

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

December 3, 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	<u>Back from public comment: *No comments received on any rule</u> <ul style="list-style-type: none"> • CJA 2-101. Rules for the conduct of Council meetings • CJA 5-101. The Board of Appellate Court Judges • CJA 6-101. The Board of District Court Judges • CJA 7-101. Juvenile Court Board, Executive Committee and Council Representatives • CJA 9-101. Board of Justice Court Judges • CJA 3-303. Justice court clerks • CJA 3-117. Committee on Court Forms <ul style="list-style-type: none"> ○ (New proposed amendments) • CJA 3-401. Office of General Counsel • CJA 4-202.02. Records classification <ul style="list-style-type: none"> ○ (New proposed amendments) • CJA 4-208. Automatic expungement of cases 	Action	Tab 2	Keisa Williams Nathanael Player
12:25	CJA 2-103. Open and closed meetings	Action	Tab 3	Keisa Williams
12:35	CJA 3-403. Judicial branch education	Action	Tab 4	Lauren Andersen
12:45	Problem Solving Courts (best practices)	Action	Tab 5	Judge Dennis Fuchs Judge Clint Gilmore
1:00	CJA 6-303. Collection of fines and restitution	Action	Tab 6	Michael Drechsel
1:10	<u>Internal procedures re judicial misconduct complaints:</u> <ul style="list-style-type: none"> • HR 15-4. Workplace Harassment Investigative Procedures • HR 16-3. Abusive Conduct Investigative Procedures • CJA 3-301.01. State Court Administrator—Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees. 	Action	Tab 7	Bart Olsen Keisa Williams
1:45	Old Business/New Business			
2:00	Adjourn			

2022 Meetings:

January 7, 2022

February 4, 2022

March 4, 2022

April 1, 2022

May 6, 2022 (all day)

June 3, 2022

July 1, 2022

August 5, 2022

September 2, 2022

October 7, 2022

November 4, 2022 (all day)

December 2, 2022

TAB 1

Minutes

November 5, 2021

**UTAH JUDICIALCOUNCIL
POLICY AND PLANNING COMMITTEE
MEETING MINUTES**

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

DRAFT

MEMBERS:

PRESENT

EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Augustus Chin		•
Judge Samuel Chiara	•	
Judge David Connors	•	
Judge Michelle Heward	•	

GUESTS:

Nick Stiles
Lisa Collins
Nathanael Player
Michael Drechsel
Jon Puente
Allison Barger
Jim Peters
Commissioner Minas
Paul Barron
Kari Sargent
Shonna Thomas

STAFF:

Keisa Williams
Minhvan Brimhall

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Derek Pullan welcomed the committee to the meeting. The committee considered the minutes from the September 3, 2021 meeting. With one grammatical correction, Judge Connors moved to approve the minutes as presented. Judge Chiara seconded the motion. The motion passed unanimously.

(2) CJA 4-206. Exhibits:

As currently written, CJA 4-206 impacts the Appellate Court's ability to obtain exhibits that have been returned to the parties following the trial court case. The proposed amendment is intended to make it easier for the appellate court to obtain those exhibits when an appeal has been filed.

Mr. Stiles noted that the amendments to CJA 4-206 removed language from (3)(B), requiring the court to hold onto exhibits for a specific period of time following case disposition. The exhibits are then allowed to be disposed of by the parties after the 90 day period to file an appeal. Appellate attorneys are having a hard time retrieving exhibits once released to the parties following the trial case disposition.

The committee discussed the concerns expressed by the Committee on Appellate Representation and recommended that section (3)(B) be rewritten to provide clarification of the definition of "disposition" and include language that exhibits are not to be returned to the parties until after the 90-day period to file an appeal. Mr. Stiles will discuss the recommended changes with the Appellate Representation committee and seek feedback from the Clerks of Court. Mr. Stiles will report back to Policy and Planning at a later date.

(3) CJA 1-205. Standing and ad hoc committees:

Forms Committee:

The proposed amendments to the Forms Committee membership would add a second district court judge from a rural community, replace the Court Services Director, and add the Licensed Paralegal Practitioner administrator from the Utah State Bar. The addition of a second district court judge is to ensure that the forms reflect the needs of courts at locations beyond the Wasatch Front. The removal of the Court Services Director position is due to the elimination of that position. The addition of the LPP program administration is at the request of the Bar to allow for greater coordination of efforts to the LPP program.

With no further discussion, Judge Chiara moved to accept the proposed changes as amended. Judge Connors seconded and the motion passed unanimously.

Self-Represented Parties Committee:

The proposed amendments to the Self-Represented Parties Committee membership adjusts the composition of the committee to accommodate the change in staffing. The current rule requires someone from the Self-Help Center be a member of the committee. The director has served in that role, but is now staff to the committee and is unable to serve in both capacities. The amendment would open a spot for membership from a social service organization. The committee's chair, Judge Mrazik, supports the proposed changes.

With minor language changes to the proposed amendments, Judge Heward moved to accept the amendments as discussed. Judge Connors seconded and the motion passed unanimously.

MUJI-Criminal Committee:

The proposed amendments to the Standing Committee on Model Utah Criminal Jury Instructions membership seeks to remove the professor of criminal law position. That position has historically been difficult to fill and retain, and it does not provide a benefit to the committee's work. The committee's chair, Judge Blanch, supports the removal of the position.

With no further discussion, Judge Connors moved to accept the proposed changes as amended. Judge Chiara seconded and the motion passed unanimously.

Judicial Fairness and Accountability Committee:

The Judicial Council requested that the director of the Office of Fairness and Accountability begin the process of establishing a committee to provide support and guidance to the office, as well as provide guidance to the Judicial Council on supporting the work of the Office of Fairness and Accountability, as the office falls under the direction of the Judicial Council. The proposed amendments would create a new Committee on Fairness and Accountability under subsection (1)(B)(xv), and includes a reference to the duties and responsibilities of the committee in rule CJA 3-420.

Policy and Planning recommended removing the Judicial Council membership position, as membership from the Council is not necessary for the committee's work. The committee recommended the addition of a sitting judge or current or former judicial officer. The committee also recommended changing the name of the committee to "The Committee on Fairness and Accountability."

Following further discussion and additional minor language changes to the proposed amendments, Judge Connors moved to accept the amendments as discussed. Judge Chiara seconded and the motion passed unanimously.

(4) CJA 3-420. Committee on Judicial Fairness and Accountability (NEW).

Mr. Puente presented new proposed rule CJA 3-420 that outlines the role and responsibility of the new Committee on Fairness and Accountability. Mr. Puente discussed the committee's work and strategic plan, functionality of the group, and involvement of stakeholders.

The committee discussed the proposals and made recommendations for changes to the committee's strategic plan, inclusion of committee outreach, and coordination with stakeholders and other branches of government. Many areas of the proposed new rule were discussed earlier during the discussion on the membership provisions in CJA 1-205 (tab 3) and similar changes were made to these proposals.

Following further discussion and additional changes to the proposed new rule, Judge Connors moved to accept the amendments as discussed. Judge Chiara seconded and the motion passed unanimously.

(5) CJA 6-501. Reporting requirements for guardians and conservators.

CJA 6-507. Court visitors.

CJA 6-501:

The proposed amendments to CJA 6-501 are intended to streamline the rule and provide clarification about the exceptions to the reporting requirements for a court visitor. The WINGS Committee expressed concern that parents who are guardians or are conservators of an adult child were not required to provide a written report to the court. The amendments to the applicability section clean up the language with respect to reporting requirements when a parent is a guardian or conservator of an adult child. "Ward" was changed to "protected person" throughout the rule for consistency purposes. Current Judicial Council approved forms contain information regarding an interested person's right to object to the filed reports, but do not include procedures instructing the court on what it should do or provide a timeframe to file those objections.

