

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

May 7, 2021 – 9:00 a.m. to 5:00 p.m.

Webex

9:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Pullan
9:05	4-403. Electronic signature and signature stamp use	Action	Tab 2	Nathanael Player
9:15	4-206. Exhibits	Action	Tab 3	Judge Farr Chris Palmer Loni Page
9:40	4-401.02. Possession and use of portable electronic devices	Action	Tab 4	Dr. Jennifer Yim
9:55	3-419. Office of Fairness and Accountability (NEW)	Action	Tab 5	Jon Puente
10:15	<u>Rules back from Public Comment:</u> <ul style="list-style-type: none"> • 1-204. Executive Committees • 2-103. Open and Closed Meetings 	Action	Tab 6	Keisa Williams
10:20	1-205. Standing and ad hoc committees	Action	Tab 7	Keisa Williams
10:30	4-402.02. Records classification	Action	Tab 8	Brent Johnson Keisa Williams
10:45	4-412. Court seals (NEW)	Action	Tab 9	Brent Johnson Keisa Williams
11:00	Update: URCP Rule 5 and CJA amendments re email notifications and “undeliverable” emails	Discussion	Tab 10	Keisa Williams Paul Barron
12:00	Adjourn			

2021 Meetings:

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

April 2, 2021

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

Webex video conferencing
April 2, 2021: 12 pm -2 pm

DRAFT

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge Derek Pullan, <i>Chair</i>	•		Paul Barron
Judge Brian Cannell	•		Wayne Kidd
Judge Samuel Chiara	•		Tiffany Pew
Judge David Connors	•		Bart Olsen
Judge Michelle Heward	•		STAFF:
Mr. Rob Rice	•		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 March 5, 2021 meeting. With the correction of a few typos, Judge Connors moved to approve the minutes as drafted. Judge Heward seconded the motion and it passed unanimously.

(2) Rules back from public comment:

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

Ms. Williams: There were no formal public comments, but Judge Orme made a few minor recommendations. His proposed amendments have been incorporated.

Judge Connors: Judge Orme's recommendation to add "other" in paragraph (1) doesn't make sense in context. If I report an allegation to my judicial assistants, does that begin this process? I don't think so. If a judge violates the Code of Judicial Conduct and his clerk tells another clerk about it, does that initiate some kind of response or action? An alternative is to say, "any other court employee designated to receive or review such allegations."

Judge Pullan: Our goal is to create an organization in which there are multiple places to report problems.

Mr. Rice: In a more typical grievance procedure in an employee handbook, that clause would read, "any other management or supervisory level employee," or something to that effect. In this context, that doesn't feel like the right fix. There are so many supervisory and management employees in the Judiciary. Hopefully, supervisors are trained to report those grievances to Human Resources, but judicial conduct issues are more complex than traditional HR issues. Judge Connors has a valid point. My suggestion is to create a way to draw a smaller circle around the kind of employees we're talking about.

The Committee discussed reporting levels and employee training regarding alleged judicial conduct violations.

Judge Pullan: I don't think the presiding officer of the Council should be the only person to whom these submissions can be made. I recommend separating the reporting structure into two sections.

Mr. Rice: I agree. The first section should make it clear to line employees that they can report to anyone, and the second section should outline how the allegation gets to the Chief Justice once a report has been received at a lower level. The anti-discrimination and harassment policy is the model for the first section, stating that employees can report to anyone with whom they feel comfortable. The Human Resources department should be in the equation somewhere.

After further discussion, the Committee asked Ms. Williams to incorporate the two-step reporting structure from the HR policies into the rule and circulate it to members via email for approval.

Judge Heward moved to send rule 7-302, as amended and subject to future changes by Ms. Williams, to the Judicial Council with a recommendation that it be adopted as final. Judge Connors seconded and the motion passed unanimously.

(3) 3-415. Auditing:

Mr. Kidd: The purpose of the revisions is to clarify elements of the audit process, including the types of audits, and ensuring transparency. Substantial changes to the rule include the following:

- All boards of judges now have an opportunity to make recommendations for audit plans. Previously, only the board of justice court judges provided recommendations
- Clarifies that auditors have full, unrestricted access to all records and information
- Articulates clear definitions of fiscal and performance audits
- Clarifies that an audit may contain elements of both fiscal and performance audits
- Clarifies which individuals are involved at critical points and to whom audit reports are sent

Judge Pullan: In line 43, it says "objectivity shall be employed by the auditors at all times." Is that something in addition to the earlier statement that auditors will follow "generally accepted audit principles"? Isn't objectivity a requirement of those principles? I don't want to create the perception that there is some standard independent of generally accepted audit principles.

Mr. Kidd: Yes, objectivity is included in generally accepted audit principles. We can take that out.

Judge Pullan: Line 113 is referring to the written responses and comments authorized in lines 100 and 107, but it isn't clear. I recommend changing lines 113-114 to, "Written responses or comments to reports presented under paragraph (6)(A) shall be provided to the audit director within 30 days."

The Committee discussed whether to include a consequence for not meeting the 30-day deadline, but determined that the language should be flexible enough to allow for case-by-case decisions by the audit director.

Judge Pullan: Final reports are sent to the Management Committee, but I'm wondering if performance audits shouldn't also be sent to Policy and Planning because they deal with achieving policy goals and objectives, and financial audits to the Budget and Fiscal Management Committee for similar reasons. On the other hand, is the Management Committee acting as a screening mechanism? For example, if the Management Committee determines certain policy or financial issues need to change, then they make any necessary assignments?

Mr. Kidd: Yes, the Management Committee does make assignments as necessary, but the Audit Department should be making recommendations about copying certain boards or committees in the final reports.

Judge Connors moved to send rule 3-415 to the Judicial Council, as amended, with a recommendation that it be approved for public comment. Judge Chiara seconded and the motion carried unanimously.

(4) 7-302. Court reports prepared for delinquency cases:

Ms. Pew: The proposed amendments originated with the Juvenile Probation Policy Committee. The purpose is to align the rule with statutory changes, requirements outlined in the new juvenile disposition guide, and evidence-based practices related to objectively collecting and reporting information to the court.

The requirement that probation officers include an itemized list of losses suffered by the victim in (3)(A)(iv) has been eliminated in order to align with Utah Code section 78A-6-117, which states that a prosecutor or victim shall submit a request for restitution to the court at the time of disposition. The Board of Juvenile Court Judges feels that the role of probation officers and the role of prosecutors are very clear when it comes to restitution. The onus is on the prosecutors.

Paragraph (3)(B) has been removed to align with current evidence-based practices and research. Our officers should only include information in the court report that can be collected objectively through the administration of a validated risk assessment, collateral contacts, and formal interviewing techniques. The assessment under (3)(B) is subjective and could vary by probation officer. It's important to remove subjectivity and potential bias.

The amendments in (3)(E) update the rule to align with juvenile disposition guidelines that went into effect in December 2020. The new guidelines no longer include a sentencing matrix and now reference factors that inform disposition, which replaced "aggravating and mitigating factors."

Judge Heward: Who will gather the information for the victim impact statement? In the past, it's been done differently in districts across the state. Traditionally, in second district the county attorney's office gathers the information, but I know in other jurisdictions the probation officer has that primary responsibility. Has this met resistance from other areas of the state? Is the Board now taking the position that the county attorney's office must gather the information?

Ms. Pew: My understanding from the discussions with the Board is, yes, that should be the role of the county attorney. The probation department will continue to mail and e-file the victim impact statements in CARE, so they will still play a role in collecting that information, but when it comes to following up with the victim and getting receipts, et cetera, that would fall on the prosecutor.

Judge Heward: Will probation officers still be involved in non-judicial cases?

Ms. Pew: This rule only applies to delinquency cases in Juvenile Court, so the process for determining restitution for non-judicial agreements will remain the same.

After further discussion, Judge Heward moved to send rule 7-302, as amended, to the Judicial Council for approval for public comment. Mr. Rice seconded and the motion passed unanimously.

