

**UTAH JUDICIAL COUNCIL  
POLICY AND PLANNING COMMITTEE  
MEETING AGENDA**  
June 4, 2021 – 12:00 p.m. to 2:00 p.m.  
**Webex**

12:00	Welcome and approval of minutes	Action	Tab 1	Judge Pullan
12:05	URCP Rule 5 and CJA amendments; programming prioritization for “undeliverable” emails <ul style="list-style-type: none"> <li>• <b>URCP Rule 5.</b> Service and filing of pleadings and other papers</li> <li>• <b>CJA 3-306.05.</b> Interpreter removal, discipline, and formal complaints</li> <li>• <b>CJA 4-103.</b> Civil calendar management</li> <li>• <b>CJA 4-202.04.</b> Request to access or classify a record associated with a case</li> <li>• <b>CJA 4-202.05.</b> Request to access or classify an administrative record</li> <li>• <b>CJA 4-202.06.</b> Response to request to access or classify a court record</li> <li>• <b>CJA 4-202.07.</b> Appeals</li> <li>• <b>CJA 4-510.05.</b> Referral of civil actions</li> <li>• <b>CJA 4-701.</b> Failure to appear</li> </ul>	Action	Tab 2	Keisa Williams Paul Barron Nancy Sylvester
12:30	<b>CJA 4-202.02.</b> Records classification	Action	Tab 3	Keisa Williams
12:40	<b>Grant policies and procedures:</b> <ul style="list-style-type: none"> <li>• <b>CJA 3-411.</b> Grant management</li> <li>• Procedural Workflow for Grant Application Approval in the Utah Courts</li> </ul>	Action	Tab 4	Jordan Murray Karl Sweeney
1:15	<b>CJA 11-201.</b> Senior judges	Action	Tab 5	Cathy Dupont Judge Connors Judge Pullan
1:55	Cancel July meeting?	Discussion		Judge Pullan
2:00	Adjourn			

**2021 Meetings:**

July 2, 2021  
August 6, 2021  
September 3, 2021

October 1, 2021  
November 5, 2021 (all day)  
December 3, 2021

# TAB 1

Minutes

May 7, 2021

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

Webex video conferencing  
May 7, 2021: 12 pm -2 pm

**DRAFT**

**MEMBERS:**

**PRESENT**

**EXCUSED**

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

**GUESTS:**

Paul Barron  
Nathanael Player  
Judge Farr  
Chris Palmer  
Loni Page  
Dr. Jennifer Yim  
Jon Puente  
Jim Peters  
Nancy Sylvester

**STAFF:**

Keisa Williams  
Minhvan Brimhall

**(1) WELCOME AND APPROVAL OF MINUTES:**

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the April 2, 2021 meeting. With one minor correction in the 3<sup>rd</sup> paragraph on page 2 (correcting the rule reference in the motion to advance rule 2-211), Judge Connors moved to approve the minutes as amended. Judge Cannell seconded the motion. The motion passed unanimously.

**(2) 4-403. Electronic signature and signature stamp use:**

Mr. Player: The proposed amendments correspond with changes to Rules 7A and 7B of the rules of civil procedure, effective on May 1, 2021. The new rules replace the order to show cause (OSC) process with 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 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) only mentions orders to show cause. The proposed amendment will allow clerks and judicial assistants to process motions to enforce with an electronic signature or signature stamp.

We usually try to avoid referencing a specific subsection in a rule so that it doesn't become outdated every time a rule changes, but we think it's necessary here in order to make it clear that clerks and JAs have the authority to use stamps to issue the order to attend the hearing, and not necessarily the substantive order after the hearing.

Judge Cannell: I prefer the specificity as opposed to a general reference.

Judge Pullan: Does the new motion to enforce require the filing of an affidavit in support of the motion?

Mr. Player: No, it doesn't necessarily require an affidavit. You can file a verified motion.

Mr. Barron: Do we need a separate document type in the E-filing environment or is the generic "proposed order" sufficient? It's possible to add a separate document type to identify a motion for enforcement distinctly, as opposed to just "motion" or whatever other language is typed on the end of the document title. That question can be taken up with the clerks of court. It doesn't need to be in the rule.

Ms. Page: I can raise that with the clerks of court at our next meeting.

Judge Cannell moved to approve the rule as drafted with a recommendation to the Judicial Council that it be approved on an expedited basis. Judge Heward seconded and the motion carried unanimously.

### **(3) 4-206. Exhibits:**

Judge Pullan: A 2019 performance audit found significant room for improvement in how the courts are handling and storing exhibits. In some parts of the state, we were not complying with our own rule. Mr. Palmer and others have done a remarkable amount of work evaluating where we are throughout the state and then proposing new standards. This rule is the culmination of that effort

Mr. Palmer: We met with the Board of District Court Judges, Board of Justice Court Judges, and Board of Juvenile Court Judges. Judge Farr will address justice court concerns. This an almost complete rewrite of rule 4-206. The State Audit found that a lot of law enforcement evidence requiring a chain of custody was being mishandled. Recently, we added procedures for digital exhibits to accommodate remote proceedings via Webex.

Judge Farr: The board of justice court judges completely understands the issues identified in the audit and the need for this rule. It makes a lot of sense. The board's concern is its applicability to justice courts. Most justice court judges do not physically take evidence at trial. Trials rarely last longer than a day, and because appeals are de novo, exhibits are filed in the district court.

If the parties have evidence, the court views it, but it remains in the custody of the parties. The court never takes it. As a result, there are no storage facilities or locations. The board would feel much more comfortable if the rule noted that justice courts have discretion, or included a statement that, "justice courts don't take evidence." It would be a heavy lift for justice courts to comply with the marking and storage requirements in the rule.

Judge Pullan: Is there anything in this rule that requires justice courts to depart from current practice? The rule says, "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 (2)(C)." In every court, there is a period of time when physical exhibits are received during the trial and are in the possession of the clerk. That could be 20 minutes in justice court. As soon as that time period ends, you jump directly to the disposal section.

Once something is received into evidence, the court to some degree becomes responsible for its integrity. Even though multi-day trials in justice courts are rare, they do happen. In those instances, evidence shouldn't go back to the parties prior to disposition.

Judge Connors: (3)(B) also says exhibits "received by the court" must be held at least until the time for appeal has expired, which would put those exhibits in the clerk's custody for some period of time.

Judge Farr: My concern is the language, "exhibits other than those in paragraph (2)(A) will remain in the custody of the clerk." Paragraph (2)(A) addresses bulky items, biohazards, etc., which we rarely have. The rule seems to suggest that anything other than those bulky items would remain in the custody of the clerk. Justice courts often see small items of drug paraphernalia that wouldn't fit under (2)(A). The language in (2)(B) suggests paraphernalia would be placed in the custody of the clerk. Appeals are another issue identified by the Board. Justice courts don't

retain evidence. It all stays with the parties. If the parties choose to appeal, the parties take whatever evidence they feel is appropriate to the district court.

Judge Heward: To me, drug paraphernalia would fit under (2)(A) and remain in the custody of the party.

Judge Connors: I recommend adding a separate provision to make it clear that exhibits in justice court can or shall be immediately returned to the parties upon conclusion of the trial and preserved by the parties until the time for appeal has expired.

Judge Heward: In parental rights cases, we have been receiving large video and audio files that have been difficult for the clerks to manage. If those are deemed “bulky” items that would fall under (2)(A) and be retained by the parties, we would have the same integrity concerns.

Mr. Palmer: The digital evidence contemplated under (2)(A) was intended to apply to things like computers and body cameras.

Ms. Page: As a practical matter, could the court require large digital files to be submitted on a USB or CD that could be physically stored?

Judge Connors: In the 2<sup>nd</sup> district, at the conclusion of a preliminary hearing, the prosecution usually asks to withdraw their exhibits. At that point, I ask the defense counsel if they have an objection to withdrawing exhibits on the theory that if they're going to file a motion to set aside the bind over, they probably don't want those exhibits removed.

Judge Chiara: That does present an interesting issue. Because the rule applies “to all trials,” it doesn't apply to preliminary hearings (or any evidentiary hearing) and we'd be required to hold chain of custody evidence. The rules of criminal procedure clearly distinguish trials and preliminary hearings. I recommend expanding the applicability of the rule to “evidentiary proceedings.”

Judge Pullan: I like limiting the rule to trials, but building in discretion so that the court could require evidence received during an evidentiary hearing to be maintained in accordance with this rule. I'm not sure that we want to formalize every evidentiary hearing to this degree. That could become a burdensome administrative task.

Judge Heward: In child welfare cases, the disposition on the original petition is called a dispositional hearing. That is the hearing from which a parent can appeal, but we continue to work with that parent for another 12 to 18 months. A termination petition could also be filed, so we have trials that may be appealed from the beginning, and then final orders, which can be appealed but not for another 12 to 18 months down the road.

Judge Pullan: There is an inconsistency in (3)(B). (3)(B) says, “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).” But then (5) says that exhibits may or shall be disposed of “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.” So under (3)(B), we can dispose of exhibits after appeal, but under (5), we keep them longer. I recommend removing the timing language in (3)(B) and simply referencing (5).

After further discussion, the following amendments were made:

- Added to Applicability: “In the discretion of the court, this rule may apply to any proceeding in which exhibits are introduced.”
- Added to (2)(A): “paraphernalia” and ...original digital storage media “such as a hard drive or computer”
- Added to (2)(B): Digital exhibits received as evidence by the court during the trial shall be stored electronically or on digital media “such as a thumb drive and stored in accordance with paragraph (2)(C)”

- Added to (3)(B): “In courts not of record, upon final disposition of the case, all exhibits shall be returned to the parties.”
- (3)(B) was amended in part to read: “...upon final disposition of the case, exhibits in the court’s custody shall be disposed of pursuant to paragraph (5).”

Judge Connors moved to approve the rule as amended with a recommendation to the Judicial Council that it be published for comment. Judge Cannell seconded and the motion passed unanimously.

**(4) 4-401.02. Possession and use of portable electronic devices:**

Dr. Yim: JPEC has engaged in a lengthy process of trying to find ways to conduct a more substantive evaluation of justice court judges with very low caseloads. We hired the Gardner Institute at the University of Utah to do an assessment and they recommended electronic observation. Following the pandemic, Webex became a much more viable option. We have been using Webex to conduct electronic observation of these basic evaluation courts as part of our pilot project and we would like to continue to do so. JPEC is requesting adoption of the proposed language in (2)(D).

Judge Cannell moved to approve the rule as amended with a recommendation to the Judicial Council that it be published for comment. Judge Connors seconded and the motion passed unanimously.

**(5) 3-419. Office of Fairness and Accountability (NEW):**

Mr. Puente: Policy and Planning has reviewed this rule a few times already. I’ve made a few minor amendments.

Judge Connors: In line 93, is “People of Color” a defined term? In line 99-100, it talks about issues related to race, gender, ethnicity, age, disability, sexual orientation, marital status, veteran status. How does all of that fit within the term “People of Color?”

Mr. Puente: When talking about race and ethnicity, or individuals or groups outside of the dominant culture, the vernacular is moving away from the term “minority” and moving toward use of the term “People of Color.” I agree that, technically, veterans and those with a lower socio-economic status for example aren’t minorities. We could use the term “protected class” or “persons from historically marginalized communities.”

One concern to consider is that if a term is too broad, it can dilute what we’re trying to accomplish. The focus is to remove any bias, but someone could argue that we are biased against people with red hair. I recommend limiting the language to groups that have been historically marginalized.

Judge Heward: With that goal in mind, I recommend adding limiting language to (3)(B) as well.

Ms. Williams: Paragraph (4) was added because Mr. Puente will be presenting a memo to the Management Committee recommending the creation of an ad hoc committee, or a standing committee, to assist with developing the strategic plan.

Judge Pullan: In supporting efforts to diversify the bench, I recommend adding “support efforts to diversify the bar and bench” to (2)(C), to clarify that the judiciary will support the pipeline effort.

Judge Chiara: I am concerned with adding the term “anti-racism” to (3)(A) and (3)(B). If you look up “anti-racism” in Merriam Webster, it’s a clear and simple definition and something that it would seem any reasonable person would agree with. But over the last several years, the term “anti-racism” has come to mean different things to different groups and has become a point of contention and even division. For example, Abraham Kennedy’s book, “How to be an anti-racist”, is one view of what “anti-racism” means. That view is distinct from Dr. Martin Luther King Junior’s vision of “anti-racism” and different than Thomas Sowell’s vision of anti-racism. “Anti-racism” is a

contested concept nationally and a mutating word in our culture right now. It could also encompass a political doctrine. "Bias" is a clearly defined word and we all know what it means because it's a legal concept. "Equal protection" and "due process" are also clearly defined because they have been developed in caselaw over a period of 200 years. I recommend using the term "bias" or "racial bias" instead.

