

JUDICIAL COUNCIL MEETING

AGENDA

Monday, January 26, 2015

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

Judge Kimberly K. Hornak, Presiding

1. 9:00 a.m. Welcome & Approval of Minutes Judge Kimberly K. Hornak
(Tab 1 - Action)
2. 9:05 a.m. Administrator's Report. Daniel J. Becker
3. 9:20 a.m. Reports: Management Committee. Judge Kimberly K. Hornak
Liaison Committee. Justice Jill Parrish
Policy and Planning Judge Reed Parkin
Bar Commission. John Lund, esq.
(Tab 2 - Information)
4. 9:30 a.m. Rules for Final Action. Alison Adams-Perlac
(Tab 3 - Action)
5. 9:40 a.m. Senior Judge Certification. Nancy Sylvester
(Action)
6. 9:45 a.m. Early Case Resolution (ECR) Evaluation Study. Kort Prince
(Tab 4 - Information/Action) Erin B. Worwood
Utah Criminal Justice Center
- 10:25 a.m. Break
7. 10:35 a.m. Legislative Update/Interim Highlights. Rick Schwermer
(Information)
8. 10:50 a.m. New Justice Court Judge Certification. Rick Schwermer
(Tab 5 - Action)
9. 10:55 a.m. Judicial Assistant Reclassification Funding. Daniel J. Becker
(Action) Rob Parkes

- 10. 11:15 p.m. Rule 26 – Discovery Reform Evaluation Report.Paula Hanaford
(Tab 6 - Information) Cynthia Lee
- 11. 12:05 p.m. Executive Session
- 12:10 p.m. Lunch
- 12. 12:40 p.m. Adjourn

Consent Calendar

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

Note: Chief Justice Durrant will deliver his *State of the Judiciary Address* to the Legislature beginning at 2:15 p.m.

Transportation to the Capitol will be provided for Council members able to attend, and it will leave immediately following the Council meeting.

TAB 1

JUDICIAL COUNCIL MEETING

Minutes

Monday, December 15, 2014

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Jill Parrish
Hon. Marvin Bagley
Hon. Ann Boyden
Hon. James Davis
Hon. Glen Dawson
Hon. Thomas Higbee
Hon. David Marx
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
John Lund, esq.

EXCUSED:

Daniel J. Becker

STAFF PRESENT:

Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Derek Byrne
Alyn Lunceford
Rosa Oakes
Nancy Sylvester

GUESTS:

Judge Royal Hansen
Judge Mary Noonan

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

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Hornak moved to approve the minutes from the October 27, 2014 Judicial Council meeting as amended. Judge Boyden seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the following items:
2014-2015 local legislative meetings have been scheduled in each judicial district, with the first one scheduled for December 22 in the Sixth District.

3. ADMINISTRATOR'S REPORT: (Ray Wahl)

Mr. Wahl reported on the following items:
Report of the Utah Elected Official and Judicial Compensation Commission. Mr. Wahl distributed a copy of their 2014 report to members of the Council. He highlighted the following from the presentation made to the Executive Appropriations Committee on December 9, 2014, by the Elected Official and Judicial Compensation Commission to include the following:
1) Utah judicial salaries are headed toward the uncompetitive position; 2) judges caseloads are changing, noting an increase in civil filings; 3) judicial applicant pools are becoming smaller;

4) recruiting and retaining good judges requires reasonable salaries; 5) compared judicial salaries to public sector compensation; 6) the recommendation to increase trial court judges' salaries to \$160,000 per year over a two-year period; 7) the recommendation to increase Appellate Court and Supreme Court salaries at 105% and 110% of \$160,000, respectively over a two-year period; and 8) the recommendation of funding the judicial salary increase, ongoing, in the amount of \$4,013,000.

Mr. Schwermer provided responses to questions asked relative to the recommendations of increased judicial salaries by the Elected Offices and Judicial Compensation Commission.

Governor's FY 2016 Budget Recommendations. The Governor's FY 2016 budget recommendations were released on Thursday, December 11. Mr. Wahl highlighted the following relative to the recommendations: 1) 2% cost-of-living increase for staff, 2) juror/witness/interpreter supplemental for FY 2014 deficient in the amount of \$814,200, 3) Fourth District Court Juvenile Court judgeship and staff in the amount of \$385,000, 4) ongoing increase to eliminate the jury/witness/interpreter line item deficits in the amount or \$850,000, 5) replace trust GFR account appropriation with general fund, 6) judicial salary adjustment of 4 – 4.25% increase in the amount of \$1 million.

Mr. Schwermer highlighted the following additional FY 2016 budget recommendations: 1) \$1.5 million to fund the Justice Reinvestment Initiative (to be included if the Healthy Utah Plan is approved), 2) \$2 million to fund CCJJ grants relative to evidence-based practices, and 3) in addition to the 2% cost-of-living increase for staff, the Governor is recommending discretionary funding for other salary adjustments.

2014-2015 Legislative Meetings. Mr. Schwermer distributed a copy of the 2014/2015 schedule of legislative meetings to be held in each judicial district with the local legislators.

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 December.

Policy and Planning Meeting:

Judge Parkin reported on the following items:

The Policy and Planning Committee discussed the following at their December meeting:

1) media policy, 2) interpreter's role in the law library, and 3) model jury instruction.

Bar Commission Report:

Mr. Lund reported that the Bar Commission had discussion on what type of interaction they would like to take place between members of the Bar and members of the Judicial Council throughout the course of each year.

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

Mr. Schwermer highlighted the following in his legislative update to the Council:

1) reviewed the Senate standing committee and executive appropriations/appropriations subcommittee assignments, 2) reviewed the House of Representatives standing committee and executive appropriations subcommittee assignments, and 3) no interim committee meetings were held in December.

6. HIGH COST LEASE APPROVAL: (Alyn Lunceford)

Chief Justice Durrant welcomed Mr. Lunceford to the meeting.

Mr. Lunceford provided background information on the current lease agreement with Piute County. He mentioned that legislative approval to renew the amended lease was not required; it only required approval from the Judicial Council.

The Facilities Planning Committee is recommending approval of the amended high cost lease agreement for the Piute County court facility, for a period of 15 years, in the amount of \$669,500. The amended lease includes one five-year renewal and a repair and maintenance fund has been added to the renewal.

Motion: Judge Bagley moved to approve the amended high cost lease agreement for the Piute County court facility. Judge Davis seconded the motion, and it passed unanimously.

7. LANGUAGE ACCESS REPORT: (Alison Adams-Perlac)

Chief Justice Durrant welcomed Ms. Adams-Perlac to the meeting.

Ms. Adams mentioned that the 2012-2014 Language Access Report includes data on behalf of the Utah justice courts. She highlighted the following from the Language Access Report: 1) English fluency by Utah population; 2) language spoken at home; 3) speaks English less than very well; 4) interpreter credentialing types; 5) interpreter availability; 6) percent of hours interpreted per language; 7) district court – interpreted hearings by district, case type, and hearing type; 8) juvenile court – interpreted hearings by case and parties, and by district; 9) justice court – interpreted hearings by language, and by case type; 10) interpreter costs, 2012-2014; 11) change in language interpreting costs, 2013-2014; 12) travel costs, 2012-2014; 13) data sources used for preparing the report; 14) program costs vs. number of hearings; 15) staff interpreter program; 16) remote interpreting program; 17) the recommendation on behalf of the Language Access Committee to focus on improving record-keeping and interpreter schedule practices; and 18) the recommendation on behalf of the Language Access Committee to study and propose solutions for creating video recordings of hearings that require an ASL interpreter.

Ms. Adams-Perlac provided responses to questions asked during her report to the Council.

8. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Judge Dennis Barker has applied for appointment as an inactive senior judge. He meets the minimum performance standards.

Motion: Judge Mortensen moved to forward the recommendation, on behalf of the Council, to certify Judge Dennis Barker as an inactive senior judge. Judge Higbee seconded the motion, and it passed unanimously.