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

10-1-602. Orders to Show Cause:

Ms. Williams: Ms. Sylvester brought this to my attention about a week ago. The changes to rule 7 and the two new rules of civil procedure, rules 7A and 7B, go into effect on May 1, 2021. Ms. Sylvester recommends that local CJA rules 10-1-501 and 10-1-602 be repealed because they conflict with the new rules. We reached out to the 5th and 6th district benches to see if they had any thoughts or objections. Judge Bagley said the 6th district bench prefers

its local rule, but understand that it conflicts with the civil rules so they are not objecting to a repeal. I emailed Judge Westfall's concerns to the Committee separately. Per his comments, the 5th district bench is objecting to a repeal and would like to keep their local rule. My concern is that the Rules of Civil Procedure supersede these rules. I think Judge Westfall makes valid points about delay and workload, especially considering that they don't have a commissioner. I made a few edits to try and address some of his concerns, while remaining in compliance with the new rules, but I'm not sure I've succeeded. I don't think they can get around the 28-day service timeframe. Mr. Player also makes good points about forms. I don't think we want different forms for each court location. I also think the caution language and bilingual notice requirements are extremely important.

Judge Pullan: If these local rules are now in conflict with rule 7, they should be repealed. To Mr. Player's point, the purpose of the Rules of Civil Procedure is to create a uniform process of litigation statewide. A repeal might generate an initiative to adopt new local rules that are more consistent with the rules of procedure. I would prefer that process to trying to make amendments now. I propose that the committee recommend repeal, but encourage the 5th and 6th district benches to meet with the Rules of Civil Procedure committee to see if that body is willing to make adjustments, or to present new local CJA rules to this body that supplement the rules of procedure or are drafted in a way that implements rules of procedure efficiently, given local conditions.

Judge Connors: I agree. We can't maintain a rule that is not compliant or consistent with the rules of civil procedure.

Judge Chiara: I agree that the rules should be uniform. It would be inconceivable to file a summary judgment, for example, only to discover that the district had their own local rule that trumped rule 56. When I started practicing law, I had no idea how to file an order to show cause and there wasn't a rule anywhere that told me how to do it. The practice varied by district. After many years, we will finally have a uniform rule.

Mr. Rice: I agree. I don't think most practitioners are even aware of these local rules.

After further discussion, the committee asked Ms. Williams to notify Judge Bagley and Judge Westfall of the committee's decision.

Mr. Rice moved to recommend to the Judicial Council that rules 10-1-501 and 10-1-602 be repealed with an expedited May 1, 2021 effective date to coincide with the effective date of the new rules of civil procedure. Judge Connors seconded and the motion passed unanimously.

(6) ADJOURN:

With no further items for discussion, the meeting adjourned at 1:25 p.m. without a motion. The next meeting will be on May 7, 2021 at 9 AM via Webex video conferencing.

TAB 2

CJA 4-403. Electronic signature and signature stamp use

Notes: New [Utah Rules of Civil Procedure 7A and 7B](#), which will be effective May 1, 2021, have eliminated the order to show cause process. Instead, there is now a process under a "motion to enforce." Similar to the OSC process, a moving party files an ex parte motion and the court issues an order. Under new URCP 7A(c)(4) and new URCP 7B(c)(4) the resulting order is an order to "appear personally or through counsel" instead of an "order to show cause." The Forms Committee has approved plain language forms consistent with this process, titling the model order "Order to Attend Hearing." The Clerks of Court have expressed concern that they do not have authority to sign an order to attend hearing on behalf of a judge because CJA 4-403(1) mentions orders to show cause, but does not list orders to attend hearing. The proposed changes will allow clerks and judicial assistants to process motions to enforce process and still remain within the scope of their delegated authority. Without this rule change clerks of court will either be acting beyond the scope of CJA 4-403 or will need to seek a judge or commissioner's signature on each order to attend hearing.

Policy and Planning - Rule Amendment Request Form

The respondent's email (**nathanaelp@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

04 / 21 / 2021

Name of Requester *

Nathanael Player

Requester Phone Number *

8012387921

Name of Requester's Supervisor *

Cathy Dupont

Location of the Rule *

Code of Judicial Administration ▼

CJA Rule Number or HR/Accounting Section Name *

4-403

Brief Description of Rule Proposal *

Amend CJA 4-403(1)(E) to say "orders to show cause and orders to appear or attend under URCP 7A(c)(4) and URCP 7B(c)(4)"

Reason Amendment is Needed *

New Utah Rules of Civil Procedure 7A and 7B, which will be effective May 1, 2021, have eliminated the order to show cause process. Instead, there is now a process under a "motion to enforce." Similar to the OSC process, a moving party files an ex parte motion and the court issues an order. Under new URCP 7A(c)(4) and new URCP 7B(c)(4) the resulting order is an order to "appear personally or through counsel" instead of an "order to show cause." The Forms Committee has approved plain language forms consistent with this process, titling the model order "Order to Attend Hearing." The Clerks of Court have expressed concern that they do not have authority to sign an order to attend hearing on behalf of a judge because CJA 4-403(1) mentions orders to show cause, but does not list orders to attend hearing. The proposed changes will allow clerks and judicial assistants to process motions to enforce process and still remain within the scope of their delegated authority. Without this rule change clerks of court will either be acting beyond the scope of CJA 4-403 or will need to seek a judge or commissioner's signature on each order to attend hearing.

Is the proposed amendment urgent? *

☒ Yes

☐ No

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

May 1, 2021 due to the effective date for new URCP 7A and 7B.

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
- ☐ 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

- ☐ 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
- ☐ 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. *

Clerks of court, judicial assistants, judges, commissioners, and any litigant who needs to enforce an order.

.....

This form was created inside of Utah State Courts.

Google Forms

Rule 4-403. Electronic signature and signature stamp use**Intent:**

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

Applicability:

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

Statement of the Rule:

- (1) A clerk may, with the prior approval of the judge or commissioner, use an electronic signature or signature stamp in lieu of obtaining the judge's or commissioner's signature on the following:
 - (1)(A) bail bonds from approved bondsmen;
 - (1)(B) bench warrants;
 - (1)(C) civil orders for dismissal when submitted by the plaintiff in uncontested cases or when stipulated by both parties in contested cases;
 - (1)(D) civil orders for dismissal pursuant to Rule 4-103, URCP 3 and URCP 4(b);
 - (1)(E) orders to show cause and orders to appear/attend under URCP 7A(c)(4) and URCP 7B(c)(4);
 - (1)(F) orders to take into custody;
 - (1)(G) summons;
 - (1)(H) supplemental procedure orders;
 - (1)(I) orders setting dates for hearing and for notice;
 - (1)(J) orders on motions requesting the Department of Workforce Services (DWS) to release information concerning a debtor, where neither DWS nor the debtor opposes the motion;
 - (1)(K) orders for transportation of a person in custody to a court hearing, including writs of habeas corpus ad prosequendum and testificandum; and
 - (1)(L) orders appointing a court visitor.
- (2) When a clerk is authorized to use a judge's or commissioner's electronic signature or signature stamp as provided in paragraph (1), the clerk shall sign his or her name on the document directly beneath the electronic signature or stamped imprint of the judge's or commissioner's signature.
- (3) In a case where a domestic relations injunction must be issued under URCP 109, the electronic signature of the judge assigned to the case may be automatically attached to the domestic relations injunction form approved by the Judicial Council, without the need for specific direction from the assigned judge and without the need for a clerk's signature accompanying the judge's signature.

38 (4) All other documents requiring the judge's or commissioner's signature shall be personally
39 signed by the judge or commissioner, unless the judge or commissioner, on a document
40 by document basis, authorizes the clerk to use the judge's or commissioner's electronic
41 signature or signature stamp in lieu of the judge's or commissioner's signature. On such
42 documents, the clerk shall indicate in writing that the electronic signature or signature
43 stamp was used at the direction of the judge or commissioner and shall sign his or her
44 name directly beneath the electronic signature or stamped imprint of the judge's or
45 commissioner's signature.

46 Effective ~~January~~ May/November 1, 20__~~20~~

TAB 3

CJA 4-206. Exhibits

NOTES:

On August 27, 2019, the State Auditor released Performance Audit 19-03 “An Audit of Evidence Storage and Management Among Selected Utah District and Juvenile Courts.” The audit identified multiple issues requiring immediate attention by the Court. The focus of the audit centered around compliance with Code of Judicial Administration rule 4-206, addressing proper procedure and management in securing of exhibits and evidence. Specifically, the audit addressed property evidence, including drugs, weapons, paraphernalia, large-sized items, dangerous pieces of evidence typically the subject of chain of custody protocol.

The exhibit audit task force received feedback from all boards of judges and the clerks of court and made amendments to address concerns expressed. However, the Board of Justice Court Judges continues to have reservations about the applicability of the rule to courts not of record. Judge Farr will be attending on behalf of the BJCJ to explain the board’s position. The amendments highlighted in yellow are the most recent changes following Policy and Planning’s February 2021 review of the rule draft.

