

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

November 5, 2021 – 9:00 a.m. to 12:00 p.m.

Webex

9:00	Welcome and approval of minutes	Action	Tab 1	Judge Pullan
9:05	CJA 4-206. Exhibits	Action	Tab 2	Nick Stiles Lisa Collins
9:20	CJA 1-205. Standing and ad hoc committees <ul style="list-style-type: none"> Forms Committee Self-Represented Parties Committee MUJI-Criminal Committee Judicial Fairness & Accountability Committee 	Action	Tab 3	Nathanael Player Mike Drechsel Jon Puente
9:40	CJA 3-420. Committee on Judicial Fairness and Accountability (NEW)	Action	Tab 4	Jon Puente
10:00	CJA 6-501. Reporting requirements for guardians and conservators. CJA 6-507. Court visitors	Action	Tab 5	Allison Barger
10:20	<u>Back from public comment:</u> <ul style="list-style-type: none"> CJA 1-303. Internal procedures and organization 	Action	Tab 6	Jim Peters
10:30	CJA 4-903. Uniform Custody Evaluations	Action	Tab 7	Commissioner Minas Jim Peters
10:50	Old Business/New Business			
12:00	Adjourn			

2021 Meetings:

December 3, 2021

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

December 2, 2022

Tab 1

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

Webex video conferencing
September 3, 2021: 12 pm -2 pm

DRAFT

MEMBERS:

PRESENT

EXCUSED

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

GUESTS:

Judge Kate Appleby
Judge Brower
Jim Peters
Jordan Murray
Karl Sweeney
Lauren Anderson
Kim Zimmerman
Paul Barron
Meredith Mennenbach
Gage Hansen
Lauren Andersen
Jody Thenot
Michael Drechsel
Wayne Kidd

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 August 6, 2021 meeting. With no corrections, Judge David Connors moved to approve the minutes as presented. Rob Rice seconded the motion. The motion passed unanimously.

This is Mr. Rice's final meeting as a member of the committee. Judge Pullan and the committee members expressed appreciation for Mr. Rice's dedication, service, and significant contributions to the committee.

(2) Water Law:

- CJA 6-104. District Court Water Judges (NEW).

Judge Kate Appleby discussed a new proposed rule establishing water law judges. The rule is modeled after the existing rule for tax judges. As a result of the drought this year, litigation surrounding land and property rights and water usage have increased and some regions in the state may be pulled into litigation with another state. The new rule provides guidance for judges who hear those cases.

The committee discussed the proposed rule as drafted by Judge Appleby and created a subcommittee to review the proposal and seek feedback from the Board of District Court Judges. Judge Connors will chair the subcommittee. The other members will be Judge Appleby, Judge Chiara, and potentially Mr. Rice's replacement, Margaret Plane. The subcommittee will provide an update at a future meeting.

(3) Justice Court Board Recommendations:

- CJA Appendix B. Justice Court Standards
- CJA 3-303. Justice Court Clerks.

Jim Peters and Judge Brian Brower presented updated proposals to the Justice Court standards for recertification and certification requirements for Justice Court clerks. Mr. Peters presented the original proposal at the January 2021 meeting. The committee asked Mr. Peters to seek further input from the Utah Leagues of Cities and Towns and the Utah Association of Counties, as well as court clerks throughout the state. The amended proposals have been vetted by the Board of Justice Court Judges and discussed with lead court clerks from all regions within the state, many of which welcome the proposals as presented.

The committee expressed continued concerns with a rule requiring Justice Court clerks to be certified annually, however, the committee was more comfortable with the amended language in rule 3-303 as presented. Due to potential regulatory changes in statute in the upcoming legislative session, Judge Pullan recommended holding off on approving the Justice Court certification standards in Appendix B. Jim Peters will work with Michael Drechsel to determine whether the proposed changes could be incorporated into statutory amendments next session. Mr. Peters will provide an update at a future meeting.

Judge Heward moved to recommend that the Judicial Council approve rule 3-303 for public comment. Mr. Rice seconded and the motion passed unanimously.

(4) Grants.

- CJA 3-411. Grant Management
- Accounting Manual – Section 11-07.00 – Special Funds – Grants (Federal & Non-Federal)

Jordan Murphy and Karl Sweeney met with each member of the committee to review specific sections of the Accounting Manual and the Grant Management rule.

Mr. Murphy presented the committee with an alternative to the language in section (4)(B) creating a process for approving “urgent” requests. The Chief Justice could, at any time, add last minute urgent requests to the Council’s agenda for discussion. The committee determined that urgent requests should be approved with a $\frac{3}{4}$ majority vote.

Section (12) provides “guardrails” for when external parties are seeking court support for their own grant opportunities. The court could act as a stakeholder and non-financial collaborator. These would mainly be used in low-risk applications.

After further discussion, Judge Connors moved to adopt the alternative version of section (4)(B) with the minor modification to a $\frac{3}{4}$ th majority vote. Judge Cannell seconded and the motion passed unanimously.

Judge Michelle Heward moved to recommend that the Judicial Council publish the Grant Manual and CJA 3-411 for public comment. Judge Cannell seconded and the motion passed unanimously.

(5) Automatic Expungements.

- Automatic Expungement Orders
- Presiding Judge Standing Order
- CJA 4-208. Automatic Expungement of Cases (NEW)

Ms. Williams presented revised amendments to the Automatic Expungement Orders and the Presiding Judge Standing Order. In previous meetings, the committee expressed concerns about including “the court finds” in an automated order that a judge has not reviewed. The committee also felt that the procedures surrounding

automatic expungements should be captured in the Rules of Criminal Procedure. The automated orders were amended to remove “the court finds,” and the following language was added:

“This case has been identified by the Judiciary’s automated expungement review process as one meeting the requirements for automatic expungement. Expunging the records associated with case number [case_number] is statutorily mandated.”

Ms. Williams met with Doug Thompson, the Chair of the Rules of Criminal Procedure Committee, to discuss the proposed orders and rule 4-208. The criminal rules committee is working on a new rule, URCrP 42, governing expungements. That rule is currently in draft form. Mr. Thompson did not express concerns with the proposed orders as drafted and did not feel that rule 4-208 would conflict with URCrP 42 in any way. Because rule 42 is not yet in place and rule 4-208 has not been approved, Ms. Williams recommended removing the references to rule 42 and 4-208 from the automated and standing orders.

Proposed rule 4-208 is not required for the implementation of an automated expungement process. The purpose would be to memorialize (in rule) what we’re already doing – ensuring that any automated expungement programming or processes are developed by the AOC, are in compliance with the code and rules of procedure, and are approved by the Judicial Council, including the form and content of automated orders. A rule may alleviate some of the discomfort many judges feel in having their signatures affixed to an order they haven’t reviewed. It may also provide clear direction for the Administrative Office of the Courts as employees with institutional knowledge leave the court.

Judge Brian Cannel moved to recommend that the Judicial Council approve the Automatic Expungement Orders and Standing Order as final, and CJA 4-208 for public comment. Mr. Rice seconded and the motion passed unanimously.

(6) Rules back from public comment.

- CJA 4-403. Electronic Signature and Signature Stamp Use
- CJA 3-415. Auditing
- CJA 7-302. Court reports prepared for delinquency cases

No public comments were received on CJA rules 4-403, 3-415, and 7-302. CJA 4-403 was approved by the Judicial Council on an expedited basis so no further action is needed on that rule. Ms. Williams recommend rules 3-415 and 7-302 be forwarded to Judicial Council for final approval.

Judge Connors moved to recommend that the Judicial Council approve rules 3-415 and 7-302 be approved as final. Judge Heward seconded and the motion passed unanimously.