The following amendments were made to the rule draft:

- (2)(B): added "support efforts to diversify the bar and bench"
- (3)(A)(iii): added the "Utah" Judicial Institute
- (3)(A)(iii)(b): replaced "anti-racism" with "racial bias"
- (3)(B): replaced "People of Color" with "for persons in historically marginalized communities"

After further discussion, Judge Chiara moved to approve the rule as amended with a recommendation to the Judicial Council that it be published for comment. Judge Connors seconded and the motion passed unanimously.

**(6) Rules back from public comment:**

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

Ms. Williams: No comments were received and the proposed amendments are relatively minor. I do not recommend any additional amendments.

Judge Connors moved to approve the rules as proposed with a recommendation to the Judicial Council that they be approved as final. Judge Cannell seconded and the motion passed unanimously.

**(7) 1-205. Standing and ad hoc committees:**

Ms. Williams: Judge Harmond, chair of the Standing Committee on Pretrial Release and Supervision, recommends the proposed changes to committee membership.

The recommendation to remove the representative from the Utah Insurance Department is based on the request from Reed Stringham included in the packet. A representative from the Victims' Council has been attending committee meetings as a guest over the last year. She provides a perspective that we feel is critical to the committee's work. Mr. Puente supports adding a member from a local community organization supporting diversity, equity, and inclusion efforts. Law enforcement are integral to and interested in these issues. Police agency perspectives are not always perfectly aligned with the sheriffs.

Judge Cannell moved to approve the rule as amended with a recommendation to the Judicial Council that it be published for comment. Judge Heward seconded and the motion passed unanimously.

**(8) 4-202.02. Records Classification:**

Ms. Williams: The clerks of court requested the addition of "when the minor is a party" to line 167. I think it already says that in line 163, but because this has been such a point of confusion for clerks, it may not hurt to reiterate it more clearly in line 167. I also recognize that there is a training component and the clerks and others are working on that side of the issue.

Judge Connors moved to approve the rule as amended with a recommendation to the Judicial Council that it be published for comment. Judge Heward seconded and the motion passed unanimously.

**(9) 4-412. Court seals (NEW):**

Ms. Williams: Mr. Johnson and I are on the fence about whether this rule is necessary. When the pandemic hit, a

judge had masks made that included the court seal and offered to sell them to employees at cost. The judge didn't seek permission or talk to anyone about it beforehand. Following that incident, Mr. Johnson was asked to consider whether we should institute a rule. I think this could easily be remedied with training and/or clear language in the style guide. Mr. Johnson and I don't have a good understanding of how the court seal is being used across the state right now, but this has never been identified as an issue before.

Judge Connors: Have the court seals been trademarked or copyrighted? If so, we would have the authority of federal trademark law in terms of how we regulate the use of our seals. I don't think we need a rule, but I would ask our General Counsel's office whether we should consider trademarking or copywriting court seals.

Ms. Williams will research and report back to the committee on the trademark/copyright question.

Judge Connors moved not to adopt a rule on court seals. Judge Cannell seconded and the motion passed unanimously.

**(10) Update: URCP rule 5 and CJA amendments re email notifications and “undeliverable” emails:**

Ms. Williams: In February, I recommended changing “mail” to “send” in several CJA rules, allowing notices and other documents to be sent via email where appropriate. Policy and Planning asked whether the amendments conflicted with the rules of civil procedure, and how the clerks would monitor and capture undeliverable emails. Recent proposed amendments to URCP rule 5 specifically touch on this issue. The rule 5 amendments went out for public comment, and several comments were received. Ms. Sylvester said the URCP Committee is willing to hold off on taking rule 5 back to the Court for final approval until the mechanics on undeliverable emails can be worked out.

Mr. Barron: IT estimates a cost of about \$75,000 to create and implement group/team emails. Some courts are already using team emails, but we currently store those anywhere in our system. We only store individual clerk email addresses. If individual clerk emails are used, they could be inundated with emails from parties. If we know when rule 5 will likely go into effect, we could plan resources accordingly. Even though we are unlikely to get legislative appropriations for this, it would be prioritized at the highest level because it's a rule change. The question for Policy and Planning and the Judicial Council is how to prioritize this work with other project deadlines.

Ms. Williams: Mr. Barron, Ms. Sylvester, and I will be presenting this question at the next Clerks of Court meeting. We do not need anything from Policy and Planning today. This presentation is strictly informational to keep the committee informed about our progress. We will bring the issue back to the committee, along with the clerks' recommendations, at which point we will be looking for a policy decision on prioritizing the programming project.

I think this is somewhat urgent because we don't know how long the Supreme Court is willing to wait on approving changes to rule 5. Considering the time it takes to get on P&P, JC, and potentially BFMC agendas, and adding in programming time and the IT deployment schedule, we may be pushing into the Fall.

**ADJOURN:**

With no further items for discussion, the meeting adjourned at 12:00 p.m. without a motion. The next meeting will be on June 4, 2021 at 12 PM via Webex video conferencing.



# TAB 2

## CJA rule amendments and undeliverable email programming prioritization

**NOTES:** In March 2021, 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?

The Supreme Court recently posted related amendments to URCP rule 5 for public comment (see attached). The changes in URCP 5 overlap with CJA 4-103 and a reference to rule 5 has been added to that rule. The effected sections of the remaining proposed rules are not subject to URCP 5, but language (rather than a reference) from rule 5 has been incorporated. The primary concern is the practical aspect of monitoring and recording undeliverable emails. Mr. Barron, Ms. Williams, and Ms. Sylvester met with the Clerks of Court. The CoC determined that programming to use “team” emails to receive undeliverable notices would be the best approach. They do not want to use individual JA/clerk emails as it would invite an onslaught of unsolicited communication from parties and would cause issues when employees are out of the office.

Mr. Barron will provide an update on the technical component, including a cost/time estimate, and will seek a recommendation from Policy and Planning on how this work should be prioritized with other IT projects.

**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) A paper is served under this rule by:

(A*i*) 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*ii*) 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.

(B) 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;

~~(F)~~(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) **or** when service to all parties is made under paragraph (b)(3)(A).

**Commented [NS1]:** Certificates of service change proposed. This would mean when all parties are e-filers, not certificate of service is necessary.

**(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.

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

103

**104 Advisory Committee Notes**

105 *Note adopted 2015*

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

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

118

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

To outline the procedures for interpreter removal and discipline.

**Applicability:**

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

**Statement of the Rule:**

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

**(2) Discipline.**

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

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

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

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

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

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

(2)(A)(vi) conduct or omissions resulting in discipline by another jurisdiction;

(2)(A)(vii) failing to appear as scheduled without good cause;

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

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

(2)(B) Discipline may include:

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

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

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

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

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

(2)(B)(vi) reprimand.

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

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

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

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

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

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

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

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

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

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

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



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

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

**(6) Hearing by panel.**

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

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

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

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

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

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

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

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

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

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

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

(9) Documents may be sent by email, mail, or hand-delivery. If an email is returned as undeliverable, notice shall be sent by regular mail or hand-delivery. Service is complete upon the attempted email for purposes of the sender meeting any time period.

*Effective May/November 1, 20\_\_16*

**Rule 4-103. Civil calendar management.****Intent:**

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

To reduce the time between case filing and disposition.

**Applicability:**

This rule shall apply to the District Court.

**Statement of the Rule:**

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

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

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

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

**(5) Notice.** Notice must be provided in accordance with rule 5 of the Utah Rules of Civil Procedure.

Effective May/November 1, 20\_\_19

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

**Intent:**

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

**Applicability:**

This rule applies to court records associated with a case.

**Statement of the Rule:**

**(1) Request to access a record.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 ~~(87)~~(A) **Appellate briefs.**

88  
89 ~~(8)~~(A) If an appellate brief is sealed, the clerk of the court shall seal the brief under Rule  
90 4-205.

91  
92 ~~(8)~~(B) If an appellate brief is classified as private, protected, safeguarded, juvenile court  
93 legal, or juvenile court social, the clerk of the court shall allow access only to persons  
94 authorized by Rule 4-202.03.

95  
96 ~~(8)~~(C) If the court orders information redacted from the brief, the clerk of the court shall  
97 remove the information and allow public access to the edited brief.

98  
99 ~~(87)~~(~~DB~~) If the petitioner serves the order on the director of the State Law Library, the  
100 director shall comply with the order in the same manner as the clerk of the court ~~under~~  
101 ~~paragraph (7)(A).~~

102  
103 ~~(87)~~(~~EG~~) Unless otherwise ordered by the court, the order is binding only on the court,  
104 the parties to the petition, and the state law library. Compliance with the order by any  
105 other person is voluntary.

106  
107 ~~(98)~~ **Governing rules.** A request under this rule is also governed by Rule 4-202.06. A motion or  
108 petition under this rule is not governed by Rule 4-202.06 or Rule 4-202.07.

109  
110 ~~(10)~~ **Delivery method.** Documents may be sent by mail, email, or hand-delivery. If an email is  
111 returned as undeliverable, documents shall be sent by regular mail or hand-delivery. Service is  
112 complete upon the attempted email for purposes of the sender meeting any time period.

113  
114 *Effective date: May*~~/November~~ 1, 20\_\_~~16~~

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

**Intent:**

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

**Applicability:**

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

**Statement of the Rule:**

**(1) Request to access a record.**

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

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

~~(12)(CA)~~ **Non-public records – unauthorized access.** A request to access a private or protected court record, including aggregate records, to which the person is not authorized access shall be presented in writing to the state court administrator. The request shall contain the requester's name, email address, mailing address, daytime telephone number, a description of the record and a statement of facts, authority and argument in support of the request. The person making the request shall provide identification. ~~If the state court administrator allows access, the state court administrator may impose any reasonable conditions to protect the interests favoring closure. The person making the request shall sign an agreement to be bound by the conditions.~~

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

**(3) Reasonable conditions.** If the state court administrator allows access to records under (1)(C), the state court administrator may impose any reasonable conditions to protect the interests favoring closure. The person making the request shall sign an agreement to be bound by the conditions.



~~(2)(C)(i4)~~ **Records access for research purposes.**

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

~~(42)(C)(iiB)~~ If the state court administrator discloses non-public court records for research purposes, the researcher shall sign a written statement acknowledging that violating the agreement may be grounds for criminal prosecution under Utah Code Section 63G-2-801. The agreement may include any reasonable condition to protect the interests favoring closure, including an agreement to:

~~(42)(BG)(ii)(ai)~~ maintain the integrity, confidentiality and security of the records;

~~(42)(BG)(ii)(b)~~ return or destroy records from which a person can be identified as soon as the research has been completed;

~~(42)(BG)(ii)(ei)~~ not disclose the record, except for the purpose of auditing or evaluating the research and the auditor or evaluator agrees not to disclose the record;

~~(42)(BG)(ii)(div)~~ use the record only for the described research;

~~(42)(BG)(ii)(ey)~~ indemnify the courts for any damages awarded as a result of injury caused by the research; and

~~(42)(BG)(ii)(fvi)~~ if the research involves human subjects, comply with state and federal laws regulating research involving human subjects.

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

~~(53)~~ **Request to classify a record.** A request to classify a court record as private or protected shall be presented in writing to the state court administrator. The request shall contain the relief sought and a statement of facts, authority and argument in support of the request. The state court administrator may deny access to the record until the determination ~~is~~ **has been madeentered.**

~~(64)~~ **Considerations.** In deciding whether to allow access to a court record or whether to classify a court record as private or protected, the decision maker may consider any relevant

factor, interest or policy presented by the parties, including but not limited to the interests described in Rule 4-202.

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

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

**(9) Delivery method.** Documents may be sent by email, mail, or hand-delivery. If an email is returned as undeliverable, documents shall be sent by regular mail or hand-delivery. Service is complete upon the attempted email for purposes of the sender meeting any time period.

*Effective May/November 1, 20\_\_*

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

To establish the steps required for responding to a request.

**Applicability:**

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

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

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

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

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

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

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

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

**~~(2)~~**

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

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

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

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

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

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

(24)(A) providing the record;

(24)(B) denying the request; or

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

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

(35)(A) another governmental entity is using the record;

(35)(B) the request is for a large number of records;

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

(35)(D) the court must locate the records;

(35)(E) the court must separate records that the requester may access from records the requester may not access;

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

(35)(G) the court must seek legal advice on whether to allow access.

(46) Denials.

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

~~(47)(B) The response shall be mailed to the requester.~~ If the request is denied, the response shall:

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

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

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

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

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

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

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

~~(8)(A5)~~ **Adoption records.** If the request is to access an adoption record, the person to whom the request is submitted shall respond by providing only the case number.