The committee discussed the proposed amendments and made minor recommendations on language. The committee recommended establishing the same reporting requirements for parents or conservators that would be required of court visitors. The committee recommended shortening the statement under applicability and renumbering the sections and subsections as appropriate.

Following further discussion and additional minor language changes to the proposed amendments, Judge Connors moved to accept the amendments as discussed. Judge Heward seconded and the motion passed unanimously. However, the motion was rescinded following discussion of CJA 6-507. Both CJA 6-501 and 6-507 went back to the WINGS Committee for revisions.

CJA 6-507:

CJA 6-507 provides for clarification of the definition, role, and requirements of a court visitor. The WINGS committee has received approval from the Forms Committee regarding minor changes made to the court visitor cover sheet. The language in the rule is required by statute.

The committee discussed the proposed amendments and expressed concern regarding language in section (7) related to objections to the court visitor reports and the limitations set on the court in considering those objection. The WINGS Committee's intent was to provide clarification on what can be objected to and what can be sent to the judge for review prior to a hearing.

The committee also discussed the term "protected person" when referring to a person receiving guardianship or conservatorship. The committee recommended changing "protected person" to "respondent" in that section as it may be a better term of art. The change was made in both 6-507 and 6-501. The committee recommended that the WINGS Committee review the proposed language in (7) for further amendments.

No motion was made on this discussion. Rules 6-507 and 6-501 will be brought back to the committee for discussion at another time.

(6) Rules back from public comment.

- CJA 1-303. Internal procedures and organization.

CJA rule 1-303 returned from a 45-day public comment period, having received one comment. Ms. Williams noted that the comment did not merit any additional amendments. Following discussion, the committee made no changes to the rule as proposed.

Judge Connors moved to recommend that the Judicial Council approve rule 1-303 for final approval. Judge Chiara seconded and the motion passed unanimously.

(7) CJA 4-903. Uniform Custody Evaluation.

The proposed amendments to CJA 4-903 limit the circumstances in which a custody evaluation can be ordered and outlines the training requirements of those who conduct custody evaluations. The proposed amendments are in response to a legislative audit that was done in August 2019, as well as recommendations made by the Standing Committee on Children and Family Law.

The committee reviewed the proposed amendments and made recommendations for minor language changes. The committee expressed appreciation for the definition and clarification of a custody evaluator. The committee recommended inclusion of proof of training completion in the evaluators' curriculum vitae.

Following further discussion and additional minor language changes to the proposed amendments, Judge Connors moved to accept the amendments as discussed and recommend that the Judicial Council approve CJA 4-903 for public comment. Judge Chiara seconded and the motion passed unanimously.

Old Business/New Business:

Margaret Plane has been appointed to the Judicial Council to replace Rob Rice, however, Ms. Plane will not be appointed to serve on the Policy and Planning Committee. Judge Augustus Chin has replaced Judge Cannell. Judge Connors will continue to serve on the water law judge subcommittee with Judge Appleby and Judge Chiara. Ms. Williams will talk to Cathy Dupont to see if she would like to staff the subcommittee, or Ms. Williams or one of the Associate General Counsels will serve as staff to the subcommittee. Judge Appleby is currently drafting the proposed new rule.

ADJOURN:

With no further items for discussion, the meeting adjourned with a motion from Judge Connors. Judge Heward seconded the motion. With no objection, the meeting adjourned. The next meeting will be on December 3, 2021 at 12 PM via Webex video conferencing.

TAB 2

Rules back from Public Comment

- CJA 2-101. Rules for the conduct of Council meetings
- CJA 5-101. The Board of Appellate Court Judges
- CJA 6-101. The Board of District Court Judges
- CJA 7-101. Juvenile Court Board, Executive Committee and Council Representatives
- CJA 9-101. Board of Justice Court Judges
- CJA 3-303. Justice court clerks
- CJA 3-117. Committee on Court Forms
- CJA 3-401. Office of General Counsel
- CJA 4-202.02. Records classification
- CJA 4-208. Automatic expungement of cases

Notes: No public comments were received on any rule, but new amendments will be proposed on rules 3-117 and 4-202.02.

Rule 2-101. Rules for the conduct of Council meetings.

Intent:

To provide for the formal and orderly consideration of issues by the Council.

Applicability:

This rule shall apply to all meetings of the Council.

Statement of the Rule:

(1) A quorum of the Council is necessary for the Council to take any action. Council members may be present either physically or by means of electronic communication.

(2) The affirmative vote of a majority of the Council members present is required to take final action on any rule or resolution.

(3) The presiding officer votes only in the event of a tie. All other members of the Council have one vote.

(4) Meetings of the Council shall be conducted in ~~accordance with Robert's Rules of Order. The Council may suspend the rules of order upon the affirmative vote of a majority of the Council members present. When the rules of order are suspended, the Council meeting shall be conducted in~~ an orderly and professional manner.

Rule 3-117. Committee on Court Forms**Intent:**

To establish a committee to determine the need for forms, to standardize court forms, and to create forms for use by litigants in all court levels.

Commented [KW1]: New proposal (Keisa Williams)**Applicability:**

This rule shall apply to the judiciary.

Statement of the Rule:

(1) The committee shall conduct a comprehensive review of current court forms and the need for new court forms to assist parties and practitioners in all court levels.

Commented [KW2]: New proposal (Keisa Williams)

(2) The committee shall create forms as it deems necessary for use by parties and practitioners, including forms for the Online Court Assistance Program.

(3) The committee shall create standardized court forms for use in courts throughout the judiciary, when practicable.

(43) ~~Process for form creation~~Procedures.

Commented [KW3]: New proposal (Keisa Williams)

(43)(a) The committee shall adopt procedures for creating new forms or making substantive amendments to existing forms, procedures for eliminating obsolete and outdated forms, procedures for recommending which forms should be translated into other languages, and procedures for expediting technical or non-substantive amendments to forms.

(43)(b) Forms should be:

(4)(b)(i) reviewed for legal correctness;

(4)(b)(ii) standardized across the state where practicable;

(4)(b)(iii) developed to promote and expand access to justice;

(4)(b)(iv) structured to eliminate redundancy and unnecessary steps;

(4)(b)(v) written in plain language and reference the statutes and rules to which the forms apply; and

(4)(b)(vi) user tested, when practicable.

Commented [KW4]: New proposal (Keisa Williams, (i) & (ii))**Commented [KW5]:** New proposal (Forms Committee, (iii-vi))

(43)(c) The committee shall solicit input from other interested groups as it deems appropriate. The committee may establish subcommittees using non-committee members to facilitate its work.

(43)(d) The committee may recommend to the Judicial Council mandatory use of particular forms. A mandatory designation by the Judicial Council would mean that courts and litigants may not use a different form that aims to perform the same function as the mandatory form, without prior approval from the Judicial Council. However, the Judicial

Commented [KW6]: New proposal (Keisa Williams)

Council's designation of a form as mandatory is not binding on a decision-maker asked to review the legal correctness of the form.

~~(3)(e) The Office of General Counsel shall staff the committee and shall review all forms for legal correctness before final approval by the committee.~~

Commented [KW7]: Part out for public comment. Part new proposal (Keisa Williams)

(54) The State Law Librarian shall be responsible for maintaining and archiving the forms.

~~(65) The Administrative Office shall provide administrative support to the committee.~~

Commented [KW8]: Out for public comment

Effective ~~May 22, 2017~~ May 1, 2021

Rule 3-303. Justice court clerks.**Intent:**

To provide for clerical services in justice courts and to establish uniform responsibilities for justice court clerks.

Applicability:

This rule shall apply to all justice courts.

