

**UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING AGENDA**
May 6, 2022 – 12:00 p.m. to 4:00 p.m.
Webex

12:00	Welcome and approval of minutes	Action	Tab 1	Judge Pullan
12:05	<u>Rules back from Public Comment</u> <ul style="list-style-type: none"> • CJA 1-205 • CJA 3-407 • CJA 3-421 • CJA 6-104 	Action	Tab 2	Keisa Williams Judge Appleby
12:40	CJA 4-508. Guidelines for ruling on a motion to waive fees	Action	Tab 3	Nathanael Player
12:55	CJA 4-202.03. Records Access	Action	Tab 4	Nathanael Player
1:10	Pretrial Protective Order Form	Action	Tab 5	Nathanael Player Amy Hernandez
1:25	CJA 9-109. Presiding Judges	Action	Tab 6	Jim Peters
1:35	CJA 4-903. Uniform custody evaluations	Action	Tab 7	Commissioner Minas Jim Peters
1:50	CJA 6-501. Reporting requirements for guardians and conservators.	Action	Tab 8	Stacy Haacke Shonna Thomas Allison Barger
2:15	<u>Human Resource Policies</u> <ul style="list-style-type: none"> • HR 01 • HR 07-2, 07-9, 07-21 • HR 04-1 – 04-4 and HR 05-1 – 05-3 • HR 15-3, 15-4, 15-6 • HR 16-2, 16-3, 16-4 • CJA 3-301.01 • HR 09-9 • HR 17-9 • HR 09-12 	Action	Tab 9	Bart Olsen
3:15	CJA 1-204. Executive committees CJA 1-205. Standing and ad hoc committees	Action	Tab 10	Judge Pullan
3:50	Old Business/New Business			
4:00	Adjourn			

2022 Meetings:

June 3, 2022	October 7, 2022
July 1, 2022	November 4, 2022 (all day)
August 5, 2022	December 2, 2022
September 2, 2022	

TAB 1

Minutes

March 4, 2022

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

Webex video conferencing
March 4, 2022: 12 pm -2 pm

DRAFT

MEMBERS:

PRESENT

EXCUSED

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

GUESTS:

Ron Gordon
Bart Olsen
Paul Barron
Keri Sargent
Jon Puente

STAFF:

Keisa Williams
Minhvan Brimhall

(1) Welcome and approval of minutes:

Judge Connors welcomed committee members and guests. The committee considered the minutes from the February 4, 2021 meeting. With no changes, Judge Heward moved to approve the minutes as presented. Judge Chiara seconded the motion. The motion passed unanimously.

(2) Internal procedures re judicial misconduct complaints:

- **HR 15-3 and 15-4. Workplace Harassment Investigative Procedures.**
- **HR 16-2 and 16-3. Abusive Conduct Investigative Procedures.**
- **CJA 3-301.01. State Court Administrator – Complaints and performance review; complaints regarding judicial officers and state court employees.**
- **CJA 3-104. Presiding Judges.**

The committee discussed amendments to HR 15-3, 15-4, 16-2, and 16-3 during its November 2021 meeting and recommended that Bart Olsen meet with each committee member individually. Mr. Olsen integrated members' feedback from those individual sessions into the current proposals. The amendments are intended to align procedures regarding allegations of judicial misconduct to that of allegations of employee misconduct. The amendment to 3-104 would allow Presiding Judges to place a judge on temporary, non-punitive paid administrative leave during an investigation.

HR 15-3 and 15-4:

The committee discussed substantive changes to HR 15-3 and 15-4 and made additional amendments. Section 15-3(4)(b), line 47, was amended to allow a complainant to submit a request to either the State Court Administrator or Deputy State Court Administrator for an independent review of a complaint if the complainant disagrees with Human Resource's determination that the accused did not violate policy. The committee discussed the language in HR 15-14(1)(c)(i)(1), lines 104-106. Section (1)(c) provides instruction for actions taken by the investigator. The committee determined that the language was better suited in 15-4(1)(a)(v), lines 78-79, for complaints against employees, and 15-14(1)(b)(v), lines 94-98, for complaints against judicial officers. The following amendments were also made:

- Line 102 - changed "often" to "may"

- Line 125 - added a reference to CJA 3-104
- Line 141 – added clarifying language to ensure the complainant and accused are notified of the completion of the investigative process
- Line 169 - “determine” was replaced by “believe”
- Lines 171-173 – rather than removing an accused’s representative from an interview if the representative becomes disruptive, the investigator may pause or terminate the interview to consult with administration or legal counsel on next steps

HR 16-2 and 16-3:

The committee noted that the changes in HR 15-3 and 15-4 should align with HR 16-2 and 16-3. Mr. Olsen will make those amendments.

After further discussion, the committee determined that both policies need additional review and language modification. Mr. Olsen and Ms. Williams will make adjustments to the policies as recommended. Mr. Olsen will circulate the changes to the committee members via email for review in hopes that the amendments can be approved electronically. If not, both policies (along with CJA 3-301.01 and 3-104) will be addressed at a future meeting. No motion was made at this time.

(3) HR 01. Definitions

HR 8-14. Dual State Employment

HR 9-11. Conflict of Interest

HR 9-12. Political Activity

HR 9-12:

In reviewing HR policies, Mr. Olsen and Ms. Williams discovered inaccuracies in section HR 9-12 regarding judicial employees’ ability to engage in political activities. The language in the current version of the policy was copied in error from executive branch policies. Employees of the judicial branch are subject to more restrictions on political activity than those employed in other branches of government. The proposed amendments revert back to language in the pre-July 1, 2021 HR policy, with a few amendments that reflect prohibitions found in Utah ethics advisory opinions.

Following discussion, the committee made the following minor changes:

- Lines 28-29 – Clarifies that the list of prohibited political activity is non-exhaustive
- Line 38 – replaced “invidious” with “unlawful”
- Lines 35-36 - replaced “etc.” with “other entities” and “entity”

In subsection (3), judicial employees are prohibited from serving on state and local boards, councils, committees, or other entities in the executive or legislative branches, unless those entities deal with the law, the legal system, or the administration of justice. Mr. Gordon expressed concern that the prohibition in (3) is too broad, noting that judicial employees should be allowed to participate in some local community activities. Ms. Williams pointed to Informal Ethics Advisory Opinion 97-6. The opinion states that employees are subject to the same restrictions as judges in this regard. Following discussion, the committee determined that the policy should remain as currently written because it would otherwise be out of step with the ethics advisory opinions, however, the committee agreed with Mr. Gordon that the prohibition seems overly broad. The committee asked Ms. Williams to submit a formal request on its behalf to the Ethics Advisory Committee for an opinion on this issue.

The committee discussed concerns with subsection (9), primarily the practicality of prohibiting any and all political displays (e.g., framed portrait of George Washington in a judge’s chambers) and religious discussions that may arise naturally in the work place, provided the discussions and displays aren’t offensive, harassing, or discriminatory in nature. The committee amended (9) to read “Employees should exercise caution with partisan political and religious displays, statements and discussions in the workplace, especially in areas visible to or within earshot of the public.” Ms. Williams expressed disagreement with the amendment, indicating that she believes political and

religious displays and discussions in the workplace violate judicial ethics, tie management's hands when those issues become disruptive or an employee disagrees with management about the appropriateness of a particular discussion or display, and could lead to liability for the courts with respect to allegations of abusive conduct or workplace harassment or discrimination.

The committee discussed and made no changes to the proposed amendments to HR 01, HR 8-14, and HR 9-11.

With no further discussion, Judge Chiara moved to approve the proposed amendments to HR 01, HR 8-14, HR 9-11, and HR 9-12, with a recommendation to the Judicial Council that the policies be approved as final. Judge Chin seconded the motion. The motion passed unanimously.

(4) HR 8-22. Out-of-State Work Policy

HR 8-22 is a new policy associated with rules recently adopted by State Finance. The judicial branch utilizes the same payroll system as the executive branch, so judicial policies must align with those adopted by the executive branch. The state court administrator and deputy court administrator will provide additional direction to managers regarding employees' ability to work out of state.

With no recommendations for amendments or further discussion, Judge Chiara moved to send HR 8-22 to the Judicial Council with a recommendation that the policy be approved as final. Judge Chin seconded the motion. The motion passed unanimously.

(5) HR 9-9. Professional Appearance Policy.

Due to the lack of time, this item will be discussed at a future meeting.

Old Business/New Business: None

Adjourn: With no further items for discussion, the meeting was adjourned without a motion. The next meeting will be held on April 1, 2022 at 12 PM via Webex video conferencing.

TAB 2

Rules back from Public Comment

CJA 1-205. Standing and ad hoc committees *(no comments)*

CJA 3-407. Accounting *(no comments)* *(approved on expedited basis)*

CJA 3-421. WINGS committee *(no comments)*

CJA 6-104. Water law judges *(4 comments)*

Notes: The public comment period on the above rules closed on April 28, 2022. No comments were received on rules 1-205, 3-407, or 3-421. Rule 3-407 was approved on an expedited basis with a March 11, 2022 effective date, so no further action is needed on 3-407 unless the committee makes additional changes.

Four (4) substantive comments were received on rule 6-104. Judge Appleby prepared a response memo (attached) and would like to make the Committee aware of the following article:

<https://www.cnn.com/2022/04/30/us/west-drought-lake-powell-hydropower-or-water-climate/index.html>

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

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

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

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

Applicability:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1)(A)(xv) Committee on Judicial Fairness and Accountability; and

~~(1)(A)(xv)~~ (1)(A)(xvi) Working Interdisciplinary Network of Guardianship

Stakeholders (WINGS)

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

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

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

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

(1)(B)(i)(c) one lawyer recommended by the Board of Bar Commissioners;

(1)(B)(i)(d) two court executives;

(1)(B)(i)(e) two court clerks; and

(1)(B)(i)(f) two staff members from the Administrative Office.

(1)(B)(ii) The **Uniform Fine 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 a social services organization providing direct services to underserved communities;
- (1)(B)(viii)(f) one representative from the Utah State Bar;
- (1)(B)(viii)(g) two representatives from legal service organizations that serve low-income clients;
- (1)(B)(viii)(h) one private attorney experienced in providing services to self-represented parties;
- (1)(B)(viii)(i) two law school representatives;

(1)(B)(viii)(j) the state law librarian; and
(1)(B)(viii)(k) two community representatives.
(1)(B)(ix) The **Language Access Committee** 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

- (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) 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;
 - (1)(B)(xiv)(i) the district court administrator or designee;
 - (1)(B)(xiv)(j) one representative from a legal service organization that serves low-income clients;

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

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

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

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

(1)(B)(xiv)(o) the LPP administrator.

(1)(B)(xv) The **Committee on Fairness and Accountability** performs the duties described in rule 3-420. The committee shall include members who demonstrate an interest in, or who have experience with, issues of diversity, equity, and inclusion and shall consist of:

(1)(B)(xv)(a) one sitting judge;

(1)(B)(xv)(b) three current or former judicial officers;

(1)(B)(xv)(c) the General Counsel or designee; and

(1)(B)(xv)(d) the Director of the Office of Fairness and Accountability.

(1)(B)(xvi) The **Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)** performs the duties described in rule 3-421, and shall consist of:

(1)(B)(xvi)(a) **Judiciary** representatives:

(i) two or more district court judges;

(ii) two or more district court judicial support staff with experience in guardianship matters;

(iii) one representative from the Guardianship Reporting and Monitoring Program (GRAMP)

(iv) one representative from the Court Visitor Program; and

(v) the General Counsel or designee.

(1)(B)(xvi)(b) **Community stakeholder** representatives:

(i) one representative from Adult Protective Services;

(ii) one representative from Disability Law Center;

(iii) one representative from Adult and Aging Services;

(iv) one representative from Office of Public Guardian;

(v) one representative from the Utah State Bar;

(vi) one representative from Office of the Attorney General;

(vii) one representative from the Utah legislature;

(viii) one representative from the Utah Commission on Aging;

(ix) one representative from Utah Legal Services; and

(x) the Long-Term Care Ombudsman or designee.

(1)(B)(xvi)(c) **Individual community** representatives:

three or more community stakeholders representing:

(i) mental health community;

(ii) medical community;

(iii) private legal community that specializes in guardianship matters;

(iv) aging-adult services community;

(v) educator from a legal program or law school;

(vi) organization serving low-income, minorities, or marginalized communities;

(vii) citizens under or involved in guardianship; and

(viii) other organizations with a focus including, but not limited to guardianship, aging, legal services, or disability.

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

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

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

(2) **Ad hoc committees.** The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the

270 termination of any ad hoc committee. The Council may invite non-Council members to
271 participate and vote on ad hoc committees. Ad hoc committees shall keep the Council
272 informed of their activities. Ad hoc committees may form sub-committees as they deem
273 advisable. Ad hoc committees shall disband upon issuing a final report or recommendations
274 to the Council, upon expiration of the time set for termination, or upon the order of the
275 Council.

276 (3) **General provisions.**

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

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

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

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

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

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

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

300 (3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members
301 shall serve staggered three year terms. Standing committee members shall not
302 serve more than two consecutive terms on a committee unless the Council

303 determines that exceptional circumstances exist which justify service of more than
304 two consecutive terms.

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

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

310 *Effective November 1, 2022*

Rule 3-407. Accounting.**Intent:**

To establish uniform procedures for the processing, tracking, and reporting of accounts receivable and trust accounts.

Applicability:

This rule applies to the judiciary.

Statement of the Rule:**(1) Manual of procedures.**

(1)(A) **Manual of Procedures.** The administrative office shall develop a manual of procedures ("Accounting Manual") to govern accounts receivable, accounts payable, trust accounts, the audit thereof, and the audit of administrative procedures generally. The procedures shall be in conformity with generally accepted principles of budgeting and accounting and shall, at a minimum, conform to the requirements of this Code and state law. Unless otherwise directed by the Judicial Council, the Accounting Manual of procedures and amendments to it shall be approved by the majority vote of the Budget and Fiscal Management Committee ("BFMC") following the procedures in (1)(D). state court administrator, the court administrators for each court of record, and the finance manager.

(1)(B) **Accounting Manual Review Committee.** There is established an accounting manual review committee responsible for making and reviewing proposals for repealing accounting policies and procedures and proposals for promulgating new and amended accounting policies and procedures. The committee shall consist of the following minimum membership:

(1)(B)(i) the director of the AOC finance department, who shall serve as chair and shall vote only in the event of a tie;

(1)(B)(ii) four support services coordinators who will serve a three year term, and may repeat;

(1)(B)(iii) two accountants or clerks with accounting responsibilities from each of the trial courts of record who will serve a three year term, and may repeat;

(1)(B)(iv) a trial court executive who will serve a three year term;

(1)(B)(v) a clerk of court who will serve a three year term;

(1)(B)(vi) a clerk with accounting responsibilities from an appellate court who will serve a three year term, and may repeat;

(1)(B)(vii) one court services field specialist, who has an indefinite term;

(1)(B)(viii) the audit director or designee, who shall not vote; and

(1)(B)(viii) the director of the state division of finance or designee, who shall not vote.

(1)(C) **Member Appointments.** Unless designated by office, members of the committee shall be appointed by the state court administrator, or designee. The AOC department of finance shall provide necessary support to the committee.

(1)(D) **Trial Court Executives and Clerks of Court Review.** New and amended policies and procedures recommended by the majority vote of the accounting manual review committee shall be reviewed and approved by the trial court executives and clerks of court of all courts of record. The trial court executives and clerks of court may endorse or amend the draft policies and procedures or return the draft policies and procedures to the committee for further consideration.

Once approved by the trial court executives and court clerks, prior to being the new and amended policies and procedures will be submitted to the Budget and Fiscal Management Committee ("BFMC") for approval as noted in (1)(A). Judicial Council or to the vote of the administrators and the finance manager. The Court Executives may endorse or amend the draft policies and procedures or return the draft policies and procedures to the committee for further consideration.

(2) Revenue accounts.

(2)(A) **Deposits; transfers; withdrawals.** All courts shall deposit with a depository determined qualified by the administrative office or make deposits directly with the Utah State Treasurer or the treasurer of the appropriate local government entity. The Supreme Court, Court of Appeals, State Law Library, administrative office, district court primary locations and juvenile courts shall deposit daily, whenever practicable, but not less than once every three days. The deposit shall consist of all court collections of state money. District court contract sites and justice courts having funds due to the state or any political subdivision of the state shall, on or before the 10th day of each month, deposit all funds receipted by them in the preceding month in a qualified depository with the appropriate public treasurer. The courts shall make no withdrawals from depository accounts.

(2)(B) **Periodic revenue report.** Under the supervision of the court executive, the clerk of the court shall prepare and submit a revenue report that identifies the amount and source of the funds received during the reporting period and the state or local government entity entitled to the funds. Juvenile courts and primary locations of the district courts shall submit the report weekly to the administrative office. District court contract sites shall submit the report at least monthly, together with a check for the state portion of revenue, to the administrative office. Justice courts shall submit the report

monthly, together with a check for the state revenue collected, to the Utah State Treasurer.

(2)(C) **Monthly reconciliation of bank statement.** The administrative office shall reconcile the revenue account upon receipt of the weekly revenue report from the courts and the monthly bank statements.

(3) Trust accounts.

(3)(A) **Definition.** Trust accounts are accounts established by the courts for the benefit of third parties. Examples of funds which are held in trust accounts include restitution, attorney fees, and monetary bail amounts.

(3)(B) **Accounts required; duties of a fiduciary.** District court primary locations and juvenile courts shall maintain a trust account in which to deposit monies held in trust for the benefit of the trustor or some other beneficiary. Under supervision of the court executive, the clerk of the court shall be the custodian of the account and shall have the duties of a trustee as established by law. All other courts of record and not of record may maintain a trust account in accordance with the provisions of this rule.

(3)(C) **Monthly reconciliation of bank statement.** Each court shall reconcile its ledgers upon receipt of the monthly bank statement and submit the reconciliation to the administrative office.

(3)(D) **Accounting to trustor.** The courts shall establish a method of accounting that will trace the debits and credits attributable to each trustor.

(3)(E) **Monetary Bail forfeitures; other withdrawals.** Transfers from trust accounts to a revenue account may be made upon an order of forfeiture of monetary bail or other order of the court. Other withdrawals from trust accounts shall be made upon the order of the court after a finding of entitlement.

(3)(F) **Interest bearing.** All trust accounts shall be interest bearing. The disposition of interest shall be governed by Rule 4-301.

(4) Compliance. The administrative office and the courts shall comply with state law and the Accounting Manual of procedures in (1)(A), adopted by the administrative office.

Effective March 11~~November 1~~, 20220

Rule 3-421. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

Intent:

To establish a committee of stakeholders from various disciplines to improve the state's guardianship and conservatorship services and processes.

Applicability:

This rule shall apply to all members of the WINGS committee.

Statement of the Rule:

(1) The WINGS committee shall provide leadership to identify the needs in guardianship and conservatorship matters and to secure and coordinate resources to meet those needs.

(2) The WINGS committee shall:

(2)(A) assess available services, forms, and rules for guardianship and conservatorship and gaps in those services, forms, and rules;

(2)(B) recommend measures to the Judicial Council, the State Bar and other appropriate institutions for improving guardianship and conservatorship processes;

(2)(C) support policy initiatives for the enhancement of guardianship, conservatorship, and related infrastructure;

(2)(D) identify and develop education and outreach opportunities regarding guardianships, conservatorships, and their alternatives;

(2)(E) provide training and support to those engaging the guardianship/conservatorship system;

(2)(F) promote high standards for guardians and conservators;

(2)(G) promote collaboration between WINGS members and other stakeholders;

(2)(H) regularly evaluate the needs and priorities of WINGS's efforts; and

(2)(I) strive to maintain interdisciplinary representation of members drawn from the organizations, entities, and individuals related to guardianship and conservatorship matters.

(3) **Chair.** The Chair of WINGS shall be a Utah District Court judge.

(4) **Executive Committee.** The WINGS Executive Committee shall consist of the Utah WINGS chair, the GRAMP Coordinator, the Court Visitor Program Coordinator, a staff attorney from the

Administrative Office of the Courts, and up to three members of Utah WINGS, as determined by the chair.

(5) **Community stakeholders.** One of the purposes of WINGS is to receive input from community stakeholder organizations. Community stakeholder organizational representatives (Rule 1-205(1)(B)(xv)(b)) will be designated by their organizations and not subject to the term limitations of Rule 1-205(3)(B).

Effective May/November 1, 2022

Rule 6-104. District court water judges

Intent:

To designate certain district court judges as water judges.

To establish a procedure whereby district court water cases are heard by designated water judges.

To designate a supervising water judge.

Applicability:

This rule shall apply to district court judges.

Statement of the Rule:

(1) **Council Designation.** The Judicial Council shall formally designate at least three district court judges who volunteer as water judges. In making the designation, the Judicial Council shall consider the knowledge and experience of the judge in relation to cases involving the adjudication of water rights, or the willingness of that judge to become familiar with this area of the law.

(2) **Request for Assignment.** If a party to a case involving water law an action filed under Utah Code Title 73, Chapter 3 or Chapter 4 makes a request, as part of the complaint or first responsive pleading, to have the case assigned to a water judge, the case will be assigned to a water judge. Thereafter, a request to have the case assigned to a water judge may be granted in the discretion of the judge assigned to the case. Additionally, a party may request that a non-Chapter 3 or Chapter 4 case be assigned to a water judge. Non-Chapter 3 or 4 cases will be reviewed and assigned by the supervising water judge if the case is of sufficient legal complexity as related to water law to warrant assignment to a water judge.

(3) **Assignments.** Assignment of cases involving water law to a water judge shall be made on a random basis. Assignment will may- include an adjustment in the judge's calendar to allow the judge to handle the case.