ADJOURN:

With no further items for discussion, the meeting adjourned without a motion. The next meeting will be on November 5, 2021 at 9 AM via Webex video conferencing. The November meeting is the bi-annual daylong meeting.

Tab 2

Policy and Planning - Rule Amendment Request Form

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

Instructions

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

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

Date of Request *

MM DD YYYY

10 / 15 / 2021

Name of Requester *

Nick Stiles

Requester Phone Number *

3853033305

Name of Requester's Supervisor *

Cathy Dupont

Location of the Rule *

Code of Judicial Administration ▼

CJA Rule Number or HR/Accounting Section Name *

4-206

Brief Description of Rule Proposal *

Amendment to make it easier for appellate courts to get exhibits when appeals are filed.

Reason Amendment is Needed *

The amendments to Rule 4-206 impact the Appellate Courts ease of getting exhibits back when appeals are filed.

Is the proposed amendment urgent? *

☐

Yes

☒

No

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

N/A

Select each entity that has approved this proposal. *

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

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

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

.....

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

District Courts, Juvenile Courts

.....

This form was created inside of Utah State Courts.

Google Forms

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

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

Applicability:

This rule shall apply to all trials in courts of record and not of record, except small claims court. In the discretion of the court, this rule may apply to any proceeding in which exhibits are introduced.

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

(1)(A) **Marking Exhibits.** Prior to trial, or at a time specified by the judge, each party must mark all exhibits it intends to introduce by utilizing exhibit labels in the format prescribed by the clerk of court. Labels or tags must include, at a minimum, a case number, exhibit number/letter, and an appropriate party designation. With approval of the court, a photograph may be offered by the submitting party as a representation of the original exhibit.

(1)(B) **Digital Exhibits.** Digital exhibits must be marked as provided in paragraph (1)(A) and submitted to the court as prescribed by the clerk of court. Exhibits should not be eFiled.

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

(2) Exhibit custody during trial

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit. Such exhibits include, but are not limited to: biohazards, controlled substances, paraphernalia, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media such as a hard drive or computer, and documents or physical exhibits of unusual bulk or weight. The clerk of court or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party.

(2)(B) **Custody of the Court.** Physical exhibits received during trial, other than those in paragraph (2)(A), must be placed in the custody of the clerk of court or designee. Digital exhibits received as evidence by the court during the trial shall be stored electronically or on digital media such as a thumb drive and stored in accordance with paragraph (2)(C). The clerk of court or designee must list all exhibits in the exhibit list, and the list shall be made a part of the court record. An exhibit list may be the court's designated case management system or a form approved by the Judicial Council.

(2)(C) Secured Storage

(2)(C)(i) Upon daily adjournment, the clerk of court or designee must compare the exhibit list with the exhibits received that day. Digital exhibits received under paragraph

(2)(B) shall be stored electronically in a manner meeting the requirements outlined in paragraph (3)(A)(ii). Physical exhibits received under paragraph (2)(B) must be stored in an envelope or container, marked with the case number, and stored in a secured storage location that meets the requirements outlined in paragraph (3)(A)(ii).

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

(3) Exhibit custody prior to disposition

(3)(A) **Pending Disposition.** Exhibits in the court's custody pursuant to paragraph (2)(B) may not be taken from the custody of the clerk of court or designee until final disposition of the case, except upon order of the court and execution of a receipt that identifies the material, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record.

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

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

(3)(B) **Exhibit custody post disposition.** In courts of record, upon final disposition of the case, exhibits in the court's custody shall be disposed of or returned to the offering parties pursuant to paragraph (5). The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. In courts not of record, upon final disposition of the case, all exhibits shall be returned to the parties.

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

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

(4) **Appeals.** Exhibits and exhibit lists shall be provided upon appeal in accordance with the Utah Rules of Appellate Procedure. Documents, photographs, and similar exhibits must be included in the record on appeal. Exhibits of unusual bulk or weight, or other physical exhibits, should not be transmitted to the appellate court unless specifically requested by a party or the appellate court.

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

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

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

Effective November 1, 2021

Tab 3

Policy and Planning - Rule Amendment Request Form

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

Instructions

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

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

Date of Request *

MM DD YYYY

10 / 28 / 2021

Name of Requester *

Nathanael Player

Requester Phone Number *

801-238-7921

Name of Requester's Supervisor *

Cathy Dupont

Location of the Rule *

Code of Judicial Administration ▼

CJA Rule Number or HR/Accounting Section Name *

1-205

Brief Description of Rule Proposal *

Adjust the composition of the Forms Committee

Reason Amendment is Needed *

There are three changes: add a second district court position; replace the Court Services Director; add the LPP program administrator from the Utah State Bar. Adding the judge is recommended by the Committee to ensure that our forms reflect the needs of courts at locations beyond the Wasatch Front. Replacing the Court Services Director position is needed because that position has been eliminated. Adding the LPP program administrator is requested by the Bar and recommended to allow for greater coordination of efforts with regard to the LPP program.

Is the proposed amendment urgent? *

☐ Yes

☒ No

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

Select each entity that has approved this proposal. *

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

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

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

.....

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

The Forms Committee.

.....

This form was created inside of Utah State Courts.

Google Forms

RULE AMENDMENT REQUEST

Policy and Planning

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

Instructions: Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before they will be considered by the Policy and Planning Committee. **Once completed, please e-mail this form and the proposed rule changes to Keisa Williams at keisaw@utcourts.gov.**

REQUESTER CONTACT INFORMATION:

Name of Requester:

Michael Drechsel

E-mail:

michaelcd@utcourts.gov

Phone Number:

801-578-3821

Date of Request:

09/01/2021

RULE AMENDMENT:

Rule Number:

1-205(1)(B)(xii)

Location of Rule:

Code of Judicial Administration

Brief Description of Proposed Amendment:

This amendment seeks to remove "one professor of criminal law" from membership list for Judicial Council's Standing Committee on Model Utah Criminal Jury Instructions.

Reason Amendment is Needed:

The "one professor of criminal law" position has proven to: 1) be difficult to fill and keep filled; and 2) not provide a benefit to the committee's work.

Is this proposal urgent?

☒ No

☐ Yes

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

This change could be made in the future, the next time Rule 1-205 is revised for other purposes.

List all stakeholders:

Standing Committee on Model Utah Criminal Jury Instructions

Select each entity that has approved this proposal:

- ☐ Accounting Manual Committee
- ☐ ADR Committee
- ☐ Board of Appellate Court Judges
- ☐ Board of District Court Judges
- ☒ Board of Justice Court Judges
- ☐ Board of Juvenile Court Judges
- ☐ Board of Senior Judges
- ☐ Children and Family Law Committee
- ☐ Court Commissioner Conduct Committee
- ☐ Court Facility Planning Committee
- ☐ Court Forms Committee
- ☐ Ethics Advisory Committee
- ☐ Ethics and Discipline Committee of the Utah Supreme Court
- ☐ General Counsel
- ☐ Guardian ad Litem Oversight Committee
- ☐ Judicial Branch Education Committee
- ☐ Judicial Outreach Committee
- ☐ Language Access Committee
- ☐ Law Library Oversight Committee
- ☐ Legislative Liaison Committee
- ☐ Licensed Paralegal Practitioner Committee
- ☐ Model Utah Civil Jury Instructions Committee
- ☒ Model Utah Criminal Jury Instructions Committee
- ☐ Policy and Planning member
- ☐ Pretrial Release and Supervision Committee
- ☐ Resources for Self-represented Parties Committee
- ☐ Rules of Appellate Procedure Advisory Committee
- ☐ Rules of Civil Procedure Advisory Committee
- ☐ Rules of Criminal Procedure Advisory Committee
- ☐ Rules of Evidence Advisory Committee
- ☐ Rules of Juvenile Procedure Advisory Committee
- ☐ Rules of Professional Conduct Advisory Committee
- ☐ State Court Administrator
- ☒ TCE's
- ☐ Technology Committee
- ☐ Uniform Fine and Bail Committee
- ☐ WINGS Committee
- ☐ NONE OF THE ABOVE

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

Requester's Signature:

/s/ Michael C. Drechsel

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

FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?