~~(8)(B6)~~ **Sealed records or records in which name is protected.** If the request is to access a sealed record or a record in which the name of a person is the interest protected by closure, the person to whom the request is submitted shall respond, without indicating whether the record exists, that such records are not accessible.

~~(8)(C7)~~ **Investigative interviews.** If the request is to access a record of a Children's Justice Center investigative interview, the person to whom the request is submitted shall follow the procedures in Section 77-37-4.

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

~~(840)~~ **Delivery method.** ~~DA documents required to be sent by mail~~ may be sent by email, fax mail, or hand-delivery. If an email is returned as undeliverable, documents shall be sent by regular mail or hand-delivery. Service is complete upon the attempted email for purposes of the sender meeting any time period.

132    *Effective May/November 1, 20\_\_*

**Rule 4-202.07. Appeals.****Intent:**

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

**Applicability:**

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

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

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

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

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

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

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

**(4) Reviewing body.**

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

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

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

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

45  
46 **(54) Denials.**  
47

48 **(5)(A)** An appeal to the state court administrator is deemed denied unless a decision on  
49 the appeal is mailed-sent within 5 business days after receiving the date the appeal was  
50 received, or within 15 business days after mailing the date the notice under Rule 4-  
51 202.05(2)(B) was sent.

52  
53 **(5)(B)** An appeal to the Management Committee is deemed denied unless a decision on  
54 the appeal is mailed-sent within 5 business days after the first meeting of the Committee  
55 that is held more than 15 business days after receiving the appeal.  
56

57 **(65) Management Committee.**  
58

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

61  
62 **(6)(B) Notice of meeting.** The state court administrator shall mail-send notice of the  
63 Management Committee meeting to all participants at least 10 business days before the  
64 meeting.  
65

66 **(6)(C) Participant response.** At least 7 business days before the meeting, all  
67 participants shall mail-send to the state court administrator, and to the other participants,  
68 a written statement of facts, authority, and argument in support of or in opposition to the  
69 appeal.  
70

71 **(6)(D) Public meeting – deliberations closed.** ~~The Management Committee may~~  
72 ~~permit any person whose interests are substantially affected by a decision to participate.~~  
73 The deliberations of the Management Committee are closed, but the balance of the  
74 hearing-meeting on the appeal is an open and public meeting of which notice will be  
75 given in accordance with Rule 2-103.  
76

77 **(6)(E) Presentation.** The Management Committee shall allow the participants a  
78 reasonable opportunity to present facts, authority, and argument in support of or in  
79 opposition to the appeal. The order of presentation shall be decided by the Management  
80 Committee. The Management Committee may review the record in a closed meeting.  
81 Discovery is prohibited, but the Management Committee may compel the production of  
82 evidence.  
83

84 **(7) Decisions.** The state court administrator shall mail-send the decision on an appeal to all  
85 participants in writing. The decision shall:  
86

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



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

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

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

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

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

(8) **Time periods.** The time periods in this rule may be extended by mutual agreement.

**(9) Delivery method.** ~~Documents required to may~~ be sent by mail, ~~may be sent by~~ email, ~~fax~~ or hand-delivery. If an email is returned as undeliverable, documents shall be sent by regular mail or hand-delivery. Service is complete upon the attempted email for purposes of the sender meeting any time period.

**(10) Delegation of duties.** The duties of the state court administrator may be delegated.

*Effective May/November 1, 20\_\_*

**Rule 4-510.05. Referral of civil actions.****Intent:**

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

**Applicability:**

This rule applies in the district court.

**Statement of the Rule:****(1) General Provisions.**

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

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

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

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

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

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

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

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

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

(3) **Notice requirements.**

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

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

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

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

(4)(B) The parties may select:

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

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

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

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

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

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

87  
88 (6) **Immunity.** An ADR provider acting as a mediator or arbitrator in cases under the ADR program  
89 shall be immune from liability to the same extent as judges of this state, except for such sanctions  
90 the judge having jurisdiction of the case may impose for a violation of URCADR Rule 104 which  
91 raises a substantial question as to the impartiality of the ADR provider and the conduct of the  
92 ADR proceeding involved.

93  
94 (7) **Testimony.** No ADR provider may be required to testify as to any aspect of an ADR proceeding  
95 except as to any claim of violation of URCADR Rule 104 which raises a substantial question as  
96 to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

97  
98 (8) **Governing rules.** All ADR providers providing services pursuant to the ADR program shall be  
99 subject to this rule and the URCADR.

100  
101 (9) **Location of ADR pProceedings.** Unless otherwise agreed upon by all the parties, all ADR  
102 proceedings shall be held at the office of the ADR provider or such other place designated by the  
103 ADR provider.

104  
105 **(10) Delivery method. Documents may be sent by mail, email, or hand-delivery. If an email is**  
106 **returned as undeliverable, documents shall be sent by regular mail or hand-delivery. Service is**  
107 **complete upon the attempted email for purposes of the sender meeting any time period.**

108  
109 *Effective May/November 1, 20\_\_*

**Rule 4-701. Failure to Appear.****Intent:**

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

**Applicability:**

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

**Statement of the Rule:**

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

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

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

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

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

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

**(5) Notice.** Notice may be sent by email, mail, or hand-delivery. If an email is returned as undeliverable, notice shall be sent by regular mail or hand-delivery. Service is complete upon the attempted email for purposes of the sender meeting any time period.

*Effective May/~~November~~ 12, 20\_\_20*

# TAB 3

## 4-202.02. Records classification

**Notes:** A working group is preparing a new form on petitions to determine competency. The form will have two parts: 1) the petition without confidential information, and 2) a statement in support that includes confidential information. The proposed amendment would ensure the statements in support are classified as private.

Parties, the subject of the record, attorneys, and anyone with a court order (among others) may access private records ([CIA 4-202.03\(3\)](#)).

**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;

- 116 (4)(A)(ii) Section 76-10-532, Removal from the National Instant Check  
117 System database;
- 118 (4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the  
119 records are sealed;
- 120 (4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until  
121 the records are sealed; and
- 122 (4)(A)(v) cases initiated in the district court by filing an abstract of a  
123 juvenile court restitution judgment.
- 124 (4)(B) records in the following actions, except that the case history, judgments,  
125 orders, decrees, letters of appointment, and the record of public hearings  
126 are public records:
- 127 (4)(B)(i) Title 30, Husband and Wife, including qualified domestic  
128 relations orders, except that an action for consortium due  
129 to personal injury under Section 30-2-11 is public;
- 130 (4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;
- 131 (4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability  
132 and their Property;
- 133 (4)(B)(iv) Title 78B, Chapter 7, Protective Orders;
- 134 (4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;
- 135 (4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody  
136 Jurisdiction and Enforcement Act;
- 137 (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support  
138 Act;
- 139 (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- 140 (4)(B)(ix) an action to modify or enforce a judgment in any of the  
141 actions in this subparagraph (B);
- 142 (4)(C) records related to determinations of indigency;
- 143 (4)(D) an affidavit supporting a motion to waive fees;
- 144 (4)(E) aggregate records other than public aggregate records under subsection  
145 (2);
- 146 (4)(F) alternative dispute resolution records;
- 147 (4)(G) applications for accommodation under the Americans with Disabilities Act;
- 148 (4)(H) jail booking sheets;
- 149 (4)(I) citation, but an abstract of a citation that redacts all non-public information  
150 is public;
- 151 (4)(J) judgment information statement;
- 152 (4)(K) judicial review of final agency action under Utah Code Section 62A-4a-  
153 1009;
- 154 (4)(L) the following personal identifying information about a party: driver's license  
155 number, social security number, account description and number,  
156 password, identification number, maiden name and mother's maiden name,  
157 and similar personal identifying information;
- 158 (4)(M) the following personal identifying information about a person other than a  
159 party or a victim or witness of a crime: residential address, personal email  
160 address, personal telephone number; date of birth, driver's license number,

- 161 social security number, account description and number, password,  
162 identification number, maiden name, mother's maiden name, and similar  
163 personal identifying information;  
164 (4)(N) medical, psychiatric, or psychological records;  
165 (4)(O) name of a minor, except that the name of a minor party is public in the  
166 following district and justice court proceedings:  
167 (4)(O)(i) name change of a minor;  
168 (4)(O)(ii) guardianship or conservatorship for a minor;  
169 (4)(O)(iii) felony, misdemeanor, or infraction when the minor is a party;  
170 (4)(O)(iv) protective orders and stalking injunctions; and  
171 (4)(O)(v) custody orders and decrees;  
172 (4)(P) nonresident violator notice of noncompliance;  
173 (4)(Q) personnel file of a current or former court personnel or applicant for  
174 employment;  
175 (4)(R) photograph, film, or video of a crime victim;  
176 (4)(S) record of a court hearing closed to the public or of a child's testimony taken  
177 under URCrP 15.5:  
178 (4)(S)(i) permanently if the hearing is not traditionally open to the  
179 public and public access does not play a significant positive  
180 role in the process; or  
181 (4)(S)(ii) if the hearing is traditionally open to the public, until the  
182 judge determines it is possible to release the record without  
183 prejudice to the interests that justified the closure;  
184 (4)(T) record submitted by a senior judge or court commissioner regarding  
185 performance evaluation and certification;  
186 (4)(U) record submitted for in camera review until its public availability is  
187 determined;  
188 (4)(V) reports of investigations by Child Protective Services;  
189 (4)(W) statement in support of petition to determine competency;  
190 (4)(~~XX~~) victim impact statements;  
191 (4)(~~YX~~) name of a prospective juror summoned to attend court, unless classified  
192 by the judge as safeguarded to protect the personal safety of the  
193 prospective juror or the prospective juror's family;  
194 (4)(~~ZY~~) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate  
195 Procedure, except briefs filed pursuant to court order;  
196 (4)(~~AAZ~~) records in a proceeding under Rule 60 of the Utah Rules of Appellate  
197 Procedure; and  
198 (4)(~~BBAA~~) other records as ordered by the court under Rule 4-202.04.  
199  
200 (5) **Protected Court Records.** The following court records are protected:  
201 (5)(A) attorney's work product, including the mental impressions or legal theories  
202 of an attorney or other representative of the courts concerning litigation,  
203 privileged communication between the courts and an attorney representing,  
204 retained, or employed by the courts, and records prepared solely in

Commented [KW1]: Out for public comment

Commented [KW2]: New proposed amendment

- 205 anticipation of litigation or a judicial, quasi-judicial, or administrative  
206 proceeding;
- 207 (5)(B) records that are subject to the attorney client privilege;
- 208 (5)(C) bids or proposals until the deadline for submitting them has closed;
- 209 (5)(D) budget analyses, revenue estimates, and fiscal notes of proposed  
210 legislation before issuance of the final recommendations in these areas;
- 211 (5)(E) budget recommendations, legislative proposals, and policy statements, that  
212 if disclosed would reveal the court's contemplated policies or contemplated  
213 courses of action;
- 214 (5)(F) court security plans;
- 215 (5)(G) investigation and analysis of loss covered by the risk management fund;
- 216 (5)(H) memorandum prepared by staff for a member of any body charged by law  
217 with performing a judicial function and used in the decision-making process;
- 218 (5)(I) confidential business records under Utah Code Section 63G-2-309;
- 219 (5)(J) record created or maintained for civil, criminal, or administrative  
220 enforcement purposes, audit or discipline purposes, or licensing,  
221 certification or registration purposes, if the record reasonably could be  
222 expected to:
- 223 (5)(J)(i) interfere with an investigation;
- 224 (5)(J)(ii) interfere with a fair hearing or trial;
- 225 (5)(J)(iii) disclose the identity of a confidential source; or
- 226 (5)(J)(iv) concern the security of a court facility;
- 227 (5)(K) record identifying property under consideration for sale or acquisition by the  
228 court or its appraised or estimated value unless the information has been  
229 disclosed to someone not under a duty of confidentiality to the courts;
- 230 (5)(L) record that would reveal the contents of settlement negotiations other than  
231 the final settlement agreement;
- 232 (5)(M) record the disclosure of which would impair governmental procurement or  
233 give an unfair advantage to any person;
- 234 (5)(N) record the disclosure of which would interfere with supervision of an  
235 offender's incarceration, probation, or parole;
- 236 (5)(O) record the disclosure of which would jeopardize life, safety, or property;
- 237 (5)(P) strategy about collective bargaining or pending litigation;
- 238 (5)(Q) test questions and answers;
- 239 (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- 240 (5)(S) record of a Children's Justice Center investigative interview before the  
241 conclusion of any legal proceedings;
- 242 (5)(T) presentence investigation report;
- 243 (5)(U) except for those filed with the court, records maintained and prepared by  
244 juvenile probation; and
- 245 (5)(V) other records as ordered by the court under Rule 4-202.04.
- 246
- 247 **(6) Juvenile Court Social Records.** The following are juvenile court social records:
- 248 (6)(A) correspondence relating to juvenile social records;