(4) **Supervising Water Judge.** The water judges shall elect one of the water judges to be the supervising water judge. The term of office of the supervising water judge is two years beginning July 1. The supervising water judge shall be primarily responsible for:

(4)(A) the assignment of water law cases to water judges;

(4)(B) the coordination of schedules of water judges and the assignment of courtrooms and facilities in conjunction with the state court administrator and the presiding judge of each district court;

(4)(C) addressing concerns of water judges, other district court judges, or the Judicial Council regarding the management of district court water law cases;

(4)(D) overseeing the water law education of the water judges, in conjunction with the Standing Committee on Judicial Branch Education and the Education Division of Utah Judicial Institute the Administrative Office of the Courts;

(4)(E) presiding over meetings of the water judges; and

(4)(F) the use of law clerk resources to develop water expertise, to assist the water judges, and to facilitate consistency in the development of case precedents in the water law area and otherwise assist in the transition as new water judges are designated; and-

(4)(G) coordinating with the water judge's presiding judge regarding any appropriate adjustments to the water judge's caseload.

(5) **Publishing Opinions.** If a water judge decides a water law case of first impression, or one which creates new law or gives new guidance, the water judge shall cause an opinion of the case to be published. An opinion need not be published where the case deals with settled rules of law.

(6) **Term.** Water judges shall serve only so long as they are district court judges. Water judges may, however, resign as water judges, at their own request or the request of the Judicial Council, while still serving as district court judges.

(7) **Caseload.** If a water judge does not have a full workload of water law cases, the judge shall hear non-water law district court cases to maintain a full workload of cases.

Effective May/November 1, 20

MEMORANDUM re: PROPOSED CJA RULE 6-104

To: Policy and Planning Committee
From: Senior Judge Kate Appleby
Date: April 29, 2022
Re: Responses to Comments Posted to Proposed Rule 6-104

The Policy and Planning Committee's subcommittee drafted proposed Rule 6-104 to create a mechanism by which a volunteer group of judges willing to be assigned water law cases could develop the necessary expertise and have appropriate cases assigned to them. The proposed rule is based upon the long-established District Court Tax Judges Rule (Rule 6-103), and is intended to address the pressing need, given the complexity and importance of some types of water law cases, for cultivating judicial proficiency in water law without requiring a substantial commitment of resources or the substantive restructuring of our District Courts to create a water court. Establishing a water court is an ambitious and lengthy endeavor, and it would require legislative support in the form of statutory changes and the commitment of significant financial resources. The Judicial Council and water law stakeholders may be interested in seeking to establish a water court, but that is not what the proposed rule is intended to accomplish: it is a modest attempt to quickly improve the existing system with better training for volunteer judges, and a means of assigning to those judges certain types of water law cases.

Proposed Rule 6-104 was posted for public comment, and four comments were submitted before the April 28, 2022 deadline: from a law firm with water-related practice (SCM); from the Utah Water Task Force (UWTF); from the Attorney General's Office in its capacity as counsel for the Utah State Engineer (SE); from Dave Decker (DD). All comments favor the concept of designating water judges and of the proposed rule. The commenters continued with specific concerns, comments, and suggestions. Because these are similar and focus on the same themes, I address them by category. The proposed rule already covers some of what's being suggested; in other cases, the suggestions are not addressed by the rule and the Committee could adjust the proposed language; some of the suggestions, if adopted, would make it difficult to develop a pool of volunteer judges; and finally, some of the suggestions bear consideration but delaying the implementation of the proposed rule would be unwise. Instead, the rule could be adjusted as we learn more after its implementation.

The Proposed Rule Already Covers Some of the Suggestions

The commenters suggest that the Council designate more than three judges as water judges. The proposed rule calls for the Council to designate "at least three district court judges who volunteer as water judges." The "at least three" language is a floor, not a ceiling; it's modeled on the Tax Judges Rule. At present there are six designated tax judges, and if more qualified judges were to volunteer, I assume they would be designated. The greater concern is

that we won't get even three judges to volunteer to be designated as water judges, and the Council has no authority to compel them to.

UWTF notes a concern that if a water judge must be removed from a case, "there must be a sufficient pool of other water judges" to take the case. It would be nice to think there will be enough volunteer judges to make this possible, but the reality is that the case may need to be reassigned to a judge who has not volunteered to receive special training. In that event, a party is no worse off than if the case had been assigned to a judge with no water law education, as is the case now without the adoption of the proposed rule.

The Proposed Rule Could Be Amended to Take Account of Some of the Suggestions

SCM suggests "requiring the availability of remote, virtual proceedings or that the assigned judge travel to the district in which the case was filed." From a practical standpoint, the suggestion is easily accommodated now that the courts have the capacity for remote hearings and parties are accustomed to appearing that way. District court judges have long had the discretion to allow this, though, and I don't think the proposed rule differs from other types of proceedings in which the exercise of this discretion would be a good thing.

Every comment raised concerns about the proposed rule's provision for "publishing opinions." The concern seems to be that practitioners will have the impression that publishing the "opinion" means that it has "precedential value." This part of the proposed rule was based upon the Tax Judges Rule, and I am unaware of any problems in those cases along the lines raised here. At present, only a handful of tax decisions have been posted on the courts' website (the last one was in 2018), and I doubt that knowledgeable practitioners will think a district court decision available on the courts' website creates precedent. If the Committee prefers, the language could be edited to substitute the word "posted" for "published." Similarly, the word "opinion" could be replaced by "decision" or "ruling", as UWTF and the SE suggest. I urge the Committee to consider whether substituting these words and being explicit about whether a district court's ruling is binding is consistent with current general practice and applicable law. UWTF also asks how and where publication takes place, and we could be transparent about it, although the Tax Judges Rule is not explicit about it, either. If the Committee thinks it wise to make these adjustments, it should consider similar adjustments in other contexts bearing in mind the potential for unintended consequences.

Some of the comments suggest a concern that existing adjudications might be transferred to a water judge after years of active litigation. This could only happen upon request and "in the discretion of the judge assigned to the case." It is difficult to imagine a scenario in which a judge assigned for some years to, for example, an active general stream adjudication, would grant a request to transfer the case, but the rule could be amended to circumscribe a judge's discretion. Another word of caution though: a long-dormant case when it becomes active might be better transferred to a judge with water training rather than remaining with a judge to whom it was assigned during its dormancy.

Suggestions That Will Make the Concept Difficult to Realize

SCM suggests that “the designation include a public comment process similar to that used for the appointment of judges,” “given the substantial, important role the water judges will play in developing this area of the law.” In my view, this argument could be made concerning judges assigned to many kinds of cases, including tax cases, but setting that aside, it seems unwise if we hope to encourage volunteers who have already been through a public comment process to become judges in the first place. The Council is in a position to evaluate “the knowledge and experience of the judge in relation to cases involving the adjudication of water rights, or the willingness of that judge to become familiar with this area of the law,” and that ought to be enough, as it is with judges who volunteer to take tax cases.

Suggestions That May Warrant Further Consideration, But Not at the Expense of Delay

SCM suggests that mandatory assignment of water cases “be broadened to include all of Title 73, which is the entire Utah Water Code.” The drafting subcommittee considered that approach but rejected it as overbroad: although a number of case types determine water rights such as those identified by SCM, many of these do not require the special expertise we hope to cultivate by adopting the proposed rule. Nevertheless, a party may request that cases outside Chapters 3 and 4 be assigned to a water judge “if the case is of sufficient complexity as related to water law.” If a party made that request, the supervising judge would decide whether assignment to a water law judge is warranted. Although SCM’s suggestion may warrant further consideration, the subcommittee contemplated that adjustment to the designated statutory origination of the case could be made in the future if experience with the cases warrants it.

The proposed rule states that assignments “shall be made on a random basis.” UWTF questions whether assignments should be random, and suggests that other criteria might control, such as using the same judge to address litigation involving “a river drainage, rather than based on the boundaries of a judicial district.” This makes sense, although in practical terms, this is what happens with stream adjudications. The committee might consider making this explicit. Related to this is UWTF’s suggestion that venue continue at the water source point of diversion. If proceedings can be conducted remotely, I do not see this as a burden on the judges undertaking these cases or to the litigants who appear before them.

UWTF and the SE propose appointing a drafting committee; this could be done now, but it will delay implementing a rule that is arguably overdue given the urgency of determining these important cases with the best-educated judges possible. A committee perspective could be useful in fine-tuning the approach we’ve taken here, which has worked well in the Tax

Judges context, but the proposed rule, should it be adopted, may need adjustment as we learn more after its implementation. I suggest as an alternative that the Policy and Planning Committee proceed with recommending adoption by the Council of the proposed rule with the anticipation of amending it in future. An alternative is implementation of the proposed rule followed by establishing a committee of stakeholders to work with the courts in considering whether to propose legislation, with appropriate funding, to establish a water law court. This would be a serious, long-term endeavor, but in the meantime, Utah would be well-served by having better educated judges consider water law cases. The proposed rule accomplishes that.

The SE suggests that the rule state that a Special Master can continue in his present assignment, and that water judges can assign a special master. Nothing in the proposed rule precludes this, but the rule could be adjusted to make it explicit. I see no urgency in addressing this now.

Conclusion

The commenters generally support the concept proposed in this rule, and stress the importance of this issue to our State. (SCM: “this is an idea whose time has come;” UWTF: its members have “long supported the concept . . . to maintain and enhance both Utah water common law and statutory cases,” and “[w]ater issues will only become more critical and new significant matters will emerge”; the SE “supports the Judicial Council’s interest in designating water law judges in Utah.”). Their suggestions may help the Committee and the Council fine-tune the existing proposed rule—modeled upon the longstanding Tax Judges Rule—but I urge both bodies to avoid delay in moving this important but modest initiative forward. It is a tool that will efficiently and inexpensively improve the status quo.

UTAH COURTS

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4 thoughts on “Code of Judicial Administration – Comment Period Closed April 28, 2022”

Scott H. Martin
April 27, 2022 at 12:13 pm

RE: Comments re: [Proposed] CJA Rule 6-104. District Court Water Judges (Draft 1/5/22)

Dear Judicial Council Members:

On behalf of Snow, Christensen & Martineau (SCM), we offer the following comments to the above-referenced proposed rule. SCM enjoys a long-standing and diverse collection of water-related clients and holds itself out as a leader in Utah water law and practice. As part of its water-related practice, SCM is very involved in matters of policy and legislation – consistently participating in the Utah Water Task Force and numerous legislative and bar committees and organizations. We appreciate the opportunity to comment on this proposed rule.

Generally, we are very supportive of the concept of water judges, and this proposed rule. We believe this is an idea whose time has come. As such, we urge the rule’s adoption and look forward to the installation of water judges and our practice before them.

However, we offer a few conceptual suggestions that we ask guide some limited changes to the proposed rule.

6-104 (1) Council Designation. We suggest that more than three judges be designated statewide. Specifically, we suggest that the Judicial Council formally designate at least six district court judges. We additionally suggest that the designation include a public comment process similar to that used for the appointment of judges, while ensuring confidentiality for those providing comments. We believe the opportunity for public comment is important given the substantial, important role the water judges will play in developing this area of the law.

- -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
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- CJA03-0107
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- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02

6-104(2) Request for Assignment. We agree with the concept that actions involving chapters 3 and 4 of Title 73 should be assigned to the sitting district water judge. However, we suggest that the scope of mandatory assignment be broadened to include all of Title 73, which is the entire Utah Water Code. More specifically, there are other chapters of Title 73 that would likely be better applied by a water judge – e.g., chapters 1 and 5 that include, among other things water right forfeiture claims, canal/ditch interference, and diligence claims, respectively. All of these are relatively common topics found in water litigation.

We also suggest that it be clear the proposed rule does not affect Rule 63A of the Utah Rules of Civil Procedure, although it could provide that the reassignment will be to another water judge.

6-104(3) Assignments. We understand that Rule 6-104(3) is not intended to change the venue of water cases. To minimize the travel burden on the parties in water cases in the event the case is assigned to a water judge outside of the district in which the case is filed, we suggest considering requiring the availability of remote, virtual proceedings or that the assigned judge travel to the district in which the case was filed (or a district agreed upon by the parties, including the judge's district) for matters requiring in-person proceedings.

6-104(5) Publishing Opinions. Paragraph (5) of the proposed rule raises some concerns. While it appears the rule may be intended to merely establish a repository of substantive decisions in water cases involving matters of first impression, that create new law, or give new guidance, the reference to "published" "opinions" may leave the impression that something more is required and the decisions have some new precedential value. We would suggest clarifying language to address these concerns, and the associated concern that district court judges' role may be seen as transforming to a role better suited for the appellate courts.

Thank you for your attention to this matter.

Very truly yours,

SNOW CHRISTENSEN & MARTINEAU

Scott H. Martin
Shawn E. Draney
Dani N. Cepernich

UTAH WATER TASK FORCE
April 27, 2022 at 1:42 pm

From: Utah Water Task Force
To: Utah Supreme Court and Utah Judicial Council

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- CJA04-0202.07

Date: April 27, 2022

Re: Comments to proposed rule for water law judges – CJA06-0104

The Utah Water Task Force supports the designation of district court water judges and respectfully submits its comments. Members of the task force have long supported the concept of appointing district court water judges to maintain and enhance both Utah water common law and statutory cases.

The Task Force was organized under the auspices of the Utah Department of Natural Resources in 2008 as a body that analyses state-wide water challenges and issues brought before it. The Task Force initiates and drafts proposed water legislation, and also reviews proposed water legislation brought to it by members of the Utah Legislature to provide recommendations. In addition, given the broad representation of interests represented on the task force, it assists in developing water policy and consensus solutions that consider the wide spectrum of interests represented by the task force members and the task force executive branch co-chairs. Please see the task force membership roster appended below. Task force projects and discussions are not limited to the members listed. Any interested person or organization is granted opportunity to participate in task force work committees and meetings, thus providing the benefit of diverse stakeholder engagement.

The Task Force respectfully submits these specific comments to the proposed rule. This is not an exhaustive list describing all concerns raised by task force participants, but represent issues highlighted during one meeting of the Utah Water Task Force and which task force members and public participants expressed consensus. The Task Force also proposes the Judicial Council appoint a drafting committee to address certain matters raised in the comments and other items that may arise which require further thought and discussion.

(1) Council Designation. The knowledge and experience of judges to be considered for appointment as water judges are tied to “cases involving the adjudication of water rights.” To broaden the types of cases described elsewhere in the Rule, the task force recommends changing the proposed rule to read “cases involving water law, including the adjudication of water rights.” The Task Force suggests for your consideration that three district court water judges may not be sufficient for addressing water cases throughout the state. Please see our comment under (3)(a).

(2) Request for Assignment. The proposed rule states that if a party in a Title 73, Chapter 4 general determination of water rights proceeding requests to have the case assigned to a water judge, the case will be so assigned. There is concern that numerous general determination cases have been pending for years before various district court judges across the state. In some instances, assignment of the pending general adjudication cases, or new filings in such cases, should remain with those

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- CJA06-0102
- CJA06-0104
- CJA06-0303

judges because of their case knowledge regardless of whether they volunteer to be water judges.

(3) Assignments.

a. There are various factors and criteria that should be considered. For example, should it always be a random assignment from the total pool of water judges, or should other criteria be controlling in certain circumstances, such as designating a water judge, along with an alternate water judge, to all cases within a certain water drainage basin? Most drainage basins have controlling decrees and other circumstances that are unique to the basin. Having one judge interpreting the same decree(s) could lead to more consistent rulings. This would also allow an assigned judge to develop familiarity with the unique basin hydrology and the appropriation and distribution of water within the basin. River drainage basins often travers several judicial districts, and for that reason, it may make sense to appoint judges to the position of water judges on a river basin basis rather than based on the boundaries of a judicial district.

b. The general venue rule for water cases should likely continue to be where the water source point of diversion is located. This minimizes the travel burden on the parties. This may require assigned judges to travel to a different district than where the judge resides for matters requiring in-person proceedings.

c. If the need arises to seek removal of a water judge assigned to a case, there must be a sufficient pool of other water judges available from which to assign a new water judge.

(4) Supervising Water Judge. No specific comments.

(5) Publishing Opinions. This section has raised numerous questions and concerns, as follows:

a. Rather than an “opinion,” are they better termed “rulings” or “decisions,” or is the contemplated opinion something in addition to or separate from typical district court rulings or decisions?

b. Who determines and how is it determined that a water law case warrants an opinion?

c. A definition of “opinion” is needed.

d. How and where is a district court water judge’s opinion published?

e. Does a district court water case opinion have any precedential value or force outside the given case? If so, what is the scope of the precedent?

f. May non-parties potentially affected by any precedent be given an opportunity to intervene or otherwise participate?

Again, the Utah Water Task Force fully supports the appointment of district court water judges. Water issues will only become more critical and new significant matters will emerge. We support the Supreme Court and Judicial Council’s efforts. The Task Force desires that the adopted rules sufficiently address the unique nature of Utah water cases. We recommend that a water judge rule drafting committee be appointed before the proposed rule is adopted to advise on

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- CJA06-0402
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- CJA06-0504
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- CJA07-0101
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- CJA_Appx_I
- CJA_Appx_J
- CJC Terminology
- CJC01
- CJC02
- CJC02.11

these issues and others that may arise during the rulemaking process. The task force offers the assistance of its members to serve on the drafting committee, if so requested.

Respectfully Submitted,

UTAH WATER TASK FORCE

Brian C. Steed, Co-Chair and
Executive Director of the Utah Department of Natural
Resources

UTAH WATER TASK FORCE
March 2022

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- [CJC02.12](#)
- [CJC02.3](#)
- [CJC03](#)
- [CJC03.7](#)
- [CJC04](#)
- [CJC04.1](#)
- [CJC05](#)
- [CJCApPLICABILITY](#)
- [Fourth District Local Rule 10-1-407](#)
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- [LPP15.01106](#)
- [LPP15.01107](#)
- [LPP15.01108](#)

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Dave Ure,
SITLA, Director (Retired)

- [LPP15.01109](#)
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Sarah Shechter
April 28, 2022 at 2:35 pm

To: Utah Judicial Counsel
From: Norman Johnson, Gordon Rowe, and Sarah Shechter,
Assistant Attorneys General, Counsel for the Utah State
Engineer

Date: April 28, 2022

RE: Utah State Engineer's Comments Regarding CJA06-0104 –
Water Law Judges

INTRODUCTION

The State Engineer appreciates the opportunity to review and comment on the proposed amendments to Rule 6-104 of the Code of Judicial Administration, which would designate certain district court judges as water judges and establish procedures for the water judges to handle cases involving water rights. As the State water rights administrator and the Director of the

Utah Division of Water Rights, the State Engineer has a statutory duty to participate in actions brought under Utah Code Title 73, Chapters 3 and 4, as well as other water rights disputes brought before the Utah courts. Due to her critical role in the water rights cases contemplated by the proposed rule, the State Engineer has a unique and important interest in the potential designation of water law judges and their administration.

The State Engineer supports the Judicial Council's interest in designating water law judges in Utah. However, the State Engineer humbly suggests that the proposed rule could be more beneficial to the litigants as well as water users throughout the state with certain modifications, clarifications, and additional stakeholder input. The State Engineer specifically suggest the following items for the Judicial Council to consider:

1. Additional stakeholder involvement in drafting the proposed rule

During the April 13, 2022, meeting of the Utah Executive Water Task Force, the body passed a motion recognizing general support for the proposed rule and requesting the formation of a committee of stakeholders to help the Council develop the rule designating water law judges. Though not a member, the State Engineer supports Task Force's motion. She believes that a committee of stakeholders could assist the Council in creating a rule that would benefit the courts as well as the Utah water law community.

2. Designation of Water Judges

As the Council is aware, the State Engineer has initiated general adjudications in all fifteen (15) of the river drainage systems in Utah. Twelve of those adjudications remain pending in district courts around the state. The State Engineer is concerned about transferring these adjudications out of their current venues. The State Engineer agrees with the Council that designating a water judge to hear the adjudications would be beneficial; however, she believes that each of the designated water judges should sit in the judicial districts in which the adjudications have been initiated. As currently formulated, Section (1) of the proposed rule does not specify which venues the water law judges would preside over. If each water judge could hear a case from any part of the state, the State Engineer reiterates her comments stated above about the general adjudications. In addition, the State Engineer is concerned that litigants would incur greater costs if they have to travel to a distant part of the state.

The State Engineer has similar concerns for de novo review cases brought under Utah Code Title 73, Chapter 3. Currently, appeals from administrative orders of the State Engineer are entitled to de novo review in the local district court. These cases involve participation from local water users and the State Engineer's regional offices. The State Engineer is concerned that if there are only three water law judges across all of the state's district courts, the parties in these de novo review cases would

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- Petition to Increase Bar Admission Fees
- Petition to Increase Licensing Fees.
- Regulatory Reform
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be required to travel throughout the state to participate in the cases.

Accordingly, the State Engineer recommends that the Judicial Council designate one water judge in each of the districts. For general adjudications, a single water judge could preside over all adjudications in their district. As an example, the First District has two pending adjudications – the Bear River adjudication and the Western Box Elder adjudication. The Judicial Council could designate single water judge for the First District, who would preside over both adjudications. In addition to allaying concerns about cases pending in geographically distant venues, this approach would also mirror the approach taken in Colorado of designating water judges by river basin. The Colorado system allows for the water judges to develop knowledge of regional issues and consistently apply the law throughout the entire drainage.

3. Effect on the Role of the Special Master in Water Rights General Adjudications

The two most active general adjudications pending in the state—the Utah Lake and Jordan River adjudication and the Virgin River adjudication—have been assigned to a Special Master to help handle objections to lists of unclaimed rights and proposed determinations. The State Engineer believes that the Special Master has been very effective in increasing the efficiency of these portions of water rights general adjudications. While the proposed rule does not contemplate removing the Special Master from his assignments, the State Engineer would prefer if the rule specifically stated that the Special Master could continue in his current assignment and that the water judges presiding over other adjudications could assign a special master.

4. Publishing Opinions

Section (5) of the proposed rule requires certain water law opinions to be published. This rule should be revised to clarify what types of “opinions” are to be published. The terminology in this rule is somewhat confusing as district court rulings are typically described as decisions, orders, or decrees. Additionally, the proposed rule should be modified to clarify what precedential value, if any, these decisions carry. The rule contemplates the ability of a district court judge to “create new law,” which seems to imply that their decisions could carry precedential value. The State Engineer requests that the rule be modified to establish that a decision of a district court is not binding on any other court and only carries persuasive value.

