

JUDICIAL COUNCIL MEETING

AGENDA

Monday, February 23, 2015

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

1. 9:00 a.m. Welcome & Approval of Minutes Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 9:05 a.m. Chair's Report. Chief Justice Matthew B. Durrant
3. 9:15 a.m. Administrator's Report. Daniel J. Becker
4. 9:30 a.m. Reports: Management Committee. . . . Chief Justice Matthew B. Durrant
Liaison Committee. Justice Jill Parrish
Policy and Planning Judge Reed Parkin
Bar Commission. John Lund, esq.
(Tab 2 - Information)
5. 9:40 a.m. Rule 4-401.01 – Electronic Media Coverage of Court
Proceedings. Alison Adams-Perlac
(Tab 3 - Action)
6. 10:05 a.m. Rules for Final Action. Alison Adams-Perlac
(Tab 4 – Action)
7. 10:15 a.m. Technical Corrections to Rule 3-111 – Performance
Evaluation of Senior Judges and Court Commissioners
and to Rule 11-201 – Senior Judges. Alison Adams-Perlac
(Tab 5 - Action)
8. 10:25 a.m. Ethics Advisory Committee Update. Judge Michele Christiansen
(Information) Brent Johnson
- 10:45 a.m. Break
9. 10:55 a.m. Box Elder Mental Health Court Application. Judge Brian Cannell
(Tab 6 – Action) Rick Schwermer
10. 11:05 a.m. Legislative and Interim Highlights. Rick Schwermer
(Information)

TAB 1

JUDICIAL COUNCIL MEETING

Minutes

Monday, January 26, 2015

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

Judge Kimberly K. Hornak, 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:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Nancy Sylvester
Rob Parkes

GUESTS:

Kort Prince, UCJC
Erin B. Worwood, UCJC
Rob Butters, UCJC
David Litvack, CJAC
Patricia Cassell, SL County DA Ofc
Jim Bradley, SL County Council
Max Burdick, SL County Council
Michael Postma, District Attorney
Paula Hanaford-Agor, NCSC
Cynthia Lee, NCSC
Justice Christine Durham
Justice Thomas Lee

1. WELCOME AND APPROVAL OF MINUTES: (Judge Kimberly K. Hornak)

Judge Hornak welcomed everyone to the meeting. She mentioned that Chief Justice Durrant was attending the Conference of Chief Justices mid-year meeting, and he was traveling back to Utah for the remainder of the meeting and to deliver the State of Judiciary address this afternoon. It was noted that Justice Parrish went through the Senate Confirmation hearing process for her appointment as a federal judge. Judge Hornak expressed to Justice Parrish, on behalf of the Council, how proud they were of her accomplishments and nomination. Judge Hornak extended a special welcome to Mr. Max Burdick and Mr. Jim Bradley of the Salt Lake County Council.

Motion: Judge Skanchy moved to approve the minutes from the December 15, 2014 Judicial Council meeting. The motion was seconded, and it passed unanimously.

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

Mr. Becker reported on the following items:

Legislative Meetings. Legislative meetings were held in all judicial districts, and they were very well attended by both judges and legislators. Mr. Becker mentioned the discussions that took place at the legislative meetings.

Elected Offices and Judicial Compensation Commission Update. A bill has been drafted to fund the proposed recommendations made by the Elected Offices and Judicial Compensation Commission.

SJR003 – Proposal to amend Utah Constitution. A bill has been sponsored by Senator Stephen Urquhart requesting a constitutional amendment regarding the practice of law.

Six-Month Case Filing Update. District court case filings, overall, reflect a 1% increase compared to a 4% decrease in FY2014. Juvenile court referrals, overall, reflect a 2% decrease compared to a 5% decrease in FY2014. Justice court case filings, overall, reflect a 6% decrease.

National Filing Trends. Mr. Becker distributed a copy of a document prepared by the National Center of State Courts (NCSC) on filing trends of state courts nationally.

State Audit of Drug Courts. The audit has been completed by State audit. The results of the audit will be shared with the Council at their February meeting. He highlighted the following recommendations resulting from the audit: 1) more attention to Utah-based data, 2) better use of Medicaid dollars, and 3) a need for more administrative oversight. Mr. Becker responded to questions asked relative to the audit.

2015 Legislative Session. The 2015 legislative session begins today. The legislative appropriations process will begin on Wednesday. Base budget meetings will be discussed in four separate meetings, already scheduled. A request, for budget cuts in the amount of 2%, has been made to all state entities. Three meetings will be devoted to discussing building block requests. The courts budget will be discussed at the February 3 Appropriations Subcommittee meeting.

State of the Judiciary Address. Chief Justice Durrant will deliver the State of the Judiciary address this afternoon. Transportation will be provided for Council members able to attend.

Annual Report to the Community. A copy of the 2015 Annual Report to the Community was distributed to members of the Council. Copies of the annual report will be available at all court locations.

3. **COMMITTEE REPORTS:**

Management Committee Report:

Judge Hornak 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:

Justice Parrish mentioned that she was not in attendance at the last meeting. Judge Mortensen provided an update to the Council, on behalf of the Liaison Committee meeting.

He reported on the following items: 1) the majority of the bills considered by the Liaison Committee, no position was taken; and 2) HB 137 – Change to mandatory retirement age for judges, sponsored by Representative Kraig Powell.

Judge Mortensen provided background information on HB 137 – Change to mandatory retirement age for judges. Mr. Becker shared information, with regard to retirement age in other state court systems. Mr. Schwermer noted what is set in statute with regard to retirement age. The Liaison Committee recommended opposing HB 137, but they are requesting Council input. Discussion took place.

Motion: Judge Higbee moved to oppose HB 137 – Change to mandatory retirement age for judges. The motion was seconded, and it passed unanimously.

Policy and Planning Meeting:

Judge Parkin reported on the following items: 1) continued focus on Rule 4-401.01 – Electronic Media Coverage of Court Proceedings, and 2) continued discussion on Rule 3-201 – Public comment for court commissioners.

Bar Commission Report:

Mr. Lund reported on the following items: 1) Associate Justice Anthony M. Kennedy, US Supreme Court, will provide the keynote address at the Bar's Summer Convention in Sun Valley, Idaho July 29-Aug 1; 2) the lodging options for the Bar's Summer Convention are provided on the Bar's website; 3) the Bar Commission met on Friday, January 23 at the BYU Law School; 4) selection of Mr. Thomas Seiler and Mr. Rob Rice for the upcoming bar presidency election; and 5) the Bar's focus on SJR003 – Proposal to amend Utah Constitution—regarding the practice of law, sponsored by Senator Stephen Urquhart.

4. RULES FOR FINAL ACTION: (Alison Adams-Perlac)

Judge Hornak welcomed Ms. Adams-Perlac to the meeting.

Ms. Adams-Perlac reported that the Policy and Planning Committee recommended final action for the following rules:

CJA – 03-0111 – Performance evaluation of senior judges and court commissioners. The rule has been amended to: 1) require senior judges in the district, juvenile and justice courts to undergo a performance evaluation every 18 months, 2) require senior judges in the appellate court to undergo a performance evaluation every three years, and 3) changes the evaluation criteria to more closely match the JPEC criteria.

CJA 03-0201 – Court commissioners. The rule has been amended to require a court commissioner to undergo a performance evaluation annually.

CJA 11-0201 – Senior judges. The rule has been amended to: 1) establish a residency requirement, and 2) require a senior judge to undergo a performance evaluation every 8 months after a first term.

CJA 11-0203 – Senior justice court judges. The rule has been amended to: 1) establish a residency requirement, and 2) require a senior justice court judge to undergo a performance evaluation every 18 months after a first term.

Ms. Adams-Perlac mentioned that the Policy and Planning Committee has recommended an effective date of May 1, 2015, if the rules are approved. She noted that the Council may want to consider approving the rules on an expedited basis.

Discussion took place. Members of the Council expressed concerns with rule pertaining to the process for evaluating senior judges in the appellate court.

Motion: Judge Dawson moved to approve the rules as recommended by the Policy and Planning Committee, on an expedited basis. Judge Parkin seconded the motion. The motion passed with Justice Parrish, Judge Skanchy, Judge Marx and Judge Sandberg voting no.

5. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)

Judge Hornak welcomed Ms. Sylvester to the meeting.

Ms. Sylvester mentioned that information on the requests for appointment as active/inactive senior judge certification was distributed to each Council member, at their seats, for their review.

The following judges have applied for senior judge appointments: 1) Justice Nehring has applied to be appointed as an active senior judge, 2) retired Judge Raymond Uno has applied for appointment as an inactive senior judge, and 3) retired Judge Darwin Poulsen has applied for appointment as an inactive senior judge.

All three judges meet the minimum performance standards.

Motion: Justice Parrish moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify the following: 1) Justice Ronald Nehring as an active senior judge, 2) Judge Raymond Uno as an inactive senior judge, and 3) Judge Darwin Poulsen as an inactive senior judge. Judge Mortensen seconded the motion, and it passed unanimously.

6. EARLY CASE RESOLUTION (ECR) EVALUATION STUDY: (Kort Prince, and Erin Worwood)

Judge Hornak welcomed Mr. Prince and Ms. Worwood to the meeting.

Mr. Schwermer provided background information on the Early Case Resolution (ECR) Pilot Program approved by the Council for a three-year period. An outcome evaluation report of the pilot program was requested by the Council at the time of approval.

The Utah Criminal Justice Center of the University of Utah has completed an outcome evaluation report. Mr. Kort Prince and Ms. Erin Worwood highlighted the following in their review of the evaluation findings: 1) sample selection of cases where the defendant was booked into the Salt Lake County jail, broken down by ECR/non-ECR cases; 2) comparison of ECR and non-ECR cases; 3) probation statistics; 4) statewide recidivism; 5) faster case processing; 6) provide "same justice sooner"; 7) access to treatment services; 8) reduce recidivism; and 9) evaluate program.

It was noted that a copy of the final report was included with the Council's meeting materials.

Discussion took place.

Comments were provided on what to consider regarding the direction to take relative to early case resolution in the Utah court system. Consideration regarding inclusion of evidence-based, best practice programs was noted.

Judge Royal Hansen, Third District Court, has established a subcommittee to address the findings from the Early Case Resolution (ECR) evaluation study and develop a plan of action relative to the current program and how to move forward.

Motion: Judge Sandberg moved to defer the matter to the February 10 Management Committee meeting for further program analysis to be prepared by the Third District Court and provided for consideration. Justice Parrish seconded the motion, and it passed unanimously.

7. LEGISLATIVE UPDATE/INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer highlighted the following in his update: 1) local legislative meetings had similar participation, by judges and legislators, as in past years, 2) SJR003 – Proposal to amend Utah constitution, sponsored by Senator Stephen Urquhart, 3) HB 136 – Campaign disclosures for judicial retention elections, sponsored by Representative Brad King, and 4) more bill files requested this year compared to previous years.

8. NEW JUSTICE COURT JUDGE CERTIFICATION: (Rick Schwermer)

Mr. Schwermer recommended the certification of the following three justice court judges who recently completed justice court judge orientation and passed the orientation exam: 1) Mr. Ronald Elton, Grantsville City Justice Court; 2) Mr. Dee Smith, Ogden City Justice Court; and 3) Mr. Timothy Smith, Panguitch City Justice Court.

Motion: Judge Higbee moved to approve the certification of Mr. Ronald Elton, Mr. Dee Smith and Mr. Timothy Smith as justice court judges. Judge Mortensen seconded the motion, and it passed unanimously.

9. JUDICIAL ASSISTANT RECLASSIFICATION FUNDING: (Daniel J. Becker and Rob Parkes)

Mr. Becker provided background information relative to the Comprehensive Clerical Study recommendations that were adopted by the Council in 2009. Objectives outlined in the Study and implemented included the following: 1) address the type of clerical support the courts foresee with future changes in case filings and the electronic environment, 2) increased opportunities for employee advancement, 3) reduce and minimize employee turnover, and 4) improve public service.

An online training program was developed to provide self-directed training for clerical staff.

Mr. Becker highlighted the following statistics from 2008 to the present to include: 1) turnover rate during the first year of employment in 2008, 41%; 2) turnover rate in first year of employment in 2014, 8.5%; 3) 2012-2014 – 60% of clerical staff holds a bachelor's degree; and 4) an investment, to date, of an additional \$2 million was made to implement the reclassification recommendation made in the 2009 study. This information was presented as context for the recommendation to be presented by Mr. Parkes.

Mr. Parkes provided background information on the recommendation proposed by the JSR/JA Classification Study Group. The study group was charged with looking at the current classifications represented in the clerk's offices, statewide. They were to determine 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.

Factors considered in making the recommendation include: 1) more flexibility to move clerical staff internally, 2) the workforce has changed over time, 3) a more professional demeanor is represented by the current clerical staff, and 4) ability to provide clerical support remotely.

Mr. Becker highlighted the following relative to the proposed recommendation for funding the judicial assistant reclassification: 1) to fund the reclassification, it would require \$130,000 in additional funding, 2) some accrual of downsizing 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.

Motion: Judge Bagley moved to approve the funding for the judicial assistant reclassification. Judge Dawson seconded the motion, and it passed unanimously.

10. RULE 26 – DISCOVER REFORM EVALUATION REPORT: (Paula Hanaford-Agor and Cynthia Lee)

Mr. Shea provided background information relative to the changes made to the rules governing discovery in civil cases filed in the Utah district courts.

Mr. Shea introduced and welcomed Ms. Paula Hanaford-Agor and Ms. Cynthia Lee of the National Center for State Courts (NCSC) to the meeting.

Ms. Paula Hanaford-Agor and Ms. Cynthia Lee provided an overview of their research and findings of *the Impact of the Revisions to Rule 26 on Discovery Practice in the Utah District Courts*.

The following information was reviewed in the evaluation process: 1) comparison of cases, 2) survey of attorneys, 3) judicial focus groups, and 4) litigation cost estimates.

Working hypotheses in the expected short-term impact included: 1) increased orders to amend pleadings to facilitate tier assignment, 2) increased motions to amend pleadings to adjust tier assignment, 3) increased proportion of Tier 2 and Tier 3 cases, 4) increased amended disclosures, and 5) increased motions/stipulations for extraordinary discovery.

Working hypotheses in the expected long term impact included: 1) reduced time to complete discovery, 2) reduced filing-to-disposition time, 3) decreased discovery costs, 4) increased filings of lower value (Tier 1) cases, 5) lower compliance by SRLs, and 6) increased trial rates or decreased trial rates.

The key findings included: 1) impact on monthly civil case filings; 2) discovery tier assignments – pre and post implementation findings; 3) discovery tier assignments for cases in which an answer was filed; 4) cumulative probability of survival without disposition, all tiers and case types; 5) frequency of discovery disputes; 6) litigant representation status; 7) both parties represented; 8) estimated litigation costs; and 9) compliance with standard discovery.

Concerns were expressed in the following areas: 1) tier inflation, 2) compliance/enforcement issues, 3) attorney ratings of impact on case, and 4) why are so few cases litigated.

Questions were asked throughout the presentation. Ms. Hanaford-Agor and Ms. Lee provided responses to the questions asked of them.

Ms. Hanaford-Agor and Ms. Lee were thanked for their presentation. They were scheduled to present these findings to the Civil Procedures Committee later in the week.

11. EXECUTIVE SESSION

An executive session was not needed at this time.

12. ADJOURN

Motion: Judge Mortensen moved to adjourn the meeting. Judge Boyden seconded the motion, and it passed unanimously.

The meeting was adjourned.

TAB 2

**Management Committee
Minutes**

**JUDICIAL COUNCIL MANAGEMENT COMMITTEE
MINUTES**

**Tuesday, February 10th, 2015
Matheson Courthouse
450 South State Street
Salt Lake City, Utah**

MEMBERS PRESENT:

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

EXCUSED:

Hon. James Davis

GUESTS:

Judge Royal Hansen
Judge Vernice Trease
Judge Mary Noonan
Jim Bradley, SL County Council
Max Burdick, SL County Council
2 SL County Staff
Mike Postma
David Litvack
Colin Winchester

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
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 Skanchy moved to approve the January 13, 2015 Management Committee meeting minutes. Judge Sandberg seconded the motion, and it passed unanimously.

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

He reported on the following items:

Legislative Session Update. He highlighted the following in his update: 1) the base budget was adopted, 2) a draft list of potential cuts in the amount of 2% of each agency budget was prepared by the respective appropriation subcommittees, 3) the draft list reflected potential cuts for the courts to include \$1.38 million from the court's contract and lease budget and a \$829,000 general fund reduction in personnel, 4) Executive Appropriations took action on the potential cuts with \$1.8 million in budget cuts, the two potential cuts impacting the courts were

not included, 5) judgeship requests for the Fourth District Juvenile Court and the Fifth District Court passed out of committee, 6) the ADR fee increase passed out of committee, 7) two bills have been drafted to implement the recommendations proposed by the Elected Offices and Judicial Compensation Commission—one to address judicial salaries and one to address elected official's salaries, 8) the Provo Courthouse expansion project is still being considered, and 8) several issues such as the Healthy Utah Plan and the Justice Reinvestment Initiative have not yet been addressed.

3. RULE 3-111 – PERFORMANCE EVALUATION OF SENIOR JUDGES AND COURT COMMISSIONERS: (Alison Adams-Perlac and Tim Shea)

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

The Management Committee was reminded that Rule 3-111 – Performance evaluation of senior judges and court commissioners was considered for final action at the January 26 Judicial Council meeting. The rule, along with the other rules being considered for final action, was approved with several Council members voting no.

At the conclusion of the January 26 Judicial Council meeting, several Council members expressed concerns to Mr. Becker regarding the evaluation schedule for senior judges in the Court of Appeals which differs from the schedule for senior judges in the trial courts, as well as, the process by which the difference was determined.

Mr Shea provided background information on communication that took place regarding Rule 3-111 between the Policy and Planning Committee, the boards of judges, the presiding judges, and the court executives. He emphasized the involvement undertaken by the Court of Appeals judges throughout the process of amending Rule 3-111. It was noted that senior judges cannot sit in on Supreme Court oral arguments and that the Supreme Court was not notified of the proposed changes to Rule 3-111. The Management Committee was reminded that the Supreme Court is responsible for appointing senior judges.

Mr. Shea noted some technical amendments to Rules 11-201 and 11-203 to bring consistency between the two rules and Rule 3-111.

Discussion took place.

Motion: Judge Skanchy moved to recommend technical amendments be made to bring consistency in Rule 3-111, Rule 11-201, and Rule 11-203 and be placed on the February Judicial Council agenda for further action. Judge Hornak seconded the motion, and it passed unanimously.

4. EARLY CASE RESOLUTION (ECR) PILOT PROGRAM: (Judge Royal Hansen, Judge Vernice Trease, Jim Bradley, and Max Burdick)

Chief Justice Durrant welcomed Judge Royal Hansen; Judge Vernice Trease; Jim Bradley Salt Lake County Council; Max Burdick, Salt Lake County Council; and other Salt Lake County staff members in attendance.

Judge Royal Hansen provided background information on the Early Case Resolution (ECR) program which was approved by the Council as a three-year pilot program. It was noted that the Council approved the pilot program with the request that an evaluation report would be prepared at the end of the three-year period. Judge Hansen reported that an ECR Subcommittee has been formed and chaired by Judge Vernice Trease to gain input from the appropriate stakeholders, discuss any concerns and matters of importance relative to the ECR pilot program,

and determine what action(s) to take relative to early case resolution.

Judge Trease listed the members of the ECR Subcommittee to include: 1) Judge Randall Skanchy, 2) Judge Paul Maughan, 3) Judge Ann Boyden, 4) Judge Mark Kouris, and 5) Judge Richard McKelvie. The subcommittee was divided into three groups. Each group met with all stakeholders requesting input on the current program, and noting concerns and aspects of the program to take into consideration when determining what changes to make.

A follow-up meeting has been held by the subcommittee to discuss input received from all stakeholders. The matter will be discussed further at the Third District bench meeting at the end of February.

Mr. Bradley and Mr. Burdick, Salt Lake County Council, provided input on the current ECR program and their interest to keep it up and running. They requested that all stakeholders be included as decisions and plans are made relative to what changes and direction the ECR program will take in the future.

Discussion took place.

Judge Hansen, Mr. Becker and Mr. Schwermer expressed the sense of urgency to make positive changes to the current program and determine more beneficial aspects of the program.

Chief Justice Durrant thanked Mr. Bradley and Mr. Burdick for their remarks and their interest in the Early Case Resolution (ECR) Program.

5. SECOND DISTRICT, DAVIS AND WEBER COUNTIES JUVENILE COURT TRUST ACCOUNTS, LIMITED AUDIT: (Heather Mackenzie-Campbell)

Chief Justice Durrant welcomed Ms. Mackenzie-Campbell to the meeting.

Ms. Mackenzie-Campbell reported on the Second District, Davis and Weber Counties Juvenile Court Trust Accounts, Limited Audit which was prompted by the appointment of a new clerk of court in September 2014.

The audit findings showed that all trust fund accounting reviewed for the audit period were performed according to state laws, judicial rules, and accounting policies and procedures which resulted in preparation of only an executive summary.

Ms. Mackenzie-Campbell highlighted the following commendable procedures recognized during the audit: 1) separation of duties, 2) trust check writing, and 3) trust account reconciliation.

Motion: Judge Hornak moved to accept the Second District, Davis and Weber Counties Juvenile Court Trust Accounts, Limited Audit as prepared. Judge Sandberg seconded the motion, and it passed unanimously.

6. FOURTH DISTRICT, JUAB COUNTY, NEPHI CITY JUSTICE COURT, FULL AUDIT: (Heather Mackenzie-Campbell)

Ms. Mackenzie-Campbell reported on the Fourth District, Juab County, Nephi City Justice Court, Full Audit. Background information on the court included: 1) court staff consists of a 26 hour per week part-time clerk and the judge, 2) the clerk left employment with the justice court during the audit, 3) a Juab County Justice Court clerk performed the clerical duties until the January 2015 hiring of a new clerk, and 4) the court relocated from a building shared with the Nephi City Police Department to an office in the Juab County building.

Ms. Mackenzie-Campbell highlighted the following from her report: 1) four commendable procedures, 2) 33 of 56 observations were found as significant areas for

improvement, 3) 6 of the 33 observations found as significant areas for improvement were new reportable items not found in other audits, and 4) many areas of improvement found may benefit from onsite IT training.

Discussion took place.

Mr. Becker suggested that it may be beneficial to draft a letter to the Nephi City Council and City Attorney with a copy of the audit attached noting the importance of the audit issues being resolved before their court is up for recertification.

Concerns were expressed relative to other small justice courts where audits may result in similar findings and the importance of onsite training, when deemed necessary. It was suggested that Mr. Schwermer, Ms. Mackenzie-Campbell and the Board of Justice Court Judges discuss the matter further and put a plan in place to educate clerks on the proper court processes and necessary training.

Motion: Judge Skanchy moved to accept the report to include the following: 1) the court's audit staff conduct an interim follow-up, 2) a request for Ms. Mary Barrientez, IT staff, to provide the necessary onsite training to the clerk, 3) a letter be sent to the Nephi City Council and the Nephi City Attorney regarding the audit relative to their next recertification, and 4) a copy of the audit be reviewed by the Board of Justice Court Judges to determine what further action should be taken. Judge Hornak seconded the motion, and it passed unanimously.

7. CONDUCT COMMISSION JURISDICTION: (Colin Winchester)

Chief Justice Durrant welcomed Mr Winchester and Judge Noonan to the meeting.

Mr. Becker provided background information on the matter as discussed at the December Management Committee meeting.

Judge Hornak spoke on behalf of the Board of Juvenile Court Judges and concerns expressed regarding matters before the Conduct Commission which they have determined deal with legal error.

