

JUDICIAL COUNCIL MEETING

AGENDA

Friday, August 16, 2013
Large Conference Room A
Matheson Courthouse
Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

1. 12:30 p.m. Welcome & Approval of Minutes Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 12:35 p.m. Chair's Report. Chief Justice Matthew B. Durrant
3. 12:45 p.m. Administrator's Report. Daniel J. Becker
4. 1:00 p.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)
5. 1:10 p.m. Ethics Advisory – Informal Opinion 12-02 – Followup. . . . Brent Johnson
(Tab 3 - Information)
6. 1:30 p.m. Board of District Court Update. Judge Scott Hadley
(Information) Debra Moore
7. 1:50 p.m. Update on Mandatory E-filing of Probate and
Citation Cases. Kim Allard
(Information) Ron Bowmaster
8. 2:10 p.m. Morgan County Petition to End Contract Site. Judge Brent West
(Tab 4 - Action) Sylvester Daniels
9. 2:25 p.m. Rules for Final Action. Tim Shea
(Tab 5 - Action)
10. 2:35 p.m. Legislative Update and Interim Highlights. Rick Schwermer
(Information)
11. 2:45 p.m. Executive Session
12. 3:45 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. Rules for Comment
(Tab 6)

Tim Shea

TAB 1

JUDICIAL COUNCIL MEETING

Minutes

Monday, July 22, 2013

Matheson Courthouse

Salt Lake 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. Glen Dawson
Hon. George Harmond
Hon. David Mortensen
Hon. Gregory Orme
Hon. Reed Parkin
Hon. John Sandberg
Hon. Larry Steele
John Lund, esq.

EXCUSED:

Hon. Paul Maughan
Hon. Brendan McCullagh

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Jody Gonzales
Debra Moore
Rick Schwermer
Tom Langhorne
Alyn Lunceford
Nancy Volmer
John Bowers
Kris Prince
Rob Godfrey
Shirley Trujillo

GUESTS:

Judge James Davis
Judge Dennis Fuchs
Judge Scott Waterfall
Juana Gutierrez

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

Chief Justice Durrant welcomed everyone to the meeting.

He mentioned the selection of Judge Kim Hornak to serve on the Fourth District Nominating Commission to fill the vacancy with the upcoming retirement of Judge Kay Lindsay, and the selection of Justice Jill Parrish to serve on the Appellate Nominating Commission to fill the vacancy with the upcoming retirement of Judge Bill Thorne.

Professor Eric D. de Rosia, Brigham Young University, will replace Mr. Myron March on the Judicial Performance Evaluation Commission as the Supreme Court's appointment.

Chief Justice Durrant noted that this would be Judge Atherton's last meeting prior to her retirement. He thanked her, on behalf of the judiciary, for her dedication and service. Judge Atherton offered a few comments.

Motion: Justice Parrish moved to approve the minutes from the June 24, 2013 Judicial Council meeting. Judge Hornak seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

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

Mr. Becker reported on the following items:

Fourth Juvenile Nominating Commission. The nominating commission to fill Judge Kay Lindsay's vacancy with her upcoming retirement has been selected. Judge Kim Hornak will serve on the commission.

Council Term. Judge Atherton's term on the Council does not expire until September 13, 2013. The Board of District Court Judges has selected Judge Kate Toomey to fill the vacancy during August. Judge Randall Skanchy will fill the vacancy during September, and he has been nominated to fill the vacancy for the term beginning September 14, 2013.

Juvenile Court Administrator. Final interviews to fill the Juvenile Court Administrator vacancy took place last week. An offer was extended to the selected applicant over the weekend.

Elected Officials Compensation Commission. The Commission met on June 26. Western states data was presented by the courts. Public attorney compensation was reviewed with more extensive data to be compiled and reviewed.

Huntsville Town/Uintah Justice Court. The Council approved an inter-local agreement, effective September 1, 2013, between Huntsville Town and Uintah Justice Court at their May 2013 meeting. Huntsville Town has requested the inter-local agreement become effective August 1 instead of September 1 as the Huntsville prosecuting attorney passed away last week. This would allow the Uintah prosecutor to handle the caseload. Mr. Becker recommended approval of the expedited effective date.

Motion: Judge Steele moved to approve Huntsville Town's request of an August 1 effective date for their inter-local agreement with Uintah Justice Court. Judge Sandberg seconded the motion, and it passed unanimously.

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 July.

Policy and Planning Meeting:

No meeting was held in July.

Bar Commission Report:

Chief Justice Durrant thanked Mr. Lund for the role he played in preparing the article "The Importance of Judicial Evaluations" found in the 2013 July/August Bar Journal. Mr. Lund noted that Ms. Lori Nelson was instrumental in preparing the article.

Mr. Lund reported on the following:

The Bar held their Summer Conference in Snowmass, CO last week.

There is debate taking place relative to filling the current Bar Commissioner vacancy with the resignation of Mr. Jim Gilson. The policy in filling the vacancy is being reviewed.

Mr. Rob Jeffs has developed a group benefits program for members of the Bar. Mr. Lund highlighted features of the benefit program.

An upgrade to the Bar's database is underway.

Justice Thomas Lee reported on the State of the Judiciary at the Bar's Summer Conference.

5. PROBLEM SOLVING COURT APPROVAL: (Rick Schwermer)

Mr. Schwermer provided background information relative to a proposed problem solving court submitted by Judge James Blanch.

The proposal is for an Alternative Court for High Needs (HN)/Low Risk (LR) offenders and would serve as an alternative track to drug court. It would be categorized more as a compliance court.

Discussion took place. Judge Fuchs provided an explanation on the specialty court that Judge Bill Barrett held which was similar to the proposed problem solving court.

It was noted that the Management Committee endorsed a two-year pilot court to include an evaluation process.

Motion: Judge Steele moved to approve the court as a two-year pilot court and provide for a review at the completion of the two years. Judge Orme seconded the motion, and it passed unanimously.

6. COURT FACILITIES PLANNING COMMITTEE UPDATE: (Judge James Davis and Mr. Alyn Lunceford)

Chief Justice Durrant welcomed Judge James Davis and Mr. Alyn Lunceford to the meeting.

Judge Davis highlighted the following in his update: 1) completion of the Ogden juvenile court facility sometime in 2015, 2) Juab County court facility fully funded and will be completed in January 2014, 3) approval for a security upgrade to the Carbon County court facility, and 4) expansion to the Duchesne County court facility to allow for multiple judges and multiple courts with the approved new judgeships in the Eighth District.

Mr. Lunceford highlighted the responsibilities of the Standing Committee on Court Facilities Planning to include: 1) review trends and projections in population, caseload and other growth indicators to anticipate courthouse construction needs, 2) review the evaluations of courthouses required by rule and recommend the prioritized placement of courthouse construction projects within the Master Plan, 3) review recommendations from the facility coordinator on construction projects and the Master Plan, 4) make recommendations to the Council regarding the reordering of Master Plan priorities and amendments to Design and Space

Guidelines, 5) compare construction requests with the Design and Space Guidelines of the Master Plan to ensure the current and anticipated needs of the court are met, 6) develop timetable for construction requests so the Committee presents recommendations to the Council in advance of the Annual Planning Workshop, 7) make recommendations to the Council for the approval, modification, or disapproval of construction requests, and 8) develop procedures for the delegation of committee responsibilities to the facility coordinator.

The following projects on the courts' ten-year building were highlighted: 1) Ogden Juvenile Court Facility, 2) Provo District Court expansion, 3) Davis County Court Facility – additional courtrooms, 4) Juab County Court Facility, and 4) Duchesne County Court Facility – addition to the current facility for multiple judges and multiple courts.

Mr. Lunceford highlighted the following county court sites activities in his update: 1) Wayne County will conduct a feasibility study to review the need for a new court facility, and 2) Summit County will study the need for additional courtrooms.

He noted that the Council approved the Design Guidelines in 2012.

The Subcommittee on Security and Emergency Preparedness update included the following update: 1) security reviews, 2) the revised Continuity of Operations Plan (COOP) was approved by the Council in June 2013, 3) incident reporting, and 4) judicial security survey.

Questions were asked relative to Summit County, Duchesne County and the Provo District Court expansion. Mr. Lunceford provided responses.

Judge Davis and Mr. Lunceford were thanked for their updates.

7. PROBLEM SOLVING COURT CERTIFICATIONS: (Judge Dennis Fuchs and Mr. Rick Schwermer)

Judge Fuchs and Mr. Schwermer were welcomed to the meeting.

The following aspects of certification of problem-solving courts were highlighted: 1) the process for reviewing the courts, 2) adoption of more specific recertification standards, and 3) review of the template used for the site visits.

The courts being recommended for certification include seven drug courts and three mental health courts.

The following drug courts were highlighted: 1) Carbon County Family Dependency Court, and 2) Washington County Adult Drug Court.

Discussion took place including the following aspects of drug court: 1) fee charged to participants, and 2) types of incentives.

The criteria for reviewing mental health courts was mentioned.

Judge Fuchs mentioned one drug court reviewed that had several issues to address. They were given six months to address the issues raised in the drug court site visit, and their court certification would come before the Council at that time.

Motion: Judge Hornak moved to certify the problem-solving courts being recommended for recertification. Judge Dawson seconded the motion, and it passed unanimously.

8. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided a legislative update for members of the Council. He highlighted the following in his update: 1) a special session was held this month, 2) practicing law without a license, 3) sunset review—guardian ad litem in district court cases, 4) enacted felonies and enhancements on existing punishments, 5) Mr. Paul Parker was confirmed by the

Senate Judicial Confirmation Committee as a judge for the Third District, and 6) Veteran's Reintegration Task Force.

9. CONCURRENT JURISDICTION DISCUSSION: (Ray Wahl)

Mr. Wahl mentioned that a summary and other documents relative to the issue of concurrent jurisdiction were included with the Council materials for review.

