

JUDICIAL COUNCIL MEETING

AGENDA

Monday, October 22, 2012

LaQuinta Inn

Moab, Utah

Chief Justice Matthew B. Durrant, Presiding

1. 9:00 a.m. Welcome & Approval of Minutes Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 9:05 a.m. Oath of Office for New Council Members Judge Mary Manley
3. 9:10 a.m. Chair's Report. Chief Justice Matthew B. Durrant
4. 9:20 a.m. Administrator's Report. Daniel J. Becker
5. 9:35 a.m. Reports: Management Committee. . . . Chief Justice Matthew B. Durrant
Liaison Committee. Justice Jill Parrish
Policy and Planning Judge Greg Orme
Bar Commission. John Lund, esq.
(Tab 2 - Information)
6. 9:45 a.m. Council Committee Appointments. . . . Chief Justice Matthew B. Durrant
(Action)
7. 9:50 a.m. 2013 Calendar Approval. Ray Wahl
(Tab 3 - Action)
8. 10:00 a.m. Justice Court: Ivins Interlocal Agreement. Rick Schwermer
(Tab 4 - Action)
9. 10:10 a.m. Justice Court Proposals. Rick Schwermer
(Information)
- 10:35 a.m. Break
10. 10:45 a.m. Rules for Final Action. Tim Shea
(Tab 5 - Action)
11. 11:00 a.m. Senior Judge Certification. Tim Shea
(Tab 6 - Action)
12. 11:05 a.m. Executive Session.

13. 11:10 a.m. Justice Court Weighted Caseload. Rick Schwermer
(Action)
14. 11:25 a.m. Seventh District Update. Judge Mary Manley
(Information) Judge George Harmond
Terri Yelonek
- 12:10 p.m. Lunch
15. 12:40 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 Tim Shea
(Tab 7) Alyn Lunceford

JUDICIAL COUNCIL WORKSHOP

AGENDA

Monday, October 22, 2012

LaQuinta Inn

Moab, Utah

SESSION TO BEGIN AT 1:00 PM

1. Introduction and Goals for the Planning Session. Daniel J. Becker
2. Anticipating the Future. Tom Langhorne
3. Recommendations from Justice in the 21st Century Report:
Twenty Years Later.Rick Schwermer
4. Utah – Ten Years in the Future. Tim Shea
5. Facilitated Discussion.Rick Schwermer
6. Decision of Study Items.All

TAB 1

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, September 11, 2012
Silver Mine A
Park City Marriott
Park City, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Justice Jill Parrish
Hon. Judith Atherton
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Gregory Orme
Hon. John Sandberg
Hon. Larry Steele
Hon. Keith Stoney
Hon. Thomas Willmore
John Lund, esq.

STAFF PRESENT:

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

EXCUSED:

GUESTS:

Steve Raabe, OpinionWorks
Judge Reed Parkin

1. **WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge McCullagh moved to approve the minutes from the August 16, 2012 Budget and Planning Session and the August 16, 2012 Judicial Council meeting. Judge Harmond seconded the motion, and it passed unanimously.

2. **CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant reported on the following:

He, Mr. Dan Becker and Mr. Rick Schwermer met with the Judicial Compensation Commission, and they discussed judicial salaries and the importance of keeping compensation at levels that will attract qualified applicants and retain judges.

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

Mr. Becker reported on the following items:

The October 22, 2012 Judicial Council meeting will be an all-day event held in Moab. The first part of the day will consist of the Council business meeting. The second part of the day will be a planning workshop format. The workshop will include the following: 1) review of emerging issues and what court systems will be dealing with 10 years into the future, 2) review Justice in the 21st Century findings and recommendations 20 years later, and 3) identify specific challenges courts will face in the future, and 4) produce 2-3 Council study items for consideration.

The Executive Appropriations Subcommittee held their August 28 meeting at the Matheson Courthouse. During this time, they visited Judge Skanchy's drug court.

Mr. Becker mentioned that Utah has been asked by the National Center for State Courts (NCSC) to participate in a National Press Event in Washington, DC in conjunction with the Rehnquist dinner of the Supreme Court. Chief Justice Durrant, Mr. Becker and Representative Eric Hutchings will attend the event as Utah delegates. Representatives from Vermont and an additional trial court have also been invited to participate.

An article on the *Court Observer Program* featured in the Court Review Magazine was distributed.

Judge Rand Beacham has announced his upcoming retirement effective December 16, 2012, and Judge Clint Judkins has announced his upcoming retirement effective February 1, 2013.

Mr. Rick Schwermer attended the Judicial Performance Evaluation Committee (JPEC) meeting this morning representing the courts, and he has been asked by the JPEC Workgroup to attend all future meetings as well. He noted that the 2012 reports on judges up for retention went live today on the Commission's webpage.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant 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 September.

Policy and Planning Meeting:

Judge Orme reported on the following:

The Committee met in September. Judge Orme mentioned that most of the rules discussed during the meeting will be listed on the Council's October agenda for final action.

The following two items were handled separately: 1) review of the proposed amendment to the Court Interpreter Rule, and 2) review of a provision in the Probate Code for adoption of a fee schedule by the Judicial Council. Policy and Planning has decided not to advance the proposed Court Interpreter Rule, and no change will be made to the current rule. For the provision in the Probate Code relative to adoption of a fee schedule, the Policy and Planning Committee will recommend to the Liaison Committee, for the upcoming Legislative Session, to include a minor revision in the court's Housekeeping Bill noting that "the court will, in a contested case, award reasonable attorney's fees".

Bar Commission Report:

Mr. Lund reported on the following:

The Commission held their retreat in August. Mr. Lund highlighted their priority list as prepared at the retreat: 1) public and lawyer education, 2) judicial independence, 3) delivery of affordable legal services, 4) Utah State Bar's building review, 5) implementation of diversity policy and 6) group benefits.

The Commission is reviewing the rule relative to lawyer advertising.

The next Commission meeting will be held on September 28.

5. PUBLIC TRUST AND CONFIDENCE SURVEY: (Nancy Volmer, Opinion Works Staff)

Ms. Volmer mentioned that Judge Robin Reese, Public Opinion Subcommittee chair of the Public Outreach Committee, was unable to attend and asked to be excused. She reported that the last public opinion survey was conducted in 2006. She reviewed the selection process for securing a vendor to conduct the 2012 survey.

Ms. Volmer introduced Mr. Steve Raabe, President of OpinionWorks to provide the results of the survey.

Mr. Raabe provided background information on OpinionWorks. He highlighted the following relative to the Public Trust and Confidence Survey, 1) how the survey was conducted, 2) survey sample reflective of Utah's adult population, 3) survey objective, and 4) survey findings.

The survey questions included: 1) confidence in public institutions, 2) familiarity with the Utah State Courts, 3) ever needed to get information about the courts, 4) sources of information about the courts, 5) personal involvement with the Utah Courts, 6) type of case, 7) role in the case, 8) perceived outcome of the case, 9) confidence in the Courts Based on Court Experience, 10) deciding not to take a case to court, 11) barriers to court access, 12) importance of court functions, 13) performance of court functions, 14) impact analysis of court functions, 15) Utah courts as revenue-raisers, 16) overall opinion of the Utah Court System, and 17) conclusions.

Discussion took place. Questions were asked and comments were provided. It was noted that the subcommittee will review the survey for areas of focus and use the survey results to improve services and the public's understanding of its court system.

Mr. Raabe was thanked for his work on the survey.

6. CRIMINAL E-FILING UPDATE: (Debra Moore)

Ms. Moore reported on the update provided by Mr. Mark Nash, Director of the Prosecution Council, to the Management Committee at their August 7, 2012 meeting. The prosecutors currently use a case management system known as the Prosecutor's Information Management System (PIMS). A version of this case management system will be tailored to interface with the CORIS system and interface with local law enforcement agencies to receive police reports electronically.

Ms. Moore highlighted the following in her update: 1) pilot testing of the e-filing software began in Weber County last spring and has moved to Davis County, 2) test filings are being done in Cache County, 3) addressing security system issues in county locations, 4) a tentative roll out date for criminal e-filing has been prepared and is expected to be released this

week, 5) additional funding is being sought to provide additional technical staff to complete the criminal e-filing efforts, 6) e-filing to public and private defense counsel is available statewide, and 7) in development is the ability to file amended information, summons, warrants and booking sheets which will be built into the system at a later date.

Questions were asked of Ms. Moore. She provided responses.

7. GUARDIAN AD LITEM BUILDING BLOCK REQUEST: (Rick Smith)

Mr. Rick Smith was welcomed to the meeting. He updated the Council on the Building Block requests submitted on behalf of the Guardian ad Litem (GAL).

He highlighted the three requests which include two requests submitted last year: 1) additional attorney position in the Eighth District, 2) attorney salary parity increase, and 3) funding request in the amount of \$55,000 for CASA personnel costs as a result of losing funding from a grant from the National CASA. Mr. Smith noted there are currently 561 CASA volunteers, statewide.

The GAL Oversight Committee voted unanimously in favor of submitting the Guardian ad Litem building block requests.

Questions were asked relative to the use of guardian ad litem in district court. Mr. Smith shared how the issue is being addressed.

Motion: Judge Steele moved to approve the request for submission to the Governor and Legislature. Judge Harmond seconded the motion, and it passed unanimously.

8. JUDICIAL WORKSPACE APPLICATION: (Ron Bowmaster and Brody Arishita)

In working with the electronic record, a judicial workspace application has been developed for use by judges. The following requirements were highlighted: 1) case/incident management, 2) hearing preparation, and 3) in-courtroom case management.

The following capabilities relative to hearing preparation were reviewed: 1) view hearings from calendar, 2) display case/incident and hearing type from the hearing schedule, 3) display case/incident events and documents for a case, 4) identify one or more documents relevant to the hearing, 5) add case/incident/hearing/document notes, 6) highlight or add comments on selected document, 7) save case/incident/document information to shared folder, and 8) move folder to supported devices if desired.

The following capabilities relative to In Courtroom Management were reviewed: 1) display case/incident when called, 2) display case/incident summary information, 3) display case/incident/hearing/document notes, 4) retrieve selected document(s), 5) take an action, 6) record hearing minutes, 7) convert minutes to documents, and 8) docket minute entry.