Mr. Winchester highlighted the following relative to the complaint received by the Judicial Conduct Commission of a juvenile court judge which they determined dealt with a matter of legal error: 1) reviewed the respective complaint regarding a juvenile court judge, 2) sought input from Judge Janice Frost to determine the procedure followed by juvenile court judges in the particular matter, 4) concluded that no further investigation was appropriate and that the matter dealt with legal error, 5) a letter of education was sent to the appropriate judge, 6) a redacted copy of the complaint was sent to Ms. Rubio to educate the juvenile judges/board on the situation, 7) 10 such letters of education were sent to various judges in 2013/2014, 8) 3 of the 10 letters of education were addressed additionally to three AOC staff for additional awareness and training opportunities, and 9) noted the exceptions to considering legal error matters.

Discussion took place.

Chief Justice Durrant thanked Mr. Winchester for providing clarification to members of the Management Committee on the matter of the Judicial Conduct Commission jurisdiction.

8. DAVIS COUNTY JUSTICE COURT DISSOLUTION: (Rick Schwermer)

Mr. Schwermer provided an update to members of the Management Committee on Davis County Justice Court's request to shorten the time required between the notice and the effective date of the dissolution. He reminded the committee that legislative approval would need to be requested, due to the size of the Davis County Justice Court, as cases would be transferred to

district court. To date, no bill requests, on behalf of Davis County, relative to their request for dissolution have been drafted.

Mr. Schwermer mentioned that discussion of the statutory requirement on the salary matter pertaining to the Davis County Justice Court Judge has taken place between the judge and the County.

Discussion took place.

Motion: Judge Hornak moved to place the Davis County Justice Court dissolution request be placed on the March 13 Judicial Council agenda for further action. Judge Sandberg seconded the motion, and it passed unanimously.

9. BOX ELDER MENTAL HEALTH COURT APPLICATION: (Rick Schwermer)

Mr. Schwermer provided background information on the First District Mental Health Court expansion project. He highlighted the following: 1) concern with the consideration of the following relative to selecting the target population -as well as motivational history and apparent readiness for change, represent additional eligibility factors that may be taken into consideration; and 2) concern with the gap in community supervision.

Discussion took place. Mr. Schwermer made recommendations to the proposed application.

Motion: Judge Hornak moved to accept the application with the recommended changes and place it on the February Judicial Council agenda for approval. Judge Sandberg seconded the motion, and it passed unanimously.

10. COMMITTEE APPOINTMENT: (Brent Johnson)

The Ethics Advisory Committee recommended reappointment of the following two committee members whose first terms will expire in the spring: 1) Judge Catherine Roberts, justice court representative; and 2) Ms. Tawni Anderson, attorney representative.

Motion: Judge Sandberg moved to approve the recommendations for reappointment of the following Ethics Advisory Committee members to serve a second term: 1) Judge Catherine Roberts, justice court representative; and 2) Ms. Tawni Anderson, attorney representative; and place it on the February Judicial Council calendar. Judge Hornak seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reviewed the proposed Council agenda for the February 23 Council meeting.

Motion: Judge Hornak moved to approve the Council agenda for the February 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 Sandberg seconded the motion, and it passed unanimously.



12. EXECUTIVE SESSION:
An executive session was held at this time.

13. ADJOURN
The meeting was adjourned.



Liaison Committee Minutes

JUDICIAL COUNCIL LIAISON COMMITTEE MEETING

**Minutes
Friday, January 16, 2015
Matheson Courthouse
Council Room**

Honorable Jill Parrish, Presiding

ATTENDEES:

Hon. Thomas M. Higbee
Justice Jill Parrish
Hon. David Mortensen

STAFF PRESENT:

Alison Adams-Perlac
Daniel J. Becker
Brent Johnson
Nancy Merrill
Rick Schwermer
Nancy Sylvester

EXCUSED:

Judge David Marx

GUESTS:

1. WELCOME: (Justice Jill Parrish)

Justice Parrish welcomed everyone to the meeting.

Motion: Judge David Mortensen moved to approve the minutes from the Liaison Committee Meeting on August 15, 2014. Judge Thomas Higbee seconded the motion. The motion carried unanimously.

**2. H.B. 39 Emergency Placement of Children
(Chief Sponsor: Johnny Anderson) (Judge Thomas Higbee)**

This bill amends provisions related to the emergency placement of a child who has been removed by the Division of child and Family Services.

Judge Higbee reviewed the background of this issue. The committee discussed pros and cons regarding placing children with friends versus relatives. They agreed this is a policy issue.

Liaison Committee's position: No position but try to encourage DCFS to include additional protection in the statute or rule beyond the minimum requirement in the event of considering friend placement.

3. **H.B. 20 Jury Duty Amendments**
(Chief Sponsor: Craig Hill) (Judge David Marx)

This bill amends provisions related to the Jury and Witness Act to address jury service requirements for specific counties.

The committee agreed that there have been no problems with the issue in this bill.

Liaison Committee's position: No position

4. **H.B. 35 Parent-Time Schedule Amendments**
(Chief Sponsor: V. Lowry Snow) (Judge David Mortensen)

This bill creates an optional parent-time schedule.

The committee agreed that the bill is policy.

Liaison Committee's position: No position but the committee sees the bill as positive.

5. **H.B. 40 Expungement Amendments**
(Chief Sponsor: Eric K. Hutchings) (Judge David Mortensen)

This bill makes specific changes regarding the expungement of information in state agency files and creates a statement of legislative intent with regard to expungement.

The committee discussed the difference in the definitions of expunge and redact. They discussed lines 68, 69, and 113 and the possibility of defining redact in the document.

Liaison Committee's position: No position but clarify the definition of redaction.

6. **H.B. 32 Local Government Disclosure and Campaign Finance Amendments**
(Chief Sponsor: Jack R. Draxler) (Judge David Marx)

This bill amends provisions related to municipal candidate campaign finance disclosures and personal use expenditures.

The committee agreed that on page 2 line 53 judges should be excluded from the definition of candidate and on page 5 lines 122-123 judge and judges committees should be taken out of the draft

Liaison Committee's position: No position

7. **H.B. 74 Consent Definition for Sexual Offense**
(Chief Sponsor: Angela Romero) (Justice Jill Parrish)

This bill modifies the definition of consent in the Criminal Code regarding sexual offenses.

Liaison Committee's position: No position the bill is policy

8. **H.B. 77 Postretirement Employment**
(Chief Sponsor: Rich Cunningham) (Justice Jill Parrish)

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions for postretirement reemployment.

The main concern with the bill is to make sure that it does not interfere with senior judge status. The committee had further discussion and reviewed the wording in the bill.

Liaison Committee's position: No position

9. **H.B. 109 Expungement of Administrative Action**
(Chief Sponsor: Brian M. Greene) (Judge Thomas Higbee)

This bill modifies the treatment of agency records, including providing for the administrative expungement of agency records under certain circumstances.

This is a two part bill; first the bill provides that records may be classified as protected under certain circumstances, second there is a separate administrative expungement process. They discussed line 362 and proposed adding criminal to that line.

Liaison Committee's position: No position but define line 362 (legal violation)

10. **S.B. 46 Juvenile Court Judge Amendments**
(Chief Sponsor: Curtis S. Bramble) (Judge Thomas Higbee)

This bill increases the number of juvenile judges in the Fourth Juvenile District.

Liaison Committee's position: Support

11. **Bill Concepts Requiring our Input**
(Mr. Richard Schwermer)

-Competing Adoptions: DCFS is purposing a bill that will address competing adoptions. Mr. Schwermer explained to the committee the impetus for the concept.

The committee had a lengthy discussion on competing adoptions. Judge Higbee requested to address this again next week.

Liaison Committee's position: Address this on the January 23, 2015 agenda

-Justice Reinvestment Initiative: Mr. Schwermer explained the concept of this potential bill. The two potential concerns are the presumptive limits on the amount of time in jail that the judge can order limit for first, second, and third technical violation of probation, and a reduction of first, second, third, and fourth possession charges from felonies to misdemeanors. The committee had further discussion about the concept.

Liaison Committee's position: Support the concept

-Treatment Availability: To have more treatment options. The committee discussed how to support the creation of additional treatment capacity without getting into the politics surrounding Healthy Utah.

Liaison Committee's position: Support the concept of expanded treatment capacity, whether by Healthy Utah or any initiative having the same treatment result.

12. Other Business

The committee discussed HB 66 and decided to put it on the next agenda.

Justice Jill Parrish asked to Judge David Mortensen to chair the committee in her absence next week.

NEXT MEETING:

**January 23, 2014
12:00 p.m.
Council Room**

JUDICIAL COUNCIL LIAISON COMMITTEE MEETING

**Minutes
Friday, January 23, 2015
Matheson Courthouse
Council Room**

Honorable Jill Parrish, Presiding

ATTENDEES:

Hon. Thomas M. Higbee
Hon. David Marx
Hon. David Mortensen

STAFF PRESENT:

Rick Schwermer
Daniel J. Becker
Brent Johnson
Nancy Sylvester
Debra Moore
Ray Wahl
Nancy Merrill

EXCUSED:

Justice Jill Parrish

GUESTS:

1. WELCOME: (Judge David Mortensen)

***Motion:** Judge Thomas Higbee moved to approve the minutes from the Liaison Committee Meeting on January 16, 2015. Judge David Marx seconded the motion. The motion carried unanimously.*

**2. H.B. 66 Marriage Modifications
(Chief Sponsor: Jacob L. Anderegg) (Judge David Mortensen)**

This bill affirms a person's religious freedom to act within the confines of the person's religious beliefs.

The committee discussed the bill and agreed to request that judges be taken out of the bill. The committee is concerned about the statute conflicting with the Code of Judicial Conduct.

***Liaison Committee's position:** No position but excuse judges from the bill because it conflicts with the judicial code of conduct*

**3. H.B. 136 Campaign Disclosures For Judicial Retention Elections
(Chief Sponsor: Brad King) (Judge David Mortensen)**

This bill amends the definition of "political purposes" as it relates to campaign and financial reporting requirements.

Mr. Schwermer explained to the committee that the bill attempts to prevent anonymous attacks on judges in the judicial retention election campaign process. Mr. Johnson researched the implications of the bill and the committee had further discussion about the bill causing potential perception issues. Mr. Schwermer agreed to discuss the committee's concerns bill with the sponsor.

Liaison Committee's position: No position but address the bill next week if necessary

**4. H.B. 137 Change to Mandatory Retirement Age For Judges
(Chief Sponsor: Kraig Powell) (Judge David Marx)**

This bill modifies provisions relating to the mandatory retirement age for judges.

The bill gets rid of the mandatory retirement age for judges in Utah. The committee had further discussion about factors for retirement age.

Liaison Committee's position: Consensus to oppose but get a broader perspective from the Judicial Council.

**5. H.B. 139 Foster Home Amendments
(Chief Sponsor: Brad M. Daw) (Judge Thomas Higbee)**

This bill amends the definition of "foster home" in the Utah Human Services Code.

The bill has a definitional change in human services code that increases the number of children allowed in a foster home. The committee pointed out a drafting concern on lines on 78 and 79.

Liaison Committee's position: No position but clarify lines 78 and 79

**6. H.B. 143 Prohibition On Tattooing Of Minors
(Chief Sponsor: LaVar Christensen) (Judge Thomas Higbee)**

This bill modifies the Utah Criminal Code regarding the tattooing of minors.

The committee had some concern that the bill takes away parents' rights but they agreed the bill is policy.

Liaison Committee's position: No position

**7. H.B. 144 Check Cashing And Deferred Deposit Lending Amendments
(Chief Sponsor: Brad M. Daw) (Judge David Mortensen)**

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address deferred deposit loans.

Liaison Committee's position: No position

8. **S.B. 59 Domestic Violence Amendments**
(Chief Sponsor: Todd Weiler) (Judge David Marx)

This bill modifies provisions in the Cohabitant Abuse Procedures Act.

The bill ensures that the prosecutor is involved in screening the case. The committee had some discussion about the bill and agreed it is policy.

Liaison Committee's position: No position

9. **S.B. 71 Tax Commissioners' Compensation**
(Chief Sponsor: Todd Weiler) (Judge David Mortensen)

This bill amends the compensation provision of the chair and commissioners of the State Tax Commission.

There is a fiscal note.

Liaison Committee's position: No position

10. **S.B. 77 Adoption Records Access Amendments**
(Chief Sponsor: Todd Weiler) (Judge Thomas Higbee)

This bill modifies provisions related to accessing adoption documents.

The bill makes it easier for the adult birth parents and adoptees to find information out about each other. The committee discussed the meaning of "identifying information". There are possible implications for the courts on line 440.

The committee discussed concerns with lines 444- 447. They agreed to add language that recognizes the primacy of the courts records rules.

Liaison Committee's position: No position but add the suggested language to line 445

Other Business: The Committee discussed the competing adopting issue and decided to wait for the bill to come out for further discussion.

NEXT MEETING:

January 30, 2015
12:00 p.m.
Matheson Courthouse, Council Room

JUDICIAL COUNCIL LIAISON COMMITTEE MEETING

**Minutes
Friday, January 30, 2015
Matheson
Council Room**

Honorable Jill Parrish, Presiding

ATTENDEES:

Justice Jill Parrish
Hon. David Marx
Hon. David Mortensen
Hon. Thomas M. Higbee

STAFF PRESENT:

Alison Adams-Perlac
Daniel J. Becker
Brent Johnson
Nancy Merrill
Debra Moore
Dawn Marie Rubio
Rick Schwermer
Ray Wahl
Tim Shea

EXCUSED:

GUESTS:

1. WELCOME: (Justice Jill Parrish)

Justice Parrish welcomed everyone to the meeting.

***Motion:** Judge David Marx moved to approve the minutes from the Liaison Committee Meeting on January 23, 2015. Judge David Mortensen seconded the motion, and the motion carried unanimously.*

**2. H.B. 154 Jury Duty Amendments
(Chief Sponsor: Mike K. McKell) (Judge David Marx)**

This bill amends provisions relating to exemptions from jury service.

The committee discussed the implications of the bill.

Liaison Committee's position: No position

**3. H.B. 164 Grandparent Rights Amendments
(Chief Sponsor: LaVar Christensen) (Judge Thomas Higbee)**

This bill amends provisions concerning the visitation rights of a grandparent.

The committee discussed various definitions of parental rights in the adoption process. There is a concern that the bill is not in the child's best interest and could possibly be unconstitutional. The committee discussed possible implications to district court. They agreed that the bill is policy.

Liaison Committee's position No position but it is bad policy

**4. H.B. 176 Rights of Child Victim Amendments
(Chief Sponsor: LaVar Christensen) (Judge Thomas Higbee)**

This bill provides that a child victim may have a parent present during interviews.

The bill assures that in an interview the child has the right to have an adult with them as long as the adult is not a suspect. The committee agrees that the bill would cause the interview to not be credible. The bill is policy but the committee agrees it is a bad idea.

Liaison Committee's position: No position but it is bad policy

**5. H.B. 182 Criteria For Determination of Alimony
(Chief Sponsor: Brad M. Daw) (Judge David Mortensen)**

This bill authorizes the inclusion of certain expenses in the alimony award.

The committee discussed line 146 and suggested adding "or at the end of high school" at the end of the line.

The bill seems to blur the lines between alimony and child support. The committee discussed the implications to the courts and interference with the administration of justice. The bill is policy but it seems to create difficulty in a divorce case for judges.

Liaison Committee's position: No position but restructure the bill in a way that is easier for judges to apply

**6. H.B. 184 Victim Restitution Amendments
(Chief Sponsor: Brad R. Wilson) (Judge David Mortensen)**

This bill makes changes to the Crime Victims Restitution Act.

The committee has some discussion about the bill, there are drafting concerns:

- lines 376-377 objection should be made at the time of sentencing if you address restitution at sentencing or within 30 days of the mailing of notice of restitution
- line 381 appears to be the opposite of the purpose of the bill

Liaison Committee's position: No position but amend lines 376-377 and line 381

7. **S.B. 79 Impeachment Amendments**
(Chief Sponsor: J. Stuart Adams) (Judge David Marx)

This bill amends which state and judicial officers are liable for impeachment.

The committee agreed that the bill seems to be clean up.

Liaison Committee's position: No position

8. **S.B. 82 Forcible Entry Amendments**
(Chief Sponsor: Stephen H. Urquhart) (Justice Jill Parrish)

This bill modifies the Utah Code of Criminal Procedure regarding the use of forcible entry when serving a search warrant of making an arrest.

Justice Parrish raised several questions, practical concerns and a policy concern:

- Does the bill in fact amends a statute
- Does treating justice court judges different from district court judges create confusion

Practical concerns:

- what happens to the evidence if the camera does not work though no fault of law enforcement
- what are the requirements regarding when the camera needs to be worn to make the evidence admissible

Policy concern:

- struck provisions allowing entry if there is probable cause to believe evidence is being destroyed

The committee discussed line 90 which possibly interferes with the administration of justice.

Liaison Committee's position: Oppose because of line 90-92

9. **S.B. 93 Uniform Commercial Code Filing Amendments**
(Chief Sponsor: Lyle W. Hillyard) (Judge David Mortensen)

This bill modifies the Uniform Commercial Code and criminal provisions to address certain filings.

The committee had discussion about the wording on line 81-84 and they agreed the bill is policy.

Liaison Committee's position: No position

**10. S.B. 101 1st Sub. (Green) Adoption Amendments
(Chief Sponsor: Todd Weiler) (Judge Thomas Higbee)**

This bill amends the Utah Adoption Act.

The committee discussed the wording and implications of the bill. The committee discussed the language in regards to open courts and the intervention of the courts procedures. The committee had concern with the parts of the bill that interfere with rules of procedure. The bill is policy.

Liaison Committee's position: No position but clean up the rule making issues

**11. S.B. 109 Removal From DataBase Amendments
(Chief Sponsor: Daniel W. Thatcher) (Judge David Mortensen)**

This bill adds language regarding a person's reputation to the statute on removing a person from the National Instant Check System database.

The bill requires that evidence of character be considered which is contradictory to the Rules of Evidence. The committee had drafting concerns on line 62.

Liaison Committee's position: No position but strike "any evidence concerning" on line 62

**12. S.J.R. 3 Proposal To Amend Utah Constitution Regarding The Practice of Law
(Chief Sponsor: Stephen H. Urquhart) (Justice Jill Parrish)**

This joint resolution of the Legislature proposes to amend the Utah Constitution to modify a provision relating to rules governing the practice of law.

Justice Parrish suggested opposing the bill. The committee had lengthy discussion about the definition of the practice of law and the repercussions of the proposed bill. The agreed the current bill is a bad idea.

Liaison Committee's position: Oppose the concept until clarification of the consequences of the bill

13. Other Business

NEXT MEETING:

**February 6, 2015
12:00 p.m.
Council Room**

JUDICIAL COUNCIL LIAISON COMMITTEE MEETING

Minutes
Friday, February 06, 2015
Matheson Courthouse
Council Room

Honorable Jill Parrish, Presiding

ATTENDEES:

Justice Jill Parrish
Hon. Thomas M. Higbee
Hon. David Marx
Hon. David Mortensen

STAFF PRESENT:

Rick Schwermer
Debra Moore
Daniel J. Becker
Brent Johnson
Nancy Merrill
Ray Wahl
Dawn Marie Rubio
Nancy Sylvester
Katie Gregory
Tim Shea
Katie Gregory

EXCUSED:

GUESTS:

1. WELCOME: (Justice Jill Parrish)

Justice Parrish welcomed everyone to the meeting.

***Motion:** Judge Thomas Higbee moved to approve the minutes from the Liaison Committee meeting on January 30, 2015. Judge David Mortensen seconded the motion. The motion carried unanimously.*

2. H.B. 91 2nd Sub.Campaign Contributions Amendments (Chief Sponsor: Kraig Powell) (Judge David Mortensen)

This bill amends campaign finance provisions related to anonymous contributions, in the form of cash or a negotiable instrument, and aggregate reporting of those contributions.

Mr. Schwermer clarified that this draft is the 2nd substitute. The committee discussed language concerns regarding accountability.

Liaison Committee's position: No position

3. **H.B. 137 1st Sub. (Buff) Change to Mandatory Retirement Age For Judges
(Chief Sponsor: Kraig Powell) (Judge David Marx)**

This bill modifies provisions relating to the mandatory retirement age for judges.

The committee discussed concerns about changing the mandatory retirement age of judges and agreed they do not support increasing the current age.

Liaison Committee's position: Oppose

4. **H.B. 228 Appellate Bond Amendments
(Chief Sponsor: Douglas V. Sagers) (Justice Jill Parrish)**

This bill repeals and reenacts provisions relating to appellate bonds for political subdivisions.

Justice Parrish reviewed the background of this bill. The committee is concerned with multiple drafting problems.

Liaison Committee's position: No position but point out the inconsistent drafting problems

5. **H.B. 244 Child Support Amendments
(Chief Sponsor: Keven J. Stratton) (Judge David Mortensen)**

This bill amends provisions related to the Utah Child Support Act.

Mr. Schwermer informed the committee that a proposed substitute bill came out this morning and the title of the bill is now changed to Alimony Amendments.

The committee discussed the changes in the substitute bill. They discussed the intentions of the bill and had some concern regarding the procedures in the bill. After further discussion the committee agreed that there are drafting issues that need to be addressed particularly with lines 105 and 106 pertaining to fault.

Liaison Committee's position: No position but the drafting is inconsistent and problematic

6. **S.B. 101 2nd Sub. (Salmon) Adoption Amendments
(Chief Sponsor: Todd Weiler) (Judge Thomas Higbee)**

This bill amends the Utah Adoption Act.

Judge Higbee pointed out various significant changes in this version of the bill. The committee discussed the changes.

Liaison Committee's position: No position

7. **S.B. 141 Judiciary Amendments**

(Chief Sponsor: Lyle W. Hillyard) (Judge David Mortensen)

This bill makes amendments related to the judiciary.

The committee discussed the bill. Mr. Johnson discussed the following drafting amendments:

- line 135 change “may” to “shall”
- strike 3(a) lines 132 to 134
- possibly strike lines 137 and 138

The committee had further discussion about the wording of the bill and proposed making the statute regarding the timing of bail determinations consistent with the rule.

Liaison Committee’s position: Support and amend to make the statute consistent with the rule on bail issues

**8. S.B. 150 Driving Under the Influence Sentencing Revisions
(Chief Sponsor: Scott K. Jenkins) (Judge David Marx)**

This bill modifies provisions relating to sentencing requirements for driving under the influence violations.

The bill is policy. There is a fiscal note on the bill because of the section that requires judges to order installation of interlock ignition devices.

Liaison Committee’s position: No position

**9. H.B. 240 Judicial Discretion In Sentencing Amendments
(Chief Sponsor: Kay L. McIff) (Judge David Mortensen)**

This bill modifies Title 77, Utah Code of Criminal Procedure, regarding the minimum term of imprisonment.

The bill allows the judge to adjust sentencing under certain circumstances. The committee agreed as drafted the bill will cause increased court time at a sentencing.

The committee proposed amending line 79 to say, “At the time of imposition, if the prison sentence is not suspended, the sentencing judge may

Liaison Committee’s position: Support in concept and recommend the proposed draft change which narrows the applicability.

Other Business: The committee discussed various upcoming bill concepts. Justice Parrish will be available by phone for the next meeting.

NEXT MEETING:

**February 13, 2015
12:00 p.m.
Matheson Courthouse**

**Policy and Planning
Committee Minutes**

Minutes of the Policy and Planning Committee

February 6, 2015

Draft

Members Present

Marvin Bagley, Ann Boyden, Glen R. Dawson, John R. Lund (by phone), Reed S. Parkin

Members Excused

Thomas M. Higbee

Staff

Alison Adams-Perlac

Guests

Tim Shea

(1) Approval of Minutes

Judge Boyden moved to approve the minutes of the January 9, 2015 meeting. Judge Dawson seconded the motion and it passed unanimously.

(2) Update on Rule 4-101.01 – Electronic media coverage of court proceedings.

Ms. Adams-Perlac stated that she and Nancy Volmer had met with members of the media and the response to the proposed rule 4-101.01 is mostly positive. She stated that the version the Committee approved will be on the Judicial Council's February Agenda.

(3) Interpreters and OCAP

The Committee discussed Mr. Shea's proposal to amend the comment to the Code of Professional Responsibility for Interpreters to allow interpreters to fill out information in OCAP for LEP patrons.

