

## JUDICIAL COUNCIL MEETING

### AGENDA

Monday, January 23, 2012

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

*Chief Justice Christine M. Durham, Presiding*

1. 9:00 a.m. Welcome & Approval of Minutes . . . Chief Justice Christine M. Durham  
(Tab 1 - Action)
2. 9:05 a.m. Chair's Report. . . . . Chief Justice Christine M. Durham
3. 9:15 a.m. Administrator's Report. . . . . Daniel J. Becker
4. 9:30 a.m. Reports: Management Committee. . . Chief Justice Christine M. Durham  
Liaison Committee. . . . . Justice Jill Parrish  
Policy and Planning . . . . . Judge Greg Orme  
Bar Commission. . . . . Lori Nelson, esq.  
(Tab 2 - Information)
5. 9:40 a.m. Six Month Workload Review. . . . . Kim Allard  
(Information)
6. 10:00 a.m. Rules for Final Action. . . . . Tim Shea  
(Tab 3 - Action)
7. 10:15 a.m. New Justice Court Judge Certification. . . . . Rick Schwermer  
(Tab 4 - Action)
8. 10:20 a.m. Municipal Justice Court Recertification. . . . . Rick Schwermer  
(Tab 5 - Action)
- 10:50 a.m. Break
9. 11:00 a.m. Legislative Update. . . . . Rick Schwermer  
(Information)
10. 11:10 a.m. Senior Judge Certification. . . . . Tim Shea  
(Tab 6 - Action)
11. 11:15 a.m. Judicial Performance Evaluation Commission Update. . . . Joanne Slotnik  
(Information)

12. 11:35 a.m. Utah State Bar Pro Bono Program. . . . . Rod Snow  
(Action) John Baldwin
13. 12:05 p.m. Executive Session. . . . .
- 12:25 p.m. Lunch
14. 12:55 p.m. Adjourn

#### **Consent Calendar**

*The consent items in this section are approved without discussion if no objection has been raised with the Admin. Office (578-3806) or with a Council member by the scheduled Council meeting or with the Chair of the Council during the scheduled Council meeting.*

1. Committee Appointments Nancy Volmer  
(Tab 7) Ron Bowmaster  
Tim Shea
2. GAL Oversight Committee Chair Daniel J. Becker  
Appointment  
(Tab 8)
3. Rules to be Published for Comment Tim Shea  
(Tab 9)
4. Effective Date for Rules 6-401 and Tim Shea  
6-601  
(Tab 10)

# TAB 1

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, December 12th, 2011

Senior Citizen Center

Juab County Courthouse

Nephi, UT

**Chief Justice Christine M. Durham, Presiding**

### **ATTENDEES:**

Chief Justice Christine M. Durham  
Hon. Kimberly K. Hornak, vice chair  
Justice Jill N. Parrish  
Hon. Judith Atherton  
Hon. George Harmond  
Hon. Paul Maughan  
Hon. Brendan McCullagh  
Hon. David Mortensen  
Hon. Gregory Orme  
Hon. Larry Steele  
Hon. Keith Stoney  
Hon. Thomas Willmore

### **EXCUSED:**

Hon. John Sandberg  
Lori Nelson, esq.

### **STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Diane Abegglen  
Jody Gonzales  
Debra Moore  
Rick Schwermer  
Tim Shea  
Carol Price  
Nancy Volmer  
Brent Johnson

### **GUESTS:**

Hon. Kate Toomey  
Paul Vance, 4<sup>th</sup> Dist TCE  
County Attorney Jared Eldridge  
Commissioner Val Jones  
Commissioner Chad Winn  
Sheriff Alden Orme  
Chief Deputy M. Tischner

### **1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)**

Chief Justice Durham welcomed everyone to the meeting.

**Motion:** Judge Steele moved to approve the minutes. Judge Stoney seconded the motion, and it passed unanimously.

### **2. CHAIR'S REPORT: (Chief Justice Christine M. Durham)**

Chief Justice Durham reported on the following:

She reported that an international group of women from Afghanistan and Pakistan visited the courts recently as part of a sponsorship by the State Department on leadership of women's issues.

Discussion took place at the Management Committee meeting and with members of the

Bar regarding the proposed Pro Bono Program and the role the court would play in the program. Members of the Bar Commission will present the proposed program to the Council at their January meeting.

**3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

He referred to an article in the National Law Journal on December 5 entitled *We Need a National Justice Index* which recognized Utah's CourTools performance measurement system.

American Fork and Cedar Hills are considering formation of a justice court. They may seek an inter-local agreement.

The next Council meeting will be held on Monday, January 23 which is the start of the 2012 Legislative Session. Chief Justice Durham will give the State of the Judiciary Address that afternoon. Council members are encouraged to attend the address. Transportation will be available.

Mr. Becker reported that revenue projections for the state have been improving. He mentioned the status of several federal juvenile grants which provide funding for various court programs, and the fact that federal grand funding has been declining.

**4. COMMITTEE REPORTS:**

***Management Committee Report:***

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

***Liaison Committee Report:***

No meeting was held in December. The Liaison Committee's first meeting is scheduled in early January.

***Policy and Planning Meeting:***

Mr. Shea reported on the following:

The draft Policy and Planning Committee meeting minutes accurately reflect the issues discussed.

Mr. Shea noted that time was spent discussing the use of social media by judges and how to best implement the social media report. Mr. Brent Johnson, staff to the Ethics Advisory Committee, will draft a paper focusing on the questions developed by the Social Media Subcommittee. The information will then be distributed to judges as well as included as a topic at the Annual Judicial Conference.

The custody evaluation web page has been finalized and has been given to the court's web designer to publish the information.

There will be several rules for final action and published for comment on the January Council agenda.

***Bar Commission Report:***

Ms. Nelson asked to be excused from the meeting, so no report was provided.

**5. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Kate Toomey and Debra Moore)**

Chief Justice Durham welcomed Judge Toomey and Ms. Moore to the meeting.

Judge Toomey provided an update to the Council on the activities of the Board of District Court Judges. She highlighted the following in her update: 1) provided a list of board members, and 2) review of the continuing and new goals being undertaken by the Board. With the large number of new members on the Board of District Court Judges, an orientation was held in October. Ms. Moore was thanked for her help in coordinating and participating in the orientation.

Highlighted are the goals being addressed or that will be addressed by the Board: 1) work continues on the domestic case study and the fee waiver guidelines and procedures, 2) monitoring statewide implementation of the new civil discovery rules, 3) mental health court, 4) create a revised statewide district court judges benchbook, 5) propose minimum standards for courtroom computers and software, and 6) design a judges' case management system. She noted the annual service project undertaken by the Board of District Court Judges with the Food and Care Coalition in Provo. Another service project will be selected for the coming year.

Ms. Moore provided insight into the Board's activities for the coming year.

**6. THIRD DISTRICT LOCAL RULE ON CIVIL PROCEDURES: (Judge Kate Toomey)**

Judge Toomey is requesting ratification of Rule 10-1-306 - Expedited Procedures for Resolving Discovery Issues. The rule was drafted by Judge Toomey and Judge Todd Shaughnessy with the intent to further the just, speedy, and inexpensive determination of civil actions. The Third District bench voted to adopt the rule district-wide. The Board of District Court Judges would like to monitor its use in Third District before determining if the rule should be used statewide.

Judge Mortensen reported that the Fourth District judges will be discussing a similar rule tomorrow.

Discussion took place regarding a concern that individual districts may want to adopt their own local rules and the lack of consistency and uniformity that would result. It was suggested that if additional requests for local rules are received by the Council, that Policy and Planning should advance a uniform rule.

**Motion:** Judge Orme moved to approve the local rule for use in Third District. The motion was seconded, and it passed unanimously.

**7. JUAB COUNTY COURT SECURITY OVERVIEW (Daniel J. Becker)**

**TOUR (Sheriff Alden Orme, M. Tischner, and Carol Price)**

Mr. Becker provided background information on the Juab County court facility relative to the short-term and long-term security concerns. The security audit identified several concerns which Mr. Becker and Mr. Wahl shared with the presiding judges and a Juab County Commissioner, the County Attorney and sheriff in separate meetings.

He noted that two Juab County Commissioners and the County Attorney met with the Facilities Standing Committee on Friday, December 9 to discuss moving forward with plans for a

new court facility. The intent is to begin in August of 2012 and build a one-courtroom facility, with the ability to expand to another courtroom, and have the facility completed within a 9-10 month timeframe.

Mr. Becker expressed his concerns with the current facility and the safety of court staff and court patrons in the interim period while a new courthouse is being planned and constructed.

Sheriff Orme, Chief Deputy Tischner and Ms. Price will be providing a tour of the facility for the Council members.

Sheriff Orme provided background information relative to security services provided at the Juab County court facility. He mentioned that the facility is the old high school which now serves as the county offices/county court facility. He reviewed the staffing issues relative to providing adequate court security.

The tour of the court facility took place.

**8. JUAB COUNTY COURT SECURITY - REMARKS (Commissioner Val Jones, Commissioner Chad Winn and County Attorney Jared Eldridge)**

Chief Justice Durham welcomed County Attorney Jared Eldridge, Commissioner Val Jones and Commissioner Chad Winn to the meeting.

It was noted that discussions between the Juab County Commission and the court's building committee are taking place relative to building a new court facility in Juab County. Commissioner Carlton and County Attorney Eldridge met with the Facility Standing Committee on Friday, December 9. The Juab County officials expressed their concerns with financing of the facility, adequate floor plans and needs.

A meeting between the Juab County officials and the Facilities Standing Committee will be held on January 17 to further discuss the future plans of constructing a new court facility in Juab County.

Short-term security options to improve security at the Juab County court facility were discussed.

**9. REPORT ON INTERPRETER PILOT PROGRAMS: (Tim Shea)**

Chief Justice Durham welcomed Mr. Shea to the meeting.

Mr. Shea highlighted the two interpreter pilot programs which include: 1) the use of two staff interpreters at the Matheson Courthouse rather than the use of contract interpreters, and 2) the use of remote interpretation in Vernal and Richfield. Cost savings were generated with the use of the staff interpreters and the remote interpretation in Vernal. Due to limited use in Richfield, no savings were realized. Judge Steele provided feedback regarding the use of remote interpretation in Vernal.

Staff interpreters. Mr. Shea reported that the program has been successful. Logistics of administering the program district-wide and statewide would need to be addressed before determining whether to institute the program on a permanent basis or not.

Remote Interpretation. Technical issues and vendor commitment to training of the equipment would need to be dealt with before considering placement of remote interpretation equipment in other districts.

Mr. Shea was thanked for his update.

**10. JUDICIAL PERFORMANCE EVALUATION COMMISSION - 2012 JUDGES CERTIFICATION STANDARDS: (Tim Shea)**

Mr. Shea reported that the Judicial Performance Evaluation Commission has requested that the Judicial Council certify to them whether the judges standing for election in 2012 have met the three judicial performance evaluation standards as listed: 1) a maximum number of allowable cases under advisement, 2) a minimum number of continuing education hours, and 3) physical and mental competence.

Mr. Shea noted that all the judges standing for election in 2012 meet the standards with the exception of Judge Edwin Peterson who did not meet the education requirement in 2009 as he was not appointed until September of that year, and Judge Shauna Kerr who has more than three cases under advisement for over two months in 2010. Discussion took place.

**Motion:** Judge Steele moved to approve the transmission of the results of the 2012 judges certification standards to the Judicial Performance Evaluation Commission. Judge Hornak seconded the motion, and it passed unanimously.

**11. SENIOR JUDGE CERTIFICATION: (Tim Shea)**

Mr. Shea reported that Judge Donald Sawaya has applied to be appointed as an active senior judge.

**Motion:** Judge McCullagh moved to forward the recommendation, on behalf of the Council, to the Supreme Court to certify Judge Donald Sawaya as an active senior judge. Judge Stoney seconded the motion, and it passed unanimously.

**12. LEGISLATIVE UPDATE/INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwermer provided a legislative update to the Council. He highlighted the following: 1) Governor's budget was released today, 2) an Executive Appropriations Committee meeting will be held tomorrow, and 3) provided a list of the bill requests related to the courts that are public. He noted that Senator Urqhart has agreed to sponsor the Self-Help Center Bill.

**13. STUDY ITEM RECOMMENDATIONS: (Daniel J. Becker)**

Mr. Becker recommended that Rule 3-202 - Court Referees be referred to the Policy and Planning Committee to review its use in district and justice courts to determine if amendments are needed.


No study item will be undertaken in 2012.

**Motion:** Judge Maughan moved to refer Rule 3-202 - Court Referees to Policy and Planning to consider its use in district and justice courts. Judge Stoney seconded the motion, and it passed unanimously.

**Motion:** Judge Hornak moved to enter into an executive session to discuss security issues. Judge Steele seconded the motion, and it passed unanimously.

**14. EXECUTIVE SESSION**

An executive session was held at this time.



The executive session ended, and the Council was back on the record.

15.

**ADJOURN**

The meeting was adjourned.

# TAB 2

# **Management Committee Minutes**

**JUDICIAL COUNCIL MANAGEMENT COMMITTEE  
MINUTES**

**Tuesday, January 10th, 2012**

**Matheson Courthouse  
450 South State Street  
Salt Lake City, Utah**

**MEMBERS PRESENT:**

Chief Justice Christine M. Durham, Chair  
Hon. Kimberly K. Hornak, vice chair  
Hon. Judith Atherton  
Hon. George Harmond  
Hon. John Sandberg

**EXCUSED:**

**GUESTS:**

**STAFF PRESENT:**

Daniel J. Becker  
Ray Wahl  
Diane Abegglen  
Lisa-Michele Church  
Jody Gonzales  
Debra Moore  
Rick Schwermer  
Tim Shea  
Nancy Volmer  
Ron Bowmaster

**1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Durham)**

Chief Justice Durham welcomed everyone to the meeting. After reviewing the minutes, the following motion was made:

**Motion:** Judge Hornak moved to approve the minutes. Judge Harmond seconded the motion, and it passed unanimously.

**2. ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

He reported on the following items:

Ms. Tani Downing, Chair of the GAL Oversight Committee, has had to resign from the Committee. An interim chair of the Committee needs to be selected. Ms. Downing and Mr. Rick Smith recommend Mr. Merrill Nelson to be selected as the acting chair of the GAL Oversight Committee.