Mr. Arishita provided a demonstration of the courtroom management system. The screens and their functionality were reviewed. Discussion took place and questions were asked. Mr. Arishita provided answers to the questions asked.

Once the design has been approved, the plan is to have the prototype available in beta form before rolling it out statewide in January.

Mr. Bowmaster and Mr. Arishita were thanked for their presentation.

9. CERTIFICATION OF SENIOR JUDGES AND COURT COMMISSIONERS: (Tim Shea)

The following senior judges have terms that will expire on December 31, 2012; and they have applied for reappointment. 1) Judge Kent Bachman, 2) Judge Russell W. Bench, 3) Judge James E. Box, 4) Judge Betty Burns, 5) Judge Richard D. Carr, 6) Judge Roger S. Dutson, 7) Judge Pamela T. Greenwood, 8) Judge Gordon J. Low, 9) Judge Sharon P. McCully, 10) Judge A. Lynn Payne, 11) Judge Allan D. Vail, 12) Judge Sara Watson, and 13) Judge Jeril B. Wilson. He noted that Judge Burns and Judge Carr formerly were active senior judges, and they are applying for inactive status.

The following commissioners have terms that will expire on December 31, 2012; and they are up for reappointment: 1) Commissioner Thomas Arnett, 2) Commissioner Joshua Faulkner, and 3) Judge Daniel Garner.

Mr. Shea noted a problem with the survey of attorneys for senior judges from a court of record. Of the 11 active senior judges, the National Center for State Courts (NCSC) has reported survey results from only two of them. A problem was found with AIS and CARE not having a corresponding script (computer instructions) to report the necessary information to the National Center. With the exception of the attorney surveys, all of the senior judges meet all of the minimum performance standards.

The only option would be to obtain attorney survey results by administering a traditional survey in an accelerated fashion.

Motion: Judge Orme moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify the senior judges applying for reappointment as active senior judges. Judge Steele seconded the motion. The motion was withdrawn.

Motion: Judge Maughan moved to advance the appropriate reports to the National Center for State Courts (NCSC) on behalf of the senior judges applying for reappointment as required by rule. Judge Orme seconded the motion, and it passed unanimously.

Mr. Shea reported that the senior judges in the justice courts and the court commissioners meet the minimum performance standards to be reappointed.

Motion: Judge McCullagh moved to forward the recommendations, on behalf of the Council, to the local presiding judges to certify the senior judges in the justice courts and the court commissioners, for reappointment. Judge Hornak seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss a personnel matter. The motion was seconded, and it passed unanimously.

10. EXECUTIVE SESSION:

An executive session was held at this time.

11. ADJOURN

The meeting was adjourned.

TAB 2

**JUDICIAL COUNCIL MANAGEMENT COMMITTEE
MINUTES**

**Tuesday, October 9th, 2012
Matheson Courthouse
450 South State Street
Salt Lake City, Utah**

MEMBERS PRESENT:

Chief Justice Matthew B. Durrant, Chair
Hon. Kimberly Hornak
Hon. George Harmond
Hon. John Sandberg

EXCUSED:

Hon. Judith Atherton

GUESTS:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Lisa-Michele Church
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Alyn Lunceford
Brent Johnson
Heather Mackenzie-Campbell

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

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

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

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

Mr. Becker reported on the following items:

Court Executive Retirement. Ms. Beani Martinez, Second Juvenile court executive, has announced her retirement – effective December 31, 2012. He noted that Ms. Martinez is a long-term, very dedicated court employee, whose services will be missed.

Court Visit. Court staff from Maricopa County, Arizona, will be visiting next week to learn from our experience with clerical reorganization. Nebraska court staff have expressed interest in discussing our use of digital recording and our transcript management system, and will be scheduling a visit to our courts in the near future.

National Summit on Language Access in the Courts. Mr. Becker reported on the National Summit on Language Access in the Courts which was held on October 1-3 in Houston, TX. The following attended from Utah: 1) Judge Larry Steele, 2) Mr. Dan Becker, 3) Mr. Tim Shea, and 4) Ms. Rosa Oakes. The Summit was attended by over 300 people from 49 states and 5 territories.

Mr. Becker was pleased with the fact that Utah addressed the issue of interpreters and their use in civil cases early on. He noted that the Justice Department has shown interest in eight states relative to interpreters in civil cases.

Ms. Rosa Oakes provided a presentation on remote interpretation, and Mr. Becker moderated a panel held relative to funding issues.

Mr. Becker foresees the Utah courts addressing the following issues relative to language access in the courts as a result of the Summit: 1) developing a complaint process, and 2) modifying CORIS and CARE to process payments as an automated function, with improved data collection as a byproduct.

Courts Budget Review. Chief Justice Durrant and Mr. Becker will be meeting with the Governor's office to review the courts' budget requests on October 16.

New Judge Orientation. New judge orientation was held October 3-5. Chief Justice Durrant, Mr. Becker and Mr. Wahl met with them on Friday, October 5, to discuss court governance and administration.

JPEC. Mr. Russ VanVleet resigned from the Judicial Performance Evaluation Commission. An appointment will need to be made to fill the vacancy.

The Council's JPEC Workgroup will meet following the Management Committee meeting.

3. COMMITTEE APPOINTMENTS: (Tim Shea and Alyn Lunceford)

The Committee on Resources for Self-Represented Parties recommended Judge Michael Di Reda and Ms. Carol Frank are reappointed for a second term.

Motion: Judge Harmond moved to approve the recommendations on behalf of the Committee on Resources for Self-Represented Parties for reappointment of Judge Michael Di Reda and Ms. Carol Frank for a second term and place it on the October Judicial Council consent calendar. Judge Hornak seconded the motion, and it passed unanimously.

The Court Interpreter Committee recommended Mr. Wendell Roberts be reappointed for a second term.

Motion: Judge Harmond moved to approve the recommendation on behalf of the Court Interpreter Committee for reappointment of Mr. Wendell Roberts for a second term and place it on the October Judicial Council consent calendar. Judge Hornak seconded the motion, and it passed unanimously.

The Courts Facility Planning Committee recommended Mr. Stephen S. Jacobsen to fill the vacancy on the committee left by the passing of Mr. Neil Stow.

Motion: Judge Hornak moved to approve the recommendation on behalf of the Courts Facility Planning Committee to appoint Mr. Stephen S. Jacobsen to fill a vacancy on the committee. Judge Sandberg seconded the motion, and it passed unanimously.

4. UTAH APPELLATE COURTS, SUPREME COURTS AND COURT OF APPEALS, FULL AUDIT FINAL REPORT: (Heather Mackenzie-Campbell) Ms. Mackenzie Campbell was welcomed to the meeting.

She reported on the final audit report for the Utah Appellate Courts – Supreme Court and Court of Appeals. Ms. Mackenzie-Campbell highlighted the following in her report: 1) the combined clerical operations employs 15 FTE judicial support staff and two clerks of court, 2) management and judicial support staff were recognized for implementation of 11 commendable procedures, 3) five significant areas for improvement were identified, and 6) action plans have been or are being prepared to address the weaknesses.

Ms. Mackenzie-Campbell was thanked for providing the audit report findings.

Motion: Judge Harmond moved to accept the audit report as presented. Judge Sandberg seconded the motion, and it passed unanimously.

5. JUSTICE COURT: IVINS INTER-LOCAL AGREEMENT: (Rick Schwermer)

Mr. Schwermer provided information relative to the request to enter into an inter-local agreement by Ivins City.

Ivins City, a Category III Court, is requesting to dissolve their inter-local agreement with the Washington County Justice Court and enter into an inter-local agreement with the Santa Clara Justice Court, a Category IV Court—effective January 1, 2013. If the inter-local agreement is reached, the Santa Clara Justice Court would be a Category III Court.

All parties have been notified and are in agreement with the request.

Motion: Judge Sandberg moved to recommend the approval of the proposed inter-local agreement request made by Ivins City to the Judicial Council. Judge Hornak seconded the motion, and it passed unanimously.

6. ETHICS ADVISORY – INFORMAL OPINION 12-01: (Brent Johnson)

Mr. Johnson was welcomed to the meeting.

He highlighted the following in his discussion: 1) the opinion conflicts with what is in place in the existing policy for the use of social media for court employees, 2) the difference between an informal and formal opinions, 3) history of the three existing formal opinions, and 4) recommendations regarding the opinion.

Mr. Johnson mentioned that the court executives discussed the opinion and the conflict that exists with the current policy for the use of social media for court employees. The matter will be discussed further with the Policy Committee, and a change may be made to the employee policy.

Discussion took place. Mr. Johnson recommended that the opinion remain as an informal opinion. The Management Committee decided to include this item on the November Council agenda for further discussion on whether the informal opinion should be considered for conversion to a formal opinion.

7. MEDIA RULES: (Tim Shea)

Mr. Shea reported to the Management Committee that approval of the following media rules are being recommended for approval by Policy and Planning: 1) CJA 04-0401.01 – Media coverage of court proceedings, and 2) CJA 04-0401.02 – Possession and use of portable electronic devices. The comment period for the rules has closed. The deadline for getting the rules published and printed has passed, and the next date to be included in print is April of 2013.

He is requesting input from the Committee on the following: 1) should the rules be discussed at the October or November Council meeting, and 2) when would be the appropriate effective date—November 1, January 1 or April 1.

Discussion took place. The Management Committee was in agreement to placing the rules on the November agenda for final action.

8. JUSTICE COURT WEIGHTED CASELOAD: (Rick Schwermer)

Mr. Schwermer provided background information relative to the justice court weighted caseload. The majority of the information is based upon information used in the district court weighted caseload system. It was noted that the same judge year, as used for district and juvenile courts, is used.

The recommended changes made by the Board of Justice Court Judges include the following: 1) use each individual court location, 2) bench hour day changed to 8 hours from 7 hours, 3) 100% contest traffic—do not use state court numbers, 4) administrative hours for each court class were adjusted, 5) 40 training hours, and 6) small claims removed from courts using Pro Tem.