- 249 (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations,  
250 substance abuse evaluations, domestic violence evaluations;  
251 (6)(C) medical, psychological, psychiatric evaluations;  
252 (6)(D) pre-disposition and social summary reports;  
253 (6)(E) probation agency and institutional reports or evaluations;  
254 (6)(F) referral reports;  
255 (6)(G) report of preliminary inquiries; and  
256 (6)(H) treatment or service plans.  
257
- 258 **(7) Juvenile Court Legal Records.** The following are juvenile court legal records:  
259 (7)(A) accounting records;  
260 (7)(B) discovery filed with the court;  
261 (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes,  
262 findings, orders, decrees;  
263 (7)(D) name of a party or minor;  
264 (7)(E) record of a court hearing;  
265 (7)(F) referral and offense histories  
266 (7)(G) and any other juvenile court record regarding a minor that is not designated  
267 as a social record.  
268
- 269 **(8) Safeguarded Court Records.** The following court records are safeguarded:  
270 (8)(A) upon request, location information, contact information, and identity  
271 information other than name of a petitioner and other persons to be  
272 protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions  
273 or Title 78B, Chapter 7, Protective Orders;  
274 (8)(B) upon request, location information, contact information and identity  
275 information other than name of a party or the party's child after showing by  
276 affidavit that the health, safety, or liberty of the party or child would be  
277 jeopardized by disclosure in a proceeding under Title 78B, Chapter 13,  
278 Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B,  
279 Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15,  
280 Utah Uniform Parentage Act;  
281 (8)(C) location information, contact information, and identity information of  
282 prospective jurors on the master jury list or the qualified jury list;  
283 (8)(D) location information, contact information, and identity information other than  
284 name of a prospective juror summoned to attend court;  
285 (8)(E) the following information about a victim or witness of a crime:  
286 (8)(E)(i) business and personal address, email address, telephone  
287 number, and similar information from which the person can  
288 be located or contacted;  
289 (8)(E)(ii) date of birth, driver's license number, social security  
290 number, account description and number, password,  
291 identification number, maiden name, mother's maiden  
292 name, and similar personal identifying information.  
293

CJA 4-202.02

DRAFT: May 24, 2021 (out for public comment)  
June 4, 2021 (new proposal)

|294 Effective ~~December 5~~May/November 1, 2021

# TAB 4

## CJA 3-411. Grant Management

**NOTES:** Per Policy and Planning's direction at its February 4, 2021 meeting, Mr. Jordan and Mr. Sweeney will be presenting revisions to rule 3-411 and the grant approval workflow chart.

**Rule 3-411. Grant management.****Intent:**

To establish the policy and procedures for ~~obtaining-applying for~~ grant funds.

To delineate the responsibility for the assessment and administration of grant funds, including compliance and renewal projects.

~~To facilitate the coordination of grant funded projects in the courts.~~

**Applicability:**

This rule shall apply to all grants where the courts are the applicant, sub-recipient, or pass-through recipient of public or private grant funds.  
~~the application process for and management of grants for the judiciary.~~

This rule applies broadly to encompass all agreements precedent to the potential receipt of grant funds either directly or indirectly. Agreements include, but are not limited to, memorandums of understanding and sub-recipient agreements.

The grant application and approval process is also governed by Rule 3-105.

**Definitions:**

(1) "Grantor" means the primary applicant or organization the courts are working with to obtain a grant.

(2) "Grant Application Proposal" (GAP) is the form maintained in the Accounting Manual used to request authorization for grant applications.

(3) "Grant Administering Unit" (GAU) is the Council, committee, court, board of judges, department, or court employee that intends to apply for and administer the grant or grant funds.

(4) "Grant manager" is the individual identified by the GAU or Grants Coordinator to manage the grant for the GAU.

(5) "Notice of Award" (NOA) is the legal document notifying the applicant that an award has been issued and that funds are available to be accepted. This document contains the terms and conditions of the grant.

**Statement of the Rule:**

~~(1) **Application process**~~**Purpose.** The purpose of the grants policy is to facilitate the prudent pursuit of grant funds that:



(1)(A) further the courts' mission to provide an open, fair, efficient, and independent system for the advancement of justice under the law; and

(1)(B) assist the courts in solving problems and promoting innovations that cannot be accomplished with existing resources.

## **(2) Grant application proposals**

(2)(A) Grant opportunities that may be of interest to the courts will be posted to the court's Grant website.

(2)(B) To apply for a grant, the grant manager must complete the following steps in the order listed:

(2)(B)(i) Notify the Grant Coordinator;

(2)(B)(ii) Complete the GAP, including any application documents required by the grantor;

(2)(B)(iii) Obtain General Counsel staff approval of grantor documents;

(2)(B)(iv) Obtain Court Purchasing approval for all vendors included in the budget;

(2)(B)(v) Obtain court IT Department approval for all technology hardware, software, and services in the budget;

(2)(B)(vi) For grants in which matching funds are required of the courts, to the extent possible, structure the grant to allow for any labor by court employees to count towards grant matching requirements; and

(2)(B)(vii) Forward the completed proposal to the Grant Coordinator no less than 8 weeks prior to the grant application deadline.

(2)(C) Federal grants received by the courts as a result of congressional action, without submitting a grant application proposal, must still comply with the requirements set forth in paragraphs (3), (4), and (6).

## **(3) Assessment**

(3)(A) The Grant Coordinator will conduct a collaborative assessment of the incremental impacts the grant may have on the courts, with particular emphasis on the IT Department. The Grant Coordinator must consider:

(3)(A)(i) the capacity of each impacted area to support the grant at current staffing levels; and

(3)(A)(ii) whether any incremental impacts would continue if grant funds ceased.

(3)(B) Following the assessment, the GAU must incorporate adjustments identified by the Grant Coordinator in the grant application proposal before circulating it for approval.

#### **(4) Approval of grant application proposals**

(4)(A) The GAU and Grant Coordinator will present grant application proposals to all governing bodies within the court that may benefit from or be impacted by the grant. Grant application proposals that do not receive approval from a governing body will not be advanced.

(4)(B) The GAU must incorporate adjustments identified by a governing body in the grant application proposal before it is circulated for re-consideration.

(4)(C) The Grant Coordinator will provide a synopsis of grant application proposals that did not receive approval from a governing body to the Budget and Fiscal Management Committee ("BFMC").

(4)(D) The BFMC and Judicial Council will consider grant application proposals in accordance with the following criteria:

(4)(D)(i) Is the grant essential to accomplishing the mission of the courts?

(4)(D)(ii) Does the grant add value when compared with the burden on existing and future resources, both during the grant project completion phase and thereafter?

(4)(D)(iii) Does the grant provide measurable benefits to marginalized, minority, pro se, or similar under-served individuals or communities?

#### **(5) Submission and tracking of approved applications**

(5)(A) All application documents sent to the grantor or primary applicant must be signed by the State Court Administrator. Copies of the application will be maintained by the Grant Coordinator.

(5)(B) The Grant Coordinator and grant manager will serve as the contact person for the courts and will monitor grant approval by the grantor.

(5)(C) If the grant is denied, the Grant Coordinator will notify BFMC, and Judicial Council.

**(6) Notice of award and accepting grant funds**

(6)(A) Upon receipt of a Notice of Award, the Grant Coordinator will ensure the notice is consistent with the grant application proposal as approved by the Judicial Council.

(6)(B) In accordance with Utah Code, if approved by the Judicial Council, the Grant Coordinator will either:

(6)(B)(i) notify the Executive Appropriations Committee (EAC);

(6)(B)(ii) obtain "review and recommendation" from the EAC; or

(6)(B)(iii) obtain approval from the Legislature.

If approval from the Legislature is required, the Grant Coordinator will ensure grant funds are not accepted until Legislative approval is obtained.

(6)(C) If not approved by the Judicial Council, no funds shall be accepted from the grant and the Grant Coordinator and grant manager will notify the grantor of the Judicial Council's decision not to accept grant funds.

(6)(D) If grant funds may only be accepted with remedial steps, the Grant Coordinator and grant manager will communicate those steps in writing to the grantor. The Grant Coordinator and grant manager will work with the State Court Administrator to ensure remediation has been accomplished and to determine whether the grant can be resubmitted for Judicial Council approval.

**(7) Grant implementation**

(7)(A) If required, the Grant Coordinator will return the executed Notice of Award to the grantor or primary applicant.

(7)(B) **Start date.** The grant manager will ensure no grant activities requiring the expenditure of grant funds begin until the start date of the grant project period.

(7)(C) **Personnel.**

(7)(C)(i) Positions created as a result of grant funds must be posted and filled in accordance with Human Resource Policies or grant requirements, whichever are stricter. Potential employee status hires must be advised that their positions are time-limited and will expire at the close of the grant, and are subject to overtime

173 based on Fair Labor Standards Act applied to comparable court employees.  
174 Contracted positions are subject to overtime as defined in their executed  
175 contract.

176  
177 (7)(C)(ii) Court employees funded by a single award must certify semi-annually to  
178 the grant manager and Grant Coordinator that work performed during the period  
179 covered by the certification was solely for the funded grant.

180  
181 (7)(C)(iii) Grant funds shall only be used to hire permanent full-time or part-time  
182 employees if approved by the Judicial Council and in accordance with Utah  
183 Code.

184  
185 (7)(D) **Fiscal policies.** All grant contracts, purchases, and payments, including travel  
186 reimbursements, must be processed and submitted in accordance with the Accounting  
187 Manual. The grant unit number assigned by Finance must be attached to grant  
188 purchases.

189  
190 (7)(E) **Technology.** All grant technology-related equipment and software must be  
191 purchased through the IT department. Arrangements for installations will be made  
192 through a service ticket to the courts' help desk. Technology purchases designated as  
193 "Equipment" by the grant must be tagged and tracked in accordance with grantor  
194 policies.

195  
196 (7)(F) **Judicial/Quasi-Judicial duties.** If impacted by the grant, the presiding judge(s) of  
197 each district shall supervise any judicial or quasi-judicial duties required by the grant.  
198

## 199 (8) Grant reporting requirements

### 200 201 (8)(A) Grantor

202  
203 (8)(A)(i) The Grant Coordinator will maintain a master compliance calendar of all  
204 reporting requirements.

205  
206 (8)(A)(ii) The grant manager is responsible for reporting to the grantor. Grant  
207 reporting may include both financial and milestone-based reports.

208  
209 (8)(A)(iii) No later than 10 business days before a grant reporting deadline, the  
210 grant manager will forward all associated deliverables to the Grant Coordinator  
211 for review and approval by the Grant Coordinator and Director of Finance.

212  
213 (8)(A)(iv) If approved by the Grant Coordinator and Director of Finance, the grant  
214 manager will be notified to proceed with submission of grant deliverables. If not  
215 approved, remedial steps will be communicated to the grant manager to be  
216 addressed prior to submission.

(8)(B) Judicial Council

(8)(B)(i) Annually, the Grant Coordinator will complete a compliance self-assessment for all grants in the courts' active portfolio and report the results to the BFMC, Audit Director, and Judicial Council.

(8)(B)(ii) Quarterly, the Grant Coordinator will prepare a summary of:

(8)(B)(ii)(1) all existing court grants;

(8)(B)(ii)(2) a pipeline of potential future grants inclusive of all grants-in-progress under paragraphs (4) and (5); and

(8)(B)(ii)(3) a list of potential grants denied under paragraph (4)(A).

(9) Changes in budget or scope

(9)(A) Any changes to a grant must be documented with a grant amendment, whether or not the grantor or primary applicant requires such documentation. Changes include, but are not limited to:

(9)(A)(i) revisions to the scope or objectives of the overall grant or any portion thereof;

(9)(A)(ii) transfers of funds between different cost categories with no overall budget impact;

(9)(A)(iii) extensions of time to complete grant spending;

(9)(A)(iv) revisions to the amount of funds needed; or

(9)(A)(v) changes in key personnel named in the grant.

(9)(B) Changes may not be implemented until grantor approval is obtained in writing and executed between the parties.

(9)(C) The grant manager and Grant Coordinator will work together to prepare grant amendments.

(9)(D) Grant amendments described in paragraph (11)(B) must be approved by the Judicial Council. All other amendments must be reviewed by General Counsel staff and signed by the State Court Administrator or designee

261 (10) Closing out the grant

262  
263 (10)(A) Audits. Audits by the grantor or other third party of closed grants will be handled  
264 by the grant manager, or by the Grant Coordinator if no grant manager is assigned, with  
265 assistance from the Finance and Internal Audit departments.

266  
267 (10)(B) Documentation. Grant documentation will be retained in accordance with the  
268 Accounting Manual or grantor/primary applicant requirements, whichever retention  
269 period is longest.