Statement of the Rule:

(1) Clerks shall be provided to each justice court to assist the judge in managing the operation of the courts. The clerk shall have primary responsibility for performing clerical duties including:

(1)(A) recordkeeping;

(1)(B) filing reports;

(1)(C) scheduling hearings and trials;

(1)(D) mailing notices;

(1)(E) maintaining case files;

(1)(F) collecting fines;

(1)(G) docketing cases;

(1)(H) taking and certifying acknowledgments and administering oaths; and

(1)(I) other court related duties as assigned.

(2) The judge shall concur in the appointment of the clerk assigned to serve the court and shall participate in the personnel evaluation process for that clerk.

(3) If the clerk is serving the court in a part time capacity, the clerk shall not be assigned to other duties which present a conflict of interest or promote an appearance of impropriety regarding court responsibilities.

(4) Counties and municipalities are responsible for bearing the expense of providing clerical services to the justice courts located within their jurisdictions.

(5) Each clerk shall be certified on an annual basis by demonstrating proficiency with the training required by the Board of Justice Court Judges.

Effective May/November 1, 20__

Rule 3-401. Office of General Counsel.**Intent:**

To establish the office of General Counsel within the Administrative Office.

To identify the office of General Counsel as the primary authority for coordinating the provision of legal services to the judiciary.

To establish uniform procedures governing the provision of legal services to the judiciary.

To define the relationship between the office of General Counsel and the Office of the Attorney General.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) ~~Establishment of office of general counsel.~~ The office of General Counsel is established within the Administrative Office to provide legal services to the judiciary.

(2) **Responsibility.** The office of General Counsel shall have primary responsibility for providing the following legal services:

(2)(A) informal advice and counsel;

(2)(B) written opinions;

(2)(C) legislative drafting;

(2)(D) legal representation in administrative and judicial proceedings where the claimant is seeking declaratory, injunctive, or extraordinary relief or where risk management coverage is not provided;

(2)(E) negotiation, drafting, and review of contracts and leases;

(2)(F) consultation, drafting, and review of judicial policies and procedures;

(2)(G) staff support to committees established by the Council and the Supreme Court as directed; and

(2)(H) coordination of, and arrangement for, legal representation by the Attorney General's Office or outside counsel in appropriate cases.

(3) **Protocol for requesting legal assistance.**

(3)(A) **Courts of record.**

(3)(A)(i) **Non-judicial officers and employees of the state.**

(3)(A)(i)(a) All requests for legal assistance, other than requests for informal advice or counsel, shall be in writing and directed to the appropriate state level administrator, who shall refer appropriate requests to the office of General Counsel.

(3)(A)(i)(b) All requests for legal representation and indemnification shall be made in writing by the employee or officer who is named as a defendant. The request shall be made within ten days of service and directed to the office of General Counsel. A copy of the request shall be sent by the individual officer or employee to the Office of the Attorney General at that time. General Counsel shall be responsible for coordinating the legal representation of non-judicial officers and employees with the Attorney General's Office.

(3)(A)(ii) **Judicial officers.**

(3)(A)(ii)(a) All requests for legal assistance from judicial officers, other than requests for informal advice or counsel, shall be in writing and directed to General Counsel.

(3)(A)(ii)(b) All requests for legal representation and indemnification shall be made by the judicial officer who is named as a defendant. The request shall be made within ten days of service and directed to General Counsel. General Counsel shall be responsible for coordinating the legal representation of judicial officers with the Attorney General's Office.

(3)(B) **Courts not of record.**

(3)(B)(i) All requests for legal assistance, representation and indemnification shall be made in writing by the officer or employee seeking assistance and directed to the appropriate governmental entity.

(3)(C) **Judicial council, boards of judges, committees and task forces.**

(3)(C)(i) All requests for legal assistance from the Council, the Boards, committees or task forces established by the Council or the Supreme Court shall be in writing and directed to General Counsel from the presiding officer of the Council, Board, committee or task force.

86

87 (4) **Relationship to attorney general's office.** The provision of legal services to the judiciary
88 by the Office of General Counsel and the Office of the Attorney General shall be governed
89 by this rule and Utah Code section 63G-7-901.

90

91 *Effective November 1, ~~2018~~2021*

92

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:

- 114 (4)(A)(i) Section 62A-15-631, Involuntary commitment under court
115 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)(~~XW~~) 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,

Commented [KW1]: July public comment

Commented [KW2]: September public comment

- 203 privileged communication between the courts and an attorney representing,
 204 retained, or employed by the courts, and records prepared solely in
 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, **or Chapter 3a, Stalking**
273 **Injunctions 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.

Commented [KW3]: New proposal

CJA 4-202.02

DRAFT: Line 169 (July public comment)
Line 189 (September public comment)
Lines 272-273 (new proposal)

293
294 Effective ~~December 5~~May/November 1, 2021

Rule 4-208. Automatic expungement of cases

Intent:

The intent of this rule is to govern the Administrative Office of the Court's development and implementation of an automated expungement process.

Applicability:

This rule applies to cases in district and justice courts.

Statement of the Rule:

(1) Definitions

(1)(A) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety.

(1)(B) "Clean slate eligible case" means the same as defined in Utah Code §77-40-102.

(1)(C) "Conviction" means a judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(1)(D) "Expunge" means to seal or otherwise restrict access to the individual's record when the record includes a criminal investigation, detention, arrest, or conviction.

(2) Automated expungement process

(2)(A) The Administrative Office of the Courts shall develop an automated process for expunging eligible court records.

(2)(B) Automated processes must comply with the requirements outlined in the Utah Rules of Criminal Procedure and the Utah Expungement Act.

(2)(C) All automated expungement processes developed by the Administrative Office of the Courts shall be approved by the Utah Judicial Council.

(3) Standing orders and orders of expungement

(3)(A) The presiding officer of the Judicial Council may appoint a district court presiding judge as a signing judge for automatic expungements in all district courts within the presiding judge's district in accordance with Rule 3-108.

(3)(B) A justice court presiding judge may act as a signing judge for automatic expungements in all justice courts within the presiding judge's district. The length of the assignment must coincide with the judge's term as a presiding judge.

(3)(C) If the district or justice court presiding judge determines that the requirements under the Utah Rules of Criminal Procedure and this rule have been met, the presiding judge shall issue a standing order authorizing the Administrative Office of the Courts to prepare and automatically affix the presiding judge's judicial

37 signature to orders of expungements issued in relation to cases from that judicial
38 district.

39 (3)(D) The form and content of automated orders of expungement must be approved by
40 the Utah Judicial Council.

41 **(4) Notice of action taken**

42 (4)(A) The Administrative Office the Courts shall send notice that an order of
43 expungement has been issued in accordance with the Utah Rules of Criminal
44 Procedure.

45

46 *Effective May/November 1, 20*

1 **Article 1. General.**

2
3 **Rule 5-101. ~~The~~ Board of Appellate Court Judges.**

4
5 **Intent:**

6 To establish the Board of Appellate Court Judges.

7
8 To establish the procedure of the Board in the conduct of Board meetings.

9
10 **Applicability:**

11 This rule shall apply to the Board of Appellate Court Judges.

12
13 **Statement of the Rule:**

14 (1) **Establishment.** There is established a Board of Appellate Court Judges.

15
16 (2) **Membership.** Members of the Board shall be the members of the Court of Appeals and the
17 members of the Supreme Court

18
19 (3) **Chair and vice chair.** The Chief Justice of the Supreme Court and the Presiding Judge of
20 the Court of Appeals shall alternate as the Chair and Vice Chair of the Board and shall alternate
21 presiding over the meetings of the Board.

22
23 (4) **Meetings.**

24
25 (4)(A) The Board shall meet a minimum of three times a year to transact any business
26 that is within its jurisdiction.

27
28 ~~(45)(B)~~ The Board shall act by majority vote. All members of the Board have the right to
29 vote.

30
31 ~~(4)(C)~~ A quorum from both the Supreme Court and the Court of Appeals is required for a
32 Board meeting. A quorum for the Supreme Court is at least three members and a
33 quorum for the Court of Appeals is at least four members.

