UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING AGENDA

April 2, 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	Rules back from Public Comment: • 2-211. Compliance with the Code of Judicial Administration and the Code of Judicial Conduct	Action	Tab 2	Keisa Williams
12:10	3-415. Auditing	Action	Tab 3	Wayne Kidd
12:40	7-302. Court reports prepared for delinquency cases	Action	Tab 4	Tiffany Pew
1:10	10-1-501. Orders to Show Cause 10-1-602. Orders to Show Cause	Action	Tab 5	Keisa Williams
2:00	Adjourn			

2021 Meetings:

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

March 5, 2021

UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING MINUTES

Webex video conferencing
March 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
Jordan Murray
Jon Puente
Karl Sweeney
Nancy Sylvester
Brent Johnson

STAFF:

Keisa Williams
Minhvan Brimhall

(1) Welcome and approval of minutes:

Judge Connors agreed to act as Chair until Judge Pullan was able to join. The committee considered the minutes from the February 5, 2021 meeting. Judge Heward moved to approve the minutes as drafted. Rob Rice seconded the motion and it passed unanimously.

(2) Grant project update:

Mr. Murray: We have been working to incorporate the Committee's feedback from the meeting last month. For example, we updated the grant approval flowchart to provide more specificity about the Supreme Court's jurisdiction and compiled a time sensitive grant table. The time sensitive grant table was presented to the Budget and Fiscal Management Committee and the Judicial Council. Those will be monitored continuously. I am continuing to conduct a five-year retrospective assessment of grant compliance. Mr. Sweeney is taking the lead on revising and drafting new language for CJA rule 3-411 and updates to the accounting manual. Ultimately, the goal is for grant work to be guided by three documents - rule 3-411, the accounting manual, and a grants manual.

Mr. Sweeney: The grants manual will be long, with more than 10 pages covering several different areas. Similar to what Bart Olsen did with HR policy revisions, we may pair up with Committee members to review various subsections. The first thing we should have ready is a framework for the grants manual.

(3) 1-204. Executive Committees:

Mr. Sweeney: Ms. Williams incorporated the Budget and Fiscal Management Committee's (BFMC) proposed amendments to rule 1-204. Currently, the rule is fairly restrictive in terms of how long someone can serve as Chair. With the amount of financial knowledge required for the BFMC, the committee recommends that the Chair be allowed to serve for at least two years. The proposed amendment allows the BFMC the flexibility to elect a new Chair whenever they feel it's warranted.

Judge Connors: Judicial Council member terms are three years. How could a Chair be elected for longer than that term? Executive Committee members must be members of the Judicial Council, but the proposed sentence doesn't

say that Chairs must be members of the Council.

Judge Chiara: Council members can serve up to two, 3-year terms, so Chairs could potentially serve longer than three years if they remained on the Council for two terms.

Ms. Williams: Added "Chairs must be members of the Council" to the end of (6). The proposed amendments reflect current practice. Policy and Planning has not elected or re-elected Judge Pullan every year. With most executive committees, the Chair usually remains until they choose to step down or another member expresses and interest. It takes some time for Chairs to get their feet under them. The proposed language would allow each committee to elect their respective chairs on a schedule deemed appropriate by that committee. The only other changes were to formatting. As we're amending rules, I'm trying to make them easier to read by adding bolded headings. The change in (8) updates the language to match other rules.

Mr. Rice moved to approve the changes to rule 1-204 as amended. Judge Cannell seconded and the motion carried unanimously.

(4) CJA 2-103. Open and Closed Meetings:

Mr. Johnson: In a recent meeting of the Council, it became apparent that this rule wasn't updated when safeguarded records were added as a new category a few years ago. "Safeguarded records" has been added as one of the reasons a Council meeting may be closed.

Judge Heward moved to approve rule 2-103 as drafted. Judge Chiara seconded and the motion passed unanimously.

(5) Rules back from public comment:

- CJA Appendix J. Ability-to-Pay Matrix

Ms. Williams: There are several competing bills on pretrial reform, with one that appears to "repeal" most of the provisions included in HB 206 last year (HB 220). Michael Drechsel, under the direction of the Legislative Liaison Committee, made it very clear during the committee hearing and in conversations with bill sponsors that the court will continue to follow the Constitution, the law, and act within its authority to promulgate rules of procedure. He noted that if the intent of the legislature in passing HB 220 is that the court will no longer consider ability to pay or would go back to a charge-based bail schedule, that was not the case.

The bill sponsor, Rep. Schultz, asked the Legislative Research and General Counsel's Office for an opinion on whether HB 220 would make the State vulnerable to a lawsuit. The Legislative Counsel published a brief memo, essentially saying that nothing in HB 220 prevents the Court from continuing to consider ability-to-pay, or requires the Court to return to using a charge-based bail schedule. In fact, the memo states that long as the Court continues to keep those "guardrails" in place, the State is safe. Outside of that, if the court removes their guardrails, the equation may be different.

The Pretrial Committee reviewed all of the public comments and felt that the concerns were well taken, but most expressed policy-based concerns outside of the courts' control – like the elimination of cash bail. Working within a system in which cash bail exists, we have to come up with some way to conduct an individualized ability to pay analysis. After a robust discussion, the Pretrial Committee does not recommend any amendments to the Matrix and is recommending that it be adopted as final. It was adopted on an expedited basis prior to being sent out for comment, so if Policy and Planning agrees that no changes are necessary, it won't need to go back to the Judicial Council. It would remain in effect. While it was out for public comment, the 2021 federal poverty guidelines were published so I had to update the poverty guideline chart on the left-hand side of the Matrix. That will happen every year.

Judge Connors: Without the statutory backstop, are other rules in place that allow us to adopt the ability to pay

matrix?

Ms. Williams: There is nothing in our rules that would prevent the adoption of the Matrix if HB 220 were to become effective. Some of the Rules of Criminal Procedure (URCrP) reference the bail section of the code instead of incorporating the ability-to-pay language, so the Pretrial Committee is putting together a package of recommended amendments to the URCrP for consideration by the Supreme Court's Advisory Committee on the URCrP. Final recommendations should go to the Supreme Court prior to any statutory changes, but nothing in the rules currently would prevent judges from considering ability to pay or using this Matrix. In looking at caselaw, I believe it's pretty clear that an ability-to-pay analysis is required.

Judge Connors: There are statutory references in the Matrix. Will those need to be changed?

Ms. Williams: Those references are correct right now, but they will need to be changed if the bill goes into effect. If it's signed by the Governor, the bill would be effective on May 5, 2021.

Judge Cannell moved to adopt the Ability-to-Pay Matrix as final as drafted. Mr. Rice seconded and the motion passed unanimously.

(6) Changing "mail" to "send":

- 3-306.05
- 4-103
- 4-202.04
- 4-202.05
- 4-202.06
- 4-202.07
- 4-510.05
- 4-701

Mr. Johnson: Currently, rule 4-103 requires that notice be mailed. In an electronic age, many notices can and are being sent electronically by email or otherwise. I propose changing "mail" to "send" in rule 4-103 to allow for various delivery options. Ms. Williams went through all of the rules, changing "mail" to "send" where appropriate to allow for the same flexibility. One issue is whether Policy and Planning feels like "send" is the right substitute for "mail."

Judge Pullan: Do we define "send"?

Mr. Johnson: No, but "send" is used in Utah Code and other rules. Some of the proposed rule drafts include a list of the various delivery options, "documents may be sent by mail, email, or hand-delivery." That clarification could be added to all of the proposed rules.

Mr. Rice: Have we vetted all of the practical applications to ensure the court can verify that notice was sent to the correct email address?

Mr. Johnson: The rules of civil procedure allow emailing in certain circumstances. I don't believe these rules, as drafted, will create any issues, but we can certainly take a closer look at the practical aspects.