Rule 4-206. Exhibits.**Intent:**

To establish a uniform procedure for the receipt, maintenance and release of exhibits.

Applicability:

This rule shall apply to all trials court proceedings in courts of record and not of record, except small claims court.

Statement of the Rule:**(1) Marking exhibits**

(1)(A) **Marking Exhibits.** Prior to trial, or at a time specified by the judge, each party must mark all exhibits it intends to introduce by utilizing exhibit labels in the format prescribed by the clerk of court of the judicial district in which the trial is located. Labels or tags must include, at a minimum, a case number, exhibit number/letter, and an appropriate party designation. With approval of the court, a photograph may be offered by the submitting party as a representation of the original exhibit. All exhibits offered as evidence shall be marked with a label or tag, which shall contain, at a minimum, the exhibit number or alpha identification, the case number, the date received, and the initials of the clerk who received the exhibit.

(1)(B) **Digital Exhibits.** Digital exhibits must be marked as provided in paragraph (1)(A) and submitted to the court as prescribed by the clerk of court of the judicial district in which the trial is located. Exhibits should not be eFiled. The clerk shall designate the source of the exhibit by the letter "P" if it is received from plaintiff and "D" if it is received from defendant. In cases with multiple parties, the label shall further identify the parties, e.g. 1st D is the first named defendant in the pleadings, 3rd D is the third party defendant.

(1)(C) The clerk shall secure the label on the item and shall affix more than one identical label when necessary.

(1)(D) The court may order exhibits to be marked in advance of the date and time of trial or other hearing.

(1)(C) **Courts not of record.** Courts not of record may exempt pro se parties from the requirements outlined in paragraphs (1)(A) and (1)(B) and prescribe an alternative process for marking exhibits.

(2) Exhibit custody during trial and tracking.

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit. Such exhibits include, but are not limited to: biohazards, controlled substances, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media, and documents or physical exhibits of unusual bulk or weight. The clerk of court or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party. The exhibit custody tracking record means the CORIS computer system or a form approved by the Administrative Office of the Courts. If an approved form is used as the exhibit custody tracking record, it shall be placed in the case file.

(2)(B) **Custody of the Court.** Physical exhibits received during trial, other than those in paragraph (2)(A), must be placed in the custody of the clerk of court or designee. Digital exhibits received as evidence by the court during the trial shall be stored electronically in accordance with paragraph (2)(C). The clerk of court or designee

must list all exhibits in the exhibit list, and the list shall be made a part of the court record. An exhibit list may be the court's designated case management system or a form approved by the Judicial Council. Each person with custody of an exhibit shall identify herself or himself in the exhibit custody tracking record and record changes in the status of the exhibit contemporaneous with the event.

~~(2)(C) **Secured Storage.** Prior to daily adjournment, the clerk, under the direction of the court, shall compare the exhibit custody tracking record with the exhibits in the custody of the clerk. The clerk shall keep the exhibits received at trial in a container. The container shall be numbered and shall identify the case name and number.~~

(2)(C)(i) Upon daily adjournment, the clerk of court or designee must compare the exhibit list with the exhibits received that day. Digital exhibits received under paragraph (2)(B) shall be stored electronically in a manner meeting the requirements outlined in paragraph (3)(A)(ii). Physical exhibits received under paragraph (2)(B) must be stored in an envelope or container, marked with the case number, and stored in a secured storage location that meets the requirements outlined in paragraph (3)(A)(ii).

(2)(C)(ii) Exhibits may be stored in a temporary secured location for no more than 72 hours, provided the temporary location is sufficient to prevent access by unauthorized persons, and the location is secured with a key lock, combination lock, or electronic lock. Access to the temporary storage location shall be limited to the clerk of court, judge, or a designee.

~~(2)(D) Each court location shall provide a locked facility for storing exhibits. The Clerk of the Court shall appoint an exhibit manager with responsibility for the security, maintenance and disposition of exhibits. Access to the exhibit storage area by anyone other than the exhibit manager and the clerk is prohibited without a court order.~~

~~(2)(E) Unless otherwise ordered by the court, at the conclusion of the trial or proceeding, the clerk shall release to the party offering them all exhibits not suitable for filing and transmission to the appellate court as part of a record on appeal. Such exhibits include, but are not be limited to: narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit money, and exhibits of unusual bulk or weight. The clerk shall transfer the remaining exhibits to the exhibit manager. The exhibit manager shall record receipt and location of the exhibits.~~

~~(2)(F) The exhibit manager shall record the date of release of exhibits and to whom released, if applicable.~~

(3) Exhibit custody prior to disposition ~~Withdrawal of exhibits.~~

(3)(A) **Pending Disposition.** Exhibits in the court's custody pursuant to paragraph (2)(B) may not be taken from the custody of the clerk of court or designee until final disposition of the case, except upon order of the court and execution of a receipt that identifies the material, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. If the time for filing an appeal or requesting a rehearing or new trial has not expired, exhibits may be withdrawn only upon written order of the court.

(3)(A)(i) **Exhibit Manager.** The clerk of court shall appoint an exhibit manager with responsibility for the security, maintenance, documentation of the chain of custody, and disposition of exhibits. The clerk of court may also appoint a person to act as exhibit manager during periods when the primary exhibit manager is absent. Unaccompanied or unauthorized access to secured storage locations by anyone other than the exhibit manager, acting exhibit manager, or the clerk of court is prohibited without a court order.

(3)(A)(ii) Secured Storage Location. Each court must provide physical and electronic secured storage locations within their facility for storing exhibits retained by the court under subsection (2)(B), and shall maintain a current inventory list of all exhibits in the court's custody. The physical secured storage location must be sufficient to prevent access from unauthorized persons, secured with a key lock, combination lock, or electronic lock, and protected from theft or damage. The electronic secured storage location should be sufficient to prevent access from unauthorized persons. Prior to use, physical and electronic secured storage locations must be certified by the Court Security Director. Requests for certification must be made in writing and shall fully describe the secured storage location, local access procedures, and security controls. Any changes to the location, access procedures, or security controls require recertification by the Court Security Director.

(3)(B) Exhibit custody post disposition. Upon final disposition of the case and after the time for appeal has expired or all appeals have been resolved, exhibits in the court's custody shall be disposed of or returned to the offering parties pursuant to paragraph (5)(A). The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. ~~If the time for filing appeals or requesting a rehearing or new trial has expired, exhibits may be withdrawn by filing a Notice of Intent to Withdraw Exhibits.~~

(3)(C) Exhibits in the custody of the parties. Unless otherwise ordered by the court, exhibits identified in paragraph (2)(A) shall remain in the custody of the parties until they are eligible for disposal pursuant to paragraph (5). Parties are responsible for preserving exhibits in the same condition as when they were first admitted into evidence. ~~The clerk or exhibit manager shall record withdrawal of the exhibits.~~

(3)(D) Access to exhibits by parties. Parties may file a motion requesting access to an exhibit in the custody of the court or another party. Upon order of the court, the clerk of court, exhibit manager or designee, or party with custody of the exhibits shall promptly make available for examination exhibits, or original or true copies of the exhibits.

(4) Appeals. Exhibits and exhibit lists shall be provided upon appeal in accordance with the Utah Rules of Appellate Procedure. ~~Disposal of exhibits. After three months have expired from final disposition of the case and no appeals have been filed or requests for new trials or rehearing have been made, the clerk shall dispose of the exhibits as follows:~~

~~(4)(A) Property having value shall be returned to its owner or, if unclaimed, shall be given to the sheriff of the county or other law enforcement agency to be sold in accordance with Utah Code Section 24-3-103. The agency receiving the property shall furnish the court with a receipt that may be maintained with the exhibit custody tracking record or noted in the computer record.~~

~~(4)(B) Property having no value shall be destroyed by the clerk of the court who shall furnish the court with a certificate of destruction that may be maintained with the exhibit custody tracking record or noted in the computer record.~~

~~(4)(C) The exhibit manager shall record disposition of the exhibits.~~

(5) Disposal of exhibits. Parties may dispose of, and exhibit managers, clerks of court, or designees shall dispose of any exhibits in their custody 90 days after the time for appeal has expired, or the statute of limitations for post-conviction relief, including the time for appeal from post-conviction relief has expired, whichever is later.

(5)(A) Exhibits in the court's custody shall be disposed of as follows:

(5)(A)(i) Property having no monetary value shall be destroyed by the exhibit manager, clerk of court, or designee. The exhibit manager shall create a certificate of destruction including a description of the exhibit, the case and exhibit numbers, and the date and time of the destruction. The certificate of destruction shall be made a part of the court record.

