

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING, & TECHNOLOGY COMMITTEE
MEETING AGENDA**

October 6, 2023 – 12:00 p.m. to 2:00 p.m.

Webex

12:00	Welcome and approval of minutes	Action	Tab 1	Judge Chiara
12:05	<u>Rules back from public comment:</u> <ul style="list-style-type: none"> • CJA 6-501. Reporting requirements for guardians and conservators 	Action	Tab 2	Stacy Haacke Shonna Thomas Allison Barger Judge Laura Scott
12:15	CJA 3-101. Judicial performance standards CJA 3-104. Presiding judges	Action	Tab 3	Keisa Williams
1:00	Technology report/proposals	Discussion		Brody Arishita
1:50	Old Business/New Business			
2:00	Adjourn			

2023 Meetings:

November 3, 2023 (all day)
December 1, 2023

2024 Meetings:

January 5, 2024
February 2, 2024
March 1, 2024
April 5, 2024
May 3, 2024 (all day)
June 7, 2024

July 5, 2024
August 2, 2024
September 6, 2024
October 4, 2024
November 1, 2024 (all day)
December 6, 2024

TAB 1

Minutes

September 1, 2023

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING and TECHNOLOGY COMMITTEE
MEETING MINUTES**

Webex video conferencing
September 1, 2023: 12:00 p.m.

DRAFT

MEMBERS:

PRESENT

EXCUSED

Judge Samuel Chiara, <i>Chair</i>	•	
Judge Suchada Bazzelle	•	
Judge Augustus Chin	•	
Judge Michael DiReda	•	
Judge James Gardner	•	

GUESTS:

Keri Sargent
Paul Barron
Tucker Samuelsen
Shane Bahr
Nick Stiles
Judge Laura Scott

STAFF:

Keisa Williams
Brody Arishita
Minhvan Thach

(1) Welcome and approval of minutes:

Judge Chiara welcomed committee members to the meeting. The committee considered the minutes from the June 7, 2023, meeting. With no changes, Judge Gardner moved to approve the minutes as presented. Judge Chin seconded and the motion passed unanimously.

(2) Rules back from public comment:

- **CJA 4-202.11. Vexatious record requester (New)**

Under 63G-2-702(5), the Judicial Council may now:

- a) establish a process for an administrative unit of the judicial branch to petition for relief from a person that the administrative unit claims is a vexatious requester; and
- b) establish an appellate board to hear a petition for relief from a person that an administrative unit of the judicial branch claims in a vexatious requester.

The proposed rule establishes a new process to petition for relief from a vexatious requester, designating the Management Committee as the “appellate board” and the Office of General Counsel as the “administrative unit” authorized to petition for relief. The court received one public comment. The commenter is generally supportive of the rule, however, suggests adding an exception for an attorney hired by a vexatious requester.

Following a discussion, the committee determined that amendments in response to the public comment are unnecessary because the safeguard requested by the commenter is already established in the rule. The court will grant reasonable requests from attorneys seeking records on a client’s behalf, provided the attorney has not also been deemed a vexatious requester.

With no further discussion, Judge Chin moved to recommend to the Council that CJA rule 4-202.11 be approved as final with a November 1, 2023 effective date. Judge Bazzelle seconded the motion. The motion passed unanimously.

(3) CJA 6-301. Authority of court commissioner as magistrate.

The Judicial Council approved a budget request from the Third District court for assistance with criminal calendars. One option is to hire “criminal commissioners.” Council members asked for an amendment to CJA rule 6-301 to broaden commissioners’ magistrate authority. The proposed amendments identify the types of cases and matters court commissioners are authorized to hear, the types of relief and orders they may recommend, and establish procedures for the timely judicial review of recommendations and orders made by a court commissioner.

The committee recommended the following edits:

- (2)(A), line 25: insert “; and” at the end of the paragraph.
- (6)(B), line 99: replace “. . . may file a written objection to the recommendation . . .” with “may make an oral objection or file a written objection . . .”
- (6)(C), line 105: replaced “. . . shall be filed . . .” with “. . . must be made . . .”