- ☐ Yes
- ☐ No

Queue Priority Level:

- ☐ Red
- ☐ Yellow
- ☐ Green

Committee Notes/Comments:

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Policy and Planning - Rule Amendment Request Form

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

Instructions

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

Date of Request *

MM DD YYYY

10 / 28 / 2021

Name of Requester *

Nathanael Player

Requester Phone Number *

801-238-7921

Name of Requester's Supervisor *

Cathy Dupont

Location of the Rule *

Code of Judicial Administration ▼

CJA Rule Number or HR/Accounting Section Name *

1-205(1)(B)(viii)

Brief Description of Rule Proposal *

Adjust the composition of the Committee on Resources for Self-Represented Parties to accommodate for the space made when the director of the Self-Help Center was made staff to the committee.

Reason Amendment is Needed *

The current rule requires someone from the Self-Help Center (SHC) to be a committee member. However, the SHC only has a staff of five and cannot commit to attending the meetings. The director has served in this role as a member, but he is now staff to the committee and so he cannot serve as both a staff member and committee member. This change frees up the spot for someone from a social services organization, to add an important perspective to the committee.

Is the proposed amendment urgent? *

☐

Yes

☒

No

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

Select each entity that has approved this proposal. *

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

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

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

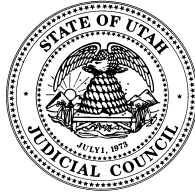
This rule change is supported by Judge Mrazik, the chair of the Committee on Resources for Self-Represented Parties and Nathanael Player, director of the Self-Help Center.

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

Committee on Resources for Self-Represented Parties and its members, and social service agencies who will serve on the committee

This form was created inside of Utah State Courts.





Administrative Office of the Courts

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

November 2, 2021

Ronald B. Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Policy and Planning Committee

FROM: Jonathan Puente, Director of OFA

RE: Committee on Judicial Fairness and Accountability

This past summer the Judicial Council asked the Director of the OFA to begin the process of establishing a committee to provide support and guidance to the Office of Fairness and Accountability and to provide expertise and guidance to the Judicial Council regarding how to best support the work of the Office of Fairness and Accountability. After considering diverse governing models for this type of committee the attached draft rule, Rule 3-420, is being submitted to the Policy and Planning Committee for consideration to establish the Committee on Judicial Fairness and Accountability. A draft copy of ammended Rule 1-205, which includes the proposed committee is also included.

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

1 Rule 1-205. Standing and Ad Hoc Committees.

2 Intent:

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

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

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

8 Applicability:

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

10 Statement of the Rule:

11 (1) Standing Committees.

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

14 (1)(A)(i) Technology Committee;

15 (1)(A)(ii) Uniform Fine Schedule Committee;

16 (1)(A)(iii) Ethics Advisory Committee;

17 (1)(A)(iv) Judicial Branch Education Committee;

18 (1)(A)(v) Court Facility Planning Committee;

19 (1)(A)(vi) Committee on Children and Family Law;

20 (1)(A)(vii) Committee on Judicial Outreach;

21 (1)(A)(viii) Committee on Resources for Self-represented Parties;

22 (1)(A)(ix) Language Access Committee;

23 (1)(A)(x) Guardian ad Litem Oversight Committee;

24 (1)(A)(xi) Committee on Model Utah Civil Jury Instructions;

25 (1)(A)(xii) Committee on Model Utah Criminal Jury Instructions;

26 (1)(A)(xiii) Committee on Pretrial Release and Supervision; and

27 ~~(1)(A)(xiv)~~ Committee on Court Forms; and

28 ~~(1)(A)(xiv)~~ ~~(1)(A)(xv)~~ Committee on Judicial Fairness and Accountability.-

29 **(1)(B) Composition.**

30 (1)(B)(i) The **Technology Committee** performs the duties described in rule 3-410
31 and shall consist of:

Commented [KW1]: 3-410 discusses the technology committee's duties with respect to data processing, but it does not appear to cover all of the committee's duties. The technology committee does not appear to have an all-encompassing standalone rule.

- (1)(B)(i)(a) one judge from each court of record;
- (1)(B)(i)(b) one justice court judge;
- (1)(B)(i)(c) one lawyer recommended by the Board of Bar Commissioners;
- (1)(B)(i)(d) two court executives;
- (1)(B)(i)(e) two court clerks; and
- (1)(B)(i)(f) two staff members from the Administrative Office.
- (1)(B)(ii) The **Uniform Fine Schedule Committee** performs the duties described in rule 4-302 and shall consist of:
- (1)(B)(ii)(a) one district court judge who has experience with a felony docket;
- (1)(B)(ii)(b) three district court judges who have experience with a misdemeanor docket; and
- (1)(B)(ii)(c) four justice court judges.
- (1)(B)(iii) The **Ethics Advisory Committee** performs the duties described in rule 3-109 and shall consist of:
- (1)(B)(iii)(a) one judge from the Court of Appeals;
- (1)(B)(iii)(b) one district court judge from Judicial Districts 2, 3, or 4;
- (1)(B)(iii)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
- (1)(B)(iii)(d) one juvenile court judge;
- (1)(B)(iii)(e) one justice court judge; and
- (1)(B)(iii)(f) an attorney from either the Bar or a college of law.
- (1)(B)(iv) The **Judicial Branch Education Committee** performs the duties described in rule 3-403 shall consist of:
- (1)(B)(iv)(a) one judge from an appellate court;
- (1)(B)(iv)(b) one district court judge from Judicial Districts 2, 3, or 4;
- (1)(B)(iv)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
- (1)(B)(iv)(d) one juvenile court judge;
- (1)(B)(iv)(e) the education liaison of the Board of Justice Court Judges;
- (1)(B)(iv)(f) one state level administrator;
- (1)(B)(iv)(g) the Human Resource Management Director;
- (1)(B)(iv)(h) one court executive;
- (1)(B)(iv)(i) one juvenile court probation representative;
- (1)(B)(iv)(j) two court clerks from different levels of court and different judicial districts;
- (1)(B)(iv)(k) one data processing manager; and

(1)(B)(iv)(l) one adult educator from higher education.

(1)(B)(iv)(m) The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.

(1)(B)(v) The **Court Facility Planning Committee** performs the duties described in rule 3-409 and shall consist of:

(1)(B)(v)(a) one judge from each level of trial court;

(1)(B)(v)(b) one appellate court judge;

(1)(B)(v)(c) the state court administrator;

(1)(B)(v)(d) a trial court executive;

(1)(B)(v)(e) two business people with experience in the construction or financing of facilities; and

(1)(B)(v)(f) the court security director.