270  
271 (11) Renewing the grant

272  
273 (11)(A) Judicial Council approval is required for grant renewal, even when there are no  
274 changes to scope, purpose, employees, matching, funding amount, or other areas, or  
275 when the prior assessment and/or Legislature approvals will not need to be revised. With  
276 appropriate documentation, the Management Committee may recommend the grant  
277 renewal for Judicial Council approval in the consent calendar.

278  
279 (11)(B) If a grant renewal involves a change that requires a new incremental  
280 assessment, or a change to the number of permanent or part time employees, or a grant  
281 amount requiring a different approval level than previously obtained, the Grant  
282 Coordinator will perform the steps in paragraphs (3) and (4). If the grant qualifies, the  
283 Grant Coordinator will resubmit the grant to the BFMC and Judicial Council for approval.

284  
285 ~~A person interested in applying for grant funds shall prepare a proposal including~~

286  
287 ~~(1)(A)(i) the issues to be addressed by the project,~~

288  
289 ~~(1)(A)(ii) an explanation of how the grant funds will contribute toward resolving the issues~~  
290 ~~identified, and~~

291  
292 ~~(1)(A)(iii) an identification of possible funding sources for the continuing costs of the project~~  
293 ~~when grant funds are no longer available.~~

294  
295 ~~(1)(B) If the applicant is seeking new federal funds or to participate in a new federal program,~~  
296 ~~the proposal shall include:~~

297  
298 ~~(1)(B)(i) the number of additional permanent full-time and part-time employees needed to~~  
299 ~~participate in the federal program; and~~

300  
301 ~~(1)(B)(ii) a list of any requirements the state must meet as a condition for receiving the federal~~  
302 ~~funds or participating in the federal program.~~

303  
304 ~~(1)(C) Submission of the proposal.~~

~~(1)(C)(i) The proposal shall be reviewed by the court executives or their designees and the judges in the districts which will be affected by the project.~~

~~(1)(C)(ii) If the court executives or their designees and the presiding judges in the districts which will be affected by the project approve the proposal, the proposal shall be forwarded to the grant coordinator at the administrative office.~~

~~(1)(C)(iii) If the court executives or their designees and the presiding judges in the districts that the project will affect approve the proposal, but sufficient time to comply with paragraph (1)(D) prior to submission of the proposal to the funding source is not available, the proposal may be submitted simultaneously to the funding source and the grant coordinator at the administrative office.~~

~~(1)(D) Review of the proposal. The grant coordinator shall review the proposal with the Finance Manager and the court level administrator. This review must be complete prior to submission to the Board(s) of Judges.~~

~~(1)(E) Recommendation by the Board of Judges. The Board of Judges for affected courts must recommend to the Council that the grant proposal be pursued.~~

~~(1)(F) Approval by the Council. Any proposal to apply for grant funds must be approved by the Council.~~

~~(1)(G) Approval by the Legislature. The Judicial Council shall submit proposals to the Legislative Executive Appropriations Committee or to the Legislature as required by statute.~~

~~(1)(H) If the Council approves the proposal, the grant coordinator shall work with the requestor and the affected courts in seeking the grant funds. The administrative office shall constitute the designated agency for approving grant applications if such approval is required by the grant application.~~

~~(1)(I) If the Council or a Board of Judges does not approve the proposal, the proposal shall not be submitted to the funding source or, if already submitted to the funding source, the proposal shall be withdrawn.~~

~~(1)(J) No funds shall be accepted from a funding source until the proposal is approved.~~

~~(2) Administration of grant funds and projects.~~

~~(2)(A) The administrative office shall receive, administer and be accountable for all grant funds awarded to the courts and provide detailed budget reports to the Council upon request.~~

~~(2)(B) The administrative office shall name the project director for each grant. The project director may delegate the supervision of non-judicial daily operations and other non-judicial duties required by the grant. The presiding judges of the districts affected by the project shall supervise any judicial or quasi-judicial duties required by the grant.~~

~~(3) Grant applications by non-judicial branch applicants.~~

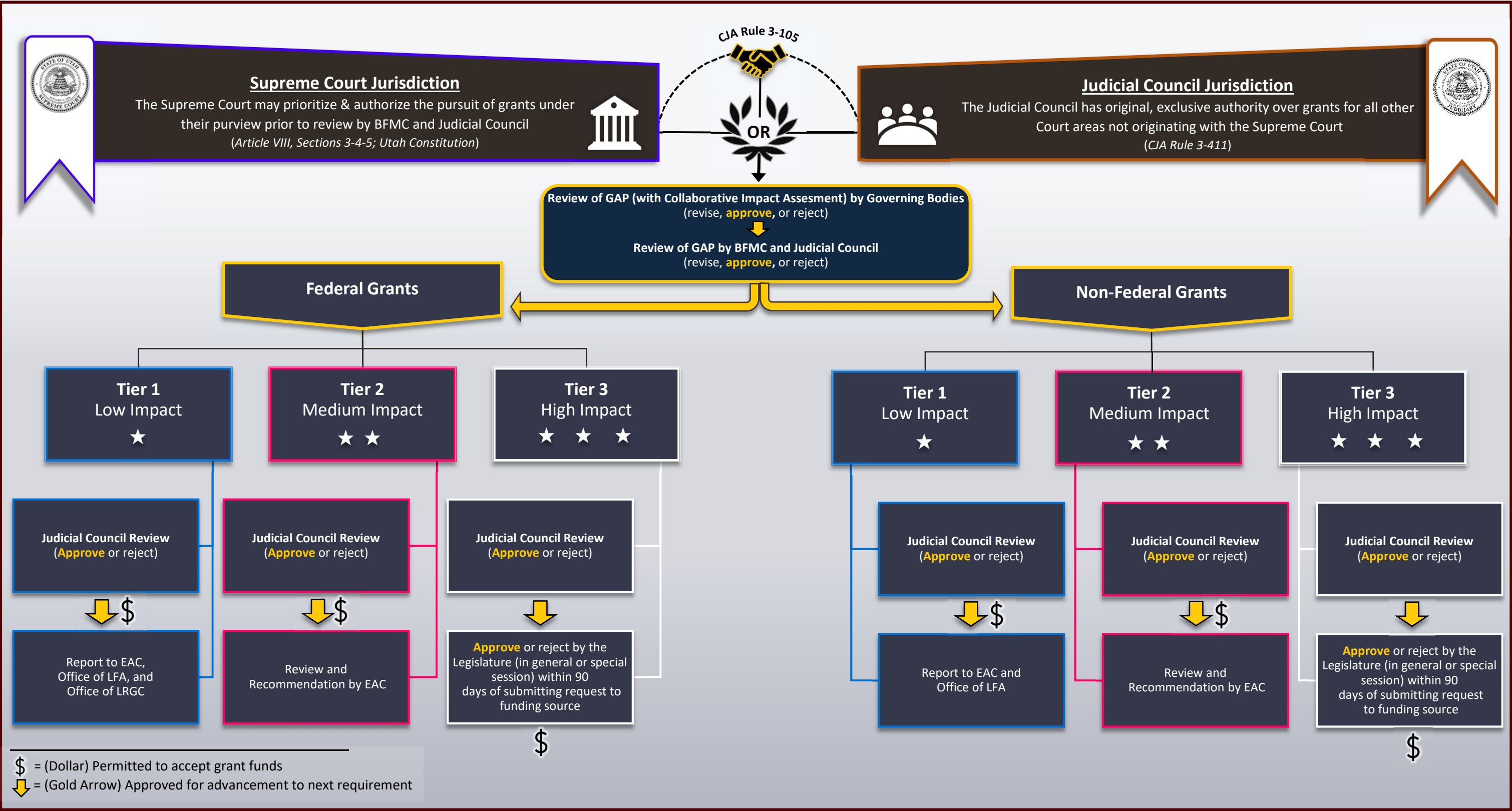
~~(3)(A) Endorsement of a grant application prepared by a non-judicial branch applicant may only be made by the Judicial Council.~~

~~(3)(B) Any grant application by a non-judicial branch applicant which contemplates participation of the courts or expenditures of court resources should be referred to the Judicial Council for review and endorsement. Judicial branch employees shall not participate in the preparation of a grant application by a non-judicial branch applicant without Judicial Council approval.~~

*Effective May/November 1, 20\_\_*



Exhibit A: Procedural Workflow for Grant Application Approval in the Utah Courts



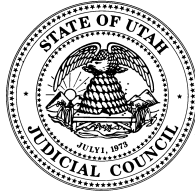
Glossary of Terms

<div><div>I. Federal Grants</div><div><div>a. Tier 1 – Low Impact (UCA 63J-5-203)</div><div>Meets <b>all</b> of the following conditions:</div><div><div>i. ≤ \$1 million per year in federal funds;</div><div>ii. No new permanent full or part-time employees; and</div><div>iii. No new state monies for match requirements</div></div></div><div><div>b. Tier 2 – Medium Impact (UCA 63J-5-204 1(b))</div><div>Meets <b>one or more</b> of the following conditions:</div><div><div>i. ≥ \$1 million but &lt; \$10 million per year in federal funds;</div><div>ii. Require state to add more than zero, but less than 11, permanent full or part-time employees;</div><div>iii. Require state to expend up to \$1 million per year in new state monies as match requirement</div></div></div><div><div>c. Tier 3 – High Impact (UCA 63J-5-204 1(a))</div><div>Meets <b>one or more</b> of the following conditions:</div><div><div>i. ≥ \$10 million per year in federal funds;</div><div>ii. Require state to add ≥ 11 permanent full or part-time employees;</div><div>iii. Require state to expend &gt; \$1 million per year in new state monies as match requirement</div></div></div></div> <div><div>II. Non-Federal Grants</div><div><div>a. Tier 1 – Low Impact (UCA 63J-7-202)</div><div>Meets <b>all</b> of the following conditions:</div><div><div>i. At least \$10k but no more than \$50k in non-federal funds;</div><div>ii. No new permanent full or part-time employees; and</div><div>iii. No new state monies required for match</div></div></div><div><div>b. Tier 2 – Medium Impact (UCA 63J-7-202)</div><div>Meets <b>one or more</b> of the following conditions:</div><div><div>i. &gt; \$50k but &lt; \$1 million per year in non-federal funds;</div><div>ii. Require the state to add more than 0 but less than 11 permanent full or part-time employees;</div><div>iii. Require the state to expend \$1 to \$1 million of new state monies in a fiscal year as match</div></div></div><div><div>c. Tier 3 – High Impact (UCA 63J-7-202)</div><div>Meets <b>one or more</b> of the following conditions:</div><div><div>i. ≥ \$1 million per year in non-federal funds;</div><div>ii. Require the state to add 11 or more permanent full or part-time employees;</div><div>iii. Require the state to expend &gt; \$1 million per year in new state monies as match</div></div></div></div>	<div><div>Acronyms</div><div><div>▪ BFMC – Budget &amp; Fiscal Management Committee</div><div>▪ CJA – Code of Judicial Administration</div><div>▪ EAC – Executive Appropriations Committee</div><div>▪ GAP – Grant Application Proposal</div><div>▪ GC – Grants Coordinator</div><div>▪ LFA – Legislative Fiscal Analyst</div><div>▪ LRGC – Legislative Research &amp; General Counsel</div><div>▪ TCE – Trial Court Executive</div><div>▪ UCA – Utah Code Annotated</div></div></div> <div><div>Applicable Rules and Statutes</div><div><div>▪ <a href="#">CJA Rule 3-411</a> (Grant Management)</div><div>▪ <a href="#">CJA Rule 3-105</a> (Coordination and Referral of Activities Implicating Exclusive Authority of the Supreme Court and Judicial Council)</div><div>▪ <a href="#">UCA 63J-5-203</a> (Judicial council to approve certain Federal funds requests)</div><div>▪ <a href="#">UCA 63J-5-204</a> (Legislative review and approval of Federal funds requests)</div><div>▪ <a href="#">UCA 63J-7-202</a> (Judicial council to approve Non-Federal grant requests)</div><div>▪ <a href="#">UCA 63J-7-203</a> (Legislative review and approval of Non-Federal funds requests)</div><div>▪ <a href="#">Utah Constitution</a><div><div>○ Article VIII <a href="#">Section 3</a> (Jurisdiction of Supreme Court)</div><div>○ Article VIII <a href="#">Section 4</a> (Rulemaking power of Supreme Court; judges pro tempore; regulation of practice of law).</div><div>○ Article VIII <a href="#">Section 5</a> (Jurisdiction of District Court and other courts – right of appeal)</div></div></div></div></div>
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# TAB 5

## Senior judges

**Notes:** See attached memo



# Administrative Office of the Courts

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

May 27, 2021

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

## MEMORANDUM

**TO:** The Policy and Planning Committee

**FROM:** The Policy and Planning Committee Senior Judge Rule Workgroup

**RE:** Proposed Amendments to Senior Judge Rules

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The Policy and Planning Committee appointed a work group to review and make recommendations about the proposed amendments to the senior judge rules. The work group included Judge David Connors, Chair, Judge Derek Pullan, Cathy Dupont, staff, Judge Atherton, active senior judge, Peyton Smith, TCE of the 3<sup>rd</sup> District Court, and Joyce Pace, TCE for the 5<sup>th</sup> District and Juvenile Courts.