With no further discussion, Judge Chin moved to send CJA rule 6-301 to the Council, with a recommendation that it be published for a 45-day public comment period. Judge DiReda seconded the motion. The motion passed unanimously.

(4) CJA 4-202.08. Fees for records, information, and services.

The proposed amendments:

- Lines 48-50: clarify that personnel time may be charged to “copy” records (i.e., download and convert recordings, etc.);
- Lines 63-71: remove individual hourly rates to avoid the need for frequent updates when rates increase;
- Lines 59-60: authorize the State Court Administrator to set personnel rates, which would then be posted on the court’s website;
- Lines 90-93: add a provision regarding fees for bulk data, authorizing the State Court Administrator to set the fees; and
- Lines 110-1150: clarify that court appointed attorneys qualify for a fee waiver if they are requesting records on behalf of an indigent client and the client would qualify for a waiver under (10)(A)(ii).

With no further discussion, Judge Gardner moved to send rule CJA 4-202.08 to the Council, with a recommendation that it be published for a 45-day public comment period. Judge Chin seconded the motion. The motion passed unanimously.

(5) CJA 4-202.02. Records classification.

CJA 4-202.03. Records access.

The number of records requests for Webex video recordings has increased over the last year. The court does not currently have the technological capability to blur faces, “splice” recordings, or otherwise obscure or remove sensitive or non-public information from a video record. The proposed amendments distinguish between audio (FTR) records and video (Webex) recordings, classifying official audio records as public and video records of court proceedings, other than security video, as sealed.

The Committee asked Ms. Williams to make a corresponding amendment to CJA rule 4-202.03(2), granting access to video records of court proceedings to official court transcribers for the purposes outlined in CJA rule 5-202 and to court employees if needed to fulfill official court duties. Any person may file a motion with the court under CJA rule 4-202.04 if access to a video recording is denied. All sealed records are accessible with a court order.

With no further discussion, Judge Chin moved to send rules CJA 4-202.02 and CJA 4-202.03 to the Council, with a recommendation that the rules be published for a 45-day public comment period. Judge Gardner seconded the motion. The motion passed unanimously.

Technology report/proposals:

- IT-01000. Information Security Policy (New – Internal)
- IT-01150. Information Security Risk Management Policy (New – Internal)

The Technology Advisory Committee (TAC) is working to overhaul the judicial branch's information technology policies. The TAC is developing a comprehensive Information Technology Policy Manual, similar in a format to the Human Resource and Accounting Manuals. The TAC recommends that these two policies be adopted first, as they are critical to protecting the courts against cyberattacks.

IT-01000 establishes the Information Security policy for all Information Technology (IT) employees, interns, vendors, contractors, and third-party entities that create, use, maintain or handle IT resources. The policy will be subject to and superseded by applicable regulations and laws.

IT-01150 establishes the Enterprise Domain and Security Architect's (EDSA) duties and responsibilities, including documenting and implementing a risk management program to prevent, detect, contain, and correct both deliberate and inadvertent IT security incidents and emergencies.

Because these are internal policies, they do not need to be posted for public comment.

Following a discussion, Judge Chin moved to send new IT policies IT-01000 and IT-01150 to the Council, with a recommendation that they approved as final with a September 12, 2023 effective date. Judge Bazzelle seconded the motion. The motion passed unanimously.

Old Business/New Business:

Judge Mortensen has asked for clarification on the timelines in CJA rule 3-101 for cases held under advisement, particularly the calculation of "averages." Judges receive an automated notice for cases held under advisement more than 60 days. Judge Mortensen's questions arise from reporting mechanisms tied to retention elections.

In response to Judge Mortensen's concerns, Ms. Williams sent a proposed draft of CJA rule 3-101 to all Boards of Judges to elicit feedback. Once that feedback is received, Ms. Williams will add CJA rule 3-101 to this Committee's agenda for discussion.