**Motion:** Judge Hornak moved to accept the recommendation of Mr. Merrill Nelson to serve as the acting chair of the GAL Oversight Committee for the balance of calendar year 2012 and place it on the January Judicial Council consent calendar. Judge Atherton seconded the motion, and it passed unanimously.

**Rule 4-111 - Priority of Post-Conviction Petitions in Capital Cases.** Mr. Becker shared that there had been concerns expressed with the rule and whether it is workable in its present form. Chief Justice Durham offered her experience with the rule, and the adequacy of information being provided under the present rule. It was suggested that the rule be referred to

Policy and Planning for review and possible amendment. The Management Committee was in agreement to refer the rule to the Policy and Planning Committee.

**Judicial Performance Evaluation Commission.** Mr. Chris Buttars has resigned from his position on the Commission. Mr. Lowry Snow, chair of the Commission, has been selected to fill the vacancy in the House of Representatives left by the resignation of Representative David Clark, and therefore, he has also had to resign his position on the Commission. With the 2012 retention election forthcoming, the new appointees will not be involved with the current retention cycle.

Chief Justice Durham mentioned a vacancy on the Judicial Conduct Commission for a lawyer representative.

Mr. Curt Garner, the Governor's appointee to fill Judge Peuler's vacancy has withdrawn his name from consideration. The Nominating Commission will start anew to fill Judge Peuler's vacancy. Judge Peuler will assist with coverage, in part, as a senior judge.

Judge Tyron Medley has announced his retirement effective June 29, 2012.

Mr. Becker reported that an executive session will be necessary at the January 23 Council meeting to discuss matters relative to HB 49 - Fire Arms Revisions. Mr. Schwermer reviewed the proposed bill. Discussion took place.

**3. COMMITTEE APPOINTMENTS: (Nancy Volmer, Ron Bowmaster and Tim Shea)**

The Standing Committee on Judicial Outreach recommends the reappointment of Mr. Robert Austin to serve a second term on the Committee.

The Committee on Resources for Self-Represented Parties recommends the reappointment of Mr. Robert Jeffs to serve a second term on the Committee.

The Board of Justice Court Judges recommends Judge Matthew Funk to fill the vacancy for a justice court representative on the Standing Committee on Technology. The Standing Committee on Technology recommends the reappointment of Judge Carolyn McHugh as the representative of the Appellate Court.

**Motion:** Judge Harmond moved to approve the recommended committee appointments as presented and place them on the January Judicial Council consent calendar. Judge Hornak seconded the motion, and it passed unanimously.

**4. GAL OVERSIGHT COMMITTEE CHAIR APPOINTMENT: (Daniel J. Becker)**

Discussion of this item took place with the Administrative Update.

**5. MUNICIPAL JUSTICE COURT RECERTIFICATIONS: (Rick Schwermer)**

Mr. Schwermer provided an update to the Management Committee on several municipal justice court re-certifications. He reminded the Committee that re-certification of municipal justice courts is required every four years. He reported that there are a high number of problems surfacing during the re-certification process. Mr. Schwermer suggested that it may be time to review the process in assessing compliance by justice courts.

The following courts and their re-certification issues were highlighted:

**Delta.** There were issues with the court's hours. The certification committee recommends a waiver, if the city agrees to the necessary changes. The Management Committee agrees with that recommendation.

Draper. The issue is that as a Class I court, the judge is presumed to be full-time. Draper has asked to be heard on this issue at the Council's January 23 meeting. Discussion took place. The Management Committee recommended the latter issue of what constitutes a full time justice court judge be referred to Policy and Planning for further review. The Management Committee will recommend the Council grant Draper a one-year waiver.

Heber. The facility has no victim/witness room available, and the judge finds a gavel "unnecessary". The Management Committee agrees with the committee recommendation.

Hilldale. The court does not appear to be open on Fridays, and the judge's "temporary" status. The Management Committee agrees with the committee recommendation.

Naples. The facility is now within the boundaries of the municipality. The Management Committee agrees with the committee recommendation.

Orderville. The facility has no space for a jury or a jury deliberation room. The Management Committee agrees with the committee recommendation.

Parawon. Issue of two separate tables for counsel. Currently a 12 foot table is being used. The Management Committee agrees with the committee recommendation to grant a waiver.

Santa Clara. The court is not open on Fridays. The Management Committee agrees with the committee recommendation.

Kanab. The city has not made a request for recertification, but the judge has submitted a re-certification affidavit. Discussion took place. The matter was deferred until the January 23 Council meeting for further discussion.

**6. APRIL COUNCIL MEETING - DATE CHANGE: (Daniel J. Becker)**

Mr. Becker requested the amendment of the Judicial Council schedule to reflect a change to the April date. The Management Committee was in agreement to move the April 23 meeting to April 30.

**7. JUAB COUNTY UPDATE: (Ray Wahl)**

Mr. Wahl provided an update relative to the Juab County court facility.


On December 21 as followup to the Judicial Council meeting of December 12, Mr. Brent Johnson sent a letter to the Juab County attorney. The content of the letter was reviewed.

Mr. Alyn Lunceford, Mr. Paul Vance and Mr. Jim Peters will meet with Juab County officials next week. The following items will be discussed: 1) resolution of the number of days court is being held at the Juab County court facility, 2) agreement by Juab County to obtain a contract with an architect for the design of a new court facility, and 3) review the revenue bond process.

Viack is currently being installed at the facility to allow for appearances from jail. It has been recommended to Juab County officials to consider reserving a parking space near the door for transport of prisoners, and other security measures have been suggested.

**8. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Christine M. Durham)**

Chief Justice Durham reviewed the proposed Council agenda for January 23.



**Motion:** Judge Harmond moved to approve the January Council agenda. Judge Hornak seconded the motion, and it passed unanimously.

**9. ADJOURN**

The meeting was adjourned.

# **Liaison Committee Minutes**

**DRAFT**  
**JUDICIAL COUNCIL LIAISON COMMITTEE**  
**MINUTES**

**Friday - January 6, 2012**

**Noon**

**Council Room**

***Hon. Jill Parrish, Presiding***

**MEMBERS PRESENT:**

Hon. Brendan McCullagh  
Hon. David Mortensen  
Hon. Jill Parrish  
Hon. Larry Steele

**STAFF PRESENT:**

Daniel Becker  
Lisa-Michele Church  
Brent Johnson  
Debra Moore  
Richard Schwermer  
Ray Wahl  
Sandy Iwasaki

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**1. WELCOME AND REVIEW OF RULES GOVERNING THE COMMITTEE:  
(Justice Jill Parrish)**

Justice Parrish welcomed everyone to this meeting. Mr. Schwermer briefly reviewed with the Liaison Committee the charge of the Committee as specified in Rule 1-204.

Justice Parrish advised the Liaison Committee that there is a scheduling conflict between two of the Liaison Committee meetings (January 27<sup>th</sup> and February 24<sup>th</sup>) and the meetings of the Judicial Council's Study Committee on Cameras in the Courtroom. Justice Parrish and Judge David Mortensen are also members of the study committee. After some discussion, it was decided that the Liaison Committee meeting on January 27<sup>th</sup> will be scheduled for 10:30 a.m. rather than at the regularly scheduled time of 12:00 p.m. The Liaison Committee will decide what to do about the February 24<sup>th</sup> meeting as that date approaches.

**2. H.B. 11 - GRAND JURY AMENDMENTS: (Justice Jill Parrish)**

This bill provides exceptions to the requirement of 72 hours notice for a minor to testify before a grand jury. It allows a subpoena to be served on a minor to testify before a grand jury less than 72 hours before testifying if there is a threat to the minor's safety or a risk of:

- concealment or removal of the minor from the jurisdiction;
- intimidation, either to the minor or a member of the minor's family; and
- undue influence on the minor regarding the minor's testimony.

***Liaison Committee's Position: No position***

**3. H.B. 13 - OFFENDER REGISTRY REVIEW: (Judge Brendan McCullagh)**

This bill allows a person who has been convicted of the following to petition the court for removal from the Sex Offender and Kidnap Offender Registry after five years:

- unlawful sexual conduct with a 16 or 17 year old;
- unlawful sexual activity with a minor; or
- a misdemeanor violation of voyeurism.

The bill requires the person to have successfully completed any court-ordered treatment and not have any subsequent convictions. It also requires that a copy of the petition be delivered to the prosecutor and victim, or if the victim is still a minor, the victim's parents. The bill gives the court discretion to order the person removed from the registry if it determines that the person is no longer a risk to society.

The provisions allowing a person to petition the court for removal from the registry do not apply to a person on the registry as a result of being convicted in another state.

Some drafting issues with the proposed amendments were pointed out. It was noted that the standards for removal from the registry should mirror the language of the standards for expungement.

*Liaison Committee's Position: No position, but there appear to be some drafting issues.*

**4. H.B. 14 - CIVIL COMMITMENT AMENDMENTS: (Judge David Mortensen)**

This bill amends Title 62A, Chapter 15, Substance Abuse and Mental Health Act, by including harmful sexual conduct as grounds for a civil commitment. It defines the term "harmful sexual conduct;" amends the definition of "substantial danger;" amends the process for civil commitment; and makes technical changes.

*Liaison Committee's Position: No position.*

**5. H.B. 18 - KIDNAPPING OFFENDER AMENDMENTS:  
(Judge Brendan McCullagh)**

This bill modifies the Code of Criminal Procedure regarding offenses on the Sex Offender and Kidnap Offender Registry. It provides a judicial process by which an offender under Section 76-5-301 regarding kidnapping or an offender under Section 76-5-304 regarding unlawful detention may petition the court for removal from the registry and provides a process for the offender to obtain criminal records necessary for the judicial hearing. The bill removes the offenses of kidnapping from the list of offenses required to be on the sex offender registry, but does not remove kidnapping offenses involving children or aggravating circumstances.

Some drafting issues with the proposed amendments were pointed out. It was noted that the standards for removal from the registry should mirror the language of the standards for expungement.

*Liaison Committee's Position: No position, but there appear to be some drafting issues.*

**6. H.B. 37 - CHILD SUPPORT GUIDELINES ADVISORY COMMITTEE  
AMENDMENTS: (Judge David Mortensen)**

This bill changes the Child Support Guidelines Advisory Committee's creation and dissolution dates to give the committee 42 months to complete its statutory charge. It clarifies language regarding obligations for minor children in the home and makes technical corrections regarding duplicative and confusing language.

*Liaison Committee's Position: No position.*

**7. H.B. 38 - COMPETENCY TO STAND TRIAL AMENDMENTS:  
(Judge David Mortensen)**

This bill modifies Title 77, Chapter 15, Inquiry into Sanity of Defendant, by amending the process for determining a defendant's competency to stand trial. It amends the process by clarifying that the court may not order an examination of the defendant or order a hearing on the mental condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial. The bill requires the experts conducting the competency exam to consider any exhibition of false or exaggerated symptoms related to capacity to stand trial. It requires that the experts who determine the defendant is incompetent to stand trial shall provide in their report information regarding any instruments, methods, and observations used to determine if the defendant exhibits false or exaggerated symptoms. The bill provides that if there is a conflict between the opinions of the examining experts, the court is not required to appoint an additional expert unless the court finds the appointment necessary.

*Liaison Committee's Position: No position, but ascertain that lines 150-151 provide the court with the discretion intended.*

**8. H.B. 49 - FIREARMS REVISIONS: (Justice Jill Parrish)**

This bill provides that in the absence of additional threatening behavior, the otherwise lawful possession of a firearm or dangerous weapon, whether visible or concealed, is not a violation of certain statutory provisions. It provides that governmental entities may not enact, maintain, or enforce firearm or dangerous weapon laws, ordinances, rules or regulations without explicit authority granted by the Legislature. The bill provides that where authority has been granted to a governmental entity by the Legislature to regulate firearms or other dangerous weapons, any law, ordinance, rule, regulation, code of conduct, or contractual obligation based on that grant shall reference the grant and detail the conduct that is limited or prohibited pursuant to the grant. It voids any firearm or dangerous weapon law, ordinance, rule, regulation, code of conduct, or contractual obligation that does not reference the applicable legislative grant of authority and details the conduct that is limited or prohibited pursuant to the grant.

*Liaison Committee's Position: No position.*

**9. H.B. 202 - CHILD PROTECTION AMENDMENTS: (Judge Larry Steele)**

This bill modifies Title 62A, Chapter 4a, Child and Family Services, and Title 78A, Chapter 6, Juvenile Court Act of 1996, by prohibiting the Division of Child and Family Services and juvenile courts from taking action against a parent or guardian on the sole basis of a positive drug test when the drug test results are due to the proper use of prescribed medication. The bill requires the division and juvenile courts to consider evidence that a failed drug test is due to a parent's or guardian's proper use of prescribed medication. It states that an employee of the Division of Child and Family Services who violates these provisions is subject to discipline.

The Liaison Committee discussed the unintended consequences with the proposed amendments as drafted. It is unclear as to what is considered a failed drug test.

*Liaison Committee's Position: No position, but may point out the unintended consequences of the proposed amendments to the sponsor.*

**10. H.B. 203 - PARENTAL RIGHTS REVISIONS: (Judge Larry Steele)**

This bill amends the Juvenile Court Act of 1996 by providing that before ordering termination, the court shall consider whether terminating a parent's rights will cause a child to lose meaningful contact with other members of the child's ethnic group or race. The bill also makes technical changes.

The Liaison Committee noted that it is unclear how the proposed amendment will be applied. The proposed amendment appears to be misplaced and may be more appropriate if it were a part of the best interest considerations rather than under grounds for termination of parental rights.