9. ADR COMMITTEE UPDATE: (Judge Royal Hansen and Nini Rich)

Chief Justice welcomed Judge Royal Hansen and Ms. Nini Rich to the meeting.

Judge Hansen and Ms Rich highlighted the following in their update to the Council:

- 1) the ADR Committee's current focus of creating a Best Practice Guide for Utah Mediators,
- 2) continuation of the ADR Department's annual 40-hour mediation training program,
- 3) coordination between the Self-Help Center and the ADR Department in scheduling mediations,
- 4) committee membership changes,
- 5) program structure and rationale,
- 6) ADR

program statistics for FY 2014, 7) ADR Committee and programs in 2014, and 8) ADR resources.

Chief Justice Durrant thanked Judge Hansen and Ms. Rich for their update.

10. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Mary Noonan and Dawn Marie Rubio)

Chief Justice Durrant welcomed Judge Noonan to the meeting.

Judge Noonan mentioned that Mr. Becker provided details of the Governor's FY 2016 budget relative to the courts at the December 12 Board of Juvenile Court Judges meeting. She also expressed the board's appreciation for the ongoing communication between the judiciary and the Judicial Performance Evaluation Commission (JPEC).

Judge Noonan highlighted the following board goals and study item in her update:

1) implementation of the juvenile court e-filing action plan in three phases; 2) implementation of the use of the Education Court Report Form statewide for DCFS caseworkers, probation officers, JJS case managers, and CASAs; 3) evaluating representation in juvenile court proceedings; and 4) study law clerk needs for the juvenile bench, statewide.

Judge Noonan provided an update on the discussion of shackling of youth offenders in court proceedings. The practice in Utah allows for indiscriminate shackling. A six month pilot is being conducted in Third District Court with respect to shackling practices which will end in February 2015. Youth offenders entering Judge Dane Nolan's and Judge James Miche's courtrooms will enter unshackled. Interviews will be conducted of youth on the effect of shackling upon entering court proceedings, and it will be noted if there are any disruptions as a result.

Mr. Schwermer noted that a protected bill has been drafted, for the upcoming legislative session, regarding the practice of unshackling.

Judge Noonan briefly mentioned the discussion of Judicial Conduct Commission jurisdiction among the Board and before the Management Committee.

Chief Justice Durrant thanked Judge Noonan for her Board of Juvenile Court Judges update to the Council.

11. EXECUTIVE SESSION

An executive session was not needed at this time.

12. ADJOURN

The meeting was adjourned.

TAB 2

Management Committee Minutes

**JUDICIAL COUNCIL MANAGEMENT COMMITTEE
MINUTES**

**Tuesday, January 13th, 2015
Matheson Courthouse
450 South State Street
Salt Lake City, Utah**

MEMBERS PRESENT:

Chief Justice Matthew B. Durrant, Chair
Hon. Kimberly Hornak
Hon. James Davis
Hon. John Sandberg
Hon. Randall Skanchy

STAFF PRESENT:

Daniel J. Becker
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Brent Johnson

EXCUSED:

GUESTS:

Judge Mark May

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 Skanchy moved to approve the December 9 Management Committee meeting minutes. Judge Davis seconded the motion, and it passed unanimously.

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

He reported on the following items:

Legislative Meetings. Legislative meetings in five of the eight judicial districts have been held. The legislative meetings were well attended by both judges and legislators. Mr. Becker mentioned the discussions that took place at several legislative meetings.

Governor's Proposed Budget. Mr. Becker clarified that the proposed budget for judicial compensation is 6.2%, which includes a 2% cost-of-living adjustment recommended for state employees generally.

E-Filing – Criminal Case Filing of the Informations. The effective date for mandatory e-filing of the informations in criminal cases was January 1. Implementation went very smooth. Mr. Becker mentioned that a one-month extension was granted to Salt Lake County, due to a pipe break in their office during the holidays, as they had to relocate to another location.

January 26 Council Meeting. A full agenda is scheduled for this meeting. Following the meeting, a van has been schedule to take Council members to the State of the Judiciary address.

JPEC Meeting. Chief Justice Durrant, Mr. Becker, and Mr. Schwermer attended JPECs monthly meeting this morning. Chief Justice Durrant, on behalf of the judiciary, encourage the commission to focus their efforts on the process at hand and not make additional changes at this

time.

Mr. Schwermer highlighted the following items discussed at the remainder of the meeting: 1) the judiciaries' response to the matter of procedural fairness, 2) soliciting ideas from members of the commission on ways to increase the attorney response rate to the surveys, 3) reviewed proposed changes to the staff and attorney surveys, 4) minor changes to be made to the 2018 mid-term evaluation with adoption for the 2018 retention election, 5) changes to the instructions for the 2016 surveys, 6) courtroom observer recruitment, and 7) the announcement of Chairman Schofield's resignation from the commission.

3. RULE 3-109 – ETHICS ADVISORY COMMITTEE: (Alison Adams-Perlac)

Chief Justice Durrant welcomed Ms. Adams-Perlac to the meeting.

Ms. Adams-Perlac reviewed the proposed changes to Rule 3-109 – Ethics Advisory Committee to include the following: 1) the proposed amendment would allow the Ethics Advisory Committee to issue an opinion in 60 days rather than the current 45 days, 2) the proposed amendment would allow the committee chair to extend the time for deliberations on an opinion as necessary, and 3) the proposed amendment would allow the boards of judges to request reconsideration of an opinion.

Motion: Judge Skanchy moved to approve the proposed amendments to Rule 3-109 – Ethics Advisory Committee and send the rule to Policy and Planning for final action. Judge Hornak Seconded the motion, and it passed unanimously.

4. RECORDS APPEAL PROCESS: (Alison Adams-Perlac)

Ms. Adams-Perlac mentioned that a draft rule was reviewed and discussed by the Policy and Planning Committee. The Policy and Planning Committee decided against recommending a rule change at this time. The matter relative to who should advise the Management Committee relative to the records appeal, at the time of appeal, and who will respond once a decision has been made was discussed by the committee.

Discussion took place.

Motion: Judge Hornak moved to have Ms. Adams-Perlac prepare an internal policy relative to the records appeal process. Ms. Gonzales will distribute such policy to the committee once completed. Judge Skanchy seconded the motion, and it passed unanimously.

5. CONDUCT COMMISSION JURISDICTION – FOLLOW-UP (Brent Johnson and Judge Mark May)

Chief Justice Durrant welcomed Mr. Johnson to the meeting.

Mr. Johnson provided follow-up to the Management Committee regarding concerns expressed by the Board of Juvenile Court Judges as a result of two letters sent by Mr. Colin Winchester, Executive Director of the Judicial Conduct Commission, regarding "Compliance with Rule of Juvenile Procedure 25(c)."

Mr. Johnson highlighted the following in his update of the matter to members of the Management Committee: 1) further communication with Mr. Winchester was noted, 2) documentation noting standards and referenced case law used from other states by the Judicial Conduct Commission was distributed, 3) relayed the intent of the Judicial Conduct Commission

with their communication to the judges and Board of District Court Judges, 4) information was shared with members of the Board of Juvenile Court Judges at their January meeting, and 5) members of the Board of Juvenile Court Judges expressed concern regarding the Judicial Conduct Commissions position relative to ethical vs. legal matters. Mr. Schwermer also reported on a conversation with Mr. Winchester.

Judge Mark May expressed concerns discussed by the Board of Juvenile Court Judges at their January meeting.

Discussion took place.

Motion: Judge Hornak moved to invite Mr. Colin Winchester to the February 10 Management Committee meeting to discuss the matter of conduct commission jurisdiction relative to the issues referenced in two letters sent by the Judicial Conduct Commission and brought to the attention of the Management Committee. Judge Mary Noonan, chair of the Board of District Court Judges, will also be invited to the meeting. Judge Davis seconded the motion, and it passed unanimously.

6. DAVIS COUNTY JUSTICE COURT DISSOLUTION NOTICE: (Rick Schwermer)

Mr. Schwermer provided background information relative to Davis County's notice of intent to dissolve the Davis County Justice Court and their request to shorten the time required between the notice and the effective date of the dissolution. The notice for dissolution by Davis County does not meet the statutory requirements for requesting dissolution of a county justice court. With the size of the Davis County Justice Court, legislative approval would need to be requested as cases would be transferred to district court.