He provided background information on the issue of concurrent jurisdiction. In October 2010, the Council charged the Standing Committee on Children and Family Law (SCCFL) to review "the narrow issue of concurrent jurisdiction, the issues raised by concurrent jurisdiction and in differing standards for termination of parental rights in juvenile and district courts." He noted the formation of an adoption subcommittee by the SCCFL to address the matter of concurrent jurisdiction which reviewed aspects of the matter during a two-year timeframe.

The differences regarding the functions before the juvenile and district courts relative to concurrent jurisdiction were highlighted in the report prepared by the SCCFL with the following highlighted issues: 1) the jurisdiction and procedure for termination of parental rights when connected to adoptions is too restrictive in juvenile court and too broad in district court, 2) juvenile courts should have jurisdiction to grant both terminations and adoptions for children within its jurisdiction, 3) contested terminations are not always best handled in district court, 4) defending parents get a state appointed attorney in juvenile court but do not in district court, 5) the appeal times for termination cases are different in district court rather than in juvenile court, and 6) the persons authorized to receive consents and relinquishments differ between the two courts.

The Standing Committee on Children and Family Law (SCCFL) provided general updates on their findings and views to the Boards and Council throughout the two-year study. In concluding the study, the Committee made no recommendations; and they had no plans to continue studying the matter further.

The issue of concurrent jurisdiction was highlighted in the update from the Committee to the Council at their June meeting. At that time, the Council asked to review the matter further at their July meeting.

Discussion took place.

It was suggested to provide an education program on available solutions to judges be considered.

Motion: Judge Sandberg moved to accept the recommendation to follow-up with education and move forward. Judge Orme seconded the motion, and it passed unanimously.

10. JUDICIAL BRANCH EDUCATION COMMITTEE UPDATE: (Tom Langhorne)
Chief Justice Durrant welcomed Mr. Tom Langhorne to the meeting.

Mr. Langhorne provided an update to the Council on the activities of the Standing Education Committee. He highlighted the following in his update: 1) greater community collaborations with the University Ed Network, the University of Utah Law School, the National Judicial College and Michigan State University; 2) development of four online modules for judges; 3) development of a Michigan State University certificate program to include a ten-core course curriculum for court executives, clerks of court, and chief probation officers; 4) development of individualized new judge orientation curriculum; 5) development of interpreter training focused on civil litigation; 6) revised and enhanced new judge orientation to be offered

twice yearly; 7) developed a "train the faculty" curriculum; 8) restructured the Probation Officer Education Committee; 9) migrating to "paperless" judicial conferences; 10) developed an audit "course observer evaluation" form; 11) over 100 individual half-day and full-day courses offered; and 12) conducted 26 major statewide conferences.

Mr. Langhorne introduced Juana Gutierrez, court interpreter and members of the education staff to include: 1) Mr. John Bowers, 2) Ms. Kris Prince, 3) Mr. Rob Godfrey, 4) Ms. Shirley Trujillo, and 5) Ms Nancy Nelson (not present).

Discussion took place relative to the judicial conferences going paperless.

It was noted that new judge orientation for the justice court judges was revised three or four years ago.

Members of the Education Department were thanked for all their efforts and hard work.

11. ROY JUSTICE COURT – REQUEST FOR COURT HOURS WAIVER: (Judge Scott Waterfall)

Judge Waterfall was welcomed to the meeting.

Mr. Schwermer provided background information regarding Roy Justice Court's request for a waiver of the statutory five day open requirement to a modified four and one-half day schedule during the three summer months, consistent with the Roy City office schedule.

As a Class I justice court, the statutory requirement for being open to the public is not being met with the modified schedule.

Judge Scott Waterfall provided input relative to the requested waiver of the modified schedule. He mentioned that the Roy Justice Court is located in the Roy City Office building.

Discussion took place. It was mentioned that the summer hours for the Roy City Offices can be found online and in the city newsletter.

It was noted that the Management Committee recommended the Council not approve the requested waiver.

Motion: Judge Steele moved to deny the Roy Justice Court's requested waiver. Judge Harmond seconded the motion, and it passed unanimously.

12. EXECUTIVE SESSION:

An executive session was not needed at this time.

13. ADJOURN

The meeting was adjourned.

TAB 2

Management Committee Minutes

**JUDICIAL COUNCIL MANAGEMENT COMMITTEE
MINUTES**

**Tuesday, July 9th, 2013
Matheson Courthouse
450 South State Street
Salt Lake City, Utah**

MEMBERS PRESENT:

Chief Justice Matthew B. Durrant, Chair
Hon. Kimberly Hornak, vice chair
Hon. Judith Atherton
Hon. George Harmond
Hon. John Sandberg

EXCUSED:

GUESTS:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Jody Gonzales
Debra Moore
Rick Schwermer
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.

Chief Justice Durrant noted that this would be Judge Atherton's last meeting before her retirement. He thanked her, on behalf of the Management Committee and the judiciary, for her dedication and service.

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

He reported on the following items:

Juvenile Court Administrator. The final interviews to fill the Juvenile Court Administrator vacancy will be held on Monday, July 15. Mr. Becker will be reviewing the qualifications of the final two candidates with the Board of Juvenile Court Judges on Friday, July 12.

Alaskan Court Delegation Visit. A large contingent of court staff from Alaska will be visiting on Monday, July 15 and Tuesday, July 16 to discuss our experience with e-filing.

Judicial Council Vacancy. Judge Randall Skanchy has been nominated by the Third District Bench to fill the vacancy on the Council with Judge Atherton's upcoming retirement.

Minorities on the Bench. Chief Justice Durrant, Mr. Becker, and Mr. Schwermer met with Senator Jim Dabakis and Bar Minority President Jesse Nix to discuss their concern with the need for more minority judges.

3. PROBLEM SOLVING COURT APPROVAL: (Rick Schwermer)

Mr. Schwermer provided background information relative to the proposed problem solving court submitted by Judge James Blanch. He noted that it is somewhat related to a specialty court that Judge Bill Barrett held.

The proposal is for an Alternative Court for High Needs (HN)/Low Risk (LR) offenders and would serve as an alternative track to drug court; therefore, it is not technically considered a drug court.

Discussion took place. The need to assess and evaluate the effectiveness of the court was discussed.

Motion: Judge Hornak moved to approve the court as a pilot court and provide for a review to be completed at the end of two years. Judge Harmond seconded the motion, and it passed unanimously.

4. DRUG COURT CERTIFICATION UPDATE: (Rick Schwermer)

Mr. Schwermer noted that 15 drug courts will be considered for certification at the July 22 Council meeting. He referred to one drug court not meeting all of the requirements. The recommendations for this drug court would be to allow the court in question six months to remedy the problems and revisit them, after that time, to determine if the court has met all requirements for certification.

Discussion took place.

Judge Atherton asked for clarification on the status of certifying mental health courts. Mr. Schwermer provided an update, and he reported that a full certification of the mental health courts will take place next calendar year.

5. STUDY COMMITTEE MEMBERSHIP: (Daniel J. Becker)

Mr. Becker reviewed the proposed membership for the Ad Hoc Committee on Remote Services which will include judges from district, juvenile and justice courts; court executives, clerk of court, and AOC managers. He recommended the committee be authorized to add members as it determined necessary. Mr. Tim Shea will staff the committee.

Discussion took place.

Motion: Judge Atherton moved to approve the proposed membership of the Ad Hoc Committee on Remote Services and allow the Board of Justice Court Judges to submit names of several justice court judges for consideration at the next Management Committee meeting. Judge Hornak seconded the motion, and it passed unanimously.

6. DELTA CITY JUSTICE COURT: (Rick Schwermer)

Mr. Schwermer provided an update on the matter of the Delta City justice court clerk working for both the justice court and the Millard County sheriff's office. A letter, dated June 13, 2013; was sent to the justice court judge, the Delta City Attorney, and the Delta City Mayor requesting the situation be remedied by the July 22 Council meeting, or if not remedied, requesting their attendance at the meeting to discuss the matter further.

Mr. Schwermer reported that the Millard County sheriff's office is in the process of hiring a replacement. The AOC has been assured the matter will be resolved by the July 22 Council meeting.

Discussion took place.

Mr. Schwermer will update the Management Committee at their August 6 meeting as to the outcome.

7. ONLINE TRAFFIC SCHOOL UPDATE: (Brent Johnson)

Mr. Johnson reported that he had received a copy of the contract between St George and an online traffic school provider. He provided background information on the arrangement between St George and the online traffic school provider with regards to collecting the plea in abeyance fee. He reported that the arrangement is legal.

Mr. Johnson noted that to address the matter further, legislation would have to be sought.

Discussion took place.

Ms. Moore will discuss the matter further with the Board of District Court Judges and get feedback on what action, if any they would recommend.

8. ROY JUSTICE COURT – REQUEST FOR COURT HOURS WAIVER: (Rick Schwermer)

Mr. Schwermer provided background information regarding Roy Justice Court's request for a waiver of the statutory four or five day open requirement to a modified four and one-half day schedule for the three summer months, consistent with the Roy City office schedule.

It was noted that the statutory requirement for being open to the public for Class I justice courts is not being met with the modified schedule.

Discussion took place.

The Management Committee asked Mr. Schwermer to invite the appropriate Roy Justice Court officials to the July 22 meeting to discuss the matter further.

9. FOURTH DISTRICT, JUVENILE LIMITED AUDIT TRUST ACCOUNTS: (Heather Mackenzie-Campbell)

Ms. Mackenzie-Campbell reported on the Limited Audit of the Fourth District, Millard, Utah and Wasatch Counties, Juvenile Court Trust Accounts. The audit resulted from the retirement of a clerk and the appointment of a new clerk of court in March 2013.

She highlighted the following in her report: 1) three commendable procedures were recognized, 2) one significant area for improvement was noted, 3) the audit exit conference was held and 4) responses on implementation of action plans have been received.

Mr. Wahl provided comments on the audit.

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

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

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

Motion: Judge Hornak moved to approve the agenda for the July 22 Council meeting as amended. Judge Sandberg seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss personnel matters. Judge Atherton seconded the motion, and it passed unanimously.