*Liaison Committee's Position: No position, but may point out to the sponsor that the proposed amendment may be more appropriate as part of the best interest considerations.*

**11. S.B. 11 - DEPARTMENT OF ENVIRONMENTAL QUALITY BOARDS  
ADJUDICATIVE PROCEEDINGS: (Justice Jill Parrish)**

This bill modifies requirements and procedures for adjudicative proceedings where a party challenges an agency order, other than a termination order, relating to a permit, plan, license, approval order, or other administrative authorization made by an executive secretary under Title 19, Environmental Quality Code.

*Liaison Committee's Position: No position.*

**NEXT MEETING: Friday - January 20, 2012  
Noon  
Administrative Office of the Courts**

**Policy and Planning Committee  
Minutes**

Minutes of the Policy and Planning Committee					
Meeting Date January 6, 2012			Meeting Room Court of Appeals Conference Room		
Committee Member	Present	Excused	Committee Member	Present	Excused
Judge Paul Maughan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Judge Larry Steele	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ms. Lori Nelson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Judge Keith Stoney	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Judge Gregory Orme, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Judge Thomas Willmore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Staff: Tim Shea					

Approve minutes of December 2, 2011	By Judge Orme
Motion: Approve as prepared.	By Acclamation
Vote: Yes All No Abstain	Pass <input checked="" type="checkbox"/> No Pass <input type="checkbox"/>

Social media report update	By Judge Orme
Discussion: Judge Orme reported on the further communications among Randy Dryer, on behalf of the Social Media Subcommittee, himself and Brent Johnson.	

Rule 3-202. Court Referees.	By Tim Shea
<p>Discussion: Instead of considering the broader issue of alternatives for minor offenses, the Council would like to review the current rule. Should the rule should be amended, and if so, how?</p> <p>Judge Stoney explained the circumstances in West Valley Justice Court and some other justice courts. Some courts are using referees even though there is no law authorizing referees in justice court. To better govern referees, the Council should develop a rule around use in the justice courts, since that is where most of these cases are filed. Judge Orme said that the rule should apply in district court and juvenile court as well, although there might be express provisions applicable in less than all courts.</p> <p>Judge Orme said the definition of referee should be all-inclusive so courts cannot evade the rule by calling an officer by a different title. Judge Stoney said that the judge should be responsible for supervision rather than the city or county. He is concerned about executive branch employees supervising a judicial function.</p> <p>The committee agreed that only cases classified by the Uniform Fine and Bail Schedule as not having a mandatory appearance would be appropriate for a referee, but some jurisdictions evade that limitation by arguing that the Fine and Bail Schedule is only advisory.</p> <p>Mr. Shea suggested that some cases were so routine that a not even a referee is needed. A rule could precisely describe outcomes for select cases that could be implemented by the clerk of court. Judge Stoney again was concerned that in the justice courts the clerk of court is an executive branch employee.</p> <p>Judge Maughan asked how this approach could be squared with the Utah Supreme Court's decision in Ohms v. Salt Lake City. Mr. Shea said that a decision by the referee would have to be called a recommendation, and the judge would have to countersign it.</p>	

Action: Judge Stoney and Mr. Shea will draft a rule for the committee to consider. Judge Stoney will get input from the Board of Justice Court Judges.

Consideration of comments	By Tim Shea
<p>Discussion:</p> <p>CJA 03-0101. Judicial performance standards.</p> <p>CJA 04-0704. Authority of court clerks to extend payment schedule and dismiss citations.</p> <p>CJA 04-0907. Mandatory divorce education.</p> <p>Regarding mandatory divorce education a commentator observed that the divorce education courses should have on-line options. Mr. Shea explained that staff had discussed this, but rejected it because the statute seems to require attendance in person. Making the video available in limited circumstances already stretches the statutory intent.</p> <p>Regarding judicial performance standards, a commentator asked the meaning of an "exceptional" case. The Council discussed this when drafting the rule. An exceptional case is not every case held under advisement, but rather one that is held under advisement for more than the maximum allowable time.</p> <p>The commentator asked, if a judge has an odd number of exceptional cases under advisement for more than two months, with no more than half of the exceptional cases in any one calendar year, how can a judge have half of a case under advisement? Mr. Shea explained that the maximum allowable exceptional cases for a full six-year term is 15: three cases per year for five years, not counting the last year of the term because the performance evaluation occurs approximately one year before the end of the judge's term. Half of 15 is 7 1/2, so, during a full term, a judge can have as many as seven exceptional cases in any one calendar year and still comply with the standard.</p> <p>The commentator suggested that the time be calculated in days rather than months. Mr. Shea said that the time used to be calculated in days, but that the Council changed it several years ago because judges' personal calendaring methods focused on months rather than days. Even the statute was amended to describe time in months.</p> <p>The commentator recommended allowing an average of four cases per year under advisement for more than 90 days. Judge Orme said that since judicial evaluation by JPEC is still new, the Council should not, at this juncture, modify the rule that has been in effect for many years.</p>	
Motion: Recommend that the Council approve these rules.	By Acclamation
Vote:      Yes    All                      No                      Abstain	Pass <input checked="" type="checkbox"/> No Pass <input type="checkbox"/>

Publish for comment: Rule 3-301. Court administrators. Rule 3-410. Automated information resource management.	By Tim Shea
<p>Discussion: The amendments are intended to conform the rules to administrative changes that have occurred recently.</p>	
Motion: Recommend that the Council publish these rules for comment.	By Acclamation
Vote:      Yes    All                      No                      Abstain	Pass <input checked="" type="checkbox"/> No Pass <input type="checkbox"/>

# TAB 3



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

**To:** Judicial Council  
**From:** Tim Shea *TJS*  
**Date:** January 6, 2012  
**Re:** Rules for final action

The comment period for the following rules has closed, and the Policy and Planning Committee recommends that they be approved.

#### Rule Summary

CJA 03-0101. Judicial performance standards. New. Establishes standards of performance for minimum education and cases under advisement for application by the Judicial Performance Evaluation Commission. Effective October 24, 2011 under Rule 2-205. Subject to change after the comment period.

CJA 04-0704. Authority of court clerks to extend payment schedule and dismiss citations. Amend. Allows clerks to dismiss citations as permitted in the Uniform Fine/Bail Schedule.

CJA 04-0907. Mandatory divorce education. Amend. Simplifies policy on access to divorce orientation courses and divorce education courses.

Encl. Draft Rules  
Comments

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

450 South State Street / POB 140241 / Salt Lake City, Utah 84114-0241 / 801-578-3808 / Fax: 801-578-3843 / email: [tims@email.utcourts.gov](mailto:tims@email.utcourts.gov)

## **Comments: Code of Judicial Administration**

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Rules appear to prohibit the possibility of developing online educational options in the future for delivery of divorce orientation education. This is unfortunate because online options could improve the standardization of the content of the class and make the class more accessible for individuals.

Posted by Alan J. Hawkins November 1, 2011 12:27 PM

I am addressing the provisions that apply to Trial Judges, 2(C)lines 21-24, although the question concerning "exceptional cases" applies to all courts.

1. What is the definition of an "exceptional" case? Does it just mean cases under advisement? If so, why is the adjective needed?

2. The judge is unsatisfactory if he/she has more than 3 cases under advisement per calendar year for more than two months, with no more than half of exceptional cases in any one calendar year. If exceptional cases are the cases under advisement(3), how does a judge have half of a case under advisement?

3. Having just dealt with an issue of 6 months vs 180 days, I believe all references would be clearer if days were used instead of months.

4. Since the caseload and complexity has changed it would appear that the rule should recommend 4 cases a year and more than 90 days under advisement

Posted by Judge Lee Dever October 26, 2011 11:36 AM

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

**Intent**

To establish standards of performance for application by the Judicial Performance  
Evaluation Commission.

**Applicability**

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

**Statement of the Rule**

(1) Case under advisement standard. 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.

(2)(A) 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.

(2)(B) A judge of the Court of Appeals demonstrates satisfactory performance by:

(2)(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

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

(2)(C) A trial court judge demonstrates satisfactory performance by holding:

(2)(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

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

(3) Education standard. Satisfactory performance is established if the judge annually  
obtains 30 hours of judicial education subject to the availability of in-state education  
programs.

(4) Physical and mental competence. Satisfactory performance is established if the  
response of the judge demonstrates physical and mental competence to serve in office

31 and if the Council finds the responsive information to be complete and correct. The  
32 Council may request a statement by an examining physician.

33

**Rule 4-704. Authority of court clerks to extend payment schedule and dismiss citations.**

**Intent:**

To establish the authority of court clerks to extend the time for payment of bail.

To establish the authority of court clerks to dismiss citations issued for certain offenses.

~~To establish a uniform procedure for court clerks to extend time for payment of bail and to dismiss citations.~~

**Applicability:**

This rule shall apply to all courts of record and courts not of record.

**Statement of the Rule:**

(1) Unless otherwise ordered by the judge, the clerk of the court, for reasonable cause, is authorized to allow a defendant an extension of time to post bail.

(2) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss traffic citations for violation of Section 53-3-217 if the defendant presents proof that the defendant possessed a valid driver's license at the time the citation was issued.

~~(3) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Section 41-1a-214 if the defendant presents proof that the defendant possessed a valid registration at the time the citation was issued.~~

~~(4) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Section 41-12a-303.2 if the defendant presents proof that valid insurance was in effect for the vehicle at the time the citation was issued.~~

~~(5) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Section 41-12a-302 if the defendant presents proof that valid insurance was in effect for the vehicle at the time the citation was issued.~~

~~(6) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Section 53-3-227 if the defendant presents proof that the defendant possessed a valid driver's license at the time the citation was issued.~~

~~(7) Unless otherwise ordered by the judge, the clerk of the court is authorized to dismiss citations for violation of Title 41, Chapter 6a, Part 16, Vehicle Equipment, if the~~

31 ~~defendant presents proof that the defendant has repaired the mechanical deficiency~~  
32 ~~within 20 days after the citation was issued~~ as provided in the Appendix C. Uniform  
33 Fine/Bail Schedule.  
34

1        **Rule 4-907. ~~Mandatory d~~Divorce education and divorce orientation courses.**

2        Intent:

3        To ~~establish a procedure for implementing the mandatory divorce education program~~  
4        policies for the implementation of the divorce education course required by Utah Code  
5        Section 30-3-11.3 and the divorce orientation course required by Utah Code Section 30-  
6        3-11.4.

7        Applicability:

8        This rule shall apply to all ~~divorce proceedings in which the parties have a child or~~  
9        ~~children under the age of 18 or a dependent adult~~ Utah Code Section 30-3-11.3, Utah  
10       Code Section 30-3-11.4 or a court order require attendance at one or both courses.

11       Statement of the Rule:

12       (1) ~~The Council shall appoint a committee to oversee and monitor the program,~~  
13       ~~whose membership shall include judges, court administrators, attorneys, and members~~  
14       ~~of the public.~~

15       (2) ~~The state court administrator shall assign the responsibility to direct the program~~  
16       ~~to an administrator in~~ The education department within the Administrative Office of the  
17       Courts.

18       (3) ~~The program administrator shall:~~

19       (1)(A) ~~establish uniform specifications and standards for the~~ courses; curriculum and  
20       ~~provision of the divorce education course, in consultation with the committee.~~

21       (4) ~~The Administrative Office shall (1)(B) issue a request for proposals to providers of~~  
22       ~~divorce education setting forth the uniform established specifications and standards;.~~

23       (5) ~~The committee shall review the proposals submitted and make recommendations~~  
24       ~~for award of contracts.~~

25       (6) ~~The program administrator, in consultation with the state court administrator and~~  
26       ~~the judges in each district, shall (1)(C) award the contracts~~ for live courses; and

27       (1)(D) produce the courses by video and other effective formats.

28       (7) ~~(2)(A) Each party to a complaint for divorce~~ required to attend one or both  
29       courses shall, prior to the entry of the decree of divorce, attend the divorce education  
30       live course provided under contract with the Administrative Office and present at any  
31       location at which it is offered.

32 (2)(B) A party required to attend one or both courses may watch a video of the  
33 course if:

34 (2)(B)(i) the party lives out of state or more than 60 miles from the nearest live class;

35 (2)(B)(ii) the party is in prison, jail or other detention facility;

36 (2)(B)(iii) the party is an in-patient at a medical facility; or

37 (2)(B)(iv) the party's request to watch the video is approved by the divorce education  
38 administrator.

39 (2)(C) The party may purchase the video or watch it at any district court courthouse.

40 (3) The course provider or the custodian of the video shall provide the party with a  
41 certificate of completion to the court.

42 ~~(8) The clerk shall, at the time a complaint for divorce~~ (4) When the petition is filed,  
43 the clerk shall notify the party filing the complaint petitioner of the course requirement.  
44 The party filing the complaint petitioner shall notify the other party respondent of the  
45 requirement and file a certificate with the court that notice has been given and  
46 identifying the type of notice given of service of the notice.

47 ~~(9) Each party shall contact the court or the course provider and register to attend~~  
48 ~~the course. No further notice of the date and time of the course need be provided to any~~  
49 ~~party.~~

50 ~~(10) Each party~~ (5) Any person attending a course shall present a valid form of photo  
51 identification, and pay the course fee in the manner required by the provider, to the  
52 course provider at the time and place of the course. If a party has filed an Affidavit of  
53 Impecuniosity with the court in the divorce proceeding, that party may, in lieu of paying  
54 the course fee, or present a copy of the Affidavit to the course provider. The court shall,  
55 prior to the entry of the decree of divorce, review the Affidavit and may take evidence in  
56 order to determine whether the party is impecunious an order waiving the fee or a  
57 motion to waive fees that has been filed with the court. If the court determines that the  
58 party is not impecunious, the court may enter judgment for the amount of the course  
59 fee.

60 ~~(11)~~ (6) The course fee for each participant shall for attending the education course  
61 or watching the video is \$35.00, which includes \$8.00 which the course provider shall  
62 remit to the court for deposit in the Children's Legal Defense Fund. The fee for attending

63 the orientation course or watching the video is \$20.00, which includes \$5.00 for deposit  
64 in the Children's Legal Defense Fund. The course provider shall complete a certificate  
65 of completion and provide the same to each party who:

66 (A) ~~attends and completes the course;~~

67 (B) ~~either pays the course fee or presents a copy of an Affidavit of Impecuniosity filed~~  
68 ~~with the court in the divorce action; and~~

69 (C) ~~completes the course evaluation form.~~

70 ~~(12)-(7)~~ The course provider shall, within 72 hours of each course, provide the court  
71 with an alphabetized list of each party who ~~attended and completed~~ the course.