Discussion took place and options were noted.

The Management Committee agreed to defer this matter for further discussion at the February 10 Management Committee meeting.

7. EARLY CASE RESOLUTION (ECR) EVALUATION STUDY: (Rick Schwermer)

Mr. Schwermer provided background information relative to the Early Case Resolution (ECR) Evaluation Study.

Mr. Schwermer highlighted the following relative to the ECR Program: 1) the Early Case Resolution (ECR) Program was undertaken as a three-year pilot program, 2) part of the funding for the program was provided by a grant, 3) the remainder of the program was collaboratively funded by the courts and Salt Lake County, 4) members of the ECR Committee were noted, 5) the pilot program was approved by the Judicial Council noting that an outcome evaluation would be conducted at the outset of the pilot program, 6) the ECR Committee reviewed the draft report at their December 17 meeting, 7) the findings of the report were summarized, 8) recommendations, on behalf of Third District Court, on how to proceed will be prepared, and 9) a report of the program findings will be given to the Council at their January 26 meeting.

Discussion took place.

The Management Committee agreed to the evaluation report being provided to the Council at their January 26 meeting with a proposal on how to proceed to be provided, to the Management Committee, at their February 10 meeting.

8. JUDICIAL ASSISTANT RECLASSIFICATION FUNDING: (Daniel J. Becker)

Mr. Becker provided background on the work of the JSR/JA Classification Study Group. The judicial assistant reclassification will be on the January 26 Council agenda for funding consideration.

The study group was charged with looking at the current classifications represented in the clerk's offices statewide and determining what changes, if any, should be made.

Upon completion of the study group's review of the current classifications, they recommended eliminating the judicial service representative classification and having the new entry level classification be that of the judicial assistant. Mr. Becker noted that the judicial assistant classification is a higher paid position and by making it the new entry level; entry into the clerk's office would require a college degree, or the equivalent education and experience.

The recommendation was discussed with the trial court executives at their December meeting.

Mr. Becker highlighted the following relative to the judicial assistant reclassification to include: 1) to fund the reclassification, it would require \$130,000 in additional funding, 2) some accrual of downsize savings and reduction in the number of managers has already taken place, and 3) the balance of funding will need to be secured by July 1.

Discussion took place.

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

Chief Justice Durrant reviewed the proposed Council agenda for the January 26 Council meeting.

Motion: Judge Skanchy moved to approve the Council agenda for the January Council meeting as amended. Judge Davis seconded the motion, and it passed unanimously.

10. ADJOURN

The meeting was adjourned.

**Policy and Planning
Committee Minutes**

Minutes of the Policy and Planning Committee

January 9, 2015

Draft

Members Present

Marvin Bagley, Ann Boyden, Glen R. Dawson, Thomas M. Higbee, John R. Lund, Reed S. Parkin

Staff

Alison Adams-Perlac

Guests

Nancy Volmer

(1) Approval of Minutes

Judge Boyden moved to approve the minutes of the December 5, 2014 meeting. Mr. Lund seconded the motion and it passed unanimously.

(2) Rule 3-111 – Performance Evaluation of Appellate Senior Judges

Ms. Adams-Perlac reviewed rule 3-111 and the accompanying performance plan for senior appellate judges. She stated that the comment period for rule 3-111 had closed, and that the proposal received no public comments. She stated that the version the committee should consider provided that senior appellate judges need only be evaluated at the end of each term, rather than at mid and end of term like the other senior judges.

Judge Dawson moved to approve both the rule and the form as written, with minor typographical edits. Mr. Lund seconded the motion and it passed unanimously. Judge Parkin requested that the committee be ready to discuss with the Judicial Council why it is recommending a different performance evaluation schedule for appellate senior judges. Ms. Adams-Perlac stated that she will include the reasoning the committee discussed when it recommended the rule for public comment in her memo to the Judicial Council.

(3) Rule 4-401.01 – Electronic Media Coverage of Court Proceedings

Ms. Volmer discussed the meetings she and Ms. Adams-Perlac have had with members of the media. She stated that the media has been supportive of a more open approach. Ms. Adams-Perlac discussed the proposed changes to the rule including that: 1) there is a presumption of electronic media coverage where the predominant purpose of the media coverage is journalism or dissemination of news to the public (the purpose was previously a factor to consider); 2) all requests to provide electronic media coverage come through the court's public information office; 3) there is a presumption that the news reporter whose request is granted by the court will provide pool coverage; 4) news reporters will share their files as soon as possible; and 5) members of the media who are unwilling to share their files will not be approved to provide coverage.

Minutes of the Policy and Planning Committee

Draft

January 9, 2015

Page 2

The committee discussed these changes. Mr. Lund suggested deleting "as soon as possible" from lines 104-105, and adding "promptly" before "share" on line 104. Judge Boyden suggested changing the last sentence of paragraph 4(C) to read, "Members of the media must be willing and able to share their files to be approved to provide coverage." Judge Higbee noted his disagreement with changing that language and stated that the initial language was more direct.

The committee discussed adding "promptly" to the first line of paragraph (2) on the Request and Order for Electronic Media Coverage of Court Proceedings form.

Judge Dawson moved to recommend the rule, as amended to the Council, and to amend the related form as discussed. Mr. Lund seconded the motion, and it passed unanimously.

Ms. Volmer and Ms. Adams-Perlac stated that they will be meeting with more members of the media before the next committee meeting. If there are no concerns, Ms. Adams-Perlac will forward the rule to the Council. Otherwise, the committee will consider any concerns at its February meeting. Either way, the proposed rule will be ready for the Council's consideration in February.

(4) Rule 3-201 – Public Comment for Court Commissioners

Ms. Adams-Perlac discussed the recommendations by the Commissioner Workgroup to require public comment on commissioners who are being appointed or retained. She stated that there is a question as to whether public comment should be required only for district court commissioners or for all court commissioners, including juvenile court commissioners. Ms. Adams-Perlac recommended that the comment period apply to all court commissioners and the committee agreed.

Mrs. Adams-Perlac reviewed the proposal to amend rule 3-201 to require public comment.

Mr. Lund suggested that the publication language mirror that of the publication language for judicial evaluations.

Ms. Adams-Perlac stated that she will review the publication language for judicial evaluations and revise the rule before the next meeting. She stated that she will also send the revised rule to Ms. Debra Moore, District Court Administrator, for her consideration before the next meeting.

The committee agreed to table the rule until its next meeting.

TAB 3



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: Alison Adams-Perlac *Alison Adams-Perlac*
Date: January 20, 2015
Re: Rules for Final Action Regarding Performance Evaluation of Senior Judges and Court Commissioners

The public comment period for rules 3-111, 3-201, 11-201, and 11-203 of the Utah Code of Judicial Administration have now closed. The Policy and Planning Committee has approved these proposals, including senior appellate judge performance evaluation forms, and they are now ready for final action by the Judicial Council. If the Council approves the rules as recommended, they will effective May 1, 2015. However, the Council may want to consider approving these rules on an expedited basis.

CJA 03-0111. Performance evaluation of senior judges and court commissioners. Amend. Requires senior judges in the district, juvenile and justice courts to undergo a performance evaluation every 18 months. Requires senior judges in the appellate court to undergo a performance evaluation every 3 years. Changes the evaluation criteria to more closely match the JPEC criteria.

After a prior proposal to amend rule 3-111 had gone out for public comment, Judge Fred Voros attended the Policy and Planning Committee Meeting to discuss his concerns with rule 3-111 as it relates to senior appellate judges. He explained that the performance evaluation process would be quite onerous for the presiding judge at the appellate level to complete. He also stated that senior appellate judges may not need to be evaluated as often, since they have much more oversight than other senior judges

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.

have. Senior appellate judges work quite closely with the appellate bench so that their work is evaluated on an ongoing basis.