Mr. Barron: One of the concerns we have with the rules of civil procedure is whether emails returned as undeliverable would be monitored as closely as a physical letter would be. If something is mailed via the postal service and it's not deliverable, the letter would be stamped as undeliverable and returned to the sender. Some of our emails are sent from generic email accounts and the returns aren't monitored to confirm delivery. There may be associated costs with creating new email accounts depending on whether notices will be sent from individual clerk email accounts, team email accounts, or the generic utcourts.gov account we're currently using.

Judge Connors: Does “send” mean successfully sent, or does “send” just mean emailed with no indication of whether or not it was received?

Mr. Barron: Is it good enough knowing that we sent it to the last email address on record?

Ms. Williams: What about including a provision that says, if notice is sent by email and it comes back undeliverable, it must then be mailed?

Judge Connors: How do we handle this in the rules now when a letter comes back undeliverable?

Mr. Johnson. We haven’t addressed it in the rules. I think it’s just a procedure clerks follow. A copy is included in the file with a note that the letter was returned. If it’s a notice to dismiss, for example, the court would go ahead and dismiss. The person suffers the consequences of not keeping an accurate address on file with the court. The rules of civil procedure state that individuals have an obligation to keep their addresses up to date. I believe attorneys have an obligation to try and track a person down to verify that notice was in fact served, whereas with the court it's a little different.

Ms. Williams: These rules only address what the court is required to do. If our current procedure with physical mail is to scan the envelope into the file and note that it was undeliverable, can’t an undeliverable email be saved as a PDF and uploaded into the file the same way? Isn’t that just as good?

Mr. Johnson: I think it's probably just as good, the problem is monitoring the email account so that court personnel know it was undeliverable. That may just be a training issue.

Mr. Barron: It’s also a technology issue because many automated emails are sent from a generic email account that isn’t monitored. We would need to change the process to send them from a clerk's email account, a team email account, or some other account that is monitored.

Mr. Rice: It might be a good idea to build into each of these rules some responsibility on the part of the participant to keep a current email address on file.

Judge Pullan: Some of these rules relate to parties who have a due process right to notice, and others relate to internal court communications where that's not an issue. There's no need to revamp our entire system to provide notice internally, but if a party is involved it clearly needs to be done.

Mr. Johnson: In rule 76 of the rules of civil procedure, an attorney or unrepresented party must promptly notify the court in writing of any change to that person's address, email address, phone number, or fax number. There is also a presumption that if notice is mailed, it is presumed to have been received. I think the concept of emailing documents to parties is a ship that is well out of the harbor, but building in any safeguard we can while still relying on some of the presumptions might be helpful. It sounds like we need to go back and evaluate any unintended consequences and make certain that we have contingencies in place.

Judge Pullan: Is it the receiver’s decision to mark things as spam, or is there anything we can do on our end to make sure that court emails have a higher priority?

Mr. Barron: No, I don’t believe there is anything we can do on our end. It could be the receiver or the receiver’s email service provider who controls what is determined to be spam.

Mr. Johnson: I imagine most providers, if not all, would allow emails sent from a .gov account to go through.

Judge Heward: It makes sense to use the same method with undeliverable emails that we do with snail mail.

Judge Pullan: What document or information will we get back from an undeliverable email? Will it say, “this email

doesn't exist" or "this email has been shut down" or "there was a problem with transmission, try again"?

Mr. Barron showed a couple of examples of undeliverable email notices received by the court. One said the email was blocked, another said "delivery status is notification failure." Mr. Barron said there are many more potential notices.

Mr. Rice: The volume of undeliverable messages concerns me, but at least anecdotally, there is a heightened expectation that people maintain their email accounts in such a way that they can be communicated with. In some ways, I think that justifies shifting the burden to the email recipient and away from the court. That may also cut in favor of more explicit references in the rules to participants. Judge Pullan makes a valid point about the due process issues at play, but it's such a common communication form I think there is justification in shifting some of the burden to the recipient.

Judge Pullan: It seems to me that the policy question is, do we want to create an obligation on the litigant to keep his or her email address up to date? If so, it doesn't matter if we track undeliverables.

Judge Chiara: In both civil and criminal case, if I call the case and someone fails to appear, I look in Workspace to see if they received notice. If my clerk has photocopied the envelope stamped by the post office as undeliverable, I know that we sent notice and I can see that we sent it to the address they provided to the court. Emailed notice wouldn't be any different, provided the clerk records any email failure notice in CORIS. I've caught errors on the court's part, where we sent notice to a different address than what the party had on file. In those instances, I can instruct the clerks to resend notice to the correct address.

Ms. Sylvester: The rules of civil procedure committee just encountered this issue last week. Rule 5 was amended to state that if service was made by email and returned as undeliverable, service must then be made by regular mail if the person has provided a mailing address. Service is complete upon the attempted email service for purposes of meeting any time period. The committee borrowed that language from another state.

Judge Connors: That seems to presume that a record is made of the fact that the email was undeliverable.

Judge Pullan: It would be helpful to know what backstops are in place before allowing emailed notice. I think we need a better idea of what the practices are across the state. Is there a way to assess whether we have a uniform system in place?

Ms. Williams will work with Mr. Johnson, Mr. Barron, and Ms. Sylvester and report back to the Committee with more detailed information about what's happening now, what needs to happen, and what it will take to create a uniform system.

(7) CJA 3-101. Judicial Performance Standards:

- Self-declaration forms
    - Justice Courts
    - District & Juvenile Courts
    - Court of Appeals
- JPEC certification letter

Ms. Williams: This is a follow up to JPEC's recommendation that the self-declaration forms be amended to ensure compliance with rule 3-101. Ms. Sylvester created Google forms from the drafts in your packet.

Ms. Sylvester: There are different forms for justice courts, district and juvenile courts, and the appellate courts. The first page provides instructions on who should be using the form, when it should be turned in, and what information must be sent to the Judicial Council. The second page explains how to calculate under advisement numbers with a link to a spreadsheet with a built-in formula and examples.

Judge Heward: What is the definition of an “exceptional case”? Is it just a case that took over 2 months, or does it mean a case with hundreds of pages of exhibits? If we took “exceptional cases” out, does it still mean the same thing?

Ms. Sylvester: That term has been on our forms for a while. I think what it means is that you can have a certain number of cases under advisement overall, and then a certain number per year. It may be a good idea to define “exceptional cases” in paragraph one.

Ms. Williams: The term “exceptional cases” is found in Rule 3-101(3)(c)(i). I agree that it is somewhat unclear.

Judge Pullan: I don’t want to do anything that disrupts what has become a term of art to justices and court of appeals judges.

Ms. Sylvester put “exceptional cases” in parenthesis at the end of question 1 as a way to define it. After discussion, the Committee agreed that was the best solution.

Judge Connors: There is also a monthly declaration form asking whether judges have held anything under advisement more than 60 or 90 days. Is that an outdated form? My judicial assistant sends it to me every month. The latest says, “draft version February 2018,” and is addressed to presiding judges.

Judge Pullan: I also complete a monthly form, but it only asks about cases past 60 days.

Ms. Sylvester: That requirement is found in Rule 3-104. Once a month, each judge shall submit a statement notifying the state level administrator of the percentage of any cases under advertisement for more than two months and the reason why the case or issue continues to be held under advisement. The presiding judge submits a monthly list of the cases held under advisement for more than two months. If the case is held under advisement for an additional 30 days, the state level administrator shall report that back to the Council. That’s why it asks about cases under advisement for 90 days.

Judge Heward: Will the answers to both questions 1 and 2 be reported to JPEC?

Ms. Sylvester: Both have historically been reported.