The workgroup accepted the proposed amendments to the Senior Judge Rules presented by the Senior Judges at the October 2020 Policy and Planning Committee meeting, except for Rules 3-108 and 11-201. The workgroup added language to Rule 3-108 that permits some flexibility for appointing a senior judge when there are exigent circumstances. Rule 11-201 was modified at the request of the Supreme Court to give the Management Committee the authority to recommend the appointment of a senior judge.

The Board of Senior Judges approved the workgroup's changes, with the understanding that Policy and Planning will work to establish guidelines for evaluating how to determine the need for senior judges in Rule 11-201, and that the language will be reviewed in 2 to 3 years. Judges Pullan and Connors are willing to engage in the evaluation, but question whether it is possible to develop those standards. The working group has not yet been able to articulate clear standards for need.

The following is a brief description of the amendments:

- Three different rules addressed the appointment of senior judges, Rule 3-104(3)(c), Rule 3-108 and Rule 11-201(6). The amendments move all of the appointment language to Rule 3-108, and clarify the authority to appoint, and when permission for appointment is needed from the Management Committee.
- Rule 1-305 amendments reduce the number of Board members from 7 to 5, and reduce the required meetings to once a year.
- Rule 3-113 is amended to permit a senior judge to be compensated for mentoring a new judge. This amendment was added at the request of the Judicial Institute. The

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

amendments to this rule also increase the amount paid for non-courtroom duties such as Board meetings, conferences, and education from \$25 to \$50 for a half day, and from \$50 to \$100 for a full day.

- Rule 3-501 provides reimbursement of 50% of the cost of health insurance for an active senior judge and the judge's spouse, if the active senior judge has exhausted earned and automatic accumulated health benefits, and the active senior judge performs case work, subject to being called, during the active senior judge's term of appointment. An active senior judge must show good cause to the Judicial Council why the active senior judge should not be disqualified for the incentive benefit if the active senior judge has turned down case assignments and has not performed case work for two or more fiscal years. The rule also requires an active senior judge to inform the deputy state court administrator if the judge moves to inactive status so that the health insurance benefit can be adjusted appropriately.
- Rule 11-201 require a senior judge to maintain familiarity with court case management systems, such as Coris and Care; require an applicant to disclose if any criminal charges, other than infractions, are pending at the time of application; authorize the Management Committee to recommend (or not) the appointment of an active senior judge, and clarify the process for appealing a recommendation from the Management Committee to the Supreme Court.

The amendments are attached to this memorandum. The Work Group requests that you approve the proposed amendments and refer them to the Judicial Council for publication. The workgroup recommends that the Council give the amendments an immediate effective date so that the selection of senior judges can be expedited to address the pandemic case backlog.

**Rule 1-305. Board of Senior Judges.**

Intent:

To establish a Board of Senior Judges consisting of senior justices and senior judges of courts of record.

To prescribe the composition of the Board's membership, the method of selection of Board members, the members' terms of office, the Board's officers, the procedures to be followed in the event of vacancies, the frequency of Board meetings, and the procedures to be followed in the conduct of Board meetings.

To increase the level of participation of senior justices and senior judges in the development of policy for the judiciary.

To improve communication between the Council and senior justices and senior judges.

Applicability:

This rule shall apply to the Board of Senior Judges.

Statement of the Rule:

(1) For purposes of this rule, "senior judge" means active senior justice or active senior judge.

(2) Board of senior judges.

(2)(A) Establishment. There is established a Board of Senior Judges.

(2)(B) Membership. The Board shall be comprised of ~~seven~~ five active senior judges, elected at the annual judicial conference senior judge business meeting, by all senior judges who are in attendance ~~at the meeting~~.

(2)(C) Election. The senior judges present at the business meeting shall constitute a quorum. Nominations for Board positions may be made by any senior judge. All senior judges present at the meeting shall be entitled to vote for ~~all~~ members of the Board.

(2)(D) Terms. The terms of the ~~initial~~ Board members shall be ~~determined by lot, with four~~ three ~~members selected to serve two-year terms and three members selected to serve one-year terms.~~ Successors shall be elected for two-years terms. A Board member shall not serve more than two consecutive terms and the remainder of a predecessor's term.

(2)(E) Vacancies. If a vacancy occurs for any reason on the Board, the Board shall elect a replacement for the unexpired term of the vacancy.

(3) Board officers.

(3)(A) Establishment. There shall be a chair and vice-chair of the Board. Both the chair and vice chair shall be active senior judges.

(3)(~~B~~) Election. The chair and vice chair shall be elected by the Board members.

(3)(~~B~~)(C) Chair and vice chair's term. The chair and vice-chair shall be elected to serve a one-year term, effective ~~The chair shall serve a one-year term beginning~~ immediately after the annual

judicial conference. ~~in the~~ The year following election as ~~the~~ vice chair shall assume the chair position. A new vice chair shall be appointed each year.

(3)(~~C~~)(D) Chair and vice chair's responsibilities. The chair shall preside over all meetings of the Board and the annual judicial conference senior judge business meeting, and shall perform other duties as set forth in this Code and as directed by the Board. The vice-chair shall serve as chair in the absence of the chair or at the request of the chair.

(3)(~~D~~)(E) Vacancy in office of chair or vice chair. In the event that the chair resigns or leaves the Board for any reason, the vice-chair shall become chair, serving both the unexpired term of the chair and the full term as chair. In the event that the vice-chair resigns from the Board for any reason, a new vice-chair shall be elected by the Board from among its members to serve the unexpired term of the vice-chair and to succeed as chair as otherwise provided in this rule.

Voting and replacement of the vice chair may be conducted by e-mail if a replacement is needed before the next annual judicial conference.

(3)(~~E~~) Election. ~~The vice chair shall be elected by the Board members at the commencement of the first year of the vice chair's two-year term on the Board.~~

(3)(~~F~~) Vice chair's responsibilities. ~~The vice chair shall serve as chair in the absence of the chair or at the request of the chair.~~

(3)(~~G~~) Vacancy in office of vice chair. ~~In the event that the vice chair resigns from the Board for any reason, a new vice chair shall be elected by the Board from among its members to serve the unexpired term of the vice chair and to succeed as chair as otherwise provided in this rule.~~

(3)(~~H~~)(F) Secretariat services. The Administrative Office shall serve as secretariat to the Board.

(3)(~~I~~)(G) Board responsibility. The Board shall exercise such authority and assume such responsibility as delegated by the Council.

(4) Meetings of the ~~b~~Board.

(4)(A) The Board shall meet not less than ~~twice~~ once a year to transact any and all business that is within its jurisdiction.

(4)(B) The Board shall rule by majority vote. All Board members have the right to vote. ~~Four~~ Three members of the Board constitute a quorum.

(4)(~~C~~) Board meetings shall be conducted in accordance with Robert's Rules of Order and this Code.

**Rule 3-104. Presiding Judges.****Intent:**

To establish the procedure for election, term of office, role, responsibilities and authority of presiding judges and associate presiding judges.

**Applicability:**

This rule shall apply to presiding judges and associate presiding judges in the District and Juvenile Courts.

**Statement of the Rule:****(1) Election and term of office.**

(1)(A) **Presiding judge.** The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court. The presiding judge's term of office shall be at least two years. A district, by majority vote of the judges of the court, may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the presiding officer of the Council to serve for two years.

**(1)(B) Associate presiding judge.**

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A).

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge or by the court.

(1)(C) **Removal.** A presiding judge or associate presiding judge may be removed as the presiding judge or associate presiding judge by a two-thirds vote of all judges in the district. A successor presiding judge or associate presiding judge shall then be selected as provided in this rule.

**(2) Court organization.****(2)(A) Court en banc.**

(2)(A)(i) Multi-judge courts shall have regular court en banc meetings, including all judges of the court and the court executive, to discuss and decide court business. The presiding judge has the discretion to excuse the attendance of the court executive from court en banc meetings called for the purpose of discussing the performance of the court executive. In single-judge



- 38 courts, the judge shall meet with the court executive to discuss and decide  
39 court business.
- 40 (2)(A)(ii) The presiding judge shall call and preside over court meetings. If neither  
41 the presiding judge nor associate presiding judge, if any, is present, the  
42 presiding judge's designee shall preside.
- 43 (2)(A)(iii) Each court shall have a minimum of four meetings each year.
- 44 (2)(A)(iv) An agenda shall be circulated among the judges in advance of the meeting  
45 with a known method on how matters may be placed on the agenda.
- 46 (2)(A)(v) In addition to regular court en banc meetings, the presiding judge or a  
47 majority of the judges may call additional meetings as necessary.
- 48 (2)(A)(vi) Minutes of each meeting shall be taken and preserved.
- 49 (2)(A)(vii) Other than judges and court executives, those attending the meeting shall  
50 be by court invitation only.
- 51 (2)(A)(viii) The issues on which judges should vote shall be left to the sound  
52 discretion and judgment of each court and the applicable sections of the  
53 Utah Constitution, statutes, and this Code.
- 54 (2)(B) Absence of presiding judge. When the presiding judge and the associate presiding  
55 judge, if any, are absent from the court, an acting presiding judge shall be appointed.  
56 The method of designating an acting presiding judge shall be at the discretion of the  
57 presiding judge. All parties that must necessarily be informed shall be notified of the  
58 judge acting as presiding judge.
- 59 (3) **Administrative responsibilities and authority of presiding judge.**
- 60 (3)(A) **Generally.**
- 61 (3)(A)(i) The presiding judge is charged with the responsibility for the effective  
62 operation of the court. He or she is responsible for the implementation and  
63 enforcement of statutes, rules, policies and directives of the Council as  
64 they pertain to the administration of the courts, orders of the court en banc,  
65 and supplementary rules. The presiding judge has the authority to  
66 delegate the performance of non-judicial duties to the court executive.  
67 When the presiding judge acts within the scope of these responsibilities,  
68 the presiding judge is acting within the judge's judicial office.
- 69 (3)(A)(ii) Caseload. Unless the presiding judge determines it to be impractical, there  
70 is a presumption that the judicial caseload of the presiding judge shall be  
71 adjusted to provide the presiding judge sufficient time to devote to the  
72 management and administrative duties of the office. The extent of the  
73 caseload reduction shall be determined by each district.
- 74 (3)(A)(iii) Appeals. Any judge of the judicial district may ask the Chief Justice or  
75 Judicial Council to review any administrative decision made by the  
76 presiding judge of that district.

(3)(B) **Coordination of judicial schedules.**

(3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.

(3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge consistent with Rule 3-103(4).

(3)(C) **Authority to appoint senior judges.**

(3)(C)(i) ~~With the consent of the senior judge, The the~~ presiding judge is authorized to ~~use~~ assign a senior judge coverage for judicial assistance consistent with Rule 3-108, for up to 14 judicial days if a judicial position is vacant or if a judge is absent due to illness, accident, or disability. ~~Before assigning a senior judge, the presiding judge will consider the priorities for requesting judicial assistance established in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule 11-201(6).~~

(3)(C)(ii) The presiding judge will notify the State Court Administrator when a senior judge assignment has been made.

~~(3)(C)(iii) If more than 14 judicial days of coverage will be required, the presiding judge will promptly present to the State Court Administrator a plan for meeting the needs of the court for the anticipated duration of the vacancy or absence and a budget to implement that plan. The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should estimate the funds needed for travel by judges and for time and travel by senior judges.~~

~~(3)(C)(iv) If any part of the proposed plan is contested by the State Court Administrator, the plan will be reviewed by the Management Committee of the Judicial Council for final determination.~~

(3)(D) **Court committees.** The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(3)(E) **Outside agencies and the media.**

(3)(E)(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court.