11. EXECUTIVE SESSION

An executive session was held at this time.

12. ADJOURN

The meeting was adjourned.

Policy and Planning Committee Minutes

Minutes of the Policy and Planning Committee

August 2, 2013

Draft. Subject to approval

Members Present

Glen R. Dawson, Paul G. Maughan, Gregory K. Orme, Chair, Larry A. Steele

Members Excused

John R. Lund, Reed S. Parkin,

Staff

Alison Adams-Perlac, Debra Moore, Rosa Oakes, Tim Shea

Guests

(1) Approval of minutes.

The minutes of June 7, 2013 were approved as prepared.

(2) Rule 4-101. Calendaring court sessions.

At the request of the clerks of court, Ms. Moore recommended that Rule 4-101 be repealed. The rule requires publication of an annual calendar for each district. The equivalent of the rule was a statute from 1984 to 1988, and an earlier rule was part of the Rules of Practice and Procedure, which preceded the Code of Judicial Administration. Ms. Moore said that an annual calendar serves no purpose, even in the rural districts, since the courts now publish daily calendars on the court's website. The committee agreed that there is no further purpose for an annual calendar. The committee recommends that the rule be repealed and that the proposal be published for comment.

(3) Consideration of Comments to Rules

CJA 02-0103. Open and closed meetings. CJA 02-0104. Recording meetings.

The amendments adopt for the Judicial Council the new requirements of public bodies under SB 77. The amendments became effective May 14, 2013 under Rule 2-205 and are subject to change after the comment period. We received no comments, and the committee does not recommend any further changes.

CJA 03-0414. Court security. The amendment removes a reference to proselytizing that arguably limits the scope of the restriction on demonstrating or pamphleteering in a courthouse.

CJA 04-0202.02. Records classification. The amendments:

- classify an addendum to an appellate brief in a case involving termination of parental rights or adoption as a private record;
- establish the classification of a "safeguarded" record and which records are safeguarded records; and
- describe when jurors' names are public, private or safeguarded.

Brent Johnson recommends that the reference in paragraph (5)(P) to search warrants and affidavits as "protected" records be deleted. URCrP 40 describes when the documents are sealed and when they are public. The committee agreed to that further amendment.

Carol Verdoia recommends that the addendum to an appellate brief in cases other than just termination of parental rights and adoption should be private. She recommends that an addendum in protective order appeals, abuse, neglect and dependency appeals, and substantiation appeals also be classified as private. The committee thinks that these cases are logical extensions of the ones already named, but wants the input of the Board of Juvenile Court Judges. Judge Steele and Mr. Shea will present the topic to the Board and report the Board's discussion to the Judicial Council.

Mr. Shea described the purpose of safeguarded records and the reasons for classifying juror information in different categories at different stages of the proceedings.

CJA 04-0202.03. Records access. The amendments describe who has access to safeguarded records and modify who has access to the juvenile court social file. We received no comments, and the committee does not recommend any further changes.

CJA 04-0403. Signature stamp use. The amendment deletes acceptance of pleas in abeyance from the list of documents on which the clerk can sign for the judge with a signature stamp. Now that clerks have the authority to accept the plea, the judge will have to personally counter-sign the acceptance. We received no comments, and the committee does not recommend any further changes.

CJA 04-0906. Guardian ad litem program. The amendments implement the requirements of Section 78A-2-228 for private guardian ad litem attorneys. The amendments are effective July 1, 2013 under Rule 2-205 and are subject to change after the comment period. The editors at Lexis-Nexis recommend several grammatical corrections to paragraph (8)(B), which Mr. Shea distributed to the committee. The committee agreed with the corrections.

CJA 06-0401. Domestic relations commissioners. The amendment includes dating violence protective orders, authorized by HB 50, within the authority of court commissioners. The amendment is effective May 14, 2013 under Rule 2-205 and is subject to change after the comment period. We received no comments, and the committee does not recommend any further changes.

Subject to Judge Steele's report on the Board's discussion of Rule 4-202.02, the committee recommends that the Judicial Council adopt the rules as further amended.

(4) Guidelines for court payment of interpreters for non-court proceedings

Mr. Shea asked the committee for guidance on paying for interpretation and translation outside of court proceedings. During the discussion the principle emerged that interpreting proceedings within the courthouse and translating documents associated with those proceedings should be paid for by the court. In addition interpretation and translation for court annexed programs also should be paid for by the court. But the court should not be responsible for paying for interpreting non-court proceedings—such as interviews by lawyers, investigators, probation officers and case workers—or translating documents associated with those proceedings.

If paying for an interpretation or translation furthers a court purpose, the judges should continue to have the discretion to order the court to pay. But judges should be advised that others have responsibility under federal law for interpreting non-court proceedings, just as the court has responsibility for interpreting court proceedings. Thus, special orders for payment should be rare. If translation of a document is ordered, the court should make arrangements for it to be done by one of the staff interpreters, if possible, rather than by a contract interpreter.

In the context of particular questions raised by Mr. Shea, the court would pay for:

- translation of transcripts or audio record of a hearing;
- interpreters for Legal Aid Society of Salt Lake in the Matheson Courthouse; or
- translation of service plans if not already done by DCFS.

And normally would not pay for:

- interviews by lawyers, investigators, DCFS case workers or AP&P probation officers;
- translation of taped interrogations; or
- interpreters at divorce mediation.

TAB 3

Informal Opinion 12-02¹
July 23, 2013

Question:

The Judicial Conduct Commission has requested an opinion on whether a judge may refer criminal defendants to a specific service provider when the provider is on a preapproved roster created by the court and the referrals are made on a rotating basis.

Answer:

Yes, the court may create a preapproved roster as long as the criteria the court creates for being admitted to the roster are reasonable and directly related to the services that the court needs and any interested individual or entity may apply to be included on the roster. Referrals should generally be made on a rotating basis or by allowing the defendant to select a provider.

Discussion:

The Judicial Conduct Commission (JCC) has requested an ethics advisory opinion on the propriety of a judge referring defendants to a specific service provider. The JCC states that the request arises from a concern “that a justice court’s on-going referral program . . . may violate [the] Code of Judicial Conduct.” The JCC provided the following background:

[T]he judge preapproves a pool of providers and then makes referrals among those providers on a rotating basis. Any state licensed provider may apply to be admitted to the pool by complying with the provisions of the [court’s] administrative orders. There is no evidence that the judge or the court benefits financially from the arrangement or that admission to the pool is based on anything other than state licensure and a willingness to adhere to the principles and requirements set forth in administrative orders.

The JCC also provided information from the justice court showing the criteria and process for inclusion on the roster.

¹ The original Committee opinion was reviewed and modified by the Judicial Council pursuant to Rule 3-109 of the Utah Rules of Judicial Administration. The Council has directed the Committee to release the modified opinion as an informal opinion.

In making its request, the JCC referenced Informal Opinion 10-2 in which this Committee determined that a judge may not refer parties to a specific mediator. The Committee determined that referring parties to a specific mediator would create the impression that the mediator is in a special position to influence the judge. The Committee also determined that referring to a specific mediator would be using the prestige of the judicial office to advance the personal and economic interests of the mediator. The Committee did not address the question of whether a judge could, for example, give parties a list of mediators and allow the parties to select from the list. However, the Committee stated that a judge could refer individuals to the roster of mediators maintained by the Administrative Office of the Courts.

According to the facts provided by the JCC, referrals in the justice court are made from a roster of court-approved licensed providers. The court has established criteria for being listed on the roster. Any licensed provider may apply to be on the roster, as long as the provider is willing to make the commitments required by the court. Under the criteria, providers are required to have a representative present in the courtroom when referrals are made. The court will then make referrals from the list on a rotating basis, but a referral may also include consideration of a provider's proximity to a defendant's domicile or work. Thus, although referral will generally be on a rotating basis, some deviation may occur when the court deems it appropriate.

The Committee determines that a judge may create a roster from which referrals will be made provided the creation of the roster and referrals are based on unbiased considerations. The criteria for being included on the roster must be reasonable, unbiased, and directly related to the needs of the court. For example, if licensure is required to provide the services, either because a law specifically requires a licensed program, or the court determines that only licensed providers are capable of providing the necessary services, then licensure is a reasonable criterion. Requiring a provider to offer specific services is also a reasonable criterion. The reliability of providers might also be a consideration.

Referrals from the roster must also be based on neutral principles, such as referrals being made on a rotating basis or by having the defendant select from the list of approved providers. By creating a list that is open to those who are interested and by making rotating referrals, the court will eliminate any perception that the providers are in a special position to influence the judge. Also, the judge will not be using the prestige of the judicial office to advance the interests of others, as all interested and qualified providers will be on the list and have the same opportunities. Although the providers will benefit financially from the referrals, by allowing all interested providers to apply for inclusion, and by insuring that referrals are based on neutral criterion, the prestige of the judicial office is not a factor. The judge will not be favoring one provider over another.

When establishing a roster and making referrals the judge may not establish any criterion that reflects bias toward a specific provider or a specific type of provider. A judge must carefully consider every factor that could be perceived as a deviation from neutrality. For example, in this circumstance one of the criterion for receiving referrals is that the provider be present in court when the referral is made. A provider might be next on the rotation list but would not receive the

referral because a representative is not present. Deviation might nevertheless be permissible if the judge can articulate reasons why having the provider present is important for doing the business of the court. For example, does it lead to more efficient treatment and processes? Similarly, the facts in this circumstance indicate that the court considers proximity when determining which provider is next in line to receive a referral. The judge must again be able to articulate how deviating from the regular rotation by considering proximity helps the court and the defendants in the administration of justice. The Committee simply raises this question to ensure that judges carefully consider the criteria they adopt. *He*

In conclusion, courts may create rosters of service providers as long as all interested individuals and entities have an opportunity to apply for inclusion, and provided the criteria for being included are reasonable and unbiased. The court must make referrals on a rotating basis or allow defendants to select from the roster. Under these circumstances, the court would not be lending the prestige of the judicial office, and providers will not be receiving economic benefits to the exclusion of others.