Mr. Shea stated that he disagreed with Ms. Adams-Perlac's position that allowing interpreters to fill out OCAP forms is an ethical violation. Judge Boyden stated that she did not agree with Ms. Adams-Perlac's position that entering information into OCAP is something different than interpreting or translating. Ms. Adams-Perlac stated that it might be more of a hybrid of the two. Ms. Adams-Perlac stated that allowing interpreters to enter information into OCAP is an ethical violation in that the Code of Professional Responsibility for Interpreters prevents interpreters from doing anything that could be construed as something other than translating or interpreting, and that this activity will likely be construed as something other than interpreting or translating. She stated that the provision of the Code is concerned with the perception of LEP patrons, and that an LEP patron who has an interpreter sit down with them at the computer and enter information for them will likely see that interpreter as something other than just a person who is communicating information. She stated that the examples in her memo suggest that this has already happened.

Minutes of the Policy and Planning Committee

Draft

February 6, 2015

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Ms. Adams-Perlac stated that the Legal Department's position is that it would require a Code amendment, and that the Code should not be amended. She also stated that the Language Access Committee has recommended that the Code not be amended and that interpreters not be used in this way.

Judge Dawson moved to table the issue for further discussion at the next meeting.

(4) Rules for Final Action and Proposed Amendments to the Code of Judicial Administration

The committee tabled the final two items for discussion at the 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: February 17, 2015
Re: CJA 4-401.01. Electronic media coverage.

In April 2014, this Council passed an amendment to rule 4-401.01 of the Utah Code of Judicial Administration. The amendment removed the presumption of electronic media coverage in cases classified as private and added a factor for judges to consider when determining whether the presumption of electronic media coverage has been overcome. This Council passed the amendment on an expedited basis, so that public comment occurred after the rule was passed.

The proposal received the following public comments, which were overwhelmingly unfavorable:

Cameras in family court are very valuable in furthering the general public's understanding of the judicial process as it involves families. Responsible use by media outlets should be allowed.
Posted by Linda Petersen June 25, 2014 04:41 AM

As a journalist and journalism professor, I am opposed to the blanket decision to change Rule 4-401.01. Video keeps people honest, especially when the voting public is watching. When I worked full-time for KUTV, the system which allowed only still photography seemed odd (I moved to Utah from a state which allowed video); why did the courts trust a frozen image to capture a person's reaction, which may be longer and more complicated? Why did the courts rely on a reporter trying to quote or paraphrase someone, when a video camera can replay their comments verbatim, with the accompanying non-verbal cues and inflection? Instead of closing off Utah's Court system to all except those with the time to watch it work in person, can we not work together to address specific concerns?
Posted by Brian Champagne June 24, 2014 08:01 PM

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.

As somebody who has written for a number of publications in Utah over the years and someone who believes in making education tools available to the public, this new rule change is just bad for policy. Educating people about the court process, and teaching them how it works, makes for a smoother process, should they need to go to court and represent themselves. Not only does it help to educate the public on court process for themselves, but it helps to save the court's time with individuals who would otherwise have no clue and would stumble through the process, take up extra time by not knowing what they are doing, file frivolous claims, ect. As a free society that believes in justice and free press, I can see no benefit to not allowing cameras in court rooms, especially if all parties involved in the case agree. This encourages the public to believe there is something for the courts in Utah to hide from the public. This is just bad policy, period...

Posted by Griffin Bonacci June 24, 2014 02:41 PM

I serve on the Judicial Outreach Committee, which recommended these amendments to the Judicial Council, and I voiced my strong opposition when these changes were precipitously voted through after less than an hour of discussion. I also co-chair the Bench-Media Subcommittee, which includes many members of the news media and judiciary, where the issue of Mr. Johnson's EMC requests was first brought for discussion. Just a week before these changes were voted through, my subcommittee had a vigorous and lively debate about the complicated issues involved and the need for much more discussion and planning before changes were made to a cameras rule that was years in the making. The fact that these changes were pushed through almost immediately afterwards, and then made effective prior to any public comment just to deal with Mr. Johnson's pending requests, reveals a flawed process that has proposed flawed changes to this rule. I urge the Judicial Council to reject the changes to subsections (2)(A) and (2)(E) that categorically remove the presumption of EMC in every domestic case. The changes to subsection (2)(A) appear superficially innocuous. They are made to seem like they are just conforming the EMC rule to the categorization of records in domestic cases as private under the Utah Code of Judicial Administration. But the changes to the EMC rule have nothing to do with records. It is critical to remember that the EMC presumption applies only when the hearing at issue is already open to the public. It is black-letter prior restraint law that the contents of a document discussed in open court are placed in the public domain and cannot be restrained from publication or kept confidential by the court. The content of any private record in domestic cases that is discussed in open hearings, therefore, no longer has that status. There is nothing about the presence of cameras in such open hearings that changes that fact. If the parties in a domestic case see the need to maintain the confidentiality of a record that is discussed in a hearing, their remedy is to seek to close the hearing itself and satisfy the constitutional standard for doing so. Because EMC is only allowed in open hearings, the confidentiality of records is not an EMC

issue. The amendment's attempt to gloss over this fact, by misleadingly referring to "case types classified as private under rule 4-202.02(4)(B)," when in fact that rule only deals with records – not hearings – is inaccurate and conceals the actual purpose of the amendment. These rule changes are being driven by a reaction to a single individual. Any time a rule is changed as a reaction to a single incident, it is likely to be bad policy. And that is indeed the case here. Rule 4-401.01 was passed after months of study and discussion and considerable debate about the presumption of EMC it codified. That presumption is a recognition that when hearings are already open to the media and public, and the media are free to report in traditional ways about the proceedings, there is usually no reason to prohibit EMC. In fact, EMC often provides more accurate information about the proceedings than second-hand reporting. That is true regardless of the type of case – domestic, civil, criminal, or otherwise. Many people have a reflexive reaction that domestic cases are more sensitive, or more confidential, than other types of proceedings. But that too is not the issue here, since the EMC presumption only applies to hearings that are already open to the public. And domestic cases have no monopoly on sensitive or confidential issues. Those concerns are addressed by judges every day across the legal spectrum in the discharge of their public duties. When families come to the courts to resolve domestic disputes, they are availing themselves of a public process that is presumptively open to the public. The reflexive reaction of a family's business being private is out of place once the family calls upon the public courts to address those issues. The EMC rule recognizes this fact by aligning the presumption of EMC with otherwise public hearings and maintaining that no type of open hearing is categorically different, in every single case, from any other open hearing. Certainly there will be aspects of some hearings, in some domestic cases, where the benefits of EMC are outweighed by the particular interests or harms EMC might cause. That is also true of other types of cases. Those situations are likely to be unusual, and obviously not present in every single hearing in every single domestic case, as the amendment presumes. And Rule 4-401.01 is already well-equipped to deal with those situations. It is laden with factors judges can consider in granting or denying EMC requests, including limitations to protect the interests of a minor, or to prevent an unwarranted invasion of personal privacy, or to protect the safety or well-being of any individual. Indeed, direct EMC of a minor is already presumptively disallowed by the rule. It is a far wiser course of action to commend these specific determinations to judges handling each individual hearing than to categorically remove the presumption of EMC from every single open hearing in every single domestic case. There is another problem with treating domestic cases as different from every other kind of open hearing – if it is allowed, it is likely not the last such change to the rule. Today it may be the family bar that is urging for their own exception to the rule. Tomorrow the proposed change may be to exempt all juvenile proceedings, then all proceedings involving a minor witness, then all sex crime cases, then all corporate trade secret cases, and on and on, until the rule

and its bedrock presumption are eviscerated. That is why the original rule gave discretion to judges to consider EMC requests on a case by case basis and treated all open hearings the same, rather than endorsing iterative exceptions to the rule. History has repeatedly shown that increasing public access to and transparency of the courts improves public trust in the judiciary and fosters systemic accountability. This need is particularly urgent in the area of family law, as that is the portion of the court system with which most people, over the course of their lives, will have some interaction. Public perception of the unfairness, gender bias, or otherwise skewed nature of domestic law will only be exacerbated by secreting the operations of the courts beyond public view. For all of these reasons, the proposed changes to subsections (2)(A) and (2)(E) are both unnecessary and unwise. I urge the Judicial Council to reject them.
Posted by David C. Reymann June 24, 2014 01:26 PM

As a reporter and a member of the Society of Professional Journalists, I am asking the Utah State Court to reconsider changes to Rule 4-401.01. Courts in Utah made great strides in openness and transparency by allowing cameras to report on hearings in the state. So far, media and court administrators alike have worked positively to learn and adapt to the new policy. Dramatically reversing the cameras in the courts rule for all family court hearings because of conflict with one individual is a discredit to all the progress that has been made.
Posted by McKenzie Romero June 23, 2014 11:58 PM

As an investigative reporter and digital editor for the Standard-Examiner I am respectfully opposing the proposed changes to Rule 4-401.01 as this hampers the public's right to access. I believe a scalpel should be used and not a machete when determining a rule change that would affect nearly 3 million Utahns and even more out of state reporters or families looking for public information stemming out of Utah Courts. The public's right to know should not be hampered this harshly due to an inability to control one person. As stated in previous comments this rule change shows a lack of leadership and no attempt to lawfully protect everyone's right to public records. The rule change inhibits the majority in order to truly handle a minority issue. I would respectfully ask the court administrators and administrative bodies please take this issue back to the drawing board for a more reasonable solution.
Posted by Cimaron Neugebauer June 23, 2014 07:37 PM

As a former court reporter and now digital editor I am respectfully opposing the proposed changes to Rule 4-401.01 A scalpel should be used and not a machete when determining a rule change that would affect nearly 3 million Utahns and even more out of state reporters or families looking for public information stemming out of Utah Courts. The public's right to know should not be hampered this harshly due to an inability to control one person. As stated in previous comments this rule change shows a lack of leadership and no ability to

lawfully protect everyone's right to public records because it inhibits the majority in order to truly handle a minority issue. I would respectfully ask the court administrators and administrative bodies please take this issue back to the drawing board for a more reasonable solution.

Posted by Cimaron Neugebauer June 23, 2014 07:35 PM

In our opinion: Efforts to remove electronic devices from courtrooms should be promptly squelched

Deseret News editorial

Published: Monday, June 16 2014 12:00 a.m. MDT

Less than a year after a rule took effect allowing television cameras and electronic media devices into Utah courtrooms, there is a move to disallow use of such devices in domestic and family law cases. Such a change is not necessary and would erode transparency and public access to judicial proceedings. A tentative rule change put into effect in April bars the use of electronic media devices in domestic relations cases including divorce proceedings, child custody cases and hearings on protective orders. It is predicated on concerns that such cases often involve private information that, if made public, could be harmful to parties in such cases. But the year-old law granting media access, which was long sought by media organizations and groups advocating for open government, contains adequate protections against dissemination of information a judge may deem private. Pursuing a blanket banishment of electronic media coverage would set a precedent for future restrictions on public access to court proceedings. The rule change does not bar news reporters or members of the public from attending cases involving domestic relations; it only disallows electronic video and audio recording devices. Restricting those devices doesn't add to existing safeguards designed to protect vulnerable parties in domestic cases, including abused spouses and children involved in custody disputes. Judges may easily restrict documents and testimony from public disclosure in such cases, and they frequently exercise that prerogative. The rule change may be repealed after a comment period that ends later this month. Should it remain in place, it could open the door to similar restrictions in other proceedings. Virtually all types of court cases are capable of delving into matters that individuals may wish to keep private. In short, the change in administrative rules looks a lot like a solution in search of a problem. The rules allowing access to electronic devices took effect last year after decades of lobbying by journalism organizations and institutions in favor of openness and transparency in the judiciary. At the time, members of the Utah Judicial Council who voted in favor of more access said the new rules would move Utah "into the next era" and align the state with the majority of state court systems which have long been open to cameras and other recording devices. There is no compelling reason for the state to backtrack on that important and groundbreaking effort. The body of law in place since last year ensures a presumption of openness in our judicial system,

and we see no credible reason that presumption should be reversed in the domestic court calendar.

Posted by Deseret News Editorial Board June 23, 2014 07:26 PM

My name is Sheryl Worsley and I am the president of the Utah Headliners, the local chapter of the Society of Professional Journalists. I am also the news director at KSL Newsradio. I am writing to express strong opposition to the emergency proposed change to rule 4-401.01. If we profess that courts are presumed open, it makes no sense to restrict electronic media coverage in hearings where a reporter or any other member of the public is allowed to attend in person. A video camera in the courtroom removes the chance anyone could 'get it wrong' and is arguably a more accurate way to portray what is going on in hearings. Transparency provided through electronic media is also a great way to educate, provide accountability and instill public confidence in the judicial system. Rule 4-401.01 already provides a mechanism to deal with private or sensitive information, and that's in the way the judge can select evidence, witnesses or victims which can't be filmed ahead of time. Court documents can be sealed. There is absolutely no reason to restrict all domestic law cases from EMC. If there are privacy concerns, which admittedly sometimes arise, the current rule already provides protections for those situations on a case by case basis. The court is responding to the repeated requests of a single family law attorney who was hoping to post video to his YouTube channel. The Utah Headliners chapter is dismayed that such a drastic and overarching change would be made in response to this attorney's actions. As a cross-platform group of journalists working for different companies, we are issuing a united request to the Utah State Courts to reconsider what we feel is a heavy-handed change that sets back the important progress we have made in the past year. When an entire category of cases is so quickly changed from open, to secret, it sends a signal that the court may not hesitate the next time a tough situation presents itself, and the next time, until the rule has eroded down to closed courtrooms instead of open ones. I urge you to please reject the change to the rule.

Posted by Sheryl Worsley June 23, 2014 07:08 PM

I am writing in opposition to the proposed change to Rule 4-401.01. Utah took a great leap forward with respect to the judiciary, by allowing television cameras and electronic devices into courtrooms to provide greater (and more accurate) coverage of proceedings. By the Utah Administrative Office of the Court's own perception surveys, 80% of those who get news of the judiciary, get it from the news media. Allowing the public at large to see what happens in a courtroom and have a greater understanding of the importance of the judiciary can only be helpful. While this proposed alteration is meant to address a specific problem, it has the effect of using a sledgehammer to swat a fly. Judges, under the existing rule, have the ability to examine a request for electronic coverage. To roll back

access sets a concerning precedence that, I believe, would only harm overall efforts to promote greater understanding of the judiciary.

Posted by Ben Winslow June 23, 2014 06:07 PM

I am very concerned about the proposed changes to Rule 4-401.01 and also ask they be rejected. I believe the Utah media has proved this past year that they are responsible and professional and have used the new law allowing cameras in the courtrooms to enhance the quality and accuracy of their coverage. I think the public better understands what happens in Utah's courts as a result. I believe transparency is paramount and when we do the public's business behind closed doors the public - and democracy - suffers. I understand the sensitivity of domestic relations cases. Rule 4-401.01 already allows judges to treat each case individually and prohibit electronic media coverage in specific situations. Isn't this best left to the wisdom of the bench rather than a sweeping all-inclusive change that could create more harm than good? The foundation of Rule 4-401.01 is that electronic media coverage is presumptively allowed in all open court proceedings. Please don't change that.

Posted by Renai Bodley June 23, 2014 04:19 PM

I hope the proposed changes to Rule 4-401.01 will be rejected as an over-reaction that too severely hampers legitimate public interest in what happens inside family courts in Utah. Utah courts have a proud history of working with journalists and the public to allow the least-restrictive access so that the judicial system is transparent in its actions and the public can be confident in its operation. Creating a negative presumption that openness will not be allowed does not serve anyone well. Please continue to limit access when there are legitimate reasons to do so, but keep the presumption of openness.

Posted by Lois M. Collins June 23, 2014 03:07 PM

Courts were established by the people, of the people and for the people, thus, they should be OPEN to the people with transparency and that includes allowing cameras in the courtroom.

Posted by Jennifer Weaver June 23, 2014 03:00 PM

I oppose any rule change that would limit camera access in Utah's courtrooms. Transparency is crucial to a healthy judicial system and cameras allow for an extra level of insight beyond what a written summary or article provides. Please consider the entire public instead of ruling on behalf of select individuals or cases. Posted by Sara Israelsen-Hartley June 23, 2014 10:14 AM

I am also opposed to the proposed changes to Rule 4-401.01 and ask the courts' administrators and administrative bodies please reject them. My observation of the judicial process is that the judge(s) in court is/are already too able to influence not only the process, but environment, too far away from the best

interest of the public, toward what ends up being the interest of themselves and their cronies...akin to a dictatorship. Of course they will maneuver to handicap what (already limited) freedom the people have to record and review this pompous conduct, just like most other dictatorships the world over. I oppose any effort to make it easier for them to skirt accountability and shift their burden of proof down the line. Any recipient of public funds (tax revenue, etc.), while on the clock, should only be free from public oversight via direct "electronic recording" during their lunch and bathroom breaks. Cops, judges, teachers, in their office, car, or sidewalk, if they are on the public dime, they should be recordable and accountable to the public. As with the aforementioned bathroom break example, there are obvious times and circumstances in which privacy and discretion should be exercised, but there are means (some already stated in the comments of others) by which they can and are being achieved by logical and thoughtful professionals, without the imposing rules proposed. I feel not only that the proposed changes are not in the greater good, but that changes should be made so that it is easier for the trials public participants (not reporters) to electronically record their own proceedings, also with commitment to certain confidentiality, for their use. Thank you.

Posted by John June 22, 2014 10:47 PM

Since 1970, the Reporters Committee for Freedom of the Press has provided free legal advice, resources, support and advocacy to protect the First Amendment and Freedom of Information rights of journalists. We applaud the Utah Judicial Council for allowing cameras in the state's courts, but we disagree with the proposal to remove from family court cases the presumptive right to electronic media coverage. The Supreme Court has repeatedly emphasized that our nation's courtrooms are presumptively open. In *Richmond Newspapers, Inc. v. Virginia*, the Court explained, "[T]hroughout its evolution, the trial has been open to all who care to observe." 448 U.S. 555 (1980). We believe that camera coverage is not a special or "bonus" type of access to courtrooms. Instead, it is the modern-day equivalent of the *Richmond Newspapers* pronouncement that courtrooms are open. In *Richmond Newspapers* and its progeny, the Supreme Court has enumerated many benefits of court openness: it increases the public's trust in the judicial system; it helps ensure that the judiciary functions fairly; and it strengthens democracy by giving voters a better understanding of their government. Electronic media coverage provides additional benefits: it ensures that viewers are getting the most accurate rendering of what occurs in the courtroom, and it provides access and opportunity for education to people who cannot attend a hearing in person. Recognizing these important interests, all 50 states allow cameras in their courts in some form. As electronic media coverage is simply access for the modern age, the same policies that govern whether people can attend a hearing in person should govern whether cameras are allowed. As the general public can attend family court hearings in Utah, they should be able to record these proceedings as well. Though family court cases

sometimes present heightened privacy interests, the presumption of access should not disappear. Instead privacy concerns should be just one factor of many that the court considers when deciding whether to grant public access. Three other aspects of the proposed changes concern us. First, we disagree with changing the definition of "news reporter" from "any person who gathers, records, photographs, reports or publishes information for the primary purpose of disseminating news and information to the public" to a "publisher, editor, reporter or other similar person gathering information for the primary purpose of disseminating news to the public." In today's media climate, so-called "non-traditional" journalists are common. Often they are informing the public in new and innovative ways or providing indepth information in subjects where they have expertise. These journalists fill an important role in this economic climate, as many so-called "mainstream" outlets do not have the financial resources to comprehensively cover the courts or other institutions. We worry that judges could use the proposed new language to exclude "nontraditional journalists" or people whose work they disagree with. By placing false boundaries on the definition of reporter, the court is limiting the opportunity for innovative voices to arise, and - as the Framers and Supreme Court have found essential for democracy - to educate the public. We consider anyone whose purpose is to disseminate information to the public - no matter if he or she is affiliated with a traditional news organization - to be a journalist. Second, we are concerned that the proposal defines news reporter as someone who disseminates "news to the public" rather than "news and information to the public." It is clear to us that any public court hearing is news. However, we worry that the court could somehow use this wording to exclude voices with which it does not agree, or to play the role of editor and decide what voices or types of publication constitute news. Along these lines, we are concerned about the proposed clause (2)(B)(x), which lets judges consider the following factor in determining whether to allow cameras: "whether the predominant purpose of the electronic media coverage request is something other than journalism or dissemination of news to the public." Again, this places the government - instead of the journalist - in the position of determining what is or is not news. Such a dynamic is incompatible with the First Amendment. We appreciate Utah's efforts to introduce electronic media coverage into its courts, and we thank you for considering our comments on this matter.