Dave Decker
April 28, 2022 at 6:09 pm

I am generally supportive of the creation of water judges as currently outlined. Having judges with specific knowledge of

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- RPC Preamble
- RPC Terminology
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water concepts and the associated law are generally helpful. However, care should be taken to protect the current process with adjudications and current level of review and opinions of the State Engineer's office. While the legal process has an appropriate role in water and water rights, the involvement, review, and opinion of the State Engineer, in its current role and process, is important to maintain.

The assignment of these judges should be random and the process of assignments must maintain a neutral, equal-footing for all parties involved. Having only one judge, as the only option in a water basin or specific area of the state, should be avoided.

There are a number of questions related to publishing opinions which must be clarified in the current draft. The Utah Water Task Force members may be a good source to provide clarification language and to distinguish the potential precedent an opinion may set.

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TAB 3

CJA 4-508. Guidelines for ruling on a motion to waive fees

Notes: The proposed amendments are in response to [S.B. 87](#), effective May 4, 2022.

See the attached memo from Nathanael Player. I have proposed alternative language in the comments of the rule draft.

Memo**To:** Policy and Planning**From:** Nathanael Player

QUESTION: Does [SB 87](#) require the court to conduct hearings when a party requests a waiver of court fees?

ANSWER: Yes, but only if the party making the request states in their affidavit of indigency that they have insufficient income or other means to pay the necessary fees without depriving the party or their family of food, shelter, clothing, or other necessities.

ANALYSIS:

SB 87 changes, among other things, Utah Code [78A-2-304\(3\)](#). Previously, this section read:

However, in cases where an impecunious affidavit is filed, the judge shall question the person who filed the affidavit at the time of hearing the cause as to his ability to pay. If the judge opines that the person is reasonably able to pay the costs, the judge shall direct the judgment or decree not be entered in favor of that person until the costs are paid. The order may be cancelled later upon petition if the facts warrant cancellation.

Under SB 87, the section reads (at line 376):

(3)(a) In cases where an affidavit of indigency under Section [78A-2-302](#) is filed, the court shall question the individual who filed the affidavit at the time of hearing the cause as to the individual's ability to pay.

(b) If the court opines that the individual is reasonably able to pay the costs, the court shall direct the judgment or decree not be entered in favor of that individual until the costs are paid.

(c) The order may be cancelled later upon petition if the facts warrant cancellation.

In both the old and the new version of this legislation, the statute contemplates the court holding a hearing. At the hearing, the court is supposed to question the party requesting a fee waiver as to their ability to pay. Which hearing is unclear. In an action where the respondent/defendant defaults, there might not be a hearing at all; the entire matter could be disposed of based on the pleadings. My understanding is that, as a general rule, courts do not hold hearings or question parties regarding their fee waiver requests. Instead, most courts make a decision based on the filings and then move on to other matters.

It could be argued that the legislature did not attempt to clarify the hearing requirement, but simply to clean up and standardize language with these edits. They replaced all instances of "impecuniosity" and "impecunious" with "indigency," replaced "person" with "individual," and removed gender specific language. However, the legislature also clarified that the "affidavit of indigency" being filed, is one under 78A-2-302. This section is revised under SB 87 (at line 308) to say that someone is indigent (and thus unable to pay their fees) if their affidavit shows that they meet the requirements of 78A-2-302(a) through (c). The court only has discretion to grant or deny a request to waive fees if the affidavit says the requesting party makes the request under 78A-2-302(d) (the requesting party has insufficient

income or other means to pay the necessary fees and costs or security without depriving themselves or their family of food, shelter, clothing, or other necessities). Thus, the clarification that the filing of an affidavit of indigency “under Section 78A-2-302” requires the court to question the filing party means that the legislature intended the court to hold hearings when a party files a request to waive fees and does not meet the presumptive requirements of 78A-2-302(a) through (c), but instead makes the request pursuant to 78A-2-302(d).

Rule 4-508. Guidelines for Ruling on a Motion to Waive Fees.**Intent:**

To promote statewide consistency in deciding motions to waive fees in civil cases and in the expungement of criminal records in which the moving party is not ~~incarcerated a prisoner~~.

To promote statewide consistency in deciding motions to waive fees in juvenile court cases in which the moving party is not ~~incarcerated a prisoner~~.

~~Nothing in this rule should be interpreted as limiting the discretion of the judge to decide a motion to waive fees.~~

Applicability:

This rule applies to all civil and small claims cases and in the expungement of criminal records in which the moving party is not ~~incarcerated a prisoner~~.

This rule applies to all juvenile court cases in which the moving party is not ~~incarcerated a prisoner~~.

As used in this rule “fee waiver” and similar phrases include waiving the court filing fee and any ancillary fees in full or in part, as may be ordered by the judge.

Statement of the Rule:

(1) The moving party must complete a ~~motion~~ Motion to ~~waive~~ Waive fees ~~Fees and a financial affidavit~~ approved by the Judicial Council’s Standing Committee on Court Forms. If requested by the court, the moving party must provide supporting documentation of the claims made in the affidavit. In juvenile court, the minor or a minor’s parent, guardian or authorized representative may move to waive fees.

(2) Upon the filing of a ~~motion~~ Motion to ~~waive~~ Waive f ~~Fees and financial affidavit~~, the court, sheriff or any other provider of a service offered by or through a government entity shall do what is necessary and proper as promptly as if the fee had been fully paid.

(3) A motion to waive fees may be decided without notice to the other parties, requires no response ~~or~~ request to submit for decision ~~or hearing~~. The court will review the affidavit and make an independent determination whether the fees should be waived. The court should apply a common sense standard to the information and evaluate whether the information is complete, consistent and true. Section 78A-2-304 requires a party to pay a full or partial fee if the financial affidavit and any further questioning demonstrate the party is reasonably able to pay a fee.

(4) ~~In general, a~~ party is ~~reasonably un~~able to pay a fee if the moving party:

(4)(A) receives gross monthly income ~~that exceeds~~ is at or below 1950% of the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(4)(B) ~~the moving party has liquid assets that can be used to pay the fee without harming the party’s financial position~~ receives benefits from a means-tested government program, including the Family Employment Program, Temporary Assistance to Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program, or Medicaid;

Commented [NP1]: SB 87 very clearly removed judicial discretion when reviewing motions to waive fees

Commented [KW2R1]: I would say it removed some (not all) discretion, but I’m okay with deleting this line.

Commented [NP3]: This seems to contradict 78A-2-304(3)(a). See my memo.

Commented [KW4R3]: I recommend against deleting “hearing.” Under 78A-2-304(1), the court is instructed to review the affidavit and take action upon filing. No hearing is contemplated. Under (3), the court must question the individual “at the time of hearing the cause,” meaning when the court considers the merits of the underlying cause of action. At that time, the court reassesses its decision under (1).

Commented [NP5]: This is not in the bill explicitly, but the bill says “the individual receives benefits from a means-tested program, including...” (SB 87 at line 313.) So the bill contemplates other programs not explicitly delineated.

~~(4)(C) the moving party has credit that can be used to pay the fee without harming the party's financial position~~ receives legal services from a nonprofit provider or a pro bono attorney through the Utah State Bar; or

~~(4)(D) the moving party has assets that can be liquidated or borrowed against without harming the party's financial position~~ has insufficient income or other means to pay the necessary fees and costs or security without depriving the individual's family of food, shelter, clothing, or other necessities.;

(5) If the reason for the moving party's inability to pay is insufficient income, as noted in paragraph (4)(D), then the court must question the party at a hearing, and consider the moving party's:

(5)(A) identity and residence;

(5)(B) amount of income, including any government financial support, alimony, or child support (but not government programs where it would be unlawful to do so, such as the Supplemental Nutrition Assistance Program under 7 CFR 272.1(a));

(5)(C) assets owned, including real and personal property;

(5)(D) business interests;

(5)(E) accounts receivable;

(5)(F) securities, checking and savings account balances;

(5)(G) debts; and;

(5)(H) monthly expenses.

~~(4)(E) expenses are less than net income;~~

~~(4)(F) Section 30-3-3 applies and the court orders another party to pay the fee of the moving party; or~~

~~(4)(G) in the judge's discretion, the moving party is reasonably able to pay some part of the fee.~~

(6) If the moving party is represented by private counsel, the motion to waive fees may be granted in proportion to the attorney's discount of the attorney fee. The moving party's attorney must provide an affidavit describing the fee agreement and what percentage of the attorney's normal, full fee is represented by the discounted fee.

(7) A motion to waive fees should be ruled upon within ten days after being filed.

(7)(A) If the fee is fully waived, the court, sheriff or any other provider of a service offered by or through a government entity shall do what is necessary and proper as promptly as if the fee had been fully paid.

(7)(B) If the fee is not fully waived, the court, sheriff or any other provider of a service offered by or through a government entity may require payment of the fee before doing what is necessary and proper. If the service has already been performed, the court, sheriff or service provider may do what is necessary and proper to collect the fee, including dismissal of the case.

Commented [NP6]: See my memo

Commented [KW7R6]: I interpret 78A-2-304(3) as requiring the court to readdress indigency at the time the court considers the merits, regardless of the reason provided by the individual in their original affidavit. If the individual's reason was (4)(A), (B), or (C), the inquiry will be one quick question (e.g., "Are you still receiving TANF?"). A (4)(D) reason will obviously require more.

I recommend amending the first sentence in (5) to the following:

"At the time of hearing the cause, the court must question the moving party as to the moving party's ability to pay. If the reason for the moving party's inability to pay is insufficient income under paragraph (4)(D), the court must consider the moving party's:"

(76)(C) If the fee is not fully waived, the court shall notify the party in writing of the fee amount, the procedure to challenge the fee, and the consequences of failing to pay the fee.

(76)(D) If the motion is rejected because of a technical error, such as failure to complete a form correctly or to attach supporting documentation, the court shall notify the moving party, and the moving party may file a corrected motion and affidavit within 14 days after being notified of the decision.

(87) In addition to any statutory remedies, an order granting a fee waiver may be reviewed at any time if the court has jurisdiction of the case. If the court determines, after waiving a fee, that the moving party is reasonably able to pay the fee, including from the proceeds of a judgment, the court may modify its previous order. The court may allocate the fee among the parties under Utah Rule of Civil Procedure 54, Utah Code Section 30-3-3, or as otherwise provided by law.

Effective: 5/234/202219

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Email

Check your email. You will receive information and documents at this email address.

I am ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Plaintiff/Petitioner's Attorney ☐ Defendant/Respondent's Attorney (Utah Bar #: _____)
☐ Plaintiff/Petitioner's Licensed Paralegal Practitioner
☐ Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #: _____)

In the ☐ District ☐ Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Plaintiff/Petitioner

v.

Defendant/Respondent

Motion to Waive Fees

(Utah Code 78A-2-302 and Code of Judicial Administration Rule 4-508)

Case Number

Judge

Commissioner (domestic cases)

1. I cannot pay the court fees in this case. I believe I qualify for a waiver. I ask the court to waive the following fees: (Choose all that apply. If you need help, ask court staff.)

- | | |
|---|--|
| <input type="checkbox"/> Filing fee (Refer to Cover Sheet):
Amount: \$ _____ | <input type="checkbox"/> Office of Vital Records fee (Certificate of Adoption or Divorce - \$8.00) |
| <input type="checkbox"/> OCAP fee (\$20.00) | <input type="checkbox"/> Appeal fee |
| <input type="checkbox"/> Divorce education & orientation class fees (\$70.00) | <input type="checkbox"/> \$240 Filing |
| <input type="checkbox"/> Fee to have papers served within Utah | <input type="checkbox"/> \$10 Small claims appeal (Justice Court) |
| | <input type="checkbox"/> Other _____ |

2. I qualify for a fee waiver because: (Choose all that apply.)

☐ I receive: (Choose all that apply.)

☐ Food Stamps (SNAP)

☐ SSI

☐ Medicaid

☐ FEP or TANF

☐ I receive legal services from:

☐ a nonprofit provider: (name of provider) _____

☐ a pro bono attorney through the Utah State Bar.

☐ my gross monthly income (before deductions for taxes) equal to or is less than the amount listed below:

Family size	Family income	Family size	Family income	Family size	Family income
1	\$1,698.75	3	\$2,878.75	5	\$4,058.75
2	\$2,288.75	4	\$3,468.75	6	\$4,648.75

(For each additional family member over six, add \$590)

☐ I don't have enough money to pay the court fees and provide myself or my family with food, shelter, clothing, or other necessities.
(If you choose this option you **must** fill out pages 3 through 10.)

I do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

Plaintiff/Petitioner or Defendant/Respondent

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date
Signature ► _____
Printed Name _____

Attorney or Licensed Paralegal Practitioner of record (if applicable)

Date
Signature ► _____
Printed Name _____

Additional information

supporting Motion to Waive Fees

Case Number _____

(You only need to complete this if you told the court you don't have enough money to pay the court fees and provide you or your family with food, shelter, clothing, or other necessities.)

3. Employment

☐ I am employed as (Choose all that apply):

☐ an hourly employee (Form W-2)

☐ a salaried employee (Form W-2)

☐ self-employed (Form 1099, Form K-1, Schedule C, etc.)

☐ other (Explain): _____

Name of employer	Employer's address and phone number	Job title	Hourly rate or annual salary	Hours per week (If hourly)
			\$	
			\$	
			\$	

☐ I am unemployed because:

4. Dependents (Count spouse, children or other dependents in your household. If none, write 0.)

The following people depend on me for support.

Number of adults	
Number of children under 18	

5. **Gross Monthly Income**

☐ I have the following monthly income before tax deductions:
(Print your pre-tax income in the boxes below. For income that changes from month to month, calculate the annual total and divide by 12 months to list a monthly average.)

Source of income	Monthly amount
Work (Including self employment, wages, salaries, commissions, bonuses, tips and overtime)	\$
Rental income	\$
Business income	\$
Interest	\$
Dividends	\$
Retirement income (Including pensions, 401(k), IRA, etc.)	\$
Worker's compensation	\$
Private disability insurance	\$
Social Security Disability Income (SSDI)	\$
Supplemental Security Income (SSI)	\$
Social Security (Other than SSDI or SSI)	\$
Unemployment benefits	\$
Education benefits (Including grants, loans, cash scholarships, etc.)	\$
Veteran's benefits	\$
Alimony	\$
Child support	\$
Payments from civil litigation	\$
Victim restitution	\$
Public assistance (Including AFDC, FEP, TANF, welfare, etc.)	\$
Financial support from household members	\$
Financial support from non-household members	\$
Trust income	\$
Annuity income	\$
Other (Describe)	\$
Other (Describe)	\$
Total gross monthly income	\$

☐ I have no income because:

6. **Monthly Tax Deductions**

☐ I have no monthly tax deductions because I have no income.

☐ I have the following monthly tax deductions.

Type of tax deduction	Amount
Federal income tax	\$
State income tax	\$
Municipal income tax	\$
FICA	\$
Medicare	\$
Total monthly tax deductions	\$

7. **After Tax Income**

☐ My monthly income is:

\$ _____

Gross monthly income from section 5

- \$ _____

Minus monthly tax deductions from section 6

= \$ _____

Equals after-tax monthly income

☐ I have no income.

8. **Monthly Expenses** (Include amounts you pay for yourself and any spouse, children or other dependents in your household.)

Monthly expense	Current Amount
Rent or mortgage	\$
Real estate taxes (if not included in mortgage)	\$
Real estate insurance (if not included in mortgage)	\$
Real estate maintenance	\$
Food and household supplies	\$
Clothing	\$

Monthly expense	Current Amount
Automobile payments	\$
Automobile insurance	\$
Automobile fuel	\$
Automobile maintenance	\$
Other transportation costs (public transportation, parking, etc.)	\$
Utilities (such as electricity, gas, water, sewer, garbage)	\$
Telephone	\$
Paid television, cable, satellite	\$
Internet	\$
Credit card payments	\$
Loans and other debt payments	\$
Alimony	\$
Child support	\$
Child care	\$
Extracurricular activities for children	\$
Education (children)	\$
Education (self)	\$
Health care insurance	\$
Health care expenses (excluding insurance listed above)	\$
Other insurance (describe)	\$
Entertainment	\$
Laundry and dry cleaning	\$
Donations	\$
Gifts	\$
Union and other dues	\$
Garnishment or income withholding order	\$
Retirement deposits (including pensions, 401(k), IRA, etc.)	\$
Other (describe)	\$
Other (describe)	\$
Total monthly expenses	\$

9. **Business Interests** (Add additional sheets if needed.)

☐ I have no business interests.

☐ I have the following business interests.

Business name		
Address & phone		
Nature of business		
Current value of the business \$	Percent owned by _____ % Petitioner _____ % Respondent	

Business name		
Address & phone		
Nature of business		
Current value of the business \$	Percent owned by _____ % Petitioner _____ % Respondent	

10. **Financial Assets** (Add additional sheets if needed.)

☐ I have no financial assets.

☐ I have the following financial assets.

Asset	Name & address of institution	Names on account	Current balance
Bank or credit union Account number: _____ Date opened: _____ Type: <input type="checkbox"/> checking <input type="checkbox"/> savings <input type="checkbox"/> other			\$
Bank or credit union Account number: _____ Date opened: _____ Type: <input type="checkbox"/> checking <input type="checkbox"/> savings <input type="checkbox"/> other			\$

Asset	Name & address of institution	Names on account	Current balance
Stocks, bonds, securities, money market account Account number: _____ Date opened: _____			\$
Retirement account Account number: _____ Date opened: _____			\$
Profit sharing plan Account number: _____ Date opened: _____			\$
Annuity Account number: _____ Date opened: _____			\$
Life insurance Account number: _____ Date opened: _____			\$
Money owed to me Date of loan: _____			\$
Cash			\$
Other (describe)			\$
Other (describe)			\$

11. **Real Estate** (Add additional sheets if needed.)

☐ I have no real estate.

☐ I have the following real estate.

Home

Address			
Date acquired	Name(s) on title	\$ Original cost	\$ Current value
First mortgage or lien holder (name & address)		\$ Amount owed	\$ Monthly payments
Second mortgage or lien holder (name & address)		\$ Amount owed	\$ Monthly payments

Other real estate

Address			
Date acquired	Name(s) on title	\$ Original cost	\$ Current value
First mortgage or lien holder (name & address)		\$ Amount owed	\$ Monthly payments
Second mortgage or lien holder (name & address)		\$ Amount owed	\$ Monthly payments

12. **Personal Property** (Such as vehicles, boats, trailers, major equipment, furniture, jewelry, and collectibles. Add additional sheets if needed.)

☐ I have no personal property.

☐ I have the following personal property.

Property description (if automobile, include year, make, and model)	Debt owed to (name and address)	Names on title (if applicable)	Amount owed	Minimum monthly payments
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$

13. **Debts Owed** (Do not include amounts you owe on property reported in the Real Estate or Personal Property sections. Add additional sheets if needed.)

☐ I do not owe any debts.

☐ I owe the following debts.

Type of debt (such as credit card, cash loan, or installment payment)	Debt owed to (name and address and phone number)	Names on debt	Amount owed	Minimum monthly payments
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$

14. **Other**

[] The following facts also show why I cannot pay these court fees.

TAB 4

CJA 2-202.03. Records Access

Notes: See attached rule amendment request form



Policy and Planning

Questions **Responses** 24 Settings

24 responses



Accepting responses ☒

Summary Question **Individual**

nathanaelp@utcourts.gov (7) ▼

< 24 of 24 >



Responses cannot be edited

Policy and Planning - Rule Amendment Request Form

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

*** Required**

Instructions

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

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

Date of Request *

MM DD YYYY

04 / 20 / 2022

Name of Requester *

Nathanael Player

Requester Phone Number *

8012387921

Name of Requester's Supervisor *

Cathy Dupont

Location of the Rule *

Code of Judicial Administration ▼

CJA Rule Number or HR/Accounting Section Name *

4-202.03(2)

Brief Description of Rule Proposal *

Allow parties who request expungement of their records to obtain a copy of their expungement order - the proposal mirrors the process that allows adoptive parents to obtain a copy of the adoption decree.

Reason Amendment is Needed *

Given the dramatic increase in cases that will be expunged through automatic expungement and the new availability of expungement in protective order and eviction cases, we hope that this process change will make things easier for everyone involved. The Clerks of Court and the Self-Help Center recommend this proposal to make the courts more open, efficient, and fair. This is more open by allowing a party to obtain a copy of their expungement order without hassle or complex procedural requirements. This is more efficient because allowing a JA to verify someone's identification and then give them a copy of their expungement order is less work than processing a petition to unseal the record - this will also save judicial resources for the same reason. This process is more fair because it treats parties to expunged cases the same way we treat parties to adoption cases.

The privacy concerns are analogous to concerns regarding adoption. In both instances, there was a prior adjudication that, for policy reasons, is now not available as a public record. But in both circumstances, there may be reasons why the petitioner needs to access the record. In both instances, there is a measure of protection to ensure that the court is not making these records generally available.

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

- ☐ 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. *

Judges, JAs, the Self-Help Center, and any court patron whose case is expunged but later needs a copy of their expungement order.

.....

Submitted 4/20/22, 4:57 PM

Rule 4-202.03. Records Access.**Intent:**

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Public Court Records.** Any person may access a public court record.

(2) **Sealed Court Records.** An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. A petitioner in an expunged case may obtain certified copies of the expungement order and the case history upon request and presentation of positive identification. Otherwise, no one may access a sealed court record except by order of the court. A judge may review a sealed record when the circumstances warrant.

(3) **Private Court Records.** The following may access a private court record:

(3)(A) the subject of the record;

(3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;

(3)(C) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;

(3)(D) an interested person to an action under the Uniform Probate Code;

(3)(E) the person who submitted the record;

(3)(F) the attorney or licensed paralegal practitioner for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;

(3)(H) anyone by court order;

(3)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(3)(K) a governmental entity with which the record is shared under Rule 4-202.10.

(4) Protected Court Records. The following may access a protected court record:

(4)(A) the person or governmental entity whose interests are protected by closure;

(4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;

(4)(C) the person who submitted the record;

(4)(D) the attorney or licensed paralegal practitioner for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;

(4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;

(4)(F) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;

(4)(G) anyone by court order;

(4)(H) court personnel, but only to achieve the purpose for which the record was submitted;

(4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(4)(J) a governmental entity with which the record is shared under Rule 4-202.10.