The Committee recognizes that the conclusions of this opinion may raise questions about court referrals in other areas, such as specialty courts. The Committee is unable to anticipate how this opinion will affect those areas because the questions will be fact specific as to how a provider is selected and being used. The Committee must therefore await opinion requests dealing with other situations before offering advice.

TAB 4



August 6, 2013

Judicial Council
450 South State Street
Salt Lake City, UT 84114

Dear Judicial Council:

The Morgan County Council hereby request to transfer responsibility for operation of the district court to the state. Morgan County respectfully request an expedited amendment to Rule 4-408.01 removing Morgan as a location which shall be administered through contract with the county government, and asks that this be done as soon as possible.

Morgan County will continue to support a contract agreement with the Administrative Office of the Courts to lease space from Morgan County within the courthouse for court services.

Sincerely,

Tina Kelley
Morgan County Council Chair

MORGAN

COUNTY

August 6, 2013

Judicial Council
450 South State Street
Salt Lake City, UT 84114

Dear Judicial Council:

The Morgan County Council hereby request to transfer responsibility for operation of the district court to the state. Morgan County respectfully request an expedited amendment to Rule 4-408.01 removing Morgan as a location which shall be administered through contract with the county government, and asks that this be done as soon as possible.

Morgan County will continue to support a contract agreement with the Administrative Office of the Courts to lease space from Morgan County within the courthouse for court services.

Sincerely,



Tina Kelley
Morgan County Council Chair

MORGAN

2013 JUL 29 P 3:18
SECOND DISTRICT COURT

July 23, 2013

Sylvester Daniels
2nd District Court
2525 Grant Ave
Ogden, Utah 84401

Dear Mr. Daniels:

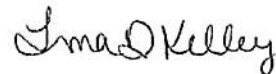
The members of the Morgan County Council met on July 2nd to discuss the contract between Morgan County and the Administrative Office of the Courts. A portion of the meeting's discussion centered around the challenge Morgan County faces when dealing with the County's four day work week versus the State's five day work week, more specifically, the fact that Morgan County has been obligated to provide clerical support (one employee) who works alone in a closed building.

A newspaper article was written in our local newspaper this past weekend, making public the fact that we have a female employee who works alone in the building on Friday. The article also quoted a statement made by the Sheriff indicating that he would not provide security to the clerk on Fridays.

The clerk has previously made her feelings regarding her safety and her concern for the lack of security on Friday's known, therefore, putting Morgan County on notice regarding their liability for failing to provide a safe work environment. The newspaper article exasperated the situation by declaring to the public that she is alone in the building on Fridays and that the County is not able to remedy the situation.

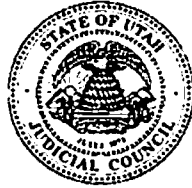
The Morgan County Council is respectfully notifying the Second District and the Administrative Office of the Courts that, due to the safety and security issues faced by Morgan County, we will not be able to provide clerical services to courts effective Friday, July 26th.

Sincerely,



Tina Kelley
Morgan County Council Chair

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 *TJS*
Date: August 5, 2013
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 02-0103. Open and closed meetings. Amend. Technical changes. Adopts for the Judicial Council the new requirements of public bodies under SB 77. Effective May 14, 2013 under Rule 2-205. Subject to change after the comment period.

CJA 02-0104. Recording meetings. Amend. Requires additional public records to be published on the Utah Public Notice Website. Adopts for the Judicial Council the new requirements of public bodies under SB 77. Effective May 14, 2013 under Rule 2-205. Subject to change after the comment period.

CJA 03-0414. Court security. Amend. Removes duplicate reference to proselytizing in a courthouse.

CJA 04-0202.02. Records classification. Amend. Classifies the addendum to an appellate brief in a case involving termination of parental rights or adoption as a private record. Establishes the classification of a "safeguarded" record and which records are safeguarded records. Describes when jurors' names are public, private or safeguarded.

CJA 04-0202.03. Records access. Amend. Describes who has access to safeguarded records. Modifies who has access to the juvenile court social file.

CJA 04-0403. Signature stamp use. Amend. Deletes acceptance of pleas in abeyance from the list of documents on which the clerk can sign for the judge with a signature stamp.

CJA 04-0906. Guardian ad litem program. Amend. Implements the requirements of Section 78A-2-228 for private guardian ad litem attorneys. Effective July 1, 2013 under Rule 2-205. Subject to change after the comment period.

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@utcourts.gov

CJA 06-0401. Domestic relations commissioners. Amend. Includes dating violence protective orders, authorized by HB 50, within the authority of court commissioners. Effective May 14, 2013 under Rule 2-205. Subject to change after the comment period.

Comments

Other than the changes described below, the committee recommends that the rules be approved as they were published for comment.

Rule 4-202.02

In my previous comment, I should have included protective orders as well.

Posted by Carol Verdoia July 9, 2013 03:41 PM

The provision regarding classification of the addendum in an appellate brief in CJA 04-0202.02 should be broadened. Currently the amendment classifies the addendum to an appellate brief in a case involving termination of parental rights or adoption as a private record. There are numerous other juvenile court child welfare orders that are final and appealable, which are equally confidential, but which are not currently listed. The juvenile court rules (rule 2(a), (c)) and the appellate rules (rule (1)(f)) explicitly recognize the other types of child welfare proceedings, i.e., abuse, neglect, dependency, and substantiation proceedings. The records from all of those proceedings should be confidential (classified as private) for the same reasons applicable to termination of parental rights and adoption cases. If you feel it is too wordy to include all of the proceedings, some of the juvenile rules refer to them as "non-delinquency" cases.

Posted by Carol Verdoia July 9, 2013 03:12 PM

The August 2 draft of the rule includes these further casetypes and dating violence protective orders. (See lines 173-177.) The Policy and Planning Committee has asked the Board of Juvenile Court Judges to discuss whether the additional casetypes are appropriate. The Board's discussion and any recommendations will be reported to the Council.

Rule 4-202.02(5)(P) states that search warrants are protected before the filing of the return. Under URCrP 40, the documents are sealed for the first 20 days after issuance unless there is an order extending the sealing period. The subject of the record is not entitled to access except upon court order so perhaps (5)(P) should be eliminated and instead Rule 40 of the Rules of Criminal Procedure will govern.

E-mail from Brent Johnson

The committee deleted paragraph (5)(P) in response to this comment.

Rule 4-906

The editors at Lexis-Nexis recommended several grammar and style changes to paragraph (8)(B) which the committee adopted.

Rule 2-103. Open and closed meetings.

Intent:

To establish the Council's responsibility for providing public notice of its meetings and to ensure the opportunity for public attendance at Council meetings.

To establish procedures consistent with the philosophy of the Utah Open and Public Meetings Act.

To provide the Council with sufficient flexibility to close meetings when discussing matters of a sensitive nature.

Applicability:

This rule shall apply to all meetings of the Council.

Statement of the Rule:

(1) Definitions. As used in this rule "meeting" means the gathering of a quorum of the Council, whether in person or by means of electronic communication, for the purpose of discussing or acting upon any matter over which the Council has jurisdiction, but does not include a chance or social meeting of Council members.

(2) Public notice of meetings.

(2)(A) After the Council has set its annual meeting schedule, the administrative office of the courts shall publish on the court's website and on the Utah Public Notice Website the date, time and place of the meetings ~~on the courts' website~~. At least 24 hours before each meeting, the administrative office of the courts shall post on the websites the meeting agenda and notify at least one newspaper of general circulation within the state of the postings. The administrative office of the courts shall notify a media agency of the postings by email upon request for routine notice. The Council may address a matter not on the meeting agenda but will take no final action on the matter.

(2)(B) When, due to unforeseen circumstances, it is necessary for the Council to consider matters of an urgent nature, the requirement of public notice may be suspended and the best notice practicable given. No such meeting of the Council shall be held unless:

(2)(B)(i) an attempt has been made to notify all members;

(2)(B)(ii) at least a quorum is present; and

(2)(B)(iii) a majority of those present vote to hold the meeting.

(3) Open meetings. Meetings of the Council are open to the public unless closed as provided in this rule.

(4) Reasons for closed meetings.

A closed meeting of the Council may be held for discussions regarding any of the following:

(4)(A) the character, professional competence, or physical or mental health of an individual;

(4)(B) collective bargaining or litigation;

(4)(C) the purchase, exchange or lease of real property if public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the Council from completing the transaction on the best possible terms;

(4)(D) the sale of real property if:

(4)(D)(i) public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the Council from completing the transaction on the best possible terms;

(4)(D)(ii) the Council has previously given public notice that the property would be offered for sale; and

(4)(D)(iii) the terms of the sale are publicly disclosed before the Council approves the sale;

(4)(E) deployment of security personnel or devices;

(4)(F) allegations of criminal misconduct; or

(4)(G) consideration of a private, protected, sealed, juvenile court social or juvenile court legal record as defined in Rule 4-202.02.

(5) Procedure for closing a meeting.

(5)(A) A closed meeting may be held only upon the affirmative vote of two-thirds of the members present at an open meeting for which public notice is given, provided a quorum is present.

60 (5)(B) The recording and minutes otherwise required by Rule 2-104 shall not be
61 made if a meeting is closed to discuss the character, competence, or physical or mental
62 health of an individual or to discuss the deployment of security personnel or devices.
63 The presiding officer shall sign a sworn statement, which is a public record, affirming
64 that the sole purpose for closing the meeting is to discuss the character, competence, or
65 physical or mental health of an individual or the deployment of security personnel,
66 devices, or systems.

67 (6) Limit on actions at a closed meeting. No contract, appointment, rule or resolution
68 may be approved at a closed meeting. A contract, appointment, rule or resolution
69 approved at an open meeting may be based upon discussions had at a closed meeting.

70 (7) Limit on discussions outside of closed meeting. No one who attends a closed
71 meeting may disclose information discussed or materials distributed outside of the
72 closed meeting except with

73 (A) others who participated in the closed meeting, and

74 (B) a member of the Judicial Council.