Posted by Reporters Committee for Freedom of the Press June 20, 2014 03:13 PM

As an attorney, journalist, communications professor and former member of the Utah State Courts Outreach Committee, I believe I am sensitive to the various interests involved in this rule and these proposed changes. I am opposed to the proposal to remove the presumption of electronic media coverage in Rule 4-401.01(2)(A) for certain domestic matters whose records are classified as private in Rule 4-202.02(4)(B). I was recently a panelist at a conference of the Broadcast Education Association in Las Vegas. It was said on our panel that, with the

adoption of Rule 4-401.01, Utah was a leader in judicial transparency. I believe the presumption of electronic media coverage in Utah's courts is a key component to foster public understanding and trust. However, by making this exception Utah's judiciary will take a step backward and the public interest ultimately will be harmed. I do not believe the change is in line with the intent of Rule 4-401.01 "[t]o permit electronic media coverage of proceedings while protecting the right of parties to a fair trial, personal privacy and safety, the decorum and dignity of proceedings, and the fair administration of justice." The removal of the presumption of electronic media coverage appears to be an overreaction to a small number of incidents. In reality, judges already possess the authority under Rule 4-401.01 to address those rare instances in which the reasons to prohibit or restrict electronic media coverage "are sufficiently compelling to outweigh the presumption." (Rule 4-401.01(2)(A)). Rule 4-401.01(2)(B) already has a long list of factors to guide a judge's decision in this regard. For example, judges may act to protect the interests of a minor, prevent an unwarranted invasion of personal privacy or protect the safety and well-being of any individual. But those are decisions to be made in specific cases, with actual facts before a judge, instead of a blanket presumption against electronic media coverage in all hearings in all domestic-relations cases, even those in which no reason exists to restrict electronic media coverage. I understand that sensitive issues may be discussed in domestic cases. However, those issues already are discussed in open court, and that is in line with longstanding constitutional and common-law principles in the United States. In the public court system, the public's business should be done in public. We do not have a private dispute resolution system paid for by taxpayers, and thus the public needs to be able to access the proceedings in its court system. Since these hearings are already public, the only question is whether electronic media coverage should be allowed. I believe the presumption of electronic media coverage should remain in place, with of course the possibility for a judge to act to prohibit or restrict such coverage in the rare instance when doing so is justified. I have litigated issues relating to access to judicial court documents as stated in Rule 4-202.02. The fact that some domestic case documents are classified as private does not mean that hearings in those cases should be closed to the public or to electronic media coverage. Access to documents and hearings are different issues, and the U.S. Supreme Court in cases like *Richmond Newspapers, Inc. v. Va.*, 48 U.S. 555 (1980) has recognized a First Amendment right of access to court proceedings and observed that "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." There is much data showing that people in today's society learn about the court system from news accounts, and electronic media coverage is prominent in helping members of our society understand their courts. I do not believe there is sufficient justification for changing the presumption of electronic media coverage. Adding this exception could lead to future exceptions, and soon the rule would suffer death by a thousand cuts. I believe Utah judges can be

trusted to use their discretion rather than having this change forced upon them and upon a public that needs the understanding and trust in the courts that are fostered through electronic media coverage.
Posted by Ed Carter June 20, 2014 03:03 PM

If justice is truly blind, audio not video should be allowed. Video would be/could be disruptive. Video could also discourage witnesses and victims from testifying. Sex crime victims would have endure another gauntlet. Now that video is available worldwide, the victim could have to endure worldwide comments. The worst case scenario would be a show trial like the O.J. trial. The news should depend on issues and not on the appearance of a wronged or guilty person. I urge you to close Utah courtrooms to video. To not do so will deter testimony of crime victims and could provide a way to target witnesses. Public safety is obviously impacted and demands that video cameras be banned from courtrooms. Audio can provide the issues and increase the public's staying on the issues instead of defocusing and devolving into a discussion of a person/victim/witness/defendant appearance.
George Chapman slc Posted by George Chapman June 14, 2014 02:50 PM

With all due respect, I strongly appeal to the good sense of our court administrators considering changes to Rule 4-401.01 and ask that you please do not move forward with implementing those changes. No good can come to closing off communication. We do not want to take steps back in this wonderful process we just began one year ago.. we must continue to progress and if that includes adapting the process slightly to improve the efficiency and effectiveness of the open court process, so be it. But please do not deny access to our judicial process - keep Utah Courts open and allow Utahns to be informed.
Sincerely, George Severson News Director ABC4 Utah/CW30
Posted by George Severson June 13, 2014 10:19 PM

In my divorce case, had there been cameras in the court, the Commissioner would have had to apply the law, and this would have resulted in 2 years less court battles and saved the family over a hundred thousand dollars. The Commissioner's need oversight from the outside so that they do not rule on their personal whims or views. They need to be accountable as do judges. I support the efforts of Erik Johnson and believe that Commissioners and Judges who oppose it, do so out of fear for making faulty rulings, yet they hide behind the catch phrases of "privacy" all the while its really about their competency and application of law that could withstand scrutiny.
Mark Posted by Mark Allen June 13, 2014 06:51 PM

I am opposed to the proposed changes to Rule 4-401.01 and ask the courts' administrators and administrative bodies please reject them. Closing the presumption of openness leaves it to the judge to determine what is journalism

and worthy news. This is not congruent with a free press and open courts. Also, as the form to request video is only one page, the judge will probably be making this decision without the benefit of news outlets offering briefings, oral arguments and other means through which judges consider interested parties. From what I understand of how this proposal was implemented, it sounds as if the courts found one person it did not know how to handle and made a drastic rule change. That shows a lack of leadership and jurisprudence.
Posted by Nate Carlisle June 11, 2014 08:47 AM

With sincere due respect, the proposed changes to UCJA 4-401.01 are as bad as the original version of UCJA 4-401.01 is good. Allow me to explain how and why: The first proposed change is to subparagraph (1)(D). It changes the perfectly serviceable definition of news reporter to be "a publisher, editor, reporter or other similar person gathering information for the primary purpose of disseminating news and information to the public[.]" I know why the change was proposed: to keep someone like me (who runs a YouTube channel, Utah Family Law TV, which can be found at <http://www.youtube.com/user/UtahFamilyLawTV>) from being considered a reporter. This is not only shameful, but myopic. First of all, few, if any, "mainstream" or "professional" reporters work full-time as reporters. So limiting the group of reporters/news outlets to those whose "primary purpose" (whatever that means) is news reporting does nothing to benefit the public. The rule was changed simply to keep small the pool of those who fit the definition of "news reporter." This is disingenuous. The point isn't whether a reporter's "primary purpose" is to report news but whether the reporter (no matter where news reporting falls in his/her list of priorities) can be trusted to report the news in compliance with the rule for electronic news media. The next proposed change, to subparagraph (2)(A), seeks to exempt all cases classified as private from news coverage. Why? Hearings and trials in these cases are already open to the public and to members of the news media who don't record news using electronic media. What makes divorce and other domestic relations cases so sacrosanct? The notion that "private information" comes pouring out of divorce and other domestic relations cases is nonsense. If being charged with murder, the panoply of substance abuse and sexual crimes, DUI, embezzlement, burglary, "revenge porn," public urination, etc. is considered fair game for a presumption of electronic news media coverage, to claim that divorce and domestic relations cases are just too sensitive to be subject to the same presumption beggars credulity. Besides, Rule 4-401.01 already provides for the court to "restrict" electronic news media coverage, so if there is concern that unfettered coverage or a divorce or other domestic relations case could result in prejudice, don't bar the door to the electronic news media, just impose reasonable restrictions. I've offered to blot out faces, bleep out names and other sensitive words. Electronic media coverage is not a zero-sum proposition, but the revised rule treats it as such. As for the proposed change of to subparagraph (2)(B)(ix), i.e., "whether the

predominant purpose of the electronic media coverage request is something other than journalism or dissemination of news to the public," this rule is fair enough, IF construed and applied in good faith by the courts. But it won't be. Instead, courts will treat every request by any media outlet other than by broadcast radio and TV stations and somehow suspect in "purpose." A divorce lawyer such as myself, who, by all appearances, established a YouTube channel dedicated to educating and informing the public on matters of Utah family law can't be sincere. No, he must have some nefarious and self-serving purpose underlying the project, eh? That's how significant portion of my media requests to date have been treated, and based on absolutely no evidence available to the court. The changes to Rule 4-401.01 were made for no other reason than to make it harder for the news media to report on Utah court cases already open to the public. None of these changes were necessary, and none of these changes were warranted in comparison to the way the rule was previously drafted.

Posted by Eric K. Johnson May 13, 2014 06:24 PM

In light of the public comments, the Management Committee directed the Policy and Planning Committee to take another look at the proposal, and the Policy and Planning Committee has been discussing rule 4-401.01 since August 2014. In crafting a revised rule, the Policy and Planning Committee has sought feedback from members of local media, including the media coalition.

The Policy and Planning Committee voted to recommend the following amendments to the Judicial Council for its approval. First, the Committee voted to change the presumption in subparagraph (2)(A). The revised rule provides a presumption that electronic media coverage shall be permitted by a news reporter in public proceedings where "the predominant purpose is journalism or the dissemination of news to the public."

Second, the Committee voted to make changes to the pool coverage provisions in subparagraphs (4)(A)-(C). The revised proposal provides that all requests for electronic media coverage shall come through the court's public information office, and that the news reporter whose request is granted shall provide pool coverage. Next, the proposal requires that pooling arrangements be reached before the proceedings, without imposing on the judge or court staff, and that judges and court staff shall not be called

upon to resolve pool coverage disputes. Finally, the proposal provides that the approved news reporters shall promptly share their files with other news reporters and must be willing and able to share their files to be approved to provide pool coverage.

If the Council approves this proposal, the proposal will be opened to public comment before coming back to the Council for final action.

Encl. CJA 4-401.01

1 **Rule 4-401.01 Electronic media coverage of court proceedings.**

2 Intent:

3 To establish uniform standards and procedures for electronic media
4 coverage of court proceedings.

5 To permit electronic media coverage of proceedings while protecting the
6 right of parties to a fair trial, personal privacy and safety, the decorum and
7 dignity of proceedings, and the fair administration of justice.

8 Applicability:

9 This rule applies to the courts of record and not of record.

10 This rule governs electronic media coverage of proceedings that are open
11 to the public.

12 Statement of the Rule:

13 (1) Definitions.

14 (1)(A) "Judge" as used in this rule means the judge, justice, or court
15 commissioner who is presiding over the proceeding.

16 (1)(B) "Proceeding" as used in this rule means any trial, hearing, or other
17 matter that is open to the public.

18 (1)(C) "Electronic media coverage" as used in this rule means recording or
19 transmitting images or sound of a proceeding.

20 (1)(D) "News reporter" as used in this rule means a publisher, editor,
21 reporter or other similar person who gathers, records, photographs, reports, or
22 publishes information for the primary purpose of disseminating news to the
23 public, and any newspaper, magazine, or other periodical publication, press
24 association or wire service, radio station, television station, satellite broadcast,
25 cable system or other organization with whom that person is connected.

26 (2) Presumption of electronic media coverage; restrictions on coverage.

27 ~~(2)(A) Other than for case types classified as private under rule 4-~~
28 ~~202.02(4)(B), t~~There is a presumption that electronic media coverage by a
29 news reporter shall be permitted in public proceedings where the predominant
30 purpose of the electronic media coverage request is journalism or
31 dissemination of news to the public. The judge may prohibit or restrict
32 electronic media coverage in those cases only if the judge finds that the
33 reasons for doing so are sufficiently compelling to outweigh the presumption.

34 (2)(B) When determining whether the presumption of electronic media
35 coverage has been overcome and whether such coverage should be
36 prohibited or restricted beyond the limitations in this rule, a judge shall
37 consider some or all of the following factors:

38 (2)(B)(i) whether there is a reasonable likelihood that electronic media
39 coverage will prejudice the right of the parties to a fair proceeding;

40 (2)(B)(ii) whether there is a reasonable likelihood that electronic media
41 coverage will jeopardize the safety or well-being of any individual;

42 (2)(B)(iii) whether there is a reasonable likelihood that electronic media
43 coverage will jeopardize the interests or well-being of a minor;

44 (2)(B)(iv) whether there is a reasonable likelihood that electronic media
45 coverage will constitute an unwarranted invasion of personal privacy of any
46 person;

47 (2)(B)(v) whether electronic media coverage will create adverse effects
48 greater than those caused by media coverage without recording or
49 transmitting images or sound;

50 (2)(B)(vi) the adequacy of the court's physical facilities for electronic media
51 coverage;

52 (2)(B)(vii) the public interest in and newsworthiness of the proceeding;

53 (2)(B)(viii) potentially beneficial effects of allowing public observation of the
54 proceeding through electronic media coverage; and

55 ~~.(2)(B)(ix) whether the predominant purpose of the electronic media~~
56 ~~coverage request is something other than journalism or dissemination of news~~
57 ~~to the public; and~~

58 (2)(B)(ix) any other factor affecting the fair administration of justice.

59 (2)(C) If the judge prohibits or restricts electronic media coverage, the
60 judge shall make particularized findings orally or in writing on the record. Any
61 written order denying a request for electronic media coverage shall be made
62 part of the case record.

63 (2)(D) Any reasons found sufficient to prohibit or restrict electronic media
64 coverage shall relate to the specific circumstances of the proceeding rather
65 than merely reflect generalized views or preferences.

66 ~~(2)(E) A judge may permit electronic media coverage by a news reporter in~~
67 ~~the case types classified as private under rule 4-202.02(4)(B). In deciding~~
68 ~~whether to permit coverage, the judge shall consider the factors in paragraph~~
69 ~~(2)(B).~~

70 (3) Duty of news reporters to obtain permission; termination or suspension
71 of coverage.

72 (3)(A) Unless otherwise ordered by the court, news reporters shall file a
73 written request for permission to provide electronic media coverage of a
74 proceeding at least one business day before the proceeding. The request
75 shall be filed on a form provided by the Administrative Office of the Courts.
76 Upon a showing of good cause, the judge may grant a request on shorter
77 notice.

78 (3)(B) A judge may terminate or suspend electronic media coverage at any
79 time without prior notice if the judge finds that continued electronic media

80 coverage is no longer appropriate based upon consideration of one or more of
81 the factors in Paragraph (2)(B). If permission to provide electronic media
82 coverage is terminated or suspended, the judge shall make the findings
83 required in Paragraphs (2)(C) and (2)(D).

84 (4) Conduct in the courtroom; pool coverage.

85 (4)(A) Electronic media coverage is limited to one audio recorder and
86 operator, one video camera and operator, and one still camera and operator,
87 unless otherwise approved by the judge or designee. ~~If more than one news~~
88 ~~reporter has requested permission to provide electronic media coverage, i~~ All
89 requests to provide electronic media coverage shall be made to the court's
90 public information office. The news reporter whose request is granted by the
91 court will provide pool coverage.

92 (4)(B) It is the responsibility of news reporters to determine who will
93 participate at any given time, how they will pool their coverage, and how they
94 will share audio, video or photographic files produced by pool coverage. The
95 pooling arrangement shall be reached before the proceedings without
96 imposing on the judge or court staff. Neither the judge nor court staff shall be
97 called upon to resolve disputes concerning pool arrangements.

98 (4)(C) ~~The pool~~ The approved news reporter operators shall use equipment
99 that is be capable of sharing audio, video or photographic files to with other
100 pool recipients news reporters in a generally accepted format. The pooling
101 arrangement shall be reached before the proceedings without imposing on the
102 judge or court staff. Neither the judge nor court staff shall be called upon to
103 resolve disputes concerning pool arrangements. News reporters providing
104 pool coverage shall promptly share their files with other news reporters. News
105 reporters must be willing and able to share their files to be approved to
106 provide coverage.

107 (4)(~~BD~~) News reporters shall designate a representative with whom the
108 court may consult regarding pool coverage, and shall provide the court with
109 the name and contact information for such representative.

110 (4)(~~CE~~) Tripods may be used, but not flash or strobe lights. Normally
111 available courtroom equipment shall be used unless the judge or a designee
112 approves modifications, which shall be installed and maintained without court
113 expense. Any modifications, including microphones and related wiring, shall
114 be as unobtrusive as possible, shall be installed before the proceeding or
115 during recess, and shall not interfere with the movement of those in the
116 courtroom.

117 (4)(~~DE~~) The judge may position news reporters, equipment, and operators
118 in the courtroom. Proceedings shall not be disrupted. Equipment operators
119 and news reporters in the courtroom shall:

120 (4)(~~DG~~)(i) not use equipment that produces loud or distracting sounds;

121 (4)(~~DG~~)(ii) not place equipment in nor remove equipment from the
122 courtroom nor change location while court is in session;

123 (4)(~~DG~~)(iii) conceal any identifying business names, marks, call letters,
124 logos or symbols;

125 (4)(~~DG~~)(iv) not make comments in the courtroom during the court
126 proceedings;

127 (4)(~~DG~~)(v) not comment to or within the hearing of the jury or any member
128 thereof at any time before the jury is dismissed;

129 (4)(~~DG~~)(vi) present a neat appearance and conduct themselves in a
130 manner consistent with the dignity of the proceedings;

131 (4)(~~DG~~)(vii) not conduct interviews in the courtroom except as permitted by
132 the judge; and

133 (4)(~~DG~~)(viii) comply with the orders and directives of the court.

134 (5) Violations. In addition to contempt and any other sanctions allowed by
135 law, a judge may remove from the proceeding anyone violating this rule or the
136 court's orders and directives and terminate or suspend electronic media
137 coverage.

138 (6) Limitations on electronic media coverage. Notwithstanding an
139 authorization to conduct electronic media coverage of a proceeding, and
140 unless expressly authorized by the judge, there shall be no:

141 (6)(A) electronic media coverage of a juror or prospective juror until the
142 person is dismissed;

143 (6)(B) electronic media coverage of the face of a person known to be a
144 minor;

145 (6)(C) electronic media coverage of an exhibit or a document that is not
146 part of the official public record;

147 (6)(D) electronic media coverage of proceedings in chambers;

148 (6)(E) audio recording or transmission of the content of bench conferences;

149 or

150 (6)(F) audio recording or transmission of the content of confidential
151 communications between counsel and client, between clients, or between
152 counsel.

153 (7) Except as provided by this rule, recording or transmitting images or
154 sound of a proceeding without the express permission of the judge is
155 prohibited. This rule shall not diminish the authority of the judge conferred by
156 statute, rule, or common law to control the proceedings or areas immediately
157 adjacent to the courtroom.

TAB 4



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

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

MEMORANDUM

To: Judicial Council
From: Alison Adams-Perlac *Alison Adams-Perlac*
Date: February 17, 2015
Re: Rule for Final Action

The public comment period for rule 4-202.02 has closed. The Policy and Planning Committee has recommended the proposal to amend subparagraphs (4)(A) and (4)(B) and the proposal is now ready for final action by the Judicial Council. If the Council approves the rule as recommended, the amended rule will be effective May 1, 2015.

CJA 4-202.02. Records classification. Amend. Classifies qualified domestic relations orders (QDROs) and records in an action regarding removal from the National Instant Check database as private.

There were no public comments and the Committee voted to recommend the proposal, as written, to the Council.

Encl. CJA 4-202.02

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.

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

2 Intent:

3 To classify court records as public or non-public.

4 Applicability:

5 This rule applies to the judicial branch.

6 Statement of the Rule:

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

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

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

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

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

13 (2)(D) audit reports;

14 (2)(E) case files;

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

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

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

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

23 (2)(J) financial records;

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

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

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

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

30 (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;

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

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

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

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

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

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

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

55 (2)(T) order or decision classifying a record as not public;

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

58 (2)(V) probation progress/violation reports;

59 (2)(W) publications of the administrative office of the courts;

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

62 (2)(Y) record of the receipt or expenditure of public funds;

63 (2)(Z) record or minutes of an open meeting or hearing and the transcript of them;
64 (2)(AA) record of formal discipline of current or former court personnel or of a person
65 regulated by the judicial branch if the disciplinary action has been completed, and all
66 time periods for administrative appeal have expired, and the disciplinary action was
67 sustained;

68 (2)(BB) record of a request for a record;

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

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

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

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

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

85 (3) The following court records are sealed:

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

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

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

91 (3)(A)(iii) Title 76, Chapter 7, Part 3, Consent required for abortions performed on
92 minors;

93 (3)(B) expunged records;

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

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

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

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

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

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

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

104 (4) The following court records are private:

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

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

107 (4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System
108 database;

109 (4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are
110 sealed;

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

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

116 (4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders,
117 except that an action for consortium due to personal injury under Section 30-2-11 is
118 public;

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

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

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

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

- 124 (4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and
125 Enforcement Act;
- 126 (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;
- 127 (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- 128 (4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this
129 subparagraph (B);
- 130 (4)(C) aggregate records other than public aggregate records under subsection (2);
- 131 (4)(D) alternative dispute resolution records;
- 132 (4)(E) applications for accommodation under the Americans with Disabilities Act;
- 133 (4)(F) citation, but an abstract of a citation that redacts all non-public information is
134 public;
- 135 (4)(G) judgment information statement;
- 136 (4)(H) judicial review of final agency action under Utah Code Section 62A-4a-1009;
- 137 (4)(I) the following personal identifying information about a party: driver's license
138 number, social security number, account description and number, password,
139 identification number, maiden name and mother's maiden name, and similar personal
140 identifying information;
- 141 (4)(J) the following personal identifying information about a person other than a party
142 or a victim or witness of a crime: residential address, personal email address, personal
143 telephone number; date of birth, driver's license number, social security number,
144 account description and number, password, identification number, maiden name,
145 mother's maiden name, and similar personal identifying information;
- 146 (4)(K) medical, psychiatric, or psychological records;
- 147 (4)(L) name of a minor, except that the name of a minor party is public in the
148 following district and justice court proceedings:
 - 149 (4)(L)(i) name change of a minor;
 - 150 (4)(L)(ii) guardianship or conservatorship for a minor;
 - 151 (4)(L)(iii) felony, misdemeanor or infraction;
 - 152 (4)(L)(iv) child protective orders; and
 - 153 (4)(L)(v) custody orders and decrees;

154 (4)(M) personnel file of a current or former court personnel or applicant for
155 employment;

156 (4)(N) photograph, film or video of a crime victim;

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

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

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

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

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

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

168 (4)(S) victim impact statements;

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

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

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

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

177 (4)(W)(i) adoption;

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

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

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

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

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

183 (5) The following court records are protected:

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

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

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

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

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

196 (5)(F) court security plans;

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

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

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

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

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

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

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

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

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

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

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

- 215 (5)(N) record the disclosure of which would interfere with supervision of an
- 216 offender's incarceration, probation or parole;
- 217 (5)(O) record the disclosure of which would jeopardize life, safety or property;
- 218 (5)(P) strategy about collective bargaining or pending litigation;
- 219 (5)(Q) test questions and answers;
- 220 (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- 221 (5)(S) record of a Children's Justice Center investigative interview before the
- 222 conclusion of any legal proceedings;
- 223 (5)(T) presentence investigation report; and
- 224 (5)(U) other records as ordered by the court under Rule 4-202.04.
- 225 (6) The following are juvenile court social records:
- 226 (6)(A) correspondence relating to juvenile social records;
- 227 (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations,
- 228 substance abuse evaluations, domestic violence evaluations;
- 229 (6)(C) medical, psychological, psychiatric evaluations;
- 230 (6)(D) pre-disposition and social summary reports;
- 231 (6)(E) probation agency and institutional reports or evaluations;
- 232 (6)(F) referral reports;
- 233 (6)(G) report of preliminary inquiries; and
- 234 (6)(H) treatment or service plans.
- 235 (7) The following are juvenile court legal records:
- 236 (7)(A) accounting records;
- 237 (7)(B) discovery filed with the court;
- 238 (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes,
- 239 findings, orders, decrees;
- 240 (7)(D) name of a party or minor;
- 241 (7)(E) record of a court hearing;
- 242 (7)(F) referral and offense histories
- 243 (7)(G) and any other juvenile court record regarding a minor that is not designated
- 244 as a social record.
- 245 (8) The following are safeguarded records:

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

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

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

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

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

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

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

266

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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: Alison Adams-Perlac *Alison Adams-Perlac*
Date: February 17, 2015
Re: 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 the Council approved these proposals.

However, the Management Committee considered these proposals and voted to send the proposal back to the Judicial Council with an amendment to rule 3-111 to make it clear that the presiding judge in the Court of Appeals has the responsibility for evaluating senior appellate judges, and an amendment to rule 11-201 to make the rule conform with the end of term performance evaluation requirement for senior appellate judges set out in rule 3-111. If the Council approves the rules as recommended, they will be 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 Court of Appeals 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

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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 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. Requires an appellate senior judge to undergo a performance evaluation at the end of each 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 Court
14 of Appeals, 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 Court of Appeals 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 (24) Active Ssenior judges and court commissioners shall be evaluated and certified
35 upon the following criteria:

36 (24)(A) integritydemonstration of understanding of the substantive law and any
37 relevant rules of procedure and evidence;

38 (24)(B) knowledge and understanding of the law and proceduresattentiveness to
39 factual and legal issues before the court;

40 (24)(C) ability to communicateadherence to precedent and ability to clearly explain
41 departures from precedent;

42 (24)(D) preparation, attentiveness, dignity and control over proceedingsgrasp 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 (24)(E) skills as a managerability to write clear judicial opinions;

46 (24)(F) punctualityability to clearly explain the legal basis for judicial opinions;

47 (24)(G) service to the profession and the publicdemonstration of courtesy toward
48 attorneys, court staff, and others in the commissioner's or senior judge's court; and

49 (24)(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.

209 ~~(53)~~(I) 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) 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, except that an active senior appellate judge must
39 be willing to undergo a performance evaluation only at the end of each term; and

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

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

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

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

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

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

53 (3) Term of Office.

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

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

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

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

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

72 (5) Application and Appointment.

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

76 (5)(B) The applicant shall:

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

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

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

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

90 (6) Assignment.

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

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

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

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

107 (6)(E) Notice of an assignment made under this rule shall be in writing and
108 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.

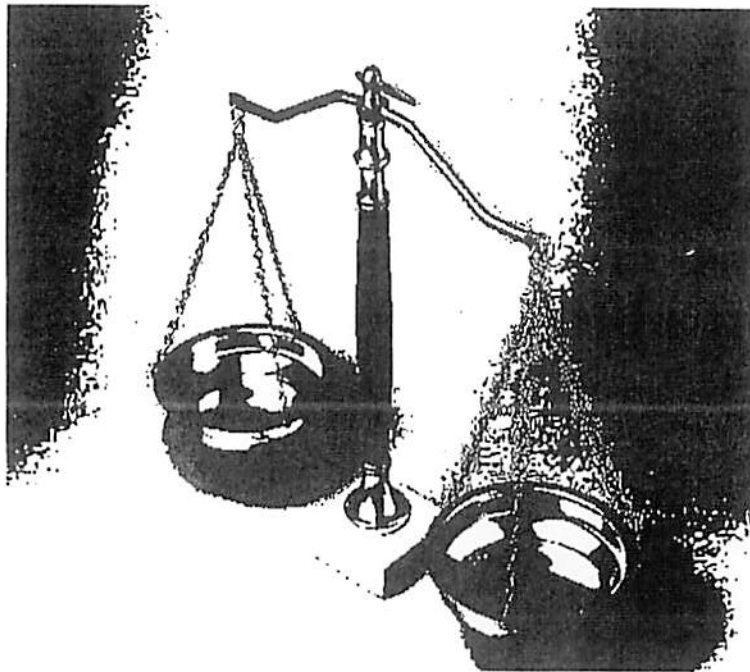
88 (6)(B) In extraordinary circumstances and with the consent of the active senior
89 justice court judge, the chief justice may assign an active senior justice court judge to
90 address the extraordinary circumstances for a specified period of time not to exceed 60
91 days per calendar year, which may 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.