(5) Juvenile Court Social Records. The following may access a juvenile court social record:

(5)(A) the subject of the record, if 18 years of age or over;

(5)(B) a parent or guardian of the subject of the record if the subject is an unemancipated minor;

(5)(C) an attorney or person with power of attorney for the subject of the record;

(5)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;

(5)(E) the subject of the record's therapists and evaluators;

(5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(H) the Department of Human Services, school districts and vendors with whom they or the courts contract (who shall not permit further access to the record), but only for court business;

(5)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(J) a governmental entity with which the record is shared under Rule 4-202.10;

(5)(K) the person who submitted the record;

(5)(L) public or private individuals or agencies providing services to the subject of the record or to the subject's family, including services provided pursuant to a nonjudicial adjustment, if a probation officer determines that access is necessary to provide effective services; and

(5)(M) anyone by court order.

(5)(N) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations, psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical records may be accessed only by:

(5)(N)(i) the subject of the record, if age 18 or over;

(5)(N)(ii) an attorney or person with power of attorney for the subject of the record;

(5)(N)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(N)(iv) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(N)(v) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(N)(vi) anyone by court order.

(5)(O) When records may be accessed only by court order, a juvenile court judge will permit access consistent with Rule 4-202.04 as required by due process of law in a manner that serves the best interest of the child.

(6) Juvenile Court Legal Records. The following may access a juvenile court legal record:

(6)(A) all who may access the juvenile court social record;

(6)(B) a law enforcement agency;

(6)(C) a children's justice center;

(6)(D) public or private individuals or agencies providing services to the subject of the record or to the subject's family;

(6)(E) the victim of a delinquent act may access the disposition order entered against the minor; and

(6)(F) the parent or guardian of the victim of a delinquent act may access the disposition order entered against the minor if the victim is an unemancipated minor or under legal incapacity.

(7) Safeguarded Court Records. The following may access a safeguarded record:

(7)(A) the subject of the record;

(7)(B) the person who submitted the record;

(7)(C) the attorney or licensed paralegal practitioner for a person who may access the record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(7)(D) an individual with a release from a person who may access the record signed and notarized no more than 90 days before the date the request is made;

(7)(E) anyone by court order;

(7)(F) court personnel, but only to achieve the purpose for which the record was submitted;

(7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;

(7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and

(7)(I) a person given access to the record in order for juvenile probation to fulfill a probation responsibility.

(8) Court personnel shall permit access to court records only by authorized persons. The court may order anyone who accesses a non-public record not to permit further access, the violation of which may be contempt of court.

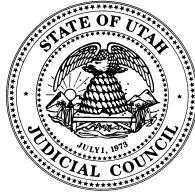
(9) If a court or court employee in an official capacity is a party in a case, the records of the party and the party's attorney are subject to the rules of discovery and evidence to the same extent as any other party.

Effective: ~~11/1/2019~~ November 1, 2022

TAB 5

Court Form: Pretrial Protective Order

Notes: See attached memo



Administrative Office of the Courts

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

May 2, 2022

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

MEMORANDUM

TO: Policy and Planning Committee of the Utah Judicial Council

FROM: Nathanael Player, on behalf of the Forms Committee

RE: Language in protective orders

The Forms Committee is preparing criminal protective order forms. Some new provisions have been reviewed by the relevant boards of judges. The boards disagree about two provisions and guidance is needed. The two provisions are below. A sample form highlighting the provisions is attached.

The first provision would be grouped with the no contact and stay away orders. The language says:

Notice: You will not violate the protective order by:

- attending a hearing with the protected person. But you must be a party to the case or a required witness. And you must tell the bailiff that you are a respondent to a protective order when you arrive.
- serving the documents on the protected person. Service must be according to the Rules of Civil Procedure. It must also be civil and not threatening.

This language is needed because respondents to protective orders are regularly confused. They are unsure whether the no contact order bars them from participating in litigation – they don't know whether they can serve documents on the petitioner in the protective order pursuant to URCPs 4 and 5.

This language (and the rationale behind it) was presented to the Board of District Court Judges, the Board of Juvenile Court Judges, and the Board of Justice Court Judges. All three boards approved of the concept. However, the Board of District Court Judges wanted a general statement, while the Board of Justice Court Judges wanted space on the form to articulate which types of service were satisfactory. The Board of Juvenile Court Judges agreed with the Board of District Court Judges.

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

The second provision is in the stay away order. It says:

You must stay away from the protected person if you encounter them at any other location not listed in this order. You still must not communicate or have contact with the protected person and must leave. If leaving is not an option (such as at your place of employment or at a required court hearing), you must move as far away as possible to avoid any confrontation.

This language is recommended because it anticipates a common scenario that defendants, victims, and law enforcement may find themselves confronted with and provides clear guidance. The Domestic Violence Program advises us that this clear guidance is critical to reduce the risk of lethality in criminal domestic violence cases. Stalking is a precursor behavior in domestic violence homicide. Research demonstrates that 76% of victims are stalked by their intimate partner prior to their death.¹ Due to the high risk of lethality, the Domestic Violence Program worked with community partners (i.e. prosecutors, defense attorneys, law enforcement, and victim advocates) to develop language to provide clear instructions that strike a balance between victims' safety needs and defendants' rights.

The Board of Justice Court Judges wanted some version of this language included in the order. The Board of District Court Judges wanted to remove the language. We did not ask the Board of Juvenile Court Judges about this provision.

Once this language is finalized, we plan to include these provisions in the civil protective orders when we review them.

¹ See Stalking Prevention Awareness and Resource Center. (2017). Stalking & intimate partner violence: Fact sheet. Retrieved from <https://www.stalkingawareness.org/wp-content/uploads/2018/11/Stalking-IPV-Fact-Sheet.pdf>.

In the ☐ District ☐ Justice Court of Utah
_____ Judicial District _____ County
City of _____
Court Address _____

Pretrial Protective Order (Utah Code
78B-7-803)

Petitioner

v.

Defendant

Case Number

Judge

1. Party information

The protected person's name is: _____.

The defendant's name is: _____.

2. The court finds

The defendant represents a credible threat to the physical safety of the protected person.

The protected person is:

☐ an intimate partner of the defendant. (The defendant and the protected person are or were married, are the parents of a shared child, cohabitate or have cohabited together). (18 U.S.C. Sec. 921 (a)(32)).

☐ the child of an intimate partner of the defendant.

☐ not an intimate partner of the defendant, but is a cohabitant under Utah law.

☐ not an intimate partner or cohabitant, but is an alleged victim of a qualifying offense.

The court orders:

You, the defendant, must obey all orders marked below.

3. ☒ No domestic violence or abuse

You must not threaten to commit or commit acts of domestic violence or abuse, stalk, or engage in any conduct that could cause bodily injury against the protected person or any of these designated family or household members:

Name

4. ☐ No contact or limited contact

Notice: You will not violate the protective order by:

- attending a hearing with the protected person. But you must be a party to the case or a required witness. And you must tell the bailiff that you are a respondent to a protective order when you arrive.
- serving the documents on the protected person. Service must be according to the Rules of Civil Procedure. It must also be civil and not threatening.

☐ You must not harass, telephone, contact, or otherwise communicate with the protected person, directly or indirectly (includes email, text, social media, social media messaging or posts, mail, or other methods of contact).

☐ You and the protected person share custody of one or more minor children. You must only contact the protected person to arrange visits with the children by the methods checked below. Any approved communication must be civil and respectful.

☐ Phone

☐ Text

☐ Email

☐ Third party person (name): _____

☐ Other: _____

- ☐ For family related matters other than parent time, you must only communicate with the protected person through the person listed below:

First name:	
Middle name or initial (if any):	
Last name:	
Phone or other:	

5. ☐ Removal from residence

You **may not** go to the protected person's residence or premises without an officer. You must remove yourself from and stay away from the protected person's residence and premises.

Warning to defendant: Law enforcement can remove you or keep you away from the protected person's residence or premises if needed.

6. ☐ Stay away

Notice: You will not violate the protective order by:

- attending a hearing with the protected person. But you must be a party to the case or a required witness. And you must tell the bailiff that you are a respondent to a protective order when you arrive.
- serving the documents on the protected person. Service must be according to the Rules of Civil Procedure. It must also be civil and not threatening.

Warning to defendant: You **may not** go to the residence or premises of the protected person or other protected places without an officer. Law enforcement can remove you or keep you away from the places frequented by the protected person if needed.

You must stay away from the following places:

☐ Protected person's residence;

☐ Protected person's school;

☐ Protected person's workplace;

☐ These other places frequented by the protected person and any designated family members:

(Street, City, State, ZIP)

(Street, City, State, ZIP)

☐ You must stay away from the protected person if you encounter them at any other location not listed in this order. You still must not communicate or have contact with the protected person and must leave. If leaving is not an option (such as at your place of employment or at a required court hearing), you must move as far away as possible to avoid any confrontation.

Commented [NP1]: Board of Justice Court Judges votes to keep these concepts. Board of District Court Judges votes to remove. This section is not specifically listed in the provisions of 78b-7-803(2). It can be argued legal authority for this section comes from 78b-7-803(2)(e), which says "an order for any relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member."

7. ☐ **Monitoring programs**

☐ You must participate in and comply with an electronic monitoring program.
(Your location is monitored with a wearable tracking device.)

☐ You must participate in and comply with these monitoring programs:

8. ☐ **Other orders**

Other orders: _____

9. ☐ **Orders to agencies**

A law enforcement officer from:

_____ (police agency) will enforce the orders checked below:

- ☐ Remove and require the defendant to stay away from the protected person's residence.
- ☐ Accompany the defendant one time to get your personal property.
- ☐ Accompany the protected person to get their personal property.

Notices to defendant:

This order is in effect until further order of the court, trial, or other resolution of the case.

Penalties for violating this order (Utah Code 78B-7-806(2))

If you do not obey this order, you can be arrested and charged with a new offense. The new offense would be Violation of a Protective Order, which is a:

- Third degree felony, if you were charged of committing a felony in this case.
- Class A misdemeanor, if you were charged of committing a misdemeanor in this case.

You may become subject to federal law because this protective order was issued against you. This would mean that it would be a crime for you to possess, transport, ship or receive any firearm or ammunition, including a hunting weapon.

"The defendant was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C. Sec. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

Notice to defendant, petitioner, and protected person:

The parties cannot change or dismiss this order. Only the court has the authority to change or dismiss this order. If you want to ask the court to change or dismiss this order, you must file a motion with the court.

— The court completes this section —

Expiration date for National Crime Information Center purposes only: 01/01/3000

Judge's signature may instead appear at the top of the first page of this document.

Date

Signature ► _____
Judge _____

TAB 6

CJA 9-109. Presiding Judges

Notes: [S.B. 98](#) approved compensation for Presiding Judges and Associate Presiding Judges, but not for Education Directors. The proposed amendment simplifies the leadership structure of the justice courts and addresses the compensation disparity by eliminating the position of Education Director. Associate Presiding Judges will assume education duties.

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

03 / 14 / 2022

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 *

9-109

Brief Description of Rule Proposal *

This amendment simplifies the leadership structure of the justice courts by eliminating the position of Education Director. If approved, those duties would be incorporated into the role of Associate Presiding Judge.

Reason Amendment is Needed *

Recent legislation (S.B. 98) approved compensation for Presiding Judges and Associate Presiding Judges, but not for Education Directors. The best way to address this disparity is to eliminate Education Directors.

Is the proposed amendment urgent? *



Yes



No

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

Ideally, this rule would be made effective as of April 25, 2022 pursuant to CJA 2-205. Elections for Education Directors are set for the judges' conference to take place that week. It will be unnecessary to hold elections for Education Directors if this amendment is approved beforehand.

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. *

Justice Court Judges and the Education Department

This form was created inside of Utah State Courts.

Google Forms

Rule 9-109. Presiding judges.**Intent:**

To establish the procedure for election, term of office, role, responsibilities, and authority of presiding judges, and associate presiding judges, ~~and education directors~~ for Justice Courts.

Applicability:

This rule shall apply to presiding judges, and associate presiding judges, ~~and education directors~~ in the Justice Courts.

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

(1)(A)(i) A presiding judge in each judicial district shall be elected by a majority vote of the active judges present at the district meetings held at the ~~2018~~ Justice Court Conference. ~~Thereafter, regular elections shall take place at the annual conference~~ in odd years for odd-numbered districts and in even years for even-numbered districts. In the event that a majority vote cannot be obtained, the presiding judge shall be determined by the Board of Justice Court Judges. Interim elections, if necessary, shall take place as provided in this rule. A presiding judge shall be an active judge, currently appointed to at least one court within the district. Senior judges are ineligible to hold or vote for the office of presiding judge.

(1)(A)(ii) The presiding judge's term of office shall commence on July 1 following his or her election ~~be from the time of his or her election~~ or immediately upon appointment, as applicable, and run until he or she resigns or until June 30 of an odd year for odd-numbered districts or of an even year for even-numbered districts ~~the next regular election~~, whichever occurs first. A presiding judge may serve successive terms.

(1)(B) Associate presiding judge.

(1)(B)(i) The active judges of a district ~~may, at their discretion, shall~~ elect one judge of the district to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A). An associate presiding judge shall be an active judge, currently appointed to at least one court within the district. Senior judges are ineligible to hold or vote for the office of associate presiding judge.

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall serve on the justice court Education Committee and shall work with the Education Department of the Administrative Office in developing, planning and presenting relevant judicial training at the district level. In addition, the associate presiding judge shall perform other duties assigned by the presiding judge.

~~**(1)(C) District education director.**~~

~~(1)(C)(i) The active judges of a district may, at their discretion, elect one judge of the district to the office of education director. An education director shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A). Senior judges are ineligible to vote for the office of district education director but may hold the office. If a district does not elect an education director, the associate presiding judge, if there is one, shall serve as the education director. If the district elects neither an education director nor an associate presiding judge, the presiding judge shall serve as the education director.~~

~~(1)(C)(ii) The education director shall serve on the justice court education committee and shall work with the Education Department of the Administrative Office in developing, planning and presenting relevant judicial training at the district level.~~

(1)(C) Compensation. Presiding judges and associate presiding judges shall be compensated for their service at the end of each fiscal year, in proportion to the percentage of the year they served in office, and as otherwise contemplated by Section 78A-7-209.5 of the Utah Code.

(1)(D) Removal and Other Vacancies of Office.

~~(1)(D)(i) If the office of presiding judge becomes vacant, then the associate presiding judge shall serve the rest of the presiding judge's term. If there is no associate presiding judge, the district education director shall, if the education director is an active judge, serve the unexpired term. Otherwise, the Chair of the Board of Justice Court Judges shall appoint a judge to serve until the next district meeting.~~

(1)(D)(ii) A presiding judge may appoint, on an interim basis, an eligible judge of the district to fill an unexpired term of the associate presiding judge ~~or education director~~ until the next district meeting. At the district meeting, the active judges present shall ratify the appointment by majority vote. If they do not ratify the appointment, or if the presiding judge does not make an interim appointment, nominations and an election shall then be held at that meeting to fill the unexpired term.

(1)(D)(iii) A presiding judge, or associate presiding judge ~~or education director~~ may be removed from that office by a two-thirds vote of the active justice court judges in the district. A successor presiding judge or associate presiding judge shall, ~~or an associate presiding judge or education director may,~~ then be elected to fill the unexpired term of the vacant office.

(1)(D)(iv) In extraordinary circumstances, to preserve confidence in the fair administration of justice, the Presiding Officer of the Judicial Council may remove a judge from any office described in this rule. Vacancies shall be filled as provided in this rule.

(2) District meetings.

(2)(A) Each district shall have regular meetings to discuss and decide district business, receive training, or address issues and concerns specific to the district.

(2)(A)(i) The presiding judge shall call and preside over a meeting of other justice court judges in the district at the annual Justice Court Conference.

(2)(A)(ii) Each district shall have at least one other meeting during the calendar year in which a majority of active justice court judges is present, including the presiding judge or associate presiding judge.

(2)(B) In addition to regular meetings, the presiding judge or a majority of the active judges may call additional meetings as necessary.

(2)(C) An agenda shall be circulated among the judges in advance of any meeting with a known method on how matters may be placed on the agenda.

(2)(D) Other than judges and the Justice Court Administrator, attendance at district meetings shall be by invitation of the presiding judge only.

(2)(E) The issues on which judges vote shall be left to the sound discretion and judgment of each district and the applicable sections of the Utah Constitution, statutes, and this Code.

(3) Administrative responsibilities and authority of presiding judge and associate presiding judge.

(3)(A) **Generally.** The presiding judge is charged with the responsibility for the effective operation of the justice courts within a district. He or she is responsible for the implementation and enforcement of statutes, rules, policies, and directives of the Judicial Council and the Board of Justice Court Judges as they pertain to the administration of the courts. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

(3)(B) Coordination of required training.

(3)(B)(i) The ~~presiding judge~~, associate presiding judge, ~~or education director~~ shall: (a) be responsible to see that judges in his or her district are appropriately trained, (b) assist in planning statewide trainings as part of the Education Committee, (c) plan district training to be held in connection with the meetings required by section (2), (d) recommend mentors for new judges, and (e) arrange for individual training, as needed.

(3)(B)(ii) Presiding judges ~~are encouraged to~~ shall occasionally observe ~~the~~ hearings of judges within the district to assess training needs.

(3)(C) **Court committees.** The presiding judge shall, where appropriate, make use of committees composed of other judges and court personnel to investigate problem areas and improve the administration of justice.

(3)(D) Outside agencies and the media.

(3)(D)(i) The presiding judge shall be available to meet with outside agencies, such as prosecuting attorneys, city attorneys, county attorneys, public defenders or associations of defense counsel, sheriffs, police chiefs, bar association leaders, probation providers, government officials of cities or counties located within the district, civic organizations, and other state agencies.

(3)(D)(ii) The presiding judge shall be the primary judicial representative of the justice court judges in the district.

(3)(D)(iii) Nothing in this rule shall replace or interfere with the statutory and administrative responsibilities of an appointed judge to the appointing authority of a court.

(3)(E) **Judicial officers.** The presiding judge shall discuss significant concerns, problems or complaints regarding the judges in his or her district with the Justice Court Administrator, who shall work together to resolve the concern. In the event that another judge in the district fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment, or violates the Code of Judicial Conduct, the presiding judge may, depending on the severity of the issue and consistent with legal and ethical obligations:

(3)(E)(i) Consult with appropriate staff at the Administrative Office of the Courts and/or discuss the issue with other presiding judges;

(3)(E)(ii) Meet with the judge to explain the reasons for the directive given or the position taken, consult with the judge about alternative solutions and reevaluate the directive or position, as appropriate;

(3)(E)(iii) Present the problem to the Board of Justice Court Judges for input;

(3)(E)(iv) Require the judge to participate in appropriate counseling, therapy, education or treatment; or

(3)(E)(v) Refer the problem to the Judicial Council, the Chief Justice, or the Judicial Conduct Commission, as appropriate.

(3)(F) **Liaison.** The presiding judge or his or her designee shall serve as a liaison between the justice courts of the district and (i) the Board of Justice Court Judges and (ii) the presiding judges of Juvenile Court and District Court.

(3)(G) **Reassignment.**

(3)(G)(i) In the event that a motion to disqualify a judge or judges is filed and no appointed judge of the court is available or empowered to hear the motion, the presiding judge shall consider the motion and, if necessary, assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

(3)(G)(ii) In the event that all of the appointed judges of a court recuse themselves from a matter, the presiding judge shall assign any judge duly appointed pursuant to Utah Code section 78A-7-208 to serve as a temporary justice court judge.

(3)(H) **Compliance with standards.** The presiding judge shall monitor and ensure that judges are complying with performance standards established by the Council or as otherwise required by law.

(3)(l) **Performance evaluations.** Pursuant to Utah Code 78A-12-203, the presiding judge shall receive the midterm reports prepared by the Judicial Performance Evaluation Commission for the other justice court judges in his or her district. The presiding judge shall consult with the evaluated judge and the Justice Court Administrator to develop a plan for addressing the issues resulting in less than satisfactory scores.

Effective: ~~August 2~~November 1, 20220

TAB 7

CJA 4-903. Uniform custody evaluations

Notes: In November 2021, proposed amendments to rule 4-903 were recommended by the Standing Committee on Children and Family Law. The amendments limit the circumstances under which a custody evaluation can be ordered and outlines the training requirements of those who conduct custody evaluations. The rule went out for public comment in [December 2021](#), receiving one comment:

Mary Catherine Rutledge
December 20, 2021 at 2:16 pm

I disagree with 2(H). The party requesting a written report should NOT necessarily have to pay for it. This rule incentivizes the “loser” of a custody evaluation from settling at a 4-903 conference. The person wanting to call the evaluator as a witness would automatically be forced to pay for the report even though the evaluator may have determined custody in them is in the child’s best interest. Moreover, the rule doesn’t recognize why the evaluation was ordered. It could have come from a petition to modify stemming from an allegation of child abuse or domestic violence. The evaluation could have been ordered to help the court reassess the parenting plan contained in the decree. The rule that the party requesting the report pays for it can act to keep the evaluation from the court if the abuser refuses to accept the evaluation and, instead, forces the innocent party to request and pay for the report in order to try the case.

In February 2022, Policy and Planning expressed concerns about the uncertainty surrounding who would be responsible for payment of the evaluation and recommended that the rule be amended to provide clarity. The committee also recommended a 15-day written notice of request for a custody evaluation, rather than 45 days. Commissioner Minas agreed to take the committee’s feedback to the Children and Family Law Committee for consideration.

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 a party requests it or when the court makes specific findings that extraordinary circumstances exist that warrant an evaluation. In either case, before appointing a custody evaluator, the court must find that the parties have 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
The curriculum vitae must demonstrate compliance with the training
requirements in paragraph (7).

(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 45-28 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. 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

TAB 8

CJA 6-501. Reporting requirements for guardians and conservators.