Adjourn: With no further items for discussion, the meeting adjourned at 12:12 pm. The next meeting will be held on October 6, 2023, at 12 PM via Webex video conferencing.

TAB 2

Back from Public Comment:

CJA 6-501. Reporting requirements for guardians and conservators

Notes: The Probate Subcommittee discussed the public comment and does not see the need for any further amendments. The comment repeats some of the concerns addressed by the committee following the first comment period. The statute requires internal reports be filed and this rule does not create any additional requirements.

The rule does require the use of a court form, which has been discussed at length. Judges prefer the uniformity court forms provide because they know where to look for specific details which is of benefit to the parties. Once practitioners adjust to using the court form, it should not add any additional costs and it should be rather easy for a corporate fiduciary to make the change.

Guardianship and conservatorship records are already classified as private per court rules. In terms of requirements to turn over information that is not relevant, when the court is making a decision about a person's life, all of the information is relevant.

Finally, the forms were updated and approved in February. They are available on the court website [here](#). The Subcommittee also did not agree with the comment that individuals would be unable to submit these forms without retaining counsel, as this is not accurate.

UTAH COURT RULES – PUBLISHED FOR COMMENT

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

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

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

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Posted: April 24, 2023

Utah Courts

Code of Judicial Administration – Comment Period Closed June 8, 2023

[CJA04-0202.03. Records access \(AMEND\).](#)

[CJA04-0202.05. Request to access an administrative record; research; request to classify an administrative record; request to create an index \(AMEND\).](#) The proposed amendments align the rules with Utah Code Sections 77-40a-403(2)(b) and 77-40a-404, identifying individuals and entities who may access expunged records. Other amendments are non-substantive and intended to streamline the rules.

[CJA04-0404. Jury selection and service \(AMEND\).](#) The proposed amendments add the option to email juror qualification forms and summonses to prospective jurors.

[CJA06-0501. Reporting requirements for guardians and conservators \(AMEND\).](#) In response to previous public comments, the proposed amendments clarify filing requirements and use of forms for guardians and conservators.

This entry was posted in [-Code of Judicial Administration](#), [CJA04-0202.03](#), [CJA04-0202.05](#), [CJA04-0404](#), [CJA06-0501](#).

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

CATEGORIES

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

« Rules of Civil Procedure –
Comment Period Closed June
8, 2023

Code of Judicial
Administration – Comment
Period Closed June 8, 2023 »

UTAH COURTS

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One thought on “Code of Judicial Administration – Comment
Period Closed June 8, 2023”

Tracy L. Olson
April 25, 2023 at 11:13 am

The changes to CJA06-0501 are problematic on numerous points. It is not clear what the reasoning is behind these changes, but they will ultimately place additional undue burdens on professional fiduciaries and the wards.

It proposes to require all internal reports must be filed (5(A)(i)). This is probably the most problematic of the changes. This change does not state what “internal reports” are, but will impose a significant burden, which will expose the wards to disclosure of protected health information, overly detailed financial records, and attorney-client communications. This may require significant redaction. The changes as stated will require significant expense to be incurred by the ward needlessly. This was my previous comments to the previous proposed changes, which I reiterate here:

With the changes already made to guardianship and conservatorship reporting, I have found that these rules are put in place, but the court approved forms are not been updated. Additionally, there is no reason why a corporate fiduciary “shall” file its internal report or accounting, changing the language from “may.” These internal reports often need to be modified or edited for filing because they are not kept in the same form as the court approved format. Additionally, these “internal reports” often have confidential information that exceeds what is required in the statute and rules and may violate the recent amendments to the guardianship code. See 75-5-301.5 (2) “Except as otherwise provided by this chapter or any other law, an incapacitated person for whom a guardian is appointed has

- [-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](#)
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- [Appendix B](#)
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- [CJA Appendix F](#)
- [CJA01-0201](#)
- [CJA01-0204](#)
- [CJA01-0205](#)
- [CJA01-0205](#)
- [CJA01-0302](#)
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- [CJA010-01-0404](#)
- [CJA010-1-020](#)
- [CJA02-0101](#)
- [CJA02-0103](#)
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- [CJA03-0111](#)
- [CJA03-0111.01](#)

right to:(n) maintain privacy and confidentiality in personal matters.” These internal reports may also include attorney-client privileged communication. It is not clear why the change in the language was needed. Please explain.