TAB 6

**APPLICATION FOR INITIAL PROJECT PLANNING
APPROVAL FOR PROPOSED PROBLEM SOLVING
COURT PROJECT**



**FIRST JUDICIAL DISTRICT
BOX ELDER COUNTY MENTAL HEALTH COURT
DRAFT PROPOSAL**

December, 2014

APPLICATION FOR INITIAL PROJECT PLANNING APPROVAL FOR PROPOSED PROBLEM SOLVING COURT PROJECT

Name/Working Title of Proposed Project: First District Mental Health Court Expansion Project

Court Location: 43 N. Main Brigham City, UT 84302

Application Submitted by: Judge Brian Cannell

Introductory Statement:

In 2004 Congress passed the Mentally Ill Offender Treatment and Crime Reduction Act, finding that according to the Bureau of Justice Statistics, over 16 percent of adults incarcerated in United States jails and prisons have a mental illness. Furthermore, the National Alliance for the Mentally Ill estimates that up to 40 percent of adults who suffer from a serious mental illness will come into contact with the American criminal justice system at some point in their lives. Additionally, studies show that significant proportions of adults with a serious mental illness who are involved with the criminal justice system are either homeless or at imminent risk of homelessness, and far too many of these individuals undergo arrest and incarceration for minor nonviolent offenses.

It has been consistently evidenced that the majority of individuals with mental illness who are involved in the criminal justice system are responsive to behavioral health interventions that integrate treatment, rehabilitation, and broad-based community support services. Collaborative and integrative programs between mental health, substance abuse, and criminal justice systems that ensure the provision of rehabilitative services for those with mental illness or co-occurring mental illness and substance abuse disorders can effectively reduce the number of such individuals in corrections facilities, while providing improved public safety.

The overall intent of legislation such as the Mentally Ill Offender Treatment and Crime Reduction Act is to facilitate collaboration among the courts, mental health treatment, and substance abuse systems so as to achieve a variety of public service goals and objectives with respect to mental health and criminal justice. The aims to protect public safety, provide courts with appropriate mental health and substance abuse treatment options, maximize the use of alternatives to prosecution, promote adequate training for criminal justice system personnel about mental illness as well as training for mental health personnel

about criminal offenders with mental illness are calculated to improve communication and collaboration among criminal justice and mental health personnel as well as foster intergovernmental and community partnerships among municipal, county, and State elected officials with respect to the organization and operation of public systems involved directly or indirectly in the management, supervision, and treatment of mentally ill offenders.

These pursuits were embraced and employed with the advent of the First Judicial District mental health court program in December 2008, at which time Cache County formally entered a new phase of mental health service collaboration unprecedented in county history. Under the leadership of a mental health court planning and steering committee, the First District Mental Health Court program achieved concrete feasibility and organizational reality. Through subsequent procedural and organizational development of the specialty court program, allied community stakeholders including court officials, mental health administrators, law enforcement personnel, defense attorneys, county prosecutors, and local representatives of the National Alliance on Mental Illness, interdependently began to work on specific program design and implementation finally resulting in formal program operation in late 2008.

However, the scope of individual, family, and social impact of mental health related problems in the broader context of all rural communities in Northern Utah, particularly with the justice-involved population who face added complexity as well as increased stress vulnerability, extends far beyond Cache County alone. Increasing suicide-related fatalities, the general deficiency of service access for unfunded individuals, the emergent volume of mental illness and the poverty of adequate treatment in incarcerated settings, escalating acute inpatient hospitalization costs, diminishing civil and forensic bed availability in state mental health institutions, increasing civil commitment rates, and the abject poverty of affordable housing supports for successful mental health interception and diversion, converge and combine to effectively strangle the availability, flexibility, and applicability of local mental health resources dedicated to the community at large and especially for unfunded and underfunded mentally ill offenders.

These obvious systemic appearances within the local community speak to the need for a multi-level approach to the expansion of therapeutic justice systems within the first judicial district. Within the existing mental health court system, expansion of the mental health court program into additional counties, the widening of eligibility criteria and the creation of targeted treatment assertion and an

integrated jail diversion system is needed to afford opportunity for an increased number of justice-involved individuals with serious mental illness the possibility for effective psycho-legal reconciliation and mental health recovery.

With this premise in mind, the following application proposes a mental health court expansion project within the first judicial district to encompass Box Elder County particular to the following application subsets:

I. Target Population

Describe the types of cases or the description of the population that will be served by this project. Please be specific.

The proposed expansion project would seek to establish a mental health court program in Box Elder County, thereby increasing court-based services and jail diversion/interception to a greater volume of justice-involved individuals with serious and persistent mental illness or co-occurring mental illness and substance use/abuse disorders in the Northern Utah tri-county area.

The target population identified for inclusion in the Box Elder County mental health court would apply to those individuals within the jurisdiction of the court with criminal charges, considered legally competent, and having a co-occurring Axis I diagnosed mental illness (e.g., Schizophrenia, Bipolar Disorder, Schizoaffective Disorder, Major Depressive Disorder, etc.). The exclusion of mental state defendants, incompetent defendants, limitations relative to the particular classes of mental illness (e.g., Developmental Disability, Mental Retardation), as well as certain limitations in the category or nature of offense (i.e., violent offenses, sole DUI offenses, and sexual offenses), appropriately narrow the scope of the mental health court so as to adequately balance concerns relative to the protection of public safety as well as the utilization and application of limited public resources.

Additionally, criminal and mental health history, personality characteristics, substance use history, perceived suitability and potential for program success, as well as motivational history and apparent readiness for change, represent additional eligibility factors that may be taken into consideration. The

considerations of primary and concomitant factors combine to form a totality of circumstances relevant to the eligibility of the defendant. Although not all factors may carry the same weight, still diagnosis alone should not completely outweigh all other relevant circumstances for inclusion in the mental health court program.

II. Purpose/Goal of Project

Please explain why you believe this project is necessary or desirable. How will a problem solving approach benefit your target population?

Currently, the First District Mental Health Court program operates solely in Cache County, although the judicial district spans a tri-county catchment area in Northern Utah, which includes Box Elder, Cache, and Rich counties. Subsequently, the proposed expansion project solicits approval for the development and operation of a mental health court program in Box Elder County, second in population density to Cache County, and the location of a supplementary district courthouse with additional judicial and court administrative staffs and criminal dockets.

Primary Goals:

The overall objectives of the mental health court program are predominately two fold. The program foremost is designed to maximize treatment and minimize lengthy incarceration for eligible defendants as a method of reducing both the over-representation of mentally ill offenders in the criminal justice system while diminishing treatment resistance in the same population. These global objectives attempt to integrate the factors of responsibility and accountability with respect to specific and limited categories of serious mental illness that are considered, in some instances, to be contributing or correlated elements in the context of the defendant's criminal conduct and/or impediments or complicating factors relative to the functional management of individual and social decorum.

Within this context, the mental health court program seeks to positively address the core dynamic factors associated with criminogenic risk, including:

- **Antisocial personality patterns characterized by impulsive, adventurous pleasure seeking, restlessly aggressive and irritable behavior.**
- **Antisocial cognition resulting in rationalization and projection of blame for criminal conduct and negative perspectives of the rule of law.**
- **Antisocial associations comprised of pro-criminal social networks and friendship patterns and avoidance of pro-social peers.**
- **Substance abuse in which there is a maladaptive pattern of substance use leading to significant impairment or distress resulting in a failure to fulfill major role obligations at work, school, or home, or recurrent use in physically hazardous situations such as driving an automobile.**
- **Educational and employment instability involving poor levels of performance and satisfaction with work and school.**
- **Family/social relationship instability marked by repeated conflicts, entanglements, and inappropriate parental monitoring and discipline.**
- **Impoverished pro-social leisure pursuits manifested by the lack of healthy and diversified pro-social recreational and leisure activities.**

Furthermore, the program targets the functional objective dedicated to the promotion and enhancement of mental health recovery. Understanding mental illness from the standpoint of its impact on the overall process of functional development provides a rationale for understanding the need for adjunct mental health services that assist with functional rehabilitation targeted to the mentally ill offender. The cognitive and behavioral skill sets necessary to navigate even the simplest of communities, let alone systems of criminal justice, and to negotiate basic goods and services are often beyond the reach of the seriously mentally ill. Whether as a result of social exclusion, or stereotype and stigma, or as a result of chronic functional atrophy through years of misuse and disuse of interpersonal and daily

living skills, impairments in these critical life areas help perpetuate the vicious cycles of homelessness, hospitalization, and incarceration too often characteristic of this population segment.

Mental health recovery is a process and approach to changing attitudes, values, skills, and/or roles, developing new life meaning and purpose, as well as regaining social function despite limitations of mental illness. The recovery model stresses therapeutic values such as hope, wellness, empowerment, social connectedness, and personal responsibility. Management of psychiatric illness is paired with the development and management of spiritual, emotional, and social aspects of the individual's life beyond mental illness. Although not new in conceptualization or application, the recovery process model has reemerged recently as an important and fundamental perspective of hope from which mental health systems and consumers can progress away from the archaic notions of mental illness as an all-powerful and negative determinate of both the quality and meaning of a person's life.

Many mental health providers across the country have embraced the recovery model as the context perspective for service delivery, including the Utah Division of Substance Abuse and Mental Health, which has identified the recovery model as a preferred base for the principle and practice of mental health treatment in the Utah public mental health system.

As a basis for the development of the recovery process model and emerging best practices, recovery is generally defined as "a personal process of overcoming the negative impact of a psychiatric disability despite its continued presence." The First District Mental Health Court program embraces the definition adopted in the President's New Freedom Commission on Mental Health which states "Recovery refers to the process in which people are able to live, work, learn, and participate fully in their community. For some individuals, recovery is the ability to live a fulfilling and productive life despite a disability. For others, recovery implies the reduction or complete remission of symptoms. Science has shown that having hope plays an integral role in an individual's recovery."

The ultimate goal then for individuals in the mental health court is to reach their optimal or highest level of social functioning possible and to learn to use and/or provide support to others outside the traditional mental health treatment and support system and to achieve rehabilitative progress across a set of basic functional recovery stages.

Supplemental Goals:

In addition to the predominate goals of a reduction in representation of the mentally ill within the offender population and the mediation of criminogenic risks among mentally ill offenders as well as the promotion of mental health recovery, as in the district court's existing program, the following additional target objectives are equally considered within the scope of the Box Elder County mental health court system, including:

- *Increased public safety:*

The issue of public safety is of prime concern to mental health court. Therefore the fusion and collaboration between the judicial and the clinical public systems is in part an effort to better address the treatment needs of the offender in the service of public protection. Mental health courts have demonstrated reductions in crime, reductions in violent crime, and reductions in lengths of incarceration for program participants. Diversion of mentally ill offenders from purely retributive aims to include utilitarian effects and movement from strict incapacitation to rehabilitation benefits both the offender as well as the public through proper symptom management and stabilization, productive and protective skill development, technical and logistical resource acquisition, as well as pro-social communal integration that enhances the quality and productivity of the relationship between the offender and the community in the spirit and interest of restorative justice.

- *Reduction in criminal system contacts with the mentally ill population:*

The mental health court program represents a specific ingredient in an overall criminal justice diversion system which utilizes the sequential intercept model currently recognized as the national standard for the development of diversion programs relative to the seriously and persistently mentally ill individual. There are many individuals in this population for whom a serious mental illness becomes a mitigating factor in social functioning. For such individuals, mental illness becomes a deterrent to the effective

resolution of criminal conduct and a critical factor in the extension of the period of incarceration as well as criminal recidivism. For these individuals, a system of interception away from the criminal justice system and toward appropriate clinical care is preferred in the interest of social responsibility. It is anticipated that the mental health court program will achieve the overall outcome of a reduction in contacts between seriously mentally ill individuals, law enforcement, and judicial/correctional systems as has been demonstrated in other jurisdictions nationally.

- *Clinical integration and/or re-integration of mentally ill offenders:*

It is anticipated that the mental health court system will enhance treatment motivation and adherence to rehabilitative and mental health recovery plans which otherwise is and has been tenuous among mentally ill offenders. Additionally, as mental illness is not empirically associated as a causal factor for criminal conduct, the clinical treatment component will be broadened to include the risk, need, and responsivity (RNR) model for offender rehabilitation to address criminogenic risk factors; as such factors are as applicable to the mentally ill offender as to any other criminal population.

Without intrinsic motivation for continued treatment, the ability to sustain the progress achieved through the mental health court program is severely compromised and consequently the program includes both dialectical and rhetorical strategies to promote and enhance sustainability for treatment motivation and engagement beyond the point of program graduation.

Every participant will face numerous critical choice points between committed participation or counter motivated and self-defeating action. Consequently, the program is dedicated to the employment of rhetorical or persuasive methodologies that exert the power of appeal through credible, reasonable, and emotional strategies which will impact and facilitate a transition from purely extrinsic sources of influence to a greater degree of intrinsically motivated participation and committed action.

- *Improved quality of life and community success:*

In addition to public safety, through the application of both judicial and clinical program elements, the mental health court focuses on a broader scope of social and functional influence that is intended to impact a variety of the defendant's psychosocial environments beyond the impact on mere personal conduct. Through the application of the mental health court system, mentally ill offenders are projected to achieve greater symptom stabilization, functional rehabilitation and thereby enhance community tenure.

Additionally, the mental health court program includes expectations for continuing productive and educational activities scalable to the individual throughout the length of the program. The activity of work and productive effort can have a profound life meaning encouraging the growth of an individual's unique strengths, talents and abilities within a shared and interdependent social context. Productive activity may help provide greater definition of individuality and sense of self as well as direction for the future. Additionally, productive engagement, whether through employment or volunteerism, lends structure to daily living and minimizes the social and personal threats associated with idle time. Without the external structure of work, many would have increased difficulty keeping above the frequent chaos of thought and feeling associated with severe mental illness.

Although the specifics of each participant's individual work path may differ, the very fact of working provides a common ground and another level of interest and association with others. The productivity aspect of the program involves individualized activity including volunteer work, sheltered employment, supported employment, supportive employment, gainful employment, etc., as a program requirement scalable to the functional level of the participant.

Furthermore, as education also factors among the elements of criminogenic risk where poor academic involvement and performance in concert with other factors can serve to heighten the potential for initial and re-occurring criminal conduct, the mental health court program emphasizes the pursuit of educational goals as part of the phase structure

of the program. Recognizing the importance of continuing education, program participants are both encouraged and assigned educational objects as part of their movement toward program completion.

Continuing education, whether formal or informal, is critical to both functional and social survival in community living. For some participants, this may mean completing basic literacy education, for others it may involve completing a GED, and still others it may include advanced education in technical, trade, or a college liberal arts and sciences program. Regardless of the level of one's education upon entry into the MHC program, the pursuit of additional learning is both valued and expected by the court as a means to sustain progress and benefit participants in their personal, family, and community life.

III. What is the size of the proposed project?

Approximately how large is your target population and how many participants would likely be served by the proposed project?

It is estimated that at the point of full program implementation that 15 to 20 individuals would participate in concurrent program enrollment with further estimates of 50 to 60 individuals annually managed through the program's referral and eligibility process given Box Elder County's population density of approximately 50, 000 and current incarceration capacity of 168 inmate beds positioned at the Box Elder County jail.

Although the prevalence estimates of mental illnesses in U.S. jails have varied widely depending on methodology and setting. The U. S. Department of Justice, Bureau of Justice Statistics (BJS) Survey of inmates in Local Jails, conducted every 5 to 6 years since 1972, represents the only national source of detailed information on criminal offenders, particularly special populations such as drug and alcohol users and offenders who have mental health problems. At midyear 2005 the BJS reported findings that more than half of all prison and jail inmates had a mental health problem, including

705,600 inmates in State prisons, 78,800 in Federal prisons and 479,900 in local jails. These estimates represented 56% of State prisoners, 45% of Federal prisoners, and 64% of jail inmates. These findings were based on data from personal interviews with State and Federal prisoners in 2004 and local jail inmates in 2002.

If national statistics are accurate in the general estimate that roughly 24% of jail inmates have mental health related problems and that 16% have a serious mental illness, for Box Elder this would extrapolate to approximately 40 individuals overall having mental health issues and as many as 26 likely experiencing the consequential effects of a serious and persistent mental illness at any given time during their period of incarceration, which will consequently factor into program referral rates and eligibility determinations.

As part of the mental health court program, mental health court eligibility assessments would be conducted in the Box Elder County Jail on a routine basis through the services of Bear River Mental Health. Additionally, many Box Elder County inmates would be diverted each year from the correctional setting through the interception efforts accomplished through the First District Mental Health Court program.

Furthermore, with the establishment of a Box Elder County mental health court program, efforts would be made to establish a more integrated, reliable, and concrete jail diversion system including the acquisition of dedicated housing units available for program utilization and the possibility of expedited release into program services.

IV. What is the anticipated impact on court staff, clerks and judges, and how will that need be met?

The procedural aspect of the mental health court program necessarily entails weekly case conference meetings and status hearings. The case staffing or conference session would typically occupy 30 to 60 minutes per week depending on the number of participants docketed for that week's status hearing and would involve the participation of both the mental health court judge and court clerk as well as a mental health court team of stakeholders as explained in the following section. The case staffing

represents a dialogue format relative to program oversight, review of referrals, and determination of program eligibility, as well as program coordination. The case conference session preceding the mental health court status hearing is indispensable to the conduct of the hearing, as critical information relative to the weekly progress or barriers to progress of program participants helps steer the direction and interaction between judge and defendant.

Mental Health Court staffing meetings are generally closed sessions, however, guests may attend by invitation or prior approval from the team. This protocol is adopted due to the often sensitive content of information discussed in the meeting in efforts to protect privacy and maintain the integrity of the workgroup as it openly collaborates through the process of eligibility determination, the development of strategic plans for progress and program compliance, as well as determinations for incentives and/or sanctions imposed in the status hearing.

Additionally, this collaborative network actively maintains its connection and cohesion apart from its formal staffing meeting through phone, email, and face-to-face contact relative to the operation of the program and the shared relationship and responsibilities among team members. In this way the mental health court team keeps abreast of programmatic issues and challenges, operational concerns and complications, as well as participant involvement in programmatic assignments, goals, and objectives.

As previously mentioned, the court status hearing is conducted on a weekly basis immediately subsequent to the case conference session and would again, depending on program volume, occupy one to two hours of court time per week. As expected in any criminal court proceeding, the mental health court status hearing involves the time and resources of the District Court Judge, court clerk, county attorney, defense attorney, and sheriff's department relative to both procedural and public decorum. Additionally, mental health court hearings are attended as well by administrative staff from the local mental health and substance abuse service providers, and other invested stakeholders. The time and many talents required of those involved in these programmatic efforts reflect the unanimous and wholehearted support and vested interest for this project shared among all the aforementioned entities included above and as further described below.

Finally, at the macro-level of court administration, the Box Elder County program would seek participation from the Administrative Office of the Courts to assist in initial education, training, and

advisory activity prior to program initiation, as the participating parties in Box Elder County are less experienced in specialty court procedure and operational priorities within the Utah judicial system. It is anticipated that partnership with state administrative stakeholders would further serve to enhance the program's consistency and viability relative to the larger scale goals and objectives of Utah's criminal justice system overall, and the judiciary in particular. Direction as to program development and eventual certification are likely to evolve, as Utah specialty mental health courts continue to proliferate in state jurisdictions. The similarity and congruity of programs across the state will eventually depend upon a close alliance between court administration and local judicial districts, of which Box Elder County perceives as a preferred partnership of co-located interest and collaborative effort toward positive and sustainable outcomes that promote mental health recovery and diminish criminogenic risk and recidivism.

V. Funding considerations/stakeholders

Identify the stakeholders and what they will need to contribute to the project. If you have identified a funding source to support the project, please specify.

As referenced above, the Box Elder County program has established a collaborative interdisciplinary team of community stakeholders composed of individuals representing criminal justice, mental health, substance abuse, law enforcement, and allied community partners who fulfill an administrative and oversight role relative to program referral, entry, advancement, and completion. The mental health court team forms an interconnected circle of influence that assists program participants in the management of their respective circle of concern. The mental Health court team is a formally organized body of stakeholders and includes members from the First District Court, Bear River Mental Health, Bear River Drug and Alcohol, NAMI, Adult Probation and Parole, Box Elder County Sheriff's Department, City Police, Box elder County Attorney's office, and the Public Defender's office.

This community coalition of allied professionals are formally committed and dedicated to the creation and operation of a mental health court program in Box Elder County, and in combination will contribute the necessary responsibilities and resources, as described below, needed to successfully conduct this specialty court program, if approved for implementation.

Fundamental contributions will include:

- **Court Services:**

The functional operation of the mental health court program fundamentally resides within the District Court and relies on the combined efforts of the District Court Judge, court clerk, and trial court executive who oversee the operational aspects of criminal justice within the judicial district. The District Judge presides over both the mental health court status hearing and case conference sessions for case processing and provides oversight of the work of the mental health court team. The District Judge leads the program and provides the necessary source credibility that lends the persuasive appeal needed among community stakeholders to further program development and the building of coalitions and support structures that will ultimately result in program sustainability. Furthermore, the procedural nuances of the court program are effectively managed by the court clerk who organizes the criminal docket, records court proceedings, documents and tracks the status of program participants and court outcomes relative to incentives and sanctions, as well as provides integrated communication between and among the mental health court team.

Additionally, the First District Trial Court Executive responsible for day-to-day supervision of the non-judicial administration of the court, court staff supervision, budget development and management, as well as facility and court security management, stands ready to participate, particularly relative to the fiscal demands of the mental health court program. Currently, the trial court executive is working with the Cache County program in the management of funds associated with legislative appropriation acquired through the 2013 legislative session. As further explained below, these funds, as applicable to the First Judicial District Court would be applied to a Box Elder County program to assist in the funding of subsidized treatment as well as housing and other resource acquisitions in support of unfunded program participants.

- **Mental Health Treatment Services:**

Mental health treatment services would be provided by Bear River Mental Health (BRMH), to include a comprehensive array of service domains relative to counseling, medication management, case management, psychosocial rehabilitation, as well as assertive community outreach and criminogenic risk response. In support of the mental health court program in general, although Bear River Mental Health predominantly serves Medicaid eligible individuals, it includes within its service priority, mental health court participants irrespective of funding.

Additionally, Bear River Mental Health will provide a mental health court liaison and administrative supervisor responsible for oversight and coordination of each participant's involvement between judicial and clinical program components. The mental health court liaison functions as the interface between the court and the treatment provider. This staff person meets weekly with each defendant and/or the clinical providers to assess and complete progress reports that are brought to the weekly mental health court case conference meeting. The program coordinator's report, in part, forms the basis for the court's case review with the defendant and determination of adherence to program requirements and subsequent recognition, advancement, or judicial sanction relative to the participant's activity in the preceding week.

The BRMH Administrative Supervisor dedicates time relative to the supervision of the court liaison as well as the design and development of written materials that support the educational, organizational, and operational function of the mental health court program. The creation and production of program guidebooks, as well as forms, documents, and educational materials about program policy and procedure serve to transition program operation from a theoretical and conceptual framework to practical reality.

- **Prosecutorial Services:**

The County Attorney's office acts as the legal gate keeper for initial mental health court program referrals and assumes responsibility to screen potential participants for the legal criteria which may include or preclude participation in the Mental Health Court program and subsequently forwards legally eligible referents to the mental health provider for clinical

eligibility assessments. A representative from the county attorney's office also participates as a member of the mental health court team and attends weekly case conference meetings as well as provides the necessary prosecutorial duties required for the conduct of formal mental health court status hearings. As an integral part of the mental health court, the county attorney's office provides both interface and consultation necessary for informed dispositional decisions among court and allied team members that help ensure the consideration of principles associated with therapeutic and procedural justice relevant to all mental health court participants.