After further discussion, Ms. Sylvester was asked to send links to the Google forms to the Committee for testing purposes. Judge Heward moved to approve the use of Google Forms, the content of the forms in so much as it matches the requirements in rule 3-101, and the direction staff is heading to identify internal procedures for reporting and submission. Judge Cannell seconded and the motion carried unanimously.

(8) ADJOURN:

With no further items for discussion, the meeting adjourned at 1:40 p.m. The next meeting will be on April 2, 2021 at noon via Webex video conferencing.

TAB 2

Rules back from Public Comment

- **CJA 2-211. Compliance with the Code of Judicial Administration and the Code of Judicial Conduct**

Notes: In the 2020 legislative session, the legislature mandated that certain policies apply to judges and court employees. It also mandated the incorporation of processes followed by other agencies. Mr. Johnson recommended adding the abusive conduct policy to the Code of Judicial Conduct (CJC) and amending CJA rule 2-111 slightly to allow all employees to report failures to comply with the CJC to the presiding judge of the Council.

Policy and Planning approved the proposed amendments to rule 2-111 pending Supreme Court approval of the companion amendments to the CJC. The Court approved amendments to the CJC and both were published for comment. Two comments were received. The only public comment was submitted in error. It related to URCrP 42 and was left on the 2-211 page by accident. Judge Orme provided the informal comments below. Those changes have been incorporated.

Judge Orme: "I have a non-substantive suggestion for this rule… In subsection 5, I think the first reference to "the presiding judge" should be changed to "the presiding officer." The rule deals with all manner of responsibilities that belong to the presiding officer of the council, and the only reference to presiding judges is in subsection 1, which authorizes presiding judges to make conduct complaints to the presiding officer.

Speaking of subsection 1, the phrase "any court employee" would appear to subsume all the other individuals previously mentioned in that listing. I'm sure it makes sense to retain a specific mention of those higher-level employees who should be particularly on the lookout for conduct violations, so rather than eliminate reference to the specific key employees mentioned, perhaps it would be a good idea to insert the word "other" between "any" and "court.""

Rule 2-211. Compliance with the Code of Judicial Administration and the Code of Judicial Conduct.

Intent:
To establish the authority of the presiding officer, the Management Committee and the Council to take corrective action in the event of non-compliance with this Code or the Code of Judicial Conduct.

Applicability:
This rule shall apply to judicial and quasi-judicial officers.

Statement of the Rule:

(1) Allegations of failure to comply with the provisions of this Code and the Code of Judicial Conduct may be submitted to the presiding officer of the Council by Council members, the chairs of the Boards, presiding judges, the court administrator, any other court employee, or the Judicial Conduct Commission.

(2) The presiding officer of the Council, in consultation with the Management Committee, has the discretion to dismiss the allegations, investigate the allegations, take appropriate corrective action or submit the matter to the Council for consideration. Where corrective action is taken, the presiding officer shall report to the Council in executive session the nature of the problem and the corrective action taken. Information which identifies the person who submitted the allegation and individual against whom corrective action is taken may be omitted from the report.

(3) The Council shall convene in executive session to review those allegations of non-compliance submitted by the presiding officer pursuant to paragraph (2) and, upon a majority vote, direct dismissal of the allegations, investigation of the allegations, corrective action or referral to the Judicial Conduct Commission. Allegations of non-compliance shall be referred to the Conduct Commission only after consideration by the Council and upon a majority vote of its members.

(4) The presiding officer of the Council is empowered to implement any corrective action recommended by the executive management committee or the Council.

(5) If the allegations involve inappropriate behavior toward the person who submitted the allegations, the presiding ~~judge~~ officer shall notify the person whether corrective action was taken. The person may ask that any decision made by the presiding officer be reviewed by the Council.

Effective May/November 1, 20__

TAB 3

3-415. Auditing

Notes: The proposed amendments clearly define the types of audits conducted by the Audit Department, clarify audit procedures, and identify the individuals involved at critical points.

Policy and Planning - Rule Amendment Request Form

The respondent's email address (**waynek@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

03 / 19 / 2021

Name of Requester *

Wayne Kidd, Internal Audit Director

Requester Phone Number *

801.580.3507

Name of Requester's Supervisor *

Judge Mary T. Noonan

Location of the Rule *

Code of Judicial Administration

CJA Rule Number or HR/Accounting Section Name *

Rule 3-415 Auditing

Brief Description of Rule Proposal *

The proposal clarifies the different steps in the audit process--planning, entrance and exit conferences, reporting, and follow-ups.

Reason Amendment is Needed *

The proposal clarifies the audit process, and the individuals involved at critical points in the audit process. The proposal also clearly defines the types of audits conducted by the Audit Department.

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
- [x] Board of Appellate Court Judges
- [x] Board of District Court Judges
- [x] Board of Justice Court Judges
- [x] Board of Juvenile Court Judges
- [ ] Board of Senior Judges
- [ ] Budget and Fiscal Management Committee
- [ ] Children and Family Law Committee
- [ ] Clerks of Court
- [ ] Court Commissioner Conduct Committee
- [ ] Court Facility Planning Committee
- [ ] Court Forms Committee
- [ ] Ethics Advisory Committee
- [ ] Ethics and Discipline Committee of the Utah Supreme Court
- [x] 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

- [ ] Model Utah Criminal Jury Instructions Committee
- [ ] Policy and Planning member
- [ ] Pretrial Release and Supervision Committee
- [ ] Resources for Self-Represented Parties Committee
- [ ] Rules of Appellate Procedure Advisory Committee
- [ ] Rules of Civil Procedure Advisory Committee
- [ ] Rules of Criminal Procedure Advisory Committee
- [ ] Rules of Evidence Advisory Committee
- [ ] Rules of Juvenile Procedure Advisory Committee
- [ ] Rules of Professional Conduct Advisory Committee
- [x] State Court Administrator
- [ ] TCE's
- [ ] Technology Committee
- [ ] Uniform Fine Committee
- [ ] WINGS Committee
- [ ] None of the Above

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

Management Committee

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

The boards of judges, presiding judges, clerks of court, state court administrator, deputy court administrator, and AOC directors.

Rule 3-415. Auditing.

Intent:

To establish an internal ~~fiscal~~ audit program for the judiciary within the administrative office.

To examine and evaluate court operations by measuring and evaluating the effectiveness and proper application of programs.

Applicability:

This rule shall apply to all courts and the administrative office.

Statement of the Rule:

(1) ~~Schedule of audits.~~ **Audit planning.**

(1)(A) ~~Periodic.~~ **Audit planning schedule.** ~~Not less than annually,~~ T~~t~~he audit director shall annually prepare a plan of scheduled fiscal and ~~program~~ performance audits for submission to and approval by the Council Management Committee. ~~The Board of Justice Court Judges shall provide the audit manager a recommendation of the courts not of record to be included in the annual audit schedule submitted to the Council Management Committee.~~

~~(B) Amendment to schedule. Any modification or change to the approved plan of scheduled audits shall require prior approval by the Council Management Committee.~~

~~(C) Special audits. Requests for special audits not included in the plan shall be submitted in writing to the Council Management Committee and identify the circumstances and need for a special unscheduled audit.~~

(1)(B) **Audit recommendations.** The Board of Appellate Court Judges, the Board of District Court Judges, the Board of Juvenile Court Judges, and the Board of Justice Court Judges may provide the audit director recommendations to be included in the audit plan submitted to the Council Management Committee.

(1)(C)~~(D)~~ ~~Limited audits.~~ **State court administrator authorization.** The state court administrator may authorize a limited scope audit in the event of a reported theft, burglary, or other alleged criminal act or suspected loss of monies or property at a court location, or if a change occurs in the personnel responsible for fiduciary duties ~~the state court administrator may authorize a limited audit~~.