Additionally, these changes removes the ability for the professionals to submit their reports without counsel filing for them (deletion of 5). This will increase costs for cases with fiduciaries that have been filing their own reports. The professionals will now have to go through an attorney to file their reports with the Court; they cannot file them themselves. This will ultimately be taxed to the ward’s estate.

Also, these changes require the guardian to “file the inventory required of a conservator under Utah Code Section 75-5-312” if there is no conservator, (6(C)), but Utah Code Section 75-5-312 does not require a guardian to file an inventory even when there is no conservator appointed. There is no statutory authority for the rule.

Further, these changes require a notice of rights to object to an accounting (5(D)), but (11) removes the ability to object to the accountings. This seems contradictory. If the Court is removing the right to object to accountings, then it should delete the requirement in 5(D).

- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
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- CJA04-0202.02
- CJA04-0202.03
- CJA04-0202.04
- CJA04-0202.05
- CJA04-0202.06

Rule 6-501. Testing and Reporting requirements for guardians and conservators.

Intent:

To set forth the testing requirements for guardians and conservators and to establish standards and procedures for annual inventories, reports, and accountings that guardians and conservators are required to file under 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.

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 as previously defined, 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 an individual ~~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 certified licensed under Utah Code Section 75-5-311(1)(a);

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

(2)(A)(iii) a conservator issued a permit 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 must file:

(3)(A)(i) a verified statement showing satisfactory completion of a court-approved examination on the responsibilities of a guardian or conservator; and

(3)(A)(ii) ~~(3)(B) Before the court enters an order of appointment, the proposed guardian or conservator must file~~ a completed and verified Private Information Record form provided by the Administrative Office of the Courts.

~~(3)(CB)~~ The guardian or conservator must continue to keep the court apprised of any changes to the guardian or conservator's contact information.

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

~~(5) Report forms. Subject to the requirements of Paragraph (6):~~

~~(5)(A) forms substantially conforming to the Judicial Council approved forms are acceptable~~

for content and format;

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

(5)(C) if the 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.

(56) Information required in reports, Filing and service of required reports and proposed Order on Review cover sheet, and service.

(5)(A) The guardian or conservator shall file with the court the reports required by Paragraphs 6, 7, 8, 9, and/or 10 using the appropriate ~~Judicial~~ Council-approved form or a form that substantially conforms to the format and content of the ~~Judicial~~ Council form.

(5)(A)(i) A corporate fiduciary shall attach its internal report or accounting, if any, as an exhibit to the ~~Judicial Council~~ form.

(5)(A)(ii) If the protected person's estate is limited to a federal or state program requiring an annual accounting, the guardian may file a copy of that accounting instead of the Judicial Council form.

~~(56)(A)(B)~~ The annual status report and annual accounting must contain sufficient information to put interested persons on notice of all significant events and transactions during the reporting period. ~~Compliance with Paragraph (54) is presumed sufficient, but the court may direct that a report or accounting be prepared with content and format as it deems necessary.~~

~~(56)(B)(C)~~ Along with the required report, the guardian or conservator shall also file the ~~Judicial Council~~-approved Order on Review of Guardian or Conservator Report ("Order on Review") ~~The annual report and annual accounting must include the Judicial Council-approved Order on Review of Guardian or Conservator Report ("Order on Review"), which must be filed as a proposed document.~~

~~(56)(C)(D)~~ The guardian, or conservator, ~~or both~~ must serve a copy of the required report, inventory, and accounting under Rule 5 of the Utah Rules of Civil Procedure on all interested persons in accordance with Rule 5 of the Utah Rules of Civil Procedure. The required 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 this report or accounting within 28 days of service. If you do not object within that time, your objection may be waived.**

(68) Inventory.