Notes: The WINGS Committee and Probate Subcommittee are recommending proposed amendments to rule 6-501, incorporating changes related to [H.B. 320](#) (Guardianship Bill of Rights) and feedback from Policy and Planning at its November 5, 2021 meeting.

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

To establish standards and procedures for annual reports and accountings that guardians and conservators are required to file under ~~the requirements sufficient to satisfy~~ the Utah Uniform Probate Code.

Applicability:

This rule applies to individuals seeking appointment as guardians and conservators and individuals who are appointed by the court as guardians and conservators. ~~with the following exceptions:~~

~~This rule does not apply if the conservator or guardian is the parent of the ward.~~

~~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)(D) does not apply to the guardian of a minor if the minor's estate is deposited in 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.~~

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

(1)(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.

(1)(B) "Interested person" means the respondent, if he or she is not a minor, the respondent's guardian and conservator, the respondent's spouse, adult children, parents and siblings, and any other person interested in the welfare, estate, or affairs of the respondent who requests notice under Utah Code Section 75-5-406. If no person is an interested person, then interested person includes at least one of the respondent'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.

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

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

(1)(E) "Protected 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.

(1)(F) "Report" means the inventory, accounting, or annual report on the status of the protected person under Utah Code Sections 75-5-209 and 75-5-312, and the final accounting under Sections 75-5-210 and 75-5-419

(1)(G) "Respondent" means a person who is alleged to be incapacitated and for whom the appointment of a guardian or conservator is sought.

(2) Exceptions.

(2)(A) Paragraph (4) does not apply to the following:

(2)(A)(i) a guardian licensed under Utah Code Section 75-5-311(1)(a);

(2)(A)(ii) the Office of Public Guardian; or

(2)(A)(iii) a conservator licensed under Utah Code Section 7-5-2.

(2)(B) Paragraphs (6), (7), (8), (9), and (10) do not apply if the guardian or conservator is a parent of the protected person.

(2)(C) Paragraph (7)(C) does not apply to the guardian of a minor if the minor's estate consists of funds that are deposited in a restricted account, which requires judicial approval for withdrawal, or if there is no estate.

(2)(D) Paragraph (9) 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 until the minor reaches the age of majority, or 2) no structured settlement payments are to be made until the minor reaches the age of majority.

(3) Examination and private information record.

(3)(A) Before the court enters an order appointing a guardian or conservator, the ~~proposed~~ 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.

(3)(B) ~~After~~Before the court enters ~~an~~the order of appointment, the ~~proposed~~ 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.

(3)(C) The guardian or conservator ~~shall~~must continue to keep the court apprised of any

changes to the guardian or conservator's contact information.

(42) Recordkeeping. The guardian ~~shall~~must keep contemporaneous records of significant events in the life of the ~~ward~~protected person 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~~protected person, if there is no successor, to the successor guardian or conservator, or to the personal representative of the ~~protected person~~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 ward, if he or she is of an appropriate age and mental capacity to understand the proceedings, the ward's guardian and conservator, the ward's spouse, adult children, parents and siblings and anyone 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 ward's closest adult relatives, if any can be found.~~

~~(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 annual report on the status of the ward required by Utah Code Section 75-5-209 and Section 75-5-312.~~

~~(F) "Ward" 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.~~

~~(54) Report forms.~~ Subject to the requirements of Paragraph ~~(65)~~:

~~(54)(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~~;~~

~~(54)(B) a corporate fiduciary may file its internal report or accounting; and~~

~~(54)(C) if the ward~~protected person~~'s estate is limited to a federal or state program requiring an annual accounting, the fiduciary may file a copy of that accounting.~~

~~(65) Information required in reports, cover sheet, and service.~~Report information.

~~(6)(A) The annual report, inventory, and annual 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.~~

~~(6)(B) The annual report and annual accounting must include the Judicial Council-approved report coversheet, which must be filed as a proposed document.~~

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

(7) Annual sStatus reports.

(6~~7~~)(A) The guardian ~~shall~~must file with the appointing court a report on the status of the wardprotected 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.~~

~~(7)(B) 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 approve it.~~

(6~~7~~)(~~D~~C) 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.

(8) Inventory reports.

(8~~7~~)(A) Within 90 days after the appointment, the conservator ~~shall~~must file with the appointing court the inventory required by Utah Code Section 75-5-418. The inventory must be in substantially the same form as the inventory form approved by the Utah Judicial Council, including the required attachments. ~~For good cause t~~Ihe court may extend the time for filing the inventory for good cause.

~~(7)(B) The conservator shall serve a copy of the inventory on all interested persons with notice that the person may object within 30 days after the notice was served.~~

~~(8)(B) 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 inventory is in order, the judge ~~shall~~must approve it.

(98) Annual accounting reports.

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

~~(8)(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.~~

~~(98)(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.

(109) Final accounting.

(109)(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.~~

~~(109)(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 court~~ may conduct a hearing even though no objection is filed. If the ~~judge court~~ finds that the accounting is in order, the ~~judge court~~ ~~shall~~must approve it.

(11) Objections.

~~(11)(A) If an interested person objects to a report or accounting, 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 or accounting. A request to submit must be included with the~~

objection. The court may for good cause, including in order to accommodate a person with a disability, waive the requirement of a writing and document the objection and request to submit in the court record.

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

(11)(C) An objection to a report or accounting 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.

(11)(D) If an objection is filed, the court must conduct a hearing unless the court determines that a hearing is not necessary. If the court determines that a hearing is not necessary, the court must issue a minute entry or order stating why a hearing is not necessary.

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

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

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

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

(12)(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.

(13) **Report approval.**

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

(13)(B) **Notice to interested persons.** When a court approves a report, the court must note that approval on the Judicial Council-approved coversheet and place the coversheet in the case file. When a court does not approve a report, the court must indicate on the coversheet,

258 or in an order, the reasons for non-approval, any additional actions required, and serve the
259 coversheet or order on all interested persons entitled to notice.

260
261 (14) **Report on a minor.** Under Utah Code Section 75-5-209, a person interested in the welfare
262 of a minor may petition the court for a report from the guardian on the minor's welfare or the
263 minor's estate. ~~If the court orders a report from the guardian, the status report must be in~~
264 ~~substantially the same form as the status report form for guardianships of adults approved by the~~
265 ~~Utah Judicial Council, including the required attachments.~~

266
267 *Effective May~~/November~~ 1, 20__~~18~~*

TAB 9

Human Resource Policies

HR 01. Definitions

HR 07-2, 07-9, 07-21. Leave

HR 04-1 thru 04-4. Filling positions

HR 05-1 thru 05-3. Career service

HR 15-3, 15-4, 15-6. Workplace Harassment

HR 16-2, 16-3, 16-4. Abusive Conduct

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

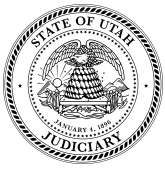
HR 09-9. Professional Appearance

HR 17-9. Grievance Review Panel

Notes: See attached memo from Bart Olsen. The complete set of HR policies can be found at the link [here](#).

HR 09-12. Political Activity

Notes: At its April 25th meeting, the Judicial Council approved all of Policy and Planning's proposed amendments to HR 09-12, except for the paragraph related to political and religious displays and statements. That paragraph was deleted and the issue sent back to Policy and Planning for discussion. The Management Committee recommended bifurcating the prohibition and including language reminding employees and judicial officers of their duty to behave professionally.



Memorandum

From: Bart Olsen, Director of Human Resources, Administrative Office of the Courts
[Human Resources Policy Review Committee](#)
To: Policy & Planning Committee
Re: Summary of draft HR Policy amendments

BACKGROUND

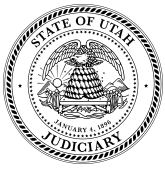
Consistent with [Rule 3-402](#), the Human Resources Policy Review Committee (HRPRC) continued to meet regularly after the supported amendments to previous policy became effective in July 2021. In part, those regular meetings were held to flesh out ideas previously considered but not yet formally submitted by the HRPRC to Policy & Planning. Additionally, members of the HRPRC were encouraged to bring ideas and feedback to HRPRC meetings from employees and management if and when July 2021 amendments raised questions or concerns. Lastly, the HRPRC also knew there would likely be legislative impacts that would need consideration for HR Policy amendments. The amendments the HRPRC now brings to Policy & Planning for review and approval resulted from all of the aforementioned reasons for regular meetings throughout the year.

AMENDMENTS TO COMPLY WITH LEGISLATIVE REQUIREMENTS

The Legislature passed several bills in this year's general session that apply to the judicial branch as an employer, requiring policy amendments. Those bills include:

- [HB238](#) State Holiday Amendments, making Juneteenth a state holiday
- [HB449](#) and [SB63](#) Bereavement Leave Modifications/Amendments, requiring certain state employers (including the judicial branch) to provide bereavement leave for employees affected by the miscarriage or stillbirth of a child
- [SB100](#) Paid Leave Modifications, requiring certain state employers (including the judicial branch) to offer paid parental leave upon the birth of the employee's child or the adoption of a minor child
- [HB104](#) State Employment Amendments makes modifications that apply almost exclusively to the Executive Branch, but removes "merit increase" as a salary tool the Legislature might consider for state employees, including the judicial branch.

These bills prompted policy amendment proposals under HR01 Definitions (removing "merit increase"), and HR07 Leave (paid leave amendments and state holiday amendments).



The Utah Judicial Branch
Department of Human Resources



AMENDMENTS TO POLICIES GOVERNING PREVENTION OF MISCONDUCT AND INVESTIGATIONS

Practices and procedures for addressing allegations of workplace harassment against judicial officers have shifted over the past two years. Additionally, the recently codified definition of abusive conduct and prohibitions of such conduct which apply to Utah's judicial branch only became effective around the time the amended HR policies were put in place last year.

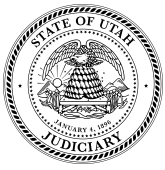
We have learned many valuable lessons. The standard practice of giving notice to the accused of a pending investigation works very well when the accused is an employee and management has authority to protect complainants by enacting temporary restrictions, giving strict instructions, and even placing the accused staff on paid administrative leave while the investigation takes place. We find this practice does not work well when the accused is a judicial officer for many reasons. Some have mentioned, and make an excellent point, that when alleged misconduct is reported to the Judicial Conduct Commission, the judge is not notified when the JCC begins investigating. Hence, judges have no need to preoccupy themselves with potential outcomes or why an investigation might appear to be taking too much time.

Furthermore, judicial officers have found it understandably off-putting to meet with HR investigators who are not attorneys and have no authority over any kind of administrative or employment action that may be taken on a judicial officer. Logistical elements such as scheduling interviews around demanding court calendars, have proven to be problematic. Finally, judicial officers have raised valid questions about why the current misconduct prevention policies should only provide protective remedies for non-judicial officer employees.

In summary, the current policies governing harassment and abusive conduct investigations still work well for allegations against employees where traditional employer management structures exist. The same policies simply do not work well or are insufficient for judicial officers because:

- a) They are appointed by a process of nomination and confirmation by elected officials, not hired;
- b) They are accountable to the people and to the Supreme Court, not to a traditional organizational management structure;
- c) Similarly protective remedies available to employees should be available to judicial officers if they become subject to harassing or abusive behavior.

Amendments to HR15 and HR16 seek to remedy all of the above concerns. Amendments are so voluminous that clean copies of proposed HR15 and HR16 are also provided for clarity.



The Utah Judicial Branch Department of Human Resources



PROFESSIONAL APPEARANCE

The judicial branch dress code was last addressed in 2018 with a substantial amount of effort and coordination. Although less than four years have passed since this substantial update, a great deal has changed the landscape of societal expectations, cultural norms, and workplace dress standards during the same time period. Our 2018 lens on [this policy](#) was acceptable. Today's lens on the same policy is uncomfortable for many reasons, including what could easily be seen as expectations that discriminate against protected classes, even if completely unintentional. In addition, the shift to remote work during the pandemic brought with it a slight relaxation of generally accepted expectations in business attire.

The HRP RC spent considerable time over the past two years researching professional dress standards in other organizations, including court systems in other states. After careful thought and consideration, the HRP RC advances proposed amendments to HR09-9 based on the best examples gathered from other state court systems.

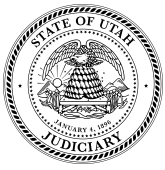
CAREER SERVICE EMPLOYMENT AMENDMENTS

In March 2019, the National Center for State Courts (NCSC) issued an [interim report](#) as part of a full courts "System Review" requested by interim State Court Administrator, Judge Mary T. Noonan. One of the many problematic areas identified in the report related to poor management support from HR on personnel matters and supervisory responsibilities. [Rule 3-402\(3\)\(A\)](#) is clear on HR's responsibility to properly distinguish classification of career-service vs. "at-will" employment and to assist management [[Rule 3-402\(4\)](#)] with personnel matters.

Numerous observations since the March 2019 interim report confirm that in general, judicial branch management is inadequately trained in procedures of basic due process to protect career service rights and best practices based on case law. Although HR has developed and is delivering management training modules to address this, it only solves a piece of the problem.

At least one other major piece of the problem lies with the inadequate resources dedicated to the internal Grievance Review Panel established by [Rule 3-402\(6\)](#). The Panel has very little guidance to steer their reviews when claims of career service protection violations come before them. Furthermore, Panel members are not inherently separate from the organization to preserve impartiality.

In contrast, most organizations in Utah's state, county, city, and municipal governments have separate, impartial bodies or staff dedicated to the function of career service protection and review of career service violations. Legislative code establishes an independent [career service](#)



The Utah Judicial Branch Department of Human Resources



[review office](#) for the executive branch's agencies and "career service councils" for [county governments](#). State law also [requires municipality ordinances](#) to designate membership of independent "career service appeal boards" with sufficient knowledge of personnel matters to adjudicate in such proceedings. Adjudicative decisions from these independent councils/appeal boards are normally analyzed and written with a quasi-legal lens, because such decisions often function as quasi-case law on career service protections for these government entities.

Consistent career service protections in the judicial branch would require similar support structures, but its Panel consists of internal court level administrators who cannot guarantee personal impartiality on a case, and can easily be overburdened with other mission-critical work when a grievance is advanced for their review. Furthermore, Panel members are not trained to analyze cases under career service employment law frameworks nor to render written decisions that can feasibly function as quasi-case law. Effective guidance for Courts management or its HR Department on career service provisions becomes extremely difficult, if not impossible.

Finally, it is worth noting that [HB104](#) reveals clear indications of the Utah Legislature's distaste for career service protections in state government. This bill also provided funding for executive branch agencies to incentivize conversion away from career service status. The funding does not extend to the judicial branch, so the proposed amendments to HR04 and HR05 simply draw a "line in the sand" beginning July 2022 with hiring changes that already have successful precedent in our branch [Clerks of Court and Chief Probation Officers in 2008, and the entire IT Department in 2018, see [HR05-3\(2\) and \(4\)](#)]. As a separate but related matter, the judicial branch may wish to consider seeking funding for similar incentivization in next year's Legislative Session.

Section 1 – Definitions

(84) Merit Increase: ~~A legislature approved and funded salary increase for employees to recognize and reward successful performance.~~

Section 7 – Leave

HR07-2. Holiday Leave.

1) The following dates are paid holidays for eligible employees:

- a) New Year's Day (January 1)
- b) Dr. Martin Luther King Jr. Day (third Monday of January)
- c) Washington and Lincoln Day (third Monday of February)
- d) Memorial Day (last Monday of May)
- e) Juneteenth – observed as follows:
 - i. June 19 if that day is on a Monday;
 - ii. If June 19 is on a Tuesday, Wednesday, Thursday or Friday, the holiday is observed immediately preceding Monday; or
 - iii. If June 19 is on a Saturday or Sunday, the holiday is observed on the immediately following Monday.
- e)f) Independence Day (July 4)
- f)g) Pioneer Day (July 24)
- g)h) Labor Day (first Monday of September)
- h)i) Columbus Day (second Monday of October)
- i)j) Veterans Day (November 11)
- j)k) Thanksgiving Day (fourth Thursday of November)
- k)l) Christmas Day (December 25)
- l)m) Any other day designated as a paid holiday by the Governor or approved by the Chief Justice.

2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

- a. Except as described in HR07-2(1)(e): If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.
- b. Except as described in HR07-2(1)(e): If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

HR07-9. Bereavement Leave.

~~An employee may receive a maximum of~~ Management may authorize three work days bereavement leave per occurrence with pay, ~~at management's discretion,~~ following the death of a member of the employee's immediate family. Additional leave may be authorized at management discretion depending on circumstances. Bereavement leave may not be charged against accrued sick or annual leave.

- 1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:
- a) Spouse;
 - b) Parents;
 - c) Siblings;
 - d) Children;
 - e) All levels of grandparents; or
 - f) All levels of grandchildren.
- 2) Management may ~~grant~~ authorize bereavement leave for other unique family relationships.
- 3) Management may authorize three work days of bereavement leave to an employee when a pregnancy ends in stillbirth or miscarriage consistent with UCA § 63A-17-106. Additional bereavement leave for stillbirth or miscarriage may be authorized at management discretion depending on circumstances.
- 3)4) Bereavement leave hours shall be coded as OE (Other - Emergency) in the employee timesheet through the payroll system.

HR07-21. Parental and Postpartum Recovery Leave.

- 1) ~~"Postpartum recovery leave" means leave hours a state employer provides to an eligible employee to recover from childbirth.~~ An employee is eligible for parental or postpartum recovery leave when:
- a) The employee is eligible for leave benefits under HR07-7-1(1), and
 - ~~b) The employee is not reemployed post-retirement as defined in UCA §49-11-1202.~~
 - ~~c) The employee gives birth to a child.~~
- 2) Parental Leave
- a) An employee is qualified for parental leave when the employee:
 - i. Is a birth parent as defined in UCA § 78B-6-103;
 - ii. Legally adopts a minor child, unless the employee is the spouse of the pre-existing parent;
 - iii. Is the intended parent of a child born under a validated gestational agreement; or
 - iv. Is appointed the legal guardian of a minor child or incapacitated adult.
 - b) Management shall grant up to three weeks of paid parental leave to an employee who gives notice that they intend to use paid parental leave.
 - c) Management calculates the amount of leave for each employee based on the number of hours the employee would have worked per week if they had not taken parental leave.
 - d) An employee may use parental leave within the six months immediately following:
 - i. The birth of the employee's child;
 - ii. The adoption of a minor child; or
 - iii. The appointment of legal guardianship of a minor child or incapacitated adult
 - e) An employee may use parental leave intermittently when:

- 96 i. The employee and management have written mutual consent for
97 intermittent use; or
98 ii. A health care provider certifies the need for intermittent leave due to the
99 child's serious health condition.
- 100 f) Parental leave:
101 i. Runs concurrently with leave under the Family and Medical Leave Act
102 (FMLA);
103 ii. Runs consecutively with postpartum recovery leave consistent with HR07-
104 21(3)(ii);
105 iii. Is limited to three weeks within any 12-month period;
106 iv. Does not increase when:
107 1. More than one child is born from the same pregnancy;
108 2. More than one child is adopted;
109 3. The employee is appointed legal guardian of more than one minor
110 child or incapacitated adult.
- 111 3) Postpartum Recovery Leave
112 a) An employee is qualified for postpartum recovery leave when the employee gives
113 birth.
114 b) Management shall grant up to three weeks of paid postpartum recovery leave to
115 an employee who gives notice that they intend to use paid postpartum recovery
116 leave.
117 c) Management calculates the amount of leave for each employee based on the
118 number of hours the employee would have worked per week if they had not taken
119 postpartum recovery leave.
120 d) Postpartum recovery leave begins on the date the employee gives birth unless a
121 health care provider certifies the medical necessity of an earlier start date.
122 e) An employee shall use postpartum recovery leave in a single continuous period.
123 f) Postpartum recover leave:
124 i. Runs concurrently with leave under the Family and Medical Leave Act
125 (FMLA);
126 ii. Runs consecutively with parental leave under HR07-21(2) with postpartum
127 recovery leave used first pursuant to restrictions in HR07-21(3)(d); and
128 iii. Does not increase when more than one child is born from the same
129 pregnancy.
- 130 4) An employee or a spokesperson shall notify management of their plan to use parental or
131 postpartum recovery leave:
132 a) Thirty days in advance; or
133 b) As soon as practicable in emergencies.
- 134 5) Management may not charge parental or postpartum recovery leave against any accrued
135 leave balance on the employee's record
- 136 6) No person may interfere with an employee's intent to use postpartum recovery leave or
137 retaliate against an employee who receives postpartum recovery leave.
- 138
- 139 ~~2) Management shall grant paid leave to an eligible employee who requests postpartum~~
140 ~~recovery leave.~~
141 ~~a) The eligible employee may receive up to three weeks of paid leave based on the~~
142 ~~employee's normal work schedule, including normally scheduled work hours in~~
143 ~~excess of 40 hours per week. The amount of leave does not change if there are~~
144 ~~multiple births from a single pregnancy.~~

- ~~b) Postpartum recovery leave shall begin on the date the employee gives birth unless a health care provider certifies the medical necessity of an earlier start date.~~
- ~~c) Postpartum recovery leave may not be used intermittently.~~
- ~~d) Postpartum recovery leave runs concurrently with leave under the Family and Medical Leave Act (FMLA). If an employee applies to use leave under the FMLA through the HR Department, leave requests for postpartum recovery leave should also be coordinated through HR.~~
- ~~e) Postpartum recovery leave may not be charged against any accrued leave balance on the employee's record. Appropriate payroll leave codes to protect accrued leave are "PF" if the employee is using this leave concurrently with FMLA; otherwise, the appropriate leave code is "P."~~
- ~~f) To request postpartum recovery leave, the employee or an appropriate spokesperson shall notify management of the need for leave:~~
- ~~i. Thirty days in advance; or~~
 - ~~ii. As soon as practicable in emergencies.~~
- ~~3) No person may interfere with an employee's intent to use postpartum recovery leave or retaliate against an employee who receives postpartum recovery leave.~~

Section 4 – Filling Positions

HR04-1. Authorized Recruitment System.