- **Public Defense Services:**

The Public Defender's office is an equally committed stakeholder with respect to the mental health court as the predominant representative managing the defense and protecting the legal rights of mental health court participants. Additionally, the public defender participates as part of the mental health court team and provides a large share of referrals to the mental health court program as well as direction and recommendations for case processing. Assuming an advocacy and persuasive role, public defense counsel further provide important influence toward program compliance, treatment engagement, and conformity with legal mandates that help participants sustain successful program involvement to the point of graduation.

- **Probation Services:**

While not all mental health court programs either nationally or in other state jurisdictions retain the participation of adult probation, the Box Elder County program as initiated in the Cache County program would replicate this element of the Utah Department of Corrections. Probation officers play a central role in monitoring and enforcing the conditions of probation, including the mandate to participate in treatment and are critically instrumental in advancing motivational incentives among mental health court probationers. Additionally, a representative of adult probation is included within the mental health court team and lends an active voice with respect to program referrals, case disposition, solution-oriented recommendations, and direct monitoring and supervision services that help assure public safety as well as adherence to the rehabilitative goals of mental health court participants.

- **Custody Services:**

Although interception and diversion from incarceration represent an overriding ideal of the mental health court program, still all criminal justice programs and specialty courts will continue to retain some percentage of an incarcerated population, even if only temporarily so. Subsequently, the Box Elder County Sheriff's Department, as the public resource charged with county jail administration, forms an integral part of the coalition of mental health court stakeholders. Representatives of the county sheriff's department actively participate as part of the mental health court team and are vital to the flow of information relative to the mental status of individuals either referred to the program from the point of incarceration or at times briefly incarcerated relative to a behavioral sanction. Additionally, the Box Elder County Sheriff's Department provides a critical role in coordinating mental health services in the jail and is actively engaged in the development and operation of a day reporting program designed to include the mental health court population in Box Elder County subsequent to formal approval for the initiation of a mental health court program.

- **Drug and Alcohol Treatment Services:**

It is common for mental health court participants to have co-occurring substance use or abuse issues including co-occurring mental health and substance use disorders. Consequently, program participants with substance related criminal charges, and/or a co-occurring substance use disorder will be required to participate in substance abuse assessment and treatment as part of the mental health court program. Bear River Drug and Alcohol within the local health department, is committed to providing the substance abuse treatment services for the mental health court population in Box Elder County. Whether providing substance abuse assessment, intensive out-patient treatment, group or individual treatment, as well as routine drug testing services, the Bear River Health Department's Substance Abuse Division is dedicated to the delivery of quality substance abuse services for those participant's in the mental health court program struggling with drug and alcohol related problems.

- **Allied Support Services:**

NAMI is the nation's largest grassroots mental health organization dedicated to improving the lives of individuals and families affected by mental illness. NAMI Utah is an affiliate of the national organization and is an allied support service utilized by the mental health court program. NAMI Utah participates as part of the mental health court team and offers a variety of resources designed to bring together people associated with the mental health court who live with the challenges of mental illness to empower individuals and families with the tools to build bridges of mental health recovery.

Mental Health Court Funding

The goal of the Mental Health Court program is to decrease the frequency of participants' contacts with the criminal justice system and promote mental health recovery by providing community resources to impact and improve social functioning while establishing vital links to employment, housing, treatment, and allied support services. To accomplish these goals, it is critical to remove key economic barriers to success through available financial subsidies. While funding resources for mental health court programs may be limited or competitive, it is the program's objective to explore and pursue the acquisition of funding supports, where possible and practical, in order to meet the challenges associated with the variables of cost that attend any program based upon the foundation of public health care.

In efforts to address the issues of financial subsidies for allied program support, the Friends of the First District Mental Health Court, a not-for profit organization, has been established to spearhead community coalitions and partnerships relative to the fiscal challenges applicable to overall program success and sustainability within the jurisdiction of the First District Court. Through this body of community stakeholders, the court itself is removed from direct association with respect to various financial aspects relative to subsidized program elements. Generally, pursuit of financial support for program development and operation is prioritized to state and federal programs through justice assistance and/or criminal justice and mental health collaboration grants as may be available from year to year, and secondly as may be gleaned through charitable affiliations.

Additionally, funds obtained through existing or future legislative appropriation, as necessary, are budgeted and expensed through judicial approval and appropriately itemized, accounted, and limited as

to the specific program areas into which these types of public expenditures would be directed, relative to the economic support targets listed below.

Although the mental health court program is intended, in part, as a jail diversion strategy, unless a defendant has available financial resources with which to secure a residence as well as targeted clinical services, release from incarceration is often difficult, as many individuals eligible for program inclusion can neither obtain shelter, treatment, or sustenance without economic assets. Not all program participants are determined eligible for Medicaid, SSI or Social Security Disability funding, or are unfortunately hampered, waiting months on end for such determinations. Unfunded defendants, without stabilizing treatment and stable housing, are at greater risk for decompensation and re-entry into the criminal justice systems to the disadvantage of both the individual and the community.

Subsequently, resource-allocation decisions are decidedly in support of the subsidy of community-based resources and services. Although arguments in favor of the decriminalization of people with mental illness should not rest solely on the basis of fiscal logic, the positive cost-benefit of treatment versus incarceration is a primary justification for this funding perspective. Despite the deficiency of current outcome studies showing definitive economic evidence for the proposition that subsidizing front-end treatment will offset future and presumably much greater costs associated with criminal recidivism, we are convinced that it is important to move proactively in this direction.

As such, the following outline represents targeted areas for mental health court program funding utilizing economic acquisitions as may be received through private or charitable donations, institutional donations, grant funding, and/or legislative appropriation.

- **Transitional Housing Subsidies**

Without suitable housing resources, release from incarceration to homelessness or substandard accommodations is not a social benefit for either the community or the individual. Sacrificing public safety for increased jail space is not a fair trade-off as the context of homelessness will likely compound the propensity for criminal conduct in the interest of basic survival.

Consequently, some portion of any funding acquisitions should be dedicated to transitional housing assistance.

- **Treatment Subsidies**

Direct service is a critical ingredient for program success as without the stabilizing effects of a therapeutic support system, defendants are merely left to the dictates of their illness and too often costly hospitalization or recidivism to incarceration. Given the substantial scope of clinical services applied to the mental health court population, available funding as acquired through the sources previously indicated would be allocated for subsidized treatment.

- **Peer Support**

Research has established that both mental health and addiction recovery are better facilitated through a community-based system of peer-to-peer social support. Over the past decade, the model of peer support has gained greater recognition as an effective strategy of service delivery with greater impact on the mental health consumer's progress toward recovery. Similarly, forensic peer support involving specialists with histories of mental illness and criminal justice involvement embody the potential to assist in the recovery of people who experience the dual stigmas associated with serious mental illness and criminal conviction.

Forensic peer support specialists can effectively communicate and instill the qualities of hope, self-determination, empowerment, and self-direction and serve as valuable and credible models of possibility. Additionally, peer specialists may adopt allied roles which can help individuals engage in treatment and other support services, as well as anticipate and address the psychological, social, functional, and financial challenges of community re-entry as well as maintain adherence to established conditions of clinical and legal supervision.

Consequently, in addition to the subsidized services itemized above, consideration would be given to the application of funds in support of a Forensic Peer Specialist.

- **Incentives**

Mental health court programs cannot exclusively rely on judicial sanctions as the sole method of behavioral influence. Mental health court programs must have an array of available rewards

or incentives for immediate and proximal reinforcement. The use of modest but tangible incentives may be particularly impactful for high-risk, dissocial offenders who would ordinarily have the poorest outcomes in correctional or clinical rehabilitation programs. Because many of these individuals have habituated to punishment and are not accustomed to receiving positive reinforcement, tangible rewards may exert substantially greater influence over their behavior than threats of punishment. As such, a portion of allocated or acquired funding support would be directed toward the acquisition and disbursement of program incentives as part of a contingency management program.

- **Program Education and Training Subsidies**

The value of continuing education and training with respect to mental health court program development and application relative to program design, function, and operation, is considered a key element of program longevity and success. A preferred method of education and training is actual on-site experience and collaboration with programs and personnel in other jurisdictions both locally and nationally. Consequently, the court's funding allocations, appropriations, and/or acquisitions would appropriately dedicate some percentage of its budget to subsidize travel, meal, and lodging costs associated with several targeted mental health court training excursions.

Additionally, some of the mental health court programming relies on a variety of published materials that are utilized in specific treatment groups as well as program orientation, of which the ongoing costs of these materials would also be included in the education/training budget should future funds materialize.

Conclusive Statement

The First District Mental Health Court embraces the overall concept of comprehensive law as a foundation for the pursuit of mental health recovery and social reintegration of the mentally ill offender in the process of judicial reconciliation. In this sense, the mental health court program brings together the interactive dimensions of the social, emotional, psychological, and behavioral functioning


of the defendant into the dynamics of the legal arena and shapes the experience of accountability and criminal justice as a therapeutic endeavor.

The mental health court attempts to apply basic principles associated with three specific aspects of comprehensive law in the operation of its program. Efforts are made to infuse practices particular to (1) therapeutic jurisprudence, (2) procedural justice, and (3) restorative justice. How the court functions in relationship to the participant relative to its perspective of justice is a critical determinate of success. The philosophy of interdependence as represented in the psycho-legal relationship between the participant and the court, as manifested through its rehabilitative alliance (therapeutic jurisprudence), its attention to individual fairness and equity (procedural justice), and its promotion of community re-integration (restorative justice), effectively shapes a partnership for recovery.

To these ends this application for initial project planning approval is respectfully submitted:

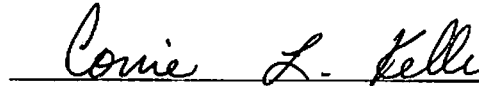
Date: JAN. 5, 2015

Signature: _____


Brian G. Cannell
District Judge


Date: January 5, 2015

Signature: _____


Corrie L. Keller
Trial Court Executive

Date: January 5, 2015

Signature: _____


Jeffrey R. Burbank
Presiding Judge

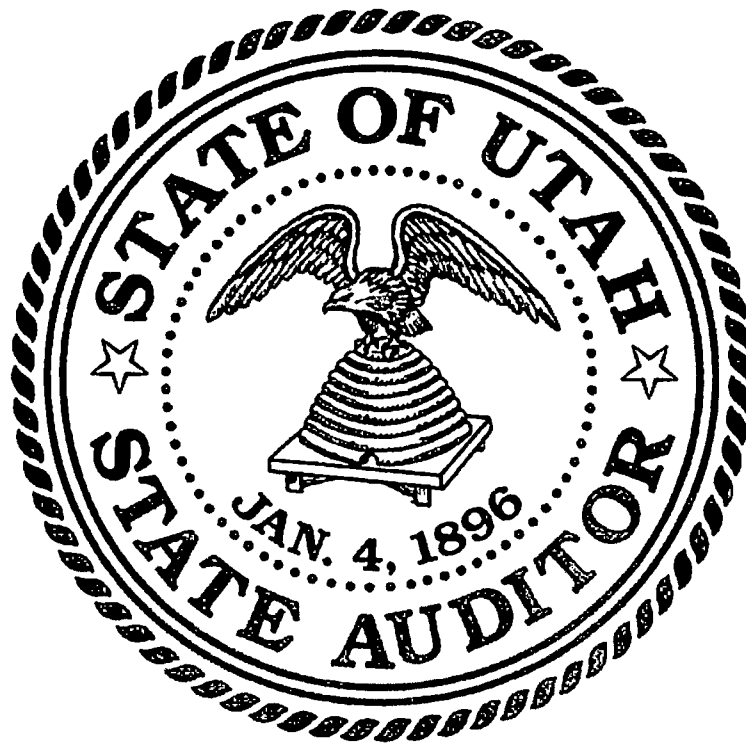
**FIRST DISTRICT ADULT MENTAL HEALTH COURT FUNDING INITIATIVE
PROVISIONAL BUDGET ALLOCATIONS - OVERVIEW**

BUDGET AREA	% OF BUDGET	BUDGET AMOUNT	BUDGET DESCRIPTION
Transitional Housing	20%	\$15,000	3 Subsidized independent transitional housing units.
Treatment Subsidies	55%	\$41,250	Assessments, treatment and direct services.
Incentives	10%	\$7,500	Funds directed toward tangible behavioral reinforcements.
Other	15%	\$11,250	District travel, supplies, training, and published materials.
TOTALS	100%		\$75,000

TAB 7

Performance Audit No. 14-06

A Performance Audit of Utah's Adult Felony Drug Courts

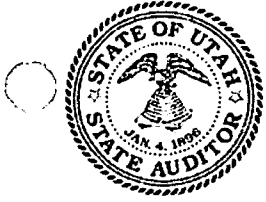


OFFICE OF THE UTAH STATE AUDITOR

Director: David Pulsipher, CIA
Staff: Rachel Dyer, MPA
Charlie Fuller, MPA



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OFFICE OF THE
UTAH STATE AUDITOR

January 8, 2015

The Office of the Utah State Auditor conducted *A Performance Audit of Utah's Adult Felony Drug Courts* and presents its findings herewith. This audit was conducted in an effort to reduce recidivism and prison costs by focusing resources on the most effective forms of rehabilitation.

This audit report outlines concerns that are principally the result of insufficient data collection and analysis, and unclear delineation of oversight responsibilities. Implementation of audit recommendations found in this report will increase the oversight of drug court programs to better ensure that there are consistent, high-quality drug court programs throughout the state. Better data collection will enable the Legislature, the Administrative Office of the Courts, the Division of Substance Abuse and Mental Health, and other stakeholders to make data-driven decisions regarding Utah's drug court programs.

Finding 1 cites concerns regarding the lack of Utah-specific data to support the evidence-based program. **Finding 2** demonstrates how drug courts may expand and achieve greater outcomes through partnering with the Department of Workforce Services' jobs and eligibility programs. **Finding 3** illustrates the importance of sufficient oversight to ensure drug courts provide consistent treatment that lead to successful outcomes. **Finding 4** provides additional information from our analysis of available data that may be valuable to decision makers regarding the administration and operations of drug courts throughout the state.

We recognize and appreciate the cooperation of the Administrative Office of the Courts, the Division of Substance Abuse and Mental Health, and local substance abuse authorities throughout the course of this audit.

Sincerely,

David S. Pulsipher, CIA, CFE
Performance Audit Director



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Executive Summary

Finding 1: Insufficient Data Limits Full-Scale Review of Utah Drug Court Effectiveness. Neither the Administrative Office of the Courts (AOC) nor the Division of Substance Abuse and Mental Health (DSAMH) collect accurate and reliable state-specific data to determine the effectiveness of felony drug courts (FDC) in the state. Additionally, the two state entities lack clear lines of responsibility on who should be collecting and analyzing outcome data. While national data supports the positive effect of drug courts, state-specific data and analysis will further improve Utah's FDCs and help to ensure that proper treatment is given to participants. The state's Commission on Criminal and Juvenile Justice (CCJJ) could provide expertise and analysis that could further strengthen drug court procedures and processes.

Finding 2: Better Coordination with DWS Could Improve Individual Outcomes and Reduce State Costs. Improved coordination with the Department of Workforce Services (DWS)—specifically with eligibility and employment specialists—could likely improve outcomes for FDC clients and offset some state treatment costs. FDC clients who are employed full time at discharge from the drug court program are up to 30 percent more likely to graduate from FDCs, and the use of private insurance and Medicaid for qualified FDC participants would reduce annual drug court costs. Case managers do not proactively coordinate with DWS to help FDC clients learn job skills and find job placement, or to enroll eligible clients in Medicaid.

Finding 3: Better Oversight of Drug Courts May Reduce Risk and Improve Outcomes. Outcomes for FDCs could improve by centralizing oversight with the AOC. Though the AOC requires FDCs to comply with national best practice standards, it does not thoroughly review compliance nor does it require FDCs to include such standards in their policies and procedures. Increased oversight would likely improve the FDC program by implementing consistently-applied standards that are clearly communicated to stakeholders.

Administering a Risk and Needs Triage (RANT) assessment to all non-violent offenders at the time of arrest could improve individual treatment outcomes, reduce recidivism, and decrease incarceration costs. The RANT assessment is currently only administered to substance abusers recommended for the FDC program prior to determining the actual risk and need level of the offender.

Finding 4: Focus on Variables Influencing Program Success Could Improve Drug Court Outcomes. DSAMH could improve FDC treatment success by focusing on key variables from Utah's drug court population that increase the likelihood of successful program completion. While DSAMH and local substance abuse authorities cannot control all variables, analysis performed on reliable data could improve individual treatment plans and outcomes. Variables indicative of successful FDC completion based on a statistical analysis of DSAMH's Treatment Episode Data Set (TEDS) include: stable housing, full-time employment, an effective provider, and increased age and education. The impact that full-time employment has on FDC participants is addressed in Finding 2.



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Background

Since the first drug court in the United States was established in Florida in 1989, the use of drug courts has expanded nationally to over 2,700 courts in all 50 states and some U.S. territories. The goal of a drug court is to rehabilitate eligible substance abuse offenders through intensive court-supervised treatment as an alternative to jail or prison. Utah has funded three types of drug courts:

1. Adult Felony Drug Court
2. Family Drug Court
3. Juvenile Dependency Court

Adult Felony Drug Court, which was the focus of this performance audit, is defined by the National Association of Drug Court Professionals (NADCP) as

A specially designed court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse among nonviolent substance abusing offenders and to increase the offender's likelihood of successful habilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, community supervision, and use of appropriate sanctions and other rehabilitation services (Bureau of Justice Assistance, 2005).

Statute describes minimum eligibility for drug court as the following:

- (a) a plea to, conviction of, or adjudication for a nonviolent drug offense or drug-related offense;
- (b) an agreement to frequent alcohol and other drug testing;
- (c) participation in one or more substance abuse treatment programs; and
- (d) an agreement to submit to sanctions for noncompliance with drug court program requirements.¹

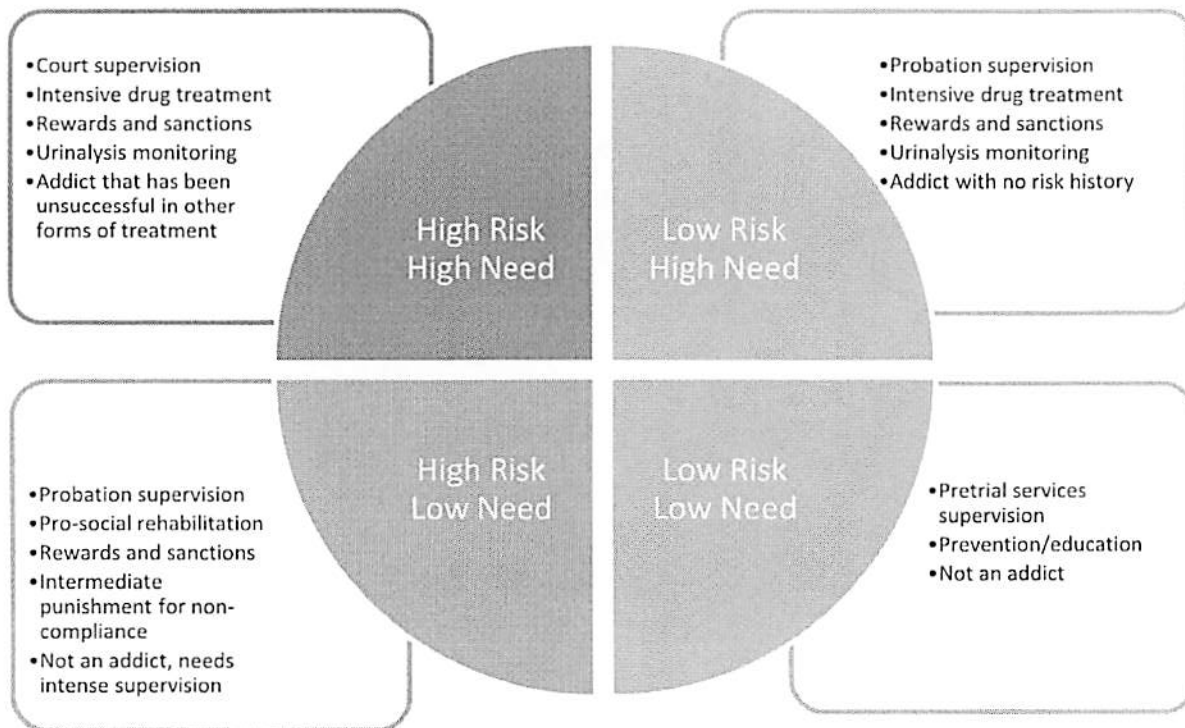
Utah's Administrative Office of the Courts (AOC)—in collaboration with the Department of Human Service's Division of Substance Abuse and Mental Health (DSAMH)—oversees drug courts in Utah. The AOC provides oversight of the administration of drug courts through its certification process which occurs every two years for each court. The AOC uses a checklist of 84 items derived from NADCP's Best Practice Standards. Of these 84 items, 55 are required by the AOC for certification, 25 are presumed to be met unless the inability to meet the standard is demonstrated, and four are recommended for drug courts seeking re-certification.

In accordance with NADCP's evidence-based standards for target population, Utah specifies that drug court participants must also be high-risk and high-need offenders. The Risk and Needs Triage

¹ Utah Code § 78A-5-201(5)

(RANT) is an assessment tool that is commonly used to determine the risk and need level of drug court participants. Figure 1 outlines the differences between the four quadrants of the RANT.

Figure 1 Risk and Needs Triage Quadrants



Source: Treatment Research Institute RANT* tool

The state currently has 25 Adult Felony Drug Courts throughout the state, ranging from nine participants to 150 participants per court at any given time. More than 1,500 total clients participated in drug court in fiscal year 2014. For many offenders, drug courts hold their plea in abeyance, dismissing charges upon successful completion of drug court requirements. In addition to admitting only participants who are “high risk high need” according to the RANT, NADCP Best Practices also require the following:

- a minimum program length of 12 months
- a graduation requirement of at least 90 days drug-free
- client placement in the program within 50 days of arrest
- drug testing performed at least twice per week

The drug court program includes a multi-disciplinary team approach to substance abuse treatment and supervision. Each drug court team is generally comprised of the following:

- Judge
- Prosecutor
- Defense attorney
- Case manager
- Treatment therapist
- Law enforcement (community supervision)

Several independent evaluations have been conducted on various individual courts during the 18 years that drug courts have operated in Utah. However, there have been no statewide outcome evaluations on compliance with currently released NADCP Best Practices or effectiveness of programs.²

² The Utah Division of Substance Abuse and Mental Health received a grant from the National Center for State Courts to develop performance and descriptive measures for adult drug courts. Implementation of these performance measures had not commenced at the time of this report, but is expected to begin sometime in 2015 for selected drug courts in Utah.



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Finding 1

Insufficient Data Limits Full-Scale Review of Utah Drug Court Effectiveness

Neither the Administrative Office of the Courts (AOC) nor the Division of Substance Abuse and Mental Health (DSAMH) collect accurate and reliable state-specific data to determine the effectiveness of felony drug courts (FDC) in the state. Additionally, the two state entities lack clear lines of responsibility on who should be collecting and analyzing outcome data. While national data supports the positive effect of drug courts, state-specific data and analysis will further improve Utah's FDCs and help to ensure that proper treatment is given to participants. The state's Commission on Criminal and Juvenile Justice (CCJJ) could provide expertise and analysis that could further strengthen drug court procedures and processes.

AOC Does Not Collect Required Drug Court Data

The collection of key data would help to maximize the effectiveness of state drug courts. The AOC does not maintain key data required by state Judicial Rules, but instead relies on national best practices. While these national best practices are useful, they may not always be relevant to Utah's FDC population.

Judicial Rules require that all "[e]xisting problem solving courts must annually submit a completed annual report on a form provided by the [AOC]."³ Drug courts are also required to annually report the following to the Judicial Council:

- the number of participants admitted in the most recent year;
- the number of participants removed in the most recent year;
- the number of participants that graduated or completed the program in the most recent year; and
- recidivism and relapse statistics for as long a period of time as is available, but at least for one year.