72 ~~(13) If a party does not attend the course within 45 days of having been notified of~~  
73 ~~the course requirement, the court may hold the party who did not timely attend in~~  
74 ~~contempt or may waive course attendance for good cause shown.~~

75 ~~(14) The court may waive the attendance requirement at any time if it determines~~  
76 ~~that course attendance and completion are not necessary, feasible, or in the best~~  
77 ~~interest of the parties.~~

78 ~~(15) The 90 day statutory waiting period does not apply to divorce proceedings in~~  
79 ~~which the parties have attended the divorce education course.~~

80



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

To: Judicial Council  
From: Tim Shea *TJ*  
Date: December 19, 2011  
Re: Rules for final action

The comment period for the following rules has closed, and the Policy and Planning Committee recommends that they be approved.

#### (1) Rule Summary

CJA 04-0202.02. Records classification. Amend. Modifies records to be classified as sealed, private or protected.

CJA 04-0202.04. Request to access a record associated with a case; request to classify a record associated with a case. Amend. Moves from Rule 4-202.02 to this rule descriptions of records that require judicial approval to classify as non-public.

CJA 04-0202.09. Miscellaneous. Amend. Requires a person filing a record with the court to identify the record as non-public if it qualifies as non-public.

CJA Appendix I. Summary of Classification of Court Records. New. Summarizes the classification of record series by casetype.

#### (2) Details of the proposal

Several months ago the Family Law Section of the Bar approached the Policy and Planning Committee with a proposal to classify financial declaration forms as private. Financial declarations contain a significant amount of private and sensitive information and are frequently filed in divorce and parentage cases and in petitions to modify custody, support and parent time orders.

About the time the comment period on that proposal closed, the clerks of court proposed a rule change that would classify as private those casetypes that the Utah Code allows to be classified by motion. The proposal was explored, refinements made and the rules summarized above were published for comment. Because classifying the

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efficient, and independent system for the advancement of justice under the law.

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entire file as private necessarily includes the financial declarations within the file, the proposal from the Family Law Section was tabled.

Utah Code Section 30-3-4(2) provides:

(a) A party to an action brought under this title or to an action under Title 78B, Chapter 12, Utah Child Support Act, Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act, Title 78B, Chapter 14, Uniform Interstate Family Support Act, Title 78B, Chapter 15, Utah Uniform Parentage Act, or to an action to modify or enforce a judgment in the action may file a motion to have the file other than the final judgment, order, or decree classified as private.

(b) If the court finds that there are substantial interests favoring restricting access that clearly outweigh the interests favoring access, the court may classify the file, or any part thereof other than the final order, judgment, or decree, as private. An order classifying part of the file as private does not apply to subsequent filings.

(c) The record is private until the judge determines it is possible to release the record without prejudice to the interests that justified the closure. Any interested person may petition the court to permit access to a record classified as private under this section. The petition shall be served on the parties to the closure order.

Before Title 78 was recodified in 2008, cohabitant abuse actions were included within the scope of paragraph (a) because the cohabitant abuse act was under Title 30. In 2008 the statutes regulating cohabitant abuse were moved to Title 78B, but this statute was never changed to update the reference.

The proposed amendments to Rule 4-202.02 classify as private the casetypes identified in the statute. The proposal also classifies cohabitant abuse cases as private, as they once were, and it adds civil stalking injunctions because of their similarity to cohabitant abuse actions. In classifying the different casetypes as private, the proposal draws a distinction between casetypes in which all documents are private—some remaining so until they are sealed—(lines 101 - 106) and casetypes in which records other than the case history; judgments, orders and decrees; letters of appointment; and the record of public hearings are private (lines 107 - 122).

The other changes to Rules 4-202.02 and 4-202.04, although substantive, do not reflect a significant change in policies. The change to Rule 4-202.09 would require the filer to identify a non-public record as such. Appendix I is proposed as a summary of the rule.

### **(3) Comments**

The proposed amendments generated five comments. One commentator mistakenly believes that the amendments will make guardianship files public. Although the current

line classifying guardianship records as private is deleted, the casetype remains private because it is identified by code title and chapter in an earlier line.

Another commentator observed that the rule classifies adoption records as private until they are sealed six months after the decree, while the statute classifies them as sealed from the beginning. This is true, but sealing the file while it is pending means the judge would have to order the file unsealed every time a pleading or other paper has to be filed. Either classification is sufficient to keep the records from public view.

A third commentator said that, under 20 U.S.C. 1415, a parent of a student with disabilities may use the state appeal process, and those appeals are confidential and include documents and exhibits that are protected from disclosure by federal law. Therefore, this type of agency review should not be public. My interpretation of 20 U.S.C. 1415 is different: The appeal, during which the records are confidential, is through the administrative agency. The state district court becomes involved only if the party, after exhausting those administrative remedies, files a civil action. The confidentiality provisions for the administrative appeal do not appear in the paragraphs describing the civil action. Therefore, the Judicial Council could, as a matter of policy, make these actions private, but is not required by federal law to do so.

#### **(4) Policies**

Despite the paucity of comments, classifying these family law casetypes by rule rather than selectively by motion is a major shift and should not be done without thoroughly exploring the competing policies.

Rule 4-202.02 serves as a convenient starting point. It describes some of the interests served by public court records:

- to obtain information concerning the conduct of the public's business;
- to educate the public about the workings of government and the decisions being made on the public's behalf;
- to contribute to informed debate;
- to hold public officers and employees accountable;
- to increase public confidence;
- to give notice of important claims, rights and obligations; and
- to provide material for independent research on improving government policy.

And some of the interests served by non-public court records:

- to protect personal privacy;
- to protect personal and public safety;
- to protect a property interest that would be lost or devalued if opened to public view;
- to promote the rehabilitation of offenders, especially youthful offenders; and

- to protect non-parties participating in the court process, such as victims, witnesses, and jurors.

Some of these factors may not be relevant in this circumstance.

In passing Section 30-3-4(2), the legislature presumably considered some of these and other factors and decided that closure would be appropriate if requested. Adopting a rule that classifies the cases as private without a request does not shift the burden of persuasion in an individual case. The law still favors public records, and the party seeking to keep the record closed must present facts and arguments favoring closure that outweigh the factors favoring access. Classifying the records as private by rule does change who has the burden of coming forward: if the Council adopts the amendments, the party seeking to open the records would have to take the first step, but standing to file such a request is liberally granted, and there is no fee.

Although many of the same standards that apply to closing a hearing apply also to closing a record, records are different. A closed hearing, once held, cannot be conducted a second time. Any damage done by closure cannot be undone. Records, on the other hand, can be re-opened after they have been closed without any loss.

The records of the described casetypes would be closed, but the hearings in those casetypes would remain open. Sometimes seen as an anomaly, this model is common. Nearly all juvenile court records are presumed closed, and nearly all hearings are presumed open.

The principal reason for keeping these records from public view is to protect the privacy of the parties and their children. In these cases the courts are called upon to decide aspects of daily family life that are personal, private and sensitive. Those decisions require information that is no one's business but one's own. Information sufficient to put a party at risk of identity fraud is routine, as is the financial information to help target that fraud. Allegations, proven and unproven, can be cast about. Custody evaluations frequently present sensitive information about the children and their relationships with their parents. The list of individual records that have historically been closed or that warrant closure has grown to the point that closing the file also is warranted.

Under this proposal court orders would remain public. Often times third parties need to rely on court orders, so they must remain public. It will be the parties' responsibility—and their lawyers'—to make sure that private information is omitted from court orders or properly redacted or truncated. The case history also would remain public, which shows that the case exists and the parties involved, identifies the documents filed, and identifies the hearings. The record of a public hearing also would remain public.

Encl. Draft rules  
Comments



**Rule 4-202.02. Records classification.**

Intent:

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Court records are public unless otherwise classified by this rule.

(2) Public court records include but are not limited to:

(2)(A) abstract of a citation that redacts all non-public information;

(2)(B) aggregate records without non-public information and without personal identifying information;

(2)(C) arrest warrants, but a court may restrict access before service;

(2)(D) audit reports;

(2)(E) case files;

(2)(F) committee reports after release by the Judicial Council or the court that requested the study;

(2)(G) contracts entered into by the judicial branch and records of compliance with the terms of a contract;

(2)(H) drafts that were never finalized but were relied upon in carrying out an action or policy;

(2)(I) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;

(2)(J) financial records;

(2)(K) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:

(2)(K)(i) amount in controversy;

(2)(K)(ii) attorney name;

(2)(K)(iii) case number;

(2)(K)(iv) case status;

(2)(K)(v) civil case type or criminal violation;

32 (2)(K)(vi) civil judgment or criminal disposition;  
33 (2)(K)(vii) daily calendar;  
34 (2)(K)(viii) file date;  
35 (2)(K)(ix) party name;  
36 (2)(L) name, business address, business telephone number, and business email  
37 address of an adult person or business entity other than a party, but the name of a juror  
38 or prospective juror is private until released by the judge;  
39 (2)(M) name, address, telephone number, email address, date of birth, and last four  
40 digits of the following: driver's license number; social security number; or account  
41 number of a party;  
42 (2)(N) name, business address, business telephone number, and business email  
43 address of a lawyer appearing in a case;  
44 (2)(O) name, business address, business telephone number, and business email  
45 address of court personnel other than judges;  
46 (2)(P) name, business address, and business telephone number of judges;  
47 (2)(Q) name, gender, gross salary and benefits, job title and description, number of  
48 hours worked per pay period, dates of employment, and relevant qualifications of a  
49 current or former court personnel;  
50 (2)(R) opinions, including concurring and dissenting opinions, and orders entered in  
51 open hearings;  
52 (2)(S) order or decision classifying a record as not public;  
53 (2)(T) private record if the subject of the record has given written permission to make  
54 the record public;  
55 (2)(U) probation violation reports;  
56 ~~(2)(U)~~ (2)(V) publications of the administrative office of the courts;  
57 ~~(2)(V)~~ (2)(W) record in which the judicial branch determines or states an opinion on  
58 the rights of the state, a political subdivision, the public, or a person;  
59 ~~(2)(W)~~ (2)(X) record of the receipt or expenditure of public funds;  
60 ~~(2)(X)~~ (2)(Y) record or minutes of an open meeting or hearing and the transcript of  
61 them;

62 ~~(2)(Y)-(2)(Z)~~ record of formal discipline of current or former court personnel or of a  
63 person regulated by the judicial branch if the disciplinary action has been completed,  
64 and all time periods for administrative appeal have expired, and the disciplinary action  
65 was sustained;

66 ~~(2)(Z)-(2)(AA)~~ record of a request for a record;

67 ~~(2)(AA)-(2)(BB)~~ reports used by the judiciary if all of the data in the report is public or  
68 the Judicial Council designates the report as a public record;

69 ~~(2)(BB)-(2)(CC)~~ rules of the Supreme Court and Judicial Council;

70 ~~(2)(CC)-(2)(DD)~~ search warrants, the application and all affidavits or other recorded  
71 testimony on which a warrant is based are public after they are unsealed under Utah  
72 Rule of Criminal Procedure 40;

73 ~~(2)(DD)-(2)(EE)~~ statistical data derived from public and non-public records but that  
74 disclose only public data;

75 ~~(2)(EE)-(2)(FF)~~ Notwithstanding subsections (6) and (7), if a petition, indictment, or  
76 information is filed charging a person 14 years of age or older with a felony or an  
77 offense that would be a felony if committed by an adult, the petition, indictment or  
78 information, the adjudication order, the disposition order, and the delinquency history  
79 summary of the person are public records. The delinquency history summary shall  
80 contain the name of the person, a listing of the offenses for which the person was  
81 adjudged to be within the jurisdiction of the juvenile court, and the disposition of the  
82 court in each of those offenses.

83 (3) The following court records are sealed:

84 (3)(A) adoption-records in the following actions:

85 (3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the  
86 conclusion of proceedings, which are private until sealed;

87 (3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the  
88 conclusion of proceedings, which are private until sealed; and

89 (3)(B) expunged records;

90 (3)(C) orders authorizing installation of pen register or trap and trace device under  
91 Utah Code Section 77-23a-15;

92 (3)(D) records showing the identity of a confidential informant;

(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;

(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

(3)(G) records designated as sealed by rule of the Supreme Court;

(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings; and

(3)(I) other records as ordered by the court under Rule 4-202.04.