(1)(D) **Amendment to the audit plan schedule.** Any modification or change to the approved plan of scheduled audits shall require prior approval by the Council Management Committee. Requests for audits not included in the plan shall be submitted in writing to the Council Management Committee and identify the need for an unscheduled audit to be included in the plan.

(2) **Authority.** ~~The audit manager shall be independent of the activities audited.~~ The ~~audit manager~~ auditors shall have the authority to conduct audits, consultations, and other engagements in accordance to generally accepted audit principles. The auditors shall be independent of the activities audited, and shall follow generally accepted accounting and performance audit principles for conducting internal audits. The auditors shall have full and unrestricted access to all records, documents, personnel and physical properties determined relevant to the performance of an audit. The auditor ~~manager~~ shall have the

full cooperation and assistance of court personnel in the performance of an audit. Objectivity shall be employed by the auditors at all times. ~~The audit manager shall follow generally accepted accounting and performance audit principles for conducting internal audits.~~

(3) **Fiscal audits.** Fiscal audits may consist of one or more of the following objectives:

(3)(A) to verify the accuracy and reliability of financial records;

(3)(B) to assess compliance with ~~management~~ fiscal policies~~, plans~~, procedures, and best practices;~~regulations;~~

(3)(C) to assess compliance with applicable laws and rules; and

~~(D) to evaluate the efficient and effective use of judicial resources;~~

(3)(D~~E~~) to verify the appropriate protection of judicial assets.

(4) ~~Short audits. When a short audit is required or approved, the audit will be conducted without prior notice. The audit shall consist of a one-time reconciliation of current cash and receipts and an observation of fiscal management procedures unless otherwise directed by the State Court Administrator or Management Committee. A written report shall be prepared and exit conference conducted.~~ **Performance audits.** Performance auditing is an assessment that provides an objective evaluation about the performance of court operations. Court operations includes any program, activity, project, function, or policy that has an identifiable purpose or set of objectives. Performance audits may contain one or more the following objectives:

(4)(A) to assess the performance and management of court operations against objective criteria;

(4)(B) to determine how efficient court operations manages its resources;

(4)(C) to determine how effective court operations accomplishes its goals and objectives;

(4)(D) to assess internal controls and compliance with laws, rules, policies, and best practices;

(4)(E) to provide information and recommendations to improve court operations.

(5) **Audit process.** An audit within the judicial branch may consist of a fiscal audit, a performance audit, or elements of both types of audits. ~~Full audits.~~ When ~~a full~~an audit is required or approved, the audit shall be conducted with prior notice.

(5)(A) An entrance conference shall be conducted between:

(5)(A)(1) **Courts of record:** the auditors, court executive, presiding judge, clerk of court, and state level administrator.

(5)(A)(2) **Courts not of record:** the auditors, justice court judge~~, a local government representative~~, and state level administrator. The presiding judge may also be invited to attend.

(5)(A)(3) **Administrative offices:** the auditors, state court administrator, deputy court administrator, and department director.

~~The audit shall be conducted at the convenience of the court.~~

(5)(B) An exit conference shall be conducted at the conclusion of the audit. This conference shall include the same individuals attending the entrance conference for both courts of record, courts not of record, and administrative offices. At the exit conference, the auditors shall review the audit findings and recommendations and provide recognition for commendable court operations, when appropriate.

(5)(C) Audit results will be communicated to and approved by the Council Management Committee.

~~(6) Performance audits. During the course of conducting a short or full fiscal audit, the audit manager shall observe and review compliance with programs and procedures established by state law and this Code and make written findings and recommendations to be incorporated in the final report. The performance audit shall include an evaluation of the adequacy, effectiveness and efficiency of court operations and management. Objectivity shall be employed by the auditors at all times. Proper recognition shall be given to commendable court operations when appropriate.~~

(6~~7~~) **Audit reports.**

(6)(A) The audit ~~manager~~ director shall prepare a written report containing findings and recommendations as a result of the audit. A draft copy of the report shall be provided ~~in advance~~prior to the exit conference and presented to:

(6)(A)(1) **Court of record:** court executive, presiding judge, clerk of court, and state level administrator ~~at the exit conference~~. An opportunity for written response or comment will be afforded the court executive and presiding judge, which will be incorporated into and become part of the final report.

(6)(A)(2) **Court~~s~~ not of record:** the presiding judge, justice court judge, and state level administrator ~~at the exit conference~~. If the court and local government are following Accounting Model 2, then a local government representative will receive a draft copy of the sections of the report that pertain to the local government, who receipt and deposit court collected funds. An opportunity for written response or comment will be afforded the justice court judge, and a local government representative if Accounting Model 2 is being followed, which will be incorporated into and become part of the final report.

(6)(A)(3) **Administrative offices:** state court administrator, deputy court administrator, and department director.

The court or office shall respond to the audit recommendations within 30 days of being provided the report to the audit director.

(6)(B) Copies of the final report shall be provided to:

(6)(B)(1) **Courts of record:** the Council Management Committee, appropriate Board of Judges, state court administrator, presiding judge, court executive, and state level administrator.

(6)(B)(2) **Courts not of record:** the Council Management Committee, state court administrator, presiding judge, justice court judge, ~~a local government representative,~~ state level administrator, and the Board of Justice Court Judges. A local government representative will receive the sections of the final report that pertain to the local government, if Accounting Model 2 is being followed.

(6)(B)(3) **Administrative offices:** the Council Management Committee, state court administrator, deputy court administrator, and department director.

(7~~8~~) **Follow-up review.**

(7)(A) **Courts of record:** Within 12 months of ~~short or full~~an audit, the audit ~~manager~~ director shall provide a Follow-up Review form, including only non-compliance audit findings, to the court executive and copy the court level administrator. The court executive will complete the Follow-up Review form reporting on progress made toward compliance and return a copy of the completed~~the~~ form within 30 days to the audit ~~manager~~ director and ~~copy the~~ court level administrator, the presiding judge, and the appropriate board of judges.

(7)(B) **Courts not of record:** Within 12 months of ~~a short or full~~an audit, the audit ~~manager~~ director shall provide a Follow-up Review form, including only non-compliance audit findings, to the justice court judge and a copy to the state level administrator. The justice court judge will complete the Follow-up Review form reporting on progress made toward compliance and return a copy of the completed form within 30 days to the audit ~~manager~~director, the state level administrator, the presiding judge, and the Board of Justice Court Judges.

(7)(C) **Administrative offices:** Within 12 months of an audit, the audit director shall provide a Follow-up Review form, including only non-compliance audit findings, to the department director and a copy to the state court administrator. The department director will complete the Follow-up Review form reporting on the progress made toward compliance and return a copy of the completed form within 30 days to the audit director and the state court administrator.

Effective May/November 1, 20__

TAB 4

7-302. Court reports prepared for delinquency cases

Notes: The Sentencing Commission released a new Juvenile Disposition Guide that does not function the same as prior juvenile sentencing guidelines, in that they do not produce a specific recommendation for disposition, only factors that should be considered.

Under 7-302 currently, probation is required to include the sentencing guideline recommendation that no longer exists. Other requirements in the rule are outdated, do not align with updates to probation policy, and require information that probation officers are not qualified to determine/asses.

Proposed amendments align the rule with the statute regarding probation's role in victim restitution (78A-6-117(j)(ix-x)) and the new Juvenile Disposition Guidelines.