1. Management shall use the HR approved recruitment and selection system unless an alternate system has been pre-approved by HR.
2. Management shall notify HR of the filling of any position at least 3 working days prior to the employee's start date.

HR04-2. ~~Career Service Exempt Positions~~Position Creation and Appointments to Positions.

1. ~~Upon management request, the HR Department~~ The HR Director may ~~approve~~ facilitate the creation ~~and filling of career service exempt~~ positions.
2. Management may use any process pre-approved through HR to select an employee for a ~~career service exempt~~ new or vacant position. Appointments may be made without competitive examination, especially for hard-to-fill and highly specialized positions, provided job requirements are met. However, public announcement of ~~career service exempt~~ new or vacant positions is encouraged.
3. Appointments to fill an employee's position who is on approved leave shall only be made temporarily.
4. Appointments made on a temporary basis shall ~~be career service exempt and:~~
 - a) be in a position whose working title includes "PT-IN", in which the employee is hired to work part time indefinitely and shall work less than 1560 hours per fiscal year; or
 - b) be in a position whose working title includes "Time-Limited", in which the employee is hired to work on a time limited basis;
 - c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.
 - d) if the required work hours of the position meet or exceed 1560 hours per fiscal year for "PT-IN" or if the position exceeds anticipated time limits for "Time Limited" positions, management shall consult with HR to review possible alternative options.

~~5. Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under HR04-8.~~

6.5. Management shall ensure that all new hires submit to a Bureau of Criminal Investigation (BCI) background check through HR as described in HR04-15.

HR04-3. ~~Career Service~~Competitive Selection for Positions.

Competitive selection is strongly encouraged as a standard business practice for positions commonly filled in the judicial branch. Selection of a career service employeeCompetitive selection shall be governed by the following principles:

1. ~~HR business~~business practices recommended by the HR Department;
2. career service principles as outlined in [HR02-3](#) "Fair Employment Practice," emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;
3. equal employment opportunity principles;
4. [UCA §52-3-1](#), employment of relatives;
5. reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

HR04-4. ~~Recruitment and Selection for Career Service Positions.~~

1. Prior to initiating recruitment, management may administer any of the following personnel actions:
 - a) reemployment of a veteran eligible under USERRA;
 - b) reassignment within the judicial branch initiated by an employee's reasonable accommodation request under the ADA;
 - c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
 - d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;
 - e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;
 - or
 - f) reclassification;~~or,~~
 - ~~g) conversion from career service exempt to career service as authorized by HR05-1(3).~~
2. If the personnel actions authorized by [HR04-4\(1\)](#) are undesirable or do not apply, management shall use the HR-approved recruitment and selection system for all career service announcements of competitive position vacancies. This includes recruitments open within a team, office, or district, across multiple districts and/or to the entire judicial branch, or to the general public. Recruitments shall comply with federal and state laws, these HR policies, and applicable HR procedures.
 - a) All recruitment announcements shall include the following:

- 87 i. Information about the HR-approved recruitment and selection
88 system; and
89 ii. opening and closing dates.
- 90 b) Recruitments for ~~career service positions~~competitive position vacancies
91 shall be posted for a minimum of three business days, excluding state
92 holidays.
93
- 94 3. Management may select a qualified candidate for any vacant position so long as
95 the candidate appears on a hiring list for the same job classification as the vacant
96 position, indicating minimum qualifications for the position are met. ~~carry out all~~
97 ~~the following steps for recruitment and selection of vacant career service~~
98 ~~positions concurrently. Appointments may be made according to the following~~
99 ~~order:~~
100 ~~a) From the judicial branch reappointment register, provided the applicant~~
101 ~~applies for the position and meets minimum qualifications;~~
102 ~~b) From a hiring list of qualified applicants for the position~~
103
- 104 4. A job application may be rejected from further consideration if the applicant:
105 a) does not meet minimum qualifications;
106 b) is unable to perform essential job functions with or without a reasonable
107 accommodation under the Americans with Disabilities Act and other state
108 and federal laws;
109 c) has falsified a material fact;
110 d) has failed to complete or submit the application in a timely manner;
111 e) has an unsatisfactory employment history or poor work references; or
112 f) does not meet requirements of the background check as established in
113 [HR04-15](#).
114
- 115 5. Management may request assistance from the HR department for any portion of
116 the recruitment or selection process.
117
- 118 6. Management is encouraged to build an interview panel of at least two or more
119 subject matter expert panelists with as much diversity as reasonably possible in
120 terms of gender, age, race/ethnicity, or other classes protected under state or
121 federal law.
122

Section 5 – Career Service Status

HR05-1. Career Service Status.

- 1) Only an employee hired through a competitive, pre-approved HR process shall be eligible for appointment to a career service position.
- 2) An employee shall complete the probationary period defined in the job description prior to receiving career service status.

3) Effective July 1, 2022, the judicial branch will no longer create career service positions.

a) When a career service position is vacated for any reason, the position shall convert to career service exempt before announcing a vacancy, making an appointment, or selecting a candidate through a competitive process as described in HR04 governing provisions of filling positions.

b) A vacated career service position may continue to be a career service position only if management initiates a reassignment, as defined in HR01(110), of a career service employee to the vacant position consistent with HR04(5)(2).

4) An employee has the right to maintain previously attained career service status so long as the employee remains in the current career service position, or is moved by a management-initiated reassignment as described in HR05-1(3)(b).

5) When an employee initiates a move to a different position such as applying for and receiving a promotion as defined in HR01(105), applying and being selected for any other position vacancy, or requesting a transfer as defined in HR01(126), the employee shall convert to a career service exempt status.

~~3) Management may convert a career service exempt employee to career service status, in a position with an equal or lower salary range, when:~~

~~a) the employee previously held career service status with no break in service between the last career service position held and career service exempt status;~~
~~or~~

~~b) the employee was hired from a public hiring list to a career service exempt position, in the same job title to which they would convert, as prescribed by HR04-8.~~

HR05-2. Probationary Period.

The probationary period allows management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period is considered part of the selection process for career service.

1. An employee shall receive an opportunity to demonstrate competence in a career service position. Performance expectations shall be established and the employee should receive frequent feedback on performance in relation to those expectations.

- a) During the probationary period, an employee may be separated from state employment in accordance with [HR11-2\(1\)](#).
 - b) On or shortly before the end of the probationary period, management shall complete a formal, written evaluation of an employee's performance relative to established expectations.
 - c) At a minimum, the evaluation should indicate overall successful or unsuccessful completion of performance expectations during the probationary period.
 - d) Management shall give a copy of the written evaluation to the employee and to HR.
 - e) The evaluation shall be maintained in the personnel file.
2. Each career service position shall be assigned a probationary period consistent with its job.
 - a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, or donated leave from an approved leave bank; and extensions may only be granted in consultation with the court level administrator and the HR Director.
 - b) The probationary period for a position may not be reduced for an individual employee after the employee is hired into the position.
 - c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period for the judicial branch unless there is a break in service.
3. An employee in a career service position and works at least 20 hours per week/40 hours per pay period has the same probationary period as a full-time employee in the same or similar position.
 4. Employees in career service positions that normally work less than 20 hours per week or 40 hours per pay period may be subject to a longer probationary period established in writing by management in consultation with HR.
 5. An employee serving probation in a career service position may be ~~transferred,~~ reassigned, ~~or promoted~~ to another career service position ~~including a career mobility assignment as follows:~~
 - a) ~~Each new appointment~~Reassignment to a career service position shall include a new probationary period unless the court executive or court level administrator, in consultation with the HR director, determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period.
 - b) The probationary period shall be the full probationary period defined in the job description of the new position.

HR05-3. Career Service Exempt Positions.

Unclassified jobs identified in [HR06-3](#) are exempt from provisions of career service. Additionally, all vacant positions on July 1, 2022 or vacated after July 1, 2022 are exempt from provisions of career service. Employees are considered to be appointed, serving at the will and pleasure of

the judicial branch. ~~Additionally, the~~The following principles relating to the nature of the job also result in exemption from career service provisions whether or not the positions were vacated on or after July 1, 2022:

1. The employee reports directly to the state court administrator.
2. The employee is in a management position and reports directly to a court executive or a court level administrator.
 - a) Employees in a Clerk of Court or a Chief Probation Officer position prior to July 11, 2008, and had already attained career service status in those positions are considered "legacy career service" employees and retain career service status ~~until they choose to move to another career service exempt position.~~
 - b) ~~If a legacy~~The rights of "legacy career service" Clerks of Court ~~or and~~ Chief Probation Officers ~~s chooses to move into a different career service exempt position, the employee's career service rights end on the effective date of the move to the new position do not supercede, but are consistent with, the provisions of HR05-1(4) and HR05-1(5).~~
3. The employee is in a law clerk or an attorney position for the judicial branch.
4. The employee is an employee of the Information Technology Department.
 - a) Employees hired into the IT department prior to January 1, 2019, and who had already attained career service status are considered "legacy career service" employees and retain career service status ~~until they choose to move into a different career service exempt position.~~
 - b) ~~If The rights of a~~ "legacy career service" IT employee ~~chooses to move into a different career service exempt position, the employee's career service rights end on the effective date of the move to the new position~~does not supercede, but is consistent with, the provisions of HR05-1(4) and HR05-1(5).

Section 15 – Workplace Harassment Prevention

HR15-3. Complaint Procedure.

~~Management shall permit employees~~ Employees or judicial officers who allege workplace harassment, ~~discrimination, or retaliation, or both shall be permitted~~ to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

- 1) ~~Any employee~~ Employees or judicial officers who believe they have been subject to, have witnessed, or are aware of discrimination, harassment, or retaliation, by any employee, commissioner, judge or justice, individual or entity ~~is strongly encouraged to report the incident as described in this policy. Additionally, the employee~~ should do the following:
 - a) Document the occurrence;
 - b) Continue to report to work; and
 - c) Identify a witness or witnesses, if applicable.
- 2) All employees ~~and judicial officers~~ can report discrimination, harassment, or retaliation verbally or in writing by any of the following methods:
 - a) By contacting directly any supervisor or member of management with whom ~~the employee is~~ they are comfortable reporting such matters.
 - b) By contacting any member of the [Human Resources Department](#).
 - c) By contacting directly, any member of AOC management, including any court-level administrator.
 - d) By contacting the State Court Administrator, Deputy State Court Administrator, or Assistant State Court Administrator.
 - e) By contacting any commissioner, judge or justice.
 - f) By contacting any member of the ~~Management Committee~~ [Judicial Council](#), who shall immediately report the complaint to the ~~Council's~~ Management Committee.
- 3) Commissioners, judges, justices, court executives and administrators, supervisors and managers must report any complaints or misconduct under this policy promptly to an appropriate authority, including a [Human Resources representative](#) for further action.
- 4) ~~Upon receipt,~~ Human Resources ~~must shall~~ promptly respond to ~~any complaint~~ complaints of discrimination, harassment, or retaliation ~~by non-judicial officer employees~~ in compliance with investigative procedures and records requirements under [HR15-4](#) and [HR15-5](#).
 - a) ~~The HR Director or HR Manager shall review the complaint to determine whether the allegation(s) potentially violate prohibited behavior under HR15-1 and/or HR15-2.~~
 - i) ~~If potential violations of HR15-1 or HR15-2 are found, the HR Director or HR Manager shall seek authorization for a formal investigation as described in HR15-4.~~
 - ii) ~~If potential violations of HR15-1 or HR15-2 are not found, the HR Director or HR Manager shall notify the complainant and refer the matter to management for additional fact-finding administrative review as described in HR09-2(7)(a).~~

b) A complainant may submit a request to the State Court Administrator or Deputy State Court Administrator to independently review the complaint if the complainant disagrees with the HR notice that potential violations of HR15-1 or HR15-2 were not found.

5) Complaints against judicial officers of discrimination, harassment, or retaliation shall be referred promptly to the Management Committee of the Judicial Council, to be handled according to Council policies.

6) Information will be disclosed only on a need-to-know basis for the purpose of responding to the complaint. Participants in any workplace harassment, discrimination or retaliation investigation shall treat all information pertaining to the case as confidential.

4)7) At the conclusion of the response to the complaint, all relevant parties will be notified.

HR15-4. Investigative Procedure.

Investigations Allegations against Non-Judicial Officer Employees

1) When allegations investigations of workplace harassment, discrimination, or retaliation in violation of HR15-1 or HR15-2 against a non-judicial officer employee are submitted as described in HR15-3, an investigation shall be conducted by the HR Department, Legal Department, or an external third party as follows: by the HR Department and/or others designated by the HR Director based on HR standards and business practices.

a) The HR Director may authorize an investigation in consultation with the State Court Administrator, Deputy Court Administrator, and/or General Counsel. Investigations shall be authorized by the State Court Administrator, Deputy Court Administrator, or General Counsel.

b) Investigators shall normally be appointed by the Director or Manager of Human Resources, but may alternatively be appointed by the State Court Administrator, Deputy Court Administrator, and/or General Counsel as needed.

c) External third-party investigators may include but are not limited to personnel from the Utah Department of Government Operations, Divisions of Risk Management and Human Resource Management.

d) Costs for third party investigations shall be the responsibility of the judicial branch.

e) Management may place the accused on reassignment, under special instructions, and/or on paid administrative leave pending an investigation.

~~— Allegations of workplace harassment against a judicial officer may be investigated by the HR Department when authorized by the Judicial Council.~~

~~— Management or The presiding or associate presiding judicial officer judge of the court action in due diligence to may place the accused on reassignment, under special instructions, and/or on paid administrative leave pending an investigation in accordance with Code of Judicial Administration rule 3-104.~~

f) Investigators shall perform investigative procedures as neutral parties in a fact-

finding capacity.

- i) Basic investigative procedures often may include, but are not limited to, the following:

~~(1) Management or presiding judicial officer action in due diligence to place the accused on reassignment, under special instructions, and/or on paid administrative leave pending an investigation;~~

(1) Intake interview with the complainant and identification of potential witnesses;

(2) Witness interviews;

(3) Interview with the accused;

(4) Examination of evidence;

(5) Written report of findings.

- ii) Investigators shall report findings and analyses of potential policy violations to appropriate parties as identified in HR15-4(3) and HR15-4(4) at the conclusion of the investigation process.

iii) Investigators are authorized only to conduct fact-finding procedures related to the allegations. Investigators are not authorized to determine specific administrative or employment action against the accused, but may offer recommendations if requested by the party or parties holding decision-making authority.

Allegations against Judicial Officers

2) When allegations of workplace harassment, discrimination or retaliation in violation of HR15-1 or HR15-2 against a judicial officer are submitted as described in HR15-3, a limited investigation shall be conducted for the purpose of assisting the Judicial Council's Management Committee on whether the allegations have sufficient merit to be referred to the Judicial Conduct Commission (JCC), the Court Commissioner Conduct Committee (CCCC), or another appropriate party. Limited investigations shall be conducted by the HR Department, Legal Department, or an external third party as follows:

- a) Investigations shall be authorized by the Judicial Council or its Management Committee if timely authorization is feasible, but may alternatively be authorized by the Chair or Vice Chair of the Management Committee.
- b) Investigators are normally assigned by the Director or Manager of Human Resources, but may be assigned by the State Court Administrator or Deputy Court Administrator, or General Counsel as designated by the party authorizing the investigation under HR15-4(2)(a).
- c) External third-party investigators may include but are not limited to personnel from the Utah Department of Government Operations, Divisions of Risk Management and Human Resource Management.
- d) Costs for third party investigations shall be the responsibility of the judicial branch.
- e) Investigators shall be neutral parties in a limited fact-finding capacity. The scope of investigative authority under this policy excludes interviews of judicial officers unless expressly authorized by the Chair or Vice Chair of the Management Committee. The investigative process includes but is not limited to:
- i) Conducting an intake interview with the complainant(s);
- ii) Gathering names and contact information of potential witnesses;
- iii) Conducting interviews or gathering statements from witnesses;

- iv) Collecting any other form of available evidence from complainant(s) and witnesses;
v) Analyzing allegations and evidence against policy;
vi) Producing a written report of findings.
f) Investigators shall be limited to determining whether the allegation(s) and supporting evidence, if any, from non-judicial officer interviews and fact-finding are sufficient or insufficient to reasonably suggest misconduct in violation of this policy.
g) Investigators are not authorized to substantiate any alleged misconduct of a judicial officer, nor to determine or attempt to determine whether or not a judicial officer actually violated the policy under this section.

Investigation Results for Allegations against Non-Judicial Officer Employees

~~2)3)~~ Results of investigations shall be handled as follows:

- a) A written report shall be provided in writing to management. If the investigators find the allegations to be sustained, management shall take appropriate administrative action.
b) If the investigators find the allegations to be substantiated, management shall take appropriate administrative action in consultation with the Human Resources Department or Legal Department.
i) or, in accordance with Code of Judicial Administration rule 3-104 the
b)c) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the court executive or court level administrator may refer the matter to the appropriate law enforcement agency.
d) At the conclusion of the investigation, the appropriate parties, including but not limited to the complainant and the accused, shall be notified including but not limited to the complainant and the accused that the investigation is complete.

Investigation Results for Allegations against Judicial Officers

4) Results of investigations shall be handled as follows:

- a) A written report shall be provided in writing to the judicial officer's Presiding Judge (or to the Chief Justice if the accused is a Presiding Judge), the State Court Administrator, and the party authorizing the investigation under HR15-4(2)(a), unless otherwise directed by the party authorizing the investigation.
e) If investigators find there is "sufficient merit" to the allegations as described in HR15-4(2), the State Court Administrator shall submit the report to the Management Committee of the Judicial Council for further consideration in accordance with Council policies.

3)–

Interviews

4)5) Interview procedures shall be handled as follows:

- a) Interviewees are required to answer truthfully to all questions asked by the authorized investigators related to their job performance and functions or possible violations of policies, procedures, and/or regulations.
b) Employees are allowed to have a representative present during an interview if desired. The employee is responsible to request representation. The

Commented [B01]: For logistical and practical purposes, in absence of a traditional management reporting structure, we recommend the MC or JC designate a representative from the MC or JC to act as the managing spokesperson between the MC/JC and the accused judicial officer for the duration of the case until it is completely resolved.

representative may be another employee that has no involvement in the alleged conduct, a private attorney retained by the employee, or a representative from an employee association.

- i) If representation is requested, an interview may be paused until representation arrives or postponed up to 48 hours to allow the representative to be present.
 - ii) ~~The representative or employee may record the interview after giving notice to the interviewer that the interview is being recorded. In general, interviews are not recorded. However, the representative or employee may record the interview(s) pursuant to UCA §77-23a-4(7).~~
 - iii) The representative may assist the employee by consulting with the employee prior to the interview and may assist the employee during the interview by asking the interviewer to clarify a question. The representative may not tell an employee what to say in response to a question nor unduly interrupt or otherwise interfere with the ~~investigator's~~ interviewer's ability to conduct the interview.
 - iv) If the investigator ~~believes~~ determines the representative is interfering with the integrity of the interview and/or the investigator's ability to conduct the interview, the ~~representative investigator~~ may ~~be removed from pause or terminate~~ the interview to consult with administration or legal counsel on next steps.
- c) When necessary to protect the integrity of the investigation, an investigator may order an employee not to disclose the contents or matters discussed in an investigative interview. Disregarding this order may be grounds for disciplinary action.
- d) When requested by the investigator, employees must provide evidence (testimonial or non-testimonial) related to the incident being investigated. Refusal to do so may be grounds for disciplinary action.

HR15-6. Harassment, Discrimination, and Retaliation Prevention Training.

1. The Human Resources Department shall provide ~~employees training on the prevention of workplace harassment, discrimination, and retaliation to employees, management, and judicial officers. including additional training for supervisors, on the prevention of workplace harassment.~~
- a) The curriculum shall be approved by the Division of Risk Management and/or General Counsel of the Administrative Office of the Courts.
- b) ~~Management shall ensure employees~~ Employees shall complete workplace harassment prevention training for employees within a reasonable time upon hire and ~~at least every two calendar years~~ thereafter.
- c) Employees in supervisory positions shall complete prevention training for supervisors upon first-time placement in a supervisory position and every calendar year thereafter.
- d) Judicial officers shall complete training within a reasonable time upon appointment to the bench and every calendar year thereafter.
- e) Training records shall be submitted to the Judicial Institute and the HR Department including the name(s) of training facilitator(s), names of attendees, and the date of training completion.

243 ~~b) Training records shall be submitted to the Education Department and/or to the HR~~
244 ~~Department including who provided the training, who attended the training, and when~~
245 ~~they attended it.~~
246
247

Section 15 – Workplace Harassment Prevention

HR15-3. Complaint Procedure.

Employees or judicial officers who allege workplace harassment, discrimination, or retaliation, shall be permitted to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

- 1) Employees or judicial officers who believe they have been subject to, have witnessed, or are aware of discrimination, harassment, or retaliation, by any employee, commissioner, judge or justice, individual or entity should do the following:
 - a) Document the occurrence;
 - b) Continue to report to work; and
 - c) Identify a witness or witnesses, if applicable.
- 2) All employees and judicial officers can report discrimination, harassment, or retaliation verbally or in writing by any of the following methods:
 - a) By contacting directly any supervisor or member of management with whom they are comfortable reporting such matters.
 - b) By contacting any member of the [Human Resources Department](#).
 - c) By contacting directly, any member of AOC management, including any court-level administrator.
 - d) By contacting the State Court Administrator, Deputy State Court Administrator, or Assistant State Court Administrator.
 - e) By contacting any commissioner, judge or justice.
 - f) By contacting any member of the [Judicial Council](#), who shall immediately report the complaint to the Council's Management Committee.
 - g) Commissioners, judges, justices, court executives and administrators, supervisors and managers must report any complaints or misconduct under this policy promptly to an appropriate authority, including a [Human Resources representative](#) for further action.
 - h) Human Resources shall promptly respond to complaints of discrimination, harassment, or retaliation by non-judicial officer employees in compliance with investigative procedures and records requirements under [HR15-4](#) and [HR15-5](#).
 - i) The HR Director or HR Manager shall review the complaint to determine whether the allegation(s) potentially violate prohibited behavior under HR15-1 and/or HR15-2.
 - i) If potential violations of HR15-1 or HR15-2 are found, the HR Director or HR Manager shall seek authorization for a formal investigation as described in HR15-4.
 - ii) If potential violations of HR15-1 or HR15-2 are not found, the HR Director or HR Manager shall notify the complainant and refer the matter to management for additional fact-finding administrative review as described in HR09-2(7)(a).
 - j) A complainant may submit a request to the State Court Administrator or Deputy State Court Administrator to independently review the complaint if the

complainant disagrees with the HR notice that potential violations of HR15-1 or HR15-2 were not found.

