules.

(4)(E) The parties shall contact the ADR provider directly for services.

(5) **Fees.** The fees of the ADR provider shall be paid in advance and divided equally between or among the parties unless otherwise provided by the court or agreed by the parties. Any party may petition the court for a waiver of all or part of the fees so allocated on a showing of impecuniosity or other compelling reason. If such waiver is granted, the party shall contact the Director who will appoint a pro bono ADR provider.

(6) **Immunity.** An ADR provider acting as a mediator or arbitrator in cases under the ADR program shall be immune from liability to the same extent as judges of this state, except for such sanctions the judge having jurisdiction of the case may impose for a violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

(7) No ADR provider may be required to testify as to any aspect of an ADR proceeding except as to any claim of violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

(8) All ADR providers providing services pursuant to the ADR program shall be subject to this rule and the URCADR.

(9) **Location of ADR Proceedings.** Unless otherwise agreed upon by all the parties, all ADR proceedings shall be held at the office of the ADR provider or such other place designated by the ADR provider.

Effective May/November 1, 20__

Rule 4-701. Failure to Appear.

Intent:
To establish a procedure for handling cases in which the defendant fails to appear and fails to remit a fine.

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

Statement of the Rule:
(1) When a case is filed, the clerk may ~~mail~~ send~~to~~ the defendant a notice indicating the fine amount. If the defendant fails to appear or remit the fine amount within fourteen days after receiving a citation, the clerk may increase the fine amount by $50 and ~~mail~~ send the defendant a delinquency notice by mail, or other means of contact provided with the citation.

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

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

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

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

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

Effective May/November 1~~2~~, 20__ ~~20~~

TAB 6

3-101. Judicial Performance Standards

Self-Declaration Forms

JPEC Certification Letter

Notes: The Judicial Council approved rule 3-101 as final, with a May 1, 2021 effective date. JPEC asked Policy and Planning to consider amendments to the Self-Declaration Forms to ensure they do not conflict with 3-101.

Rule 3-101. Judicial performance standards.

Intent

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

Applicability

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

Statement of the Rule

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

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

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

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

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

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

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

(3) **Case under advisement performance standards**.

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

(3)(B) **Court of Appeals judge**. A judge of the Court of Appeals demonstrates satisfactory performance by:

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

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

(3)(C) **Trial court judge**. A trial court judge demonstrates satisfactory performance by holding:

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

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

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

(4) **Case under advisement performance standards—compliance.** A judge or justice shall decide all matters submitted for decision within the applicable time period prescribed by this rule, unless circumstances causing a delayed decision are beyond the judge's or justice's personal control.

(5) **Judicial education performance standard**.

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

(5)(B) **Education hour standard—compliance.** A judge or justice shall obtain the number of education hours prescribed by this rule, unless circumstances preventing the judge from doing so are beyond the judge's or justice's personal control.

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

(7) **Judicial Council certification.** As to the performance standards in this Rule, the Judicial Council shall certify to JPEC that each judge or justice standing for retention is:

(7)(A) Compliant;

(7)(B) Compliant with explanation, meaning that the Judicial Council has received credible information that non-compliance was due to circumstances beyond the personal control of the judge or justice; or

(7)(C) Non-compliant, which may include a judge or justice who has certified his or her own compliance but the Judicial Council has received credible information inconsistent with that certification.

(7)(D) All material relied upon by the Judicial Council in making a certification decision or explanation shall be forwarded to JPEC and shall be made public to the extent that the information is not confidential personal health information.

Effective May 1, 2021

Self-Declaration Form

[JUDGE NAME]

Case Under Advisement Performance Standard

1. From [DATE] to the present, have you circulated more than [NUMBER] principal opinions more than six months after submission?
   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing a delayed decision beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

_____

2. From [DATE] to the present, have you circulated more than [NUMBER] principal opinions more than six months after submission in any one calendar year?

   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing a delayed decision beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

_____

3. From [DATE] to the present, is your average time to circulation of a principal opinion more than 120 days after submission?

   - ☐ No
   - ☐ Yes. If yes, were the circumstances beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

Judicial Education Performance Standard

Please enter your education hours for the following years during which you were in office:

Year	2015	2016	2017	2018	2019
Hours					

If you have fewer than 30 hours for the current year, list any courses you will complete before the end of the year and the number of hours associated with the courses.

If you have failed, or will fail, to obtain 30 education hours in each calendar year, were the circumstances surrounding the failure beyond your personal control?

- ☐ No
- ☐ Yes. Please explain the circumstances below:

Physical and Mental Competence Performance Standard

Are you mentally and physically fit for office?

- ☐ Yes
- ☐ No

Date

[NAME]
Judge, Utah Court of Appeals

Please complete this form and return it no later than [DATE] to:

Nancy J. Sylvester
P. O. Box 140241
Salt Lake City, Utah 84114-0241
FAX: 801-578-3843
nancyjs@utcourts.gov

Self-Declaration Form

[JUDGE NAME]

Case Under Advisement Performance Standard

1. From [DATE] to the present, have you held more than [NUMBER] cases under advisement more than two months after submission?
   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing a delayed decision beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

_____

2. From [DATE] to the present, have you held more than [NUMBER] cases under advisement more than two months after submission in any one calendar year?