(4) The following court records are private:

(4)(A) records in the following actions:

(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

(4)(A)(ii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, adoption records until the records are sealed; and

(4)(A) (iii) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and

(4)(B) records in the following actions, except that the case history, judgments, orders and decrees, letters of appointment, and the record of public hearings are public records:

(4)(B)(i) Title 30, Husband and Wife, except that an action for consortium due to personal injury under Section 30-2-11 is public;

(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;

(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;

(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B)

(4)(B)-(4)(C) aggregate records other than public aggregate records under subsection (2);

(4)(C)-(4)(D) alternative dispute resolution records;

(4)(D)-(4)(E) applications for accommodation under the Americans with Disabilities Act;

(4)(E)-(4)(F) citation, but an abstract of a citation that redacts all non-public information is public;

(4)(F) custody evaluations;

(4)(G) eligibility for benefits or services or the determination of the benefit level;

(4)(H) home studies;

(4)(I)-(4)(G) judgment information statement;

(4)(J)-(4)(H) judicial review of final agency action under Utah Code Section 62A-4a-1009;

(4)(K)-(4)(I) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;

(4)(L)-(4)(J) the following personal identifying information about a person other than a party: residential address, personal email address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(M) guardianship cases and conservatorship cases, except the order of appointment and letter of appointment, which are public;

(4)(N)-(4)(K) medical, psychiatric, or psychological records;

(4)(O)-(4)(L) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(O)(i)-(4)(L)(i) name change of a minor;

(4)(O)(ii)-(4)(L)(ii) guardianship or conservatorship for a minor; and

(4)(O)(iii)-(4)(L)(iii) felony, misdemeanor or infraction;

153 ~~(4)(P)-(4)(M)~~ personnel file of a current or former court personnel or applicant for  
154 employment;  
155 ~~(4)(Q)-(4)(N)~~ photograph, film or video of a crime victim or of the petitioner in a  
156 cohabitant abuse action or civil stalking action;  
157 ~~(4)(R)-(4)(O)~~ presentence investigation report;  
158 ~~(4)(S)~~ record classified as private or controlled by a governmental entity and shared  
159 with the court under the Government Records Access and Management Act;  
160 ~~(4)(T)~~ non-public record provided by a governmental entity of a state or the United  
161 States;  
162 ~~(4)(U)~~ record regarding the character or competence of an individual;  
163 ~~(4)(V)~~ record containing information the disclosure of which constitutes an  
164 unwarranted invasion of personal privacy;  
165 ~~(4)(W)~~ record involving the commitment of a person under Title 62A, Chapter 15,  
166 Substance Abuse and Mental Health Act;  
167 ~~(4)(X)-(4)(P)~~ record of a court hearing closed to the public or of a child's testimony  
168 taken under URCrP 15.5:  
169 ~~(4)(X)(i)-(4)(P)(i)~~ permanently if the hearing is not traditionally open to the public and  
170 public access does not play a significant positive role in the process; or  
171 ~~(4)(X)(ii)-(4)(P)(ii)~~ if the hearing is traditionally open to the public, until the judge  
172 determines it is possible to release the record without prejudice to the interests that  
173 justified the closure;  
174 ~~(4)(Y)~~ record of a delinquency proceeding against an insurer under Utah Code  
175 Section 31a-27-203;  
176 ~~(4)(Z)-(4)(Q)~~ record submitted by a senior judge or court commissioner regarding  
177 performance evaluation and certification;  
178 ~~(4)(AA)-(4)(R)~~ record submitted for in camera review until its public availability is  
179 determined;  
180 (4)(S) reports of investigations by Child Protective Services;  
181 (4)(T) victim impact statements;  
182 ~~(4)(BB)-(4)(U)~~ other records as ordered by the court under Rule 4-202.04.  
183 (5) The following court records are protected:

184 (5)(A) attorney's work product, including the mental impressions or legal theories of  
185 an attorney or other representative of the courts concerning litigation, privileged  
186 communication between the courts and an attorney representing, retained, or employed  
187 by the courts, and records prepared solely in anticipation of litigation and not subject to  
188 discovery;

189 (5)(B) bids or proposals until the deadline for submitting them has closed;

190 (5)(C) budget analyses, revenue estimates, and fiscal notes of proposed legislation  
191 before issuance of the final recommendations in these areas;

192 (5)(D) budget recommendations, legislative proposals, and policy statements, that if  
193 disclosed would reveal the court's contemplated policies or contemplated courses of  
194 action;

195 (5)(E) court security plans;

196 (5)(F) investigation and analysis of loss covered by the risk management fund;

197 (5)(G) investigative subpoenas under Utah Code Section 77-22-2;

198 (5)(H) memorandum prepared by staff for a member of any body charged by law  
199 with performing a judicial function and used in the decision-making process;

200 (5)(I) confidential business records under Utah Code Section 63G-2-309;

201 ~~(5)(J) a record classified as protected by a governmental entity and shared with the~~  
202 ~~court under Utah Code Section 63G-2-206;~~

203 ~~(5)(K)-(5)(J)~~ record created or maintained for civil, criminal, or administrative  
204 enforcement purposes, audit or discipline purposes, or licensing, certification or  
205 registration purposes, if the record reasonably could be expected to:

206 ~~(5)(K)(i)-(5)(J)(i)~~ interfere with an investigation;

207 ~~(5)(K)(ii)-(5)(J)(ii)~~ interfere with a fair hearing or trial; or

208 ~~(5)(K)(iii)-(5)(J)(iii)~~ disclose the identity of a confidential source; or

209 ~~(5)(J)(iv)~~ concern the security of a court facility;

210 ~~(5)(L)-(5)(K)~~ record identifying property under consideration for sale or acquisition by  
211 the court or its appraised or estimated value unless the information has been disclosed  
212 to someone not under a duty of confidentiality to the courts;

213 ~~(5)(M)-(5)(L)~~ record that would reveal the contents of settlement negotiations other  
214 than the final settlement agreement;

215 ~~(5)(N)~~(5)(M) record the disclosure of which would impair governmental procurement  
216 or give an unfair advantage to any person;

217 ~~(5)(O)~~(5)(N) record the disclosure of which would interfere with supervision of an  
218 offender's incarceration, probation or parole;

219 ~~(5)(P)~~(5)(O) record the disclosure of which would jeopardize life, safety or property;

220 ~~(5)(Q)~~(5)(P) search warrants and search warrant affidavits before the filing of the  
221 return;

222 ~~(5)(R)~~(5)(Q) strategy about collective bargaining or pending litigation;

223 ~~(5)(S)~~(5)(R) test questions and answers;

224 ~~(5)(T)~~(5)(S) trade secrets as defined in Utah Code Section 13-24-2;

225 ~~(5)(U)~~(5)(T) record of a Children's Justice Center investigative interview before the  
226 conclusion of any legal proceedings; and

227 ~~(5)(V)~~(5)(U) other records as ordered by the court under Rule 4-202.04

228 (6) The following are juvenile court social records:

229 (6)(A) correspondence relating to juvenile social records;

230 (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations,  
231 substance abuse evaluations, domestic violence evaluations;

232 (6)(C) medical, psychological, psychiatric evaluations;

233 (6)(D) pre-disposition and social summary reports;

234 (6)(E) probation agency and institutional reports or evaluations;

235 (6)(F) referral reports;

236 (6)(G) report of preliminary inquiries; and

237 (6)(H) treatment or service plans.

238 (7) The following are juvenile court legal records:

239 (7)(A) accounting records;

240 (7)(B) discovery filed with the court;

241 (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes,  
242 findings, orders, decrees;

243 (7)(D) name of a party or minor;

244 (7)(E) record of a court hearing;

245 (7)(F) referral and offense histories

246 (7)(G) and any other juvenile court record regarding a minor that is not designated  
247 as a social record.

248

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

Intent:

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

Applicability:

This rule applies to court records associated with a case.

Statement of the Rule:

(1) A request to access a public court record shall be presented in writing to the clerk of the court unless the clerk waives the requirement. A request to access a non-public court record to which a person is authorized access shall be presented in writing to the clerk of the court. A written request shall contain the requester's name, mailing address, daytime telephone number and a description of the record requested. If the record is a non-public record, the person making the request shall present identification.

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

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

(2)(C) A person with an interest in a court record may file a motion to classify the record as private, protected or sealed. The court shall deny access to the record until the order is entered. The court may classify the record as private, protected or sealed if it:

(2)(C)(i) is so classified under Rule 4-202.02;

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

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

(2)(C)(iv) is a record containing information the disclosure of which constitutes an unwarranted invasion of personal privacy.

(2)(D) Motions shall be filed under Utah Rule of Civil Procedure 7 and served under Utah Rule of Civil Procedure 5. The person filing the motion shall serve any representative of the press who has requested notice in the case. The court shall

32 conduct a closure hearing when a motion to close a record is contested, when the press  
33 has requested notice of closure motions in the particular case or when the judge  
34 decides public interest in the record warrants a hearing.

35 (3) In deciding whether to allow access to a court record or whether to classify a  
36 court record as private, protected or sealed, the court may consider any relevant factor,  
37 interest or policy presented by the parties, including but not limited to the interests  
38 described in Rule 4-202. In ruling on a motion under this rule the judge shall:

39 (3)(A) make findings and conclusions about specific records;

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

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

43 (4) A request under this rule is governed also by Rule 4-202.06. A motion under this  
44 rule is not governed by Rule 4-202.06 or Rule 4-202.07.

45

**Rule 4-202.09. Miscellaneous.**

Intent:

To set forth miscellaneous provisions for these rules.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) The judicial branch shall provide a person with a certified copy of a record if the requester has a right to inspect it, the requester identifies the record with reasonable specificity, and the requester pays the fees.

(2)(A) The judicial branch is not required to create a record in response to a request.

(2)(B) Upon request, the judicial branch shall provide a record in a particular format if:

(2)(B)(i) it is able to do so without unreasonably interfering with its duties and responsibilities; and

(2)(B)(ii) the requester agrees to pay the additional costs, if any, actually incurred in providing the record in the requested format.

(2)(C) The judicial branch need not fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(3) If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the judicial branch may provide the requester with the facilities for copying the requested records and require that the requester make the copies, or allow the requester to provide his own copying facilities and personnel to make the copies at the judicial branch's offices and waive the fees for copying the records.

(4) The judicial branch may not use the form in which a record is stored to deny or unreasonably hinder the rights of persons to inspect and receive copies of a record.

(5) Subpoenas and other methods of discovery under state or federal statutes or rules of procedure are not records requests under these rules. Compliance with discovery shall be governed by the applicable statutes and rules of procedure.

(6) If the judicial branch receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is

32 not entitled to inspect, it shall allow access to the information in the record that the  
33 requester is entitled to inspect, and shall deny access to the information in the record  
34 the requester is not entitled to inspect.

35 (7) The Administrative Office shall create and adopt a schedule governing the  
36 retention and destruction of all court records.

37 (8) The courts will use their best efforts to ensure that access to court records is  
38 properly regulated, but assume no responsibility for accuracy or completeness or for  
39 use outside the court.

40 (9)(A) Non-public information in a public record. The person filing a public record  
41 shall omit or redact non-public information. The person filing the record shall certify that,  
42 upon information and belief, all non-public information has been omitted or redacted  
43 from the public record. The person filing a private, protected or sealed record shall  
44 identify the classification of the record at the top of the first page of a classified  
45 document or in a statement accompanying the record.

46 (9)(B) If a person believes that a record qualifies as a non-public record, the person  
47 may file with the record a motion to classify the record as private, protected or sealed.  
48 Under Rule 4-202.04, the clerk shall deny access to the record until the motion is  
49 decided. Unless filed with a motion to classify as private, protected or sealed, public  
50 records, even with non-public information, will be accessible. A party may move or a  
51 non-party may petition to redact non-public information from a public record.

52 (9)(C) If the following non-public information is required in a public record, only the  
53 designated information shall be included:

54 (9)(C)(i) social security number: last four digits;

55 (9)(C)(ii) financial or other account number: last four digits;

56 (9)(C)(iii) driver's license number: state of issuance and last four digits;

57 (9)(C)(iv) address of a non-party: city, state and zip code;

58 (9)(C)(v) email address or phone number of a non-party: omit; and

59 (9)(C)(vi) minor's name: initials.

60 (9)(D) If it is necessary to provide the court with private personal identifying  
61 information, it must be provided on a cover sheet or other severable document, which is  
62 classified as private.

63 (10) A vendor or governmental agency that provides a court information technology  
64 support to gather, store, or make accessible court records is bound by rules 4-202  
65 through 4-202.10.  
66

**Appendix I. Summary of Classification of Court Records**

This chart is intended for use as a summary of how case record series are treated given classification of the case. "Public," "Private," "Protected," and "Sealed" have the meanings given them by Rule 4-202.03.

"Semi-private" is an administrative description of a case in which the documents generally are private, but case identification is a matter of public record, as are the case history and the orders, judgments, and decrees. See Rule 4-202.02(4)(B)(i)-(ix).

Select documents and other records in a "public" or "semi-private" case may be otherwise classified by court order or because of the nature of the record or the nature of information within a record.

Case Type	Summary Classification	Case Identification Is	Case History Is	Documents Are	Judgment Is
Abstract of Judgment	Public	Public	Public	Public	Public
Adjudication of Marriage/Common Law Marriage	Semi-private	Public	Public	Private	Public
Administrative Agency Review	Public	Public	Public	Public	Public
Administrative Search Warrant	Private until 20 days after filing	Private until 20 days after filing	Private until 20 days after filing	Private until 20 days after filing	
Adoption	Sealed within 6 months after decree	Private until Sealed	Private until Sealed	Private until Sealed	Private until Sealed
Asbestos	Public	Public	Public	Public	Public
Attorney Discipline	Public	Public	Public	Public	Public
Child Support Lien	Public	Public	Public	Public	Public
Civil Rights	Public	Public	Public	Public	Public
Civil Stalking	Semi-private	Public	Public	Private	Public
Cohabitant Abuse	Semi-private	Public	Public	Private	Public
Condemnation	Public	Public	Public	Public	Public
Conservatorship	Semi-private	Public	Public	Private	Public
Contract	Public	Public	Public	Public	Public
Criminal Investigations	Protected	Protected	Protected	Protected	Protected
Custody and Support	Semi-private	Public	Public	Private	Public
Debt Collection	Public	Public	Public	Public	Public
Deposit of Will	Sealed	Sealed	Sealed	Sealed	Sealed

**Appendix I.**

**Draft: December 2, 2011**

Case Type	Summary Classification	Case Identification Is	Case History Is	Documents Are	Judgment Is
Divorce	Semi-private	Public	Public	Private	Public
Estate/personal representative	Public	Public	Public	Public	Public
Eviction	Public	Public	Public	Public	Public
Extradition	Public	Public	Public	Public	Public
Felony	Public	Public	Public	Public	Public
Foreign Judgment	Public	Public	Public	Public	Public
Forfeiture of Property	Public	Public	Public	Public	Public
Gestational Agreement	Sealed within 6 months after decree	Private until Sealed	Private until Sealed	Private until Sealed	Private until Sealed
Grandparent Visitation	Semi-private	Public	Public	Private	Public
Guardianship	Semi-private	Public	Public	Private	Public
Hospital Lien	Public	Public	Public	Public	Public
Infraction	Public	Public	Public	Public	Public
Interpleader	Public	Public	Public	Public	Public
Involuntary Commitment	Private	Private	Private	Private	Private
Judgment By Confession	Public	Public	Public	Public	Public
Juvenile Court case types	Private	Private	Private	Private	Private
Lien Mortgage Foreclosure	Public	Public	Public	Public	Public
Malpractice	Public	Public	Public	Public	Public
Minors Settlement	Public	Public	Public	Public	Public
Miscellaneous	Public	Public	Public	Public	Public
Misdemeanor	Public	Public	Public	Public	Public
Name Change	Public	Public	Public	Public	Public
Other Civil	Public	Public	Public	Public	Public
Parking	Public	Public	Public	Public	Public
Paternity	Semi-private	Public	Public	Private	Public
Personal Injury	Public	Public	Public	Public	Public
Petition to modify	Determined by the classification of the case in which the petition is filed.				
Post Conviction Relief	Public	Public	Public	Public	Public
Probate	Public	Public	Public	Public	Public
Property Damage	Public	Public	Public	Public	Public