Policy and Planning - Rule Amendment Request Form

The respondent's email address (**tiffanyp@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

03 / 24 / 2021

Name of Requester *

Tiffany Pew

Requester Phone Number *

8014338788

Name of Requester's Supervisor *

Neira Siaperas

Location of the Rule *

Code of Judicial Administration

CJA Rule Number or HR/Accounting Section Name *

7-302

Brief Description of Rule Proposal *

Proposal to amend section 3(A)(iv) to remove a requirement for an itemized list of losses by the victim; remove section 3(B); amend section 3(E) to incorporate the new Juvenile Disposition Guidelines

Reason Amendment is Needed *

Updates are needed in order to align the Rule with the statute regarding probation's role in victim restitution (78A-6-117 (j)(ix-x) and to align with the requirements of the new Juvenile Disposition Guidelines. The removal of section 3(B) aligns the Rule with current evidence based practices/research to only require information in court reports that can be collected objectively through the administration of validated risk assessments, collateral contacts and formal interviewing techniques.

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
- [x] Board of Juvenile Court Judges
- [ ] Board of Senior Judges
- [ ] Budget and Fiscal Management Committee
- [ ] Children and Family Law Committee
- [ ] Clerks of Court
- [ ] 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

- [ ] Model Utah Criminal Jury Instructions Committee
- [ ] Policy and Planning member
- [ ] Pretrial Release and Supervision Committee
- [ ] Resources for Self-Represented Parties Committee
- [ ] Rules of Appellate Procedure Advisory Committee
- [ ] Rules of Civil Procedure Advisory Committee
- [ ] Rules of Criminal Procedure Advisory Committee
- [ ] Rules of Evidence Advisory Committee
- [ ] Rules of Juvenile Procedure Advisory Committee
- [ ] Rules of Professional Conduct Advisory Committee
- [ ] State Court Administrator
- [x] TCE's
- [ ] Technology Committee
- [ ] Uniform Fine Committee
- [ ] WINGS Committee
- [ ] None of the Above

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

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

Juvenile court probation department and judges

Rule 7-302. Court reports prepared for delinquency cases.

Intent:

To develop minimum standards for court reports to the Juvenile Court.

Applicability:

This rule shall apply to all court reports prepared for delinquency cases in the Juvenile Courts.

Statement of the Rule:

(1) **Court report.** The probation department or other agency designated by the court shall prepare a court report in writing in all cases in which a petition has been filed.

(2) **Any matter.** The court can direct the probation department to prepare a court report on any matter referred to the court.

(3) **Report contents.** The contents of the court report shall include the following:

(3)(A) a summary of:

(3)(A)(i) the circumstances surrounding the matter before the court;

(3)(A)(ii) the minor's prior referral history, including prior actions taken by the probation department;

(3)(A)(iii) any contacts and history the family has had with other agencies;

(3)(A)(iv) the victim impact statement ~~and an itemized listing of losses or damages suffered by the victim with respect to the matter before the court~~;

(3)(A)(v) responses to the minor's compliant and non-compliant behavior;

(3)(A)(vi) the minor's academic performance and behavior in school and a statement of the minor's employment history if applicable;

(3)(A)(vii) any physical or emotional problems the minor may have that could affect behavior;

(3)(A)(viii) the minor's substance use history; and

(3)(A)(ix) the strengths and weaknesses of the minor as perceived by the minor and the parents or guardian(s); ~~and~~

~~(3)(B) an assessment of:~~

~~(3)(B)(i) the minor's attitude towards the court and the minor's attitude and values in general;~~

~~(3)(B)(ii) the parents' attitude and what corrective action, if any, they took with respect to the minor's conduct and actions that brought the minor before the court; and~~

~~(3)(B)(iii) the strengths and weaknesses of the parents or guardian(s); and~~

(3)(BC) the minor's risk level as indicated by a validated risk and needs assessment, as well as a list of risk and protective factors;

(3)(DC) recommendations specific to the minor's risk level that consider restorative justice principles and evidence-based best practices;

(3)(DE) an acknowledgment that probation considered the Juvenile Disposition Guidelines and if there is a deviation from the statutory presumption or an increase in the level of supervision, the specific factors supporting the deviation~~sentencing guideline results, including aggravating and mitigating factors~~; and

(3)(EF) any other relevant information.

(4) **Verification.** All information contained in the court report should be verified whenever possible. Individuals providing information for the report should be identified and any opinions or unverified information should be identified as such.

(5) **Social information.** No social information shall be gathered on a minor if the minor denies the allegations during the preliminary inquiry unless the minor and parent/guardian or custodian give their written consent for the information to be gathered. ~~(6)~~ No social information shall be provided to the court before the minor's case is adjudicated.

(67) **Filing.** Once the court report is prepared, it shall be electronically filed in the minor's file.

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

TAB 5

10-1-501. Orders to Show Cause (5th Dist.)

10-1-602. Orders to Show Cause (6th Dist.)

Notes: The Supreme Court approved revisions to URCP rule 7, and created new URCP rules 7A and 7B, covering orders to show cause. Rules 7A and 7B create a new, uniform process for enforcing court orders through regular motion practice. They replace the current order to show cause process found in Rule 7(q) and in the two local court rules listed above (the 2 local rules are identical). Rule 7B addresses the domestic law order to show cause process. All three rules become effective on May 1, 2021.

Local rules 10-1-501 and 10-1-602 may conflict with the new rules of civil procedure in the following ways:

- Local rules state that Rule 7 procedures do not apply. That would eliminate the new caution language and bilingual notice requirements in Rule 7(2), (3), and (4). Those requirements appear to be of significant importance to the Court and an attempt to ensure parties receive more notice of their rights and obligations.

- Rules 7A(c) and 7B(c) require a request to submit and a proposed order, the local rules only require a proposed order.

- In (c)(5) of Rules 7A and 7B, notice that a response is permitted must be included in the proposed order, the local rules do not include that requirement.

- Rules 7A and 7B impose a 28-day service deadline under (d), but allow the court to shorten that timeline. The local rules have no deadline for service.

The 6th District bench prefers their local rule, but would not contest a repeal.

The 5th District bench is requesting that their local rule not be repealed. They feel that the new rules of civil procedure will cause unnecessary delay and burden their calendars, especially due to their lack of a Commissioner. Their preference is to leave the local rule in place and allow attorneys to contest local practices if/when an attorney feels it's warranted. Judge Wilcox will provide an explanatory email prior to the meeting.

My recommendation is to leave the local rules as is, except for the deletion of, "…and the procedures of Rule 7 of the Utah Rules of Civil Procedure shall not apply.," in paragraph (1), or to repeal them entirely.

Rule 10-1-501. Orders to show cause.

Intent:
To describe the process for requesting an order to show cause.

Applicability:
This rule shall apply to the Fifth District Court.

Statement of the Rule:
(1) **Motion.** A party who seeks to enforce an order or a judgment of a court against an opposing party may file an ex parte motion for an order to show cause. The motion must be filed with the same court and in the same case in which that order or judgment was entered. The motion shall be made only on an ex parte basis~~, and the procedures of Rule 7 of the Utah Rules of Civil Procedure shall not apply~~.

(2) **Affidavit.** The motion for an order to show cause must be accompanied by at least one supporting affidavit. Each supporting affidavit must be based on personal knowledge and must set forth admissible facts and not mere conclusions. At least one supporting affidavit must state the title and date of entry of the order or judgment which the moving party seeks to enforce.

(3) **Order.** The motion for an order to show cause must be accompanied by the proposed order to show cause, which shall:

(3)(A) state the title and date of entry of the order or judgment which the moving party seeks to enforce;

(3)(B) specify the relief sought by the moving party;

(3)(C) order the opposing party to make a first appearance in court at a specific date, time and place and, then and there, to explain why or whether the opposing party acted or failed to act in compliance with such order or judgment;

(3)(D) order the opposing party to appear personally or through legal counsel at the first appearance;

(3)(E) state that no written response to the motion and order to show cause is required;

(3)(F) state that the first appearance shall not be the evidentiary hearing, but shall be for the purpose of determining

(3)(F)(i) whether the opposing party contests the allegations made by the moving party,

(3)(F)(ii) whether an evidentiary hearing is necessary,

(3)(F)(iii) the specific issues to be resolved through an evidentiary hearing, and

(3)(F)(iv) the estimated length of any such evidentiary hearing; and

(3)(G) state whether the moving party has requested that the opposing party be held in contempt and, if such a request has been made, recite that the sanctions for contempt may include, but are not limited to, a fine of $1000 or less and a jail commitment of 30 days or less.