(5)(A)(ii) Property having monetary value shall be returned to its owner or, if unclaimed, shall be given to the prosecuting agency, sheriff of the county, or other law enforcement agency to be sold in accordance with Utah Code, Title 24, Chapter 3. The receiving agency shall furnish the court with a receipt identifying the receiving agency, the exhibit received, and the date and time the exhibit was received. The receipt shall be made a part of the court record.

Effective May/November 1, 20__

TAB 4

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

NOTES:

JPEC began a pilot project last year to evaluate the performance of justice court judges using recordings of court proceedings. JPEC is requesting that the rule be amended to allow their continued use of recordings to evaluate the performance of justice court judges subject to a basic evaluation.

RULE AMENDMENT REQUEST

Policy and Planning

Policy and Planning is an executive committee of the Judicial Council and is responsible for recommending to the Council new and amended rules for the Code of Judicial Administration and the Human Resource Policies and Procedures Manual.

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 they will be considered by the Policy and Planning Committee. **Once completed, please e-mail this form and the proposed rule changes to Keisa Williams at keisaw@utcourts.gov.**

REQUESTER CONTACT INFORMATION:

Name of Requester:

Jennifer Yim

E-mail:

jyim@utah.gov

Phone Number:

801-538-1652

Date of Request:

04/26/2021

RULE AMENDMENT:

Rule Number:

4-401.02(2)(D)

Location of Rule:

Brief Description of Proposed Amendment:

The current rule allows JPEC to complete its pilot. Yhat pilot is not complete. The requested amendment is to strike the first dependent clause of the current rule to remove the limited purpose of the rule.

Reason Amendment is Needed:

The requested amendment is to lift the rule's restriction to the pilot thereby allowing JPEC to move forward with implementation of its electronic courtroom observation for justice court judges who receive a basic evaluation from JPEC. This language was discussed with Brent Johnson. Policy and Planning may, of course, have other suggestions to accomplish the same goal.

Is this proposal urgent?

☐ No

☐ Yes

If Yes, provide an estimated deadline date and explain why it is urgent:

JPEC hopes the judicial rule may be amended by this fall so as to allow it to begin with its grant process and observations.

List all stakeholders:

Board of Justice Court Judges, cities and counties with judges who qualify for basic evaluation

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
- ☐ 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
- ☐ 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
- ☐ NONE OF THE ABOVE

If the approving entity is not listed above, please list it here:

Requester's Signature:

Jennifer Yim, JPEC

Supervisor's Signature (if requester is not a manager or above):



FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
- ☐ No

Queue Priority Level:

- ☐ Red
- ☐ Yellow
- ☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

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

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

Applicability:

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

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

- (1)(A) "Judge" as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.
- (1)(B) "Portable electronic device" as used in this rule means any device that can record or transmit data, images or sounds, or access the internet, including a pager, laptop/notebook/personal computer, handheld PC, PDA, audio or video recorder, wireless device, cellular telephone, or electronic calendar.
- (1)(C) "Court proceeding" means any trial, hearing or other matter, including proceedings conducted by remote transmission.

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

- (2)(A) A person may possess and use a portable electronic device anywhere in a courthouse, except as limited by this rule or directive of the judge.
- (2)(B) All portable electronic devices are subject to screening or inspection at the time of entry to the courthouse and at any time within the courthouse in accordance with Rule 3-414.
- (2)(C) All portable electronic devices are subject to confiscation if there is reason to believe that a device is or will be used in violation of this rule. Violation of this rule or directive of the judge may be treated as contempt of court.
- (2)(D) ~~For the limited purpose of conducting a pilot project to evaluate the performance of justice court judges using courtroom observation, t~~The Judicial Performance Evaluation Commission may record and transmit video and sound of court proceedings to evaluate the performance of justice court judges subject to a basic evaluation. These recordings and transmissions are not public, pursuant to Utah Code sections 63G-2-201(3) and 78A-12-206.

(3) Restrictions.

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

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

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

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

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

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

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

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

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

Effective November 1, 2020

TAB 5

CJA 3-419 (NEW). Office of Fairness and Accountability

NOTES: Now that Jon Puente is on board, he has had an opportunity to review and edit the new proposed rule outlining the department's responsibilities.

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

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

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

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

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

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

(2) Objectives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effective May/November 1, 20__

TAB 6

Rules back from Public Comment

- CJA 1-204. Executive Committees
- CJA 2-103. Open and Closed Meetings

Notes: The amendments to rule 1-204 allow Policy and Planning, Legislative Liaison, and Budget and Fiscal Management to each determine their own schedule for electing chairs. The amendment to rule 2-103 adds the category of “safeguarded” to the list of reasons that a Council meeting may be closed. The amendment corrects an oversight. The rule wasn’t updated when “safeguarded court records” were added as a classification in CJA rule 4-202.02.

No comments were received on either rule.

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. Chairs must be members of the Council.~~

(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__

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

88 presiding officer shall sign a sworn statement, which is a public record, affirming that the
89 sole purpose for closing the meeting is to discuss the character, competence, or physical
90 or mental health of an individual or the deployment of security personnel, devices, or
91 systems.
92

93 (6) **Limit on actions at a closed meeting.** No contract, appointment, rule or resolution may
94 be approved at a closed meeting. A contract, appointment, rule or resolution approved at an
95 open meeting may be based upon discussions had at a closed meeting.
96

97 (7) **Limit on discussions outside of closed meeting.** No one who attends a closed
98 meeting may disclose information discussed or materials distributed outside of the closed
99 meeting except with
100

101 (7)(A) others who participated in the closed meeting, and
102

103 (7)(B) a member of the Judicial Council.
104

105 (8) **Right of removal.** All or any part of an open meeting may be recorded by any person in
106 attendance, provided the recording does not interfere with the conduct of the meeting. The
107 Council may order the removal of any person who disrupts a meeting.
108

109 (9) **Training.** The administrative office of the courts shall annually train the members of the
110 Council on the requirements of this rule and of Rule 2-104.
111

112 *Effective May/November 1, 20__*

TAB 7

4-202.02. Records classification

Notes: This proposal arose when members of the media were reviewing dockets and questioned whether the names of minor victims should be public in certain circumstances. Under the rule, minor's names are only public in certain case types, including criminal cases. The rule, as drafted, could suggest that including minors' names in a criminal docket, even if they are victims, does not violate the rule. However, I don't believe that was the intent. Use of "minor party" in line 163 indicates that a minors' name should only be public in criminal cases if the minor is a party. The proposed amendment in lines 167-168 clarifies that intent.

After further investigation, the clerks of court determined that the case referenced by members of the media triggering this discussion was not a mistake on the part of the court or an issue with the rule, but rather was the result of an attorney including a minor's name in an e-filed public document in violation of the rule as written. Without reviewing every page of every document e-filed by parties in every case, the clerks would have no way of knowing an error like this had been made. The clerks of court will be discussing corresponding training and guidance on this issue, however, I recommend moving forward with the proposed amendment because it adds much-needed clarity.

1 **Rule 4-202.02. Records Classification.**

2 **Intent:**

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

4 **Applicability:**

5 This rule applies to the judicial branch.

6 **Statement of the Rule:**

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

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

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

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

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

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

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

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

- (4)(A) records in the following actions:
- (4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

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

identification number, maiden name, mother's maiden name, and similar personal identifying information;

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

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

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

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

(4)(O)(iii) felony, misdemeanor, or infraction when the minor is a party;

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

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

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

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

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

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

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

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

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

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

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

(4)(W) victim impact statements;

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

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

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

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

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

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

(5)(B) records that are subject to the attorney client privilege;