- 3) Complaints against judicial officers of discrimination, harassment, or retaliation shall be referred promptly to the Management Committee of the Judicial Council, to be handled according to Council policies.
- 4) Information will be disclosed only on a need-to-know basis for the purpose of responding to the complaint. Participants in any workplace harassment, discrimination or retaliation investigation shall treat all information pertaining to the case as confidential.
- 5) At the conclusion of the response to the complaint, all relevant parties will be notified.

HR15-4. Investigative Procedure.

Allegations against Non-Judicial Officer Employees

- 1) When allegations of workplace harassment, discrimination, or retaliation in violation of HR15-1 or HR15-2 against a non-judicial officer employee are submitted as described in HR15-3, an investigation shall be conducted by the HR Department, Legal Department, or an external third party as follows:
 - a) Investigations shall be authorized by the State Court Administrator, Deputy Court Administrator, or General Counsel.
 - b) Investigators shall normally be appointed by the Director or Manager of Human Resources, but may alternatively be appointed by the State Court Administrator, Deputy Court Administrator, and/or General Counsel as needed.
 - c) External third-party investigators may include but are not limited to personnel from the Utah Department of Government Operations, Divisions of Risk Management and Human Resource Management.
 - d) Costs for third party investigations shall be the responsibility of the judicial branch.
 - e) Management may place the accused on reassignment, under special instructions, and/or on paid administrative leave pending an investigation;
 - f) Investigators shall perform investigative procedures as neutral parties in a fact-finding capacity.
 - i) Basic investigative procedures may include, but are not limited to, the following:
 - (1) Intake interview with the complainant and identification of potential witnesses;
 - (2) Witness interviews;
 - (3) Interview with the accused;
 - (4) Examination of evidence;
 - (5) Written report of findings.
 - ii) Investigators shall report findings and analyses of potential policy violations to appropriate parties as identified in HR15-4(3) and HR15-4(4) at the conclusion of the investigation process.
 - iii) Investigators are authorized only to conduct fact-finding procedures related to the allegations. Investigators are not authorized to determine specific administrative or employment action against the accused, but may offer recommendations if requested by the party or parties holding decision-

98 making authority.
99

100 **Allegations against Judicial Officers**

101

- 102 2) When allegations of workplace harassment, discrimination or retaliation in violation of
103 HR15-1 or HR15-2 against a judicial officer are submitted as described in HR15-3, a
104 limited investigation shall be conducted by the HR Department, Legal Department, or an
105 external third party as follows:
- 106 a) Investigations shall be authorized by the Judicial Council or its Management
107 Committee if timely authorization is feasible, but may alternatively be authorized
108 by the Chair or Vice Chair of the Management Committee.
 - 109 b) Investigators are normally assigned by the Director or Manager of Human
110 Resources, but may be assigned by the State Court Administrator or Deputy
111 Court Administrator, or General Counsel as designated by the party authorizing
112 the investigation under HR15-4(2)(a).
 - 113 c) External third-party investigators may include but are not limited to personnel from
114 the Utah Department of Government Operations, Divisions of Risk Management
115 and Human Resource Management.
 - 116 d) Costs for third party investigations shall be the responsibility of the judicial branch.
 - 117 e) Investigators shall be neutral parties in a fact-finding capacity with limited scope.
118 Investigative authority includes:
 - 119 i) Conducting an intake interview with the complainant(s);
 - 120 ii) Gathering names and contact information of potential witnesses;
 - 121 iii) Conducting interviews or gathering statements from witnesses;
 - 122 iv) Collecting any other form of available evidence from complainant(s) and
123 witnesses;
 - 124 v) Analyzing allegations and evidence against policy;
 - 125 vi) Producing a written report of findings.
 - 126 f) Investigators may not conduct interviews with the accused judicial officer(s).
 - 127 g) Investigators shall be limited to determining whether or not the allegations would
128 have sufficient merit to constitute a policy violation, in theory, if the allegations
129 were substantiated.
 - 130 h) Investigators are not authorized to substantiate any alleged misconduct of a
131 judicial officer, nor to determine or attempt to determine whether or not a judicial
132 officer actually violated the policy under this section.
- 133

134 **Investigation Results for Allegations against Non-Judicial Officer Employees**

- 135 3) Results of investigations shall be handled as follows:
- 136 a) A written report shall be provided in writing to management.
 - 137 b) If the investigators find the allegations to be substantiated, management shall take
138 appropriate administrative action in consultation with the Human Resources
139 Department or Legal Department.
 - 140 c) If an investigation reveals evidence of criminal conduct in workplace harassment
141 allegations, the court executive or court level administrator may refer the matter to
142 the appropriate law enforcement agency.
 - 143 d) At the conclusion of the investigation, the appropriate parties, including but not
144 limited to the complainant and the accused, shall be notified that the investigation
145 is complete.

146
147 **Investigation Results for Allegations against Judicial Officers**
148

- 149 4) Results of investigations shall be handled as follows:
- 150 a) A written report shall be provided in writing to the judicial officer's Presiding Judge
 - 151 (or to the Chief Justice if the accused is a Presiding Judge), the State Court
 - 152 Administrator, and the party authorizing the investigation under HR15-4(2)(a),
 - 153 unless otherwise directed by the party authorizing the investigation.
 - 154 b) If investigators find there is "sufficient merit" to the allegations as described in
 - 155 HR15-4(2)(e)(iii), the State Court Administrator shall submit the report to the
 - 156 Management Committee of the Judicial Council for further consideration in
 - 157 accordance with Council policies.

158 **Interviews**
159

- 160 5) Interview procedures shall be handled as follows:
- 161 a) Interviewees are required to answer truthfully to all questions asked by the
 - 162 authorized investigators.
 - 163 b) Employees are allowed to have a representative present during an interview if
 - 164 desired. The employee is responsible to request representation. The
 - 165 representative may be another employee that has no involvement in the alleged
 - 166 conduct, a private attorney retained by the employee, or a representative from an
 - 167 employee association.
 - 168 i) If representation is requested, an interview may be paused until
 - 169 representation arrives or postponed up to 48 hours to allow the
 - 170 representative to be present.
 - 171 ii) The representative or employee may record the interview after giving notice
 - 172 to the investigator that the interview is being recorded.
 - 173 iii) The representative may assist the employee by consulting with the
 - 174 employee prior to the interview and may assist the employee during the
 - 175 interview by asking the interviewer to clarify a question. The representative
 - 176 may not tell an employee what to say in response to a question nor unduly
 - 177 interrupt or otherwise interfere with the investigator's ability to conduct the
 - 178 interview.
 - 179 iv) If the investigator believes the representative is interfering with the integrity
 - 180 of the interview and/or the investigator's ability to conduct the interview, the
 - 181 investigator may pause or terminate the interview to consult with
 - 182 administration or legal counsel on next steps.
 - 183 c) When necessary to protect the integrity of the investigation, an investigator may
 - 184 order an employee not to disclose the contents or matters discussed in an
 - 185 investigative interview. Disregarding this order may be grounds for disciplinary
 - 186 action.
 - 187 d) When requested by the investigator, employees must provide evidence
 - 188 (testimonial or non-testimonial) related to the incident being investigated. Refusal
 - 189 to do so may be grounds for disciplinary action.
 - 190 e) The accused may make a written request for records of the interview in accordance
 - 191 with HR15-5 and UCJA 4-202.02.
 - 192

HR15-6. Harassment, Discrimination, and Retaliation Prevention Training.

1. The Human Resources Department shall provide training on the prevention of workplace harassment, discrimination, and retaliation to employees, management, and judicial officers.
 - a) The curriculum shall be approved by the Division of Risk Management and/or General Counsel of the Administrative Office of the Courts.
 - b) Employees shall complete prevention training for employees within a reasonable time upon hire and every calendar year thereafter.
 - c) Employees in supervisory positions shall complete prevention training for supervisors upon first-time placement in a supervisory position and every calendar year thereafter.
 - d) Judicial officers shall complete training within a reasonable time upon appointment to the bench and every calendar year thereafter.
 - e) Training records shall be submitted to the Judicial Institute and the HR Department including the name(s) of training facilitator(s), names of attendees, and the date of training completion.

Section 16 – Abusive Conduct Prevention**HR16-2. Complaint Procedure.**

~~Management shall permit an employee who alleges~~ Employees or judicial officers who allege abusive conduct shall be permitted to file a complaint and engage in a review process free from bias, collusion, intimidation or retaliation.

- 1) ~~An employee~~ Employees or judicial officers who believes they are being subjected to abusive conduct should do the following:
 - a) Document the occurrence;
 - b) Continue to report to work; and
 - c) Identify a witness or witnesses, if applicable.
- 2) A non-judicial officer employee ~~shall file-submit~~ a written complaint of abusive conduct with the immediate supervisor, any person in a supervisory or management position in the judicial branch regardless of reporting relationship, any commissioner, judge, or justice, or anyone in the [Human Resources Department](#).
 - a) Complaints may be submitted by any employee, witness, volunteer or other individual.
 - b) Any supervisor who has knowledge of abusive conduct shall take immediate, appropriate action in consultation with the HR Department and document the action.
- 3) A judicial officer who believes they are being subjected to abusive conduct shall ~~file-submit~~ a written complaint directly to any member of the Judicial Council, who shall immediately report the complaint to the Management Committee.
- 4) Human Resources shall promptly respond to complaints of abusive conduct by non-judicial officer employees in compliance with investigative procedures and records requirements under HR16-3 and HR16-4.
 - a) The HR Director or HR Manager shall review the complaint to determine whether the allegation(s) potentially violate prohibited behavior under HR16-1.
 - i) If potential violations of HR16-1 are found, the HR Director or HR Manager shall seek authorization for a formal investigation as described in HR16-3.
 - ii) If potential violations of HR16-1 are not found, the HR Director or HR Manager shall notify the complainant and refer the matter to management for additional fact-finding administrative review as described in HR09-2(7)(a).
 - b) A complainant may submit a request to the State Court Administrator or Deputy State Court Administrator to independently review the complaint if the complainant disagrees with the HR notice that potential violations of HR16-1 were not found.
- 5) Complaints of abusive conduct by judicial officers shall be referred promptly to the Management Committee of the Judicial Council, to be handled according to Council policies.

Commented [B01]: This differs from the harassment policy because requirements in code are different. Harassment laws require employers to allow verbal and written complaints. Utah's abusive conduct code defines an abusive conduct complaint as a complaint submitted in writing.

~~4)6)~~ Information will be disclosed only on a need-to-know basis for the purpose of responding to the complaint. At the conclusion of the response to the complaint, all relevant parties will be notified.

HR16-3. Investigative Procedures~~s~~.

Investigators

~~1) When warranted due to~~ allegations of abusive conduct in violation of HR16-1 against a non-judicial officer employee are submitted as described in HR16-2, ~~investigations~~ an investigation shall be conducted by the HR Department, Legal Department, or an external third party consistent with provisions set forth in HR15-4 governing procedures for allegations against non-judicial officer employees.

~~2) When allegations of abusive conduct in violation of HR16-1 against judicial officers are submitted as described in HR16-2, a limited investigation shall be conducted by the HR Department, Legal Department, or an external third party consistent with provisions set forth in HR15-4 governing procedures for allegations against judicial officers.~~

~~1) based on HR standards and business practices.~~

~~1) Allegations of abusive conduct by non-judicial officer employees shall be conducted by investigators in the HR Department.~~

~~2) Allegations of abusive conduct by judicial officers shall be referred immediately to the Judicial Council and handled in accordance with policies of the Judicial Council. An investigation may be conducted by the HR Department if specifically requested by the Judicial Council.~~

~~3)–~~

~~4) Investigation Results~~

~~5) Results of investigations conducted by the HR Department shall be handled as follows:~~

~~6) A written report shall be produced and given to management or to the Judicial Council as appropriate, with an analysis of evidence gathered and a determination of whether allegations of abusive conduct are sustained or not sustained.~~

~~7) If the allegations of abusive conduct are sustained for non-judicial officer employees, appropriate administrative action will be taken by management.~~

~~8) If the allegations of abusive conduct are sustained for judicial officers, the Judicial Council will proceed in accordance with its policies.~~

~~9) If an investigation reveals evidence of criminal conduct in abusive conduct allegations, the court executive, court level administrator, or presiding officer of the Judicial Council may refer the matter to the appropriate law enforcement agency.~~

~~10) At the conclusion of the investigation, the appropriate parties shall be notified of investigative findings and the procedure to request an administrative review of findings through the Grievance Review Panel under HR17.~~

~~11)–~~

~~12) Participants in any abusive conduct investigation shall treat all information pertaining to the case as confidential.~~

~~13)–~~

~~14) Interviews~~

~~15)–~~

~~16) Interview procedures shall be handled as follows:~~

- ~~17) Interviewees are required to answer truthfully to all questions related to their job performance and functions or possible violations of policies, procedures, and/or regulations.~~
- ~~18) Employees are allowed to have a representative present during an interview if desired. The employee is responsible to request representation. The representative may be another employee that has no involvement in the alleged conduct, a private attorney retained by the employee, or a representative from an employee association.~~
- ~~19) If representation is requested, an interview may be paused until representation arrives or postponed up to 48 hours to allow the representative to be present.~~
- ~~20) The representative or employee may record the interview after giving notice to the interviewer that the interview is being recorded.~~
- ~~21) The representative may assist the employee by consulting with the employee prior to the interview and may assist the employee during the interview by asking the interviewer to clarify a question. The representative may not tell an employee what to say in response to a question nor unduly interrupt or otherwise interfere with the interviewer's ability to conduct the interview.~~
- ~~22) If the investigator determines the representative is interfering with the integrity of the interview and/or the investigator's ability to conduct the interview, the representative may be removed from the interview.~~
- ~~23) When necessary to protect the integrity of the investigation, an investigator may order an employee not to disclose the contents or matters discussed in an investigative interview. Disregarding this order may be grounds for disciplinary action.~~
- ~~24) When requested by the investigator, employees must provide evidence (testimonial or non-testimonial) related to the incident being investigated. Refusal to do so may be grounds for disciplinary action.~~
- ~~25) 3) The subject of an interview may make a written request for records of the interview in accordance with HR16-5 and UCJA 4-202.02.~~

HR16-4. Abusive Conduct Prevention Training.

1. The Human Resources Department shall provide ~~employees and supervisors~~ training on the prevention of abusive conduct to employees, management, and judicial officers.
 - a) Training shall include information regarding what constitutes abusive conduct, how to prevent it, options available under this policy, and grievance procedures provided by HR17.
 - ~~b) Management shall ensure employees~~ Employees shall complete prevention training for employees within a reasonable time ~~after upon~~ hire and at least every calendar year thereafter.
 - c) Employees in supervisory positions shall complete prevention training for supervisors upon first-time placement in a supervisory position and every calendar year thereafter.
 - d) Judicial officers shall complete training within a reasonable time upon appointment to the bench and every calendar year thereafter.
 - e) Training records shall be submitted to the Judicial Institute and the HR Department including the name(s) of training facilitator(s), names of attendees, and the date of training completion.
 - ~~b)f)~~

HR16-2, HR16-3

Redline from current HR Policy effective July 1, 2021

144 e)g) Training records shall be submitted to the Education Department and/or
145 to the HR Department including who provided the training, who attended the
146 training, and when they attended it.

Section 16 – Abusive Conduct Prevention

HR16-2. Complaint Procedure.

Employees or judicial officers who allege abusive conduct shall be permitted to file a complaint and engage in a review process free from bias, collusion, intimidation or retaliation.

- 1) Employees or judicial officers who believe they are being subjected to abusive conduct should do the following:
 - a) Document the occurrence;
 - b) Continue to report to work; and
 - c) Identify a witness or witnesses, if applicable.
- 2) A non-judicial officer employee shall submit a written complaint of abusive conduct with the immediate supervisor, any person in a supervisory or management position in the judicial branch regardless of reporting relationship, any commissioner, judge, or justice, or anyone in the [Human Resources Department](#).
 - a) Complaints may be submitted by any employee, witness, volunteer or other individual.
 - b) Any supervisor who has knowledge of abusive conduct shall take immediate, appropriate action in consultation with the HR Department and document the action.
- 3) A judicial officer who believes they are being subjected to abusive conduct shall submit a written complaint directly to any member of the Judicial Council, who shall immediately report the complaint to the Management Committee.
- 4) Human Resources shall promptly respond to complaints of abusive conduct by non-judicial officer employees in compliance with investigative procedures and records requirements under HR16-3 and HR16-4.
 - a) The HR Director or HR Manager shall review the complaint to determine whether the allegation(s) potentially violate prohibited behavior under HR16-1.
 - i) If potential violations of HR16-1 are found, the HR Director or HR Manager shall seek authorization for a formal investigation as described in HR16-3.
 - ii) If potential violations of HR16-1 are not found, the HR Director or HR Manager shall notify the complainant and refer the matter to management for additional fact-finding administrative review as described in HR09-2(7)(a).
 - b) A complainant may submit a request to the State Court Administrator or Deputy State Court Administrator to independently review the complaint if the complainant disagrees with the HR notice that potential violations of HR16-1 were not found.
- 5) Complaints of abusive conduct by judicial officers shall be referred promptly to the Management Committee of the Judicial Council, to be handled according to Council policies.

- 48 6) Information will be disclosed only on a need-to-know basis for the purpose of responding
49 to the complaint. At the conclusion of the response to the complaint, all relevant parties
50 will be notified.

51 **HR16-3. Investigative Procedures**

- 52
53
54 1) When allegations of abusive conduct in violation of HR16-1 against a non-judicial
55 officer employee are submitted as described in HR16-2, an investigation shall be
56 conducted by the HR Department, Legal Department, or an external third party
57 consistent with provisions set forth in HR15-4 governing procedures for allegations
58 against non-judicial officer employees.
59 2) When allegations of abusive conduct in violation of HR16-1 against judicial officers are
60 submitted as described in HR16-2, a limited investigation shall be conducted by the
61 HR Department, Legal Department, or an external third party consistent with
62 provisions set forth in HR15-4 governing procedures for allegations against judicial
63 officers.
64

65 **HR16-4. Abusive Conduct Prevention Training.**

- 66
67 1. The Human Resources Department shall provide training on the prevention of abusive
68 conduct to employees, management, and judicial officers.
69 a) Training shall include information regarding what constitutes abusive conduct, how to
70 prevent it, options available under this policy, and grievance procedures provided by
71 [HR17](#).
72 b) Employees shall complete training within a reasonable time upon hire and at least
73 every calendar year thereafter.
74 c) Management shall complete training upon first-time placement in a supervisory
75 position and every calendar year thereafter.
76 d) Judicial officers shall complete training within a reasonable time upon appointment to
77 the bench and every calendar year thereafter.
78
79 2. Training records shall be submitted to the Judicial Institute and the HR Department
80 including the name(s) of training facilitator(s), names of attendees, and the date of training
81 completion.

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

Intent:

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

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Complaints Regarding Judges and State Court Employees.

(3)(A) **Judicial Officers.** The Management Committee is authorized to receive, review, and investigate complaints regarding the conduct or performance of any judicial officer. ~~After completing the investigation it deems appropriate, the~~ Management Committee may refer the complaint and make recommendations to the appropriate presiding judge or to the Judicial Council. The Judicial Council shall decide whether to refer the complaint to the Judicial Conduct Commission. Nothing in this rule prevents any individual from filing a complaint directly with the Judicial Conduct Commission.

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

(4) Consultation Regarding Personnel and Related Matters.

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

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

(5) Confidentiality. The work performed by the Supreme Court, the Performance Review Committee or the Management Committee pursuant to this rule shall be kept confidential

103 and shall not be disclosed until (1) disclosure is required by this rule, or (2) disclosure is
104 required by applicable law.

105

|106 *Effective May**November* 1, 202~~2~~*1*

Section 9 – Employee Code of Ethics and Conduct

HR09-9. Professional Appearance

- 1) Employees of the judicial branch are expected to comply with the following professional responsible to adhere to dress and grooming standards; as established by management.
- a) Clothing should be neat, clean and appropriate for the business environment. General professional attire and appearance standards are located here.
- i) Written messages on clothing should be avoided, although minimal brand/logo writing may be considered acceptable, subject to management discretion.
- ii) Management may exercise reasonable discretion to require that staff wear traditional business or business casual attire (e.g., suit/tie, sport coat/slacks and button down shirt, dress or blouse/skirt, etc. as determined appropriate by management and in consultation with the presiding judicial officer as needed) to meetings, court hearings, or other events as needed.
- iii) Management may designate certain days, events, or circumstances when a dress standard more casual than normal is allowed.
- b) Exceptions to these standards may be made by a court executive or designee, or court level administrator or designee. Perfumes or colognes should be avoided if possible or used sensitively in moderation considering individuals sensitive to strong fragrances.
- a)c) Table 1 is provided as a guideline, giving suggested examples of appropriate business attire and attire not usually recommended.

Table 1.

Appropriate Attire	Not Recommended
<u>Dress slacks/khaki-style pants</u>	<u>Tank-top or halter top</u>
<u>Dress shirt (button-down long or short sleeved) or blouse</u>	<u>Strapless or spaghetti strap dress/shirt</u>
<u>Polo or golf-style shirt</u>	<u>Shorts</u>
<u>Sweater</u>	<u>Hat</u>
<u>Dress</u>	<u>Beach-style flip flops</u>
<u>Skirt</u>	<u>Athletic slides</u>
<u>Jeans/sneakers (casual day or event only)</u>	<u>Tee shirt</u>

- 2) Exceptions to these standards may be made on a case by case basis by management, in consultation with an appropriate judicial officer with authority over a courtroom or courthouse, as needed.
- 3) Requests for exceptions to this policy to accommodate religious beliefs, health conditions

34 or disabilities should be referred immediately to a member of the HR Department.
35 2)4) Employees may safely comply with this policy in a manner consistent with their
36 gender identity, gender expression, etc., with protections under HR15 and HR16.
37
38

Section 17 – Grievance and Appeal

HR17-9. Grievance Review Panel.