(4) **Service.** If the court grants the motion and issues an order to show cause, the moving party must have the order, the motion and all supporting affidavits served upon the opposing party. Service shall be made in the manner prescribed for service of a summons and complaint, unless the moving party shows good cause for service to be made by mailing or delivery to the opposing party's counsel of record and the court so orders. The date of the opposing party's first appearance on the order to show cause may not be sooner than five days after service thereof, unless:

(4)(A) the motion requests an earlier first appearance date,

(4)(B) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the first appearance is not held sooner than five days after service of the order to show cause, and

(4)(C) the court agrees to an earlier first appearance date.

(5) **First Appearance.** The opposing party's first appearance on the order to show cause, at the date, time and place stated therein, shall not be the evidentiary hearing. At the first appearance, the court shall determine:

(5)(A) whether the opposing party contests the allegations made by the moving party,

(5)(B) whether an evidentiary hearing is necessary,

(5)(C) the specific issues to be resolved through an evidentiary hearing, and

(5)(D) the estimated length of any such evidentiary hearing. The court may order the parties to file memoranda on legal issues before the evidentiary hearing. If the opposing party does not contest the allegations made by the moving party, the court may proceed at the first appearance as the circumstances require.

(6) **Evidentiary Hearing.** At the evidentiary hearing on a contested order to show cause, the moving party shall bear the burden of proof on all allegations which are made in support of the order.

(7) **Limitations.** An order to show cause may not be requested in order to obtain an original order or judgment; for example, an order to show cause may not be used to obtain a temporary restraining order or to establish temporary orders in a divorce case. This rule shall apply only in civil actions, and shall not be applied to orders to show cause in criminal actions. This rule does not apply to an order to show cause issued by a court on its own initiative.

Effective May/November 1, 2021

Rule 10-1-602. Orders to show cause.

Intent:
To describe the process for requesting an order to show cause.

Applicability:
This rule shall apply to the Sixth District Court.

Statement of the Rule:
(1) **Motion.** A party who seeks to enforce an order or a judgment of a court against an opposing party may file an ex parte motion for an order to show cause. The motion must be filed with the same court and in the same case in which that order or judgment was entered. The motion shall be made only on an ex parte basis~~, and the procedures of Rule 7 of the Utah Rules of Civil Procedure shall not apply~~.

(2) **Affidavit.** The motion for an order to show cause must be accompanied by at least one supporting affidavit. Each supporting affidavit must be based on personal knowledge and must set forth admissible facts and not mere conclusions. At least one supporting affidavit must state the title and date of entry of the order or judgment which the moving party seeks to enforce.

(3) **Order.** The motion for an order to show cause must be accompanied by the proposed order to show cause, which shall:

(3)(A) state the title and date of entry of the order or judgment which the moving party seeks to enforce;

(3)(B) specify the relief sought by the moving party;

(3)(C) order the opposing party to make a first appearance in court at a specific date, time and place and, then and there, to explain why or whether the opposing party acted or failed to act in compliance with such order or judgment;

(3)(D) order the opposing party to appear personally or through legal counsel at the first appearance;

(3)(E) state that no written response to the motion and order to show cause is required;

(3)(F) state that the first appearance shall not be the evidentiary hearing, but shall be for the purpose of determining

(3)(F)(i) whether the opposing party contests the allegations made by the moving party,

(3)(F)(ii) whether an evidentiary hearing is necessary,

(3)(F)(iii) the specific issues to be resolved through an evidentiary hearing, and

(3)(F)(iv) the estimated length of any such evidentiary hearing; and

(3)(G) state whether the moving party has requested that the opposing party be held in contempt and, if such a request has been made, recite that the sanctions for contempt may include, but are not limited to, a fine of $1000 or less and a jail commitment of 30 days or less.

(4) **Service.** If the court grants the motion and issues an order to show cause, the moving party must have the order, the motion and all supporting affidavits served upon the opposing party. Service shall be made in the manner prescribed for service of a summons and complaint, unless the moving party shows good cause for service to be made by mailing or delivery to the opposing party's counsel of record and the court so orders. The date of the opposing party's first appearance on the order to show cause may not be sooner than five days after service thereof, unless:

(4)(A) the motion requests an earlier first appearance date,

(4)(B) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the first appearance is not held sooner than five days after service of the order to show cause, and

(4)(C) the court agrees to an earlier first appearance date.

(5) **First Appearance.** The opposing party's first appearance on the order to show cause, at the date, time and place stated therein, shall not be the evidentiary hearing. At the first appearance, the court shall determine:

(5)(A) whether the opposing party contests the allegations made by the moving party,

(5)(B) whether an evidentiary hearing is necessary,

(5)(C) the specific issues to be resolved through an evidentiary hearing, and

(5)(D) the estimated length of any such evidentiary hearing. The court may order the parties to file memoranda on legal issues before the evidentiary hearing. If the opposing party does not contest the allegations made by the moving party, the court may proceed at the first appearance as the circumstances require.

(6) **Evidentiary Hearing.** At the evidentiary hearing on a contested order to show cause, the moving party shall bear the burden of proof on all allegations which are made in support of the order.

(7) **Limitations.** An order to show cause may not be requested in order to obtain an original order or judgment; for example, an order to show cause may not be used to obtain a temporary restraining order or to establish temporary orders in a divorce case. This rule shall apply only in civil actions, and shall not be applied to orders to show cause in criminal actions. This rule does not apply to an order to show cause issued by a court on its own initiative.

Effective May/November 1, 20__

Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) a reply to an answer if ordered by the court.

(b) Motions. A request for an order must be made by motion. The motion must be in writing unless made during a hearing or trial, must state the relief requested, and must state the grounds for the relief requested. Except for the following, a motion must be made in accordance with this rule.

(1) A motion, other than a motion described in paragraphs (b)(2), (b)(3) or (b)(4), made in proceedings before a court commissioner must follow Rule 101.

(2) A request under Rule 26 for extraordinary discovery must follow Rule 37(a).

(3) A request under Rule 37 for a protective order or for an order compelling disclosure or discovery—but not a motion for sanctions—must follow Rule 37(a).

(4) A request under Rule 45 to quash a subpoena must follow Rule 37(a).

(5) A motion for summary judgment must follow the procedures of this rule as supplemented by the requirements of Rule 56.

(c) Name and content of motion.

(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(2) **Caution language.** For all dispositive motions, the motion must include the following caution language at the top right corner of the first page, in bold type:
This motion requires you to respond. Please see the Notice to Responding Party.

(3) **Bilingual notice.** All motions must include or attach the bilingual Notice to Responding Party approved by the Judicial Council.

(4) **Failure to include caution language and notice**. Failure to include the caution language in paragraph (c)(2) or the bilingual notice in paragraph (c)(3) may be grounds to continue the hearing on the motion, or may provide the non-moving party with a basis under Rule 60(b) for excusable neglect to set aside the order resulting from the motion. Parties may opt out of receiving the notices set forth in paragraphs (c)(2) and (c)(3) while represented by counsel.

(5) **Title of motion.** The moving party must title the motion substantially as: "Motion [short phrase describing the relief requested]."

(6) **Contents of motion.** The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:

(A) a concise statement of the relief requested and the grounds for the relief requested; and

(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.

(~~2~~7) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the motion.