~~(68)~~(A) Within 90 days after the appointment, the conservator must file with the appointing court the inventory required by Utah Code Section 75-5-418 in accordance with Paragraph 5.

The inventory must be in substantially the same form as the inventory form approved by the ~~Utah Judicial~~ Council, including the required attachments. The court may extend the time for filing the inventory for good cause.

~~(6)~~(B) The judge may conduct a hearing even though no objection is filed. If the judge finds that the inventory is in order, the judge must approve it by signing the Order on Review.

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

(7) Annual status reports.

(7)(A) The guardian must file with the appointing court a report on the status of the protected person no later than 60 days after the anniversary of the appointment ~~in accordance with Paragraph 5.~~

(7)(A)(i) 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.

(7)(A)(ii) The guardian 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.

(7)(A)(iii) 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.

(7)(B) The judge may conduct a hearing even though no objection is filed. If the judge finds that the report is in order, the judge must approve it by signing the Order on Review.

~~(7)(C) If there is no conservator, the guardian must file the inventory and accounting required of a conservator under Utah Code Section 75-5-312.~~

(8) Annual accounting.

(8)(A) The conservator must file with the appointing court an accounting of the estate of the protected person no later than 60 days after the anniversary of the appointment in accordance with Paragraph 5.

(8)(A)(i) The accounting must be in substantially the same form as the accounting form approved by the ~~Utah Judicial~~ Council, including the required attachments.

(8)(A)(ii) The conservator 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.

(8)(A)(iii) 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 judge may conduct a hearing even though no objection is filed. If the judge finds that the accounting is in order, the judge must approve it by signing the Order on Review.

(8)(C) If there is no conservator, the guardian must file the accounting required of a conservator under Utah Code Section 75-5-312.

(940) Final accounting.

(940)(A) The conservator must file with the court a final accounting of the estate of the protected person with the motion to terminate the appointment in accordance with Paragraph 5.

(940)(B) The court may conduct a hearing even though no objection is filed. If the court finds that the accounting is in order, the court must approve it by signing the Order on Review.

(104) Objections.

(104)(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.

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

(104)(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.

(104)(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.

(104)(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.

(104)(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~~.

(112) **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:

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

(112)(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.

(123) **Report approval.**

(123)(A) **Approval.** The court must examine and approve ~~reports the report~~ 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.

(123)(B) **Notice to interested persons.** When a court approves a report, the court ~~must note that approval on the Judicial Council approved must sign and enter the~~ Order on Review ~~and place the Order on Review in the case file~~. When a court does not approve a report, the court must indicate on the Order on Review, or in an ~~other minute entry or~~ order, the reasons for non-approval, any additional actions required, and serve ~~the Order on Review or order it~~ on all interested persons entitled to notice.

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

Effective November 1, 2023

TAB 3

CJA 3-101. Judicial performance standards

CJA 3-104. Presiding judges

Notes: The Management Committee has asked PP&T to review and propose amendments to CJA 3-101 to provide much needed clarity about both the case under advisement standards and the reporting requirements related to retention elections. Specifically, PP&T has been asked to address the following:

1. 3-101(4) requires a judge to decide all matters submitted for decision "within the applicable time period prescribed by this rule." Does that mean the judge's term of office?
2. What is an "exceptional case"?
3. Paragraphs (3)(A), (3)(B), and (3)(C) discuss an "average" number of cases. If "applicable time period" means a judge's term of office, the math gets fairly complicated, particularly for trial court judges who preside over thousands of cases in a 3- or 6-year term. Are we currently tracking averages?
4. [78A-2-223](#) does not mention anything about averages. If the Judicial Council has the authority to establish case under advisement performance standards under [78A-12-205](#) and [R597-3-4](#), what is the justification for keeping the language about averages?