- (5)(C) bids or proposals until the deadline for submitting them has closed;
- (5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;
- (5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the court's contemplated policies or contemplated courses of action;
- (5)(F) court security plans;
- (5)(G) investigation and analysis of loss covered by the risk management fund;
- (5)(H) memorandum prepared by staff for a member of any body charged by law with performing a judicial function and used in the decision-making process;
- (5)(I) confidential business records under Utah Code Section 63G-2-309;
- (5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be expected to:
- (5)(J)(i) interfere with an investigation;
 - (5)(J)(ii) interfere with a fair hearing or trial;
 - (5)(J)(iii) disclose the identity of a confidential source; or
 - (5)(J)(iv) concern the security of a court facility;
- (5)(K) record identifying property under consideration for sale or acquisition by the court or its appraised or estimated value unless the information has been disclosed to someone not under a duty of confidentiality to the courts;
- (5)(L) record that would reveal the contents of settlement negotiations other than the final settlement agreement;
- (5)(M) record the disclosure of which would impair governmental procurement or give an unfair advantage to any person;
- (5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation, or parole;
- (5)(O) record the disclosure of which would jeopardize life, safety, or property;
- (5)(P) strategy about collective bargaining or pending litigation;
- (5)(Q) test questions and answers;
- (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- (5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;
- (5)(T) presentence investigation report;
- (5)(U) except for those filed with the court, records maintained and prepared by juvenile probation; and
- (5)(V) other records as ordered by the court under Rule 4-202.04.
- (6) Juvenile Court Social Records.** The following are juvenile court social records:
- (6)(A) correspondence relating to juvenile social records;
 - (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;
 - (6)(C) medical, psychological, psychiatric evaluations;
 - (6)(D) pre-disposition and social summary reports;
 - (6)(E) probation agency and institutional reports or evaluations;

- (6)(F) referral reports;
- (6)(G) report of preliminary inquiries; and
- (6)(H) treatment or service plans.
- (7) Juvenile Court Legal Records.** The following are juvenile court legal records:
- (7)(A) accounting records;
- (7)(B) discovery filed with the court;
- (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;
- (7)(D) name of a party or minor;
- (7)(E) record of a court hearing;
- (7)(F) referral and offense histories
- (7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.
- (8) Safeguarded Court Records.** The following court records are safeguarded:
- (8)(A) upon request, location information, contact information, and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
- (8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;
- (8)(C) location information, contact information, and identity information of prospective jurors on the master jury list or the qualified jury list;
- (8)(D) location information, contact information, and identity information other than name of a prospective juror summoned to attend court;
- (8)(E) the following information about a victim or witness of a crime:
- (8)(E)(i) business and personal address, email address, telephone number, and similar information from which the person can be located or contacted;
- (8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

Effective December 5, 2021

TAB 8

CJA 4-412 (NEW). Court seals.

Notes: Last year, a judge ordered face masks with the seal of the judiciary imprinted on the mask and offered to sell them to court employees at cost. That led to questions about whether the judge should have received permission to use the seal, what the permitted uses of the seal should be, and how permission should be sought and granted. There is a style guide on use of the seal (attached), but it was suggested that perhaps a rule would be helpful. The rule draft is meant to generate a discussion. It is unclear how the seal is being used throughout the judiciary at this time.

Rule 4-412. Court seals.**Intent:**

To establish a seal of the Judicial Council and a seal of the Judiciary, and to govern their use.

Applicability:

This rule shall apply to the Judiciary.

Statement of the rule:**(1) Form.**

(1)(A) The seal of the Judicial Council shall be in a form approved by the Judicial Council.

(1)(B) The seal of the Judiciary shall be in a form approved by the Supreme Court.

(2) Public Information Office. Court seals shall be maintained by the Public Information Office. The Public Information Office shall provide guidance on the uniform and coordinated use of court seals to ensure public trust and confidence in the Judiciary.

(3) Use.

(3)(A) The Judicial Council seal may be affixed to or embedded within communications and training materials that pertain to or represent a committee, project, or program of the Judicial Council.

(3)(B) The Judiciary seal may be affixed to or embedded within communications and training materials that pertain to or represent a project or program of the Judiciary that is not directly connected to the Judicial Council.

(3)(C) The State Court Administrator or Public Information Office may authorize use of a court seal when the mission of the Judiciary is promoted.

Effective May/November 1, 20__



UTAH STATE COURTS

Utah State Courts Style Guide

Created 2008
Updated 2019

TABLE OF CONTENTS

Introduction.....	3
Graphic Elements.....	3-5
Judicial seal, mission statement, typography, court look	
Layout and Design.....	6
Brochures	
Power Point Presentations.....	7
Court Colors.....	7-8
Business Materials.....	8-9
Letterhead, memos, business cards, emails, fax cover sheets	
Videos.....	9
Advertising.....	10
Website.....	10
Closing.....	10

Introduction

Public trust and confidence is a goal courts nationwide continually strive to build and maintain. The Utah State Court's Style Guide aims to contribute to this goal by creating consistency and professionalism in communication.

A vital aspect of building public trust and confidence in the judiciary is the consistent and coordinated use of the court's image and the judicial seal. To ensure uniformity, all AOC employees are encouraged to follow the standards listed in this guide in all public materials.

The guidelines listed here are not meant to be specific to the court's website. The 2008 redesign of the website was done with these guidelines in mind and aims to complement the court look and graphic standards.

Graphic Elements

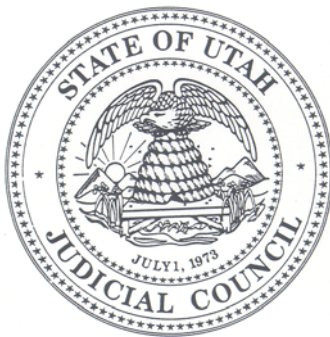
Judicial Seal

All public materials should include the Utah State Court's mission statement and the Judicial seal. Recommended placement is the back cover of the brochure, pamphlet, final frame in a video, or single placement on a cover of a report, such as the State of the Judiciary.

The **Judicial Council** seal should be used when the form of communication represents a project or program of the Judicial Council.

The **Judiciary** seal should be used when the project or program is not directly tied to the Judicial Council.

Use one or the other, but not both seals.



Size Requirements-The seal should be large enough so it is legible, but not so large that it detracts from the rest of the document. A general rule of thumb is approx. 2" x 2" in a smaller document.

The seals are available at <http://www.utcourts.gov/intranet/styleguide>

Mission Statement

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

Typography

The court's typeface subtly communicates an image. When the font is used consistently and effectively, it results in clear communication and identifies the project as a court project.

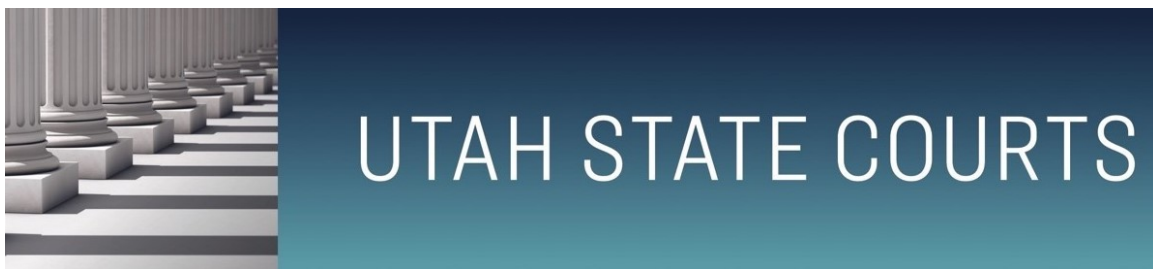
For maximum readability, body copy should always be set in upper and lower case letters. Headlines may be set in all caps. In general, it is easier to read text that is set flush left, versus centered, justified, or flush right. A general rule of thumb is that 12 point type is easier to read. If a document is text heavy, it is easier to read a serif typeface versus a sans serif typeface.

The court's primary typeface is Arial, which is clear and easy to read. When producing public materials, designers should use this typeface when possible. If the typeface is not available, other typefaces that are easy to read include Times New Roman or Palatino.

Court Look

The court look should be used in conference materials, title pages in binder, flyers, booklets, and newsletters to provide a uniformity and consistency in court materials. Color is an option to use when available; however, black and white works as well. To request a specialized heading, contact the court's Public Information Office.