The Policy and Planning Committee discussed that the process for evaluating senior appellate judges was not particularly onerous for the appellate court, especially considering that there are so few senior appellate judges compared to senior judges at the district, juvenile and justice court levels. However, the committee found Judge Voros's point that senior appellate judges have more oversight to be very compelling.

The Policy and Planning Committee voted to recommend for public comment a revision of rule 3-111 that would require senior appellate judges to be evaluated only at the end of their terms. The Committee also approved performance evaluation and performance plan forms which take into account this change.

The revised proposal was published for comment and no comments were received. The Committee then voted to recommend the revised proposal, as written, to the Council.

CJA 03-0201. Court commissioners. Amend. Requires a court commissioner to undergo a performance evaluation annually.

The proposed rule received no public comments and the committee voted to recommend the rule, as written, to the Council.

CJA 11-0201. Senior judges. Amend. Establishes a residency requirement. Requires a senior judge to undergo a performance evaluation every 18 months after a first term.

The proposal received no public comments and the committee voted to recommend the rule, as written, to the Council.

CJA 11-0203. Senior justice court judges. Amend. Establishes a residency requirement. Requires a senior justice court judge to undergo a performance evaluation every 18 months after a first term.

The proposed rule received no public comments and the committee voted to recommend the rule, as written, to the Council

Encl. CJA 3-111
 Active Senior Appellate Judge Performance Evaluation
 Active Senior Appellate Judge Performance Plan
 CJA 3-201
 CJA 11-201
 CJA 11-203

1 **Rule 3-111 Performance evaluation of senior judges and court commissioners.**

2 Intent:

3 To establish a performance evaluation, including the criteria upon which senior
4 judges and court commissioners will be evaluated, the standards against which
5 performance will be measured and the methods for fairly, accurately and reliably
6 measuring performance.

7 To generate and to provide to senior judges and court commissioners information
8 about their performance.

9 To establish the procedures by which the Judicial Council will evaluate and certify
10 senior judges and court commissioners for reappointment.

11 Applicability:

12 This rule shall apply to presiding judges, the Board of Justice Court Judges and the
13 Judicial Council, and to the active senior judges and court commissioners of the
14 appellate courts, courts of record and courts not of record.

15 Statement of the Rule:

16 (1) Performance evaluations.

17 (1)(A) On forms provided by the administrative office, the presiding judge of the
18 appellate courts shall complete an evaluation of the appellate senior judge's
19 performance at the end of each term.

20 (1)(B) On forms provided by the administrative office, the presiding judge of the
21 district a court commissioner primarily serves shall complete an annual evaluation of the
22 court commissioner's performance.

23 (1)(B) On forms provided by the administrative office, the presiding judge of the
24 district an active senior judge primarily serves shall complete an evaluation of the senior
25 judge's performance every eighteen months starting after the senior judge's initial term.

26 (1)(C) On forms provided by the administrative office, the chair of the Board of
27 Justice Court Judges shall complete an evaluation of the active senior justice court
28 judge's performance every eighteen months starting after the senior judge's initial term.

29 (1)(D) The presiding judge shall provide a copy of each commissioner evaluation to
30 the Judicial Council.

31 (1)(E) If a senior judge receives an overall “Needs Improvement” rating on the
32 performance evaluation, the evaluator shall provide a copy of the evaluation to the
33 Judicial Council.

34 (2) Active S senior judges and court commissioners shall be evaluated and certified
35 upon the following criteria:

36 (2)(A) integrity demonstration of understanding of the substantive law and any
37 relevant rules of procedure and evidence;

38 (2)(B) knowledge and understanding of the law and procedures attentiveness to
39 factual and legal issues before the court;

40 (2)(C) ability to communicate adherence to precedent and ability to clearly explain
41 departures from precedent;

42 (2)(D) preparation, attentiveness, dignity and control over proceedings grasp of the
43 practical impact on the parties of the commissioner’s or senior judge’s rulings, including
44 the effect of delay and increased litigation expense;

45 (2)(E) skills as a manager ability to write clear judicial opinions;

46 (2)(F) punctuality ability to clearly explain the legal basis for judicial opinions;

47 (2)(G) service to the profession and the public demonstration of courtesy toward
48 attorneys, court staff, and others in the commissioner’s or senior judge’s court; and

49 (2)(H) effectiveness in working with other court personnel maintenance of decorum
50 in the courtroom;

51 (2)(I) demonstration of judicial demeanor and personal attributes that promote public
52 trust and confidence in the judicial system;

53 (2)(J) preparation for hearings or oral argument;

54 (2)(K) avoidance of impropriety or the appearance of impropriety;

55 (2)(L) display of fairness and impartiality toward all parties;

56 (2)(M) ability to clearly communicate, including the ability to explain the basis for
57 written rulings, court procedures, and decisions;

58 (2)(N) management of workload;

59 (2)(O) willingness to share proportionally the workload within the court or district, or
60 regularly accepting assignments; and

61 (2)(P) issuance of opinions and orders without unnecessary delay.

62 (3) Senior judges shall also be evaluated on their ability and willingness to use the
63 court's case management systems in all cases.

64 ~~(42)~~ Standards of performance.

65 ~~(42)~~(A) Survey of attorneys.

66 ~~(42)~~(A)(i) The Council shall measure satisfactory performance by a sample survey of
67 the attorneys appearing before the senior judge or court commissioner during the period
68 for which the senior judge or court commissioner is being evaluated. The Council shall
69 measure satisfactory performance based on the results of the final survey conducted
70 during a court commissioner's term of office, subject to the discretion of a court
71 commissioner serving an abbreviated initial term not to participate in a second survey
72 under Section (2)(A)(vi) of this rule.

73 ~~(42)~~(A)(ii) Survey scoring. The survey shall be scored as follows.

74 ~~(42)~~(A)(ii)(a) Each question of the attorney survey will have six possible responses:
75 Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No
76 Personal Knowledge. A favorable response is Excellent, More Than Adequate or
77 Adequate.

78 ~~(42)~~(A)(ii)(b) Each question shall be scored by dividing the total number of favorable
79 responses by the total number of all responses, excluding the "No Personal Knowledge"
80 responses. A satisfactory score for a question is achieved when the ratio of favorable
81 responses is 70% or greater.

82 ~~(42)~~(A)(ii)(c) A court commissioner's performance is satisfactory if:

83 ~~(42)~~(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

84 ~~(42)~~(A)(ii)(c)(2) the favorable responses when divided by the total number of all
85 responses, excluding "No Personal Knowledge" responses, is 70% or greater.

86 ~~(32)~~(A)(ii)(d) The Judicial Council shall determine whether the senior judge's survey
87 scores are satisfactory.

88 ~~(42)~~(A)(iii) Survey respondents. The Administrative Office of the Courts shall identify
89 as potential respondents all lawyers who have appeared before the court commissioner
90 during the period for which the commissioner is being evaluated.

91 ~~(42)~~(A)(iv) Exclusion from survey respondents.

92 ~~(42)~~(A)(iv)(a) A lawyer who has been appointed as a judge or court commissioner
93 shall not be a respondent in the survey. A lawyer who is suspended or disbarred or who
94 has resigned under discipline shall not be a respondent in the survey.

95 ~~(42)~~(A)(iv)(b) With the approval of the Management Committee, a court
96 commissioner may exclude an attorney from the list of respondents if the court
97 commissioner believes the attorney will not respond objectively to the survey.

98 ~~(42)~~(A)(v) Number of survey respondents. The Surveyor shall identify 180
99 respondents or all attorneys appearing before the court commissioner, whichever is
100 less. All attorneys who have appeared before the senior judge shall be sent a survey
101 questionnaire as soon as possible after the hearing.

102 ~~(42)~~(A)(vi) Administration of the survey. Court commissioners shall be the subject of
103 a survey approximately six months prior to the expiration of their term of office. Court
104 commissioners shall be the subject of a survey during the second year of each term of
105 office. Newly appointed court commissioners shall be the subject of a survey during the
106 second year of their term of office and, at their option, approximately six months prior to
107 the expiration of their term of office.