Mr. Schwermer reviewed the data provided for each justice court location and the adjustments being made. Judge Sandberg provided background information on the committee work undertaken in preparing the amended justice court weighted caseload. Discussion took place.

The Management Committee was in agreement to place the Justice Court Weighted Caseload item on the October Judicial Council for discussion and approval.

9. APPLICATION FOR INITIAL PROJECT PLANNING OF THE PROPOSED SUMMIT COUNTY DRUG COURT PROJECT: (Rick Schwermer)

Mr. Schwermer reviewed the application for the proposed Summit County Drug Court. He noted that everything was in order.

Motion: Judge Hornak moved to approve the application for initial project planning for the proposed Summit County Drug Court. Judge Harmond seconded the motion, and it passed unanimously.

10. DISCUSSION OF JUSTICE COURT ISSUES: (Rick Schwermer)

Mr. Schwermer informed the Management Committee of two possible matters being considered for the next legislative session to include: 1) inclusion of prior warnings included with documents sent on behalf of the Judicial Conduct Commission to the Supreme Court when an order is sent, and 2) salary cap for justice court judges when they employed by more than one entity. The anticipated sponsor has requested an opinion of the courts.

Discussion took place. The Management Committee requested Mr. Schwermer speak with the sponsor prior to the October Council meeting to get clarification on the proposals. The matter will be discussed further at the October Council meeting.

11. 2013 CALENDAR APPROVAL: (Daniel J. Becker)

Revised copies of the 2013 calendars were distributed. The 2013 Management Committee and Judicial Council calendars were reviewed.

Mr. Becker noted the changes on the Judicial Council calendar to include: 1) date change for the March meeting in St George, and 2) July meeting date.

Mr. Becker reminded the Committee that the Council typically would hold their meeting on the Thursday morning prior to the start of the Bar's Spring Conference. However, the Legislative Session ends on Thursday. It has been recommended that the Council hold their meeting on Friday, and the Boards hold their meetings on Saturday morning.

He mentioned the dates and location for the Bar's Summer Conference. Mr. Becker reviewed the costs for attending the conference and holding the July Council meeting in conjunction with it. It was decided that the Council should meet in conjunction with the Midyear meeting rather than the Annual Bar Conference.

Motion: Judge Hornak moved to accept the 2013 calendars as proposed and send to the Judicial Council for final approval. Judge Sandberg seconded the motion, and it passed unanimously.

12. COUNCIL COMMITTEE APPOINTMENTS: (Daniel J. Becker)

Mr. Becker mentioned the three new Council members: 1) Mr. John Lund, 2) Judge Glen Dawson, and 3) Judge Reed Parkin. The recommendation is to have the current Council members retain their committee appointments, and the three new members will be appointed to the vacancies on the Policy and Planning Committee.

Discussion took place.

Motion: Judge Sandberg moved to approve the recommendation as presented for committee appointments. Judge Harmond seconded the motion, and it passed unanimously.

13. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reviewed the proposed Council agenda for the October 22 Council meeting.

14. ADJOURN

The meeting was adjourned.

TAB 3

JUDICIAL COUNCIL 2013 MEETING DATES

Meetings are generally scheduled on the fourth Monday of the month beginning at 9:00 a.m. Meetings will be held in the Council Room of the Matheson Courthouse unless otherwise noted.

Monday, January 28, 2013

Monday, February 25, 2013

Friday, March 15, 2013 (in conjunction with the Bar's Spring Convention in St. George)

Monday, April 22, 2013

Tuesday, May 20, 2013 (NOTE: Date change with May 27 being Memorial Day)

Monday, June 24, 2013

July 22, 2013

Friday, August 16, 2013 (Council Budget and Planning Meeting - Matheson Courthouse)

Tuesday, September 10, 2013 (Held in conjunction with the Annual Judicial Conference, September 11-13)

Monday, October 28, 2013

Monday, November 25, 2013

Monday, December 16, 2013

Bar Conferences:

Spring Convention in St George - March 14-16, 2013

Summer Convention in Snowmass, CO - July 17-20, 2013

TAB 4

Interlocal Agreement Approval Form

1. What is the name of the courts entering the interlocal agreement?

Ivins City would like to leave their interlocal agreement with Washington County Justice Court and enter into a new agreement with the Santa Clara Justice Court. Ivins and Santa Clara have recently combined their law enforcement departments.

What is the courts class size?

Ivins is a Category III Court with an average of 62 cases per month over the last three years. Santa Clara is a category IV court with an average of 56 cases per month over the last three years.

How many citations or cases are filed in this court per month?

If the interlocal agreement is reached, the Santa Clara Justice Court would be a category III court averaging 120-130 cases per month, based on the average for the last three years.

When would the interlocal agreement begin?

Requested date is January 1, 2013

Describe in detail how the additional caseload will impact this court in the following areas:

Hours of operation

Santa Clara's hours of operation would not change much. Currently, court is in session from 9:00am to 12:00 noon every Tuesday except for the 4th week of the month when court is held on Monday from 4:00 pm until finished. Court business can be conducted Monday through Thursday from 8:00am until 5:00pm and on Friday from 8:00am until 9:00am.

If Santa Clara enters into the agreement with Ivins, they would add one more Monday afternoon court session and be open on Fridays from 8:00am until 10:00am to conduct other court business. If necessary, they would extend the hours of their Tuesday court sessions.

Facility Needs

Santa Clara would not have any additional facility needs.

Clerical Resources

Santa Clara would not need additional clerical resources. Currently, they have one court clerk devoted to taking care of all court business and one backup clerk.

Security Needs

There would be no change in security needs.

Prosecution

There would be a change in prosecution. The city prosecutor's pay would increase from \$600 per month to \$1200 per month.

Defense

There would also be a change in defense costs. Our defense cost would increase from approximately \$300/\$400 per month to approximately \$800 per month. We pay our contracted defense attorney by the hour so it is difficult to determine the exact cost. What we pay at the current time is based on a three year average.

2. Is the court entering the interlocal agreement leaving another court/interlocal agreement? If the answer is yes, what court?

Ivins would leave their interlocal agreement with Washington County.

Describe in detail how the decrease in caseload will impact this court in the following areas:

Washington County Justice Court is a class I court. They would remain class I without Ivins' caseload. Washington County reports the loss of Ivins' citations would not impact their hours of operation, their facility needs, their clerical resources, their security needs, or their prosecution or defense. They report that Ivins' citations have decreased over the past couple of years. Washington County Justice Court requests a month or two before the change is made so that they can inform defendants what court they will need to go to in the future.

TAB 5



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
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: September 19, 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 02-0204. Local supplemental rules. Amend. Modifies the process by which local rules are approved.

CJA 03-0202. Court referees. Amend. In conjunction with Rule 4-704, prohibits courts from appointing court referees by whatever title, and permits clerks, under the direction of the judge and with the consent of the prosecutor and defendant, to resolve select cases to a determined outcome using a plea in abeyance process.

CJA 04-0202.01. Definitions. Amend. Excludes from the definition of a "record" documents prepared or received by a person in the person's private capacity and documents that do not relate to the public's business.

CJA 04-0202.02. Records classification. Amend. Removes investigative subpoenas from the list of protected records. Section 77-22-2 will regulate access to investigative subpoenas. Changes the classification of PSI reports from private to protected. Designates additional circumstances in which the name of a minor is public. Classifies as "protected" records subject to the attorney client privilege.

CJA 04-0202.03. Records access. Amend. Clarifies who has access to a private or a protected court record.

CJA 04-0202.05. Request to access an administrative record; research; request to classify an administrative record; request to create an index. Amend. Permits releasing non-public records for research purposes if the interests favoring the research are greater than or equal to the interests favoring closure.

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.

CJA 04-0405. Juror and witness fees and expenses. Amend. Requires prosecutors to certify to the number of miles for which a witness is entitled to payment.

CJA 04-0409. Council approval of Problem Solving Courts. Amend. Regulates ex parte communication in problem solving courts, as recognized by the Code of Judicial Conduct and consistent with the signed agreement.

CJA 04-0502. Expedited procedures for resolving discovery issues. Renumber 10-1-306 and 10-1-406 and amend. Describes a process for resolving discovery disputes quickly to minimize the impact on time to complete discovery.

CJA 04-0704. Authority of court clerks. Amend. Permits clerks, under the direction of the judge and with the consent of the prosecutor and defendant, to resolve select cases to a determined outcome using a plea in abeyance process.

CJA 06-0401. Domestic relations commissioners. Amend. Recognizes the authority of court commissioners to hear child protective order cases. Effective June 25, 2012 under Rule 2-205. Subject to change after the comment period.

CJA 07-0102. Duties and authority of Juvenile Court Commissioners. Amend. Recognizes the authority of court commissioners to hear child protective order cases. Effective June 25, 2012 under Rule 2-205. Subject to change after the comment period.

Comments

There was one comment to Rule 4-502, Expedited procedures for resolving discovery issues. The Policy and Planning Committee recommends the further amendments in response to this comment and subsequent staff analysis. The committee will soon recommend amendments to move the procedural provisions of this rule to the Rules of Civil Procedure. At that point, this rule should be amended to limit it to its case management policies.

The procedure and objectives of subsection (2) are a little unclear, especially as it relates to motions under Utah R. Civ. P. 37. Given that the Statement of Discovery Issues is to be filed before a motion under Rule 37 may be filed, it is unclear whether Rule 37 applies to relief requested under this subsection. Do the provisions for sanctions in 37(d) apply to Statements of Discovery Issues? Is failure to comply with an order procured under subsection (2) sanctionable under Rule 37(e)? I cannot see how this rule would not entirely replace the procedures of Rule 37(a)(3) & (b), especially as subsection (2)(F) of the proposed rule contemplates the possibility of ordering further briefing as the judge sees fit (which means that the briefing requirements would be defined by the judge rather than the rule). It seems that Rule 37(a)(3) and (b) will become redundant. Rather than having this rule in the UCJA (where it is also likely to be overlooked), the better course of action may be to incorporate the procedures of subsection 2 into Rule 37.