Examples of Different Formats



UTAH STATE COURTS



UTAH STATE COURTS

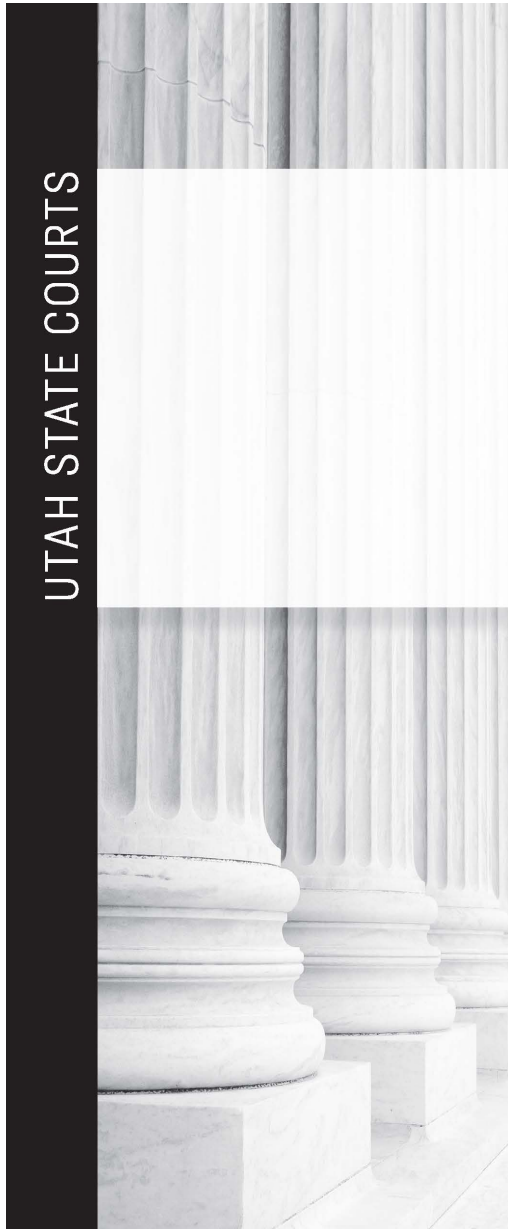


Layout and Design

Brochures

When designing a tri-fold or 5 ½ by 8 ½ brochure, the following design layouts are recommended. This template is available at

<http://www.utcourts.gov/intranet/styleguide>



PowerPoint Presentations

PowerPoint presentations should also incorporate the court's consistent look. This template is available at <http://www.utcourts.gov/intranet/styleguide>

Example of an opening and closing slide



Example of an interior slide



Color

Following is the information to use when identifying the court's design colors to a designer or printer:

Blue: PMS 5425

Teal: PMS 5483

Light Green: PMS 557

To view the PMS colors online, go to www.plstores.com/pms_color_chart
Use black when color is not available.

Paper

When updating a publication from one year to the next, a good way to differentiate the publication—besides changing the year—is to use a different color of paper or a different binder color.

Business Materials

Everyday documents such as letters, envelopes, memos, fax cover sheets, and business cards should present a look consistent with the courts. Templates are available on the Courts Intranet.

Letterhead

To access a template of the letterhead, go to <http://www.utcourts.gov/intranet/styleguide>. Be sure to include the court's website address (www.utcourts.gov) in the footer of the letter underneath the mission statement.

Memorandums

To access a memo template, go to <http://www.utcourts.gov/intranet/styleguide>. Be sure to include the court's website address (www.utcourts.gov) in the footer of the memo underneath the mission statement.

Business Cards

The AOC business card template should have a consistent look. Information on the business card should include the judicial seal, as well as the name and title of the employee, address, phone number(s), fax number, e-mail address and court's website address (www.utcourts.gov).

E-mails

It is recommended that e-mails include a signature that includes the employee's name and title, phone number(s), fax number, and the court's website address.

Example

Geoffrey Fattah
Public Information Office
Utah State Courts
nancyv@utcourts.gov
(801) 578-3994
Fax: (801) 578-3843
www.utcourts.gov

Fax Cover Sheets

Fax cover sheets should reflect the look of the court. A template is available at <http://www.utcourts.gov/intranet/styleguide>.

Court Videos

All videos produced by the Utah State Courts should use professional industry standards and quality that reflects the Utah Courts as a whole. Please consult the Courts Communication Director in your project. To close the video the Judicial Seal and the mission statement should be used. Individual credits are unnecessary when producing a video. Most public videos are posted on the Courts YouTube page: <https://www.youtube.com/user/UtahStateCourts>

Advertising

Any paid advertisements—with the exception of classified ads—should be coordinated through the court's Public Information Office.

Website

To project the court's image effectively it must extend to all forms of communication, including the court's website. The court's webmaster will use the Graphic Standards Manual as a guide. Newly created web pages must be consistent with the website's overall format and look. Staff should not ask the webmaster to deviate from this design.

Closing

By establishing guidelines for consistent communication, the Utah State Courts will produce an identity that becomes recognizable to the public. By creating a consistent identity we can maintain and build public trust and confidence in the Utah State Courts. For more information contact Geoffrey Fattah, Public Information Office, (801) 578-3994 or geofff@utcourts.gov.



The mission of the Utah State Courts is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.
www.utcourts.gov

TAB 9

CJA 1-205. Standing and ad hoc committees

NOTES: The chair of the Standing Committee on Pretrial Release and Supervision recommends the following changes to committee membership:

- At the request of the deputy insurance commissioner (see attached resignation letter), remove the rep from the insurance department.
- Add a chief of police. They are a key stakeholder in the pretrial process and their insight and issues often differ from the sheriffs.
- Add a rep from the Utah Victims' Council. A rep has been attending the meetings for the last year and her insight has been invaluable.
- Add a rep from a local community organization active in the pretrial arena. They are also a critical missing voice, especially for citizens with lived experience. Jon Puente supports this addition and has made recommendations regarding an organization/representative that would be interested and a great fit.

Current membership:

LAST NAME	FIRST NAME	ROLE
Carlos	Wayne	Commercial Surety Agent
Eddington	Hon. Keith	Juvenile Court Judge
Graves	Josh	Prosecutor
Harmond	Hon. George	District Court Judge (Chair)
Jacobsen	Andrea	Representative of County Pretrial Services Agency
Johnson	Brent	Court's General Counsel
Kamalu	Comm. Lorene	Representative of Utah Association of Counties
Kendall	Hon. William	District Court Judge
Kiddle	Lt. Corey	Representative of County Sheriff
Mauro	Rich	Representative of Indigent Defense Commission
McCullagh	Hon. Brendan	Justice Court Judge
Robison	Hon. Jeanne	Justice Court Judge
Ross	Tom	Commission on Criminal and Juvenile Justice
Tangaro	Cara	Defense Attorney
Vacant		State Senator (Sen. Michael McKell?)
Vacant		State Representative (Rep. Karianne Lisonbee?)
Vacant		Utah Insurance Department



Keisa Williams <keisaw@utcourts.gov>

Fwd: Membership on Pretrial Release and Supervision Committee

----- Forwarded message -----

From: **Reed Stringham** <rmstringham@utah.gov>
Date: Thu, Mar 4, 2021 at 4:11 PM
Subject: Membership on Pretrial Release and Supervision Committee
To: Judge George Harmond <gmharmond@utcourts.gov>
Cc: Jon Pike <jpike@utah.gov>

Dear Judge Harmond -

I write to request that the Insurance Department be relieved of its membership on the Judicial Council's Pretrial Release and Supervision Committee.

Although I can see the theory behind including the Department on the Committee, its continued participation now appears unnecessary. Since I became involved as the Department's representative in March, 2018, the Committee's business and discussions have entirely focused on court and jail operations, funding and managing those operations, and the roles that prosecutors and defense counsel play in them. Never has there been a question about the Department's expertise, regulation of the bail bond industry. Although I am able to very generally follow the Committee discussions, that is only because I have legal training. Most matters require a keen knowledge of criminal law that I don't have. If others from the Department were to participate in my place, they would likely be confused about the matters being discussed.

I am not one to shirk responsibilities, and my sense of duty and responsibility grinds on me as I write this. However, based on the nature of the Committee's business, the Department has not been able to add anything of value for the last three years. And I don't see that it will be able to do so in the future. Of course, if that were to change, the Department would be happy to contribute as needed.

If this request should be directed elsewhere, or if I can provide more information, will you please let me know? Thank you.

Reed

--

Reed Stringham
Deputy Insurance Commissioner
State Office Bldg. Rm 3110
Salt Lake City, Utah 84114
801-538-3870

Rule 1-205. Standing and Ad Hoc Committees.**Intent:**

To establish standing and ad hoc committees to assist the Council and provide recommendations on topical issues.

To establish uniform terms and a uniform method for appointing committee members.

To provide for a periodic review of existing committees to assure that their activities are appropriately related to the administration of the judiciary.

Applicability:

This rule shall apply to the internal operation of the Council.