75 (8) Right of removal. All or any part of an open meeting may be recorded by any
76 person in attendance, provided the recording does not interfere with the conduct of the
77 meeting. The Council may order the removal of any person who disrupts a meeting.

78 (9) The administrative office of the courts shall annually train the members of the
79 Council on the requirements of this rule and of Rule 2-104.

80

Rule 2-104. Recording meetings.

Intent:

To provide a formal method for memorializing Council meetings.

To regulate public access to such records.

Applicability:

This rule shall apply to all meetings of the Council.

Statement of the Rule:

(1) Except as provided in Rule 2-103(5)(B), the administrative office of the courts shall make an audio recording of all open and closed Council meetings, and the administrative office of the courts shall prepare minutes of all open Council meetings. The recording is a verbatim record of what is said during the meeting. The minutes shall include:

(1)(A) the date, time, and place of the meeting;

(1)(B) the names of members present, in person or by electronic communication, the names of members absent and the names of staff and guests who testify to the Council;

(1)(C) the substance of all matters proposed, discussed, or decided;

(1)(D) the substance of the testimony of guests and the reports of staff or a summary reference to such testimony or report if a copy thereof is filed with the minutes;

(1)(E) a record of the vote taken on any question, and, if the vote is a roll call vote, a record of the vote of individual members by name;

(1)(F) the reason for holding a closed meeting; and

(1)(G) any other information that any member requests be entered in the minutes.

(2)(A) The audio recording of a closed meeting is a protected record. The audio recording of an open meeting is a public record. Minutes of an open meeting awaiting approval by the Council are a public record. The approved minutes of an open meeting are a public record.

~~(2)(B) The recording of an open meeting shall be available within three days after the meeting to which it pertains. Minutes awaiting approval by the Council shall be clearly identified as "unapproved" and made available within a reasonable time 30 days after the meeting to which they pertain. After approval by the Council, the minutes shall~~

31 ~~be posted on the courts' website.~~ The approved minutes of an open meeting are a
32 permanent record. The audio recording of a public meeting may be destroyed 90 days
33 after the Council approves the minutes. The audio recording of a closed meeting may
34 be destroyed 90 days after the matter to which it pertains is moot.

35 (3) The administrative office of the courts shall post on the Utah Public Notice
36 Website:

37 (3)(A) the audio recording of a public meeting within three days after the meeting;

38 (3)(B) public records distributed at a public meeting, including public records
39 distributed to Council members before the meeting, within three days after the meeting;
40 and

41 (3)(C) the approved minutes of a meeting within three days after approval.
42

Rule 3-414. Court security.

Intent:

To promote the safety and well being of judicial personnel, members of the bar and citizens utilizing the courts.

To establish uniform policies for court security consistent with Section 78A-2-203.

To delineate responsibility for security measures by the Council, the administrative office, local judges, court executives, and law enforcement agencies.

Applicability:

This rule shall apply to all courts.

Section (7) on weapons shall not apply to trial exhibits.

Statement of the Rule:

(1) Definitions.

(1)(A) Court security. Court security includes the procedures, technology, and architectural features needed to ensure the safety and protection of individuals within the courthouse and the integrity of the judicial process. Court security is the joint effort of law enforcement and the judiciary to prevent or control such problems as, disorderly conduct, physical violence,, theft, bomb threats, , prisoner escapes, , assassinations, and hostage situations.

(1)(B) A key manager is a person authorized by the court executive or Deputy State Court Administrator to issue, retrieve, activate, and deactivate keys and/or access cards to courthouses in their districts.

(1)(C) Presiding judge. As used in this rule, presiding judge includes the judge of a single-judge courthouse. The presiding judge may delegate the responsibilities of this rule to another judge.

(2) Responsibilities of the Council.

(2)(A) The Council shall ensure that all design plans for renovation or new construction of court facilities are reviewed for compliance with The Utah Judicial System Design Standards.

(2)(B) As a condition for the certification of a new justice court or the continued certification of an existing justice court, the justice court shall file an acceptable local

31 security plan with the Court Security Director and shall file amendments to the plan with
32 the Court Security Director as amendments are made. The local security plan shall
33 provide for the presence of a law enforcement officer or constable in court during court
34 sessions or a reasonable response time by the local law enforcement agency upon call
35 of the court.

36 (3) Responsibilities of the Administrative Office.

37 (3)(A) The state court administrator shall appoint a Court Security Director who shall:

38 (3)(A)(i) review and keep on file copies of all local security plans; and

39 (3)(A)(ii) periodically visit the various court jurisdictions to offer assistance in the
40 development or implementation of local security plans.

41 (3)(B) The state court administrator shall appoint a court executive in each judicial
42 district to serve as a local security coordinator.

43
44 (3)(C) The Court Security Director shall promulgate general security guidelines to
45 assist local jurisdictions in the development of court security plans.

46 (4) Responsibilities of the court executive.

47 (4)(A) The court executive designated as the local security coordinator shall:

48 (4)(A)(i) in consultation with the law enforcement administrator responsible for
49 security and with the judges responsible for the security plan, develop and implement a
50 local security plan for each court of record facility within the district;

51 (4)(A)(ii) annually review the local security plan with the presiding judge and the law
52 enforcement administrator to identify deficiencies in the plan and problems with
53 implementation;

54 (4)(A)(iii) file an acceptable local security plan with the Court Security Director; and

55 (4)(A)(iv) file amendments to the plan with the Court Security Director as
56 amendments are made.

57 (4)(B) The local security plan for a courthouse and any amendments to it shall be
58 approved by a majority of the judges of the district of any court level regularly occupying
59 the courthouse. Voting shall be without regard to court level. As used in this subsection
60 the term "judges of the district of any court level occupying the courthouse" shall include

all judges of the district court of the district and all judges of the juvenile court of the district regardless of whether a particular judge occupies the courthouse so long as at least one judge of that court level occupies the courthouse. The term also includes the justices of the Supreme Court, the judges of the Court of Appeals and all justice court judges who actually occupy the courthouse.

(4)(C) The court executive shall provide a copy of the current local security plan and annual training on the plan to all court personnel, volunteers and security personnel.

(4)(D) The local plan shall clearly delineate the responsibilities between court personnel and law enforcement personnel for all areas and activities in and about the courthouse.

(4)(E) The court clerk or probation officer, under the supervision of the court executive, shall provide timely notice to transportation officers of required court appearances and cancellation of appearances for individuals in custody. The court shall consolidate scheduled appearances whenever practicable and otherwise cooperate with transportation officers to avoid unnecessary court appearances.

(4)(F) To the extent possible, the clerk of the court shall establish certain days of the week and times of day for court appearances of persons in custody in order to permit transportation officers reasonable preparation and planning time. The court shall give priority to cases in which a person in custody appears in order to prevent increased security risks resulting from lengthy waiting periods.

(5) Responsibilities of law enforcement agencies.

(5)(A) The law enforcement agency with responsibility for security of the courthouse, through a law enforcement administrator, shall:

(5)(A)(i) coordinate all law enforcement activities within the courthouse necessary for implementation of the security plan and for response to emergencies;

(5)(A)(ii) cooperate with the court executive in the development and implementation of a local security plan;

(5)(A)(iii) provide local law enforcement personnel with training as provided in this rule;

(5)(A)(iv) provide court bailiffs; and

91 (5)(A)(v) provide building and perimeter security.

92 (5)(B) The law enforcement agency responsible for court security shall be as follows:

93 (5)(B)(i) The Department of Public Safety for the Supreme Court and the Court of
94 Appeals when they are in session in Salt Lake County. When convening outside of Salt
95 Lake County, security shall be provided by the county sheriff. The Department of Public
96 Safety may call upon the Salt Lake County Sheriff for additional assistance as
97 necessary when the appellate courts are convening in Salt Lake County.

98 (5)(B)(ii) The county sheriff for district courts and juvenile courts within the county.

99 (5)(B)(iii) The county sheriff for a county justice court and the municipal police for a
100 municipal justice court. The county or municipality may provide a constable to provide
101 security services to the justice court. If a municipality has no police department or
102 constable, then the law enforcement agency with which the municipality contracts shall
103 provide security services to the justice court.

104 (6) Court bailiffs.

105 (6)(A) Qualifications. Bailiffs shall be "law enforcement officers" as defined in Section
106 53-13-103. At the discretion of the law enforcement administrator and with the consent
107 of the presiding judge, bailiffs may be "special function officers" as defined by Section
108 53-13-105.

109 (6)(B) Training. Prior to exercising the authority of their office, bailiffs shall
110 satisfactorily complete the basic course at a certified peace officer training academy or
111 pass a waiver examination and be certified. Bailiffs shall complete 40 hours of annual
112 training as established by the Division of Peace Officer Standards and Training. Bailiffs
113 shall receive annual training on the elements of the court security plan, emergency
114 medical assistance and the use of firearms.

115 (6)(C) Physical and mental condition. Court bailiffs shall be of suitable physical and
116 mental condition to ensure that they are capable of providing a high level of security for
117 the court and to ensure the safety and welfare of individuals participating in court
118 proceedings. Bailiffs shall be capable of responding appropriately to any potential or
119 actual breach of security.

20 (6)(D) Appointment. The appointment of a bailiff is subject to the concurrence of the
121 presiding judge.

122 (6)(E) Supervision. The court bailiff shall be supervised by the appointing authority
123 and perform duties in compliance with directives of the appointing authority.

124 (6)(F) Responsibilities. Court bailiff responsibilities shall include but are not limited to
125 the following.

126 (6)(F)(i) The bailiff shall prevent persons in custody from having physical contact with
127 anyone other than the members of the defense counsel's team. Visitation shall be in
128 accordance with jail and prison policies and be restricted to those facilities.

129 (6)(F)(ii) The bailiff shall observe all persons entering the courtroom, their movement
130 and their activities. The bailiff shall control access to the bench and other restricted
131 areas.