(~~3~~8) **Length of motion.** If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the motion may not exceed 25 pages, not counting the attachments, unless a longer motion is permitted by the court. Other

motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the court.

(d) Name and content of memorandum opposing the motion.

(1) A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed. The nonmoving party must title the memorandum substantially as: "Memorandum opposing motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(A) a concise statement of the party's preferred disposition of the motion and the grounds supporting that disposition;

(B) one or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and

(C) objections to evidence in the motion, citing authority for the objection.

(2) If the non-moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other opposing memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(e) Name and content of reply memorandum.

(1) Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The moving party must

title the memorandum substantially as "Reply memorandum supporting motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(A) a concise statement of the new matter raised in the memorandum opposing the motion;

(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party not previously set forth that respond to the opposing party's statement of facts and argument citing authority rebutting the new matter;

(C) objections to evidence in the memorandum opposing the motion, citing authority for the objection; and

(D) response to objections made in the memorandum opposing the motion, citing authority for the response.

(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other reply memoranda may not exceed 10 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(f) Objection to evidence in the reply memorandum; response. If the reply memorandum includes an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days after the reply memorandum is filed. If the reply memorandum includes evidence not previously set forth, the nonmoving party may file an objection to the evidence no later than 7 days after the reply memorandum is filed, and the moving party may file a response to the objection no

later than 7 days after the objection is filed. The objection or response may not be more than 3 pages.

(g) Request to submit for decision. When briefing is complete or the time for briefing has expired, either party may file a "Request to Submit for Decision," but, if no party files a request, the motion will not be submitted for decision. The request to submit for decision must state whether a hearing has been requested and the dates on which the following documents were filed:

(1) the motion;

(2) the memorandum opposing the motion, if any;

(3) the reply memorandum, if any; and

(g)(4) the response to objections in the reply memorandum, if any.

(h) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing must be separately identified in the caption of the document containing the request. The court must grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(i) Notice of supplemental authority. A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice may not exceed 2 pages. The notice must state the citation to the authority, the page of the motion or memorandum or the point orally argued to which the authority applies, and the reason the authority is relevant. Any other party may promptly file a response, but the court may act on the motion without waiting for a response. The response may not exceed 2 pages.

(j) Orders.

(1) Decision complete when signed; entered when recorded. However designated, the court's decision on a motion is complete when signed by the judge. The decision is entered when recorded in the docket.

(2) Preparing and serving a proposed order. Within 14 days of being directed by the court to prepare a proposed order confirming the court's decision, a party must serve the proposed order on the other parties for review and approval as to form. If the party directed to prepare a proposed order fails to timely serve the order, any other party may prepare a proposed order confirming the court's decision and serve the proposed order on the other parties for review and approval as to form.

(3) Effect of approval as to form. A party's approval as to form of a proposed order certifies that the proposed order accurately reflects the court's decision. Approval as to form does not waive objections to the substance of the order.

(4) Objecting to a proposed order. A party may object to the form of the proposed order by filing an objection within 7 days after the order is served.

(5) Filing proposed order. The party preparing a proposed order must file it:

(A) after all other parties have approved the form of the order (The party preparing the proposed order must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.);

(B) after the time to object to the form of the order has expired (The party preparing the proposed order must also file a certificate of service of the proposed order.); or

(C) within 7 days after a party has objected to the form of the order (The party preparing the proposed order may also file a response to the objection.).

(6) Proposed order before decision prohibited; exceptions. A party may not file a proposed order concurrently with a motion or a memorandum or a request to submit for decision, but a proposed order must be filed with:

(A) a stipulated motion;

(B) a motion that can be acted on without waiting for a response;

(C) an ex parte motion;

(D) a statement of discovery issues under Rule 37(a); and

(E) the request to submit for decision a motion in which a memorandum opposing the motion has not been filed.

(7) Orders entered without a response; ex parte orders. An order entered on a motion under paragraph (l) or (m) can be vacated or modified by the judge who made it with or without notice.

(8) Order to pay money. An order to pay money can be enforced in the same manner as if it were a judgment.

(k) Stipulated motions. A party seeking relief that has been agreed to by the other parties may file a stipulated motion which must:

(1) be titled substantially as: "Stipulated motion [short phrase describing the relief requested]";

(2) include a concise statement of the relief requested and the grounds for the relief requested;

(3) include a signed stipulation in or attached to the motion and;

(4) be accompanied by a request to submit for decision and a proposed order that has been approved by the other parties.

(l) Motions that may be acted on without waiting for a response.

(1) The court may act on the following motions without waiting for a response:

(A) motion to permit an over-length motion or memorandum;

(B) motion for an extension of time if filed before the expiration of time;

(C) motion to appear pro hac vice; and

(D) other similar motions.

(2) A motion that can be acted on without waiting for a response must:

(A) be titled as a regular motion;

(B) include a concise statement of the relief requested and the grounds for the relief requested;

(C) cite the statute or rule authorizing the motion to be acted on without waiting for a response; and

(D) be accompanied by a request to submit for decision and a proposed order.

(m) Ex parte motions. If a statute or rule permits a motion to be filed without serving the motion on the other parties, the party seeking relief may file an ex parte motion which must:

(1) be titled substantially as: "Ex parte motion [short phrase describing the relief requested]";

(2) include a concise statement of the relief requested and the grounds for the relief requested;

(3) cite the statute or rule authorizing the ex parte motion;

(4) be accompanied by a request to submit for decision and a proposed order.

(n) Motion in opposing memorandum or reply memorandum prohibited. A party may not make a motion in a memorandum opposing a motion or in a reply memorandum. A party who objects to evidence in another party's motion or memorandum may not move to strike that evidence. Instead, the party must include in the subsequent memorandum an objection to the evidence.

(o) Overlength motion or memorandum. The court may permit a party to file an overlength motion or memorandum upon a showing of good cause. An overlength motion or memorandum must include a table of contents and a table of authorities with page references.

(p) Limited statement of facts and authority. No statement of facts and legal authorities beyond the concise statement of the relief requested and the grounds for the relief requested required in paragraph (c) is required for the following motions:

(1) motion to allow an over-length motion or memorandum;

(2) motion to extend the time to perform an act, if the motion is filed before the time to perform the act has expired;

(3) motion to continue a hearing;

(4) motion to appoint a guardian ad litem;

(5) motion to substitute parties;

(6) motion to refer the action to or withdraw it from alternative dispute resolution under Rule 4-510.05;

(7) motion for a conference under Rule 16; and

(8) motion to approve a stipulation of the parties.

~~**(q) Limit on order to show cause.** An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket.~~

Advisory Committee Notes

~~The 2015 changes to Rule 7 repeal and reenact the rule. Many of the provisions from the former Rule 7 are preserved in the 2015 version, but there are many changes as well. The committee's intent is to bring more regularity to motion practice. Some of these features are found in Rule 7-1 of the U.S. District Court for the District of Utah:~~

~~: integrate the memorandum supporting a motion with the motion itself;~~

- describe more uniform motion titles;
- describe more uniform content in the memoranda;
- regulate the process for citing supplemental authority;
- prohibit proposed orders before a decision, except for specified motions;
- move the special requirements for a motion for summary judgment to Rule 56;
- allow a limited statement of facts for specified motions;
- require an objection to evidence, rather than a motion to strike evidence; and
- require a counter-motion rather than a motion in the opposing memorandum.

The 2015 amendments in this rule, as well as in Rule 54 and Rule 58A, respond to the Supreme Court's directive to the committee in Central Utah Water Conservancy District v. King, 2013 UT 13 ¶27. In that case the Supreme Court directed the committee to address the problem of undue delay when the parties fail to comply with former Rule 7(f)(2). A major objective of the 2015 amendments is to continue the policy of clear expectations of the parties established in:

- *Butler v. Corporation of The President of The Church of Jesus Christ of Latter-Day Saints*, 2014 UT 41
- *Central Utah Water Conservancy District v. King*, 2013 UT 13;
- *Giusti v. Sterling Wentworth Corp.*, 2009 UT 2;
- *Houghton v. Dep't of Health*, 2008 UT 86; and
- *Code v. Dep't of Health*, 2007 UT 43.