(1)(B)(vi) The **Committee on Children and Family Law** performs the duties described in rule 4-908 and shall consist of:

(1)(B)(vi)(a) one Senator appointed by the President of the Senate;

(1)(B)(vi)(b) the Director of the Department of Human Services or designee;

(1)(B)(vi)(c) one attorney of the Executive Committee of the Family Law Section of the Utah State Bar;

(1)(B)(vi)(d) one attorney with experience in abuse, neglect and dependency cases;

(1)(B)(vi)(e) one attorney with experience representing parents in abuse, neglect and dependency cases;

(1)(B)(vi)(f) one representative of a child advocacy organization;

(1)(B)(vi)(g) the ADR Program Director or designee;

(1)(B)(vi)(h) one professional in the area of child development;

(1)(B)(vi)(i) one mental health professional;

(1)(B)(vi)(j) one representative of the community;

(1)(B)(vi)(k) the Director of the Office of Guardian ad Litem or designee;

(1)(B)(vi)(l) one court commissioner;

(1)(B)(vi)(m) two district court judges; and

(1)(B)(vi)(n) two juvenile court judges.

(1)(B)(vi)(o) One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The **Committee on Judicial Outreach** performs the duties described in rule 3-114 and shall consist of:

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

(1)(B)(viii) The **Committee on Resources for Self-represented Parties** performs the duties described in rule 3-115 and shall consist of:

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

Commented [KW2]: New proposal - Nathanael Player

(1)(B)(viii)(j) the state law librarian; and

(1)(B)(viii)(k) two community representatives.

(1)(B)(ix) The **Language Access Committee** performs the duties described in rule 3-306.02 and shall consist of:

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

(1)(B)(ix)(b) one juvenile court judge;

(1)(B)(ix)(c) one justice court judge;

(1)(B)(ix)(d) one trial court executive;

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

(1)(B)(ix)(f) one interpreter coordinator;

(1)(B)(ix)(g) one probation officer;

(1)(B)(ix)(h) one prosecuting attorney;

(1)(B)(ix)(i) one defense attorney;

(1)(B)(ix)(j) two certified interpreters;

(1)(B)(ix)(k) one approved interpreter;

(1)(B)(ix)(l) one expert in the field of linguistics; and

(1)(B)(ix)(m) one American Sign Language representative.

(1)(B)(x) The **Guardian ad Litem Oversight Committee** performs the duties described in rule 4-906 and shall consist of:

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

(1)(B)(xi) The **Committee on Model Utah Civil Jury Instructions** performs the duties described in rule 3-418 and shall consist of:

(1)(B)(xi)(a) two district court judges;

(1)(B)(xi)(b) four lawyers who primarily represent plaintiffs;

(1)(B)(xi)(c) four lawyers who primarily represent defendants; and

(1)(B)(xi)(d) one person skilled in linguistics or communication.

(1)(B)(xii) The **Committee on Model Utah Criminal Jury Instructions** performs the duties described in rule 3-418 and shall consist of:

(1)(B)(xii)(a) two district court judges;

(1)(B)(xii)(b) one justice court judge;

(1)(B)(xii)(c) four prosecutors;

(1)(B)(xii)(d) four defense counsel; and

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~~(1)(B)(xii)(e) one professor of criminal law; and~~

~~(1)(B)(xii)(f)~~ (1)(B)(xii)(e) one person skilled in linguistics or communication.

(1)(B)(xiii) The **Committee on Pretrial Release and Supervision** performs the duties described in rule 3-116 and shall consist of:

- (1)(B)(xiii)(a) two district court judges;
- (1)(B)(xiii)(b) two justice court judges;
- (1)(B)(xiii)(c) one prosecutor;
- (1)(B)(xiii)(d) one defense attorney;
- (1)(B)(xiii)(e) one county sheriff;
- (1)(B)(xiii)(f) one representative of counties;
- (1)(B)(xiii)(g) one representative of a county pretrial services agency;
- (1)(B)(xiii)(h) one representative of the Utah Commission on Criminal and Juvenile Justice;
- (1)(B)(xiii)(i) one commercial surety agent;
- (1)(B)(xiii)(j) one state senator;
- (1)(B)(xiii)(k) one state representative;
- (1)(B)(xiii)(l) the Director of the Indigent Defense Commission or designee;
- (1)(B)(xiii)(m) one representative of the Utah Victims' Council;
- (1)(B)(xiii)(n) one representative of a community organization actively engaged in pretrial justice issues;
- (1)(B)(xiii)(o) one chief of police; and
- (1)(B)(xiii)(p) the court's general counsel or designee.

(1)(B)(xiv) The **Committee on Court Forms** performs the duties described in rule 3-117 and shall consist of:

- (1)(B)(xiv)(a) ~~one two~~ district court judges;
- (1)(B)(xiv)(b) one court commissioner;
- (1)(B)(xiv)(c) one juvenile court judge;
- (1)(B)(xiv)(d) one justice court judge;
- (1)(B)(xiv)(e) one court clerk;
- (1)(B)(xiv)(f) one appellate court staff attorney;
- (1)(B)(xiv)(g) one representative from the Self-Help Center;
- (1)(B)(xiv)(h) the State Law Librarian;

Commented [KW4]: New proposal – Nathanael Player

- 200 (1)(B)(xiv)(i) the ~~Court Services Director~~ district court administrator or
 201 designee;
- 202 (1)(B)(xiv)(j) one representative from a legal service organization that
 203 serves low-income clients;
- 204 (1)(B)(xiv)(k) one paralegal;
- 205 (1)(B)(xiv)(l) one educator from a paralegal program or law school;
- 206 (1)(B)(xiv)(m) one person skilled in linguistics or communication; ~~and~~
 207 (1)(B)(xiv)(n) one representative from the Utah State Bar; and
 208 (1)(B)(xiv)(o) the LPP administrator.
- 209 (1)(B)(xv) The Committee on Judicial Fairness and Accountability performs the
 210 duties described in rule 3-420 and shall consist of:
- 211 (1)(B)(xv)(a) four members appointed by the Judicial Council who are current
 212 or former judicial officers and who have experience with issues
 213 of diversity, equity, and inclusion;
- 214 (1)(B)(xv)(b) one member appointed by the General Counsel who is an
 215 associate general counsel, or a former General Counsel and
 216 who has extensive experience with issues of diversity, equity,
 217 and inclusion; and
- 218 ~~(1)(B)(xiv)(n)~~ (1)(B)(xv)(c) the Director of the Office of Fairness and
 219 Accountability.
- 220 (1)(C) **Standing committee chairs.** The Judicial Council shall designate the chair of each
 221 standing committee. Standing committees shall meet as necessary to accomplish
 222 their work. Standing committees shall report to the Council as necessary but a
 223 minimum of once every year. Except for the Committee on Judicial Fairness and
 224 Accountability, Council members may not serve, participate or vote on standing
 225 committees. Standing committees may invite participation by others as they deem
 226 advisable, but only members designated by this rule may make motions and vote.
 227 All members designated by this rule may make motions and vote unless otherwise
 228 specified. Standing committees may form subcommittees as they deem advisable.
- 229 (1)(D) **Committee performance review.** At least once every six years, the Management
 230 Committee shall review the performance of each committee. If the Management
 231 Committee determines that committee continues to serve its purpose, the
 232 Management Committee shall recommend to the Judicial Council that the

Commented [KW5]: New proposal – Jon Puentes

Commented [KW6]: Alternative rule number: 3-118

Commented [KW7]: Keisa's preference: "the General Counsel or designee"

committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

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

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

(3) **General provisions.**

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

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

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

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

(3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and

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

- 267 (3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each
268 committee. Whenever practical, appointments shall reflect geographical,
269 gender, cultural and ethnic diversity.
- 270 (3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members
271 shall serve staggered three year terms. Standing committee members shall not
272 serve more than two consecutive terms on a committee unless the Council
273 determines that exceptional circumstances exist which justify service of more than
274 two consecutive terms.
- 275 (3)(C) **Expenses.** Members of standing and ad hoc committees may receive
276 reimbursement for actual and necessary expenses incurred in the execution of their
277 duties as committee members.
- 278 (3)(D) **Secretariat.** The Administrative Office shall serve as secretariat to the Council's
279 committees.