**Appendix I.****Draft: December 2, 2011**

Case Type	Summary Classification	Case Identification Is	Case History Is	Documents Are	Judgment Is
Property Rights	Public	Public	Public	Public	Public
Renew Judgment	Public	Public	Public	Public	Public
Separate Maintenance	Semi-private	Public	Public	Private	Public
Sexual Harassment	Public	Public	Public	Public	Public
Small Claims	Public	Public	Public	Public	Public
Small Claims Trial De Novo	Public	Public	Public	Public	Public
Subpoena for Deposition	Public	Public	Public	Public	Public
Supervised Administration	Public	Public	Public	Public	Public
Tax Court	Public	Public	Public	Public	Public
Tax Lien	Public	Public	Public	Public	Public
Tax Protest	Public	Public	Public	Public	Public
Traffic	Public	Public	Public	Public	Public
Trust	Public	Public	Public	Public	Public
UCCJA Action	Semi-private	Public	Public	Private	Public
UISFSA Action	Semi-private	Public	Public	Private	Public
Water Rights	Public	Public	Public	Public	Public
Workforce Services Liens	Public	Public	Public	Public	Public
Writs	Public	Public	Public	Public	Public
Wrongful Death	Public	Public	Public	Public	Public
Wrongful Termination	Public	Public	Public	Public	Public

## **Comments: Code of Judicial Administration**

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I'm pleased to see that family law cases will be deemed private by this amendment. Pleadings in these types of cases are often full of confidential and private information which should be protected.

Posted by Angela Fannesbeck    October 11, 2011 07:46 AM

I applaud the proposed changes to CJA 4-202.02, and in particular, adding (4)(B)(ii) relating to civil stalking injunctions (making them private) and removing (4)(M) Guardianship and Conservatorship cases (making them public).

However, the Table in Appendix I seems inconsistent with respect to a guardianship or conservatorship case. Removing those cases as "private" but then listing them in the Table as "private" is inconsistent.

Posted by Michael Jensen    October 10, 2011 11:18 AM


I write in support of adding family law cases (divorce, parentage, child support, protective orders and stalking injunctions) as private cases, except for case history, final judgment, letters of appointment and record of public hearings. Although there has been a good deal of progress in the last several years to remove financial information(account name and numbers) and private information (SS #, birth dates) that would be a gold mine for identity theft, many practitioners and pro se litigants still include such information in pleadings. Therefore, this uniform categorization as "private" for family law cases will help to protect truly private information without compromising the public's right to do research and have knowledge of final determinations in these matters. This is an excellent example of achieving a good balance between privacy of individuals and keeping their financial information safe AND the public's right to know what happens in judicial proceedings.

Posted by Stewart P Ralphs    October 10, 2011 11:13 AM

The proposed changes to CJA 04-0202.02 suggest that adoption files are "private" until sealed at the end of the adoption process. I note that UCA 78B-6-141 appears to make adoption files "sealed" from filing. This amendment was made in 2009.

Posted by Larry Jenkins    October 10, 2011 09:08 AM

When the appendix classifies Administrative agency appeals as public, it fails to consider that pursuant to 20 U.S.C. 1415, a parent of a student with disabilities may use the state appeal process to do it, and those appeals are confidential and include



documents and exhibits that are expressly protected from disclosure without consent by federal law.


Posted by Rosemary N. Palmer    October 9, 2011 02:38 PM



# TAB 4

## JUSTICE COURT JUDGES' ORIENTATION

Orientation Dates: Jan 9<sup>th</sup> - 13<sup>th</sup> 2012

1. Full Name: Ray Robert Richards
2. Home Address: 
3. Home Phone Number: 
4. Date of Birth: 7/21/71
5. Current Occupation: Justice Court Judge
6. Expected Part-Time Employment While Serving as Judge: Vernal City  
Volunteer Fire Department, Jiffy Enterprises
7. Past Educational Background: Utah State University Graduate of  
Social work.
8. Previous Employment History: 8<sup>th</sup> District Juvenile Court,  
Chief Probation Officer, 4 years, 12 years as a  
Probation Officer. Vernal City Fire Department, Jiffy's.

SCORE:	95%
BCI:	O.K
CERT:	YES

JUSTICE COURT JUDGES

- 1 95%

**Orientation Exam**

Name: Ray Richter

Orientation Dates: Jan - 9 - 13, 2012

1. What is the maximum contempt penalty that a justice court judge can order?

5 days in Jail and ~~may~~ may not exceed a \$500<sup>00</sup> Fine.

2. What is the subject matter and territorial jurisdiction of YOUR justice court?

Subject matter - Infractions, Class C, & B misdemeanors  
Some Subject matter over Juveniles 16 & 17 years.  
Wildlife, motor vehicle, traffic, off highway vehicles, State Boating  
Littering.

Territorial jurisdiction - I have jurisdiction over Upriver City  
municipality.

3. What is the standard of proof in a criminal proceeding?

Beyond a reasonable Doubt

4. Under what circumstances can a justice court judge deny bail?

Justice Court Judges may not deny Bail.

5. How many jurors hear a jury trial in justice courts?

4

6. What parts of the Code of Judicial Conduct do not apply to part-time justice court judges?  
With Rule 2.10(A) and 2.10(B) Judicial Statements on Pending and Impending cases) and 3.14 Reimbursement of expenses and waivers of fees or charges) shall not practice law in the court which the judge serves.  
3.9 mediator, 3.10 - Practice Law 2.11 (Financially Business OR Remunerative Activities)
7. Does a defendant who has been cited for speeding have a right to have a formal information filed if he so requests?  
yes, if requested they have this right.

8. What is the correct class of misdemeanor for the following offense:

"Any person willfully violating his written promise to appear in court, given as provided in this act is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested."

- a. Infraction  
b. Class C misdemeanor  
☒ c. Class B misdemeanor  
d. Class A misdemeanor
9. List four enhanceable offenses on which justice courts must maintain records of conviction.

DUI  
Domestic Violence  
Possession of a controlled substance (marijuana)  
Theft - (Class B)

10. Justice court judges are required to attend the Annual Spring Conference

- ☒ a. every year  
b. every four years  
c. whenever they feel that they need some additional judicial education  
d. every year if their municipality/county funds them to go

11. Read each fact situation and indicate whether the judge's conduct may be prohibited by the Code of Judicial Conduct.

a. A defendant calls the judge at home and wants to tell him or her about evidence in his case. May the judge listen?

☐ Yes ☒ No

b. May a judge solicit money for the Boy Scouts of America?

☐ Yes ☒ No

c. May a judge hear a case involving his nephew?

☐ Yes ☒ No

d. May a judge be a delegate to the Republican Convention?

☐ Yes ☒ No

e. May a judge allow Channel 5 to tape a trial?

☐ Yes ☒ No

f. May a judge charge for performing a wedding outside regular court hours?

☒ Yes ☐ No

12. In the state of Utah does the defendant have a right to a trial by jury in a Class C misdemeanor?

☒ Yes ☐ No

13. Can justice court judges appoint public defenders?

☒ Yes ☐ No

14. Can the trial court judge rely on defense counsel to inform the defendant of his rights and the consequences of his plea?

\_\_\_ Yes      ☒ No

15. Must an information or sworn statement always be filed prior to the issuance of a bench warrant?

\_\_\_ Yes      ☒ No

16. The standard for issuing a search warrant is:

- a. an articulable suspicion
- ☒ b. probable cause
- c. reasonable suspicion
- d. some evidence

17. A "no bail" warrant can:

- a. only be issued by a district court judge
- ☒ b. never be issued by a justice court judge under any circumstances
- c. be issued by a justice court judge if there is a strong reason to believe the defendant will not appear if released on bail
- d. can be used in both misdemeanor and felony cases
- e. both C and D

18. The maximum sentences for the following are:

- a. Class B misdemeanor Fine 1940.00 Jail 6 months  
*including Fines & Surcharge*
- b. Class C misdemeanor Fine 1052.50 Jail 90 Days  
*including Fines & Surcharge*
- c. Infractions Fine 1052.50 Jail NONE  
*including Fines & Surcharge*

*Without Fines & Surcharge*

Class B - 1000<sup>00</sup> - 6 months  
Class C - 750<sup>00</sup> - 90 Days  
Infraction - 750<sup>00</sup> - NONE

TRUE OR FALSE

19. T ☒ F A pro se defendant may not cross-examine prosecution witnesses because only attorneys may practice before the court.
20. T ☒ F A defendant has 10 days from the entry of judgment in a criminal matter in a justice court to appeal for a trial de novo to be held in the circuit/district court.

# TAB 5

# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

## MEMORANDUM

TO: Judicial Council

FROM: Richard Schwermer, Assistant State Court Administrator

DATE: January 18, 2012

RE: 2012 RE-CERTIFICATION OF MUNICIPAL JUSTICE COURTS

---

Pursuant to statute, justice courts are certified every four years by the Judicial Council. The certification process involves application by the sponsoring governmental entity, and a review of compliance with statutes and with Judicial Council operational standards. Compliance is first reviewed by the Council's Justice Court Standards Standing Committee, which makes recommendations to the Council. In this case the Management Committee has also had an opportunity to review those recommendations. Management concurred with the committee's recommendations except where noted below in italics.

Municipalities were notified of the standing committee's recommendations, and they were invited to be heard if they disagreed with the recommendations. Several municipalities replied to the notification, and their responses are noted below as well. Municipal courts not listed below were found to be in compliance with applicable statutes and rules, and they are recommended for re-certification.

- **Delta** Delta is open Monday through Thursday, and they hold court two Fridays per month, so two or three Fridays per month they are not open. They do comply with the statute, however, by being open 11 hours per day four days per week.

The committee recommends a waiver if the city agrees to post its hours on their website, and if they add a drop-box so that filings and payments can be made on Fridays when the court is not open. Delta has agreed to the conditions.

- ▶ **Draper** As a Class I court (filings over 500 per month), the judge is presumed to be full-time. A waiver was granted in 2009, based on an appearance by Judge Bertch. Filings then averaged 707. They report an average of 625 currently. The weighted caseload is .9  
  
The committee recommended a denial of the waiver. *Management recommends a broader study of the term "full-time judge" as it relates to the Code of Judicial Conduct.*
- ▶ **Heber** There is no victim/witness room available in the facility, and the judge finds a gavel "unnecessary."  
  
The committee recommends no waivers.
- ▶ **Hildale** They do not appear to be open on Fridays, their other hours are insufficient for the statutory requirements, and the judge is "temporary" after several years now.  
  
The committee recommends no waivers.  
  
Hildale responded that they will be open on Fridays, but would like permission to keep Judge Carr for a year while they "conduct the process of finding a replacement."
- ▶ **Naples** The Naples facility is not within the boundaries of the municipality. This is a recent move, based on the new county facility opening and security concerns. The judge requested a two month waiver so that security issues can be addressed. However, the location requirement is statutory.  
  
Naples now responds that they will comply with the statutory requirement.
- ▶ **Orderville** There is no space for a jury, and there is no jury deliberation room. The judge requests a waiver because he suggests that should a jury trial be held, they would move to the county facility in Kanab. And there have been no jury trials in recent years. Or not recent years.  
  
The committee recommends no waivers.  
  
The judge responds that they will comply.

- ▶ **Parowan** The city requests waiver of the requirement for two separate tables for counsel. This waiver has been provided in the past

The committee recommends the waiver since the table is 12 feet long, and sufficient separation is provided.

- ▶ **Santa Clara** The court is not open on Fridays, and has insufficient alternate hours to comply with the statute.

Santa Clara responds that it will open on Fridays as required.

- ▶ **Kanab** The judge has submitted a re-certification affidavit on his own, and a copy of the attorney opinion. There is no resolution requesting re-certification, but the city is asking for an extension of time to consider all of their options relative to the court.

# TAB 7



# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

January 17, 2012

Daniel J. Becker  
State Court Administrator  
Raymond Wahl  
Deputy Court Administrator

## MEMORANDUM

**TO:** Utah Judicial Council's Management Committee

**FROM:** Nancy Volmer, Public Information Office

**RE:** Committee Renewal

---

The Standing Committee on Judicial Outreach recommends the following committee appointment:

- State Office of Education Specialist Robert Austin has completed his first term on the committee and would like to serve a second term. In his position with the state, Mr. Austin oversees licensing, professional development, international initiatives, and K-12 Social Studies. The chair of the committee, Judge Carolyn McHugh, recommends a second term for Mr. Austin.

### **Rule 3-114. Judicial Outreach Standing Committee on Judicial Outreach**

Intent of the committee:

- To foster a greater role for judges in service to the community.
- To provide leadership and resources for outreach.
- To improve public trust and confidence in the judiciary.

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efficient, and independent system for the advancement of justice under the law.

## **MEMORANDUM**

**TO:** JUDICIAL COUNCIL  
**FROM:** RON BOWMASTER  
**SUBJECT:** TECHNOLOGY COMMITTEE APPOINTMENT  
**DATE:** 1/4/2012

The Technology Committee develops and recommends to the Judicial Council the information technology plans and priorities governing the courts of record.

The first term of Judge Carolyn McHugh, the Committee Chair, has expired and she has expressed a desire to be reappointed to the Technology Committee as the representative of the Appellate Court.

I would ask that the Management Committee and the Judicial Council act favorably on this request for reappointment.