132 (6)(F)(iii) The bailiff shall search the interior of the courtroom and restricted areas
133 prior to the arrival of any other court participants. Similar searches shall be conducted
134 following recesses to ensure the room is clear of weapons, explosives, or contraband.

135 (6)(F)(iv) Bailiffs shall wear the official uniform of the law enforcement agency by
136 whom they are employed.

137 (6)(F)(v) Bailiffs shall comply with the directives of the judge or commissioner with
138 respect to security related activities and shall perform other duties incidental to the
139 efficient functioning of the court which do not detract from security functions. Activities
140 wholly unrelated to security or function of the court, including personal errands, shall not
141 be requested nor performed.

142 (6)(F)(vi) Bailiffs shall perform responsibilities provided for in the local court security
143 plan.

144 (6)(F)(vii) The bailiff shall maintain a clear line of sight of all courtroom participants
145 and shall be between individuals who are in custody and courtroom exits.

146 (7) Weapons.

147 (7)(A) Weapons generally.

148 (7)(A)(i) A courthouse is presumed to be free of all weapons and firearms unless a
149 local security plan provides otherwise in accordance with this rule. No person may

possess an explosive device in a courthouse. Except as permitted by this rule, no person may possess a firearm, ammunition, or dangerous weapon in a courthouse.

(7)(A)(ii) All firearms permitted under this rule and a local security plan:

(7)(A)(ii)(a) and carried upon the person shall be concealed unless worn as part of a public law enforcement agency uniform;

(7)(A)(ii)(b) shall remain in the physical possession of the person authorized to possess it and shall not be placed in a drawer, cabinet, briefcase or purse unless the person has physical possession of the briefcase or purse or immediate control of the drawer or cabinet or the drawer or cabinet is locked; and

(7)(A)(ii)(c) shall be secured in a holster with a restraining device.

(7)(B) Persons authorized to possess a firearm or other weapon.

(7)(B)(i) The following officers may possess a firearm and ammunition in a courthouse if the firearm is issued by or approved by the officer's appointing authority, if possession is required or permitted by the officer's appointing authority and the local security plan, and if the officer presents valid picture identification:

(7)(B)(i)(a) "law enforcement officer" as defined in Section 53-13-103;

(7)(B)(i)(b) "correctional officer" as defined in Section 53-13-104;

(7)(B)(i)(c) "special function officer" as defined in Section 53-13-105;

(7)(B)(i)(d) "federal officer" as defined in Section 53-13-106; and

(7)(B)(i)(e) a private security officer, licensed under Utah Code Title 58, Chapter 63, Security Personnel Licensing Act, hired by the court or the court's banker to transport money.

(7)(B)(ii) A judge or law enforcement official as defined in Section 53-5-711 may possess in a courthouse a firearm and ammunition for which the judge or law enforcement official has a valid certificate of qualification issued under Section 53-5-711 if possession is permitted by the local security plan.

(7)(B)(iii) A court commissioner may possess in a courthouse a firearm and ammunition for which the court commissioner has a concealed weapons permit, but only if the court commissioner has obtained the training and annual retraining necessary

to qualify for a certificate issued under Section 53-5-711 and if possession is permitted by the local security plan.

(7)(B)(iv) A person permitted under subsections (i), (ii) or (iii) to possess a firearm nevertheless shall not possess a firearm in a courthouse if the person is appearing at the courthouse as a party to litigation. A person possessing a firearm in a courtroom shall notify the bailiff or the judge.

(7)(B)(v) If permitted by the local security plan, court personnel and volunteers may possess in a courthouse an otherwise legal personal protection device other than a firearm. Court personnel and volunteers shall not possess a personal protection device while appearing as a party to litigation. Court personnel and volunteers shall not possess a firearm while on duty.

(7)(C) Firearm training requirements.

(7)(C)(i) To requalify for a certificate issued under Section 53-5-711 a judge shall annually complete with a passing score a range qualification course for judges and law enforcement officials established by the Department of Public Safety or a course established by any law enforcement agency of the state of Utah or its political subdivision for the requalification of its officers.

(7)(C)(ii) The cost of firearms, ammunition, initial qualification, requalification and any other equipment, supplies or fees associated with a certificate of qualification issued under Section 53-5-711 shall be the responsibility of the judge or court commissioner and shall not be paid from state funds.

(8) Security devices and procedures.

(8)(A) Metal detectors. The use of metal detectors or other screening devices, Where present, shall be used by the law enforcement agency responsible for security/bailiff services. (8)(B) Physical search. Searches of persons in or about the courthouse or courtroom shall be conducted at the discretion of the law enforcement agency responsible for security when the local law enforcement agency has reason to believe that the person to be searched is carrying a weapon or contraband into or out of the courthouse or when the court so orders. No other person is authorized to conduct

such searches. Written notice of this policy shall be posted in a conspicuous place at the entrance to all court facilities.

(8)(C) All persons in custody shall be kept in a holding cell, restrained by restraining devices, or supervised at all times while in court unless otherwise specifically ordered by the judge in whose courtroom the individual appears.

(8)(D) Extra security. In anticipated high risk situations or a highly publicized case, the law enforcement agency responsible for security should, on its own initiative or in response to an order of the court, provide extra security including additional personnel, controlled access, etc. A written operational plan outlining and assigning security duties should be developed in conjunction with the presiding judge, the court executive and the Court Security Director.

(8)(E) Courthouse Access Control. Only judges, court staff, and security and maintenance staff assigned to the courthouse will be granted access card/keys and only to those areas of the courthouse to which the individual needs access. No access cards or keys shall be issued solely for convenience purposes. Any exceptions to this rule must be pre-approved, in writing, by the Deputy State Court Administrator.

(8)(E)(i) Access cards or keys will be issued by a key manager only with the prior written authorization of the court executive(s) or Deputy State Court Administrator. Detailed recording of all card/key transactions will be the responsibility of the key manager. Supervisors shall recover all issued keys/cards from court personnel who are terminated, suspended or transferred or if loss of privileges is part of an adverse personnel action. Supervisors will return the cards/keys to the court executive who will deactivate the access card. If the access card is not returned as required, the supervisor will immediately contact the key manager to deactivate the card.

(8)(E)(ii) Court personnel shall possess their court-issued identification at all times when in the courthouse or staff parking area. Court personnel may not loan their identification cards, access cards or keys to others and must report any lost or missing identification or access card key to the key manager or their direct supervisor as soon as possible after the loss is discovered. Any lost access card will be deactivated before a replacement card is issued.

38 (8)(E)(iii) Court personnel with a court-issued identification card may bypass security
239 screening only when they are assigned to that particular courthouse. Court personnel
240 from other courthouses will be required to successfully pass through the security
241 screening area before being allowed entry.

242 (8)(E)(iv) The court executive will undertake a semiannual review of access card
243 records to ensure that no unauthorized use is occurring.

244 (8)(F) In order to protect the safety and welfare of court customers, no one is
245 permitted to block the entry or exit of a courthouse and no one is permitted to picket,
246 parade, proselytize, demonstrate or distribute leaflets, pamphlets, brochures or other
247 materials ~~for the purpose of proselytizing inside~~ a courthouse.

248 (9) Transportation of persons in custody.

249 (9)(A) The federal, state, county or municipal agency with physical custody of a
250 person whose appearance in court is required is responsible for transportation of that
251 person to and from the courtroom.

252 (9)(B) The transportation officer shall:

253 (9)(B)(i) remain present at all times during court appearances;

254 (9)(B)(ii) be responsible for the custody of such persons;

255 (9)(B)(iii) support the court bailiff in the preservation of peace in the courthouse and
256 courtroom;

257 (9)(B)(iv) provide advance notice of the transportation and of any extraordinary
258 security requirements to the law enforcement agency responsible for court security, to
259 the judge, and to the bailiff;

260 (9)(B)(v) comply with any regulations of the county sheriff regarding the
261 transportation of persons in custody to court; and

262 (9)(B)(vi) return the person in custody to the proper place of confinement.

263 (9)(C) The law enforcement agency responsible for court security shall provide
264 assistance to the transportation officer as circumstances dictate.

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 or a victim or witness of
38 a crime, but the name of a juror or prospective juror is private until released by the
39 judge;

40 (2)(M) name, address, telephone number, email address, date of birth, and last four
41 digits of the following: driver's license number; social security number; or account
42 number of a party;

43 (2)(N) name, business address, business telephone number, and business email
44 address of a lawyer appearing in a case;

45 (2)(O) name, business address, business telephone number, and business email
46 address of court personnel other than judges;

47 (2)(P) name, business address, and business telephone number of judges;

48 (2)(Q) name, gender, gross salary and benefits, job title and description, number of
49 hours worked per pay period, dates of employment, and relevant qualifications of a
50 current or former court personnel;

51 (2)(R) unless classified by the judge as private or safeguarded to protect the
52 personal safety of the juror or the juror's family, the name of a juror empaneled to try a
53 case, but only 10 days after the jury is discharged;

54 (2)(R) opinions, including concurring and dissenting opinions, and orders entered in
55 open hearings;

56 (2)(S) order or decision classifying a record as not public;

57 (2)(T) private record if the subject of the record has given written permission to make
58 the record public;

59 (2)(U) probation progress/violation reports;

60 (2)(V) publications of the administrative office of the courts;

31 (2)(W) record in which the judicial branch determines or states an opinion on the
62 rights of the state, a political subdivision, the public, or a person;

63 (2)(X) record of the receipt or expenditure of public funds;

64 (2)(Y) record or minutes of an open meeting or hearing and the transcript of them;

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

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

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

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

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

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

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

86 (3) The following court records are sealed:

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

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

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

92 (3)(B) expunged records;

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

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

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

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

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

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

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

103 (4) The following court records are private:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

127 (4)(D) alternative dispute resolution records;

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

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

131 (4)(G) judgment information statement;