Attached is my first shot at a draft of 3-101. I tried to simplify the process as much as possible. I'm also attaching a draft of 3-104. For some reason, 3-104 includes an almost identical definition of cases under advisement. That doesn't make sense to me. The only difference between the two definitions is that 3-101 does not include the last paragraph in 3-104(3)(L)(ii). I've carried that paragraph over to 3-101 because I imagine it provides helpful clarity for trial court judges.

Nick Stiles pointed out a gap of time in new paragraph (7) with respect to the reporting term. Between August 15th, when judges submit their compliance report to the Judicial Council, and the first Monday in January after the November election when the new reporting term begins, we are not tracking cases under advisement.

I selected the first Monday in January as the beginning of the reporting term because that date aligns with judicial terms found in statute ([78A-3-101](#), [78A-4-102](#), [78A-5-105](#), and [78A-6-201](#)). And judges must submit reports to the Council on August 14th because it gives the Council enough time to gather, review, and allow judges an opportunity to respond to compliance reports before the Council is required to send its certification decision to JPEC on October 1st.

I am hoping for feedback on how best to resolve that issue.

Rule 3-101. Judicial performance standards.**Intent**

To establish performance standards upon which the Judicial Council will certify judicial compliance to the Judicial Performance Evaluation Commission ("JPEC").

Applicability

This rule applies to all justices and judges of the courts of record and not of record.

Statement of the Rule

(1) ~~Certification of p~~**Performance standards.** ~~(1)(A)~~ The Judicial Council will certify to JPEC judicial compliance with the following performance standards: cases under advisement, education, and physical and mental competence.

~~(1)(B) The Judicial Council will transmit its certification to JPEC by the deadline established in the Utah Administrative Code.~~

(2) Definition of case under advisement.

(2)(A) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. For purposes of this rule, "submitted to the judge" or "submission" is the last of the following:

(2)(A)(i) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;

(2)(~~AB~~)(ii) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(2)(~~AE~~)(iii) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

(2)(B) A case is no longer under advisement when the trial court judge makes a decision on the issue that is under advisement or on the entire case. The final determination occurs when the trial court judge resolves the pending issue by announcing the decision on the record or by issuing a written decision, regardless of whether the parties are required to subsequently submit a final order memorializing the decision for the judge's signature.

(3) Case under advisement performance standards.

(3)(A) **Supreme Court justice.** A justice of the Supreme Court demonstrates satisfactory performance by circulating not more than ~~an average of~~ three principal opinions per

calendar year more than six months after submission ~~with no more than half of the maximum exceptional cases in any one calendar year.~~

(3)(B) **Court of Appeals judge.** A judge of the Court of Appeals demonstrates satisfactory performance by:

(3)(B)(i) circulating not more than ~~an average of~~ three principal opinions per calendar year more than six months after submission ~~with no more than half of the maximum exceptional cases in any one calendar year;~~ and

(3)(B)(ii) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(3)(C) **Trial court judge.** A trial court judge demonstrates satisfactory performance by holding:

(3)(C)(i) not more than ~~an average of~~ three cases per calendar year under advisement more than two months after submission ~~with no more than half of the maximum exceptional cases in any one calendar year;~~ and

(3)(C)(ii) no case under advisement more than six months after submission.

~~(3)(C)(iii) A case is no longer under advisement when the trial court judge makes a decision on the issue that is under advisement or on the entire case.~~

(4) **Case under advisement performance standards—compliance.** A judge or justice shall decide all matters submitted for decision within the applicable time periods ~~prescribed by this rule in paragraph (3),~~ unless circumstances causing a delayed decision are beyond the judge's or justice's personal control.

(5) **Judicial education performance standard.**

(5)(A) **Education hour standard.** Satisfactory performance is established if the judge or justice annually obtains 30 hours of judicial education subject to the availability of in-state education programs.