280 Effective ~~May~~ November 1, 20__~~21~~

Tab 4

Rule 3-420. Committee on Judicial Fairness and Accountability

Commented [KW1]: Alt. rule number: 3-118

Intent

This rule establishes the Committee on Judicial Fairness and Accountability to serve as a core leadership team for the Office of Fairness and Accountability. One purpose of the committee is to provide support and guidance to the Office of Fairness and Accountability, and to provide expertise and guidance to the Judicial Council regarding how to best support the work of the Office of Fairness and Accountability.

Applicability

This rule applies to the judiciary.

Statement of the Rule

The Committee on Judicial Fairness and Accountability shall:

(1) Advise the Director of the Office of Fairness and Accountability (Director) regarding the development of baseline metrics of demographic data for individuals who interact with the judiciary.

(2) Develop a strategic plan with the Director for the Office of Fairness and Accountability and submit the strategic plan to the Judicial Council for approval. The committee may form subcommittees to develop the strategic plan. The strategic plan shall include the Judiciary's goals and policy directives for meeting the court's mission for the open, fair and efficient administration of justice under the law while also being responsive to the state's cultural, ethnic, socioeconomic, linguistic, physical, gender, and age diversities. Branch efforts in this regard must include ensuring that the courts are free from both bias and the appearance of bias, meeting the needs of increasing numbers of self-represented litigants, remaining receptive to the needs of all branch constituents, ensuring that court procedures are fair and understandable, and providing culturally responsive programs and services.

(3) Once the initial strategic plan is approved by the Judicial Council, assist the Director with:

(3)(A) Determining which stakeholder groups should be involved in determining how to implement the strategic plan;

(3)(B) Appointing a functional team for each stakeholder group; and

(3)(C) Facilitating the work of the functional teams to develop their implementation plans and provide feedback about the strategic plan to the Committee on Judicial Fairness and Accountability.

(4) Receive input from the functional teams and determine if changes to the strategic plan should be recommended to the Judicial Council.

47
48 (5) Assist the Director with establishing a communication plan to cascade the court's strategic
49 plan through the District, Juvenile, and Justice Courts.
50
51 (6) Assist the Director with monitoring Court progress in implementing the strategic plan,
52 including metrics developed to measure progress.
53
54 (7) Provide expertise and support to the Director when the Director interacts with the Judicial
55 Council, the benches, and the districts.
56
57 Effective May/November 1, 20

Tab 5

RULE AMENDMENT REQUEST

Policy and Planning

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

Instructions: Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before they will be considered by the Policy and Planning Committee. **Once completed, please e-mail this form and the proposed rule changes to Keisa Williams at keisaw@utcourts.gov.**

REQUESTER CONTACT INFORMATION:

Name of Requester:

E-mail:

Phone Number:

Date of Request:

RULE AMENDMENT:

Rule Number:

Location of Rule:

Brief Description of Proposed Amendment:

Reason Amendment is Needed:

Is this proposal urgent?

No

Yes

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

List all stakeholders:

Select each entity that has approved this proposal:

Accounting Manual Committee	Legislative Liaison Committee
ADR Committee	Licensed Paralegal Practitioner Committee
Board of Appellate Court Judges	Model Utah Civil Jury Instructions Committee
Board of District Court Judges	Model Utah Criminal Jury Instructions Committee
Board of Justice Court Judges	Policy and Planning member
Board of Juvenile Court Judges	Pretrial Release and Supervision Committee
Board of Senior Judges	Resources for Self-represented Parties Committee
Children and Family Law Committee	Rules of Appellate Procedure Advisory Committee
Court Commissioner Conduct Committee	Rules of Civil Procedure Advisory Committee
Court Facility Planning Committee	Rules of Criminal Procedure Advisory Committee
Court Forms Committee	Rules of Evidence Advisory Committee
Ethics Advisory Committee	Rules of Juvenile Procedure Advisory Committee
Ethics and Discipline Committee of the Utah Supreme Court	Rules of Professional Conduct Advisory Committee
General Counsel	State Court Administrator
Guardian ad Litem Oversight Committee	TCE's
Judicial Branch Education Committee	Technology Committee
Judicial Outreach Committee	Uniform Fine and Bail Committee
Language Access Committee	WINGS Committee
Law Library Oversight Committee	NONE OF THE ABOVE

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

Requester's Signature:

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



FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?	Queue Priority Level:	Committee Notes/Comments:
Yes	Red	
No	Yellow	
	Green	

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 6-501. Reporting requirements for guardians and conservators.**Intent:**

To establish the requirements sufficient to satisfy the Utah Uniform Probate Code.

Applicability:

This rule applies to guardians and conservators with the following exceptions:

This rule does not apply if a parent is a the conservator or a guardian or co-guardian is the parent of the ward protected person.

~~Paragraph (1) does not apply to the guardian of a minor if the guardianship is limited to the purpose of attending school.~~

Paragraph (1) does not apply to a conservator licensed under the Title 7, Chapter 5, Trust Business, to a guardian licensed under §75-5-311(1)(a), or to the Office of Public Guardian.

~~Paragraphs (6)(A), (6)(B) and (6)(C) do not apply to the guardian of a minor if the guardianship is limited to the purpose of attending school. A person interested in the minor may request a report under Utah Code Section 75-5-209.~~

Paragraph (6)(~~DC~~) does not apply to the guardian of a minor if the minor's estate consists of funds that are is deposited in an a restricted account, which is an account requiring judicial approval for withdrawal, or if there is no estate. ~~A person interested in the minor may request an accounting under Utah Code Section 75-5-209.~~

Paragraph (8) does not apply to a conservator who is appointed for the purpose of receiving a personal injury settlement for a minor if 1) no funds are to be distributed, or 2) no structured settlement payments are to be made, until the minor reaches the age of majority.

Statement of the Rule:**(1) Examination and private information record.**

(A) Before the court enters an order appointing a guardian or conservator, the guardian or conservator ~~shall~~must file a verified statement showing satisfactory completion of a court-approved examination on the responsibilities of a guardian or conservator.

(B) After the court enters the order of appointment, the guardian or conservator ~~shall~~must file within 7 days a completed and verified Private Information Record form provided by the Administrative Office of the Courts. The guardian or conservator ~~shall~~must continue to keep the court apprised of any changes to the guardian or conservator's contact information.

(2) **Recordkeeping.** The guardian ~~shall~~must keep contemporaneous records of significant events in the life of the ward and produce them if requested by the court. The conservator ~~shall~~must keep contemporaneous receipts, vouchers or other evidence of income and expenses and produce them if requested by the court. The guardian and conservator ~~shall~~must maintain the records until the appointment is terminated and then deliver them to the ward, if there is no successor, to the successor guardian or conservator, or to the personal representative of the ward's estate.

(3) **Definitions.**

(A) "Accounting" means the annual accounting required by Utah Code Section 75-5-312 and Section 75-5-417 and the final accounting required by Utah Code Section 75-5-419.

(B) "Interested persons" means the wardprotected person, if he or she is of an appropriate age and mental capacity to understand the proceedings, the wardprotected person's guardian and conservator, the wardprotected person's spouse, adult children, parents and siblings and ~~anyone an interested person~~ requesting notice under Utah Code Section 75-5-406. If no person is an interested person, then interested person includes at least one of the wardprotected person's closest adult relatives, if any can be found. For purposes of minor guardianship, interested persons include the persons listed in Utah Code Section 75-5-207.