34
35 ~~(46)(D)~~ Board meetings shall be conducted in ~~accordance with Robert's Rules of~~
36 ~~Order~~ an orderly and professional manner and are not open and public meetings.

37
38 Effective ~~December 16, 2019~~ November 1, 2021

Rule 6-101. ~~The~~ Board of District Court Judges.

Intent:

To establish the Board of District Court Judges.

To prescribe the composition of the Board's membership, the method of selecting Board members and officers, and the members' terms of office.

To establish the procedure of the Board in the conduct of Board meetings.

Applicability:

This rule shall apply to the Board of District Court Judges.

Statement of the Rule:

(1) **Establishment.** There is hereby established a Board of District Court Judges.

(2) **Election.** Members of the Board shall be elected by the district court judges present at the district court business meeting at the annual judicial conference. The judges present at this meeting shall constitute a quorum. Nominations may be made only by district court judges, and must come from the judicial district or districts in which the vacancy exists.

(3) **Membership.** The Board shall consist of the following eleven positions:

(3)(A) one from the First Judicial District;

(3)(B) two from the Second Judicial District;

(3)(C) three from the Third Judicial District;

(3)(D) two from the Fourth Judicial District;

(3)(E) one from the Fifth Judicial District; and

(3)(F) two from the Sixth, Seventh, or Eighth Judicial Districts.

(4) **Terms.** Members of the Board shall serve staggered three-year terms or until a Board member is replaced or resigns.

(5) **Chair and vice chair.**

(5)(A) Establishment. There shall be a Chair and Vice Chair of the Board selected from among the Board.

(5)(B) Election. The Vice Chair shall be elected by the Board members and shall be in the first or second year of a three-year term. The Vice Chair shall serve as Chair in the absence of the Chair or at the request of the Chair.

(5)(C) Vice chair's term. The Vice Chair shall become Chair of the Board during the second or third year of a three-year term. The Chair shall preside over all meetings of the Board and over the annual district court business meeting.

(6) Vacancies.

(6)(A) If a vacancy occurs for any reason between annual district court business meetings, the Board shall elect a replacement for the unexpired term of the vacancy. The Board shall adhere to the district makeup of the Board in this selection.

(68)(B) Vacancy in the office of the chair. Should the Chair of the Board resign or leave the Board for any reason, the Vice Chair shall become Chair, serving both the unexpired term of the Chair and full term as Chair.

(69)(C) Vacancy in the office of the vice chair. In the event that the Vice Chair of the Board resigns or leaves the Board for any reason, a new Vice Chair shall be selected by the Board from among its members to serve the unexpired term of the Vice Chair.

(740) Meetings.

(7)(A) The Board shall meet a minimum of once every two months to transact any and all business that is within its jurisdiction.

(744)(B) The Board shall act by majority vote. All members of the Board have the right to vote. Six members of the Board constitute a quorum.

(7)(C) The meetings shall be conducted in an orderly and professional manner and in accordance with this Code.

(742)(D) When a Board member is unable to attend a Board meeting, that member may designate a district judge, from the same district or districts represented by the absent member, to attend the meeting on behalf of the absent member. The substitute judge shall be provided with a copy of the agenda and other meeting materials, may attend the open and closed sessions of the meeting, and may participate in the discussion of agenda items. However, the substitute judge may not make motions or vote on Board issues.

~~(13) Board meetings shall be conducted in accordance with Robert's Rules of Order.~~

~~(14) All business conducted by the Board shall be conducted in accordance with this Code.~~

Effective ~~May 1, 2019 pursuant to CJA Rule 2-205~~ November 1, 2021

Rule 7-101. Juvenile Court Board, Executive Committee and Council Representatives.**Intent:**

To establish a Board of Juvenile Court Judges.

To establish an Executive Committee of the Board.

To establish the authority and duties of the Board and the Executive Committee.

To establish the election procedure for Board members, Chair elect of the Board and the Judicial Council representatives.

Applicability:

This rule shall apply to the Board of Juvenile Court Judges.

Statement of the Rule:**(1) Juvenile court board.**

(1)(A) **Establishment.** There is hereby established a Board of Juvenile Court Judges.

(1)(B) **Membership.** The Board shall be composed of seven juvenile court judges elected at the Annual Judicial Conference Juvenile Court business meeting by sitting Juvenile Court Judges.

(1)(C) **Representation.** Representation from each judicial district shall be as follows:

(1)(C)(i) Five Board members from the Second, Third and Fourth Judicial Districts with at least one representative from each District; and

(1)(C)(ii) Two Board members from the First, Fifth, Sixth, Seventh or Eighth Districts.

(1)(D) **Election.** The juvenile court judges present at the annual business meeting shall constitute a quorum. Nominations for board positions may be made by sitting Juvenile Court Judges only. Nominations must come from the Judicial District or Districts in which the vacancy exists. All sitting judges shall be entitled to vote for all members of the Board.

(1)(E) **Terms.** The terms of the initial Board members shall be determined by lot, with four members selected to serve three year terms and three members selected to serve two year terms. Successors shall be elected for three year terms.

(1)(F) **Vacancies.** If a vacancy occurs for any reason on the Board between Annual Judicial Conferences, the Board shall elect a replacement for the unexpired term of the vacancy. In filling the vacancy, the Board shall adhere to and perpetuate the District representation in effect at the time of the vacancy.

(2) Chair and vice chair.

(2)(A) **Establishment.** There shall be a Chair and Vice Chair of the Board.

(2)(B) **Chair's term.** The Chair shall serve a one year term beginning immediately after the Annual Judicial Conference in the year following election as Vice Chair.

(2)(C) **Responsibilities.** The Chair shall preside over all meetings of the Board and the Juvenile Court Judges Meeting at the Annual Judicial Conference, and perform other duties as set forth in the Juvenile Court Act, this Code and as directed by the Board.

(2)(D) **Vacancy in office of 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.

(2)(E) **Election.** The Vice Chair shall be elected by the Board members at the commencement of the first or second year of the Vice Chair's three year term on the Board. The Vice Chair shall serve as Chair in the absence of the Chair or at the request of the Chair.

(2)(F) **Vice chair's term.** The Vice Chair shall become Chair of the Board for a one year term immediately following the Annual Judicial Conference next succeeding his election as Vice Chair.

(2)(G) **Vacancy in office of vice chair.** In the event that the Vice Chair resigns or leaves 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) **Meetings of the board.**

(3)(A) The Board shall meet a minimum of once every two months to transact any and all business that is within its jurisdiction. This meeting shall be presided over by the Chair of the Board or the Vice Chair in the absence of the Chair or at the request of the Chair.

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

(3)(C) The Board meetings shall be conducted in an orderly and professional manner and in accordance with ~~Roberts' Rules of Order and~~ this Code.

(3)(D) When a Board member is unable to attend a Board meeting, that member may designate a juvenile court judge to attend the meeting on behalf of the absent member. The substitute and the absent member must be from the same district group identified by paragraph (1)(C) above. The substitute judge shall be provided with a copy of the agenda and other meeting materials, may attend the open and closed sessions of the meeting, and may participate in the discussion of agenda items. The substitute judge may make motions and vote.

(4) **Executive committee.**

(4)(A) **Membership.** There is hereby established an Executive Committee of the Board. The committee shall be comprised of three members: the Chair of the Board, the Vice Chair and one member of the Board selected by the Board members to serve at large.

(4)(B) **Duties and responsibilities of the executive committee.** The duties and responsibilities of the Executive Committee are as follows:

(4)(B)(i) Assist the Board in establishing a planning capability in assessing and projecting needs, resources, and policies.

(4)(B)(ii) Act as liaison with other agencies and parties who seek contact with the Board.