(5)(B) **Education hour standard—compliance.** A judge or justice shall obtain the number of education hours prescribed by this rule, unless circumstances preventing the judge from doing so are beyond the judge's or justice's personal control.

(6) **Physical and mental competence performance standard.** Satisfactory performance is established if the response of the judge or justice demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct. The Council may request a statement by an examining physician.

(7) Reporting requirements.

(7)(A) Reporting term. For purposes of this rule, the reporting term for new justices and judges begins on the date the Utah Senate confirms their appointment. The reporting term for retained justices and judges begins the first Monday in January following the general election in which they were last retained. The reporting term for all justices and judges ends on August 14th of the year preceding the next general election in which the judge or justice is standing for retention.

(7)(B) Reporting requirement. The next business day following the end of a reporting term, justices and judges shall report to the Judicial Council their compliance or non-compliance with the performance standards in this rule during that reporting term. Reports shall be submitted in accordance with policies established by the Judicial Council. If non-compliance is due to circumstances beyond the justice's or judge's personal control, the judge or justice must provide an explanation of the circumstances and may submit supporting documentation.

(7)(C) The reporting requirements in this rule are in addition to the monthly reporting requirements outlined in rule 3-104.

(8) Judicial Council certification.

(8)(A) As to the performance standards in this Rule, the Judicial Council shall certify to JPEC that each judge or justice standing for retention is:

(8)(A)(i) Compliant;

(8)(A)(ii) Compliant with explanation, meaning that the Judicial Council has received credible information that non-compliance was due to circumstances beyond the personal control of the judge or justice; or

(8)(A)(iii) Non-compliant, which may include a judge or justice who has certified his or her own compliance but the Judicial Council has received credible information inconsistent with that certification.

(8)(B) The Judicial Council will transmit its certification to JPEC by the deadline established in the Utah Administrative Code.

(8)(C) All material relied upon by the Judicial Council in making a certification decision or explanation shall be forwarded to JPEC and shall be made public to the extent that the information is not confidential personal health information.

Effective: May/~~November~~ 1, 202_4

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

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

Applicability:

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

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

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

(1)(B) Associate presiding judge.

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

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

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

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

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

(2)(A)(ii) The presiding judge shall call and preside over court meetings. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(2)(A)(iii) Each court shall have a minimum of four meetings each year.

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

(2)(A)(v) In addition to regular court en banc meetings, the presiding judge or a majority of the judges may call additional meetings as necessary.

(2)(A)(vi) Minutes of each meeting shall be taken and preserved.

(2)(A)(vii) Other than judges and court executives, those attending the meeting shall be by court invitation only.

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

(2)(B) **Absence of presiding judge.** When the presiding judge and the associate presiding judge, if any, are absent from the court, an acting presiding judge shall be appointed. The method of designating an acting presiding judge shall be at the discretion of the presiding judge. All parties that must necessarily be informed shall be notified of the judge acting as presiding judge.

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

(3)(A) **General—Caseload—Appeals**

(3)(A)(i) **Generally.** The presiding judge is charged with the responsibility for the effective operation of the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and directives of the Council as they pertain to the administration of the courts, orders of the court en banc and supplementary rules. The presiding judge has the authority to delegate the performance of non-judicial duties to the court executive. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

(3)(A)(ii) **Caseload.** Unless the presiding judge determines it to be impractical, there is a presumption that the judicial caseload of the presiding judge shall be adjusted to provide the presiding judge sufficient time to devote to the management and administrative duties of the office. The extent of the caseload reduction shall be determined by each district.

(3)(A)(iii) **Appeals.** Any judge of the judicial district may ask the Chief Justice or Judicial Council to review any administrative decision made by the presiding judge of that district.

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

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

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

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

(3)(C)(i) The presiding judge is authorized to assign a senior judge for judicial assistance consistent with Rule 3-108.