108 ~~(42)~~(A)(iv) Survey report. The Surveyor shall provide to the subject of the survey, the
109 subject's presiding judge, and the Judicial Council the number and percentage of
110 respondents for each of the possible responses on each survey question and all
111 comments, retyped and edited as necessary to redact the respondent's identity.

112 ~~(42)~~(B) Survey of presiding judges and court staff. The Council shall measure
113 performance of senior judges by a survey of all presiding judges and trial court
114 executives of districts in which the senior judge has been assigned. The Administrative
115 Office of the Courts shall distribute survey forms with instructions to return completed
116 surveys to the Surveyor. The Surveyor shall provide to the subject of the survey, the
117 subject's presiding judge, and the Judicial Council the number and percentage of
118 respondents for each of the possible responses on each survey question and all
119 comments, retyped and edited as necessary to redact the respondent's identity. The

120 Judicial Council shall determine whether the senior judge's survey scores are
121 satisfactory.

122 ~~(42)~~(C) Case under advisement standard. A case is considered to be under
123 advisement when the entire case or any issue in the case has been submitted to the
124 senior judge or court commissioner for final determination. The Council shall measure
125 satisfactory performance by the self-declaration of the senior judge or court
126 commissioner or by reviewing the records of the court.

127 (4)(C)(i) A senior judge or court commissioner in a trial court demonstrates
128 satisfactory performance by holding:

129 ~~(42)~~(C)(i)(a) no more than three cases per calendar year under advisement more
130 than 60 days after submission; and

131 ~~(42)~~(C)(i)(b) no case under advisement more than 180 days after submission.

132 (4)(C)(ii) A senior judge in the court of appeals demonstrates satisfactory
133 performance by:

134 (4)(C)(ii)(a) circulating no more than an average of three principal opinions per
135 calendar year more than six months after submission with no more than half of the
136 maximum exceptional cases in any one calendar year; and

137 (4)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of no
138 more than 120 days after submission.

139 ~~(42)~~(D) Compliance with education standards. Satisfactory performance is
140 established if the senior judge or court commissioner annually complies with the judicial
141 education standards of this Code, subject to the availability of in-state education
142 programs. The Council shall measure satisfactory performance by the self-declaration
143 of the senior judge or court commissioner or by reviewing the records of the state court
144 administrator.

145 ~~(42)~~(E) Substantial compliance with Code of Judicial Conduct. Satisfactory
146 performance is established if the response of the senior judge or court commissioner
147 demonstrates substantial compliance with the Code of Judicial Conduct, if the Council
148 finds the responsive information to be complete and correct and if the Council's review
149 of formal and informal sanctions lead the Council to conclude the court commissioner is

150 in substantial compliance with the Code of Judicial Conduct. Under Rule 11-201 and
151 Rule 11-203, any sanction of a senior judge disqualifies the senior judge from
152 reappointment.

153 ~~(42)~~(F) Physical and mental competence. Satisfactory performance is established if
154 the response of the senior judge or court commissioner demonstrates physical and
155 mental competence to serve in office and if the Council finds the responsive information
156 to be complete and correct. The Council may request a statement by an examining
157 physician.

158 ~~(53)~~(A) At its meeting in August, the Council shall begin the process of determining
159 whether the senior judges and court commissioners whose terms of office expire that
160 year meet the standards of performance provided for in this rule. The Administrative
161 Office of the Courts shall assemble all evaluation information, including:

162 ~~(53)~~(A)(i) survey scores;

163 ~~(53)~~(A)(ii) judicial education records;

164 ~~(53)~~(A)(iii) self-declaration forms;

165 ~~(53)~~(A)(iv) records of formal and informal sanctions; and

166 ~~(53)~~(A)(v) performance evaluations, if the commissioner or senior judge received an
167 overall rating of Needs Improvement; and

168 ~~(5)~~(A)(vi) any information requested by the Council.

169 ~~(53)~~(B) Prior to the meeting the Administrative Office of the Courts shall deliver the
170 records to the Council and to the senior judges and court commissioners being
171 evaluated.

172 ~~(53)~~(C) In a session closed in compliance with Rule 2-103, the Council shall
173 consider the evaluation information and make a preliminary finding of whether a senior
174 judge or court commissioner has met the performance standards.

175 ~~(53)~~(D) If the Council finds the senior judge or court commissioner has met the
176 performance standards, it is presumed the Council will certify the senior judge or court
177 commissioner for reappointment. If the Council finds the senior judge or court
178 commissioner did not meet the performance standards, it is presumed the Council will
179 not certify the senior judge or court commissioner for reappointment. The Council may

180 certify the senior judge or court commissioner or withhold decision until after meeting
181 with the senior judge or court commissioner.

182 (53)(E) A presumption against certification may be overcome by a showing of good
183 cause to the contrary. A presumption in favor of certification may be overcome by:

184 (53)(E)(i) reliable information showing non-compliance with a performance standard;
185 or

186 (53)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to
187 demonstrate lack of substantial compliance with the Code of Judicial Conduct.

188 (53)(F) At the request of the Council the senior judge or court commissioner shall
189 meet with the Council in September. At the request of the Council the presiding judge
190 shall report to the Council any meetings held with the senior judge or court
191 commissioner, the steps toward self-improvement identified as a result of those
192 meetings, and the efforts to complete those steps. Not later than 5 days after the August
193 meeting, the Administrative Office of the Courts shall deliver to the senior judge or court
194 commissioner being evaluated notice of the Council's action and any records not
195 already delivered to the senior judge or court commissioner. The notice shall contain an
196 adequate description of the reasons the Council has withheld its decision and the date
197 by which the senior judge or court commissioner is to deliver written materials. The
198 Administrative Office of the Courts shall deliver copies of all materials to the Council and
199 to the senior judge or court commissioner prior to the September meeting.

200 (53)(G) At its September meeting in a session closed in accordance with Rule 2-103,
201 the Council shall provide to the senior judge or court commissioner adequate time to
202 present evidence and arguments in favor of certification. Any member of the Council
203 may present evidence and arguments of which the senior judge or court commissioner
204 has had notice opposed to certification. The burden is on the person arguing against the
205 presumed certification. The Council may determine the order of presentation.

206 (53)(H) At its September meeting in open session, the Council shall approve its final
207 findings and certification regarding all senior judges and court commissioners whose
208 terms of office expire that year.

**Rule 3-111 Performance evaluation of senior
judges and court commissioners.**

Draft: January 9, 2015

209 ~~(53)~~(l) The Judicial Council shall communicate its certification decision to the senior
210 judge or court commissioner. The Judicial Council shall communicate its certification
211 decision for senior judges to the Supreme Court and for court commissioners to the
212 presiding judge of the district the commissioner serves.

UTAH STATE COURTS
ACTIVE SENIOR APPELLATE JUDGE PERFORMANCE EVALUATION

Senior Judge:
Presiding Judge:
Evaluation Period:

INSTRUCTIONS

Active senior appellate judges shall be evaluated at the end of each term based on the seventeen performance criteria listed below and provided with an overall rating for the review period. The presiding judge shall provide a rating for each criterion. Additionally, for any criteria rated as “needs improvement”, the presiding judge shall provide a written justification summarizing the senior judge’s performance during the evaluation period. The presiding judge may take into account attorney surveys when evaluating a senior judge. When rating a senior judge’s performance, the presiding judge shall use the following scale:

- **Needs Improvement** – The senior judge does not meet expectations and requires improvement in the rating area as designated on the attached annual performance plan.
- **Meets Expectations** – The senior judge is performing at the expected level, and may periodically exceed expectations.
- **Exceeds Expectations** – The senior judge consistently exceeds expectations.

In evaluating the senior judge, the presiding judge may consider feedback from other members of the bench and court employees who work with the senior judge.