**Cc:** Judge Carolyn McHugh  
Jody Gonzales

## **MEMORANDUM**

**TO:** JUDICIAL COUNCIL  
**FROM:** RON BOWMASTER  
**SUBJECT:** TECHNOLOGY COMMITTEE APPOINTMENT  
**DATE:** 1/10/2012

The Technology Committee develops and recommends to the Judicial Council the information technology, plans and priorities governing the courts of record.

There exists a vacancy on the Committee for a member representing the Justice Courts. The Board of Justice Court Judges requests that Matthew Funk, the Richmond Justice Court Judge be appointed to the committee.



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

**To:** Management Committee  
**From:** Tim Shea *TJ Shea*  
**Date:** December 9, 2011  
**Re:** Appointment to Committee on Resources for Self-represented Parties

---

Judge John Baxter requests that the Judicial Council appoint Robert Jeffs to a second term on the Committee on Resources for Self-represented Parties. Mr. Jeffs attends meetings regularly and makes significant contributions to the committee's work. Mr. Jeffs is willing to serve.

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efficient, and independent system for the advancement of justice under the law.

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# TAB 8



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

January 17, 2012

Daniel J. Becker  
State Court Administrator  
Ray Wahl  
Deputy Court Administrator

### MEMORANDUM

**TO: Judicial Council**

**FROM: Dan Becker**

**RE: Appointment of an Acting Chair of the Guardian ad Litem Oversight Committee**

---

Tani Downing has resigned from the GAL Oversight Committee, creating a committee vacancy, as well as a vacancy in the position of committee chair. Ms. Downing and Rick Smith, GAL Director, have both recommended to the Management Committee that Merrill Nelson, the current vice chair, be named as acting chair.

The Management Committee recommends that Mr. Nelson be appointed acting chair for the balance of the calendar year 2012.

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efficient, and independent system for the advancement of justice under the law.

# TAB 9



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

To: Judicial Council  
From: Tim Shea *TJS*  
Date: December 9, 2011  
Re: Rules for comment

---

The Policy and Planning Committee recommends that the following rules be published for comment.

#### (1) Rule Summary

CJA 04-0202.08. Fees for records, information, and services. Amend. Establishes a fee of \$2.50 to email a document. Prohibits the court from emailing a document available on Xchange.

Encl. Draft Rules

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efficient, and independent system for the advancement of justice under the law.

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**Rule 4-202.08. Fees for records, information, and services.**

Intent:

To establish uniform fees for requests for records, information, and services.

Applicability:

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts.

Statement of the Rule:

(1) Fees payable. Fees are payable to the court or office that provides the record, information, or service at the time the record, information, or service is provided. The initial and monthly subscription fee for public on-line services is due in advance. The connect-time fee is due upon receipt of an invoice. If a public on-line services account is more than 60 days overdue, the subscription may be terminated. If a subscription is terminated for nonpayment, the subscription will be reinstated only upon payment of past due amounts and a reconnect fee equal to the subscription fee.

(2) Use of fees. Fees received are credited to the court or office providing the record, information, or service in the account from which expenditures were made. Fees for public on-line services are credited to the Administrative Office of the Courts to improve data quality control, information services, and information technology.

(3) Copies. Copies are made of court records only. The term "copies" includes the original production. Fees for copies are based on the number of record sources to be copied and are as follows:

(3)(A) paper except as provided in (H): \$.25 per sheet;

(3)(B) microfiche: \$1.00 per card;

(3)(C) audio tape: \$10.00 per tape;

(3)(D) video tape: \$15.00 per tape;

(3)(E) floppy disk or compact disk other than of court hearings: \$10.00 per disk;

(3)(F) electronic copy of court reporter stenographic text: \$25.00 for each one-half day of testimony or part thereof;

(3)(G) electronic copy of audio record or video record of court proceeding: \$10.00 for each one-half day of testimony or part thereof; and

(3)(H) pre-printed forms and associated information: an amount for each packet established by the state court administrator.

(4)(a) Mailing. The fee for mailing is the actual cost. The fee for mailing shall include necessary transmittal between courts or offices for which a public or private carrier is used.

(4)(b) Fax or e-mail. The fee ~~for faxing to fax or e-mail a document~~ is \$5.00 for 10 pages or less. The fee for additional pages is \$.50 per page. Records available on Xchange will not be faxed or e-mailed.

(5) Personnel time. Personnel time to copy the record of a court proceeding is included in the copy fee. For other matters, there is no fee for the first 15 minutes of personnel time. The fee for time beyond the first 15 minutes is charged in 15 minute increments for any part thereof. The fee for personnel time is charged at the following rates for the least expensive group capable of providing the record, information, or service:

(5)(A) clerical assistant: \$15.00 per hour;

(5)(B) technician: \$22.00 per hour;

(5)(C) senior clerical: \$21.00 per hour

(5)(D) programmer/analyst: \$32.00 per hour;

(5)(E) manager: \$37.00 per hour; and

(5)(F) consultant: actual cost as billed by the consultant.

(6) Public on-line services.

(6)(A) The fee to subscribe to public on-line services shall be as follows:

(6)(A)(i) a set-up fee of \$25.00;

(6)(A)(ii) a subscription fee of \$30.00 per month for any portion of a calendar month;

and

(6)(A)(iii) \$.10 for each search over 200 during a billing cycle. A search is counted each time the search button is clicked.

(6)(B) When non-subscription access becomes available, the fee to access public on-line services without subscribing shall be a transaction fee of \$5.00, which will allow up to 10 searches during a session.

(6)(C) The fee to access a document shall be \$2.50 per document.

(7) No interference. Records, information, and services shall be provided at a time and in a manner that does not interfere with the regular business of the courts. The Administrative Office of the Courts may disconnect a user of public on-line services whose use interferes with computer performance or access by other users.

(8) Waiver of fees.

(8)(A) Fees established by this rule other than fees for public on-line services shall be waived for:

(8)(A)(i) any government entity of Utah or its political subdivisions if the fee is minimal;

(8)(A)(ii) any person who is the subject of the record and who is impecunious; and

(8)(A)(iii) a student engaged in research for an academic purpose.

(8)(B) Fees for public on-line services shall be waived for:

(8)(B)(i) up to 10,000 searches per year for a news organization that gathers information for the primary purpose of disseminating news to the public and that requests a record to obtain information for a story or report for publication or broadcast to the general public;

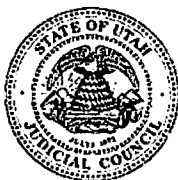
(8)(B)(ii) any government entity of Utah or its political subdivisions;

(8)(B)(iii) the Utah State Bar;

(8)(B)(iv) public defenders for searches performed in connection with their duties as public defenders; and

(8)(B)(v) any person or organization who the XChange administrator determines offers significant legal services to a substantial portion of the public at no charge.

# TAB 10



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

**To:** Judicial Council  
**From:** Tim Shea *TS*  
**Date:** December 9, 2011  
**Re:** Effective date for Rules 6-401 and 6-601

---

Rule 6-401 and Rule 6-601 deal with the court commissioner's authority. Both rules were amended to conform to the uniform process for deciding objections to the court commissioner's recommendations, URCP 108. The Judicial Council approved both rules on June 27, but withheld an effective date pending approval of Rule 108. The Supreme Court has approved Rule 108 to be effective April 1, 2012, and the Policy and Planning Committee recommends that the two Council rules be effective the same date.

Encl. Rule 6-401. Domestic relations commissioners.  
Rule 6-601. Mental health commissioners.  
URCP 108. Objection to court commissioner's recommendations.

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efficient, and independent system for the advancement of justice under the law.

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**Rule 6-401. Domestic relations commissioners.**

Intent:

To identify the types of cases and matters commissioners are authorized to hear, to identify the types of relief commissioners may recommend and to identify the types of final orders commissioners may issue.

~~To establish a procedure for judicial review of commissioners' decisions.~~

Applicability:

This rule shall govern all domestic relations court commissioners serving in the District Courts.

Statement of the Rule:

(1) Types of cases and matters. All domestic relations matters filed in the district court in counties where court commissioners are appointed and serving, including all divorce, annulment, paternity and spouse-cohabitant abuse matters, orders to show cause, scheduling and settlement conferences, petitions to modify divorce decrees, scheduling conferences, and all other applications for relief, shall be referred to the commissioner upon filing with the clerk of the court unless otherwise ordered by the Presiding Judge of the District.

(2) Authority of court commissioner. Court commissioners shall have the following authority:

(2)(A) Upon notice, require the personal appearance of parties and their counsel;

(2)(B) Require the filing of financial disclosure statements and proposed settlement forms by the parties;

(2)(C) Obtain child custody evaluations from the Division of Family Services or through the private sector;

(2)(D) Make recommendations to the court regarding any issue, including a recommendation for entry of final judgment, ~~in domestic relations or spouse abuse cases at any stage of the proceedings;~~

(2)(E) Require counsel to file with the initial or responsive pleading, a certificate based upon the facts available at that time, stating whether there is a legal action pending or previously adjudicated in a district or juvenile court of any state regarding the minor child(ren) in the current case;

~~(2)(F) At the commissioner's discretion, and after notice to all parties or their~~  
~~counsel, conduct evidentiary hearings consistent with paragraph (3)(G) below;~~  
~~(2)(G) (2)(F) Impose sanctions against any party who fails to comply with the~~  
~~commissioner's requirements of attendance or production of discovery;~~  
~~(2)(H) (2)(G) Impose sanctions for contempt of court;~~  
~~(2)(I) (2)(H) Issue temporary or ex parte orders;~~  
~~(2)(J) (2)(I) Conduct settlement conferences with the parties and their counsel in a~~  
~~domestic relations case. Issues that cannot be settled shall be certified to the district~~  
~~court for trial; and~~

~~(2)(K) (2)(J) Conduct pretrial conferences with the parties and their counsel on all~~  
~~domestic relations matters unless otherwise ordered by the presiding judge. The~~  
~~commissioner shall make recommendations on all issues under consideration at the~~  
~~pretrial and submit those recommendations to the district court.~~

(3) Duties of court commissioner. Under the general supervision of the presiding  
judge, the court commissioner has the following duties prior to any domestic matter  
being heard by the district court:

(3)(A) Review all pleadings in each case;

(3)(B) Certify those cases directly to the district court that appear to require a  
hearing before the district court judge;

~~(3)(C) Except in cases previously certified to the district court, At the commissioner's~~  
~~discretion and after notice to all parties or their counsel, conduct hearings with parties~~  
~~and their counsel for the purpose of submitting recommendations to the parties and the~~  
~~court taking testimony or proffers of testimony, except in cases previously certified to~~  
~~the district court;~~

(3)(D) Coordinate information with the juvenile court regarding previous or pending  
proceedings involving children of the parties; and

(3)(E) Refer appropriate cases to mediation programs if available.

(4) Prohibitions.

(4)(A) Commissioners shall not make final adjudications of domestic relations  
matters.

62 (4)(B) Commissioners shall not serve as pro tempore judges in any matter, except  
63 as provided by Rule of the Supreme Court.

**Rule 6-601. Mental health commissioners.**

Intent:

To identify the types of cases and matters which commissioners are authorized to hear, to identify the types of relief which commissioners may recommend, and to identify the types of orders which may be issued by commissioners.

~~To establish a procedure for judicial review of commissioners' decisions.~~

Applicability:

This rule shall govern mental health proceedings for involuntary commitment of an individual.

Statement of the Rule:

(1) Types of cases and matters. All applications for involuntary commitment of individuals alleged to be mentally ill, which are filed in the ~~district or Juvenile Court~~ in counties where mental health commissioners are appointed and serving, shall be referred to the commissioner upon filing with the clerk of the court, unless otherwise ordered by the ~~Presiding Judge of the District Court~~.

(2) Authority of commissioner.

(2)(A) ~~The~~ Except as limited in paragraph (4), the commissioner shall have the ~~has~~ authority to grant relief as set forth in Utah Code ~~Section 62A-15-601 et seq~~ Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities.

(2)(B) The commissioner ~~shall have the~~ has authority to sign orders directing individuals specified as designated examiners by the State Division of Mental Health to conduct examinations of proposed patients ~~to determine whether the individual is mentally ill and should be involuntarily hospitalized.~~

(2)(C) The commissioner ~~shall have the~~ has authority to recommend dismissal of the application based on the report of the examination.

(2)(D) The commissioner ~~shall have the~~ has authority to hold an evidentiary hearing and make findings of fact, conclusions of law and recommendations to the court ~~regarding the order for involuntary commitment of the proposed patient.~~

(2)(E) The commissioner's recommendation has the effect of an order of the court until it is modified by the court.

31 (3) Judicial review. ~~Any person hospitalized or a person's legally designated~~  
32 ~~representative who is aggrieved by the findings, conclusions, and order of the court, has~~  
33 ~~the right to a rehearing upon a petition filed with the court within 30 days of the entry of~~  
34 ~~the court order.~~

35 (3)(A) A petition for a new hearing under Section 62A-15-631(13) shall be filed within  
36 30 days after entry of the commissioner's recommendations.

37 (3)(B) If the new hearing is held before a commissioner, the person committed or  
38 that person's representative may object to the commissioner's recommendations under  
39 Rule of Civil Procedure 108.

40 (4) Prohibitions.

41 (4)(A) Commissioners shall not make final adjudications ~~involuntarily hospitalizing an~~  
42 ~~individual.~~

43 (4)(B) Commissioners shall not serve as pro tempore judges in any matter, except  
44 as provided by Rule of the Supreme Court.

45

**Rule 108. Objection to court commissioner's recommendation.**

(a) A recommendation of a court commissioner is the order of the court until modified by the court. A party may file a written objection to the recommendation within 14 days after the recommendation is made in open court or, if the court commissioner takes the matter under advisement, within 14 days after the minute entry of the recommendation is served. A judge's counter-signature on the commissioner's recommendation does not affect the review of an objection.

(b) The objection must identify succinctly and with particularity the findings of fact, the conclusions of law, or the part of the recommendation to which the objection is made and state the relief sought. The memorandum in support of the objection must explain succinctly and with particularity why the findings, conclusions, or recommendation are incorrect. The time for filing, length and content of memoranda, affidavits, and request to submit for decision are as stated for motions in Rule 7.