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

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

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

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

(3)(E)(ii) Generally, the presiding judge or, at the discretion of the presiding judge, the court executive shall represent the court and make statements to the media on matters pertaining to the total court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(3)(F) Docket management and case and judge assignments.

(3)(F)(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(3)(F)(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(3)(F)(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the State Court Administrator, request assistance of visiting judges or other appropriate resources when needed to handle the workload of the court.

(3)(F)(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

151 (3)(G) **Court executives.**

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153 (3)(G)(i) The presiding judge shall review the proposed appointment of the court
154 executive made by the State Court Administrator and must concur in the
155 appointment before it will be effective. The presiding judge shall obtain the
156 approval of a majority of the judges in that jurisdiction prior to concurring in the
157 appointment of a court executive.

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159 (3)(G)(ii) The presiding judge for the respective court level and the state level
160 administrator shall jointly develop an annual performance plan for the court
161 executive.

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163 (3)(G)(iii) Annually, the state level administrator shall consult with the presiding
164 judge in the preparation of an evaluation of the court executive's performance for
165 the previous year, also taking into account input from all judges in the district.

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167 (3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the
168 court executive, including coordination of annual leave.

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170 (3)(G)(v) Pursuant to Council policy and the direction of the state level
171 administrator, the court executive has the responsibility for the day-to-day
172 supervision of the non-judicial support staff and the non-judicial administration of
173 the court. The presiding judge, in consultation with the judges of the jurisdiction,
174 shall coordinate with the court executive on matters concerning the support staff
175 and the general administration of the court including budget, facility planning,
176 long-range planning, administrative projects, intergovernmental relations and
177 other administrative responsibilities as determined by the presiding judge and the
178 state level administrator.

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

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

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

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

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

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

199
200 (3)(K) **Judicial officers.** In the event that another judge or commissioner of the court
201 fails to comply with a reasonable administrative directive of the presiding judge,

interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment or violates the Code of Judicial Conduct, the presiding judge may:

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

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

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

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

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

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

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

(3)(L) Cases under advisement.

(3)(L)(i) A case is considered to be under advisement ~~when the entire case or any issue in the case has been submitted to the judge for final determination. For purposes of this rule, "submitted to the judge" is defined as follows: if it meets the~~ criteria outlined in rule 3-101.

~~(3)(L)(i)(a) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;~~

~~(3)(L)(i)(b) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or~~

~~(3)(L)(i)(c) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.~~

~~A case is no longer under advisement when the judge makes a decision on the issue that is under advisement or on the entire case.~~

~~The final determination occurs when the judge resolves the pending issue by announcing the decision on the record or by issuing a written decision;~~

~~regardless of whether the parties are required to subsequently submit for the judge's signature a final order memorializing the decision.~~

(3)(L)(ii) Once a month, each judge shall submit a statement on a form to be provided by the State Court Administrator notifying the presiding judge of any cases or issues held under advisement for more than two months and the reason why the case or issue continues to be held under advisement.

(3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than two months to the appropriate state level administrator and indicate the reasons why the case or issue continues to be held under advisement.

(3)(L)(iv) If a case or issue is held under advisement for an additional 30 days, the state level administrator shall report that fact to the Management Committee.

(3)(L)(v) If a judge fails to submit a statement required under (3)(L)(ii), the presiding judge shall notify the appropriate state level administrator. If a judge fails to submit a statement for two consecutive months, the state level administrator shall notify the Management Committee.

(3)(M) **Board of judges.** The presiding judge shall serve as a liaison between the court and the Board for the respective court level.

(3)(N) **Supervision and evaluation of court commissioners.** The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

(3)(O) **Magistrate availability.** The presiding judge in a district court shall consult with the justice court administrator to develop a rotation of magistrates that ensures regular availability of magistrates within the district. The rotation shall take into account each magistrate's caseload, location, and willingness to serve.

Effective May/~~November~~ 1, 202_3