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

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

137 (4)(J) the following personal identifying information about a person other than a party
138 or a victim or witness of a crime: residential address, personal email address, personal
139 telephone number; date of birth, driver's license number, social security number,
140 account description and number, password, identification number, maiden name,
141 mother's maiden name, and similar personal identifying information;

142 (4)(K) medical, psychiatric, or psychological records;

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

145 (4)(L)(i) name change of a minor;

146 (4)(L)(ii) guardianship or conservatorship for a minor;

147 (4)(L)(iii) felony, misdemeanor or infraction;

148 (4)(L)(iv) child protective orders; and

149 (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) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

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

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

(4)(P) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(Q) record submitted for in camera review until its public availability is determined;

(4)(R) reports of investigations by Child Protective Services;

(4)(S) victim impact statements;

(4)(T) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(U) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(V) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;

(4)(W) an addendum to an appellate brief filed in a case involving:

(4)(W)(i) adoption;

(4)(W)(ii) termination of parental rights;

(4)(W)(iii) abuse, neglect and dependency;

(4)(W)(iv) substantiation under Section 78A-6-323; or

(4)(W)(v) protective orders or dating violence protective orders;

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

(5) The following court records are protected:

30 (5)(A) attorney's work product, including the mental impressions or legal theories of
181 an attorney or other representative of the courts concerning litigation, privileged
182 communication between the courts and an attorney representing, retained, or employed
183 by the courts, and records prepared solely in anticipation of litigation or a judicial, quasi-
184 judicial, or administrative proceeding;

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

186 (5)(C) bids or proposals until the deadline for submitting them has closed;

187 (5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation
188 before issuance of the final recommendations in these areas;

189 (5)(E) budget recommendations, legislative proposals, and policy statements, that if
190 disclosed would reveal the court's contemplated policies or contemplated courses of
191 action;

192 (5)(F) court security plans;

193 (5)(G) investigation and analysis of loss covered by the risk management fund;

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

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

197 (5)(J) record created or maintained for civil, criminal, or administrative enforcement
198 purposes, audit or discipline purposes, or licensing, certification or registration
199 purposes, if the record reasonably could be expected to:

200 (5)(J)(i) interfere with an investigation;

201 (5)(J)(ii) interfere with a fair hearing or trial;

202 (5)(J)(iii) disclose the identity of a confidential source; or

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

204 (5)(K) record identifying property under consideration for sale or acquisition by the
205 court or its appraised or estimated value unless the information has been disclosed to
206 someone not under a duty of confidentiality to the courts;

207 (5)(L) record that would reveal the contents of settlement negotiations other than the
208 final settlement agreement;

209 (5)(M) record the disclosure of which would impair governmental procurement or
210 give an unfair advantage to any person;

211 (5)(N) record the disclosure of which would interfere with supervision of an
212 offender's incarceration, probation or parole;

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

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

215 ~~(5)(Q)~~ (5)(P) strategy about collective bargaining or pending litigation;

216 ~~(5)(R)~~ (5)(Q) test questions and answers;

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

218 ~~(5)(T)~~ (5)(S) record of a Children's Justice Center investigative interview before the
219 conclusion of any legal proceedings;

220 ~~(5)(U)~~ (5)(T) presentence investigation report; and

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

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

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

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

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

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

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

229 (6)(F) referral reports;

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

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

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

233 (7)(A) accounting records;

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

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

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

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

239 (7)(F) referral and offense histories

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

242 (8) The following are safeguarded records:

243 (8)(A) upon request, location information, contact information and identity
244 information other than name of a petitioner and other persons to be protected in an
245 action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7,
246 Protective Orders;

247 (8)(B) upon request, location information, contact information and identity
248 information other than name of a party or the party's child after showing by affidavit that
249 the health, safety, or liberty of the party or child would be jeopardized by disclosure in a
250 proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and
251 Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title
252 78B, Chapter 15, Utah Uniform Parentage Act;

253 (8)(C) location information, contact information and identity information of
254 prospective jurors on the master jury list or the qualified jury list;

255 (8)(D) location information, contact information and identity information other than
256 name of a prospective juror summoned to attend court;

257 (8)(E) the following information about a victim or witness of a crime:

258 (8)(E)(i) business and personal address, email address, telephone number and
259 similar information from which the person can be located or contacted;

260 (8)(E)(ii) date of birth, driver's license number, social security number, account
261 description and number, password, identification number, maiden name, mother's
262 maiden name, and similar personal identifying information.

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

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

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

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

(3)(F) the attorney 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 ~~(5)(A) all who may access private records, except that a juvenile court competency~~
51 ~~evaluation, psychological evaluation or sex behavior risk assessment may be accessed~~
52 ~~only with the approval of a juvenile court judge, who will permit access required by due~~
53 ~~process of law in a manner that serves the best interest of the child;~~

54 (5)(B) a prosecuting attorney;

55 (5)(C) a governmental entity charged with custody, guardianship, protective
56 supervision, probation or parole of the subject of the record in the juvenile justice
57 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.~~

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

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

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

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

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

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

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

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

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

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

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

(5)(L) anyone by court order.

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

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

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

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

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

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

96 (5)(M)(vi) anyone by court order.

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

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

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

102 (6)(B) a law enforcement agency;

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

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

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

108 (7) The following may access a safeguarded record:

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

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

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

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

115 (7)(E) anyone by court order;

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

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

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

120 ~~(7)~~(8) Court personnel shall permit access to court records only by authorized
121 persons. The court may order anyone who accesses a non-public record not to permit
122 further access, the violation of which may be contempt of court.

123 ~~(8)~~(9) If a court or court employee in an official capacity is a party in a case, the
124 records of the party and the party's attorney are subject to the rules of discovery and
125 evidence to the same extent as any other party.
126

Rule 4-403. Signature stamp use.

Intent:

To establish a uniform procedure for the use of judges' and commissioners' signature stamps.

Applicability:

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

Statement of the Rule:

(1) A clerk may, with the prior approval of the judge or commissioner, use a "signature stamp" in lieu of obtaining the judge's or commissioner's signature on the following:

(1)(A) bail bonds from approved bondsmen;

(1)(B) bench warrants;

(1)(C) civil orders for dismissal when submitted by the plaintiff in uncontested cases or when stipulated by both parties in contested cases;

(1)(D) civil orders for dismissal pursuant to Rule 4-103, URCP 3 and URCP 4(b);

(1)(E) orders to show cause;

(1)(F) orders to take into custody;

(1)(G) summons;

(1)(H) supplemental procedure orders;

(1)(I) orders setting dates for hearing and for notice;

~~(1)(J) orders accepting a plea in abeyance in cases for which no appearance is required;~~ and

~~(1)(K)~~ (1)(J) orders for transportation of a person in custody to a court hearing.

(2) When a clerk is authorized to use a signature stamp as provided in paragraph (1), the clerk shall sign his or her name on the document directly beneath the stamped imprint of the judge's or commissioner's signature.

(3) All other documents requiring the judge's or commissioner's signature shall be personally signed by the judge or commissioner, unless the judge or commissioner, on a document by document basis, authorizes the clerk to use the judge's or commissioner's signature stamp in lieu of the judge's or commissioner's signature. On such documents,

31 the clerk shall indicate in writing that the stamp was used at the direction of the judge or
32 commissioner and shall sign his or her name directly beneath the stamped imprint of the
33 judge's or commissioner's signature.

34

Rule 4-906. Guardian ad litem program.

Intent:

To establish the responsibilities of the Guardian ad Litem Oversight Committee established in Rule 1-205.

To establish the policy and procedures for the management of the guardian ad litem program.

To establish responsibility for management of the program.

To establish the policy and procedures for the selection of guardians ad litem.

To establish the policy and procedures for payment for guardian ad litem services.

To establish the policy and procedures for complaints regarding guardians ad litem and volunteers.

Applicability:

This rule shall apply to the management of the guardian ad litem program.

This rule does not affect the authority of the Utah State Bar to discipline a guardian ad litem.

Statement of the Rule:

(1) Guardian ad Litem Oversight Committee. The Committee shall:

(1)(A) develop and monitor policies of the Office of Guardian ad Litem to:

(1)(A)(i) ensure the independent and professional representation of a child-client and the child's best interest; and

(1)(A)(ii) ensure compliance with federal and state statutes, rules and case law;

(1)(B) recommend rules of administration and procedure to the Judicial Council and Supreme Court;

(1)(C) select the Director of the Office of Guardian ad Litem in consultation with the State Court Administrator;

(1)(D) develop a performance plan for the Director;

(1)(E) monitor the Office's caseload and recommend to the Judicial Council adequate staffing of guardians ad litem and staff;

(1)(F) develop standards and procedures for hearing and deciding complaints and appeals of complaints; and

31 (1)(G) hear and decide complaints and appeals of complaints as provided in this
32 rule.

33 (2) Qualifications of the director. The Director shall have the qualifications provided
34 by the Utah Code.

35 (3) Responsibilities of the director. In addition to responsibilities under the Utah
36 Code, the Director shall have the following responsibilities.

37 (3)(A) Manage the Office of Guardian ad Litem to ensure that minors who have been
38 appointed a guardian ad litem by the court receive qualified guardian ad litem services.

39 (3)(B) Develop the budget appropriation request to the legislature for the guardian
40 ad litem program.

41 (3)(C) Coordinate the appointments of guardians ad litem among different levels of
42 courts.

43 (3)(D) Monitor the services of the guardians ad litem, staff and volunteers by
44 regularly consulting with users and observers of guardian ad litem services, including
45 judges, court executives and clerks, and by requiring the submission of appropriate
46 written reports from the guardians ad litem.

47 (3)(E) Determine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6,
48 7, and 8 is best managed by full or part time employment or by contract.

49 (3)(F) Select guardians ad litem and staff for employment as provided in this rule.
50 Select volunteers. Coordinate appointment of conflict counsel.

51 (3)(G) Supervise, evaluate, and discipline guardians ad litem and staff employed by
52 the courts and volunteers. Supervise and evaluate the quality of service provided by
53 guardians ad litem under contract with the court.