Notes on style and drafting:

Subsection (1) slips into imperative mood. Consider amending the second sentence to "Parties should contact one of the judicial assistants for the assigned judge for specific questions," or omitting the first two sentences entirely.

In Line 16, consider replacing "; and" with "."

In Lines 21-22, consider taking the Rules out of parentheses and inserting the word "under" before the rules.

It may be clearer if the language about certifying conferring in good faith in Lines 27-29 were made into one of the requirements listed in (2)(B)(i)-(iv).

It seems more logical to incorporate subsection (4) into Rule 5-510.05.

Consider incorporating Subsection (6) into Subsection (2), perhaps between (2)(B) and (2)(C).

Nathan Whittaker

Day Shell & Liljenquist, LC

We received the attached letter from Thomas Patterson, Executive Director of the Department of Corrections, renewing their request to classify probation progress/violation reports as protected. The Policy and Planning Committee recommends no further change to the rule, but Judge Orme will write to Mr. Patterson, explaining the committee's reasons, highlighting the Department's ability to control what goes into the reports and to request that a specific report be classified as protected if making it public would interfere with the control and supervision of a probationer's probation or treatment.

We did not receive any comments to the other proposed changes.

Encl. Letter from Thomas Patterson, Executive Director, Department of
Corrections
Draft rules



State of Utah

GARY R. HERBERT
GovernorGREG BELL
Lieutenant GovernorUtah Department of Corrections
Executive OfficeTHOMAS E. PATTERSON
Executive Director

August 23, 2012

*Sent via facsimile (801-578-3843)*Tim Shea
Administrative Office of the Courts
450 South State Street, Suite N31
PO Box 140241
Salt Lake City, UT 84111

Re: Proposed Rule 4-202.02 Utah Rules of Judicial Administration

Dear Mr. Shea,

On behalf of the Utah Department of Corrections (UDC), I fully support an amendment to Rule 4-202.02 of the Utah Rules of Judicial Administration that would reclassify Presentence Investigation Reports (PSIs) as protected. This classification is consistent with the classification expressly given to these records by Utah statute. See Utah Code Ann. §§ 64-13-20(3)(a) & 77-18-1(5)(e). More importantly, given the sensitive information that is often contained in these reports, I believe this classification is vital to protect the safety and privacy of various individuals.

I am concerned that the Utah Judicial Council has apparently decided not to reclassify "Probation Violation Reports" (PV reports) as either protected or private. These records frequently contain the same kinds of sensitive information found in PSIs, including victim information. Yet at the present time any member of the public can access PV reports maintained in the court files. As I understand it, part of the reasoning in classifying these records as public is the Council's consideration of them as essentially charging documents. This is not entirely accurate. PV reports typically contain sensitive information that would not be found in traditional charging documents. Moreover, sometimes these reports are submitted simply to inform the district court of an offender's progress on probation or parole or to recommend an amendment to an existing probation/parole agreement. UDC has traditionally been very liberal in the amount of information its agents include in PV Reports; I believe that it is in the public's best interest for judges making decisions about an offender's supervision to be as well informed as possible. However, UDC has a duty to protect the public, including protecting the release of information that may endanger or otherwise harm individual citizens. Knowing that these records will be made available to the public, UDC will necessarily need to carefully consider the

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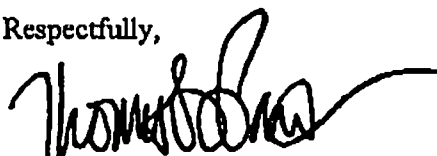
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amount of information provided in future PV reports, which in turn may affect the judiciary's ability to make reasoned decisions regarding the supervision of offenders. I therefore respectfully request that the Council reevaluate this matter and further amend Rule 4-202.02 to reclassify PV reports as protected or, at least, private.

Thank you for your attention to this matter. Should you desire any additional information, please don't hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read 'Thomas Patterson', with a long, sweeping horizontal line extending to the right.

Thomas Patterson
Executive Director
Utah Department of Corrections

1 **Rule 2-204. Local supplemental rules.**

2 Intent:

3 To establish the authority of local courts to adopt local supplemental rules for the
4 administration of the courts.

5 To ensure that local supplemental rules are adopted consistently with this Code.

6 To establish a procedure for the adoption and ratification of local supplemental rules.

7 Applicability:

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

9 Statement of the Rule:

10 ~~(1) Subject to paragraph (7) of this rule, the presiding judges of all multi-judge courts~~
11 ~~and The judges of single-judge courts may adopt such rules as they deem necessary~~
12 ~~needed to supplement this Code and to govern the administration of their courts.~~

13 (2) Local supplemental rules shall be approved by both the presiding judge and by a
14 majority of the judges in the judicial district, or, in single-judge courts, by the judge.

15 (3) ~~Upon approval of the rule by the presiding judge, the local supplemental rule~~
16 ~~shall be submitted through general counsel to the appropriate Board for review. In~~
17 ~~emergency circumstances, proposed rules shall be effective immediately upon the~~
18 ~~approval of the presiding judge until final action by the Council. The appropriate Board~~
19 shall review the rule for consistency with this Code, its potential application to courts of
20 equal jurisdiction and its potential application to all courts of record and not of record.

21 (4) ~~If the proposed rule is consistent with the provisions of this Code, approved by~~
22 ~~the Board may adopt it as a local supplemental rule and the Board shall submit it to the~~
23 ~~Council for ratification; the Board may adopt it as a Board rule and submit it to the~~
24 ~~Council for ratification; or the Board may refer the rule to the Council for consideration~~
25 ~~and adoption as a Council rule. The Council shall publish the rule for comment as~~
26 provided in Rule 2-203 and establish an effective date, which may be an expedited
27 effective date, as provided in Rule 2-205 and Rule 2-206.

28 (5) ~~Rules which are ratified by the Council as either local supplemental rules or~~
29 ~~Board rules or which are adopted as Council rules shall be forwarded to the~~
30 ~~Administrative Office for publication~~ published in this Code.

31 ~~(6) Rules which are inconsistent with the provisions of this Code or for other reasons~~
32 ~~are not adopted by the Board or adopted or ratified by the Council shall be referred back~~
33 ~~to the local court with an explanation and any recommendations for modification.~~

34 ~~(7) Local supplemental rules shall not be adopted by the Board or the local court~~
35 ~~without ratification by the Council.~~
36

Rule 3-202. Court Referees prohibited.

Intent:

To ~~establish the position of~~ prohibit courts from establishing the position of court Referee as a quasi-judicial officer.

~~To establish the duties, responsibilities, and authority of Court Referees.~~

~~To establish uniform administrative policies governing the qualifications, appointment and supervision of Court Referees.~~

Applicability:

This rule ~~shall apply to District and Juvenile~~ applies to all trial courts.

Statement of the Rule:

(1) Definition. ~~Court Referees are quasi-judicial officers of the judicial branch of government.~~ means any person, other than:

(1)(A) a judge appointed under Article VIII of the Utah Constitution;

(1)(B) a senior judge appointed under Rule 11-201 or Rule 11-203;

(1)(C) a judge pro tempore appointed under Rule 11-202;

(1)(D) a court commissioner appointed under Rule 3-201;

(1)(E) a master appointed under Rule of Civil Procedure 53;

(1)(F) a clerk of court acting under Rule 4-704; or

(1)(G) a juvenile court probation officer acting under Section 78A-6-602 or Rule 7-301

by any title, including but not limited to court referee, traffic referee, hearing officer, or adjuster who resolves or recommends resolution of any case.

~~(2) Qualifications. Court Referees must be at least 25 years of age, United States citizens and Utah residents for three years preceding appointment. Court Referees must possess knowledge of laws and regulations, court procedures, and penalties for violations within the authority of the referee to impose. Court Referees must possess evidence of good character.~~

~~(3) Appointment Oath of office. The Court Executive shall assist the presiding judge or judges of the jurisdiction in the selection of Court Referees. The presiding judge with the approval of the judges of the jurisdiction may appoint an individual to the~~

31 ~~office by contract or by employment. Court Referees, before entering upon the duties of~~
32 ~~their office, shall take and subscribe to an oath of office.~~

33 ~~(4) Standards of performance. Court Referees must comply with applicable~~
34 ~~constitutional and statutory provisions, court rules and procedures, and the provisions of~~
35 ~~this Code.~~

36 ~~(5) Evaluation. The presiding judge and the court executive shall develop a~~
37 ~~performance plan for the Court Referee and shall prepare an evaluation of performance~~
38 ~~annually. A copy of the performance plan and evaluation shall be maintained in the~~
39 ~~official personnel file in the Administrative Office.~~

40 ~~(6) Salaries and benefits.~~

41 ~~(6)(A) Court Referees employed by the court shall be compensated at a level within~~
42 ~~the standards of the Judicial Council and shall receive the same employment benefits~~
43 ~~as non judicial officers employed in the judicial branch.~~

44 ~~(6)(B) Court clerks serving as part time referees shall receive no additional~~
45 ~~compensation for referee services.~~

46 ~~(7) Authority and duties. The respective Boards shall develop uniform rules~~
47 ~~governing the duties and authority of Court Referees at each court level. The rules shall~~
48 ~~be submitted to the Council for final approval and shall, at a minimum, provide the~~
49 ~~following:~~

50 ~~(7)(A) Court Referees shall be authorized to adjudicate only those offenses listed in~~
51 ~~the uniform bail schedule not requiring court appearance by the defendant.~~

52 ~~(7)(B) Court Referees may establish bail, order dismissals, refer persons to traffic~~
53 ~~school or otherwise equitably dispose of citations.~~

54 ~~(7)(C) Court Referees shall review the offense described on the citation and the~~
55 ~~circumstances of the offense with the defendant and propose a mutually acceptable~~
56 ~~disposition. Upon stipulation of the defendant, the Court Referee may order disposition~~
57 ~~in accordance with the agreement.~~

58 ~~(7)(D) In the event that a stipulation cannot be reached or the defendant so~~
59 ~~requests, the Court Referee shall refer the matter to the court for trial.~~

~~(7)(E) Dispositions by Court Referees shall be final unless the defendant withdraws a stipulation within 10 days of its entry. If the defendant withdraws a stipulation in a timely manner, the matter shall be scheduled for trial before the Court.~~

~~(7)(F) Documentation of Court Referee dispositions shall be maintained; however, such proceedings shall not be a matter of record.~~

(2) Court referees prohibited. Court referees are prohibited.