However, the 2015 amendments do so in a manner simpler than the "magic words" required under the former Rule 7(f)(2).

In these cases, the Supreme Court established a policy favoring a clear indication of whether a further document would be required from the parties after a judge's decision. The parties should not be required to guess what, if anything, should come next.

There were three ways to meet the test: a proposed order was submitted with the supporting or opposing memorandum; an order was prepared at the direction of the judge; the decision included an express indication that a further order was not required. The 2015 amendments remove a proposed order from the process in most

~~circumstances. The trend under the former rule was to include in every order an indication that nothing further was required, sometimes even when the order expressly directed a party to prepare a further order. In other cases orders were prepared in some manner other than as described in the rule, yet the order did not expressly state that nothing further was required. The order technically was not complete, but everyone proceeded as if it were.~~

~~The 2015 amendments continue the policy of a bright-line test for a completed decision but do not rely on conditions that might or might not be met. The one condition that can be counted on is the judge's signature. Under the former rule, a completed decision was imposed by operation of law when the order was prepared in one of the recognized ways. The 2015 rule imposes a completed decision by operation of law when the document memorializing the decision is signed. Under the former rule, the judge's silence meant that something further was required, unless the order was prepared in one of the ways described in Rule 7. The presumption in the 2015 amendments is the opposite: silence means that nothing further is required from the parties. Judges can expressly require an order confirming a decision if one is needed in a particular case.~~

~~The committee recognizes the many different forms a judge's decision might take, and discussed defining "order," but decided against the attempt. There are too many variations. If written, the document might be titled "order," "ruling," "opinion," "decision," "memorandum decision," etc. The decision might not be written; an oral directive is an order. A clerk's minute entry of an oral decision is, when signed by the judge, treated the same as a written order. The committee decided instead to modify a phrase of long standing from Rule 54(b) — "a decision, however designated" — in this rule and in Rule 58A. In this rule, however a judge's decision may be designated, that decision is complete when the judge signs the document memorializing the decision. Whether there is a right to appeal is determined by whether the decision — or subsequent order confirming the decision — is a judgment. That analysis is governed by Rule 54. When the judgment is entered is governed by Rule 58A. If the order is not a judgment, the time in which to petition for permission to appeal under Rule of Appellate Procedure 5 is calculated from the date on which an order confirming an earlier decision is entered, but only if the judge directs that a confirming order be prepared. If the judge does not direct that a confirming order be prepared, the time is calculated from the date on which the decision, however designated, is entered.~~

~~The 2017 amendments to Rule 7 return pre-2015 paragraph (b)(2) language addressing limits on orders to show cause to new paragraph (q) and also clarify the discretion the court retains to manage its docket. Paragraph (q) is directed only at limitations on order to show cause proceedings initiated by parties.~~

Rule 7A. Motion to enforce order and for sanctions.

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, including in supplemental proceedings under Rule 64, a party must file an ex parte motion to enforce order and for sanctions (if requested), pursuant to this rule and Rule 7. The motion must be filed in the same case in which that order was entered. The timeframes set forth in this rule, rather than those set forth in Rule 7, govern motions to enforce orders and for sanctions.

(b) Affidavit. The motion must state the title and date of entry of the order that the moving party seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting affidavit or declaration that is based on personal knowledge and shows that the affiant or declarant is competent to testify on the matters set forth. The verified motion, affidavit, or declaration must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

(c) Proposed order. The motion must be accompanied by a request to submit for decision and a proposed order to attend hearing, which must:

(1) state the title and date of entry of the order that the motion seeks to enforce;

(2) state the relief sought in the motion;

(3) state whether the motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(4) order the other party to appear personally or through counsel at a specific place (the court's address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving party has violated the order; and

(5) state that no written response to the motion is required but is permitted if filed within 14 days of service of the order, unless the court sets a different time, and that any written response must follow the requirements of Rule 7.

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the

nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

(1) the motion requests an earlier date; and

(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

(e) Opposition. A written opposition is not required, but if filed, must be filed within 14 days of service of the order, unless the court sets a different time, and must follow the requirements of Rule 7.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply within 7 days of the filing of the opposition to the motion, unless the court sets a different time. Any reply must follow the requirements of Rule 7.

(g) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the hearing to preliminarily address any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(h) Limitations. This rule does not apply to an order that is issued by the court on its own initiative. This rule does not apply in criminal cases or motions filed under Rule 37. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or to limit the

authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

(i) Orders to show cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in Utah law.

Rule 7B. Motion to enforce order and for sanctions in domestic law matters.

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, a party must file an ex parte motion to enforce order and for sanctions (if requested), pursuant to this rule and Rule 7. The motion must be filed in the same case in which that order was entered. The timeframes set forth in this rule, rather than those set forth in Rule 7, govern motions to enforce orders and for sanctions. If the motion is to be heard by a commissioner, the motion must also follow the procedures of Rule 101. For purpose of this rule, an order includes a decree.

(b) Affidavit. The motion must state the title and date of entry of the order that the moving party seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting affidavit that is based on personal knowledge and shows that the affiant is competent to testify on the matters set forth. The verified motion or affidavit must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

(c) Proposed order. The motion must be accompanied by a request to submit for decision and a proposed order to attend hearing, which must:

(1) state the title and date of entry of the order that the motion seeks to enforce;

(2) state the relief sought in the motion;

(3) state whether the motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(4) order the other party to appear personally or through counsel at a specific place (the court's address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving party has violated the order; and

(5) state that no written response to the motion is required, but is permitted if filed at least 14 days before the hearing, unless the court sets a different time, and that

any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

(1) the motion requests an earlier date; and

(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

(e) Opposition. A written opposition is not required, but if filed, must be filed at least 14 days before the hearing, unless the court sets a different time, and must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply at least 7 days before the hearing, unless the court sets a different time. Any reply must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(g) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the hearing to preliminarily address

any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(h) Counter Motions. A responding party may request affirmative relief only by filing a counter motion, to be heard at the same hearing. A counter motion need not be limited to the subject matter of the original motion. All of the provisions of this rule apply to counter motions except that a counter motion must be filed and served with the opposition. Any opposition to the counter motion must be filed and served no later than the reply to the motion. Any reply to the opposition to the counter motion must be filed and served at least 3 business days before the hearing in a manner that will cause the reply to be actually received by the party responding to the counter motion (i.e. hand-delivery, fax or other electronic delivery as allowed by rule or agreed by the parties). The party who filed the counter motion bears the burden of proof on all claims made in the counter motion. A separate proposed order is required only for counter motions to enforce a court order or to obtain a sanctions order for violation of an order, in which case the proposed order for the counter motion must:

(1) state the title and date of entry of the order that the counter motion seeks to enforce;

(2) state the relief sought in the counter motion;

(3) state whether the counter motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(4) order the other party to appear personally or through counsel at the scheduled hearing to explain whether that party has violated the order; and

(5) state that no written response to the countermotion is required, but that a written response is permitted if filed at least 7 days before the hearing, unless the court sets a different time, and that any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(i) Limitations. This rule does not apply to an order that is issued by the court on its own initiative. This rule applies only to domestic relations actions, including divorce; temporary separation; separate maintenance; parentage; custody; child support; adoptions; cohabitant abuse protective orders; child protective orders; civil stalking injunctions; grandparent visitation; and modification actions. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or to limit the authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

(j) Orders to show cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in Utah law.