(4)(B)(iii) Screen and reduce the number of matters presented to the full Board for its consideration to ensure that all matters referred to it require full Board consideration.

(4)(B)(iv) Review initiatives, proposals and questions that will be submitted to the full Board to ensure that information is complete and in proper form to facilitate expeditious handling by the Board.

(4)(B)(v) Assist the Administrative Office in staff work as assigned by the Board where judicial guidance may be required in carrying out Board policy.

(4)(B)(vi) Consult with the Administrative Office on matters requiring immediate attention or on matters needing judicial consideration but not requiring full Board consideration.

(4)(B)(vii) Accomplish all other assignments as may be directed by the Board.

(5) Procedures of the board.

(5)(A) The Chair of the Board shall serve as Chair of the Executive Committee. When the Chair of the Board is not available, the Chair elect shall act in the Chair's behalf.

(5)(B) All action taken by the Executive Committee shall be reported to the full Board in the form of minutes and reports and may be subject to ratification by the full Board.

(5)(C) A time and date certain shall be established for Executive Committee meetings. The juvenile court administrator or designee shall serve as secretariat to the Committee.

(6) Judicial council representatives.

(6)(A) The Juvenile Court shall have three representatives on the Council, with no two representatives serving from the same judicial district:

(6)(A)(i) one from the Second, Third, or Fourth Judicial District;

(6)(A)(ii) one from the First, Fifth, Sixth, Seventh, or Eighth Judicial District; and

(6)(A)(iii) one serving at-large.

(6)(B) Timing of elections, and the process for filling vacancies, shall be conducted pursuant to Rule 1-201. Nominations can be made by any sitting judge for any Council representative. Voting shall be by all Juvenile Court judges present at the annual business meeting. Those present at the business meeting will constitute a quorum.

(6)(C) Council representatives shall serve staggered three-year terms, with one Juvenile Court judge elected to the Council each year.

Effective ~~June 22, 2020~~ November 1, 2021

Rule 9-101. Board of Justice Court Judges.**Intent:**

To prescribe the membership, method of selection, term of office and basic procedures of the Board.

Applicability:

This rule shall apply to the Board of Justice Court Judges.

Statement of the Rule:

(1) **Establishment – Membership.** There is hereby established a Board of Justice Court Judges comprised of the chair, six at-large members, and the three Council representatives.

(2) **Election.** Members of the Board shall be elected by the justice court judges in connection with the justice court business meeting at the annual judicial conference. For all elections contemplated by this rule, judges may vote in person or remotely.

(3) **Term.** The chair and the at-large members shall serve staggered two year terms. The Council representatives shall serve during the length of their term as Council representatives.

(4) **Chair and Vice Chair.**

(4)(A) The chair shall preside over all meetings of the Board and over the Justice Court judges' training conferences. The chair may not simultaneously serve as a Council representative.

(4)(B) Members of the Board shall elect a vice-chair and an education liaison. The vice-chair shall serve as chair in the absence of the chair or upon request of the chair. Neither the vice-chair nor the education liaison may simultaneously serve as a Council representative.

(5) **Executive Committee.** There shall be an Executive Committee comprised of the chair, vice-chair and one of the Council representatives designated by the chair. The Executive Committee may take necessary action on behalf of the Board between Board meetings.

(6) **Vacancies.** If vacancies occur for any reason on the Board between elections, the Board shall elect a replacement for the unexpired term of the vacancy.

(6)(A) **Vacancy in the office of chair.** Should the chair resign or leave the Board for any reason, the vice-chair shall become chair for the remainder of the term.

(6)(B) **Vacancy in the office of vice chair.** Should the vice-chair of the Board resign or leave 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.

45
46 ~~(640)~~(B) **Vacancy – Council representative.** If a vacancy occurs for any reason among
47 the representatives to the Council, the Board shall designate an interim representative to
48 serve until the next annual training conference, at which time a representative shall be
49 elected to fill the unexpired term.

50
51 ~~(744)~~ **Meetings of the Board.** The Board shall meet at least quarterly to transact any and all
52 business that is within its jurisdiction. The Board shall rule by majority vote. All members, except
53 the three Council representatives, are voting members. Four voting members of the Board
54 constitute a quorum. Board meetings shall be conducted ~~generally in accordance with Robert's~~
55 ~~Rules of Order~~ **in an orderly and professional manner.**

56 -
57 ~~(12) All business conducted by the Board shall be conducted~~ **and** in accordance with this Code.

58
59 ~~(843)~~ **Certifications.** The Board shall be responsible for certifying new justice courts and
60 recertifying existing justice courts to the Judicial Council as outlined in Rule 9-108.

61
62 *Effective ~~August 21, 2020~~ **November 1, 2021***

TAB 3

CJA Rule 2-103. Open and closed meetings (AMEND)

Notes:

These amendments were requested by the Judicial Council at its November 22, 2021 meeting.

Rule 2-103. Open and closed meetings.**Intent:**

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

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

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

Applicability:

This rule shall apply to all meetings of the Council.

Statement of the Rule:

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

(2) Public notice of meetings.

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

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

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

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

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

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

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

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

(4)(B) collective bargaining or litigation;

(4)(C) legal advice of counsel;

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

(4)(~~DE~~) the sale of real property if:

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

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

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

(4)(~~EE~~) deployment of security personnel or devices;

(4)(~~GF~~) allegations of ~~criminal~~ misconduct; or

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

(5) Procedure for closing a meeting.

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

(5)(B) The recording and minutes otherwise required by Rule 2-104 shall not be made if a meeting is closed ~~to discuss the character, competence, or physical or mental health of an individual or to discuss the deployment of security personnel or devices.~~ The presiding officer shall sign a sworn statement, which is a public record, affirming that the sole purpose for closing the meeting is to discuss ~~the character, competence, or physical or mental health of an individual or the deployment of security personnel, devices, or systems~~ one of the issues outlined in paragraph (4).

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

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

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

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

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

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

Effective ~~November~~ May 1, 2022~~1~~

TAB 4

CJA 3-403. Judicial branch education (AMEND)

Notes: The proposed amendments are requested by the Standing Education Committee.

Rule 3-403. Judicial branch education.**Intent:**

To establish the Judicial Branch Education Committee's responsibility to develop and evaluate a comprehensive education program for all judges, commissioners and court staff.

To establish education standards for judges, commissioners and court staff, including provisions for funding and accreditation for educational programs.

To ensure that education programs, including opportunities for job orientation, skill and knowledge acquisition, and professional and personal development, are available to all members of the judicial branch and that such programs utilize the principles of adult education and focus on participative learning.

To emphasize the importance of participation by all judicial branch employees in education and training as an essential component in maintaining the quality of justice in the Utah courts.

Applicability:

This rule shall apply to all judges, commissioners and court staff, except seasonal employees and law clerks.

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

(1)(A) **Judicial branch education committee.** The Judicial Branch Education Committee shall submit to the Council for approval proposed policies, standards, guidelines, and procedures applicable to all judicial branch education activities. It shall evaluate and monitor the quality of educational programs and make changes where appropriate within the approved guidelines for funding, attendance, and accreditation.

(1)(B) **Responsibilities of members.** Committee members shall propose policies and procedures for developing, implementing, and evaluating orientation, continuing skill development, and career enhancement education opportunities for all judicial branch employees; formulate an annual education plan and calendar consistent with the judicial branch education budget; and serve as advocates for judicial branch education, including educating the judiciary about the purpose and functions of the Committee.

(1)(C) Committee meetings.

(1)(C)(i) The Committee shall meet twice a year. Additional meetings may be called as necessary. A majority of voting members in attendance is required for official Committee action.

(1)(C)(ii) The chairperson may recommend to the Council that a Committee member be replaced if that member is absent without excuse from two consecutive Committee meetings or fails to meet the responsibilities of membership as outlined in paragraph (1)(B).