PERFORMANCE CRITERIA

1. Demonstrates an Understanding of the Substantive Law and Relevant Rules of Procedure and Evidence

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable
Justification:

2. Is Attentive to the Factual and Legal Issues before the Court

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable
Justification:

3. Adheres to Precedent and Clearly Explains Any Departures from Precedent

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable
Justification:

4. Grasps the Practical Impact on the Parties of the Judge’s Rulings, Including the Effect of Delay and Increased Litigation Expense

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable
Justification:

5. Writes Clear Judicial Opinions

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

6. Clearly Explains the Legal Basis for Judicial Opinions

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

7. Demonstrates Courtesy toward Attorneys, Court Staff, and Others in the Judge's Court

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

8. Maintains Decorum in the Courtroom

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

9. Demonstrates Judicial Demeanor and Personal Attributes that Promote Public Trust and Confidence in the Judicial System

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

10. Prepares for Oral Arguments

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

11. Avoids Impropriety and the Appearance of Impropriety

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

12. Displays Fairness and Impartiality toward All Parties

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

13. Communicates Clearly and Explains the Basis for Written Rulings, Court Procedures, and Decisions

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

14. Manages Workload Appropriately

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

15. Regularly Accepts Case Assignments

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

16. Issues Opinions and Orders without Unnecessary Delay

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

17. Demonstrates the Ability and Willingness to Use the Court's Case Management Systems in All Cases

Rating: Needs Improvement Meets Expectations Exceeds Expectations Not Applicable

Justification:

OVERALL PERFORMANCE RATING FOR EVALUATION PERIOD

Provide a cumulative rating of the senior judge's performance for the designated evaluation period, reflective of the ratings for the sixteen performance criteria.

Rating: Needs Improvement Meets Expectations Exceeds Expectations

Justification:

SENIOR JUDGE COMMENTS

Please attach or include any comments provided by the senior judge to the evaluation.

CERTIFICATION

We have discussed this performance evaluation in detail and the senior judge understands the evaluation. Future expectations are clear as the presiding judge has provided a new performance plan with clear objectives for the next evaluation period.

Senior Judge Signature:

Date:

Presiding Judge Signature:

Date:

UTAH STATE COURTS
ACTIVE SENIOR APPELLATE JUDGE PERFORMANCE PLAN

Senior Judge:
Presiding Judge:
Plan Period:

INSTRUCTIONS

The performance plan communicates the performance expectations for an active senior appellate judge in the upcoming evaluation period. Expectations should include addressing a “needs improvement” rating on a core performance criterion, and may detail job specific requirements. The expectations should be clear, concise, and reasonable. The performance plan should be the basis of the presiding judge’s meetings with senior judge throughout the evaluation period.

PERFORMANCE EXPECTATIONS

Please check the box next to each performance criterion to be addressed by the performance plan, and explain expectations for improvement.

Demonstrates an Understanding of the Substantive Law and Relevant Rules of Procedure and Evidence
Expectations:

Is Attentive to the Factual and Legal Issues before the Court
Expectations:

Adheres to Precedent and Clearly Explains Any Departures from Precedent
Expectations:

Grasps the Practical Impact on the Parties of the Judge’s Rulings, Including the Effect of Delay and Increased Litigation Expense
Expectations:

Writes Clear Judicial Opinions
Expectations:

Clearly Explains the Legal Basis for Judicial Opinions
Expectations:

Demonstrates Courtesy toward Attorneys, Court Staff, and Others in the Judge’s Court
Expectations:

Maintains Decorum in the Courtroom

Expectations:

Demonstrates Judicial Demeanor and Personal Attributes that Promote Public Trust and Confidence in the Judicial System

Expectations:

Prepares for Oral Arguments

Expectations:

Avoids Impropriety and the Appearance of Impropriety

Expectations:

Displays Fairness and Impartiality toward All Parties

Expectations:

Communicates Clearly and Explains the Basis for Written Rulings, Court Procedures, and Decisions

Expectations:

Manages Workload Appropriately

Expectations:

Regularly Accepts Case Assignments

Expectations:

Issues Opinions and Orders without Unnecessary Delay

Expectations:

Demonstrates the Ability and Willingness to Use the Court's Electronic Case Management Systems in All Cases

Expectations:

Other

Expectations:

CERTIFICATION

We have discussed the performance expectations and objectives on this performance plan and both parties understand them. The performance expectations of this performance plan will be considered in the senior judge's next performance evaluation.

Senior Judge Signature:

Date:

Presiding Judge Signature:

Date:

1 **Rule 3-201. Court commissioners.**

2 Intent:

3 To define the role of court commissioner.

4 To establish a term of office for court commissioners.

5 To establish uniform administrative policies governing the qualifications,
6 appointment, supervision, discipline and removal of court commissioners.

7 To establish uniform administrative policies governing the salaries, benefits and
8 privileges of the office of court commissioner.

9 Applicability:

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

11 Statement of the Rule:

12 (1) Definition. Court commissioners are quasi-judicial officers established by the
13 Utah Code.

14 (2) Qualifications.

15 (A) Court commissioners must be at least 25 years of age, United States citizens,
16 Utah residents for three years preceding appointment and residents of Utah while
17 serving as commissioners. A court commissioner shall reside in a judicial district the
18 commissioner serves.

19 (B) Court commissioners must be admitted to practice law in Utah and exhibit good
20 character. Court commissioners must possess ability and experience in the areas of law
21 in which the court commissioner serves.

22 (C) Court commissioners shall serve full time and shall comply with Utah Code
23 Section 78A-2-221.

24 (3) Appointment - Oath of office.

25 (A) Selection of court commissioners shall be based solely upon consideration of
26 fitness for office.

27 (B) When a vacancy occurs or is about to occur in the office of a court
28 commissioner, the Council shall determine whether to fill the vacancy. The Council may
29 determine that the court commissioner will serve more than one judicial district.

30 (C) A committee for the purpose of nominating candidates for the position of court
31 commissioner shall consist of one judge from each court that the commissioner will
32 serve, three lawyers, and two members of the public. Committee members shall be
33 appointed by the presiding judge of the district court of each judicial district. The
34 committee members shall serve three year terms, staggered so that not more than one
35 term of a member of the bench, bar, or public expires during the same calendar year.
36 The presiding judge shall designate a chair of the committee. All members of the
37 committee shall reside in the judicial district. All members of the committee shall be
38 voting members. A quorum of one-half the committee members is necessary for the
39 committee to act. The committee shall act by the concurrence of a majority of the
40 members voting. When voting upon the qualifications of a candidate, the committee
41 shall follow the voting procedures of the judicial nominating commissions.

42 (D) If the commissioner will serve more than one judicial district, the presiding judges
43 of the districts involved shall select representatives from each district's nominating
44 committee to form a joint nominating committee with a size and composition equivalent
45 to that of a district committee.

46 (E) No member of the committee may vote upon the qualifications of any candidate
47 who is the spouse of that committee member or is related to that committee member
48 within the third degree of relationship. No member of the committee may vote upon the
49 qualifications of a candidate who is associated with that committee member in the
50 practice of law. The committee member shall declare to the committee any other
51 potential conflict of interest between that member and any candidate as soon as the
52 member becomes aware of the potential conflict of interest. The committee shall
53 determine whether the potential conflict of interest will preclude the member from voting
54 upon the qualifications of any candidate. The committee shall record all declarations of
55 potential conflicts of interest and the decision of the committee upon the issue.

56 (F) The administrative office of the courts shall advertise for qualified applicants and
57 shall remove from consideration those applicants who do not meet minimum
58 qualifications of age, citizenship, residency, and admission to the practice of law. The

59 administrative office of the courts shall develop uniform guidelines for the application
60 process for court commissioners.

61 (G) The nominating committee shall review the applications of qualified applicants
62 and may investigate the qualifications of applicants to its satisfaction. The committee
63 shall interview selected applicants and select the three best qualified candidates. The
64 committee may indicate its order of preference. The chair of the committee shall present
65 the names, applications, and the results of background investigations of the nominees
66 to the judges of the courts the court commissioner will serve.

67 (H) The judges of the courts the court commissioner will serve shall select one of the
68 nominees by a concurrence of a majority of judges voting. The concurrence of each
69 court independent of the others is necessary for selection.