While DSAMH has collected some of this data, relapse and recidivism data have never been collected or reported on a statewide level. Five years ago, the AOC stopped collecting any reports, and assumed that all data collection responsibilities would fall under the purview of DSAMH; however, recidivism and relapse data are not tracked by either organization. We believe that such information is vital for a thorough evaluation of drug court effectiveness. Such data should be collected, analyzed, and reported to ensure drug courts are operating as effectively as possible.

³ Utah Code of Judicial Administration 4-409(3). "A problem solving court is a targeted calendar of similar type cases that uses a collaborative approach involving the court, treatment providers, case management, frequent testing or monitoring, and ongoing judicial supervision. Examples include drug courts, mental health courts, and domestic violence courts."

Additionally, the AOC does not collect any data to verify that the courts follow best practices regarding sanctions and incentives. Insufficient data collection for sanctions is especially problematic considering that a common sanction is jail time. NADCP best practice states that the sanction of jail time should be used sparingly and last no more than 3-5 days. Without any data on the amount of time FDC clients spend in jail throughout the program, it is impossible to verify that best practice is being followed and difficult to accurately report the true cost of drug courts to taxpayers. Collection and analysis of this data would likely improve the function of drug courts.

A federal grant from the National Center for State Courts will enable the DSAMH to track key performance measures of selected drug courts in Utah beginning in 2015. Some of the data they plan to track includes the following: length of stay, sanctions and incentives, frequency of testing, sobriety, recidivism, and employment improvement.

DSAMH Data is Incomplete, Self-Reported, Unverified, and Unreliable

The only data currently collected on the state level for drug courts are annual service level reports and the federally-mandated Treatment Episode Data Set (TEDS). Both of these reports are collected by DSAMH.

Service Level Reports

Service level reports are submitted to DSAMH annually by either the local substance abuse authority (LSAA) or the county drug court coordinator and include program information specific to each judge's or county's drug court. The courts report on 23 different variables in six categories:

- Treatment services
- Treatment retention
- Outcomes
- Drug testing results
- Judicial hearings report
- Caseload report

The "outcomes" category measures graduation rates but no information is provided on recidivism or relapse rates.

Treatment Episode Data Set (TEDS)

TEDS is not administrated for specific FDCs as it is a subset of the LSAA's electronic health records. While this information is valuable, it also has the following constraints:

- The data is self-reported and non-clinical data is unverified
- No court-specific information exists
- No post-drug court data is collected

Unverified data can result in conflicting or contradictory records. For example, Figure 2 shows Client A was admitted twice for treatment in Salt Lake County in 2012. For his February admission date, he was listed as a non-Hispanic, white male with 14 years of education. At his second

admission date in April, he was listed as a Puerto Rican male of two or more races with 13 years of education. Although his family size remains constant, other variables, such as children, education, race, and ethnicity change. Such inconsistencies are inherent in a self-reported system for which no verification is conducted.

Figure 2 An Example of Inconsistencies of TEDS

ID	Race	Ethnicity	Education	Family Size	Children	Admit
Client A	White	Not Hispanic	14	1	2	2/8/2012
Client A	Two +	Puerto Rican	13	1	0	4/5/2012

Source: FY 2012-2013 TEDS

The format of TEDS data collection inhibits individual-level performance evaluations because each individual is recorded as multiple lines of data, as shown in Figure 2.

Despite the weaknesses in TEDS data, it is the only individual-level data currently collected statewide and is, therefore, the only basis on which a statewide statistical analysis can be conducted. Collection of accurate and verifiable data would increase the reliability of analysis and better inform stakeholders. Collaboration between the AOC and DSAMH should help to ensure reliable and accurate reporting. The AOC and DSAMH should formally establish clear lines of responsibility to increase individual accountability.

CCJJ Could Assist in Data Collection and Analysis

Drug court stakeholders could benefit from state-specific evidence to support drug court practices and procedures. CCJJ could provide expertise to ensure the deployment of the effective management of drug courts. CCJJ's threefold mission is to:

- Promote broad philosophical agreement concerning the objectives of the criminal justice system in Utah
- Provide a mechanism for coordinating the functions of various branches and levels of government concerned with criminal and juvenile justice
- Coordinate statewide efforts to reduce crime and victimization in Utah⁴

CCJJ is not explicitly required to include drug court in its analysis of corrections programs throughout the state. However, given the recent recommendation by CCJJ in its Justice Reinvestment Report to divert offenders to community substance abuse treatment,⁵ it appears that CCJJ promotes broader use of programs like drug court. If CCJJ had access to quality drug court data, better outcome data analysis would be available to stakeholders, including the AOC, DSAMH, and the Legislature.

⁴ Utah Commission on Criminal and Juvenile Justice

⁵ According to the *Justice Reinvestment Report* released by CCJJ in November 2014.

Recommendations

1. We recommend that the Administrative Office of the Courts ensure that required data are collected annually from individual courts. Such data should, at minimum, include the following:
 - a. The number of participants admitted in the most recent year
 - b. The number of participants removed in the most recent year
 - c. The number of participants that graduated or completed the program in the most recent year
 - d. Recidivism and relapse statistics for as long a period of time as is available, but at least for one year
2. We recommend that the Division of Substance Abuse and Mental Health ensure that treatment and demographic data collected and used in analysis are accurate and verifiable.
3. We recommend that the Division of Substance Abuse and Mental Health release an annual report which includes the following:
 - a. required data, including recidivism and relapse statistics
 - b. administrative costs of drug court, as reported by the AOC
4. We recommend that the Administrative Office of the Courts and the Division of Substance Abuse and Mental Health establish, in writing, clear lines of responsibility regarding drug court data tracking, reporting, and administration.
5. We recommend that the Commission on Criminal and Juvenile Justice conduct regular reviews of drug court effectiveness.
6. We recommend that the Administrative Office of the Courts ensure that sanctions and incentives of individual courts are tracked and reported annually.

Finding 2 **Better Coordination with DWS Could Improve Individual Outcomes and Reduce State Costs**

Improved coordination with the Department of Workforce Services (DWS)—specifically with eligibility and employment specialists—could likely improve outcomes for FDC clients and offset some state treatment costs. FDC clients who are employed full time at discharge from the drug court program are up to 30 percent more likely to graduate from FDCs, and the use of private insurance and Medicaid for qualified FDC participants would reduce annual drug court costs. Case managers do not proactively coordinate with DWS to help FDC clients learn job skills and find job placement, or to enroll eligible clients in Medicaid.

Improved Coordination with DWS' Workforce Development Division Could Improve Drug Court Success

According to Utah's Treatment Episode Data Set (TEDS), FDC clients who are employed full time when they exit the drug court program are 20 to 30 percent more likely to successfully complete treatment and less likely to drop out or be terminated. Although overall full-time employment throughout all FDCs in Utah increased by 70 percent, the degree to which specific FDCs were successful in increasing full-time employment among their clientele varied from region to region as depicted in Figure 3.

Figure 3 Drug Court Full-time Employment

Employed Full Time Provider	Admit		Discharge	
	N	%	N	%
Bear River	50	34%	76	51%
Central	15	20%	23	30%
Davis	53	26%	87	42%
Four Corners	11	21%	18	35%
Northeastern	19	24%	46	58%
Salt Lake	205	22%	280	29%
San Juan	7	64%	8	73%
Southwest	84	28%	166	56%
Summit	7	50%	7	50%
Tooele	9	13%	35	51%
U of U	9	33%	11	41%
Utah	8	19%	17	41%
Wasatch	4	31%	7	54%
Weber	37	15%	102	42%
Total	518	23%	883	40%

Sources: C CJ and OSA Analysis of TEDS

While full-time employment for all FDCs increased from admission to discharge from the program, more than 60 percent of FDC participants discharged from FDCs still did not have full-time employment. As previously mentioned, full-time employment increases the overall success of the FDC program.

Improved Coordination with DWS' Eligibility Services Division Could Potentially Reduce State FDC Costs or Increase Drug Court Capacity

Drug court enrollment is limited by the number of funded treatment slots. Based on TEDS, service reports, and local substance abuse authorities' (LSAA) financial data, the annual treatment case rate is \$5,800 with an average of approximately 1,500 clients served statewide per year for a total average cost of \$8.7 million. Medicaid currently accounts for eight percent of the annual drug court funding and nine percent of total FDC participants are enrolled in Medicaid. Medicaid covers an average of 93 percent of treatment expenses for enrolled clients.⁶

DWS's Eligibility Services Division is responsible for determining who qualifies for Medicaid. Improved coordination with DWS could help offset treatment costs currently borne by the state to increase capacity in FDCs or to reduce the state's contribution. According to TEDS, it appears that 17 percent of FDC clients are eligible for Medicaid but only 9 percent are enrolled.⁷ An average of 127 clients per year appear eligible for Medicaid but were not enrolled.

For example, Client B is a married parent of two with no monthly income who does not have private insurance and would likely qualify for Medicaid. Currently, the LSAA pays for treatment for this FDC client using state and county funds. However, if the LSAA coordinated with DWS for eligibility determination services, expenditure of state and county funds would not be entirely necessary. The use of Medicaid funding would free up state and county funds that the LSAA could use to support other qualified FDC clients or other prioritized programs.

The state could potentially offset its annual FDC treatment costs by approximately \$650,000 or increase capacity in FDCs by 113 participants by coordinating with DWS to enroll eligible FDC participants in Medicaid. Figure 4 shows the annual additional Medicaid contribution that LSAAs could have received if the seemingly eligible clients had been enrolled in Medicaid.

⁶ DSAMH also provided a case rate estimate of \$6,000 and a more conservative Medicaid coverage of 73 percent. The discrepancy can be justified by using data derived from past performance.

⁷ Medicaid eligibility rates were based on data reported in TEDS for FDC clients who would likely qualify for Medicaid based on age, pregnancy, or familial dependency status.

Figure 4 Enrolling Eligible FDC Clients in Medicaid Will Offset FDC Costs

	Total FDC Clients	Total FDC Cost	FDC Clients on Medicaid	Medicaid Contribution	FDC Cost Excluding Medicaid
FY 2014	1,507	\$8,700,000	129	\$701,000	\$7,999,000
FY 2014 Adjusted	1,507	\$8,700,000	251	\$1,358,000	\$7,342,000
					(\$657,000)

Source: OSA Analysis of TEDS and LSAA Financial Records

It appears that 122 drug court participants were eligible for but not enrolled in Medicaid. The reduction in state costs could have been used to divert 113 qualified offenders into FDC from more expensive programs, like prison. Enrolling 113 additional FDC participants could have reduced prison costs by more than \$3.1 million, assuming the qualified clients were incarcerated rather enrolled in an FDC, as shown in Figure 5.

Figure 5 Potential Incarceration Cost Savings

Additional FDC Slots Available	Annual Incarceration Cost	Total Savings
113	\$28,000	\$3,164,000

Source: OSA Analysis

Regular coordination with DWS could potentially increase the number of fully-employed and insured FDC participants and, thus, increase the overall success of the drug court program, ensure appropriate treatment for non-violent drug offenders, and reduce prison population and costs.

Improved Coordination with the Health Care Marketplace Navigation Programs Could Decrease FDC Client Reliance on Government Funding

Based on TEDS, more than 60 percent of FDC clients are uninsured and more than half of those clients are funded directly through government sources. Only 9 percent of FDC clients are privately insured, while 31 percent of FDC clients have other forms of medical coverage such as Medicare, Medicaid, and Workers Compensation.

Coordination with health insurance marketplace navigators could increase the number of privately insured FDC clients and decrease the demand of public funding for treatment. For example, 40 percent of FDC clients are under 26 years old and could potentially qualify for coverage under their parents' health insurance plans; however, nearly 60 percent of this population is uninsured. Marketplace navigators could help identify such gaps in coverage for FDC clients. Regular coordination with insurance identification programs could improve insurance coverage among the FDC population and reduce the state's financial burden.

Recommendations

1. We recommend that the Administrative Office of the Courts encourage drug court teams to refer any uninsured participants to a Medicaid eligibility specialist and/or a marketplace navigator upon program admission.
2. We recommend that the Administrative Office of the Courts encourage drug court teams to refer participants for whom employment is a current treatment objective to a Department of Workforce Services workforce development specialist.

Finding 3

Better Oversight of Drug Courts May Reduce Risk and Improve Outcomes

Outcomes for adult felony drug courts (FDC) could improve by centralizing oversight with the Administrative Office of the Courts (AOC). Though the AOC requires FDCs to comply with national best practice standards, it does not thoroughly review compliance nor does it require FDCs to include such standards in their policies and procedures. Increased oversight would likely improve the FDC program by implementing consistently-applied standards that are clearly communicated to stakeholders.

Administering a Risk and Needs Triage (RANT) assessment to all non-violent offenders at the time of arrest could improve individual treatment outcomes, reduce recidivism, and decrease incarceration costs. The RANT assessment is currently only administered to substance abusers recommended for the FDC program prior to determining the actual risk and need level of the offender.

Improved Certification Process Should Ensure Compliance with Best Practice Standards

More thorough drug court certification evaluations would likely improve the quality of FDCs. The AOC has recently developed a "Drug Court Certification Checklist" that is used in certification visits to each court every two years. The checklist contains 84 items from the National Association of Drug Court Professionals (NADCP) "Adult Drug Court Best Practice Standards," dictating how an FDC should be organized and operated. If FDCs do not meet the required standards, they will not be "certified" by the AOC and will not be eligible to receive state funding for their drug court costs. Although NADCP's Best Practices are not specific to Utah data, the AOC has chosen to adopt them as criteria for Utah's FDCs.

Utah appears to be the only state in the intermountain region that has a certification process for its drug courts. Other states have expressed interest in implementing a similar system that provides oversight and direction to the local level. The drug court certification process begins with a self-evaluation of the checklist provided by AOC. An AOC contractor and subject matter expert visit each court and conduct interviews with each of the team members every two years. This meeting is generally used as an opportunity to address any questions or concerns and offer advice to the drug court team about NADCP Best Practices. The review team does not evaluate FDC data, analyze outcomes, or verify records during the visit.

While the certification checklist includes required NADCP Best Practices, the certification process does not appear to be rigorous, and compliance with NADCP Best Practices is not always verified. Improved oversight from the AOC of drug courts' adherence to NADCP Best Practices may improve consistency of outcomes throughout the state.

Inconsistently Applied FDC Policies Deviate from NADCP Best Practices

Some of the NADCP Best Practices and checklist criteria require certain measures to be outlined in the policies and procedures of each drug court. Each FDC develops their own individual policies and procedures that vary in descriptiveness and form. Figure 6 shows an example of some of the required written NADCP Best Practices and the percent of FDCs that meet the requirement in their current policies/procedures.

Figure 6 Required NADCP Best Practices in Writing

Required Best Practice Standard in Writing	% of Compliant FDCs
Eligibility and exclusion criteria are specified in writing.	72%
The program has a written policy addressing medically-assisted treatment.	52%
Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to drug court participants and team members.	92%
The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination.	92%
Upon entering the drug court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	92%

Source: OSA Analysis of Policies and Procedures

Policies and procedures of most FDCs are not in full compliance with NADCP Best Practices, despite a review every two years. For example, only 52 percent of FDCs have a written policy addressing medically-assisted treatment (MAT), creating a potential liability if courts are inconsistently treating MAT clients. Without clear policies addressing MAT, it is more difficult to see the potential associated outcomes and expectations. Increased oversight regarding an FDC's use of MAT combined with better data tracking will allow the AOC to make data-driven decisions and adjustments regarding MAT.

As another example, one FDC does not have written policies and procedures regarding the administration of incentives, sanctions, and therapeutic adjustments. This FDC's one-page policies and procedures manual includes only one paragraph about what makes someone eligible for drug court. Without descriptive policies, this FDC's team members and participants have very little criteria to reference in the operations and administration of their drug court. This FDC was certified in its latest AOC evaluation without mention of the deficient policies and procedures.

Furthermore, the lack of policies and procedures in some drug courts could lead to inconsistency among the courts. Improved data, as recommended in Finding 1, will enable drug courts to base their policies and procedures on evidence-based practices from Utah FDCs, rather than relying on national trends that may or not be entirely applicable. A robust feedback mechanism would allow FDCs to test policies, keeping those that are effective and discarding those that are not effective.

NADCP Best Practices Are Not Always Included in FDC Policies and Procedures

The certification checklist outlines other requirements that may be currently met in practice, but are not mentioned in individual policies and procedures manuals. Figure 7 shows examples of these NADCP Best Practices that are required to be met operationally and the corresponding percentage of drug courts in Utah that refer to the requirement in their policies and procedures manuals. Descriptive policies and procedures that address all of the required NADCP Best Practices will improve the operations and application of proven practices by drug court team members.

Figure 7 Other NADCP Best Practices Mentioned in Policy

Required Best Practice Standard	% of FDCs with Policy/Procedure
Drug testing is performed at least twice per week.	12%
Drug testing is random and is available on weekends and holidays.	4%
The program requires at least 90 days clean to graduate.	12%
The minimum length of the program is 12 months.	44%
At a minimum the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each staffing meeting.	28%
Clients are placed in the program within 50 days of arrest.	0%
Court fees are reasonable and based on each participant's ability to pay.	16%
Treatment fees are based on a sliding fee schedule.	48%
The program maintains adequate data for program monitoring.	20%

Source: OSA Analysis of Policies and Procedures

Drug testing twice a week, for example, may be practiced according to required NADCP Best Practices, but only three of the 25 FDCs mention it in their policies and procedures.

Similarly, none of the FDC policies and procedures require that eligible offenders be placed in the drug court program within 50 days of arrest. In addition to not maintaining this best practice in their policies and procedures, it appears that some FDC's do not comply with this best practice. While current practices are most important, it is difficult to know what actions are occurring

without good data collection. Solidifying NADCP Best Practices within FDC policies may influence the actions of FDC team members and encourage adherence to the same.

Without including such guidelines in the policies and procedures, their importance is not emphasized to all FDC participants. Not including a particular standard in FDC policies or procedures would suggest that it is not a priority for the drug court team. Whether intended or not, NADCP Best Practices that are not cited in the FDC's policies and procedures are less likely to be enforced by drug court team members.

Adherence to NADCP Best Practices should be a collaborative, team approach, as is the entire concept of drug court. The AOC may provide uniform policies and procedures for courts to adopt with the understanding that adjustments can be made according to the court's individual needs. Inclusion of required NADCP Best Practices in policies and procedures is a step towards ensuring consistency among drug courts throughout the state.

Robust Policies May Improve Drug Court Team Training and Effectively Communicate Expectations

Verifying that consistent and well-documented FDC policies and procedures are followed should help to ensure continuity of a drug court and greater implementation of requirements. Many drug court team members cited concerns regarding training for their roles on the drug court teams. This is especially concerning to team members in drug courts with high turnover.

Well-defined, descriptive policies and procedures for drug courts that guide effective practices will help new team members gain an understanding of the program and its expectations. They also provide a physical tool of reference for new team members that are learning how to successfully operate in their drug court team roles. When used in conjunction with other training opportunities, descriptive policies and procedures will help a drug court team provide the necessary information to new team members.

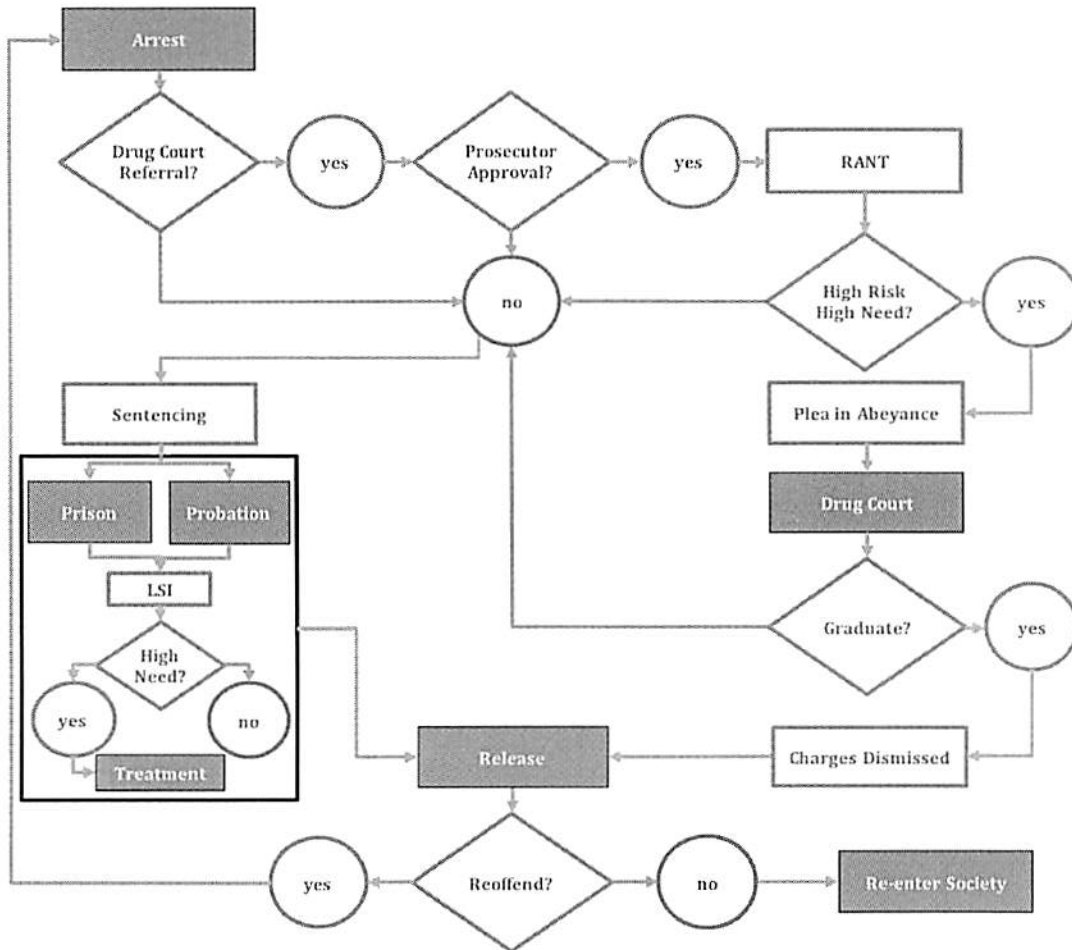
Clear policies will also help to ensure that drug court clients understand expectations and consequences. In order to achieve consistent drug court outcomes throughout Utah, the AOC should provide the adequate oversight to ensure consistent application of drug court practices. Improved policies and procedures combined with better data tracking will help drug courts have consistent, high performance throughout the state.

Delayed Timing of RANT May Result in Overlooked Eligible Clients

NADCP literature indicates that when populations of differing risk and need levels co-mingle, positive outcomes are reduced. According to the creators of the RANT assessment tool, RANT assessments should be conducted on each offender as soon as possible after an arrest is made. Early assessment helps to ensure the separation of differing risk and need populations. Utah FDCs

use the RANT as a pre-sentencing tool and most corrections programs use the Level of Service Inventory (LSI) as a post-sentencing diagnostic measure. Figure 8 shows the timing and type of risk assessments that are currently being conducted for drug offenders in Utah.

Figure 8 Drug Offender Sentencing Flow Chart



Source: OSA analysis

Unless an offender has already been pre-screened and placed on the FDC track, judges and prosecutors in Utah do not know an offender’s risks and needs before sentencing and may be inadvertently mixing differing risk and need populations. By not conducting a risk and need assessment on all non-violent offenders post-arrest and pre-sentencing, the state may be increasing recidivism among substance abusers.

Earlier RANT Assessments Could Reduce Recidivism Statewide

If the RANT assessment were performed on all non-violent offenders at the time of arrest, prosecutors could more accurately recommend offenders into substance abuse treatment programs and reduce recidivism among substance abusers. Ideally, each need/risk quadrant would be sentenced to programs that provide the appropriate level of supervision and treatment. For example, NADCP data suggests that high risk/high need individuals should be sentenced to programs like drug courts.

Other best practices suggest that high risk/low need offenders should receive intense supervision, such as probation. Low risk/high need individuals could likely benefit from community treatment programs and low risk/low need individuals would likely do best with the appropriate treatment and minimal supervision. Administering the RANT assessment at the point of arrest will better inform courts on how to best treat offenders.