(2) **Administration.**

Judicial Education Officer. The Judicial Education Officer, under the direction of the Court Administrator, shall serve as staff to the Committee and be responsible for the administration of the judicial education program consistent with this rule.

(3) **Standards for judges and court commissioners.**

(3)(A) **Program requirements.** All judges and court commissioners shall participate in the first designated orientation program offered after the date the judge is administered the oath of office, unless attendance is excused for good cause by the Management Committee. All judges, court commissioners, active senior judges, and active senior justice court judges shall complete 30 hours of pre-approved education annually, to be implemented on a schedule coordinated by the Committee. Judges of courts of record and court commissioners may attend a combination of approved local, state, or national programs. Active and inactive senior judges and retired judges may attend approved local or state programs and the annual Utah Judicial Conference, but an inactive senior judge or retired judge must pay all expenses.

(3)(A)(i) **Active senior judge.** If an active senior judge applies to be reappointed and will have completed at least 60 total education hours in the two years preceding the effective date of reappointment, the Management Committee may, for good cause shown, excuse the judge from having to complete the annual 30 hour education requirement.

(3)(A)(ii) **Inactive senior judges and retired judges.** If an inactive senior judge or a retired judge applies to be an active senior judge, the judge shall demonstrate that:

(3)(A)(ii)(a) less than three years has passed since he or she last complied with the continuing education requirements of an active senior judge;

(3)(A)(ii)(b) he or she has complied with the MCLE requirements of the Utah State Bar for at least three years before the application;

(3)(A)(ii)(c) he or she has attended 30 hours of approved judicial education within one year before the application; or

(3)(A)(ii)(d) he or she has attended the new judge orientation for judges of the courts of record within one year before the application.

(3)(B) **Program components.** Education programs for judges and court commissioners shall include: a mandatory new judge orientation program; a variety of programs addressing substantive and procedural law topics, aimed at skill and knowledge acquisition; and programs geared to professional and personal development, to meet the continuing needs of judges and court commissioners over the long term.

(3)(C) **Annual conferences.** Justices, judges, justice court judges, commissioners, and active senior justice court judges shall attend the annual justice court conference. Presiding Judges of the Appellate, District, and Juvenile Courts and the Board of Justice

~~Court Judges may unless excused by the Board of Justice~~ Court Judges excuse judges and commissioners for good cause. Because the annual judicial conference represents the only opportunity for judges to meet and interact as a group and to elect their representatives, judges, active senior judges, and court commissioners of the courts of record ~~are strongly encouraged to~~ must attend that conference.

(4) **Standards for court staff.**

(4)(A) **State employees.**

(4)(A)(i) **Program requirements.** All court staff employed by the state shall complete 20 hours of approved coursework annually.

(4)(A)(ii) **Program components.** Education programs for court staff employed by the state shall include: on-the-job orientation for new employees as well as semi-annual Orientation Academies; skill development programs that teach technical and job-related competencies; and enhancement programs that promote personal and professional growth within the organization.

(4)(B) **Local government employees.**

(4)(B)(i) **Program requirements.** All court staff employed by the justice courts shall complete 10 hours of approved coursework annually. All other court staff employed by local government shall complete 20 hours of approved coursework annually.

(4)(B)(ii) **Program components.** Education programs for court staff employed by local government shall include: annual training seminar; skill development programs that teach technical and job-related competencies; and enhancement programs that promote personal and professional growth.

(5) **Reporting.**

(5)(A) Judges, commissioners and court staff governed by these standards shall report participation in education programs on a form developed by the Committee.

(5)(B) For court staff, compliance with judicial branch education standards shall be a performance criterion in the evaluation of all staff.

(5)(B)(i) Supervisory personnel are responsible to ensure that all staff have an opportunity to participate in the required education. Failure of a supervisor to meet the minimum education standards or to provide staff with the opportunity to meet minimum education standards will result in an unsatisfactory performance evaluation in the education criterion.

(5)(B)(ii) Failure of staff to meet the minimum education requirements will result in an unsatisfactory evaluation on the education criterion unless the employee provides documented reasons that the employee's failure to meet the education standards is due to reasons beyond the employee's control.

(6) **Credit.** Judicial education procedures shall include guidelines for determining which programs qualify as approved education within the meaning of these standards.

(7) **Funding.**

(7)(A) **Budget.** In preparing its annual request for legislative appropriations, the Council shall receive and consider recommendations from the Committee. The Committee's annual education plan shall be based upon the Council's actual budget allocation for judicial education.

(7)(B) **In-state education programs.** Judicial branch funds allocated to in-state judicial education shall first be used to support mandatory in-state orientation programs for all judicial branch employees and then for other education priorities as established by the Committee with input from the Boards of Judges and Administrative Office.

(7)(C) **Out-of-state education programs.** To provide for diverse educational development, to take advantage of unique national opportunities, and to utilize education programs which cannot be offered in-state, the annual education plan shall include out-of-state education opportunities. The Committee shall approve national education providers and shall include in the education procedures, criteria to be applied by the Administrative Office to out-of-state education requests. Criteria shall include relevance to the attendee's current assignment and attendance at in-state programs. Disagreement with a decision to deny an out-of-state education request may be reviewed by a quorum of the Committee at the applicant's request.

(7)(D) **Tuition, fees, and travel.** The Committee shall develop policies and procedures for paying tuition, fees, per diem, and travel for approved programs. State funds cannot be used to pay for discretionary social activities, recreation, or spouse participation. The Committee may set financial limits on reimbursement for attendance at elective programs, with the individual participant personally making up the difference in cost when the cost exceeds program guidelines.

(8) **Mentoring.**

(8)(A) Within seven business days after a new district or juvenile judge has been sworn in, the Presiding Judge shall appoint a mentor to the new judge.

(8)(B) Within fourteen business days after a new district or juvenile judge has been sworn in, the mentor and the new judge shall meet and review the Judicial Mentoring Guidelines and Best Practices Recommendations, complete the Mentors' Checklist contained therein and the mentor, within that same fourteen business day period, shall provide the completed Mentor's Checklist to the Judicial Education Officer.

Effective May/November 1, 2022~~20~~

TAB 5

Problem Solving Courts (best practices)

Notes:

The Judicial Council asked Judge Fuchs and Judge Gilmore to address a concern about best practice #3 with Policy and Planning.

Keisa, here are the two documents I need included in the material to the Policy and Planning meeting. The first is the language taken from the Best Practices dealing with High-Risk and High Need Participants.

The second is the proposed change to the Best Practice Standard that the Judicial Council adopted.

If you have any questions for me let me let me know. In addition if you think any changes are needed let me know.

Thanks, Dennis

I. TARGET POPULATION

Eligibility and exclusion criteria for the Drug Court are predicated on empirical evidence indicating which types of offenders can be treated safely and effectively in Drug Courts. Candidates are evaluated for admission to the Drug Court using evidence-based assessment tools and procedures.

- A. Objective Eligibility & Exclusion Criteria**
- B. High-Risk and High-Need Participants**
- C. Validated Eligibility Assessments**
- D. Criminal History Disqualifications**
- E. Clinical Disqualifications**

A. Objective Eligibility and Exclusion Criteria

Eligibility and exclusion criteria are defined objectively, specified in writing, and communicated to potential referral sources including judges, law enforcement, defense attorneys, prosecutors, treatment professionals, and community supervision officers. The Drug Court team does not apply subjective criteria or personal impressions to determine participants' suitability for the program.

B. High-Risk and High-Need Participants

The Drug Court targets offenders for admission who are addicted¹ to illicit drugs² or alcohol and are at substantial risk for reoffending or failing to complete a less intensive disposition, such as standard probation or pretrial supervision. These individuals are commonly referred to as high-risk and high-need offenders. If a Drug Court is unable to target only high-risk and high-need offenders, the program develops alternative tracks with services that are modified to meet the risk and need levels of its participants. If a Drug Court develops alternative tracks, it does not mix participants with different risk or need levels in the same counseling groups, residential treatment milieu, or housing unit.