Panel Membership

- 1) A grievance review panel is established consistent with [UCJA §3-402\(6\)](#). The panel includes Court Level Administrators of Juvenile, District, and Appellate Courts, and the Assistant Court Administrator.
- 2) In consultation with the State Court Administrator or General Counsel, if a ~~Court Level Administrator~~ ~~from member of~~ the panel is unable or unavailable to participate in a grievance review, or is the subject of the grievance brought to the panel, a designee may be appointed by the HR Director or HR Manager.

Panel Procedures

- 3) The HR Department shall notify panel membership established in [HR17-9\(1\)](#) of the request for a Level 4 review within five (5) business days of receipt of the request.
- 4) The grievance review panel shall have 15 business days to establish a grievance review meeting date with grievant.
 - a) The grievance review meeting date shall be set no later than 30 calendar days after the panel receives the request for a Level 4 review unless mutually agreed upon by grievant and the panel.
 - b) A representative assistant may be appointed by the panel to coordinate and communicate logistics such as date, time, meeting location, etc.
- 5) Grievant shall have an opportunity to present relevant facts and ~~for~~ evidence to the panel during the grievance review meeting.
- 6) The panel shall consider the following items in its review of the employment action being grieved:
 - a) The testimony of grievant, relevant evidence, witness statements, and so forth as described in HR17-1(5) and HR17-1(6).
 - b) Testimony, relevant evidence, witness statements and so forth provided by individuals with decision-making authority over grievant at the time the action being grieved was taken.
 - c) Relevant organization policies, including but not limited to the human resources policies in this manual.
- 7) The panel shall have 10 business days following the grievance review meeting to issue a written review of the employment action being grieved, and shall provide a copy to the HR Director, General Counsel, and State Court Administrator.
- 8) The panel's written review shall include the following:
 - a) An analysis of all information presented to the panel during the grievance review process from grievant and other relevant stakeholders such as grievant's line of

management, including credibility analyses of testimony and evidence, if applicable.

b) An analysis of relevant human resources policies, including discretionary factors under HR11-3 for disciplinary actions, and the degree to which the panel believes the action being grieved complies with or does not comply with those policies.

c) The recommended course of action to remedy noncompliance, if the panel believes the action being grieved does not comply with relevant human resources policies.

9) The State Court Administrator (SCA) or designee shall have 10 business days to certify the panel's written review.

a) If the SCA or designee agrees with the panel's written review, the SCA or designee shall issue a written consent and send a copy of the review and consent to grievant, the grievance review panel, and to the HR Director.

b) If the SCA or designee disagrees with the panel's written review, the SCA or designee shall issue a written dissent to the grievance review panel and to the HR Director. In this event, the SCA or designee will issue a final written decision to grievant with a copy to the HR Director.

~~6) The panel shall have 15 business days following the grievance review meeting to consider facts and/or evidence presented and issue a written decision, including the reasons for the decision, and shall provide a copy to grievant and to the HR Director.~~

~~7)–~~

~~8)10) The certified consenting or dissenting decision of the SCA or designee is considered final.~~

~~The decision of the grievance review panel is considered final.~~

HR01. Definitions.

(97) **“Prohibited Political Activity”**: Running for or holding political or elective public office; making or influencing governmental policy unrelated to the performance of official court responsibilities; active support of a partisan or special interest public policy agenda; or any activity that violates HR09-12.

HR09-12. Political Activity.

An employee may only participate in political activity that does not jeopardize the confidence of the public or of government officials in the impartiality of the judicial branch of government.

Prohibited political activity includes, but is not limited to:

- 1) Political activity which conflicts with or otherwise affects the mission and activities of the judicial branch;
- 2) Running for, being appointed to, or holding an elected office at any level of government;
- 3) Serving on boards, councils, committees, or other entities in the executive or legislative branches, unless the entity deals with the law, the legal system, or the administration of justice (applicable at both the state and local levels);
- 4) Membership in an organization that practices unlawful discrimination;
- 5) Political activity during work hours, unless on management-approved leave;
- 6) Use of any state owned equipment, supplies or resources when engaged in political activity;
- 7) Discriminatione in favor of or against any person, including but not limited to court patrons, employees, or applicants for employment, based on political activities; and
- 8) Use of any information related to employment in the judicial branch while engaging in political activity, including but not limited to the employee’s job title, position, assignments or activities as an employee of the judicial branch.

~~9)~~ Trial Court Executives, directors, court administrators, and other employees in policy-making positions may be subject to additional restrictions on political activity. If there is a question about further restrictions, prior to engaging in such activity, the employee must submit the information to the HR director and the employee’s supervisor who will seek a legal opinion from the AOC General Counsel’s Office before approval, denial or conditional approval.

Political and religious statements, displays, and discussions are prohibited in areas visible to or within earshot of the public. Employees should exercise caution with political and religious displays, statements, and discussions in all other areas of the workplace. Displays, statements, or discussions that violate Utah Judicial Branch HR Policies are expressly prohibited. Employees and judicial officers shall carry out their responsibilities behaving with dignity, respect, and professionalism toward coworkers, management, court patrons, and the public, and shall not engage in discrimination, harassment, or abusive conduct.

TAB 10

CJA 1-204. Executive committees

CJA 1-205. Standing and ad hoc committees

Notes: Per the Judicial Council's direction at its April 25th meeting, Policy and Planning will be renamed the "Policy, Planning, and Technology Committee." The committee will now review and recommend technology policies and priorities, and the Standing Technology Committee will be dissolved.

Rule 1-204. Executive committees.**Intent:**

To establish executive committees of the Council.

To identify the responsibility and authority of the executive committees.

To identify the membership and composition of the executive committees.

To establish procedures for executive committee meetings.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) **Executive Committees.** The following executive committees of the Council are hereby established:

(1)(a) the Management Committee;

(1)(b) the Policy, ~~and~~ Planning, and Technology Committee;

(1)(c) the Liaison Committee; and

(1)(d) the Budget and Fiscal Management Committee.

(2) **Management Committee.** The Management Committee shall be comprised of at least four Council members, one of whom shall be the Presiding Officer of the Council. Three Committee members constitute a quorum. The Presiding Officer of the Council or Presiding Officer's designee shall serve as the Chair. When at least three members concur, the Management Committee is authorized to act on behalf of the entire Council when the Council is not in session and to act on any matter specifically delegated to the Management Committee by the Council. The Management Committee is responsible for managing the agenda of the Council consistently with Rule 2-102 of this Code. The Management Committee is responsible for deciding procurement protest appeals.

(3) **Policy, ~~and~~ Planning, and Technology Committee.** The Policy, ~~and~~ Planning, and Technology Committee shall recommend to the Council new and amended rules for the Code of Judicial Administration. ~~The committee shall recommend to the Council,~~ new and amended policies, ~~or repeals,~~ for the Human Resource Policies and Procedures Manual, pursuant to Rule 3-402, and new or amended- technology policies and priorities. The committee shall recommend to the Council periodic and long term planning efforts as necessary for the efficient

43 administration of justice. ~~The committee, and~~ shall research and make recommendations
44 regarding any matter referred by the Council.

45
46 (4) **Liaison Committee.** The Liaison Committee shall recommend to the Council legislation to
47 be sponsored by the Council. The committee shall review legislation affecting the authority,
48 jurisdiction, organization or administration of the judiciary. When the exigencies of the legislative
49 process preclude full discussion of the issues by the Council, the Committee may endorse or
50 oppose the legislation, take no position or offer amendments on behalf of the Council.

51
52 (5) **Budget and Fiscal Management Committee.** The Budget and Fiscal Management
53 Committee shall review court budget proposals, recommend fiscal priorities and the allocation of
54 funds, and make recommendations to the Council regarding budget management and budget
55 development in accordance with Rule 3-406.

56
57 (6) **Members.** Members of the executive committees must be members of the Council. Each
58 executive committee shall consist of at least three members appointed by the Council to serve
59 at its pleasure. The members of the Policy, ~~and~~ Planning, ~~and Technology~~ Committee, the
60 Budget and Fiscal Management Committee, and the Liaison Committee shall elect their
61 respective chairs on a schedule deemed appropriate by each Committee. Chairs must be
62 members of the Council.

63
64 (7) **Meetings and Judicial Council Reports.** Each committee shall meet as often as necessary
65 to perform its responsibilities, but a minimum of four times per year. Each committee shall report
66 to the Council as necessary.

67
68 (8) **Staff.** The Administrative Office shall provide staff support to the executive committees.

69
70 *Effective: May/November 1, 202_4*

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

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

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

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

Applicability:

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

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

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

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

~~(1)(A)(ii)~~ (1)(A)(i) Uniform Fine Committee;

~~(1)(A)(iii)~~ (1)(A)(ii) Ethics Advisory Committee;

~~(1)(A)(iv)~~ (1)(A)(iii) Judicial Branch Education Committee;

~~(1)(A)(v)~~ (1)(A)(iv) Court Facility Planning Committee;

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

~~(1)(A)(vii)~~ (1)(A)(vi) Committee on Judicial Outreach;

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

~~(1)(A)(ix)~~ (1)(A)(viii) Language Access Committee;

~~(1)(A)(x)~~ (1)(A)(ix) Guardian ad Litem Oversight Committee;

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

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

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

~~(1)(A)(xiv)~~ (1)(A)(xiii) Committee on Court Forms;

~~(1)(A)(xv)~~ (1)(A)(xiv) Committee on Judicial Fairness and Accountability; and

~~(1)(A)(xvi)~~ (1)(A)(xv) Working Interdisciplinary Network of Guardianship

Stakeholders (WINGS)

(1)(B) Composition.

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

~~(1)(B)(i)(a) — one judge from each court of record;~~

~~(1)(B)(i)(b) — one justice court judge;~~

~~(1)(B)(i)(c) — one lawyer recommended by the Board of Bar Commissioners;~~

~~(1)(B)(i)(d) — two court executives;~~

~~(1)(B)(i)(e) — two court clerks; and~~

~~(1)(B)(i)(f) — two staff members from the Administrative Office.~~

~~(1)(B)(iii)~~(1)(B)(i) The **Uniform Fine Committee** performs the duties described in rule 4-302 and shall consist of:

~~(1)(B)(iii)(a)~~(1)(B)(i)(a) one district court judge who has experience with a felony docket;

~~(1)(B)(iii)(b)~~(1)(B)(i)(b) three district court judges who have experience with a misdemeanor docket; and

~~(1)(B)(iii)(c)~~(1)(B)(i)(c) four justice court judges.

~~(1)(B)(iii)~~(1)(B)(ii) The **Ethics Advisory Committee** performs the duties described in rule 3-109 and shall consist of:

~~(1)(B)(iii)(a)~~(1)(B)(ii)(a) one judge from the Court of Appeals;

~~(1)(B)(iii)(b)~~(1)(B)(ii)(b) one district court judge from Judicial Districts 2, 3, or 4;

~~(1)(B)(iii)(c)~~(1)(B)(ii)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;

~~(1)(B)(iii)(d)~~(1)(B)(ii)(d) one juvenile court judge;

~~(1)(B)(iii)(e)~~(1)(B)(ii)(e) one justice court judge; and

~~(1)(B)(iii)(f)~~(1)(B)(ii)(f) an attorney from either the Bar or a college of law.

~~(1)(B)(iv)~~(1)(B)(iii) The **Judicial Branch Education Committee** performs the duties described in rule 3-403 shall consist of:

~~(1)(B)(iv)(a)~~(1)(B)(iii)(a) one judge from an appellate court;

~~(1)(B)(iv)(b)~~(1)(B)(iii)(b) one district court judge from Judicial Districts 2, 3, or 4;

~~(1)(B)(iv)(c)~~(1)(B)(iii)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;

~~(1)(B)(iv)(d)~~(1)(B)(iii)(d) one juvenile court judge;

~~(1)(B)(iv)(e)~~(1)(B)(iii)(e) the education liaison of the Board of Justice Court Judges;

~~(1)(B)(iv)(f)~~(1)(B)(iii)(f) one state level administrator;
~~(1)(B)(iv)(g)~~(1)(B)(iii)(g) the Human Resource Management Director;
~~(1)(B)(iv)(h)~~(1)(B)(iii)(h) one court executive;
~~(1)(B)(iv)(i)~~(1)(B)(iii)(i) one juvenile court probation representative;
~~(1)(B)(iv)(j)~~(1)(B)(iii)(j) two court clerks from different levels of court and
different judicial districts;
~~(1)(B)(iv)(k)~~(1)(B)(iii)(k) one data processing manager; and
~~(1)(B)(iv)(l)~~(1)(B)(iii)(l) one adult educator from higher education.
~~(1)(B)(iv)(m)~~(1)(B)(iii)(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)~~(1)(B)(iv) The **Court Facility Planning Committee** performs the duties
described in rule 3-409 and shall consist of:

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

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

~~(1)(B)(vi)(a)~~(1)(B)(v)(a) one Senator appointed by the President of the Senate;
~~(1)(B)(vi)(b)~~(1)(B)(v)(b) the Director of the Department of Human Services or
designee;
~~(1)(B)(vi)(c)~~(1)(B)(v)(c) one attorney of the Executive Committee of the Family
Law Section of the Utah State Bar;
~~(1)(B)(vi)(d)~~(1)(B)(v)(d) one attorney with experience in abuse, neglect and
dependency cases;
~~(1)(B)(vi)(e)~~(1)(B)(v)(e) one attorney with experience representing parents in
abuse, neglect and dependency cases;
~~(1)(B)(vi)(f)~~(1)(B)(v)(f) one representative of a child advocacy organization;
~~(1)(B)(vi)(g)~~(1)(B)(v)(g) the ADR Program Director or designee;

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

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

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

~~(1)(B)(vi)(k)~~(1)(B)(v)(k) the Director of the Office of Guardian ad Litem or

designee;

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

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

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

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

~~(1)(B)(vii)(a)~~(1)(B)(vi)(a) one appellate court judge;

~~(1)(B)(vii)(b)~~(1)(B)(vi)(b) one district court judge;

~~(1)(B)(vii)(c)~~(1)(B)(vi)(c) one juvenile court judge;

~~(1)(B)(vii)(d)~~(1)(B)(vi)(d) one justice court judge; one state level

administrator;

~~(1)(B)(vii)(e)~~(1)(B)(vi)(e) a state level judicial education representative;

~~(1)(B)(vii)(f)~~(1)(B)(vi)(f) one court executive;

~~(1)(B)(vii)(g)~~(1)(B)(vi)(g) one Utah State Bar representative;

~~(1)(B)(vii)(h)~~(1)(B)(vi)(h) one communication representative;

~~(1)(B)(vii)(i)~~(1)(B)(vi)(i) one law library representative;

~~(1)(B)(vii)(j)~~(1)(B)(vi)(j) one civic community representative; and

~~(1)(B)(vii)(k)~~(1)(B)(vi)(k) one state education representative.

~~(1)(B)(vii)(l)~~(1)(B)(vi)(l) Chairs of the Judicial Outreach Committee's

subcommittees shall also serve as members of the committee.

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

~~(1)(B)(viii)(a)~~(1)(B)(vii)(a) two district court judges;

~~(1)(B)(viii)(b)~~(1)(B)(vii)(b) one juvenile court judge;

~~(1)(B)(viii)(c)~~(1)(B)(vii)(c) two justice court judges;

~~(1)(B)(viii)(d)~~(1)(B)(vii)(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)~~(1)(B)(vii)(e) one representative from a social services organization providing direct services to underserved communities;

~~(1)(B)(viii)(f)~~(1)(B)(vii)(f) one representative from the Utah State Bar;

~~(1)(B)(viii)(g)~~(1)(B)(vii)(g) two representatives from legal service organizations that serve low-income clients;

~~(1)(B)(viii)(h)~~(1)(B)(vii)(h) one private attorney experienced in providing services to self-represented parties;

~~(1)(B)(viii)(i)~~(1)(B)(vii)(i) two law school representatives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~(1)(B)(xiii)(a)(1)(B)(xii)(a)~~ two district court judges;
- ~~(1)(B)(xiii)(b)(1)(B)(xii)(b)~~ two justice court judges;
- ~~(1)(B)(xiii)(c)(1)(B)(xii)(c)~~ one prosecutor;
- ~~(1)(B)(xiii)(d)(1)(B)(xii)(d)~~ one defense attorney;
- ~~(1)(B)(xiii)(e)(1)(B)(xii)(e)~~ one county sheriff;
- ~~(1)(B)(xiii)(f)(1)(B)(xii)(f)~~ one representative of counties;
- ~~(1)(B)(xiii)(g)(1)(B)(xii)(g)~~ one representative of a county pretrial services
agency;
- ~~(1)(B)(xiii)(h)(1)(B)(xii)(h)~~ one representative of the Utah Commission on
Criminal and Juvenile Justice;
- ~~(1)(B)(xiii)(i)(1)(B)(xii)(i)~~ one commercial surety agent;
- ~~(1)(B)(xiii)(j)(1)(B)(xii)(j)~~ one state senator;
- ~~(1)(B)(xiii)(k)(1)(B)(xii)(k)~~ one state representative;
- ~~(1)(B)(xiii)(l)(1)(B)(xii)(l)~~ the Director of the Indigent Defense
Commission or designee;
- ~~(1)(B)(xiii)(m)(1)(B)(xii)(m)~~ one representative of the Utah Victims'
Council;

~~(1)(B)(xiii)(n)~~(1)(B)(xii)(n) one representative of a community organization actively engaged in pretrial justice issues;
~~(1)(B)(xiii)(o)~~(1)(B)(xii)(o) one chief of police; and
~~(1)(B)(xiii)(p)~~(1)(B)(xii)(p) the court's general counsel or designee.

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

~~(1)(B)(xiv)(a)~~(1)(B)(xiii)(a) two district court judges;
~~(1)(B)(xiv)(b)~~(1)(B)(xiii)(b) one court commissioner;
~~(1)(B)(xiv)(c)~~(1)(B)(xiii)(c) one juvenile court judge;
~~(1)(B)(xiv)(d)~~(1)(B)(xiii)(d) one justice court judge;
~~(1)(B)(xiv)(e)~~(1)(B)(xiii)(e) one court clerk;
~~(1)(B)(xiv)(f)~~(1)(B)(xiii)(f) one appellate court staff attorney;
~~(1)(B)(xiv)(g)~~(1)(B)(xiii)(g) one representative from the Self-Help Center;
~~(1)(B)(xiv)(h)~~(1)(B)(xiii)(h) the State Law Librarian;
~~(1)(B)(xiv)(i)~~(1)(B)(xiii)(i) the district court administrator or designee;
~~(1)(B)(xiv)(j)~~(1)(B)(xiii)(j) one representative from a legal service organization that serves low-income clients;
~~(1)(B)(xiv)(k)~~(1)(B)(xiii)(k) one paralegal;
~~(1)(B)(xiv)(l)~~(1)(B)(xiii)(l) one educator from a paralegal program or law school;
~~(1)(B)(xiv)(m)~~(1)(B)(xiii)(m) one person skilled in linguistics or communication;
~~(1)(B)(xiv)(n)~~(1)(B)(xiii)(n) one representative from the Utah State Bar;
and
~~(1)(B)(xiv)(o)~~(1)(B)(xiii)(o) the LPP administrator.

~~(1)(B)(xv)~~(1)(B)(xiv) The **Committee on Fairness and Accountability** performs the duties described in rule 3-420. The committee shall include members who demonstrate an interest in, or who have experience with, issues of diversity, equity, and inclusion and shall consist of:

~~(1)(B)(xv)(a)~~(1)(B)(xiv)(a) one sitting judge;
~~(1)(B)(xv)(b)~~(1)(B)(xiv)(b) three current or former judicial officers;
~~(1)(B)(xv)(c)~~(1)(B)(xiv)(c) the General Counsel or designee; and
~~(1)(B)(xv)(d)~~(1)(B)(xiv)(d) the Director of the Office of Fairness and Accountability.

~~(1)(B)(xvi)(1)(B)(xv)~~ The **Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)** performs the duties described in rule 3-421, and shall consist of:

~~(1)(B)(xvi)(a)(1)(B)(xv)(a)~~ **Judiciary** representatives:

- (i) two or more district court judges;
- (ii) two or more district court judicial support staff with experience in guardianship matters;
- (iii) one representative from the Guardianship Reporting and Monitoring Program (GRAMP)
- (iv) one representative from the Court Visitor Program; and
- (v) the General Counsel or designee.

~~(1)(B)(xvi)(b)(1)(B)(xv)(b)~~ **Community stakeholder** representatives:

- (i) one representative from Adult Protective Services;
- (ii) one representative from Disability Law Center;
- (iii) one representative from Adult and Aging Services;
- (iv) one representative from Office of Public Guardian;
- (v) one representative from the Utah State Bar;
- (vi) one representative from Office of the Attorney General;
- (vii) one representative from the Utah legislature;
- (viii) one representative from the Utah Commission on Aging;
- (ix) one representative from Utah Legal Services; and
- (x) the Long-Term Care Ombudsman or designee.

~~(1)(B)(xvi)(c)(1)(B)(xv)(c)~~ **Individual community** representatives:

three or more community stakeholders representing:

- (i) mental health community;
- (ii) medical community;
- (iii) private legal community that specializes in guardianship matters;
- (iv) aging-adult services community;
- (v) educator from a legal program or law school;
- (vi) organization serving low-income, minorities, or marginalized communities;
- (vii) citizens under or involved in guardianship; and

(viii) other organizations with a focus including, but not limited to guardianship, aging, legal services, or disability.

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

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

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

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

(3) **General provisions.**

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

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

- (3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;
- (3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;
- (3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and
- (3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.
- (3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.
- (3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.
- (3)(C) **Expenses.** Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.
- (3)(D) **Secretariat.** The Administrative Office shall serve as secretariat to the Council's committees.