Rule 4-202.01. Definitions.

Intent:

To provide a uniform definition for special terms.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

As used in these rules:

(1) "Access" means to inspect and obtain a copy.

(2) "Court record" means a record prepared, owned, received, or retained by a court or the administrative office of the courts.

(3) "Record" means books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, data or other materials, regardless of form or characteristics, that are reproducible.

(4) "Record" does not mean any of the following unless received into evidence:

(4)(A) drafts, calendars, notes or similar materials prepared for the originator's personal use or for the personal use of an individual for whom the originator works;

(4)(B) document prepared or received by an individual in the individual's private capacity or document prepared or received by an individual that is unrelated to the public's business;

~~(4)(B)~~ (4)(C) materials legally owned by an individual in the individual's private capacity;

~~(4)(C)~~ (4)(D) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by the courts;

~~(4)(D)~~ (4)(E) proprietary software or software developed or purchased by or for the courts for its own use;

~~(4)(E)~~ (4)(F) junk mail or commercial publications received by the courts or an official or employee of the courts; or

~~(4)(F)~~ (4)(G) materials contained in the collection of libraries open to the public.

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;

- 31 (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 progress/violation reports;
- 56 (2)(V) publications of the administrative office of the courts;
- 57 (2)(W) record in which the judicial branch determines or states an opinion on the rights
- 58 of the state, a political subdivision, the public, or a person;
- 59 (2)(X) record of the receipt or expenditure of public funds;
- 60 (2)(Y) record or minutes of an open meeting or hearing and the transcript of them;

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

(2)(AA) record of a request for a record;

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

(2)(CC) rules of the Supreme Court and Judicial Council;

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

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

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

(3) The following court records are sealed:

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

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

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

(3)(B) expunged records;

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

- 91 (3)(D) records showing the identity of a confidential informant;
- 92 (3)(E) records relating to the possession of a financial institution by the commissioner of
- 93 financial institutions under Utah Code Section 7-2-6;
- 94 (3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;
- 95 (3)(G) records designated as sealed by rule of the Supreme Court;
- 96 (3)(H) record of a Children's Justice Center investigative interview after the conclusion
- 97 of any legal proceedings; and
- 98 (3)(I) other records as ordered by the court under Rule 4-202.04.
- 99 (4) The following court records are private:
- 100 (4)(A) records in the following actions:
- 101 (4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;
- 102 (4)(A)(ii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed;
- 103 and
- 104 (4)(A) (iii) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are
- 105 sealed; and
- 106 (4)(B) records in the following actions, except that the case history; judgments, orders
- 107 and decrees; letters of appointment; and the record of public hearings are public
- 108 records:
- 109 (4)(B)(i) Title 30, Husband and Wife, except that an action for consortium due to
- 110 personal injury under Section 30-2-11 is public;
- 111 (4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;
- 112 (4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;
- 113 (4)(B)(iv) Title 78B, Chapter 7, Protective Orders;
- 114 (4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;
- 115 (4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and
- 116 Enforcement Act;
- 117 (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;
- 118 (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- 119 (4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this
- 120 subparagraph (B);

(4)(C) aggregate records other than public aggregate records under subsection (2);
(4)(D) alternative dispute resolution records;
(4)(E) applications for accommodation under the Americans with Disabilities Act;
(4)(F) citation, but an abstract of a citation that redacts all non-public information is public;
(4)(G) judgment information statement;
(4)(H) judicial review of final agency action under Utah Code Section 62A-4a-1009;
(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)(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)(K) medical, psychiatric, or psychological records;
(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)(L)(i) name change of a minor;
(4)(L)(ii) guardianship or conservatorship for a minor; and
(4)(L)(iii) felony, misdemeanor or infraction;
(4)(L)(iv) child protective orders; and
(4)(L)(v) custody orders and decrees;
(4)(M) personnel file of a current or former court personnel or applicant for employment;
(4)(N) photograph, film or video of a crime victim;
~~(4)(O) presentence investigation report;~~
~~(4)(P)-(4)(O)~~ record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5;

150 ~~(4)(P)(i)-(4)(O)(i)~~ permanently if the hearing is not traditionally open to the public and
151 public access does not play a significant positive role in the process; or

152 ~~(4)(P)(ii)-(4)(O)(ii)~~ if the hearing is traditionally open to the public, until the judge
153 determines it is possible to release the record without prejudice to the interests that
154 justified the closure;

155 ~~(4)(Q)-(4)(P)~~ record submitted by a senior judge or court commissioner regarding
156 performance evaluation and certification;

157 ~~(4)(R)-(4)(Q)~~ record submitted for in camera review until its public availability is
158 determined;

159 ~~(4)(S)-(4)(R)~~ reports of investigations by Child Protective Services;

160 ~~(4)(T)-(4)(S)~~ victim impact statements;

161 ~~(4)(U)-(4)(T)~~ other records as ordered by the court under Rule 4-202.04.

162 (5) The following court records are protected:

163 (5)(A) attorney's work product, including the mental impressions or legal theories of an
164 attorney or other representative of the courts concerning litigation, privileged
165 communication between the courts and an attorney representing, retained, or employed
166 by the courts, and records prepared solely in anticipation of litigation ~~and not subject to~~
167 ~~discovery or a judicial, quasi-judicial, or administrative proceeding;~~

168 (5)(B) records that are subject to the attorney client privilege;

169 ~~(5)(B)-(5)(C)~~ bids or proposals until the deadline for submitting them has closed;

170 ~~(5)(C)-(5)(D)~~ budget analyses, revenue estimates, and fiscal notes of proposed
171 legislation before issuance of the final recommendations in these areas;

172 ~~(5)(D)-(5)(E)~~ budget recommendations, legislative proposals, and policy statements,
173 that if disclosed would reveal the court's contemplated policies or contemplated courses
174 of action;

175 ~~(5)(E)-(5)(F)~~ court security plans;

176 ~~(5)(F)-(5)(G)~~ investigation and analysis of loss covered by the risk management fund;

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

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

- 180 (5)(I) confidential business records under Utah Code Section 63G-2-309;
- 181 (5)(J) record created or maintained for civil, criminal, or administrative enforcement
- 182 purposes, audit or discipline purposes, or licensing, certification or registration
- 183 purposes, if the record reasonably could be expected to:
- 184 (5)(J)(i) interfere with an investigation;
- 185 (5)(J)(ii) interfere with a fair hearing or trial;
- 186 (5)(J)(iii) disclose the identity of a confidential source; or
- 187 (5)(J)(iv) concern the security of a court facility;
- 188 (5)(K) record identifying property under consideration for sale or acquisition by the court
- 189 or its appraised or estimated value unless the information has been disclosed to
- 190 someone not under a duty of confidentiality to the courts;
- 191 (5)(L) record that would reveal the contents of settlement negotiations other than the
- 192 final settlement agreement;
- 193 (5)(M) record the disclosure of which would impair governmental procurement or give
- 194 an unfair advantage to any person;
- 195 (5)(N) record the disclosure of which would interfere with supervision of an offender's
- 196 incarceration, probation or parole;
- 197 (5)(O) record the disclosure of which would jeopardize life, safety or property;
- 198 (5)(P) search warrants and search warrant affidavits before the filing of the return;
- 199 (5)(Q) strategy about collective bargaining or pending litigation;
- 200 (5)(R) test questions and answers;
- 201 (5)(S) trade secrets as defined in Utah Code Section 13-24-2;
- 202 (5)(T) record of a Children's Justice Center investigative interview before the conclusion
- 203 of any legal proceedings;
- 204 (5)(U) presentence investigation report; and
- 205 ~~(5)(U)~~ (5)(V) other records as ordered by the court under Rule 4-202.04.
- 206 (6) The following are juvenile court social records:
- 207 (6)(A) correspondence relating to juvenile social records;
- 208 (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations,
- 209 substance abuse evaluations, domestic violence evaluations;

- 210 (6)(C) medical, psychological, psychiatric evaluations;
- 211 (6)(D) pre-disposition and social summary reports;
- 212 (6)(E) probation agency and institutional reports or evaluations;
- 213 (6)(F) referral reports;
- 214 (6)(G) report of preliminary inquiries; and
- 215 (6)(H) treatment or service plans.
- 216 (7) The following are juvenile court legal records:
- 217 (7)(A) accounting records;
- 218 (7)(B) discovery filed with the court;
- 219 (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes,
- 220 findings, orders, decrees;
- 221 (7)(D) name of a party or minor;
- 222 (7)(E) record of a court hearing;
- 223 (7)(F) referral and offense histories
- 224 (7)(G) and any other juvenile court record regarding a minor that is not designated as a
- 225 social record.

226

Rule 4-202.03. Records access.

Intent:

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Any person may access a public court record.

(2) An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. Otherwise, no one may access a sealed court record except by order of the court. A judge may review a sealed record when the circumstances warrant.

(3) The following may access a private court record:

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

~~(3)(B) the attorney for the subject of the record or an individual who has a power of attorney from the subject of the record;~~

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

~~(3)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;~~

~~(3)(E) (3)(C) a party or attorney for a party to litigation in which the record is filed;~~

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

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

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

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

(3)(H) anyone by court order;

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

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

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

33 (4) The following may access a protected court record:

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

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

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

38 ~~(4)(B)~~ (4)(D) the attorney for the person who submitted the record or for the person
39 or governmental entity whose interests are protected by closure or for the parent or
40 guardian of the person if the person is an unemancipated minor or under a legal
41 incapacity or an individual who has a power of attorney from such person or
42 governmental entity;

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

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

50 ~~(4)(E)~~ (4)(F) a party or attorney for a party to litigation in which the record is filed;

51 ~~(4)(F) the person who submitted the record;~~

52 (4)(G) anyone by court order;

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

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

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

57 (5) The following may access a juvenile court social record:

58 (5)(A) all who may access private records, except that a juvenile court competency
59 evaluation, psychological evaluation or sex behavior risk assessment may be accessed

only with the approval of a juvenile court judge, who will permit access required by due process of law in a manner that serves the best interest of the child;

(5)(B) a prosecuting attorney;

(5)(C) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record in the juvenile justice system or criminal justice system;

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

(6) The following may access a juvenile court legal record:

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

(6)(B) a law enforcement agency;

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

(6)(D) a public or private agency providing services to the subject of the record or to the subject's family; and

(6)(E) the victim of a delinquent act may access the disposition order entered against the defendant.