(C) "Inventory" means the inventory required by Utah Code Section 75-5-418.

(D) "Serve" means any manner of service permitted by Utah Rule of Civil Procedure 5.

(E) "Report" means the— inventory, accounting, and annual report on the status of the wardprotected person required by under Utah Code Sections 75-5-209 and ~~Section~~ 75-5-312, and the final accounting under Sections 75-5-210 and 75-5-419.

(F) "WardProtected person" means a minor or an incapacitated person for whom the court appoints a guardian or a protected person for whom the court appoints a conservator.

(4) **Report forms.** Subject to the requirements of Paragraph (5):

(A) forms substantially conforming to the Judicial Council-approved forms ~~produced by the Utah court website~~ are acceptable for content and format for the report and accounting filed under the Utah Uniform Probate Code;

(B) a corporate fiduciary may file its internal report or accounting; and

(C) if the wardprotected person's estate is limited to a federal or state program requiring an annual accounting, the fiduciary may file a copy of that accounting.

(5) **Report information, cover sheet, and service.**

(A) The report, inventory, and accounting ~~shall~~must contain sufficient information to put interested persons on notice of all significant events and transactions during the reporting period. Compliance with Paragraph (4) is presumed sufficient, but the court may direct that a report or accounting be prepared with content and format as it deems necessary.

(B) The report must include the Judicial Council-approved report coversheet, which must be filed as if it were a proposed order.

(C) The guardian, conservator, or both must serve a copy of the report under Rule 5 of the Utah Rules of Civil Procedure on all interested persons. The report must include the following caution language at the top right corner of the first page, in bold type: **You have the right to object to this report within 28 days of service. If you do not object within that time, your objection may be waived.**

(6) **Status reports.**

(6)(A) The guardian ~~shall~~must file with the appointing court a report on the status of the ward/protected person no later than 60 days after the anniversary of the appointment. The status report must be in substantially the same form as the status report form approved by the Utah Judicial Council, including the required attachments. The guardian ~~shall~~must file the report with the court that appointed the guardian unless that court orders a change in venue under Utah Code Section 75-5-313. The reporting period is yearly from the appointment date unless the court changes the reporting period on motion of the guardian. The guardian may not file the report before the close of the reporting period. For good cause the court may extend the time for filing the report, but a late filing does not change the reporting period.

~~_(6)(B) The guardian shall serve a copy of the report on all interested persons with notice that the person may object within 30 days after the notice was served.~~

~~(6)(C) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed. If the judge finds that the report is in order, the judge ~~shall~~must approve it.

(6)(~~DC~~) If there is no conservator, the guardian ~~shall~~must file the inventory and accounting required of a conservator under Utah Code Section 75-5-312.

92 (7) **Inventory reports.**

93 (A) Within 90 days after the appointment, the conservator ~~shall~~must file with the appointing
94 court the inventory required by Utah Code Section 75-5-418. The inventory must be in
95 substantially the same form as the inventory form approved by the Utah Judicial Council,
96 including the required attachments. For good cause the court may extend the time for filing
97 the inventory.

98 ~~(CB) If an interested person objects, the person shall specify in writing the entries to which~~
99 ~~the person objects and state the reasons for the objection. The person shall file the objection~~
100 ~~with the court and serve a copy on all interested persons. If an objection is filed, the judge~~
101 ~~shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed.
102 If the judge finds that the inventory is in order, the judge ~~shall~~must approve it.

103 (8) **Accounting reports.**

104 (A) The conservator ~~shall~~must file with the appointing court an accounting of the estate of the
105 ~~ward~~protected person no later than 60 days after the anniversary of the appointment. The
106 accounting must be in substantially the same form as the accounting form approved by the
107 Utah Judicial Council, including the required attachments. The conservator ~~shall~~must file the
108 accounting with the court that appointed the conservator unless that court orders a change in
109 venue under Utah Code Section 75-5-403. The reporting period is yearly from the appointment
110 date unless the court changes the reporting period on motion of the conservator. The
111 conservator may not file the accounting before the close of the reporting period. For good
112 cause the court may extend the time for filing the accounting, but a late filing does not change
113 the reporting period.

114 ~~.(8)(B) The conservator shall serve a copy of the accounting on all interested persons with~~
115 ~~notice that the person may object within 30 days after the notice was served.~~

116 ~~(CB) If an interested person objects, the person shall specify in writing the entries to which~~
117 ~~the person objects and state the reasons for the objection. The person shall file the objection~~
118 ~~with the court and serve a copy on all interested persons. If an objection is filed, the judge~~
119 ~~shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed.
120 If the judge finds that the accounting is in order, the judge ~~shall~~must approve it.

121 (9) **Final accounting.**

122 (A) The conservator ~~shall~~must file with the court a final accounting of the estate of the

wardprotected person with the motion to terminate the appointment.

~~_(9)(B) The conservator shall serve a copy of the accounting on all interested persons with notice that the person may object within 30 days after the notice was served.~~

~~(CB) If an interested person objects, the person shall specify in writing the entries to which the person objects and state the reasons for the objection. The person shall file the objection with the court and serve a copy on all interested persons. If an objection is filed, the judge shall conduct a hearing.~~ The judge may conduct a hearing even though no objection is filed.

If the judge finds that the accounting is in order, the judge ~~shall~~must approve it.

(10) Objections.

~~(A) If an interested person objects to a report, the person must file a written objection with the court and serve a copy on all interested persons within 28 days from the date of service of the report. The objection must include a request to submit.~~

~~(B) The objection must specify in writing the entries to which the person objects and state the reasons for the objection.~~

~~(C) An objection to a report may not contain a request to remove or substitute the guardian or conservator. Any request for removal or substitution of the guardian or conservator must be filed as a separate petition consistent with Utah Code Section 75-5-307 or 75-5-415.~~

~~(D) If an objection is filed, the court may conduct a hearing upon the request of a party.~~

~~(E) At the hearing, the court may require the guardian or conservator to supplement or amend the report if the judge determines there is good cause for the objection.~~

~~(F) If the court determines that the objection is unfounded or is filed in bad faith, the judge may deny the objection and approve the report.~~

(11) Waiver. If an interested person does not object to a report within 28 days of service, the interested person waives any objection unless:

(A) the objection relates to matters not fairly disclosed by the report; or

(B) the time for objection is extended by the court under Rule 6 of the Utah Rules of Civil Procedure. If the request for an extension is made before the time has run, the court may extend the time for good cause. If the request is made after the time has run, the court may extend for excusable neglect.

(12) Report approval.

153 (A) **Approval.** The court must examine and approve reports as required by Utah Code
154 sections 75-5-312 and 75-5-417. Approving a report means the judge has reviewed it, to the
155 court's knowledge notice has been given to every person entitled to notice, no objection has
156 been received, the report meets the requirements set forth by the report form, and the court
157 has not requested additional information or scheduled a hearing. Such approval does not
158 foreclose a valid claim permitted under paragraphs (11)(A) or (11)(B), nor does it start an
159 appeal time.

160 (B) **Notice to interested persons.** When a court approves a report, the court must note that
161 approval on the Judicial Council-approved coversheet and place the coversheet in the case
162 file. When a court does not approve a report, the court must indicate on the coversheet, or in
163 an order, the reasons for non-approval, any additional actions required, and serve the
164 coversheet or order on all interested persons entitled to notice.

165 (13) **Report on a minor.** Under Utah Code Section 75-5-209, a person interested in the welfare
166 of a minor may petition the court for a report from the guardian on the minor's welfare or the
167 minor's estate.