Statement of the Rule:**(1) Standing Committees.**

(1)(A) **Establishment.** The following standing committees of the Council are hereby established:

- (1)(A)(i) Technology Committee;
- (1)(A)(ii) Uniform Fine Schedule Committee;
- (1)(A)(iii) Ethics Advisory Committee;
- (1)(A)(iv) Judicial Branch Education Committee;
- (1)(A)(v) Court Facility Planning Committee;
- (1)(A)(vi) Committee on Children and Family Law;
- (1)(A)(vii) Committee on Judicial Outreach;
- (1)(A)(viii) Committee on Resources for Self-represented Parties;
- (1)(A)(ix) Language Access Committee;
- (1)(A)(x) Guardian ad Litem Oversight Committee;
- (1)(A)(xi) Committee on Model Utah Civil Jury Instructions;
- (1)(A)(xii) Committee on Model Utah Criminal Jury Instructions;
- (1)(A)(xiii) Committee on Pretrial Release and Supervision; and
- (1)(A)(xiv) Committee on Court Forms.

(1)(B) Composition.

(1)(B)(i) The **Technology Committee** shall consist of:

- (1)(B)(i)(a) one judge from each court of record;
- (1)(B)(i)(b) one justice court judge;

- (1)(B)(i)(c) one lawyer recommended by the Board of Bar Commissioners;
- (1)(B)(i)(d) two court executives;
- (1)(B)(i)(e) two court clerks; and
- (1)(B)(i)(f) two staff members from the Administrative Office.
- (1)(B)(ii) The **Uniform Fine Schedule Committee** shall consist of:
- (1)(B)(ii)(a) one district court judge who has experience with a felony docket;
- (1)(B)(ii)(b) three district court judges who have experience with a misdemeanor docket; and
- (1)(B)(ii)(c) four justice court judges.
- (1)(B)(iii) The **Ethics Advisory Committee** shall consist of:
- (1)(B)(iii)(a) one judge from the Court of Appeals;
- (1)(B)(iii)(b) one district court judge from Judicial Districts 2, 3, or 4;
- (1)(B)(iii)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
- (1)(B)(iii)(d) one juvenile court judge;
- (1)(B)(iii)(e) one justice court judge; and
- (1)(B)(iii)(f) an attorney from either the Bar or a college of law.
- (1)(B)(iv) The **Judicial Branch Education Committee** shall consist of:
- (1)(B)(iv)(a) one judge from an appellate court;
- (1)(B)(iv)(b) one district court judge from Judicial Districts 2, 3, or 4;
- (1)(B)(iv)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
- (1)(B)(iv)(d) one juvenile court judge;
- (1)(B)(iv)(e) the education liaison of the Board of Justice Court Judges;
- (1)(B)(iv)(f) one state level administrator;
- (1)(B)(iv)(g) the Human Resource Management Director;
- (1)(B)(iv)(h) one court executive;
- (1)(B)(iv)(i) one juvenile court probation representative;
- (1)(B)(iv)(j) two court clerks from different levels of court and different judicial districts;
- (1)(B)(iv)(k) one data processing manager; and
- (1)(B)(iv)(l) one adult educator from higher education.
- (1)(B)(iv)(m) The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.

(1)(B)(v) The **Court Facility Planning Committee** shall consist of:

- (1)(B)(v)(a) one judge from each level of trial court;
- (1)(B)(v)(b) one appellate court judge;
- (1)(B)(v)(c) the state court administrator;
- (1)(B)(v)(d) a trial court executive;
- (1)(B)(v)(e) two business people with experience in the construction or financing of facilities; and
- (1)(B)(v)(f) the court security director.

(1)(B)(vi) The **Committee on Children and Family Law** shall consist of:

- (1)(B)(vi)(a) one Senator appointed by the President of the Senate;
- (1)(B)(vi)(b) the Director of the Department of Human Services or designee;
- (1)(B)(vi)(c) one attorney of the Executive Committee of the Family Law Section of the Utah State Bar;
- (1)(B)(vi)(d) one attorney with experience in abuse, neglect and dependency cases;
- (1)(B)(vi)(e) one attorney with experience representing parents in abuse, neglect and dependency cases;
- (1)(B)(vi)(f) one representative of a child advocacy organization;
- (1)(B)(vi)(g) the ADR Program Director or designee;
- (1)(B)(vi)(h) one professional in the area of child development;
- (1)(B)(vi)(i) one mental health professional;
- (1)(B)(vi)(j) one representative of the community;
- (1)(B)(vi)(k) the Director of the Office of Guardian ad Litem or designee;
- (1)(B)(vi)(l) one court commissioner;
- (1)(B)(vi)(m) two district court judges; and
- (1)(B)(vi)(n) two juvenile court judges.
- (1)(B)(vi)(o) One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The **Committee on Judicial Outreach** shall consist of:

- (1)(B)(vii)(a) one appellate court judge;
- (1)(B)(vii)(b) one district court judge;
- (1)(B)(vii)(c) one juvenile court judge;

(1)(B)(vii)(d) one justice court judge; one state level administrator;
(1)(B)(vii)(e) a state level judicial education representative;
(1)(B)(vii)(f) one court executive;
(1)(B)(vii)(g) one Utah State Bar representative;
(1)(B)(vii)(h) one communication representative;
(1)(B)(vii)(i) one law library representative;
(1)(B)(vii)(j) one civic community representative; and
(1)(B)(vii)(k) one state education representative.
(1)(B)(vii)(l) Chairs of the Judicial Outreach Committee's subcommittees
shall also serve as members of the committee.

(1)(B)(viii) The **Committee on Resources for Self-represented Parties** shall
consist of:

(1)(B)(viii)(a) two district court judges;
(1)(B)(viii)(b) one juvenile court judge;
(1)(B)(viii)(c) two justice court judges;
(1)(B)(viii)(d) three clerks of court – one from an appellate court, one from an
urban district and one from a rural district;
(1)(B)(viii)(e) one representative from the Self-Help Center;
(1)(B)(viii)(f) one representative from the Utah State Bar;
(1)(B)(viii)(g) two representatives from legal service organizations that serve
low-income clients;
(1)(B)(viii)(h) one private attorney experienced in providing services to self-
represented parties;
(1)(B)(viii)(i) two law school representatives;
(1)(B)(viii)(j) the state law librarian; and
(1)(B)(viii)(k) two community representatives.

(1)(B)(ix) The **Language Access Committee** shall consist of:

(1)(B)(ix)(a) one district court judge;
(1)(B)(ix)(b) one juvenile court judge;
(1)(B)(ix)(c) one justice court judge;
(1)(B)(ix)(d) one trial court executive;
(1)(B)(ix)(e) one court clerk;
(1)(B)(ix)(f) one interpreter coordinator;
(1)(B)(ix)(g) one probation officer;

- (1)(B)(ix)(h) one prosecuting attorney;
- (1)(B)(ix)(i) one defense attorney;
- (1)(B)(ix)(j) two certified interpreters;
- (1)(B)(ix)(k) one approved interpreter;
- (1)(B)(ix)(l) one expert in the field of linguistics; and
- (1)(B)(ix)(m) one American Sign Language representative.

(1)(B)(x) The **Guardian ad Litem Oversight Committee** shall consist of:

- (1)(B)(x)(a) seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.

(1)(B)(xi) The **Committee on Model Utah Civil Jury Instructions** shall consist of:

- (1)(B)(xi)(a) two district court judges;
- (1)(B)(xi)(b) four lawyers who primarily represent plaintiffs;
- (1)(B)(xi)(c) four lawyers who primarily represent defendants; and
- (1)(B)(xi)(d) one person skilled in linguistics or communication.

(1)(B)(xii) The **Committee on Model Utah Criminal Jury Instructions** shall consist of:

- (1)(B)(xii)(a) two district court judges;
- (1)(B)(xii)(b) one justice court judge;
- (1)(B)(xii)(c) four prosecutors;
- (1)(B)(xii)(d) four defense counsel;
- (1)(B)(xii)(e) one professor of criminal law; and
- (1)(B)(xii)(f) one person skilled in linguistics or communication.

(1)(B)(xiii) The **Committee on Pretrial Release and Supervision** shall consist of:

- (1)(B)(xiii)(a) two district court judges;
- (1)(B)(xiii)(b) one juvenile court judge;
- (1)(B)(xiii)(c) two justice court judges;
- (1)(B)(xiii)(d) one prosecutor;
- (1)(B)(xiii)(e) one defense attorney;
- (1)(B)(xiii)(f) one county sheriff;
- (1)(B)(xiii)(g) one representative of counties;
- (1)(B)(xiii)(h) one representative of a county pretrial services agency;
- ~~(1)(B)(xiii)(i) one representative of the Utah Insurance Department;~~

~~(1)(B)(xiii)(j)~~ (1)(B)(xiii)(i) one representative of the Utah Commission on Criminal and Juvenile Justice;

~~(1)(B)(xiii)(k)~~ (1)(B)(xiii)(j) one commercial surety agent;

~~(1)(B)(xiii)(l)~~ (1)(B)(xiii)(k) one state senator;

~~(1)(B)(xiii)(m)~~ (1)(B)(xiii)(l) one state representative;

~~(1)(B)(xiii)(n)~~ (1)(B)(xiii)(m) the Director of the Indigent Defense Commission or designee;

(1)(B)(xiii)(n) one representative of the Utah Victims' Council;

(1)(B)(xiii)(o) one representative of a community organization actively engaged in pretrial justice issues;

~~(1)(B)(xiii)(p)~~ (1)(B)(xiii)(p) one chief of police; and

~~(1)(B)(xiii)(q)~~ (1)(B)(xiii)(q) the court's general counsel or designee.