54 (3)(H) Monitor and report to the Committee guardian ad litem, staff and volunteer
55 compliance with federal and state statutes, rules and case law.

56 (3)(I) Prepare and submit to the Committee in August an annual report regarding the
57 development, policy, and management of the guardian ad litem program and the
58 training and evaluation of guardians ad litem, staff and volunteers. The Committee may
59 amend the report prior to release to the Legislative Interim Human Services Committee.

30 (4) Qualification and responsibilities of guardian ad litem. A guardian ad litem shall
61 be admitted to the practice of law in Utah and shall demonstrate experience and interest
62 in the applicable law and procedures. The guardian ad litem shall have the
63 responsibilities established by the Utah Code.

64 (5) Selection of guardian ad litem for employment.

65 (5)(A) A guardian ad litem employed by the Administrative Office of the Courts is an
66 at-will employee subject to dismissal by the Director with or without cause.

67 (5)(B) A guardian ad litem employed by the Administrative Office of the Courts shall
68 be selected by the Director. Prior to the Director making a selection, a panel shall
69 interview applicants and make hiring recommendations to the Director. The interview
70 panel shall consist of the Director (or Director's designee) and two or more of the
71 following persons:

72 (5)(B)(i) the managing attorney of the local guardian ad litem office;

73 (5)(B)(ii) the trial court executive of the district court or juvenile court;

74 (5)(B)(iii) a member of the Committee;

75 (5)(B)(iv) a member of the Utah State Bar Association selected by the Director; or

76 (5)(B)(v) a member selected by the Director.

77 (6) Conflicts of interest and disqualification of guardian ad litem.

78 (6)(A) In cases where a guardian ad litem has a conflict of interest, the guardian ad
79 litem shall declare the conflict and request that the court appoint a conflict guardian ad
80 litem in the matter. Any party who perceives a conflict of interest may file a motion with
81 the court setting forth the nature of the conflict and a request that the guardian ad litem
82 be disqualified from further service in that case. Upon a finding that a conflict of interest
83 exists, the court shall relieve the guardian ad litem from further duties in that case and
84 appoint a conflict guardian ad litem.

85 (6)(B) The Administrative Office of the Courts may contract with attorneys to provide
86 conflict guardian ad litem services.

87 (6)(C) If the conflict guardian ad litem is arranged on a case-by-case basis, the Court
88 shall use the order form approved by the Council. The Order shall include a list of the
89 duties of a guardian ad litem. The court shall distribute the Order as follows: original to

the case file and one copy each to: the appointed conflict guardian ad litem, the guardian ad litem, all parties of record, the parents, guardians or custodians of the child(ren), the court executive and the Director.

(6)(D) A conflict guardian ad litem's compensation shall not exceed \$50 per hour or \$1000 per case in any twelve month period, whichever is less. Under extraordinary circumstances, the Director may extend the payment limit upon request from the conflict guardian ad litem. The request shall include justification showing that the case required work of much greater complexity than, or time far in excess of, that required in most guardian ad litem assignments. Incidental expenses incurred in the case shall be included within the limit. If a case is appealed, the limit shall be extended by an additional \$400.

(7) Staff and Volunteers.

(7)(A) The Director shall develop a strong volunteer component to the guardian ad litem program and provide support for volunteer solicitation, screening and training. Staff and volunteers shall have the responsibilities established by the Utah Code.

(7)(B) Training for staff and volunteers shall be conducted under the supervision of the attorney guardian ad litem with administrative support provided by the Director. Staff and volunteers shall receive training in the areas of child abuse, child psychology, juvenile and district court procedures and local child welfare agency procedures. Staff and volunteers shall be trained in the guidelines established by the National Court Appointed Special Advocate Association.

(8) Private guardians ad litem.

(8)(A) The Director shall maintain a list of private attorney guardians ad litem qualified for appointment.

(8)(B) To be included on the list of eligible private attorney guardians ad litem, the ~~an~~ applicant shall: apply for eligible private attorney guardian status to the Utah Office of Guardian ad Litem and ~~provide the following documentation:~~

(8)(B)(i) ~~that they are a member~~ show membership in good standing with ~~in~~ the Utah State Bar;

(8)(B)(ii) provide a BCI criminal history report;

120 (8)(B)(iii) provide a DCFS Child Abuse Data Base report (and like information from
121 any state in which the applicant has resided as an adult);

122 (8)(B)(iv) provide a certificate of completion for any initial or additional necessary
123 training requirements established by the Director;

124 (8)(B)(v) agree to perform ~~and conduct themselves~~ in a competent, professional,
125 proficient, ethical, and appropriate manner and to meet any minimum qualifications as
126 determined by the Director; and

127 (8)(B)(vi) agree to be evaluated at the discretion of the Director for competent,
128 professional, proficient, ethical, appropriate conduct, and/or performance, and minimum
129 qualifications.

130 (8)(C) Upon the appointment by the court of a private guardian ad litem, the court
131 shall:

132 (8)(C)(i) use the following language in its order: "The Court appoints a private
133 attorney guardian ad litem to be assigned by the Office of Guardian ad Litem, to
134 represent the best interests of the minor child(ren) in this matter.";

135 (8)(C)(ii) designate in the order whether the private attorney guardian ad litem shall:

136 (8)(C)(ii)(a) be paid the set fee, as established by paragraph (8)(F), and an initial
137 retainer;

138 (8)(C)(ii)(b) not be paid and serve pro bono; or

139 (8)(C)(ii)(c) be paid at a rate less than the set fee in paragraph (8)(F); and

140 (8)(C)(iii) send the order to the Director c/o the Private Attorney Guardian ad Litem
141 Program.

142 (8)(D) Upon receipt of the court's order appointing a private guardian ad litem, the
143 Director shall contact and assign the case to an eligible attorney, if available.

144 (8)(E) Upon accepting the court's appointment, the assigned attorney shall file a
145 notice of appearance with the court within five business days of acceptance, and shall
146 thereafter represent the best interests of the minor(s) until released by the court.

147 (8)(F) The hourly fee to be paid by the parties and to be ordered and apportioned by
148 the court against the parties shall be \$150.00 per hour or at a higher rate as determined
149 reasonable by the court. The retainer amount shall be \$1000 or a different amount

determined reasonable by the court. The retainer amount shall be apportioned by the court among the parties and paid by the parties.

(9) Complaints and appeals.

(9)(A)(i) Any person may file with the chair of the Committee a complaint regarding the Director, or regarding an administrative policy or procedure, not including complaints regarding a particular guardian ad litem, private guardian ad litem, or volunteer. If deemed necessary, the Committee may enter a recommendation to the Judicial Council, which may include discipline of the Director.

(9)(A)(ii) If a complaint regarding the Director or an administrative policy or procedure is received in the Director's office, the Director shall forward the complaint to the chair of the Committee within a reasonable time, but not more than 14 days after receipt.

(9)(B) Any person may file with the Director a complaint regarding a guardian ad litem employed by the Office of Guardian ad Litem, private attorney guardian ad litem, or volunteer, as defined by UCA 78A-6-902(4)(a). The decision of the Director regarding the complaint is final and not subject to appeal.

(9)(C) If a guardian ad litem and a volunteer disagree on the major decisions involved in representation of the client, either may notify the Director that the dispute cannot be resolved. The decision of the Director regarding the dispute is final and not subject to appeal.

(9)(D) The failure of the Director to satisfactorily resolve a complaint against a guardian ad litem, private attorney guardian ad litem or volunteer is not grounds for a complaint against the Director.

(9)(E) The Director may remove with or without a complaint a private attorney guardian ad litem from the list of eligible private guardians ad litem for failure to perform or conduct themselves in a competent, professional, proficient, ethical and/or appropriate manner or for failure to meet minimum qualifications. Within a reasonable time after the removal, and in the event the private attorney guardian ad litem has not yet been released by the court in a pending case, the Director shall provide written notice to such court of the Director's action, and the court may, in its discretion,

180 determine whether the private attorney guardian ad litem should be released from the
181 case.

182 (9)(F)(i) A complaint shall be in writing, stating the name and contact information of
183 the complainant, the name of the child or children involved, the nature of the complaint
184 and the facts upon which the complaint is based.

185 (9)(F)(ii) In resolving a complaint, the Director or the Committee shall conduct such
186 investigation as the Director or the Committee determines to be reasonable. The
187 Director or the Committee may meet separately or together with the complainant and
188 the person against whom the complaint is filed.

189 (9)(F)(iii) The decision of the Director may include discipline of the person against
190 whom the complaint is filed. If the complaint is against a private guardian ad litem, the
191 decision may include removal of the private guardian ad litem from the list of private
192 guardians ad litem and the conditions for reinstatement.

193 (9)(G) This subsection does not apply to conflict guardians ad litem.
194

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, dating violence protective orders, 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;

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

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

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

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

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

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

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

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

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

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

(4) Prohibitions.

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

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

TAB 6



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: Policy and Planning Committee
From: Tim Shea *T. Shea*
Date: August 5, 2013
Re: Rules for comment

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

Rule summary

CJA 04-0101. Calendaring court sessions. Repeal. Annual calendars posted at the courthouse have been replaced by daily calendars published on the court's web site.

Encl. Draft rule

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@utcourts.gov

~~Rule 4-101. Calendaring court sessions.~~

~~Intent:~~

~~To establish a procedure for calendaring court sessions and cases.~~

~~Applicability:~~

~~This rule shall apply to all trial courts of record.~~

~~Statement of the Rule:~~

~~(1) The clerk of court of record shall, prior to October 1 of each year, schedule the time for holding court for each court site within that court's jurisdiction.~~

~~(2) The clerk of court shall annually prepare a court calendar which shall include:~~

~~(A) The locations within that court's jurisdiction in which court will be held.~~

~~(B) The dates when court will be held.~~

~~(3) The calendar shall be submitted to the Administrative Office prior to October 1 of each year. Calendars shall run from January 1 through December 31 of the following year.~~

~~(4) The calendar shall be posted in a conspicuous location at the appropriate courthouse.~~