168 *Effective May/November 1, 20__18*

RULE AMENDMENT REQUEST

Policy and Planning

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

Instructions: Unless the proposal is coming directly from the Utah Supreme Court, Judicial Council, or Management Committee, this Request Form must be submitted along with a draft of the proposed rule amendment before they will be considered by the Policy and Planning Committee. **Once completed, please e-mail this form and the proposed rule changes to Keisa Williams at keisaw@utcourts.gov.**

REQUESTER CONTACT INFORMATION:

Name of Requester:

E-mail:

Phone Number:

Date of Request:

RULE AMENDMENT:

Rule Number:

Location of Rule:

Brief Description of Proposed Amendment:

Reason Amendment is Needed:

Is this proposal urgent?

No

Yes

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

List all stakeholders:

Select each entity that has approved this proposal:

Accounting Manual Committee	Legislative Liaison Committee
ADR Committee	Licensed Paralegal Practitioner Committee
Board of Appellate Court Judges	Model Utah Civil Jury Instructions Committee
Board of District Court Judges	Model Utah Criminal Jury Instructions Committee
Board of Justice Court Judges	Policy and Planning member
Board of Juvenile Court Judges	Pretrial Release and Supervision Committee
Board of Senior Judges	Resources for Self-represented Parties Committee
Children and Family Law Committee	Rules of Appellate Procedure Advisory Committee
Court Commissioner Conduct Committee	Rules of Civil Procedure Advisory Committee
Court Facility Planning Committee	Rules of Criminal Procedure Advisory Committee
Court Forms Committee	Rules of Evidence Advisory Committee
Ethics Advisory Committee	Rules of Juvenile Procedure Advisory Committee
Ethics and Discipline Committee of the Utah Supreme Court	Rules of Professional Conduct Advisory Committee
General Counsel	State Court Administrator
Guardian ad Litem Oversight Committee	TCE's
Judicial Branch Education Committee	Technology Committee
Judicial Outreach Committee	Uniform Fine and Bail Committee
Language Access Committee	WINGS Committee
Law Library Oversight Committee	NONE OF THE ABOVE

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

Requester's Signature:

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



FOR POLICY AND PLANNING USE ONLY

Proposal Accepted?	Queue Priority Level:	Committee Notes/Comments:
Yes	Red	
No	Yellow	
	Green	

Date Committee Approved for Public Comment:

Date Committee Approved for Final Recommendation to Judicial Council:

Rule 6-507. Court visitors.**Intent:**

To set forth the appointment and role of court visitors. To establish a process for the review of court visitor reports.

Applicability:

This rule applies to court visitor reports in guardianship and conservatorship cases.

Statement of the Rule:**(1) Definition and visitor requirements.**

(A) A visitor is, with respect to guardianship and conservatorship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings whose role is to investigate, observe, and report to the court, but is not to determine capacity of the respondent.

(B) A visitor is trained in law, nursing, or social work either through life experience or through completing any training required by the court visitor program.

(C) A visitor must complete any training required by the court visitor program.

(2) Appointment and role of court visitor. Upon its own initiative or motion of a party or an “interested person,” as that term is defined in Utah Code section 75-1-201, the court may appoint a court visitor in a guardianship or conservatorship proceeding to conduct an inquiry into the following:

(A) whether to waive the respondent’s presence at the hearing under Section **75-5-303(5)(a)**;

(B) to confirm a waiver of notice submitted by the respondent in a guardianship or conservatorship proceeding under Sections **75-5-309(3)** or **75-5-405(1)**;

(C) to investigate the respondent’s circumstances and well-being, including when an attorney is not appointed under **75-5-303(5)(d)**;

(D) to review annual reports from the guardian and conservator or gather additional financial information;

(E) to locate guardians, conservators, and respondents;

(F) to investigate the proposed guardian's future plans for the respondent's residence under Section 75-5-303(4)

(G) to meet with the adult wardprotected person to determine the wishes of the adult wardprotected person regarding association under Section 75-5-312.5; or

(GH) to conduct any other investigation or observation as directed by the court.

(3) **Motion to excuse respondent or confirm waiver of hearing.** The petitioner, the respondent, or any interested person seeking to excuse the respondent or confirm a waiver of hearing, shall file an ex parte motion at least 21 days prior to the hearing.

(A) Upon receipt of the motion, the court shall appoint a court visitor to conduct an investigation in accordance with paragraph (2) unless a court visitor is not required under Utah Code section 75-5-303.

(B) Upon appointment to conduct an inquiry into whether to excuse the respondent from the hearing, the court visitor ~~will~~may:

(i) interview the petitioner, the proposed guardian, and the respondent;

(ii) visit the respondent's present dwelling or any dwelling in which the respondent will reside if the guardianship or conservatorship appointment is made;

(iii) interview any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition;

(iv) confirm a waiver of notice if submitted by the respondent; and

(iv) conduct any other investigation the court directs.

(4) **Other inquiries.** If the court appoints a visitor under paragraphs (2)(B) through (2)(~~GH~~), the court visitor will conduct the inquiry in accordance with the court's order or appointment.

(5) **Language access.** If ~~the court visitor does not speak or understand~~ the respondent's, proposed guardian's, proposed conservator's, or petitioner's primary language, is other than English and that person has limited English proficiency, the court visitor must use an interpretation service approved by the Administrative Office of the Courts to communicate with the respondent, proposed guardian, proposed conservator, or petitioner.

(6) **Court visitor report.**

(A) **Service of the court visitor report.** Except for court visitor appointments made under paragraph (2)(E), in accordance with Rule 5 of the Utah Rules of Civil Procedure, the court

visitor program must file and serve a court visitor report upon all ~~parties~~ current interested persons and upon any interested person who has requested the appointment of the court visitor.

(B) **Request to Submit for Decision.** The court visitor program will file with each court visitor report a request to submit for decision.

(C) **Report regarding waiver of respondent's presence.** In cases involving a motion to excuse the respondent from the hearing, the court visitor will file with the report a court-approved proposed order. The report, a request to submit for decision, and a proposed order ~~will~~ should be filed five days before the hearing.

(7) Objecting to the court visitor report. The court will only consider an objection to a court visitor report if it challenges the visitor's actions as having exceeded the order's scope. An objecting person must file a written objection and request for hearing within 7 days of the filing of the court visitor report. The court may set a briefing schedule if appropriate.

~~(78)~~ **Termination of court visitor appointment.** The appointment of the court visitor terminates and the court visitor is discharged from the court visitor's duties upon the date identified in the order of appointment. The court may extend the appointment with or without a request from a party.

~~(89)~~ **Court ~~findings~~ action on reports.**

(A) **Reports regarding waiver of respondent's presence.** When a court visitor has filed a report regarding a request to waive the respondent's presence at the hearing, the court will issue findings and an order as to the waiver at least two days prior to the hearing upon which the request has been made.

(B) **All other reports.** When a court visitor has filed a report involving matters other than the waiver of the respondent's presence, the court will review the report and make a minute entry regarding next steps in accordance with the timelines of Rule 3-101. ~~issue findings and an order as to those matters in accordance with the timelines of Rule 3-101.~~ If the parties are attempting to resolve the issues raised in the report through mediation, the time for the court to act on the report may be stayed until mediation is successful or fails.

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

Tab 6

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

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Posted: July 28, 2021

Utah Courts

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Code of Judicial Administration – Comment Period Closed September 11, 2021

CJA01-0303. Internal procedures and organization. Amend. An amendment to CJA Rule 1-303 was approved by the Judicial Council to allow for reports from the Boards twice each year rather than quarterly.