(1)(B)(xiv) The **Committee on Court Forms** shall consist of:

(1)(B)(xiv)(a) one district court judge;

(1)(B)(xiv)(b) one court commissioner;

(1)(B)(xiv)(c) one juvenile court judge;

(1)(B)(xiv)(d) one justice court judge;

(1)(B)(xiv)(e) one court clerk;

(1)(B)(xiv)(f) one appellate court staff attorney;

(1)(B)(xiv)(g) one representative from the Self-Help Center;

(1)(B)(xiv)(h) the State Law Librarian;

(1)(B)(xiv)(i) the Court Services Director;

(1)(B)(xiv)(j) one representative from a legal service organization that serves low-income clients;

(1)(B)(xiv)(k) one paralegal;

(1)(B)(xiv)(l) one educator from a paralegal program or law school;

(1)(B)(xiv)(m) one person skilled in linguistics or communication; and

(1)(B)(xiv)(n) one representative from the Utah State Bar.

(1)(C) **Standing committee chairs.** The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions

and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

(1)(D) **Committee performance review.** At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

(1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.

(2) **Ad hoc committees.** The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.

(3) **General provisions.**

(3)(A) **Appointment process.**

(3)(A)(i) **Administrator's responsibilities.** The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:

(3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;

(3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;

(3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective

reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and

(3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.

(3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.

(3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.

(3)(C) **Expenses.** Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.

(3)(D) **Secretariat.** The Administrative Office shall serve as secretariat to the Council's committees.

Effective May 1, 2020

TAB 10

Undeliverable emails

NOTES: At the last meeting, Ms. Williams and Mr. Johnson proposed changing “mail” to “send” in several rules in the code of judicial administration that would allow court staff to email notices to parties/patrons in certain circumstances. Policy and Planning made two notes:

- What overlap, if any, is there with the rules of civil procedure?
- How will clerks/employees be made aware of and record emails that are returned undeliverable?

Policy and Planning asked Ms. Williams and Mr. Barron to research those issues and report back to the Committee at a future meeting. The Supreme Court recently posted related amendments to URCP rule 5 for public comment (see attached memo). Public comments were received and the rule is back with the advisory committee for review. Ms. Sylvester is working in conjunction with Ms. Williams and Mr. Barron. Mr. Barron will be providing an update on the technical component, including a cost/time estimate, and seeking guidance from Policy and Planning on how to proceed.

URCP037. Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence. AMEND. The proposed amendments to Rule 37 would provide that hearings on discovery issues be conducted remotely, consistent with the Rule 43(b) safeguards.

URCP0043. Evidence. AMEND. Replaces repealed [Code of Judicial Administration Rule 4-106](#). The proposed amendments would provide appropriate safeguards for the use of remote hearings and bring evidentiary hearings into the rule's purview. The amendments would also adopt an oath to be used for all witness testimony.

URCP045. Subpoena. AMEND. The proposed amendments to Rule 45 would provide that if an appearance is required in response to a subpoena, the subpoena must provide notice of the date, time, and place for the appearance and, if remote transmission is requested, instructions for participation and whom to contact if there are technical difficulties.

Attached to this letter are the comments and rule proposals. I look forward to meeting with the Court this week.

Sincerely,

/s/ Jonathan O. Hafen

Enclosures

COMMENTS TO URCP. FEBRUARY 11, 2021.

Rules back from [comment](#):

RULES OF CIVIL PROCEDURE – COMMENT PERIOD CLOSES FEBRUARY 11, 2021

URCP005. Service and filing of pleadings and other papers. AMEND. The proposed amendments to Rule 5(b)(3) would make email service the default method.

URCP006. Time. AMEND. The proposed amendments to Rule 6(c) acknowledge the timing issues surrounding mail service by expanding the amount of time to act from 3 days to 7.

URCP007. Pleadings allowed; motions, memoranda, hearings, orders. AMEND. The proposed amendments to Rule 7 would provide that motion hearings may be held remotely, consistent with the safeguards in Rule 43(b).

URCP037. Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence. AMEND. The proposed amendments to Rule 37 would provide that hearings on discovery issues be conducted remotely, consistent with the Rule 43(b) safeguards.

URCP043. Evidence. AMEND. Replaces repealed Code of Judicial Administration Rule 4-106. The proposed amendments would provide appropriate safeguards for the use of remote hearings and bring evidentiary hearings into the rule's purview. The amendments would also adopt an oath to be used for all witness testimony.

URCP045. Subpoena. AMEND. The proposed amendments to Rule 45 would provide that if an appearance is required in response to a subpoena, the subpoena must provide notice of the date, time, and place for the appearance and, if remote transmission is requested, instructions for participation and who to contact if there are technical difficulties.

URCP076. Notice of contact information change. AMEND. The proposed amendments to Rule 76 would coordinate with the Rule 5 amendments by clarifying the purposes for which updated contact information is provided to the court.

Rule 5. Service and filing of pleadings and other papers.

(a) When service is required.

(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(A) a judgment;

(B) an order that states it must be served;

(C) a pleading after the original complaint;

(D) a paper relating to disclosure or discovery;

(E) a paper filed with the court other than a motion that may be heard ex parte;
and

(F) a written notice, appearance, demand, offer of judgment, or similar paper.

(2) Serving parties in default. No service is required on a party who is in default except that:

(A) a party in default must be served as ordered by the court;

(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;

(D) a party in default for any reason must be served with notice of entry of judgment under Rule [58A\(g\)](#); and

(E) a party in default for any reason must be served under Rule [4](#) with pleadings asserting new or additional claims for relief against the party.

(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required

before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(1) Whom to serve. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice; or

(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(3) Methods of service. A paper is served under this rule by:

(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account;

(B) for a paper not electronically served under paragraph (b)(3)(A), emailing it to
(i) the most recent email address provided by the person to the court and other
parties under Rule 10(a)(3) or Rule 76, or by other notice, or
(ii) to the email address on file with the Utah State Bar. If email service to the
email address is returned as undeliverable, service must then be made by regular
mail if the person to be served has provided a mailing address. Service is
complete upon the attempted email service for purposes of the sender meeting
any time period;

(C) if the person's email address has not been provided to the court and other parties, or if the person required to serve the document does not have the ability to email, a paper may be served under this rule by:

(i) mailing it to the person's last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76;

~~(D)~~(ii) handing it to the person;

~~(E)~~(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

~~(F)~~(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

~~(G)~~(v) any other method agreed to in writing by the parties.

(4) When service is effective. Service by mail or electronic means is complete upon sending.

(5) Who serves. Unless otherwise directed by the court or these rules:

(A) every paper required to be served must be served by the party preparing it;
and

(B) every paper prepared by the court will be served by the court.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(4) a copy of the order must be served upon the parties.

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B) when service to all parties is made under paragraph (b)(3)(A).

(e) Filing. Except as provided in Rule [7\(j\)](#) and Rule [26\(f\)](#), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section [46-1-16\(7\)](#);

(2) electronically file a scanned image of the affidavit or declaration;

(3) electronically file the affidavit or declaration with a conformed signature; or

(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

Advisory Committee Notes

Note adopted 2015

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on lawyers who have an e-filing account. (Lawyers representing parties in the district court are required to have an account and electronically file documents. Code of Judicial Administration Rule 4-503.) The 2015 amendment excepts from this provision documents electronically filed in juvenile court.

Although electronic filing in the juvenile court presents to the parties the documents that have been filed, the juvenile court e-filing application (CARE), unlike that in the district court, does not deliver an email alerting the party to that fact. The Board of Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure believe this difference renders electronic filing alone insufficient notice of a document having been filed. So in the juvenile court, a party electronically filing a document must serve that document by one of the other permitted methods.