(c) If there has been a substantial change of circumstances since the commissioner's recommendation, the judge may, in the interests of judicial economy, consider new evidence. Otherwise, any evidence, whether by proffer, testimony or exhibit, not presented to the commissioner shall not be presented to the judge.

(d)(1) The judge may hold a hearing on any objection.

(d)(2) If the hearing before the commissioner was held under Utah Code Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, Utah Code Title 78B, Chapter 7, Protective Orders, or on an order to show cause for the enforcement of a judgment, any party has the right, upon request, to present testimony and other evidence on genuine issues of material fact.

(d)(3) If the hearing before the commissioner was in a domestic relations matter other than a cohabitant abuse protective order, any party has the right, upon request:

(d)(3)(A) to present testimony and other evidence on genuine issues of material fact relevant to custody; and

(d)(3)(B) to a hearing at which the judge may require testimony or proffers of testimony on genuine issues of material fact relevant to issues other than custody.

(e) If a party does not request a hearing, the judge may hold a hearing or review the record of evidence, whether by proffer, testimony or exhibit, before the commissioner.

32        (f) The judge will make independent findings of fact and conclusions of law based on  
33        the evidence, whether by proffer, testimony or exhibit, presented to the judge, or, if  
34        there was no hearing before the judge, based on the evidence presented to the  
35        commissioner.

36

**ADDITIONAL COUNCIL MEETING  
HANDOUTS**



Gary R. Herbert  
Governor

Gregory S. Bell  
Lieutenant Governor

# State of Utah

## Judicial Performance Evaluation Commission

Joanne C. Slotnik  
*Executive Director*

Utah State Capitol Complex, Senate Building, Suite 330 • Salt Lake City, Utah 84114  
801-538-1031 • Fax: 801-538-1024 • [www.judges.utah.gov](http://www.judges.utah.gov)

### Proposed 2012 Statutory Changes and Rationale

#### 1. 78A-12-203. Judicial performance evaluations.

- ~~(5) (a) Before considering the judicial performance evaluation of any judge, the commission shall notify the judge of the date and time of any commission meeting during which the judge's judicial performance evaluation will be considered.~~
- ~~(b) The commission shall allow a judge who is the subject of a judicial performance evaluation to appear and speak at any commission meeting, except a closed meeting, during which the judge's judicial performance evaluation is considered.~~

Rationale: This corrects a drafting error. Before the commission considers the evaluation of each judge, the judge has nothing to talk to the commission about because the evaluation report has not yet been formulated.

#### 2. 78A-12-204. Judicial performance survey.

- (5) If the commission provides any information to a judge or the Judicial Council, the information shall be provided in such a way as to protect the ~~[confidentiality]~~ anonymity of a survey respondent.

Rationale: JPEC's view is that the word "confidentiality" was used where "anonymity" may have been meant. JPEC cannot protect the "confidentiality" of survey respondents if it distributes survey results to the judge, Judicial Council, and public, as the statute mandates. That is, once distributed, the results are no longer confidential. JPEC can, however, protect the anonymity of all survey respondents even while complying with the distribution requirements.

#### 3. 78A-12-205. Minimum performance standards.

- (1) The commission shall establish minimum performance standards requiring that:
- ~~(a) the judge have no more than one public reprimand issued by [the Judicial Conduct Commission or] the Utah Supreme Court during the judge's current term; and~~
- (b) the judge receive a minimum score on the judicial performance survey as follows:
- (i) an average score of no less than 65%, excluding juror responses, on each survey category as provided in Subsection 78A-12-204(7)

**Rationale:** Subsection (1)(a): In its current form, the statute is incorrect. The Judicial Conduct Commission makes recommendations to the Supreme Court. Only the Supreme Court can issue public reprimands.

Subsection (1)(b): The commission recommends removing jury surveys from the calculation of minimum performance standards for 2 related reasons: 1) Juror survey responses do not distinguish between the performance of judges, either in Utah or anywhere else in the U.S. In general, all jurors rate all judges extremely high; and 2) including juror responses in calculating minimum performance standards gives the district court judges an advantage over all other judges. That is, their scores are inflated by the uniformly high juror scores, an advantage not enjoyed by judges at any other court level.

#### **4. 78A-12-206. Publication of the judicial performance evaluation.**

(1) (a) The commission shall compile a retention report of its judicial performance evaluation of a judge.

(b) The report of a judicial performance evaluation nearest the judge's next scheduled retention election shall be provided to the judge at least 45 days before the last day on which the judge may file a declaration of the judge's candidacy in the retention election.

(c) A report prepared in accordance with Subsection (1)(b) and information ~~[obtained in connection with the evaluation]~~ relied upon in evaluating a judge becomes a public record under Title 63G, Chapter 2, Government Records Access and Management Act, on the day following the last day on which the judge who is the subject of the report may file a declaration of the judge's candidacy in the judge's scheduled retention election if the judge declares the judge's candidacy for the retention election.

(d) Information collected and a report that is not public under Subsection (1)(c) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

**Rationale:** JPEC recommends defining information that must be made public to include each judge's retention report, plus any other information that the commission relied upon in making its recommendation. This is narrower than the current requirement of making public all information "obtained in connection with the evaluation." The change would help ensure both the integrity of JPEC and of its work product. For example, if a judge has a small court staff and receives 3 survey responses from staff, JPEC cannot rely on the responses because the number is too small to ensure that the 3 staff did not collude in their responses. Such unreliable information should not be made public.

District Court Case Filing  
 Mid Year Counts: July 1 thru December 31  
 Run date 1/6/12 for FY'12

Case Filings		Fiscal Year (mid-year counts)					08-12	
Category		2008	2009	2010	2011	2012	Change	% Change
Criminal	State Felony	10,647	11,055	11,205	10,760	10,384	-263	-2%
	Misdemeanor	7,317	7,657	7,477	6,259	5,605	-1,712	-23%
	Misdemeanor	783	817	720	746	617	-166	-21%
	Infraction	188	221	222	161	106	-82	-44%
	(Not Applicable)	197	282	401	394	454	257	130%
Criminal Total		19,132	20,032	20,025	18,320	17,166	-1,966	-10%
Domestic	Cohabitation	2,413	2,568	2,548	2,507	2,487	74	3%
	Common Law Marriage	14	21	17	26	23	9	64%
	Custody and Support	306	381	496	575	558	252	82%
	Divorce/Annulment	6,381	6,836	6,444	6,861	6,594	213	3%
	Grandparent Visitation	20	26	19	32	32	12	60%
	Paternity	572	677	427	509	558	-14	-2%
	Separate Maintenance	14	32	31	27	20	6	43%
	Temporary Separation	5	9	24	16	18	13	260%
	UCCJA Child Cust Jur		16				0	
	UCCJEA Child Cust Jur	23		35	20	29	6	26%
	UIFSA	63	98	48	57	88	25	40%
Domestic Total		9,811	10,664	10,089	10,630	10,407	596	6%
General Civil	Administrative Ag	208	170	177	169	156	-52	-25%
	Arbitration Award	176	94	38	10	8	-168	-95%
	Attorney Discipline	10	10	7	14	9	-1	-10%
	Civil Rights	10	20	20	13	9	-1	-10%
	Civil Stalking	387	402	391	396	508	121	31%
	Contempt	252	366	324	422	333	81	32%
	Contracts	2,005	3,260	2,443	2,329	1,733	-272	-14%
	Debt Collection	31,901	39,838	37,819	43,803	37,292	5,391	17%
	Forfeiture of Property	143	184	238	212	231	88	62%
	Hospital Lien	2,060	2,594	1,836	2,339	2,445	385	19%
	Interpleader	80	48	81	34	27	-53	-66%
	Miscellaneous	930	1,000	1,037	899	660	-270	-29%
	Notice of Dep OoS	25	62	59	90	107	82	328%
	Post Conv Rel NonCap	48	60	54	66	55	7	15%
	Post Conv Relief-Cap	2	2		1	2	0	0%
	SC denovo District	141	136	102	78	32	-109	-77%
	SC denovo Justice	71	98	89	81	134	63	89%
	Sexual Harassment	6	1				-6	-100%
	Small Claim	10,292	10,898	10,880	2,857	10	-10,282	-100%
	Small Claims/Park TP			1			0	
	Tax Court	2	2	2		2	0	0%
	Tax Protest				1	1	1	
	Unsolicited Communi.	3	2				-3	-100%
	Writs	6	22	16	21	13	7	117%
	Wrongful Termination	15	7	9	7	4	-11	-73%
General Civil Total		48,773	59,276	55,623	53,842	43,771	-5,002	-10%
Probate	Adoption	843	848	630	725	668	-175	-21%
	Conservatorship	163	156	113	112	101	-62	-38%
	Estate Frml Pers Rep	185	148	167	186	153	-32	-17%
	Estate Infrml Pers R	829	691	732	718	756	-73	-9%
	Gestational Agreement	3	6	3	9	13	10	333%
	Guardianship	822	827	626	759	731	-91	-11%

	Minor's Settlement	92	128	117	129	109	17	18%
	Name Change	425	442	309	427	479	54	13%
	Other Probate	187	216	232	219	211	24	13%
	Supervised Administr					1	1	
	Trust	45	51	35	61	56	11	24%
Probate Total		4,371	4,427	3,968	4,304	4,115	-256	-6%
Property Rights	Condemnation	24	46	75	37	38	14	58%
	Eviction	3,930	3,893	4,003	4,353	4,502	572	15%
	Lien/Mortgage Fcls	350	664	336	278	144	-206	-59%
	Property Rights	217	171	149	259	208	-9	-4%
	Water Rights	3	8	5	6	5	2	67%
Property Rights Total		4,524	4,782	4,568	4,933	4,897	373	8%
Tort	Asbestos	2	1	1		1	-1	-50%
	Malpractice	123	112	65	53	74	-49	-40%
	Personal Injury	843	846	697	811	832	-11	-1%
	Property Damage	305	249	221	238	142	-163	-53%
	Wrongful Death	28	20	16	26	21	-7	-25%
Tort Total		1,301	1,228	1,000	1,128	1,070	-231	-18%
Traffic	Parking Citation	1,041	1,100	620	452	692	-349	-34%
	Parking Court Case	4	1	1			-4	-100%
	Traffic Citation	15,241	14,698	12,657	10,458	7,432	-7,809	-51%
	Traffic Court Case	4,690	4,659	4,532	4,007	2,758	-1,932	-41%
Traffic Total		20,976	20,458	17,810	14,917	10,882	-10,094	-48%
Judgments	Abstract of Judgment	1,859	4,197	4,187	3,483	3,524	1,665	90%
	Child Support Lien	6,515	6,990	7,418	7,571	7,630	1,115	17%
	Foreign Dom. Decree	39	77	44	67	66	27	69%
	Foreign Judgment	224	197	233	171	197	-27	-12%
	Jdmt by Confession	77	173	210	246	199	122	158%
	Tax Lien	20,297	29,526	34,628	33,354	35,272	14,975	74%
	Workforce Svc Lien	4,558	6,230	7,519	9,188	10,688	6,130	134%
	Wrongful Lien	10	26	23	20	24	14	140%
Judgments Total		33,579	47,416	54,262	54,100	57,600	24,021	72%
Grand Total		142,467	168,283	167,345	162,174	149,908	7,441	5%

## Juvenile Court Referrals

July 1 thru December 31 each fiscal year  
FY12 data run 1/6/12

JC Type	FY08	FY09	FY10	FY11	FY12	08-12	
						Change	% Change
Felony	1,579	1,328	1,222	997	1,135	-444	-28%
Misdemeanor	11,786	11,223	10,087	9,057	9,901	-1,885	-16%
Infraction	816	813	775	585	505	-311	-38%
Contempt	3,288	3,849	3,378	3,378	3,086	-202	-6%
Status	3,561	3,093	2,191	2,046	1,923	-1,638	-46%
Traffic	630	517	415	336		-630	-100%
Adult Violations	559	545	542	658	699	140	25%
Child Welfare Proceedings	1,747	1,784	1,706	1,673	1,684	-63	-4%
Termination Parental Rgts	378	336	329	441	315	-63	-17%
Voluntary Relinquishment	234	238	321	342	291	57	24%
Domestic/Probate	343	369	381	328	456	113	33%
	24,921	24,095	21,347	19,841	19,995	-4,926	-20%

### NOTES

- o Reported referrals is count of the most serious incident of a single intake episode.
- o FY12 most "Traffic" offense severity amended to misdemeanor
- o "Domestic/Probate" - adoptions account for 90%+ of this category

## **Resolution of the Utah Judicial Council**

WHEREAS, equal justice for all is fundamental to our system of government; and

WHEREAS, the promise of equal justice under the law is not realized for individuals and families who have no meaningful access to the justice system because they are unable to pay for legal services; and

WHEREAS, this de facto denial of equal justice has an adverse impact on these individuals, families, and society as a whole, and works to erode public trust and confidence in our system of justice; and

WHEREAS, the Utah State Bar seeks to increase pro bono legal services throughout the state of Utah by establishing the Utah Pro Bono Commission, a Utah State Bar program that includes District Pro Bono Committees in Utah's eight Judicial Districts that will assist in providing pro bono services at a local level;

NOW THEREFORE BE IT RESOLVED, pursuant to Rule 2-201(2)(E) of the Utah Rules of Judicial Administration, that the Utah Judicial Council endorses the Utah State Bar's creation of a Pro Bono Commission and urges law firms, corporate law departments, and governmental law offices to adopt pro bono policies and procedures to engage all lawyers in pro bono service that will increase access to equal justice; and

BE IT FURTHER RESOLVED, that, subject to the Utah Code of Judicial Conduct, we encourage members of Utah's judiciary to participate in Utah Pro Bono Commission activities; we support members of Utah's judiciary in promoting pro bono legal services; and we encourage and support Utah District Court Judges serving as co-chairs and members of the Pro Bono Commission and District Pro Bono Committees.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

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The Honorable Christine Durham  
Chief Justice, Utah Supreme Court  
Chair, Utah Judicial Council