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

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

Rule 4-202.05. Request to access an administrative record; research; request to classify an administrative record; request to create an index.

Intent:

To establish the process for accessing an administrative court record, aggregate records and court records for the purpose of research.

Applicability:

This rule applies to court records associated with the administration of the judiciary, aggregate records and indexes, and requests to access non-public records for the purpose of research.

Statement of the Rule:

(1) A request to access a public court record shall be presented in writing to the custodian of the record unless the custodian 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 custodian of the record. 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) A request to access a private or protected court record, including aggregate records, to which the person is not authorized access shall be presented in writing to the state court administrator. The request shall contain the requester's name, mailing address, daytime telephone number, a description of the record and a statement of facts, authority and argument in support of the request. If the state court administrator allows access, the state court administrator may impose any reasonable conditions to protect the interests favoring closure. The person making the request shall sign an agreement to be bound by the conditions.

(2)(B) Before allowing access to a private or protected record to someone not authorized access, the state court administrator shall mail notice of the request for access to any person whose interests are protected by closure and allow 10 business days for that person to submit a statement of facts, authority and argument in support of closure.

31 (2)(C)(i) The state court administrator may disclose non-public court records,
32 including records associated with a case other than sealed records, for research
33 purposes without the notice required in this rule if the state court administrator decides
34 that the research is bona fide and cannot reasonably be completed without disclosure of
35 the records, and the interests favoring the research ~~outweigh~~ are greater than or equal
36 to the interests favoring closure.

37 (2)(C)(ii) If the state court administrator discloses non-public court records for
38 research purposes, the researcher shall sign a written statement acknowledging that
39 violating the agreement may be grounds for criminal prosecution under Utah Code
40 Section 63-2-801. The agreement may include any reasonable condition to protect the
41 interests favoring closure, including an agreement to:

42 (2)(C)(ii)(a) maintain the integrity, confidentiality and security of the records;

43 (2)(C)(ii)(b) return or destroy records from which a person can be identified as soon
44 as the research has been completed;

45 (2)(C)(ii)(c) not disclose the record, except for the purpose of auditing or evaluating
46 the research and the auditor or evaluator agrees not to disclose the record;

47 (2)(C)(ii)(d) use the record only for the described research;

48 (2)(C)(ii)(e) indemnify the courts for any damages awarded as a result of injury
49 caused by the research; and

50 (2)(C)(ii)(f) if the research involves human subjects, comply with state and federal
51 laws regulating research involving human subjects.

52 (2)(C)(iii) A request to access a court record under this rule is also governed by Rule
53 4-202.06 and Rule 4-202.07.

54 (3) A request to classify a court record as private or protected shall be presented in
55 writing to the state court administrator. The request shall contain the relief sought and a
56 statement of facts, authority and argument in support of the request. The state court
57 administrator may deny access to the record until the determination is entered.

58 (4) In deciding whether to allow access to a court record or whether to classify a
59 court record as private or protected, the decision maker may consider any relevant

factor, interest or policy presented by the parties, including but not limited to the interests described in Rule 4-202.

(5) A request to identify a data element as an index shall be presented in writing to the state court administrator. The request shall contain the relief sought and a statement of facts, authority and argument in support of the request. The state court administrator shall present the request to the Management Committee, which shall consider the request in the same manner as provided for appeals in Rule 4-202.07.

Rule 4-405. Juror and witness fees and expenses.

Intent:

To develop a uniform procedure for payment of juror and witness expenses.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) Fees.

(1)(A) The courts shall pay the fee established by statute for all jurors of the courts of record. The courts shall pay the fee established by statute for witnesses subpoenaed by the prosecutor or by an indigent defendant in criminal cases in the courts of record and in actions in the juvenile court. The courts shall pay no fee to a witness appearing for a hearing that was canceled or postponed with at least 24 hours notice to the parties, excluding Saturdays, Sundays, and holidays. The parties shall notify witnesses when a hearing is canceled or postponed.

(1)(B) A subsequent day of attendance shall be:

(1)(B)(i) for a witness, attendance on a subsequent day of the hearing regardless of whether the hearing is continued to a contiguous business day, but only if the hearing was actually called on the first day; and

(1)(B)(ii) for a juror, attendance on a subsequent day during the juror's term of availability, as defined in Rule 4-404(3)(B), regardless of whether attendance is for the same trial.

(1)(C) A witness requesting payment shall present a subpoena on which appears the certification of the attorney general, county attorney, district attorney or legal defender of the number of days the witness attended court, as defined in subsection (1)(B).

(2) Mileage. The courts shall reimburse the cost of travel at the rate established by statute for those jurors and witnesses to whom the court pays a fee. A witness in a criminal case or juvenile court case traveling from out of state to whom the court pays a witness fee shall be reimbursed the cost of round trip airfare or round trip travel at \$.20 per mile, as determined by the court.

(3) Meals and refreshments.

31 (3)(A) Meals for jurors shall be provided if the case has been submitted to the jury
32 and the jury is in the process of deliberating the verdict or if the jury is sequestered. A
33 lunch meal may be provided to jurors impaneled to try a case if it is anticipated that the
34 matter will not be concluded by 2:00 p.m. on the final day of trial and the trial judge finds
35 that provision of a lunch meal will assist in expediting the conclusion of the trial.

36 (3)(B) A witness in a criminal case or a juvenile court case traveling from outside the
37 county to whom the court pays a witness fee may be reimbursed for meals.

38 (3)(C) Payment for meals for jurors and eligible in-state witnesses shall not exceed
39 the rates adopted by the Department of Administrative Services.

40 (3)(D) Refreshments may be provided to a jury during the course of trial, upon order
41 of the judge. Payment for refreshments shall not exceed \$3.00 per person per day.

42 (4) Lodging. Lodging for jurors shall be paid if the judge orders the jury sequestered,
43 if the juror must travel more than 100 miles one-way from the juror's residence to the
44 courthouse and the judge orders that lodging be paid, or if the judge orders that lodging
45 be paid due to inclement weather. A witness in a criminal case or juvenile court case to
46 whom the court pays a witness fee traveling from outside the county shall be provided
47 lodging only upon a determination by the court executive that returning to the point of
48 origin on the date in question places a hardship upon the witness or that the
49 reimbursement for travel for repeat appearances is greater than the cost of lodging.
50 Unless unavailable, lodging costs shall not exceed the rates adopted by the Department
51 of Administrative Services.

52 (5) Method and record of payment.

53 (5)(A) The payment of juror and witness fees and mileage shall be by check made
54 payable to the individual, or the court may reimburse the county or municipal
55 government for the payment of the fee or mileage allowance.

56 (5)(B) The court shall pay eligible expenses of jurors directly to the vendor. Jurors
57 shall not be required to incur the expense and seek reimbursement. The court may pay
58 the eligible expenses of witnesses directly to the vendor or may reimburse the witness
59 or the county or municipal government for the expense.

50 (5)(C) Jurors. Jurors must present a summons for payment for the first day of
61 service. If a juror does not present a summons, the clerk may certify that the juror was
62 summoned. The clerk shall file the summons and shall record the attendance of jurors
63 for payment, including subsequent days of service.

64 (5)(D) Witnesses in criminal cases and juvenile court cases. Witnesses in criminal
65 cases and juvenile court cases must present a subpoena for payment. If the subpoena
66 is issued on behalf of an indigent defendant, it shall bear the certificate of defense
67 counsel that the witness has appeared on behalf of the defendant at state expense,
68 regardless of the number of days for which the witness is eligible for payment. If the
69 subpoena is issued on behalf of the prosecution, the prosecutor shall certify the number
70 of days and the number of miles for which the witness is eligible for payment. The clerk
71 shall file the subpoena and record of attendance. If a witness does not present a
72 subpoena, the clerk may record the witness' attendance and mailing address that is
73 certified by the prosecutor or defense counsel.

74 (5)(E) The clerk of the court shall enter the payment due the juror or witness in the
75 State Accounting System (FINET) within 10 calendar days after receipt of certification.
76 The state will mail the payment to the juror or witness within 3 days. The clerk of court
77 shall maintain both a list of undeliverable juror and witness checks and the checks. A
78 payment is considered abandoned one year after it became payable and will be sent to
79 the Division of Unclaimed Property pursuant to the Utah Code.

80 (6) Audit of records. At least once per month, the clerk of the court or a designee
81 shall compare the jurors summoned and the witnesses subpoenaed with the FINET log
82 of payments. Any unauthorized payment or other irregularity shall be reported to the
83 court executive and the audit department of the Administrative Office of the Courts. The
84 Administrative Office of the Courts shall include the audit of juror and witness payments
85 within the scope of their regularly scheduled audits.

Rule 4-409. Council approval of Problem Solving Courts.

Intent:

To establish criteria for the creation and operation of problem solving courts, and to create a process for ongoing reporting from and evaluation of problem solving courts.

Applicability:

This rule applies to all trial courts.

Statement of the Rule:

(1) Definitions.

(1)(A) Applicant. As used in this rule, an applicant is the problem solving court judge, court executive, or other representative of the problem solving court as designated by the problem solving court judge.

(1)(B) Problem solving court. As used in these rules, a problem solving court is a targeted calendar of similar type cases that uses a collaborative approach involving the court, treatment providers, case management, frequent testing or monitoring and ongoing judicial supervision. Examples include drug courts, mental health courts and domestic violence courts.

(2) Initial application. Prior to beginning operations, each proposed problem solving court must be approved by the Judicial Council and agree to comply with any published standards. An application packet, approved by the Judicial Council, shall be made available by the Administrative Office of the Courts. This packet must be submitted to the Council for approval by the applicant at least 90 days in advance of the proposed operation of a new court.