   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing a delayed decision beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

_____

3. From [DATE] to the present, have you held any case under advisement more than six months after submission?

   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing the delay beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

Judicial Education Performance Standard

Please enter your education hours for the following years during which you were in office:

Year	2015	2016	2017	2018	2019
Hours					

If you have fewer than 30 hours for the current year, list any courses you will complete before the end of the year and the number of hours associated with the courses.

If you have failed, or will fail, to obtain 30 education hours in each calendar year, were the circumstances surrounding the failure beyond your personal control?

- ☐ No
- ☐ Yes. Please explain the circumstances below:

Physical and Mental Competence Performance Standard

Are you mentally and physically fit for office?

- ☐ Yes
- ☐ No

Date

[NAME]
Judge, [Name of][DISTRICT][JUVENILE] Court

Please complete this form and return it no later than [DATE] to:

Nancy J. Sylvester
P. O. Box 140241
Salt Lake City, Utah 84114-0241
FAX: 801-578-3843
nancyjs@utcourts.gov

Self-Declaration Form

[JUDGE NAME]

Case Under Advisement Performance Standard

1. From [DATE] to the present, have you held more than [NUMBER] cases under advisement more than two months after submission?
   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing a delayed decision beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

_____

2. From [DATE] to the present, have you held more than [NUMBER] cases under advisement more than two months after submission in any one calendar year?

   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing a delayed decision beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

_____

3. From [DATE] to the present, have you held any case under advisement more than six months after submission?

   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing the delay beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

Judicial Education Performance Standard

Please enter your education hours for the following years during which you were in office:

Year	2015	2016	2017	2018	2019
Hours					

If you have fewer than 30 hours for the current year, list any courses you will complete before the end of the year and the number of hours associated with the courses.

If you have failed, or will fail, to obtain 30 education hours in each calendar year, were the circumstances surrounding the failure beyond your personal control?

- ☐ No
- ☐ Yes. Please explain the circumstances below:

Physical and Mental Competence Performance Standard

Are you mentally and physically fit for office?

- ☐ Yes
- ☐ No

Date

[NAME]
Judge, [Name of] Justice Court

Please complete this form and return it no later than [DATE] to:

Nancy J. Sylvester
P. O. Box 140241
Salt Lake City, Utah 84114-0241
FAX: 801-578-3843
nancyjs@utcourts.gov

Self-Declaration Form

[JUSTICE NAME]

Case Under Advisement Performance Standard

1. From [DATE] to the present, have you circulated more than [NUMBER] principal opinions more than six months after submission?
   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing a delayed decision beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

_____

2. From [DATE] to the present, have you circulated more than [NUMBER] principal opinions more than six months after submission in any one calendar year?

   - ☐ No
   - ☐ Yes. If yes, were the circumstances causing a delayed decision beyond your personal control?
     - ☐ No
     - ☐ Yes. Please explain the circumstances below:

_____

_____

Judicial Education Performance Standard

Please enter your education hours for the following years during which you were in office:

Year	2015	2016	2017	2018	2019
Hours					

If you have fewer than 30 hours for the current year, list any courses you will complete before the end of the year and the number of hours associated with the courses.

_____

_____

If you have failed, or will fail, to obtain 30 education hours in each calendar year, were the circumstances surrounding the failure beyond your personal control?

- ☐ No
- ☐ Yes. Please explain the circumstances below:

_____

_____

Physical and Mental Competence Performance Standard

Are you mentally and physically fit for office?

- ☐ Yes
- ☐ No

_____ _____

Date [NAME]
Justice, Utah Supreme Court

Please complete this form and return it no later than [DATE] to:

Nancy J. Sylvester
P. O. Box 140241
Salt Lake City, Utah 84114-0241
FAX: 801-578-3843
nancyjs@utcourts.gov

Administrative Office of the Courts

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

February 26, 2021

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

Dr. Jennifer Yim
Executive Director
Judicial Performance Evaluation Commission
Senate Building, E-330
P. O. Box 142330
Salt Lake City, Utah 84114-2330

Dear Dr. Yim:

Pursuant to Code of Judicial Administration rule 3-101, the Judicial Council shall certify to JPEC that each judge or justice standing for retention election in [YEAR] is 1) compliant, 2) compliant with explanation, or 3) non-compliant with the judicial performance standards outlined therein. Such certifications are listed below, and all material relied upon by the Judicial Council in making those certification decisions is attached.

Judge/Justice	Compliant	Compliant with Explanation	Non-Compliant

Sincerely,

Hon. Mary T. Noonan
State Court Administrator

SUPREME COURT

COURT OF APPEALS

DISTRICT COURT

JUVENILE COURT

JUSTICE COURT