C. Validated Eligibility Assessments

Candidates for the Drug Court are assessed for eligibility using validated risk-assessment and clinical-assessment tools. The risk-assessment tool has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently

¹ Diagnostic terminology is in flux in light of recent changes to the 5th edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5). The terms *addiction* and *severe substance use disorder* are defined herein in accordance with the American Society of Addiction Medicine (ASAM), which focuses on a compulsion to use or inability to abstain from alcohol or other drugs: "Addiction is characterized by inability to consistently abstain, impairment in behavioral control, craving, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response." Available at <http://www.asam.org/for-the-public/definition-of-addiction>.

² Illicit drugs include addictive or intoxicating prescription medications that are taken for a nonprescribed or nonmedically indicated purpose.

POLICY AND PLANNING

OLD

Required Best Practice #3: The program admits only participants who are high-risk high-need as measured by the RANT or some other approved and validated assessment tool. IB

PROPOSED

The program admits only participants who are high-risk high-need, however if a program is unable to target high-risk and high-need offenders as measured by the RANT or some other approved and validated assessment tool, the program develops alternative tracks with services that are modified to meet risk and need levels of its participants. IB

TAB 6

CJA Rule 6-303. Collection of fines and restitution (AMEND)

Notes:

The proposed amendments are necessary to conform to the changes made last session in [HB0260](#).

The Department of Correction is no longer responsible for collecting any criminal accounts receivable for sentences imposed on or after July 1, 2021. They continue to be responsible for accounts receivable on cases sentenced before July 1, 2021. So subsections (1) and (2) of Rule 6-303 are out of date. Subsections (3) and (4) need no change after HB0260.

Rule 6-303. Collection of fines and restitution.**Intent:**

To provide consistency in the collection of all fines and restitution ordered by the District Court.

Applicability:

This rule shall apply to all District Courts, the Department of Corrections and the Office of State Debt Collection.

Statement of the Rule:

~~(1) Upon order of the court, the Department of Corrections shall be responsible for the collection and distribution of fines and restitution during the probation period in cases where the court orders supervised probation by the Department.~~

(1) For criminal accounts receivable established after July 1, 2021, the sentencing court shall maintain responsibility for receiving, processing, and distributing payments for the criminal accounts receivable until the account is satisfied or the account is transferred to OSDC pursuant to statute. For criminal accounts receivable established before July 1, 2021, any prior order of the sentencing court remains in effect.

(2) If a defendant fails to pay the amount of fines and restitution ordered by the court pursuant to the payment schedule established by the ~~Department~~court, the Department ~~shall~~may file a progress/violation report with the court. The report shall contain any explanation concerning the defendant's failure to pay and a recommendation as to whether the defendant's probation should be modified, continued, terminated or revoked or whether the defendant should be placed on bench probation for the limited purpose of enforcing the payment of fines or restitution.

(3) If the court orders the defendant placed on bench probation for the purpose of enforcing the payment of fines and restitution, the court shall notify the defendant of such order.

(4) The court shall transfer an account to the Office State Debt Collection for collection as required by statute.

Effective May/November 1, 20__

TAB 7

HR 15-4. Workplace Harassment Investigative Procedures

HR 16-3. Abusive Conduct Investigative Procedures

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

Notes: The proposed amendments are intended to streamline and memorialize procedures related to internal reports of alleged judicial misconduct involving court employees and/or other judicial officers, and (where appropriate and allowed under the law) to make the procedures more consistent with those related to similar reports of alleged employee misconduct.

For reference: [CJA 3-104\(3\)\(K\)](#) outlines the actions Presiding Judges are authorized to take when “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 complete set of HR policies can be found at the link [here](#).

Section 15 – Workplace Harassment Prevention

HR15-4. Investigative Procedure.

Investigators

1. Investigations of workplace harassment allegations shall be conducted by the HR Department and/or others designated by the HR Director based on HR standards and business practices.
 - a. Allegations of workplace harassment by a non-judicial officer employee may be investigated by the HR Department~~The HR Director may authorize an investigation~~ in consultation with the State Court Administrator, Deputy Court Administrator, and/or General Counsel.
 - b. Allegations of workplace harassment ~~by~~ against a judicial officer may be investigated by the HR Department or General Counsel when authorized by the Chair or Vice Chair of the Management Committee, the Management Committee, or the Judicial Council.

Investigation Results

2. Results of investigations shall be handled as follows:
 - a) ~~Non-judicial officer employee investigation results of investigations of non-judicial officer employees shall be provided in writing to management have investigation results given in writing to management.~~
 - b) ~~Judicial officer investigation results of investigations of judicial officers shall be provided have investigation results given in writing to the State Court Administrator, Deputy Court Administrator, General Counsel, and the party authorizing the investigation under HR15-4(1)(b), unless otherwise directed by the party authorizing the investigation.~~
 - c) If the investigators find the allegations to be sustained:
 - i) management shall take appropriate administrative action for non-judicial officer employees, and
 - ii) the party authorizing the investigation under HR15-4(1)(b) shall take appropriate administrative action for judicial officers.
 - d) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the matter may be referred court executive or court level administrator may refer the matter to the appropriate law enforcement agency.
 - e) At the conclusion of the investigation, the appropriate parties shall be notified.

Interviews

3. Interview procedures shall be handled as follows:
 - a) When the accused perpetrator of workplace harassment is a judicial officer:
 - i) Investigative interviews may be conducted by the HR department or General Counsel when authorized under HR15-4(1)(b).
 - ii) A presiding judge, associate presiding judge, or other appropriate judicial

officer may be appointed to assist in interviews as recommended by General Counsel.

a)b) Interviewees are required to answer truthfully to all questions related to their job performance and functions or possible violations of policies, procedures, court rules, and/or regulations.

b)c) Interviewees Employees are allowed to have a representative present during an interview if desired. The interviewee employee is responsible to request representation. The representative may be another employee that has no involvement in the alleged conduct, a private attorney retained by the interviewee employee, or a representative from an employee association.

i) If representation is requested, an interview may be paused until representation arrives or postponed up to 48 hours to allow the representative to be present.

ii) The representative or interviewee employee may record the interview after giving notice to the interviewer that the interview is being recorded.

iii) The representative may assist the interviewee employee by consulting with the interviewee employee prior to the interview and may assist the employee during the interview by asking the interviewer to clarify a question. The representative may not tell an interviewee employee what to say in response to a question nor unduly interrupt or otherwise interfere with the interviewer's ability to conduct the interview.

iv) If the investigator determines the representative is interfering with the integrity of the interview and/or the investigator's ability to conduct the interview, the representative may be removed from the interview.

e)d) When necessary to protect the integrity of the investigation, an investigator may order an interviewee employee not to disclose the contents or matters discussed in an investigative interview. Disregarding this order may be grounds for disciplinary action.

d)e) When requested by the investigator, employees must provide evidence (testimonial or non-testimonial) related to the incident being investigated. Refusal to do so may be grounds for disciplinary action.

Section 16 – Abusive Conduct Prevention

HR16-3. Investigative Procedure.