This entry was posted in [-Code of Judicial Administration](#), [-Code of Judicial Administration, CJA01-0303](#).

« [Code of Judicial Administration – Comment Period Closed September 17, 2021](#)

[Rules of Appellate Procedure – Comment Period Closed September 10, 2021](#) »

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

CATEGORIES

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

UTAH COURTS

[View more posts from this author](#)

One thought on “Code of Judicial Administration – Comment Period Closed September 11, 2021”

Eric K. Johnson
July 28, 2021 at 1:08 pm

I oppose this proposed rule revision.

This proposed revision strikes me as a bow to complacency and an attempt to reduce accountability and useful data (especially unflattering data and data that exposes failures and defects). Moreover, reducing the number of reporting periods from 4 to 2 decreases accountability, the quantity and timeliness of data, and thus decreases the quality, evidentiary value, and utility of the reports.

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0101
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0211
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
- CJA03-0105
- CJA03-0106
- CJA03-0106
- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02

Rule 1-303. Internal procedures and organization.**Intent:**

To provide the minimum standards and requirements for the operation of the Boards.

To establish the minimum requirements for liaison with the Council.

Applicability:

This rule shall apply to all Boards of Judges, except the Board of Senior Judges.

Statement of the Rule:

(1) The meetings of the Boards shall be closed unless opened by the chair of the Board.

(2) Each Board shall keep minutes of its meetings. The minutes shall not be open to public inspection.

(3) Each Board shall meet as necessary to accomplish its work, but the Board of District Court Judges, Board of Juvenile Court Judges, and Board of Justice Court Judges shall meet a minimum of once every three months. Each Board shall report to the Council as necessary, but the Board of District Court Judges, Board of Juvenile Court Judges, and the Board of Justice Court Judges shall report to the Council a minimum of once every ~~three-six~~ months.

Effective ~~December 16, 2019~~May/November 1, 20

Tab 7

Policy and Planning - Rule Amendment Request Form

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

Instructions

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

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

Date of Request *

MM DD YYYY

08 / 25 / 2021

Name of Requester *

Jim Peters

Requester Phone Number *

(801) 372-3333

Name of Requester's Supervisor *

Ron Gordon

Location of the Rule *

Code of Judicial Administration ▼

CJA Rule Number or HR/Accounting Section Name *

4-903

Brief Description of Rule Proposal *

Amendments proposed for Rule 4-903 limit the circumstances in which a custody evaluation can be ordered and describe the training required of those who conduct custody evaluations.

Reason Amendment is Needed *

Most of the amendments to this rule are being proposed in response to a legislative audit issued in August 2019. Others are recommended by the Standing Committee on Children and Family Law.

Is the proposed amendment urgent? *

☐

Yes

☒

No

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

Select each entity that has approved this proposal. *

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

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

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

.....

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

District Courts, parties to a divorce action, and custody evaluators

.....

This form was created inside of Utah State Courts.

Google Forms

Rule 4-903. Uniform custody evaluations.**Intent:**

To establish uniform guidelines for the performance of custody evaluations.

Applicability:

This rule shall apply to the district and juvenile courts.

Statement of the Rule:

~~(1) Custody evaluations shall be performed by professionals who have specific training in child development, and who are licensed by the Utah Department of Occupational and Professional Licensing as either a:~~

~~(1)(A) Licensed Clinical Social Worker;~~

~~(1)(B) Licensed Psychologist;~~

~~(1)(C) Licensed Physician who is board certified in psychiatry;~~

~~(1)(D) Licensed Marriage and Family Therapist; or~~

~~(1)(E) Licensed Clinical Mental Health Counselor.~~

(14) The purpose of the a custody evaluation will be is to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the a child's best interest. Unless otherwise specified in the order, evaluators must consider and respond to the custody factors set forth in Utah Code sections 30-3-10 and 30-3-10.2.

(2) Custody evaluations shall be ordered only when the parties request it or when the court makes specific findings that extraordinary circumstances exist that warrant an evaluation. In either case, the court must find by clear and convincing evidence that there is a present ability to pay for the evaluation.

(32) Every motion or stipulation for the performance of a custody evaluation shall include:

(32)(A) the name, address, and telephone number of each evaluator nominated, or the evaluator agreed upon;

(32)(B) the anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation;

(32)(C) specific factors, if any, to be addressed in the evaluation: and-

(3)(D) a copy of each proposed evaluator's recent curriculum vitae attached as exhibits.

(43) Every order requiring the performance of a custody evaluation shall:

(43)(A) require the parties to cooperate as requested by the evaluator;

(43)(B) restrict disclosure of the evaluation's findings or recommendations and privileged information obtained except in the context of the subject litigation or other proceedings as deemed necessary by the court;

(43)(C) assign responsibility for payment from the beginning of the evaluation through the custody evaluation conference, ~~as well as the costs of the written report if requested~~ subject to reallocation at the time of trial;

(43)(D) specify dates for commencement and completion of the evaluation;

(43)(E) specify any additional factors to be addressed in the evaluation;

(43)(F) require the evaluator to provide written notice to the court, counsel and parties within five business days of completion (of information-gathering) or termination of the evaluation and, if terminated, the reason;

(43)(G) require counsel and parties to complete a custody evaluation conference with the court and the evaluator within 45 days of notice of completion (of information gathering) or termination unless otherwise directed by the court so that evaluator may issue a verbal report; and

(43)(H) require that any party wanting a written custody evaluation report give written notice to the evaluator within 45 days after the custody evaluation conference.
The party requesting the written report shall pay for the costs of the same, subject to reallocation at the time of trial.

~~(4) The purpose of the custody evaluation will be to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the child's best interest. Unless otherwise specified in the order, evaluators must consider and respond to the custody factors set forth in Utah Code sections 30-3-10 and 30-3-10.2.~~

~~(54) Custody evaluations shall be performed by mental health professionals who have specific training in child development, and who are licensed by the Utah Department of Occupational and Professional Licensing as either a:~~

~~(54)(A) Licensed Clinical Social Worker;~~

~~(54)~~(B) Licensed Psychologist;

~~(54)~~(C) Licensed Physician who is board certified in psychiatry;

~~(54)~~(D) Licensed Marriage and Family Therapist; or

~~(54)~~(E) Licensed Clinical Mental Health Counselor.

(6) Child custody evaluators shall gain and maintain specialized knowledge and training in a wide range of topics specifically related to child custody work. Evaluators shall gain broad knowledge of family dynamics. Evaluators conducting evaluations that raise special issues shall obtain specialized knowledge. Since research and laws pertaining to the field of divorce or separation and child custody are continually changing and advancing, child custody evaluators shall secure ongoing specialized training and education.

(7) Before accepting appointment, a child custody evaluator shall have completed 18 hours of education and training within the past two years, coinciding with the professional's licensure reporting deadlines, which must include all the following topics:

(7)(A) The psychological and developmental needs of children, especially as those needs relate to decisions about child custody and parent-time;

(7)(B) Family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships; and

(7)(C) The effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and interparental conflict on the psychological and developmental needs of children and adults.

~~(85)~~ In cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall take into consideration the potential danger posed to the child's custodian and the child(ren).

(9) Evaluators having conducted fewer than three (3) evaluations shall consult with another professional who meets the education, experience, and training requirements of this rule, sufficient to review, instruct, and comment on the entire evaluation process.

(106) In cases in which psychological testing is employed as a component of the evaluation, it shall be conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. ~~If psychological testing is conducted with adults and/or children, it shall be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes.~~ The evaluator shall consider the psychological testing results with the understanding that they are hypotheses that need to be supported by and integrated with all other data gathered.

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