- 115 (3)(E)(ii) Generally, the presiding judge or, at the discretion of the presiding judge,  
116 the court executive shall represent the court and make statements to the  
117 media on matters pertaining to the court and provide general information  
118 about the court and the law, and about court procedures, practices and  
119 rulings where ethics permit.
- 120 (3)(F) **Docket management and case and judge assignments.**
- 121 (3)(F)(i) The presiding judge shall monitor the status of the dockets in the court  
122 and implement improved methods and systems of managing dockets.
- 123 (3)(F)(ii) The presiding judge shall assign cases and judges in accordance with  
124 supplemental court rules to provide for an equitable distribution of the  
125 workload and the prompt disposition of cases.
- 126 (3)(F)(iii) Individual judges of the court shall convey needs for assistance to the  
127 presiding judge. The presiding judge shall, through the State Court  
128 Administrator, request assistance of visiting judges or other appropriate  
129 resources when needed to handle the workload of the court.
- 130 (3)(F)(iv) The presiding judge shall discuss problems of delay with other judges and  
131 offer necessary assistance to expedite the disposition of cases.
- 132 (3)(G) **Court executives.**
- 133 (3)(G)(i) The presiding judge shall review the proposed appointment of the court  
134 executive made by the State Court Administrator and must concur in the  
135 appointment before it will be effective. The presiding judge shall obtain the  
136 approval of a majority of the judges in that jurisdiction prior to concurring in  
137 the appointment of a court executive.
- 138 (3)(G)(ii) The presiding judge for the respective court level and the state level  
139 administrator shall jointly develop an annual performance plan for the court  
140 executive.
- 141 (3)(G)(iii) Annually, the state level administrator shall consult with the presiding judge  
142 in the preparation of an evaluation of the court executive's performance for  
143 the previous year, also taking into account input from all judges in the  
144 district.
- 145 (3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the court  
146 executive, including coordination of annual leave.
- 147 (3)(G)(v) Pursuant to Council policy and the direction of the state level  
148 administrator, the court executive has the responsibility for the day-to-day  
149 supervision of the non-judicial support staff and the non-judicial  
150 administration of the court. The presiding judge, in consultation with the  
151 judges of the jurisdiction, shall coordinate with the court executive on  
152 matters concerning the support staff and the general administration of the  
153 court including budget, facility planning, long-range planning,

administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

(3)(H) **Courtrooms and facilities.** The presiding judge shall direct the assignment of courtrooms and facilities.

(3)(I) **Recordkeeping.** Consistently with Council policies, the court executive, in consultation with the presiding judge, shall:

(3)(I)(i) coordinate the compilation of management and statistical information necessary for the administration of the court;

(3)(I)(ii) establish policies and procedures and ensure that court personnel are advised and aware of these policies;

(3)(I)(iii) approve proposals for automation within the court in compliance with administrative rules.

(3)(J) **Budgets.** The court executive, in consultation with the presiding judge, shall oversee the development of the budget for the court. In contract sites, the court executive shall supervise the preparation and management of the county budget for the court on an annual basis and in accordance with the Utah Code.

(3)(K) **Judicial officers.** In the event that another judge or commissioner of the court fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment or violates the Code of Judicial Conduct, the presiding judge may:

(3)(K)(i) Meet with and explain to the judge or commissioner the reasons for the directive given or the position taken and consult with the judge or commissioner.

(3)(K)(ii) Discuss the position with other judges and reevaluate the position.

(3)(K)(iii) Present the problem to the court en banc or a committee of judges for input.

(3)(K)(iv) Require the judge or commissioner to participate in appropriate counseling, therapy, education or treatment.

(3)(K)(v) Reassign the judge or commissioner to a different location within the district or to a different case assignment.

(3)(K)(vi) Refer the problem to the Judicial Council or to the Chief Justice.

(3)(K)(vii) In the event that the options listed above in subsections (i) through (vi) do not resolve the problem and where the refusal or conduct is willful, continual, and the presiding judge believes the conduct constitutes a violation of the Code of Judicial Conduct, the presiding judge shall refer the problem to the Council or the Judicial Conduct Commission.

- 193 (3)(L) **Cases under advisement.**
- 194 (3)(L)(i) A case is considered to be under advisement when the entire case or
- 195 any issue in the case has been submitted to the judge for final
- 196 determination. The final determination occurs when the judge resolves
- 197 the pending issue by announcing the decision on the record or by
- 198 issuing a written decision, regardless of whether the parties are
- 199 required to subsequently submit for the judge's signature a final order
- 200 memorializing the decision.
- 201 (3)(L)(ii) Once a month each judge shall submit a statement on a form to be
- 202 provided by the State Court Administrator notifying the presiding judge
- 203 of any cases or issues held under advisement for more than two
- 204 months and the reason why the case or issue continues to be held
- 205 under advisement.
- 206 (3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or
- 207 issues held under advisement for more than two months to the
- 208 appropriate state level administrator and indicate the reasons why the
- 209 case or issue continues to be held under advisement.
- 210 (3)(L)(iv) If a case or issue is held under advisement for an additional 30 days,
- 211 the state level administrator shall report that fact to the Council.
- 212 (3)(M) **Board of judges.** The presiding judge shall serve as a liaison between the court
- 213 and the Board for the respective court level.
- 214 (3)(N) **Supervision and evaluation of court commissioners.** The presiding judge is
- 215 responsible for the development of a performance plan for the Court
- 216 Commissioner serving in that court and shall prepare an evaluation of the
- 217 Commissioner's performance on an annual basis. A copy of the performance
- 218 plan and evaluation shall be maintained in the official personnel file in the
- 219 Administrative Office.
- 220 (3)(O) **Magistrate availability.** The presiding judge in a district court shall consult with
- 221 the presiding judge in the justice court of that judicial district and the justice court
- 222 administrator to develop a rotation of magistrates that ensures regular availability
- 223 of magistrates within the district. The rotation shall take into account each
- 224 magistrate's caseload, location, and willingness to serve.

**Rule 3-108. Judicial Assistance.****Intent:**

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

**Applicability:**

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

**Statement of the Rule:**

(1) A senior judge may not be appointed without the consent of the senior judge.

~~(4)-(2)~~ Criteria for requesting assistance. Judicial assistance shall be provided only for the following reasons:

~~(2)(A) to prevent the occurrence of a backlog in the court's calendar~~ when assistance is needed because of a judicial vacancy or an absence due to an illness, accident or disability;

~~(2)(B) to~~ prevent the occurrence of or reduce a critical accumulated backlog;

~~(2)(C) to handle a particular case involving complex issues and extensive time which would have a substantial impact on the court's calendar;~~

~~(2)(D) to replace a sitting judge who is absent because of assignment as a tax judge, illness or to replace the judges in that location because of disqualification in a particular case;~~

~~(2)(E) to handle essential cases when there is a vacant judicial position;~~ to mentor a newly appointed judge;

~~(2)(F) to handle high priority cases during vacation periods or during attendance at education programs by the sitting judge, following every effort by that judge to adjust the calendar to minimize the need for assistance and only to handle those matters which cannot be accommodated by the other judges of the court during the absence;~~

~~(2)(G) to provide education and training opportunities to judges of one court level in the disposition of cases in another court level; and~~

~~(2)(H) in district court, to handle cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration; and~~

~~(2)(I) to serve on a grand jury panel.~~

(3) Assigning a senior judge for judicial assistance.

(3)(A) Unless exigent circumstances occur, a presiding judge shall seek assistance under the priorities listed in paragraph (4) before appointing a senior judge.

(3)(B) If the assignment of a senior judge will be for more than 14 judicial days, the presiding judge shall seek approval from the Management Committee, and present to the Management Committee a plan for meeting the needs of the court and a budget to implement the plan. The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should estimate the funds needed for travel by judges and senior judges.

~~(2)~~ **(4) Criteria for transferring or assigning judges.** The transfer or assignment of judges for judicial assistance under this rule, shall, in general, be based upon the following priorities:

~~(42)~~ (A) experience and familiarity with the subject matter, including, in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, knowledge of the theory and practice of ad valorem, excise, income, sales and use, and corporate taxation;

~~(42)~~ (B) active judges before active senior judges with consideration of the following:

~~(4)~~ (B)(i) active judges from a court of equal jurisdiction in a different geographical division than the court in need, and who are ~~physically situated nearest and are most convenient to that court~~ in close proximity to that court;

~~(42)~~ (B)(ii) active senior judges from a court of equal jurisdiction to the court in need and who are ~~physically situated nearest and are most convenient~~ in close proximity to that court;

~~(42)~~ (B)(iii) active judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is most closely related to that court and who are in close proximity to ~~it~~ to that court;

~~(42)~~ (B)(iv) active judges from a court of equal jurisdiction in a different geographical division than the court in need and who are ~~far removed from that court~~ in close proximity to that court;

~~(42)~~ (B)(v) active ~~judges~~ or active senior judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is similar to that court and who are not in close proximity to that court;

~~(42)~~ (C) availability;

~~(42)~~ (D) expenses and budget.

~~(3)~~ **(5) Assignment of active judges.**

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

~~(53)~~ (B) Any active judge of a court of record may serve temporarily as the judge of a court with different jurisdiction in the same or a different judicial district upon assignment by the presiding officer of the Council or assignment by the state court administrator or designee with the approval of the presiding officer of the Council.

~~(53)~~ (C) The assignment shall be made only after consideration of the judge's calendar. The assignment may be for a special or general assignment in a specific court or generally within that level of court and shall be for a specific period of time, or for the duration of a specific case. Full time assignments in excess of 30 days in a calendar year shall require the concurrence of the assigned judge. The state court administrator or designee shall report all assignments to the Council on an annual basis.



(53)(D) Requests for the assignment of a judge shall be conveyed, through the presiding judge, to the person with authority to make the assignment under paragraphs (5)-(A) and (B). A judge who is assigned temporarily to another court shall have the same powers as a judge of that court.

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

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



**Rule 3-113. Senior Judges.****Intent:**

To establish the responsibility to provide for support services for active senior judges.

To provide for the compensation of active senior judges.

**Applicability:**

This rule shall apply to judicial employees and to senior judges and active senior judges of courts of record.

**Statement of the Rule:****(1) Support services.**

(1)(A) The court executive of the court in which an active senior judge is serving shall make available clerical and bailiff services as would normally be needed in the performance of the a judge's official duties. ~~The court executive of the court in which an active senior judge is serving shall make available court reporting equipment and personnel in accordance with Rule 3-305 and Rule 4-201.~~

(1)(B) The court executive of the court in which an active senior judge is serving shall execute the necessary notice of appointment for the case or matters to which the judge has been assigned. The order of assignment shall include the district the judge will serve, the court location, the assignment for which service is needed, and the signature and date of the presiding judge or the presiding judge's designee. The order shall be sent to the state court administrator or designee.

(1)(C) The court executive of the district in which an active senior judge resides serves shall provide the following assistance as needed:

- (i) secretarial services;
- (ii) mail services;
- (iii) files and court documents;
- (iv) travel arrangements; and
- (v) preparation of reimbursement vouchers.

~~(1)(D) Active senior judges shall be provided with a current set of the soft cover edition of the Utah Code and a subscription to Utah Advance Reports and Annotations as provided by Rule 3-413.~~

**(2) Compensation.** Active senior judges shall be compensated at the rate and for the services and duties as set forth herein.

(2)(A) Compensation for the performance of judicial duties related to the assignment of cases , service on a grand jury panel, or the mentoring of a new judge shall be at an hourly rate equal to the hourly rate of a district judge, and shall be paid in half-day increments.

- 39 | (2)(B) Compensation for all other duties, such as attendance at Board meetings, committee  
40 | meetings, and educational functions required by this Code shall be paid at the rate of  
41 | ~~\$25.00- \$50.00~~ per half day (1-4 hours) and ~~\$50.00- \$100.00~~ per full day (over 4  
42 | hours).
- 43 | (2)(C) For travel required in the performance of judicial duties related to ~~the assignment of~~  
44 | ~~assigned~~ cases, senior judges shall be compensated for travel time in excess of one  
45 | and one-half hours round trip at the hourly rate of a district judge, and for expenses,  
46 | e.g., per diem, mileage, and lodging, at the rates allowed for state employees. Active  
47 | senior judges are required, as court employees, to complete the Defensive Driver  
48 | Training every two years.
- 49 | (2)(D) For travel required in the performance of judicial duties not related to ~~the assignment~~  
50 | ~~of cases~~, an assigned case, senior judges shall be compensated for round-trip travel  
51 | time as follows:  
52 | 0 - 1.5 hours No payment  
53 | 1.5 - 5.5 hours \$25.00  
54 | More than 5.5 hours \$50.00  
55 | and for expenses, e.g., per diem, mileage, and lodging, at the rates allowed for state  
56 | employees. Because senior judges do not have access to state vehicles, mileage  
57 | shall be paid at the higher rate for state employees.
- 58 | (2)(E) Except for the incentive benefit in Rule 3-501, Ccompensation shall not include any  
59 | form of benefits, i.e., state retirement contributions, medical or life insurance  
60 | premiums, etc.

**1 Rule 3-501. Insurance Benefits Upon Retirement.****2 Intent:**

3 To establish uniform policies regarding sick leave for justices, judges, and court commissioners  
4 and conversion of sick leave to paid up medical, dental and life insurance at the time of  
5 retirement.