Investigators

- 1) When warranted due to allegations of conduct in violation of [HR16-1](#), investigations shall be conducted based on HR standards and business practices.
 - a) Allegations of abusive conduct by non-judicial officer employees may be investigated by~~shall be conducted by investigators in the HR Department in consultation with the State Court Administrator, Deputy Court Administrator, and/or General Counsel.~~
 - b) Allegations of abusive conduct by judicial officers may be investigated by the HR Department or General Counsel when authorized by the Chair or Vice Chair of the Management Committee, the Management Committee, or the Judicial Council~~shall be referred immediately to the Judicial Council and handled in accordance with policies of the Judicial Council. An investigation may be conducted by the HR Department if specifically requested by the Judicial Council.~~

Investigation Results

- 2) Results of investigations conducted by the HR Department shall be handled as follows:
 - a) Non-judicial officer employee investigation results shall be provided in writing. A written report shall be produced and given to management or to the Judicial Council as appropriate, with an analysis of evidence gathered and a determination of whether allegations of abusive conduct are sustained or not sustained.
 - b) Judicial officer investigation results shall be provided in writing to the State Court Administrator, Deputy Court Administrator, General Counsel, and the party authorizing the investigation under HR16-3(1)(b), unless otherwise directed by the party authorizing the investigation.
 - c) If the investigators find the allegations to be sustained:
 - i) Management shall take appropriate administrative action for non-judicial officer employees, and
 - ii) The party authorizing the investigation under HR16-3(1)(b) shall take appropriate administrative action for judicial officers.
 - ii) ~~If the allegations of abusive conduct are sustained for non-judicial officer employees, appropriate administrative action will be taken by management.~~
 - iii) ~~If the allegations of abusive conduct are sustained for judicial officers, the Judicial Council will proceed in accordance with its policies.~~
 - b)d) If an investigation reveals evidence of criminal conduct in abusive conduct allegations, the matter may be referred court executive, court level administrator, or presiding officer of the Judicial Council may refer the matter to the appropriate law enforcement agency.
 - e)e) At the conclusion of the investigation, the appropriate parties shall be notified of investigative findings and the procedure to request an administrative review of findings through the Grievance Review Panel under [HR17](#).
- 3) Participants in any abusive conduct investigation shall treat all information pertaining to the case as confidential.

Interviews

4) Interview procedures shall be handled as follows:

a) When the accused perpetrator of abusive conduct is a judicial officer:

- i) Investigative interviews may be conducted by the HR Department or General Counsel when authorized under HR16(3)(1)(b).
- ii) A presiding judge, associate presiding judge, or other appropriate judicial officer may be appointed to assist in interviews as recommended by General Counsel.

b) Interviewees are required to answer truthfully to all questions related to their job performance and functions or possible violations of policies, procedures, court rules, and/or regulations.

c) ~~Interviewees~~~~Employees~~ are allowed to have a representative present during an interview if desired. The interviewee ~~employee~~ is responsible to request representation. The representative may be another employee that has no involvement in the alleged conduct, a private attorney retained by the ~~interviewee~~~~employee~~, or a representative from an employee association. (b i thru iii is not same as Section 15 - which has a sec ii indicating "The representative is not allowed to record the interview but may take written notes.")

- i) If representation is requested, an interview may be paused until representation arrives or postponed up to 48 hours to allow the representative to be present.
- ii) The representative or ~~interviewee~~~~employee~~ may record the interview after giving notice to the interviewer that the interview is being recorded.
- iii) The representative may assist the ~~interviewee~~~~employee~~ by consulting with the ~~interviewee~~~~employee~~ prior to the interview and may assist ~~the employee~~ during the interview by asking the interviewer to clarify a question. The representative may not tell an ~~interviewee~~~~employee~~ what to say in response to a question nor unduly interrupt or otherwise interfere with the interviewer's ability to conduct the interview.
- iv) If the investigator determines the representative is interfering with the integrity of the interview and/or the investigator's ability to conduct the interview, the representative may be removed from the interview.

d) When necessary to protect the integrity of the investigation, an investigator may order an ~~interviewee~~~~employee~~ not to disclose the contents or matters discussed in an investigative interview. Disregarding this order may be grounds for disciplinary action.

e) When requested by the investigator, employees must provide evidence (testimonial or non-testimonial) related to the incident being investigated. Refusal to do so may be grounds for disciplinary action.

f) The subject of an interview may make a written request for records of the interview in accordance with HR16-5 and UCJA 4-202.02.

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

Intent:

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

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Definitions.

(1)(A) “Performance Review Committee” means a committee consisting of one member of the Management Committee of the Judicial Council who is not a member of the Supreme Court, and one member of the Supreme Court. The Management Committee member shall be appointed by a majority vote of the Management Committee. The Supreme Court member shall be appointed by the Chief Justice.

(1)(B) “Management Committee” means the standing committee of the Judicial Council established in Rule 1-204.

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

(2)(A) **Complaints—Receipt, Review, and Investigation.** The Supreme Court and the Management Committee are authorized to receive complaints regarding the conduct or performance of the State Court Administrator.

(2)(A)(i) The Supreme Court or the Management Committee shall promptly disclose all such complaints to each other and to the Performance Review Committee. The Performance Review Committee shall convene promptly to review the complaint and to determine what investigation is appropriate.

(2)(A)(ii) After the appropriate investigation is completed, the Performance Review Committee shall make recommendations to the Judicial Council and the Supreme Court. Recommendations may include: no further action, a performance or corrective action plan, discipline as a condition of continued employment, or termination.

(2)(B) **Annual Performance Review.** At least annually, the Performance Review Committee shall review the performance of the State Court Administrator in accordance with the standards set forth in the Human Resources Policies and Procedures Manual.

(2)(B)(i) The Performance Review Committee shall report the results of the State Court Administrator’s annual performance review to the Judicial Council and Supreme Court. After completion of the performance review, the Performance Review Committee may make recommendations to the Judicial Council and the Supreme Court. Recommendations may include:

no further action, a performance or corrective action plan, discipline as a condition of continued employment, or termination.

(2)(B)(ii) The Judicial Council and the Supreme Court shall meet in a joint executive session to approve, reject, or modify any recommended performance or corrective action plan.

(2)(C) Action to Discipline or Terminate the State Court Administrator.

(2)(C)(i) If the Performance Review Committee recommends that the State Court Administrator be disciplined as a condition of continued employment or be terminated, the Performance Review Committee shall promptly report its recommendation to the Judicial Council and the Supreme Court.

(2)(C)(ii) The Judicial Council and the Supreme Court shall meet in a joint executive session to consider the recommendation. After considering the recommendation, the Judicial Council and the Supreme Court may undertake such additional investigation as they jointly deem necessary. The Judicial Council and the Supreme Court shall work together in good faith to exercise jointly and by consensus their statutory rights regarding termination of the State Court Administrator.

(3) Complaints Regarding Judges and State Court Employees.

(3)(A) **Judicial Officers.** The Management Committee is authorized to receive, review, and investigate complaints regarding the conduct or performance of any judicial officer. The Chair or Vice Chair of the Management Committee may authorize the Human Resources Department or General Counsel to conduct an investigation of complaints received from court employees or judicial officers prior to review or investigation by the Management Committee. Management Committee is authorized to receive, review, and investigate complaints regarding the conduct or performance of any judicial officer. The results of such an investigation shall be presented to the Management Committee. After the completion of aning the investigation it deems appropriate, the Management Committee may refer the complaint and make recommendations to the appropriate presiding judge or to the Judicial Council. The Judicial Council shall decide whether to refer the complaint to the Judicial Conduct Commission. Nothing in this rule prevents any individual from filing a complaint directly with the Judicial Conduct Commission.

(3)(B) **Other Court Employees.** The Management Committee is authorized to receive complaints regarding the conduct or performance of any state court employee. For complaints involving any employee other than the State Court Administrator or Human Resources Director, the Management Committee shall refer the complaint to the Human Resources Department consistent with its Policies and Procedures Manual. Complaints involving the Human Resources Director shall be referred to the State Court Administrator for review and investigation.

(4) Consultation Regarding Personnel and Related Matters.

(4)(A) The Management Committee shall be available to consult with any presiding judge on personnel and related matters involving a judicial officer.

(4)(B) The Management Committee shall be available to consult with the State Court Administrator on personnel and related matters involving any state court employee.

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

Effective May/~~November~~ 1, 202~~2~~⁴