Recommendations

1. We recommend that the Administrative Office of the Courts improve the certification process to ensure that drug courts are adhering to required NADCP Best Practices.
2. We recommend that the Administrative Office of the Courts require drug courts to include NADCP Best Practices in their drug court policies and procedures.
3. We recommend that the Administrative Office of the Courts consider providing uniform policies and procedures for courts to adopt with the understanding that approved adjustments can be made according to the court's individual needs.
4. We recommend that the Administrative Office of the Courts ensure that drug courts communicate program expectations and consequences to drug court participants.
5. We recommend that the Administrative Office of the Courts and Division of Substance Abuse and Mental Health identify the appropriate entity in each local court that is best able to administer a RANT assessment as soon as practicable after arrest.

Finding 4

Focus on Variables Influencing Program Success Could Improve Drug Court Outcomes

DSAMH could improve FDC treatment success by focusing on key variables from Utah's drug court population that increase the likelihood of successful program completion. While DSAMH and local substance abuse authorities (LSAA) cannot control all variables, analysis performed on reliable data could improve individual treatment plans and outcomes. Variables indicative of successful FDC completion based on a statistical analysis of DSAMH's Treatment Episode Data Set (TEDS) include the following: stable housing, full-time employment, an effective provider, and increased age and education. The impact that full-time employment has on FDC participants is addressed in Finding 2.

FDC Clients with Stable, Drug-Free Housing Are More Likely to Graduate from the Drug Court Program

In Utah, FDC clients who are homeless at discharge are over 50 percent less likely to successfully complete their FDC than those who were housed at discharge. The lack of viable housing options appears to directly affect FDC graduation. Only 35 percent of homeless clients successfully completed treatment, compared to 59 percent of housed clients who successfully completed treatment. Nearly 61 percent of those who entered the FDC program homeless were still homeless at discharge.

Overall, homelessness among FDC clients decreased by 9 percent from admission to discharge but four LSAs reported an increase in homelessness in their client population. Bear River, Central, Four Corners, and Utah County all had very small homeless populations at intake but each saw an increase of at least one homeless individual at discharge. Figure 9 shows the changes in the homeless FDC population by LSAA.

Figure 9 Change in Homelessness from Admit to Discharge by Provider

Homeless Clients Provider	Admit		Discharge		Change	
	N	%	N	%	N	%
Bear River	1	0.67%	2	1.34%	+1	100%
Central	1	2.17%	3	3.94%	+2	200%
Davis	0	0%	0	0%	0	0%
Four Corners	0	0%	1	1.92%	+1	100%
Northeastern	0	0%	0	0%	0	0%
Salt Lake	90	9.43%	80	8.39%	-10	-11%
San Juan	0	0%	0	0%	0	0%
Southwest	6	2.01%	6	2.01%	0	0%
Summit	0	0%	0	0%	0	0%
Tooele	1	1.45%	0	0%	-1	-100%
U of U	2	7.41%	0	0%	-2	-100%
Utah	0	0%	1	2.38%	+1	100%
Wasatch	1	7.69%	1	7.69%	0	0%
Weber	5	2.05%	3	1.23%	-2	-40%
Total	107	4.79%	97	4.34%	-10	-9%

Source: OSA Analysis of TEDS

Approximately 84 percent of homeless FDC clients reside in Salt Lake County. The FDC team members of Salt Lake County reported homelessness, especially among the female population, as a high-priority concern for their programs. Nearly 10 percent of FDC participants in Salt Lake County are homeless and one-third of the homeless population is female.

Although housing options appear limited for both men and women, Salt Lake County FDC team members reported more difficulty in placing women in safe and sober living arrangements since the closure of the local Volunteers of America women and children’s shelter in May 2014. Many drug court clients, both male and female, find it difficult to find a drug- and alcohol-free living arrangement, which is a requirement for participation in drug court. Other clients are sometimes faced with the difficult choice of living with an abusive partner or being homeless. Drug courts in Salt Lake County could benefit from safe and reliable housing options for their relatively large homeless population.

FDC Client Success Varies by Provider

Certain treatment providers have a much higher program completion rate for their FDC clients than other providers. For example, only 29 percent of the clients in Northeastern successfully completed treatment, compared to 76 percent of clients in Utah County. A complete breakdown of discharge reasons by provider can be seen in Figure 10.

Figure 10 Discharge Reason by Provider

Provider Name	Completed		Drop Out		Terminate		Transfer		Prison/jail		Died	
	N	%	N	%	N	%	N	%	N	%	N	%
Bear River	89	60%	1	1%	21	14%	2	1%	34	23%	2	1%
Central	41	54%	10	13%	4	5%	5	7%	16	21%	0	0%
Davis	109	53%	9	4%	6	3%	48	23%	35	17%	0	0%
Four Corners	29	56%	3	6%	1	2%	8	15%	11	21%	0	0%
Northeastern	23	29%	18	23%	3	4%	31	39%	3	4%	1	1%
Salt Lake	565	59%	155	16%	163	17%	46	5%	19	2%	6	1%
San Juan	7	64%	1	9%	0	0%	3	27%	0	0%	0	0%
Southwest	191	64%	13	4%	9	3%	43	14%	42	14%	0	0%
Summit	5	36%	1	7%	4	29%	4	29%	0	0%	0	0%
Tooele	35	51%	1	1%	24	35%	9	13%	0	0%	0	0%
U of U	17	63%	7	26%	0	0%	2	7%	1	4%	0	0%
Utah	32	76%	2	5%	0	0%	8	19%	0	0%	0	0%
Wasatch	5	39%	1	8%	1	8%	5	39%	1	8%	0	0%
Weber	149	61%	20	8%	44	18%	19	8%	11	5%	1	0%
Total	1297	58%	242	11%	280	13%	233	10%	173	8%	10	1%

Source: OSA Analysis of TEDS

A provider’s low completion rate indicates a concern but does not necessarily indicate a deficiency. For example, Northeastern’s low completion rate is in part due to their high transfer rate (39 percent). Transfers are a neutral exit status (as opposed to negative exit statuses like termination or incarceration). Aside from high transfer rates, Northeastern also has the second highest dropout rate (23 percent) behind the University of Utah (26 percent), which is a branch of Salt Lake County’s drug court services.

Regular analysis of this data could help DSAMH to understand individual FDC techniques and procedures that could increase the success of other FDCs. Additionally, data analysis will further enable DSAMH and the AOC to identify and mentor FDCs that may not be as successful as their peers.

Older Clients are More Likely to Graduate from FDCs

FDC clients are two percent more likely to successfully complete treatment for each additional year in their age at admittance. For example, a 30-year old FDC client would be two percent more likely to complete treatment than a 29-year old FDC client, based on Utah trends. Consideration of age at admittance could potentially help an FDC determine which clients would most benefit from the FDC program. The average Utah FDC client was 31 years old at admittance with a

standard deviation of 9.5 years. The youngest FDC client was 18 while the oldest FDC client within this population was 68.

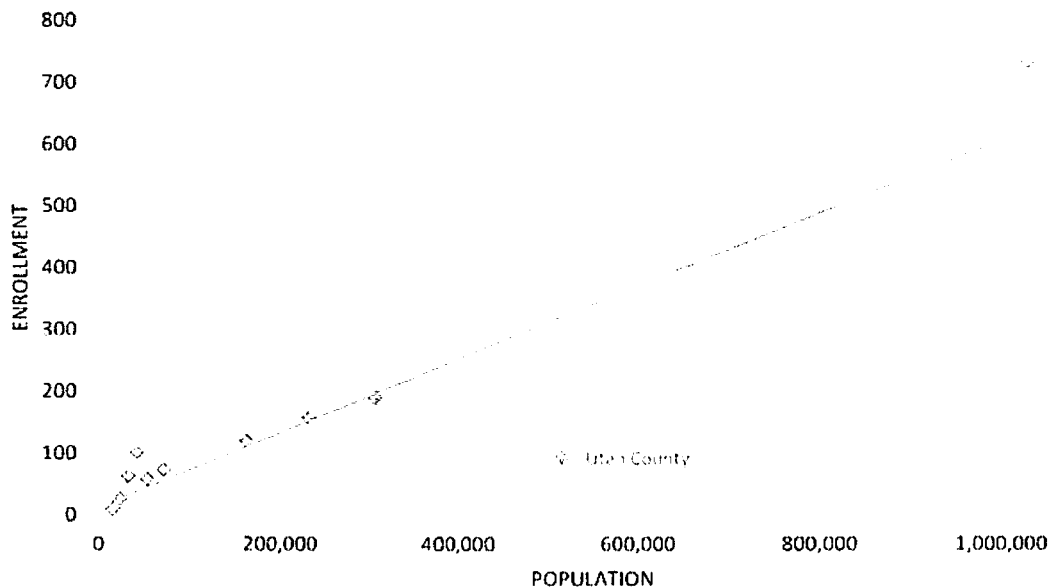
FDC Program Success Increases with Each Year of Education Completed

FDC clients are seven percent more likely to successfully complete treatment for each year of education they complete. For example, an FDC client who completed 11 years of education is seven percent more likely to complete treatment than an FDC client who completed only 10 years of education. The average FDC client claimed to have 12 years of education at admittance with a standard deviation of 1.8 years. Like other data provided by TEDS, this data is self-reported and unverified.

Regular Data Analysis Could Improve FDC Best Practices

The use of reliable data could help FDCs understand key variables that impact the overall success of individual courts. For example, as previously mentioned, the Utah County LSAA has the highest completion rate (76 percent) with the fewest terminations, incarcerations, or deaths. Given the LSAA's high success rate, it would be beneficial for as many eligible clients to participate in the program as possible. However, the Utah County LSAA serves far fewer clients per capita than would be consistent with the population size of the county as shown in Figure 11.

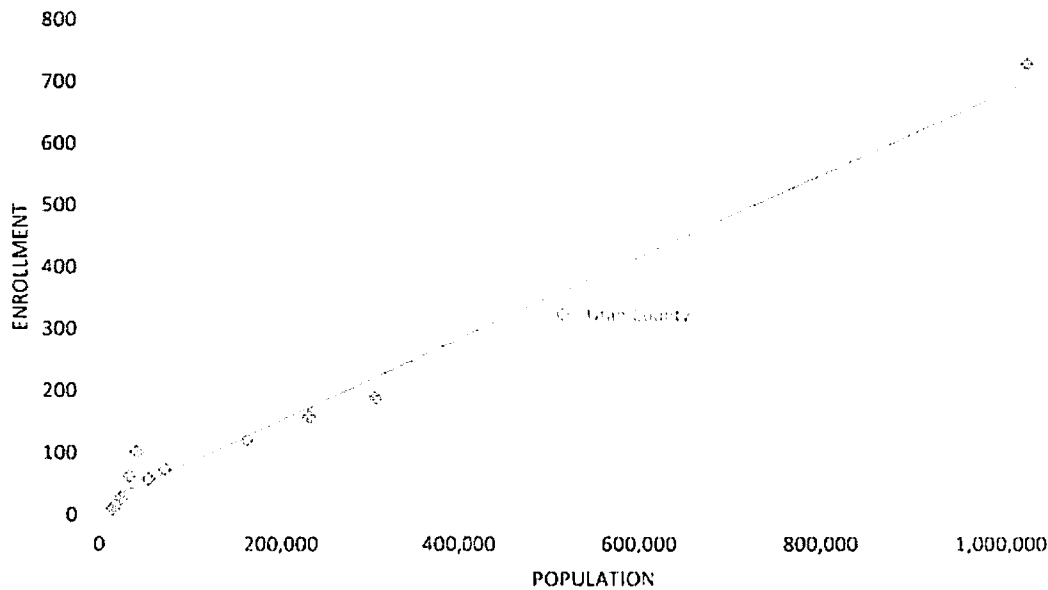
Figure 11 Average LSAA Enrollment per Capita



Source: OSA Analysis of Service Level Reports

From 2008 through 2013, the Utah County LSAA averaged only 92 FDC clients. However, the Utah County LSAA would have had 324 FDC clients if it had a similar number of FDC clients per capita as the other 13 LSAs in the state, as shown in Figure 12.

Figure 12 Projected LSAA Enrollment per Capita

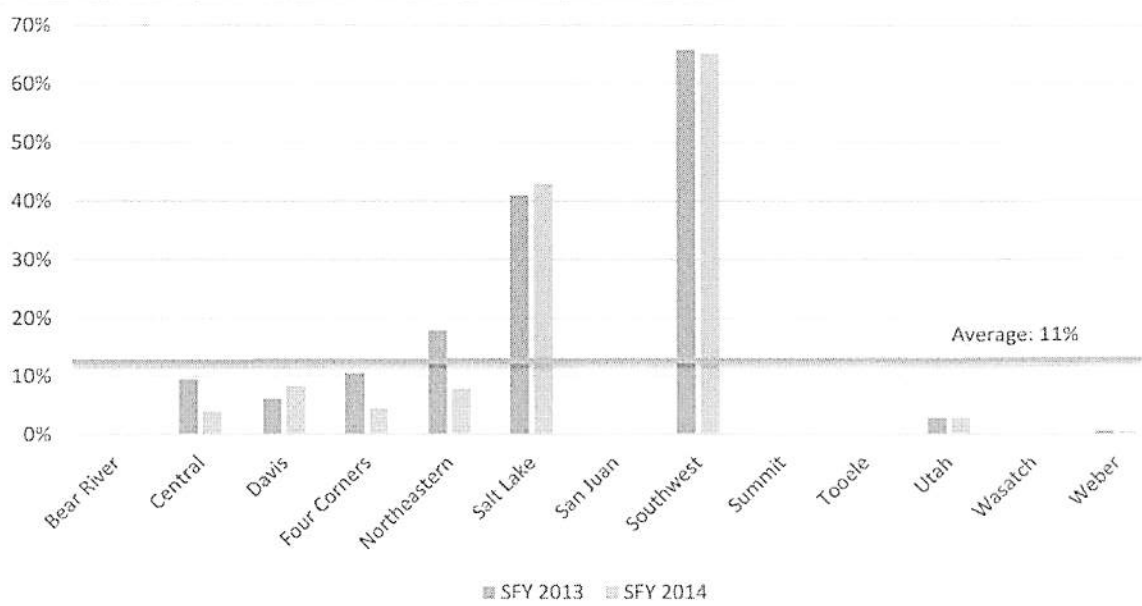


Source: OSA Analysis of Service Level Reports

Given Utah County’s population, the average number of FDC participants enrolled per year would be nearly 3.5 times higher than the current number if it had a similar number of FDC clients per capita as other LSAs. Due to an equalized case rate among LSAs in the state, the Utah County LSAA receives the same state funding per FDC client as other LSAs; however, the Utah County LSAA has chosen to limit the number of FDC clients.

The state allocation for treatment is based on the number of participants in each FDC. Because funding from the state would increase as the size of Utah County’s FDC increased, the funding constraint is not likely from the state. A possible explanation for the low enrollment rates may be a lack of county funding. Although some of the smaller LSAs do not receive any county funding, LSAs, on average, receive 11 percent of their FDC funding from county contributions. However, FDC funding from Utah County accounts for only three percent of its drug court treatment revenue, as shown in Figure 13.

Figure 13 Percent of Total Revenue from County



Source: OSA Analysis of LSAA Financial Reports

Analysis of the variables affecting drug court outcomes and trends of individual LSAs will further encourage successful and accountable FDCs.

Recommendations

1. We recommend that the Division of Substance Abuse and Mental Health regularly analyze treatment statistics to identify factors that contribute to drug court success.
2. We recommend that the Division of Substance Abuse and Mental Health review drug court analysis to identify areas in which individual drug courts could improve. This information should be included in the annual report in order to drive continual improvement of FDCs throughout the state.
3. We recommend that the Administrative Office of the Courts coordinate training for outlying drug court teams that could benefit from successful practices used by other drug courts.

Appendix A Audit Scope and Methodology

While Utah currently uses three types of drug courts (adult felony, family, and juvenile dependency), this audit focuses on the effectiveness of adult felony drug courts (FDC). We were limited in our ability to successfully address these issues due to the lack of Utah-specific data regarding drug courts. Audit field work included the following:

- Analysis of Treatment Episode Data Set (TEDS) from the Division of Substance Abuse and Mental Health from 2011 through 2013
- Administration and analysis of a survey to all FDC team members
- Collection and analysis of policies and procedures for all FDCs
- Analysis of FDC financial sources
- Observation of urban and rural FDC proceedings
- Observation of FDC certification process

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



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Agency Responses



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Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

January 20, 2015

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

Mr. David Pulsipher, Performance Audit Director
Office of the Utah State Auditor
PO Box 142310
Salt Lake City, Utah 84114-2310

Response to Performance Audit No. 14-06
A Performance Audit of Utah's Adult Felony Drug Courts
Administrative Office of the Courts
January 12, 2015

Dear Mr. Pulsipher:

The Administrative Office of the Courts appreciates the opportunity to respond to this audit, and we commend the professionalism of the audit staff with whom we worked. We also reference and incorporate the response of the Division of Substance Abuse and Mental Health. Consistent with their response, we agree with the audit recommendations.

DSAMH's response appropriately addresses each finding, and we respond separately to emphasize several points. First, we recognized several years ago that data collection was an issue, and that we needed additional outcome evaluations of Utah Drug Courts. This is why we sought a federal grant to assist us with those issues, and we are half way through the implementation of that grant. The deliverables of that grant will address those two concerns.

Second, our problem-solving court certification process is regarded nationally as a model program. We led the way in operationalizing the 10 Key Components via the NADCP Best Practices, and our certification checklists derive directly from those standards. That said, only half of the NADCP Best Practices have been released, and the half that we do have had been in place for only five months when this audit began. It should surprise no one that compliance with the first half of the standards was not yet universal.

With respect to our certification review efforts, we agree that the process could be more rigorous. However, the Judicial Council made a conscious decision when that program began that we should be conservative in expending resources that were for anything other than direct services. Funding for drug courts in Utah has never approached even 50 percent of the need, so we have

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.

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Mr. David Pulsipher

Page 2

January 20, 2015

cobbled together funds for the one half FTE contract certification position through a combination of DSAMH and AOC one-time funds and grants. The type of robust certification and quality assurance program recommended by the audit would indeed be even more effective, but it would require either new funding, or it would require moving direct service monies into administration functions, which we have to date been loath to do.

Drug courts are without question the most effective intervention for high risk high need offenders, and the courts are committed to continue to operate them, with our partners, utilizing evidence based best practices. We again appreciate the input and advice of this audit, and we look forward to continued discussions about the policy choices implicated by the audit.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Becker". The signature is written in a cursive style with a large initial "D" and "J".

Daniel J. Becker
State Court Administrator



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES
ANN SILVERBERG WILLIAMSON
Executive Director

Division of Substance Abuse and Mental Health
DOUG THOMAS
Director

January 14, 2015

David Pulsipher
Performance Audit Director
Office of the Utah State Auditor
Utah State Capitol Complex
East Office Building, Suite E310
P.O. Box 142310
Salt Lake City, UT 84114-2310

**RE: Response to Performance Audit No. 14-06
A Performance Audit of Utah's Adult Felony Drug Courts
Division of Substance Abuse and Mental Health**

To Whom It May Concern:

The Division of Substance Abuse and Mental Health (DSAMH) appreciates this opportunity to respond to the Utah State Auditor's Performance Audit 14-06 of Utah's Adult Felony Drug Courts. DSAMH also would like to express their appreciation for the auditor's professional approach. DSAMH agrees with the findings and recommendations proposed in this audit. In fact, DSAMH believes that in many ways the findings and recommendations affirm the position of the DSAMH and the Administrative Office of the Courts (AOC) and our work for the past two years to develop standardized state-wide performance measures. For some of the findings, DSAMH and AOC had existing projects designed to resolve the issue identified prior to the audits inception. For the rest of the findings, DSAMH will work with the AOC to respond to this audit.

DSAMH's response to each finding is listed below:

Finding 1: Insufficient Data Limits Full-Scale review of Drug Court Effectiveness:
DSAMH recognizes there are gaps in data necessary to fully evaluate Utah Drug Courts. In 2012, DSAMH began working collaboratively with the Administrative Office of the Courts to apply for a Bureau of Justice Assistance (BJA) federal grant to remedy this problem. Through this grant, DSAMH and the AOC partnered with the National Center for State Courts (NCSC) to

develop the Utah Adult Drug Treatment Court Performance Measure Advisory Group. This group includes representatives from the DSAMH, AOC, Judges, Prosecutors, Defense Attorneys' and treatment providers. In November 2014, this group with the support from the NCSC developed and published the State of Utah Adult Drug Treatment Court Performance and Descriptive Measures. This document includes recommended measures for Court case processing, procedural justice, accountability, social function and other descriptive measures. Implementing the recommendations from this report would in many ways remedy the concerns expressed by the Auditors regarding insufficient data. DSAMH and the AOC will continue to work to implement the requisite data collection and analysis. A copy of this document is attached to this response.

Finding 2: Better Coordination with DWS Could Improve Individual Outcomes and Reduce State Costs:

DSAMH agrees with the recommendations of the auditors. Better coordination with Workforce Services and access to health care navigators who could help individuals find commercial insurance when possible could reduce state drug court costs. DSAMH requires that public funds be the payor of last resort. All local authority program treatment providers have the ability to bill Medicaid for substance use disorder services. All Local Authority providers also have the ability to bill some commercial insurance plans. Individuals who can pay for services are assessed fees based on a fee schedule approved the County. DSAMH places a high priority on helping individual find or improve their employment. Current Drug Court outcome measures suggest that the program works in this regard. In 2014, Drug Court data collected by DSAMH show a 57.1 percent increase employment for Drug Court participants.

Finding 3: Better oversight of Drug Courts may Reduce Risk and Improve Outcomes:

DSAMH agrees that additional oversight may reduce risk and improve outcomes. Drug Court certification is critically important in this process. DSAMH commends the AOC for developing Judicial Council Rules that incorporate the best practices identified by The National Association of Drug Court Professionals. DSAMH also recognizes that the Best Practice Standards were developed and published in 2014. This audit was conducted in a year when the bar for compliance had been raised to a new level based on these new practice standards. DSAMH will continue to work with AOC to ensure that Utah's Felony Drug Courts are meeting these new standards.

DSAMH also agrees that administering the Risk and Needs Triage (RANT) or other risk and need decision making support tools at the time of arrest is a best practice. DSAMH will continue to work with county partners, the AOC and the criminal justice system to identify innovative ways to expand screening for risk and need given limited resources available for this task.

Finding 4: Focus on Variables influencing Program Success Could Improve Drug Court Outcomes:

DSAMH agrees that the variables suggested by the auditors are very important to evaluate annually. DSAMH currently monitors treatment completion, employment, housing stability, age and education outcomes. Drug Court report cards have also been published that compare the outcomes of individual drug courts. The recently completed State of Utah Adult Drug Treatment Court Performance and Descriptive Measures will also improve DSAMH's ability to gather and evaluate these outcomes and other factors that influence individual's success.

Respectfully,



Doug Thomas, Director
Division of Substance Abuse and Mental Health

cc: Ann S. Williamson, Director, Department of Human Services
Lana Stohl, Deputy Director, Department of Human Services


TAB 8

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

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

MEMORANDUM

To: Management Committee
From:  Brent Johnson, General Counsel
Re: Ethics Advisory Committee
Date: January 23, 2015

The terms of two Ethics Advisory Committee members are expiring in April and May. The two individuals are Judge Catherine Roberts, the justice court representative, and Tawni Anderson, the attorney representative. Both individuals are eligible for another term and I recommend that the Judicial Council reappoint the two members.

The Ethics Advisory Committee does not meet very often. The committee only meets when an opinion request is received and lately the committee has been receiving only one or two requests a year. When the committee receives a request, it is important that the members are immediately engaged in providing feedback and assisting with the preparation of the opinion. It is also important that the members accommodate a meeting as soon as possible. Both Judge Roberts and Ms. Anderson have been very valuable in this regard. Both members have been engaged and have attended all of the meetings that we have held during their first terms. They each provide a valuable perspective and I think their perspective will be helpful in the future. I therefore highly recommend their reappointment.

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.