(3) Annual report. Existing problem solving courts must annually submit a completed annual report on a form provided by the Administrative Office of the Courts.

(4) Grants. In addition to complying with the requirements of CJA Rule 3-411, an applicant shall notify the Judicial Council of any application for funds to operate a problem solving court, whether or not the court would be the direct recipient of the grant. This notification should be made before any application for funding is initiated.

(5) Operation of the problem solving court. All problem solving courts must adhere to the following requirements, unless specifically waived by the Judicial Council:

31 (5)(A)(i) In a criminal proceeding, a plea must be entered before a person may
32 participate in the court. Testing and orientation processes may be initiated prior to the
33 plea, but no sanctions may be imposed until the plea is entered other than those which
34 may be imposed in a criminal proceeding in which a person is released before trial.
35 Prior to the acceptance of the plea, each participant must sign an agreement that
36 outlines the expectations of the court and the responsibilities of the participant.

37 (5)(A)(ii) In juvenile dependency drug court, sanctions may not be imposed until the
38 parent has signed an agreement that outlines the expectations of the court and the
39 responsibilities of the participant.

40 (5)(B) Eligibility criteria must be written, and must include an assessment process
41 that measures levels of addiction, criminality, and/or other appropriate criteria as a part
42 of determining eligibility.

43 (5)(C) The frequency of participation in judicial reviews will be based on the findings
44 of the assessments. In rural areas, some allowance may be made for other
45 appearances or administrative reviews when the judge is unavailable. Otherwise,
46 judicial reviews should be conducted by the same judge each time.

47 (5)(D) Compliance testing must be conducted pursuant to a written testing protocol
48 that ensures reliability of the test results.

49 (5)(E) Treatment must be provided by appropriately licensed or certified providers,
50 as required by the Department of Human Services or other relevant licensure or
51 certification entity.

52 (5)(F) Each problem solving court must have written policies and procedures that
53 ensure confidentiality and security of participant information. These policies and
54 procedures must conform to applicable state and federal laws, including the
55 Government Records and Access Management Act, HIPAA, and 42 CFR 2.

56 (5)(G) Any fees assessed by the court must be pursuant to a fee schedule, must be
57 disclosed to each participant and must be reasonably related to the costs of testing or
58 other services.

59 (5)(H) Courts must conduct a staffing before each court session. At a minimum, the
60 judge, a representative from treatment, prosecutor, defense attorney, and in
61 dependency drug court a guardian ad litem, must be present at each court staffing.

62 (5)(I) At a minimum, the judge, a representative from treatment, prosecutor, defense
63 attorney, and in dependency drug court a guardian ad litem, must be present at each
64 court session.

65 (5)(J) Each court must be certified by the Judicial Council every two years.
66 Certification requires all courts to meet the minimum requirements stated in this rule.

67 (6) Evaluation and Reporting Requirements. Each problem solving court shall
68 annually report at least the following:

69 (6)(A) The number of participants admitted in the most recent year;

70 (6)(B) The number of participants removed in the most recent year;

71 (6)(C) The number of participants that graduated or completed the program in the
72 most recent year; and

73 (6)(D) Recidivism and relapse statistics for as long a period of time as is available,
74 but at least for one year. If the court has been in existence for less than one year, then
75 for the amount of time the court has been in existence.

76 (7) DUI Courts. The following courts are approved as DUI Courts: Clearfield Justice
77 Court, Holladay Justice Court, Riverdale Justice Court, Davis County Justice Court,
78 Taylorsville Justice Court, and other courts as may be approved by the Judicial Council
79 in the future.

80 (8) Communications. A judge may initiate, permit, or consider communications,
81 including ex parte communications, made as part of a case assigned to the judge in a
82 problem-solving court, consistent with the signed agreement.

83

Rule ~~10-1-306~~ 4-502. Expedited procedures for resolving discovery issues.

Intent:

To further the just, speedy, and inexpensive determination of civil actions. (~~Utah R. Civ. P. 1~~).

Applicability:

This rule shall apply to the ~~Third District Court~~. This rule is effective November 17, 2014 motions and stipulations for extraordinary discovery, motions to compel discovery and motions for a discovery protective order in the district court.

Statement of the Rule:

~~(1) Status and scheduling matters are handled differently by each judge. Contact one of the judicial assistants for the assigned judge for specific questions. In all cases, however, counsel shall:~~

(1)(A) Promptly notify the court of any stipulations for extraordinary discovery entered pursuant to Rule 26(c)(6)(A), including notice to the court of any stipulations that extend the presumptive deadlines set forth in Rule 26(c)(5). Stipulations shall be prepared on or substantially comply with the form accompanying this rule; ~~and,~~

(1)(B) Promptly notify the court of any settlements or stipulations in the case, particularly where such settlements or stipulations may affect a pending motion or trial date.

(2) The parties shall do the following before filing with the court any discovery motion, including a Motion for Extraordinary Discovery ~~(under~~ Utah R. Civ. P. 26(c)(6)(B)), Motion to Compel under Utah R. Civ. P. 37, or Motion for Protective Order ~~under~~ (~~Utah R. Civ. P. 37~~):

(2)(A) Meet and confer regarding the issues, in person or by telephone, and attempt in good faith to resolve or narrow the issues without court involvement.

(2)(B) File and serve on all parties a "Statement of Discovery Issues", in a form consistent with the requirements of Rule 10. The statement shall not exceed four pages; and shall not include exhibits; ~~and shall include a certification stating that the parties have met and conferred regarding the issues and attempted in good faith to resolve or~~

30 narrow the issues without court involvement. The statement should contain at least the
31 following:

32 (2)(B)(i) the precise relief sought;

33 (2)(B)(ii) the basis or reason for the relief sought;

34 (2)(B)(iii) a statement regarding proportionality under {Utah R. Civ. P. 26(b)(2)}; and

35 (2)(B)(iv) a statement in compliance with Rule 26(c)(6), if applicable; and

36 (2)(B)(v) a certification stating that the parties have met and conferred regarding the
37 issues and attempted in good faith to resolve or narrow the issues without court
38 involvement.

39 The party shall also file and circulate in accordance with the requirements of Utah Rule
40 of Civil Procedure 7(f)(2) a separate proposed form of Order consistent with the relief
41 sought.

42 (2)(C) Within five days following service of the "Statement of Discovery Issues", any
43 party objecting to the relief sought may file and serve a "Statement in Opposition" in a
44 form consistent with the requirements of Rule 10. The opposition shall not exceed four
45 pages and shall not include exhibits. The opposition should briefly address pertinent
46 issues raised in the statement. The party shall also file a separate proposed form of
47 Order consistent with the relief sought. The parties' written submissions will be docketed
48 and placed in the court file.

49 (2)(D) Upon filing the opposition, or expiration of the time for doing so, either party
50 may, and the party seeking relief shall, file with the court a Request to Submit for
51 Decision-~~(under~~ Utah R. Civ. P. 7(d)).

52 (2)(E) The court will promptly set a telephone conference to discuss the matter, and
53 will advise the parties by email or telephone of the date and time for the conference.
54 The court reserves the right to decide the issue(s) without a telephone conference if it
55 determines that a conference is unnecessary, and in its discretion, may require the
56 appearance of counsel and/or the parties in lieu of a telephone conference.

57 (2)(F) The court will resolve most if not all discovery issues during or in advance of
58 the phone conference. The court anticipates that no discovery motions will be
59 necessary, but if appropriate, the court will use the telephone conference to set a

briefing schedule for a motion addressing all unresolved issues together with a hearing date, if needed. In most circumstances, the court anticipates adopting one or the other of the proposed Orders.

~~(3) The parties are reminded that stipulations for extraordinary discovery pursuant to Rule 26(c)(6)(A) are appropriate only "after reaching the limits of standard discovery imposed by [the] rules..." and only if that discovery is proportional.~~

~~(4) Upon the filing of a responsive pleading, all cases subject to Rule 4-510.05 shall be referred to the ADR program, unless the parties have participated in another ADR process, such as arbitration, collaborative law, early neutral evaluation or a settlement conference, or unless excused by the court. At the close of the presumptive case deadline, the parties shall file with the court a certificate confirming that good faith mediation (or other ADR process) has been completed or excused. (Utah R. Civ. P. 46(b)).~~

~~(5)~~ (3) If the discovery deadline passes and a Certificate of Readiness for Trial has not been filed, the court may at its discretion issue an order to show cause why the case should not be dismissed. At that hearing, the court will dismiss the case without prejudice, order deadlines for specific actions to be taken, or set a trial date. If actions are not completed as ordered, the matter may be dismissed without further notice. If parties wish to stay proceedings, they should file an appropriate motion during the pendency of the case deadlines.

~~(6) Proposed orders should be prepared and circulated in accordance with the requirements of Rule 7(f)(2) of the Utah Rules of Civil Procedure. Additionally, the order should be electronically filed with the clerk's office, or a copy of the order in native electronic form (e.g., Word or WordPerfect) should be emailed to the court's judicial assistant including orders provided pursuant to paragraph 2(b) and (c) above.~~

- Stipulation for Extraordinary Discovery -  [PDF](#) |  [Word](#)

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, and to accept plea in abeyance agreements in certain limited circumstances.~~

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 citations as provided in the Appendix C, Uniform Fine/Bail Schedule.

(3) Plea in abeyance agreements.

(3)(A) A judge—or if there is a presiding judge, the presiding judge—may direct the clerk of court to accept a plea in abeyance agreement in traffic offenses that are listed in Appendix C, Uniform Fine/Bail Schedule as not requiring an appearance by the defendant. The clerk of court shall follow the procedures of Title 77, Chapter 2a, Pleas in Abeyance, including:

(3)(A)(i) the offer by the prosecutor for a plea in abeyance, including the conditions established under paragraph (3)(B), may be on a case-by-case basis or by a written standing offer;

(3)(A)(ii) the defendant's waiver of rights and acceptance of that offer shall always be in a writing signed by the defendant; and

(3)(A)(iii) the plea in abeyance order shall always be in a writing signed by the judge.

(3)(A)(iv) The writings required by the previous subsections may be included in the same document or record.