70 (I) The presiding judge of the district court of the district the court commissioner will
71 primarily serve shall present the name of the selected candidate to the Council. The
72 selection shall be final upon the concurrence of two-thirds of the members of the
73 Council. The Council shall vote upon the selection within 45 days of the selection or the
74 concurrence of the Council shall be deemed granted.

75 (J) If the Council does not concur in the selection, the judges of the district may
76 select another of the nominees or a new nominating process will be commenced.

77 (K) The appointment shall be effective upon the court commissioner taking and
78 subscribing to the oath of office required by the Utah Constitution and taking any other
79 steps necessary to qualify for office. The court commissioner shall qualify for office
80 within 45 days after the concurrence by the Council.

81 (4) Term of office. The court commissioner shall be appointed until December 31 of
82 the third year following concurrence by the Council. At the conclusion of the first term of
83 office and each subsequent term, the court commissioner shall be retained for a term of
84 four years unless the judges of the courts the commissioner serves remove the
85 commissioner in accordance with paragraph (6)(B). The term of office of court
86 commissioners holding office on April 1, 2011 shall end December 31 of the year in
87 which their term would have ended under the former rule.

88 (5) Performance evaluation. The presiding judge ~~or judges of the district shall~~
89 ~~develop a performance plan for the court commissioner and shall prepare an evaluation~~
90 of the commissioner's performance on an annual basis, on forms provided by the
91 administrative office. The presiding judge shall provide copies of the evaluation to the
92 Judicial Council. A copy of the performance plan and any subsequent evaluation shall
93 be maintained in the official personnel file in the administrative office. Court
94 commissioners shall comply with the program for judicial performance evaluation,
95 including any recommendations made in the evaluation.

96 (6) Removal and sanctions.

97 (A) If the commissioner's performance is not satisfactory, the presiding judge, with
98 the concurrence of the judges of that jurisdiction, may discipline the commissioner or
99 remove the commissioner from office. If the commissioner disagrees with the presiding
100 judge's decision, the commissioner may request a review of the decision by the
101 Management Committee of the Council.

102 (B) The court commissioner may be removed by the Council:

103 (i) as part of a reduction in force;

104 (ii) for failure to meet the evaluation and certification requirements; or

105 (iii) as the result of a formal complaint filed under CJA Rule 3-201.02 upon the
106 concurrence of two-thirds of the Council.

107 (C) The court commissioner may be removed without cause by the judges of the
108 courts the commissioner serves at the conclusion of a term of office. Removal under
109 this paragraph shall be by the concurrence of a majority of all judges of the courts the
110 commissioner serves. A decision to remove a commissioner under this paragraph shall
111 be communicated to the commissioner within a reasonable time after the decision is
112 made, and not less than 30 days prior to termination.

113 (D) The court commissioner may be sanctioned by the Council as the result of a
114 formal complaint or by the presiding judge or judges of the courts the commissioner
115 serves. Sanctions may include but are not limited to private or public censure,
116 restrictions in case assignments, mandatory remedial education, suspension for a
117 period not to exceed 60 days, and reduction in salary.

118 (7) Salaries and benefits.

119 (A) The Council shall annually establish the salary of court commissioners. In
120 determining the salary of the court commissioners, the Council shall consider the effect
121 of any salary increase for judges authorized by the Legislature and other relevant
122 factors. Except as provided in paragraph (6), the salary of a commissioner shall not be
123 reduced during the commissioner's tenure.

124 (B) Court commissioners shall receive annual leave of 20 days per calendar year
125 and the same sick leave benefits as judges of the courts of record. Annual leave not
126 used at the end of the calendar year shall not accrue to the following year. A
127 commissioner hired part way through the year shall receive annual leave on a pro rated
128 basis. Court commissioners shall receive the same retirement benefits as non-judicial
129 officers employed in the judicial branch.

130 (8) Support services.

131 (A) Court commissioners shall be provided with support personnel, equipment, and
132 supplies necessary to carry out the duties of the office as determined by the presiding
133 judge.

134 (B) Court commissioners are responsible for requesting necessary support services
135 from the presiding judge.

1 **Rule 11-201. Senior judges.**

2 Intent:

3 To establish the qualifications, term, authority, appointment and assignment for
4 senior judges and active senior judges.

5 Applicability:

6 This rule shall apply to judges of courts of record.

7 The term "judge" includes justices of the Supreme Court.

8 Statement of the Rule:

9 (1) Qualifications.

10 (1)(A) Senior Judge. To be a senior judge, a judge shall:

11 (1)(A)(i) have been retained in the last election for which the judge stood for election;

12 (1)(A)(ii) have voluntarily resigned from judicial office, retired upon reaching the
13 mandatory retirement age, or, if involuntarily retired due to disability, shall have
14 recovered from or shall have accommodated that disability;

15 (1)(A)(iii) demonstrate appropriate ability and character;

16 (1)(A)(iv) be admitted to the practice of law in Utah, but shall not practice law; and

17 (1)(A)(v) be eligible to receive compensation under the Judges' Retirement Act,
18 subject only to attaining the appropriate age.

19 (1)(B) Active Senior Judge. To be an active senior judge, a judge shall:

20 (1)(B)(i) meet the qualifications of a senior judge;

21 (1)(B)(ii) be a current resident of Utah;

22 (1)(B)(iii) be physically and mentally able to perform the duties of judicial office;

23 (1)(B)(iv) maintain familiarity with current statutes, rules and case law;

24 (1)(B)(v) satisfy the education requirements of an active judge;

25 (1)(B)(vi) attend the annual judicial conference;

26 (1)(B)(vii) accept assignments, subject to being called, at least two days per
27 calendar year;

28 (1)(B)(viii) conform to the Code of Judicial Conduct, the Code of Judicial
29 Administration and rules of the Supreme Court;

30 (1)(B)(~~viii~~x) obtain attorney survey results on the final judicial performance evaluation
31 survey conducted prior to termination of service sufficient to have been certified for
32 retention election regardless whether the survey was conducted for self-improvement
33 or certification;

34 (1)(B)(ix) continue to meet the requirements for certification for judicial retention
35 election as those requirements are determined by the Judicial Council to be applicable
36 to active senior judges;

37 (1)(B)(xi) undergo a performance evaluation every eighteen months following an
38 initial term as an active senior judge; and

39 (1)(B)(xii) take and subscribe an oath of office to be maintained by the state court
40 administrator.

41 (2) Disqualifications. To be an active senior judge, a judge:

42 (2)(A) shall not have been removed from office or involuntarily retired on grounds
43 other than disability;

44 (2)(B) shall not have been suspended during the judge's final term of office or final
45 six years in office, whichever is greater;

46 (2)(C) shall not have resigned from office as a result of negotiations with the Judicial
47 Conduct Commission or while a complaint against the applicant was pending before the
48 Supreme Court or pending before the Judicial Conduct Commission after a finding of
49 reasonable cause; and

50 (2)(D) shall not have been subject to any order of discipline for conduct as a senior
51 judge.

52 (3) Term of Office.

53 (3)(A) The initial term of office of a senior judge is until December 31 of the second
54 year following appointment. The initial term of office of an active senior judge less than
55 age 75 years is until December 31 of the second year following appointment or until
56 December 31 of the year in which the judge reaches age 75, whichever is shorter. The
57 initial term of office of an active senior judge age 75 years or more is until December 31
58 of the year following appointment.

59 (3)(B) A subsequent term of office of a senior judge is for three years. A subsequent
60 term of office of an active senior judge is three years or until December 31 of the year in
61 which the judge reaches age 75, whichever is shorter. The subsequent term of office of
62 an active senior judge age 75 years or more is for one year.

63 (3)(C) All subsequent appointments begin on January 1. The Supreme Court may
64 withdraw an appointment with or without cause.

65 (3)(D) The term of office of senior judges and active senior judges in office on
66 November 1, 2005 shall continue until December 31 of the year in which their terms
67 would have expired under the former rule.