**7 Applicability:**

8 This rule shall apply to all justices, judges, and court commissioners of courts of record.

**10 Statement of the Rule:****11 (1) Earned benefits.**

12 (1)(A) For each year of full-time employment that a justice, judge, or court commissioner  
13 uses less than four days of sick leave in a calendar year, the judge, justice, or court  
14 commissioner will be eligible for and accumulate eight months of paid up medical  
15 insurance, dental insurance, prescription drug insurance and life insurance benefits  
16 at the time of retirement. Upon retirement, the submission of an annual application  
17 and a showing that the judge, justice, or court commissioner is not otherwise covered  
18 by a comparable medical insurance policy, the judge, justice, or court commissioner  
19 shall be eligible for and receive the insurance benefits which have accrued.

20 (1)(B) Maternity leave and parental leave is considered sick leave for determining benefits  
21 under this rule.

22 (1)(C) Medical and dental insurance coverage provided will be the same as that carried by  
23 the justice, judge, or court commissioner at retirement, i.e., family, two party, single.

24 (2) **Automatic benefits.** Notwithstanding the provisions of paragraph (1), a justice, judge, or  
25 court commissioner who retires and who is eligible for retirement benefits at the time of  
26 retirement shall receive a maximum of five years medical insurance, dental insurance,  
27 prescription drug insurance and life insurance .

**28 (3) Duration of benefits.**

29 (3)(A) The duration of benefits shall be calculated from the effective date of the justice's,  
30 judge's or court commissioner's retirement. Earned benefits shall not exceed seven  
31 years. Automatic benefits shall not exceed five years. Earned benefits and automatic  
32 benefits shall not exceed seven years.

33 (3)(B) Earned benefits and automatic benefits shall terminate when the justice, judge, or  
34 commissioner is eligible for Medicare, except that prescription drug insurance and  
35 supplemental Medicare insurance shall continue for the balance of the term of  
36 earned or automatic benefits.

37 (3)(C) If the spouse of the justice, judge, or court commissioner qualifies for medical  
38 insurance, prescription drug insurance or dental insurance under subsection (1)(C),  
39 such insurance shall continue for the period of earned or automatic benefits or until

the spouse becomes eligible for Medicare, whichever is earlier, except that prescription drug insurance and supplemental Medicare insurance for the spouse shall continue for the balance of the term of earned or automatic benefits.

(3)(D) Earned or automatic Bbenefits for dependents, other than a spouse, of the justice, judge, or court commissioner terminate when the justice, judge, or court commissioner reaches age 65.

(4) As authorized by Utah Code ~~Section~~ § 78A-2-107(9), the state Ccourt Aadministrator or designee will develop methods for recording sick leave use by justices, judges, and court commissioners and for recording sick leave conversion to paid up medical, dental and life insurance benefits.

**(5) Active Ssenior Jjudge incentive benefit.**

(5)(A) The judiciary will pay 50% of the cost of medical and dental insurance premiums for a qualifying active senior judge and spouse until the qualifying active senior judge is age 65. The judiciary will pay 50% of the cost of supplemental Medicare insurance and prescription drugs for a qualifying active senior judge and spouse if the active senior judge is age 65 or older.

(5)(B) To qualify for the incentive benefit the active senior judge must:

(5)(B)(i) qualify as an active senior judge pursuant to Rule 11-201;

(5)(B)(ii) have exhausted the earned and automatic other benefits provided for by this rule;

(5)(B)(iii) submit to the state court administrator or their designee on or before July 1 of each year a letter expressing an intent to participate in the incentive benefit program;

(5)(B)(iv) perform case work, subject to being called, for at least 6 days per during the active senior judge's term of appointment fiscal year; and

(5)(B)(v) show good cause to the Judicial Council why he or she the active senior judge should not be disqualified for the incentive benefit upon declining three times within any fiscal year to accept case work if the active senior judge has turned down case assignments and has not performed case work for two or more fiscal years.

(5)(C) The State Retirement Office shall deduct from the active senior judge's retirement benefit the portion of the cost payable by the active senior judge.

(6) If an active senior judge who receives the incentive benefit changes to inactive status, the senior judge shall notify the state court administrator or designee in writing that the active senior judge has converted to inactive status and is receiving the incentive benefit. The state court administrator or designee shall notify Human Resources and URS of the change in status.

(7) This policy will be implemented subject to availability of funds.

**Rule 11-201. Senior Judges.**

**Intent:**

To establish the qualifications, term, authority, appointment and assignment for senior judges.

**Applicability:**

This rule shall apply to judges of courts of record.

The term "judge" includes justices of the Supreme Court.

**Statement of the Rule:**

**(1) Qualifications.**

(1)(A) A judge may apply to become a senior judge, on either inactive or active status.

(1)(B) ~~Inactive Senior Judge. To be an inactive senior judge, a judge shall~~ A judge is qualified to be an inactive senior judge if the judge:

(1)(B)(i) ~~have been was~~ retained in the last election for which the judge stood for election;

(1)(B)(ii) ~~have~~ voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, ~~shall have~~ recovered from or ~~shall have~~ accommodated that disability;

(1)(B)(iii) demonstrates appropriate ability and character;

(1)(B)(iv) ~~be is~~ admitted to the practice of law in Utah, but ~~shall~~ does not practice law; ~~and~~

(1)(B)(v) ~~be is~~ eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age; and

(1)(B)(vi) is appointed by the Supreme Court.

(1)(C) ~~Active Senior Judge. To be an active senior judge, a judge shall~~ A judge is qualified to be an active senior judge if the judge:

(1)(C)(i) ~~meets~~ the qualifications of an inactive senior judge;

(1)(C)(ii) ~~be is~~ a current resident of Utah and ~~be is~~ available to take cases;

(1)(C)(iii) ~~be is~~ physically and mentally able to perform the duties of judicial office;

(1)(C)(iv) maintains familiarity with current statutes, rules, - case law, court case management systems, such as CORIS for district courts, and CARE for juvenile courts, Workspace and remote hearing technology;

(1)(C)(v) ~~satisfy~~ satisfies the education requirements of an active judge set forth in Rule 3-403;

(1)(C)(vi) attends the annual judicial conference;

(1)(C)(vii) accepts assignments, subject to being called, at least two days per calendar year;

(1)(C)(viii) conforms to the Code of Judicial Conduct, the Code of Judicial Administration and rules of the Supreme Court;

(1)(C)(ix) ~~have obtained~~ obtains results on the most recent judicial performance evaluation prior to termination of service sufficient to have been recommended for retention regardless of whether the evaluation was conducted for self-improvement or certification;

(1)(C)(x) continues to meet the requirements for judicial retention as those requirements are determined by the Judicial Council to be applicable to active senior judges;

(1)(C)(xi) undergoes a performance evaluation every eighteen months following an initial term as an active senior judge; ~~and~~

(1)(C)(xii) takes and subscribes an oath of office to be maintained by the state court administrator or the administrator's designee; and

(1)(C)(xiii) is appointed by the Supreme Court as an active senior judge-

(2) **Disqualifications.** ~~To be an active senior judge, a~~ A judge is not qualified to be an active senior judge if the judge:

(2)(A) ~~shall not have been was~~ removed from office or involuntarily retired on grounds other than disability;

(2)(B) ~~shall not have been was~~ suspended during the judge's final term of office or final six years in office, whichever is greater;

(2)(C) ~~shall not have~~ has resigned from office as a result of negotiations with the Judicial Conduct Commission or while a complaint against the applicant was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause; and

(2)(D) ~~shall not have~~ has been subject to any order of discipline for conduct as a senior judge.

**(3) Term of Office.**

(3)(A) The initial term of office of an inactive senior judge is until December 31 of the second year following appointment. The initial term of office of an active senior judge less than age 75 years is until December 31 of the second year following appointment or until December 31 of the year in which the judge reaches age 75, whichever is shorter. The initial term of office of an active senior judge age 75 years or more is until December 31 of the year following appointment.

(3)(B) A subsequent term of office of an inactive senior judge is for three years. A subsequent term of office of an active senior judge is three years or until December 31 of the year in which the judge reaches age 75, whichever is shorter. The subsequent term of office of an active senior judge age 75 years or more is for one year.

(3)(C) All subsequent appointments begin on January 1.

(3)(D) The Supreme Court ~~or Judicial Council~~ may withdraw an appointment with or without cause.

(4) **Authority.** An active or inactive senior judge may solemnize marriages. An active senior judge, during an assignment, has all the authority of the office of a judge of the court to which the assignment is made.

**(5) Application and Appointment.**

(5)(A) To be appointed a senior judge a judge shall apply to the Judicial Council for either inactive or active status and shall submit relevant information as requested by the Judicial Council.

(5)(B) The applicant shall:

(5)(B)(i) provide the Judicial Council with the record of all orders of discipline entered by the Supreme Court; ~~and~~

(5)(B)(ii) declare whether at the time of the application there is any complaint against the applicant pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause; ~~and~~

(5)(B)(iii) declare whether at the time of the application there is any criminal charge, other than an infraction, pending against the applicant.

(5)(B)(iv) Judges who decline to participate in an attorney survey in anticipation of retirement may use the results of an earlier survey to satisfy paragraph (1)(C)(ix).

(5)(C)(i) After considering all information, including any performance evaluation conducted under rule 3-111, the most recent Judicial Performance Evaluation Commission evaluations, and the need for senior judges, the Judicial Council ~~may certify to~~ shall notify the Supreme Court that:

(5)(C)(ii) the applicant meets the qualifications ~~of~~ for appointment as an inactive senior judge or active senior judge, and the Council recommends the appointment of the applicant as an inactive or active senior judge;

(5)(C)(iii) the applicant meets the qualifications for appointment as an inactive or active senior judge, but based on the need for senior judges at the time of application, the Council does not recommend appointment of the applicant; or

(5)(C)(iv) the applicant does not meet the qualifications for appointment as an inactive or active senior judge.

(6)(A) The Judicial Council shall inform an applicant, in writing, if the Judicial Council notifies the Supreme Court that the applicant does not meet qualifications for appointment or if the Council does not recommend appointment. ~~forward to, and the Supreme Court shall review, information on all applicants.~~

(6)(B) Any An applicant who ~~is not certified by~~ receives notice from the Judicial Council under paragraph (6)(A), may, within 14 days of the date the Judicial Council sent the notice, ~~may~~ submit to the Supreme Court a written explanation on why the applicant should be appointed as an inactive senior judge or active senior judge.:

(6)(C) The Supreme Court shall review each applicant's information and the recommendation of the Judicial Council. With the concurrence of a majority of the members of the Supreme Court, the Chief Justice may appoint the judge as an inactive senior judge or active senior judge.

Judges who declined, under former Rule 3-111, to participate in an attorney survey in anticipation of retirement may use the results of an earlier survey to satisfy Subsection (1)(B)(ix).

~~(6) Assignment.~~ ~~(6)(A)~~ With the consent of the active senior judge, the presiding judge may assign an active senior judge to a case or for a specified period of time. Cumulative assignments under this subsection shall not exceed 60 days per calendar year except as necessary to complete an assigned case.

~~(6)(B)~~ In extraordinary circumstances and with the consent of the active senior judge, the chief justice may assign an active senior judge to address the extraordinary circumstances for a specified period of time not to exceed 60 days per calendar year, which may be in addition to assignments under subsection (6)(A). To request an assignment under this subsection, the presiding judge shall certify that there is an extraordinary need. The state court administrator shall certify whether there are funds available to support the assignment.

~~(6)(C)~~ (7) Assignment.

(7)(A) An active senior judge may be assigned to any court other than the Supreme Court.

~~(6)(D)~~ (7)(B) The state court administrator or the administrator's designee shall provide such assistance to the presiding judge and chief justice as requested and shall exercise such authority in making assignments as delegated by the presiding judge and chief justice.

~~(6)(E)~~ (7)(C) Notice of an assignment made under this rule shall be in writing and maintained by the state court administrator or the administrator's designee.

(8) Changes to senior judge status.

(8)(A)(i) An active senior judge may convert to inactive status during the term of appointment if the senior judge sends written notice of the change in status to the chief justice of the Supreme Court and the state court administrator or the administrator's designee. An active senior judge who converts to inactive status may not receive an incentive benefit under Rule 3-501 while on inactive status.

(8)(A)(ii) A senior judge who converts to inactive status under (8)(A)(i) may return to active status for the remainder of the senior judge's unexpired term if the senior judge sends written notice of the judge's intent to return to active status to the chief justice of the Supreme Court and to the state court administrator or the administrator's designee.

(8)(B) A senior judge who resigns from senior judge service during the term of appointment shall send written notice to the chief justice of the Supreme Court and to the state court administrator or the administrator's designee.