(3)(B) The conditions of a plea in abeyance authorized by this rule may include only payment of a plea in abeyance fee of no more than \$25.00 above the recommended bail in the Uniform Fine/Bail Schedule, a period of good behavior not to exceed one

31 year, and, if the offense is a moving violation of Title 41, Chapter 6a, Traffic Code,
32 successfully completing traffic school.

33 (3)(C) If the defendant does not forfeit bail as established by the court, or enter a
34 plea in abeyance, the clerk of the court shall process the case for trial.

35 (3)(D) The defendant may file a written motion to withdraw a plea in abeyance within
36 30 days after entry of the plea. If the defendant timely moves to withdraw a plea, the
37 clerk of the court shall set the matter before the judge.
38

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.

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, cohabitant abuse and child protective order 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.

(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;

(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) Impose sanctions against any party who fails to comply with the commissioner's requirements of attendance or production of discovery;

32 (2)(G) Impose sanctions for contempt of court;

33 (2)(H) Issue temporary or ex parte orders;

34 (2)(I) Conduct settlement conferences with the parties and their counsel. Issues that
35 cannot be settled shall be certified to the district court for trial; and

36 (2)(J) Conduct pretrial conferences with the parties and their counsel. The
37 commissioner shall make recommendations on all issues under consideration at the
38 pretrial and submit those recommendations to the district court.

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

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

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

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

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

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

51 (4) Prohibitions.

52 (4)(A) Commissioners shall not make final adjudications.

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

55

Rule 7-102. Duties and authority of Juvenile Court Commissioners.

Intent:

To set forth the duties and authority of Juvenile Court Commissioners and to identify the types of cases Commissioners are authorized to hear.

Applicability:

This rule shall apply to the Juvenile Court.

Statement of the Rule:

(1) Types of cases and matters.

(1)(A) Commissioners may be assigned to hear and make recommendations in cases involving:

(1)(A)(i) bailable offenses, for arraignment and disposition;

(1)(A)(ii) truancy reviews;

(1)(A)(iii) restitution hearings;

(1)(A)(iv) detention and shelter hearings;

(1)(A)(v) other misdemeanor level offenses;

(1)(A)(vi) child protective orders; and

(1)(A)(vii) contempt.

(1)(B) Commissioners may exercise specific powers as authorized by statute or rule of procedure.

(1)(C) Except as provided in paragraph (4) below, Commissioners may be assigned, on an emergency basis, to any matter under the jurisdiction of the Juvenile Court, by the presiding judge.

(2) Relief which may be granted.

(2)(A) Except as provided in paragraph (4) below, a Commissioner is authorized to recommend any dispositional order authorized by Utah law, including assessment of fines, restitution, compensatory service, probation and other appropriate sanctions.

(2)(B) All recommendations of the Commissioner shall be reviewed by a judge. The reviewing judge may confirm the recommendation of the commissioner, set the matter for rehearing before a judge, or modify the recommendation after reviewing the record.

(2)(C) Pending the filing of a request for rehearing, the recommendation of the Commissioner shall constitute the order of the court until the time for requesting a rehearing has passed or a judge has heard the matter on the merits.

(3) Judicial review.

(3)(A) If a request for a rehearing is filed, the matter shall be set for rehearing before a judge.

(3)(B) If the request for rehearing is as to disposition only and not as to guilt or innocence, the matter shall be set for a disposition review only.

(3)(C) A judge may order a rehearing of any case before confirming the Commissioner's recommendation.

(4) Limitations. Notwithstanding any other provision contained in this rule, a Commissioner may not:

(4)(A) make a recommendation for an order directing a permanent change of custody or committing a minor to a secure facility;

(4)(B) be assigned to conduct a felony level trial or a permanent deprivation of parental rights trial; or

(4)(C) enter a final order or judgment.

TAB 7



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
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 *T. Shea*
Date: September 25, 2012
Re: Committee appointments

Judge Michael Di Reda's first term on the Committee on Resources for Self-represented Parties has expired, and Carol Frank's first term is about to expire. The committee chair, Judge John Baxter, recommends that Judge Di Reda and Ms. Frank be appointed to a second term, and they are willing to serve. The committee identifies the needs of self-represented parties and recommends and coordinates resources to meet those needs.

Wendell Robert's first term on the Court Interpreter Committee is about to expire. The committee chair, Judge Vernice Trease, recommends that Mr. Robert's be appointed to a second term, and he is willing to serve. The committee recommends policies and procedures governing the qualification, training, and appointment of court interpreters.

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

Memo

To: Judicial Council Management Committee

From: Courts Facility Planning Committee

Date: 10/2/2012

Re: Courts Facility Planning Committee Membership

The Courts Facility Planning Committee is requesting the approval of Stephen S. Jacobsen to fill the position on the committee that was held by Neil Stow. Stephen was recommended by several contacts in the construction industry and has expressed an interest in serving on the committee.

I have attached Stephen's work history and statement of qualifications for your review.

Thank you for your consideration.

STEPHEN S. JACOBSEN

SENIOR PROJECT MANAGER

EDUCATION

Bachelor of Science - Civil Engineering, University of Utah; Salt Lake City, UT

EMPLOYMENT HISTORY

Sandy Home Storage Center – Dry Pack Canning Volunteer (two days per week)	2012 to 2013
Retired from Okland Construction – June 2012	2012 to Present
Okland Construction Company, Project Manager, Vice President	1994 to 2011
Salt Lake County Board of Adjustment, Board Member	1989 to 1994
Salt Lake County Board of Adjustment, Board Chairman	1990 to 1994
United Association of Community Councils – Vice Chair	1991 to 1993
Granite Community Council Chairman	1988 to 1992
Granite Community Council member	1987 to 1993
Jacobsen Robbins Construction Company, CEO and President	1978 to 1990
Jacobsen Construction Company, Vice President of Field Operations	1973 to 1978
Jacobsen Construction Company, General Superintendent	1972 to 1974
Jacobsen Construction Company, Superintendent/Project Manager	1969 to 1972
Jacobsen Construction Company, PE, Concrete, Form Engineering/Design, Building Layout, Scheduler	1965 to 1969
University of Utah – Professor assistant – supervised surveying class	1964 to 1965
Jacobsen Construction Company, Estimating Dept. during school years	1962 to 1964
Utah National Guard, Active duty (one year during Berlin Crisis)	1961 to 1962
Church of Jesus Christ of Latter-day Saints, British Mission	1958 to 1960

Steve has 43 years of construction industry experience

CURRENT CERTIFICATIONS

American Red Cross – Adult CPR Certificate 5/14/2010
American Red Cross – Standard First Aid Certificate 5/14/2010
OSHA Construction Safety and Health Certificate 12/14/2009

GENERAL CONTRACTOR AND ENGINEERING LICENSES HELD

State of Utah	1978 to 1997
State of Nevada	1985 to 1987
State of California	1985 to 1989

OKLAND CONSTRUCTION

Brigham Young University Idaho Auditorium (Activity Center), Rexburg, Idaho
Empire Pass Clubhouse, Park City, Utah
Madison Memorial Hospital Addition/Renovation, Rexburg, ID
Summit County Medical Center, Park City, UT
LDS Sacramento Temple, Sacramento, CA
Heber Valley Medical Center Additions 1 & 2, Heber City, UT
Dixie Regional Medical Center 4th Floor Build-Out, St. George, UT
Dixie Regional Medical Center - 4th West Rehabilitation Renovation, St. George, UT
Heber Valley Regional Medical Center, Heber City, UT
Dixie Regional Medical Center, St. George, UT
LDS Nauvoo Temple, Nauvoo, IL
Heber Valley Regional Medical Center, Heber City, UT
West High School Addition, Seismic Upgrade and Remodel, SLC, UT
Highland High School Seismic Upgrade and Remodel, SLC, UT
Horizonte Community School Seismic Upgrade and Remodel, SLC, UT

ADDITIONAL PROJECT EXPERIENCE

3M Office Building, Salt Lake City, UT

Boyer Ambassador Building, Salt Lake City, UT
Cottonwood Hospital Radiology Addition, Murray, UT
Sterling Medical Devices, Salt Lake City, UT
Novell Campus Buildings, Phase II
Provo Surgical Center, Provo, UT
SL International Airport Terminal No. 1 Expansion and Remodel, Salt Lake City, UT
Parkview Plaza Office Building, Salt Lake City, UT
Union Park Office Plaza - Phase II, Midvale, UT
SL International Airport Concourse D and Connector, Salt Lake City, UT
Creekside Place Mall, Holladay, UT
Lionel Playworld Store, Murray, UT
ICPA General Office Building, Salt Lake City, UT
St Alphonsus Hospital, Emergency Wing Addition & Remodel, Boise, ID
Salt Lake Regional Medical Center Hospital Lab and Radiology Addition/Surgical Suite Remodel, SLC, UT
Hewlett Packard Campus, Building No. 1 and Site Development, Boise, ID
St. Alphonsus Hospital, Boise, ID
Huntsman Special Events Center, University of Utah, Salt Lake City, UT
Physical Education Complex, University of Utah, Salt Lake City, UT
Navajo Dam Remodel and New Power Plant, Farmington, NM
Central Utah Project Water Treatment Plant, Orem, UT
Jim Bridger Power Plant Pumping Station, Green River, WY
Central Utah Project Water Plant, Bluffdale, UT
Hotel Utah Expansion, SLC, UT
Bank of Idaho – Ketchum Branch, Ketchum, ID
ZCMI Department Store, Ogden, UT
Rose Park Sewage Treatment Plant, Salt Lake City, UT
Pacific Power and Light, Coal-fired, Steam Generator Plant, Glenrock, WY

SUMMARY

Okland relied heavily on Steve's experience with special projects. As a principal of a local industry competitor, owner of his own construction company, and a Vice President for Okland Construction, Steve has performed scheduling, estimating and project management duties for numerous projects. Along with Steve's extensive experience, he has taught a construction management course at the University of Utah Civil Engineering School, taught construction management courses for the Associated General Contractors of Utah and participated in numerous construction-related seminars. Steve also managed the Land Surveying Lab while in school at the University of Utah.

(Updated resume' from Okland Construction Company, Inc. files)