68 (4) Authority. A senior judge may solemnize marriages. In addition to the authority of
69 a senior judge, an active senior judge, during an assignment, has all the authority of the
70 office of a judge of the court to which the assignment is made.

71 (5) Application and Appointment.

72 (5)(A) To be appointed a senior judge or active senior judge a judge shall apply to
73 the Judicial Council and submit relevant information as requested by the Judicial
74 Council.

75 (5)(B) The applicant shall:

76 (5)(B)(i) provide the Judicial Council with the record of all orders of discipline entered
77 by the Supreme Court; and

78 (5)(B)(ii) declare whether at the time of the application there is any complaint against
79 the applicant pending before the Supreme Court or pending before the Judicial Conduct
80 Commission after a finding of reasonable cause.

81 (5)(C) The Judicial Council may apply to the judicial performance evaluation
82 information the same standards and discretion provided for in Rule 3-111.05. After
83 considering all information the Judicial Council may certify to the Supreme Court that
84 the applicant meets the qualifications of a senior judge or active senior judge and the
85 Chief Justice may appoint the judge as a senior judge or active senior judge.

86 Judges who declined, under former Rule 3-111, to participate in an attorney survey
87 in anticipation of retirement may use the results of an earlier survey to satisfy
88 Subsection (1)(B)(viii).

89 (6) Assignment.

90 (6)(A) With the consent of the active senior judge, the presiding judge may assign an
91 active senior judge to a case or for a specified period of time. Cumulative assignments
92 under this subsection shall not exceed 60 days per calendar year except as necessary
93 to complete an assigned case.

94 (6)(B) In extraordinary circumstances and with the consent of the active senior
95 judge, the chief justice may assign an active senior judge to address the extraordinary
96 circumstances for a specified period of time not to exceed 60 days per calendar year,
97 which may be in addition to assignments under subsection (6)(A). To request an
98 assignment under this subsection, the presiding judge shall certify that there is an
99 extraordinary need. The state court administrator shall certify whether there are funds
100 available to support the assignment.

101 (6)(C) An active senior judge may be assigned to any court other than the Supreme
102 Court.

103 (6)(D) The state court administrator shall provide such assistance to the presiding
104 judge and chief justice as requested and shall exercise such authority in making
105 assignments as delegated by the presiding judge and chief justice.

106 (6)(E) Notice of an assignment made under this rule shall be in writing and
107 maintained by the state court administrator.

1 **Rule 11-203. Senior justice court judges.**

2 Intent:

3 To establish the qualifications, term, authority, appointment and assignment for
4 senior justice court judges and active senior justice court judges.

5 Applicability:

6 This rule shall apply to judges of courts not of record.

7 Statement of the Rule:

8 (1) Qualifications.

9 (1)(A) Senior Justice Court Judge. To be a senior justice court judge, a judge shall:

10 (1)(A)(i) have been certified by the Judicial Council for retention election or
11 reappointment at the last time the Judicial Council considered the judge for certification;

12 (1)(A)(ii) have voluntarily resigned from judicial office, retired upon reaching the
13 mandatory retirement age, or, if involuntarily retired due to disability, shall have
14 recovered from or shall have accommodated that disability;

15 (1)(A)(iii) demonstrate appropriate ability and character;

16 (1)(A)(iv) have been in office for at least five years; and

17 (1)(A)(v) comply with the restrictions on secondary employment provided by the
18 Utah Code.

19 (1)(B) Active Senior Justice Court Judge. To be an active senior justice court judge,
20 a judge shall:

21 (1)(B)(i) meet the qualifications of a senior justice court judge;

22 (1)(B)(ii) be a current resident of Utah;

23 (1)(B)(iii) be physically and mentally able to perform the duties of judicial office;

24 (1)(B)(iv) maintain familiarity with current statutes, rules and case law;

25 (1)(B)(v) satisfy the education requirements of an active justice court judge;

26 (1)(B)(vi) accept assignments, subject to being called, at least two days per calendar
27 year;

28 (1)(B)(vii) conform to the Code of Judicial Conduct, the Code of Judicial
29 Administration and rules of the Supreme Court;

30 (1)(B)(viii) continue to meet the requirements for certification as those requirements
31 are determined by the Judicial Council to apply to active senior justice court judges; and

32 (1)(B)(~~viii~~x) undergo a performance evaluation every eighteen months following an
33 initial term as an active senior judge; and

34 (1)(B)(x) take and subscribe an oath of office to be maintained by the state court
35 administrator.

36 (2) Disqualifications. To be an active senior justice court judge, a judge shall not:

37 (2)(A) have been removed from office or involuntarily retired on grounds other than
38 disability;

39 (2)(B) have been suspended during the judge's final term of office or final four years
40 in office, whichever is greater;

41 (2)(C) have resigned from office as a result of negotiations with the Judicial Conduct
42 Commission or while a complaint against the applicant was pending before the
43 Supreme Court or pending before the Judicial Conduct Commission after a finding of
44 reasonable cause; and

45 (2)(D) have been subject to any order of discipline for conduct as a senior justice
46 court judge.

47 (3) Term of Office.

48 (3)(A) The initial term of office of a senior justice court judge is until December 31 of
49 the second year following appointment. The initial term of office of an active senior
50 justice court judge less than age 75 years is until December 31 of the second year
51 following appointment or until December 31 of the year in which the judge reaches age
52 75, whichever is shorter. The initial term of office of an active senior justice court judge
53 age 75 years or more is until December 31 of the year following appointment.

54 (3)(B) A subsequent term of office of a senior justice court judge is for three years. A
55 subsequent term of office of an active senior justice court judge is three years or until
56 December 31 of the year in which the judge reaches age 75, whichever is shorter. The
57 subsequent term of office of an active senior justice court judge age 75 years or more is
58 for one year.

59 (3)(C) All subsequent appointments begin on January 1. The Supreme Court may
60 withdraw an appointment with or without cause.

61 (3)(D) The term of office of senior justice court judges and active senior justice court
62 judges in office on November 1, 2005 shall continue until December 31 of the year in
63 which their terms would have expired under the former rule.

64 (4) Authority. A senior justice court judge may solemnize marriages. In addition to
65 the authority of a senior justice court judge, an active senior justice court judge, during
66 an assignment, has all the authority of a justice court judge.

67 (5) Application and Appointment.

68 (5)(A) To be appointed a senior justice court judge or active senior justice court
69 judge a judge shall apply to the Judicial Council and submit relevant information as
70 requested by the Judicial Council.

71 (5)(B) The applicant shall:

72 (5)(B)(i) provide the Judicial Council with the record of all orders of discipline entered
73 by the Supreme Court; and

74 (5)(B)(ii) declare whether at the time of the application there is any complaint against
75 the applicant pending before the Supreme Court or pending before the Judicial Conduct
76 Commission after a finding of reasonable cause.

77 (5)(C) The Judicial Council may apply to the judicial performance evaluation
78 information the same standards and discretion provided for in Rule 3-111.04. After
79 considering all information the Judicial Council may certify to the Supreme Court that
80 the applicant meets the qualifications of a senior justice court judge or active senior
81 justice court judge. The chief justice may appoint the judge as a senior justice court
82 judge or active senior justice court judge.

83 (6) Assignment.

84 (6)(A) With the consent of the active senior justice court judge, the appointing
85 authority for a justice court may assign an active senior justice court judge to a case or
86 for a specified period of time. Cumulative assignments under this subsection shall not
87 exceed 60 days per calendar year except as necessary to complete an assigned case.

88 (6)(B) In extraordinary circumstances and with the consent of the active senior
89 justice court judge, the chief justice may assign an active senior justice court judge to
90 address the extraordinary circumstances for a specified period of time not to exceed 60
91 days per calendar year, which may be in addition to assignments under subsection
92 (6)(A). To request an assignment under this subsection, the appointing authority shall
93 certify that there is an extraordinary need.

94 (6)(C) An active senior justice court judge may be assigned to any justice court in
95 the state.

96 (6)(D) The appointing authority shall make the assignment in writing and send a
97 copy to the court to which the active senior justice court judge is assigned and to the
98 state court administrator.