JUDICIAL COUNCIL MEETING

AGENDA Monday, May 22, 2017 Judicial Council Room Matheson Courthouse Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

1.	9:30 a.m.	Welcome & Approval of Minutes Chief Justice Matthew B. Durrant (Tab 1 - Action)
2.	9:35 a.m.	Chair's Report Chief Justice Matthew B. Durrant
3.	9:40 a.m.	Administrator's Report
4.	9:50 a.m.	Reports: Management Committee
5.	10:00 a.m.	Facilities Standing Committee Update Judge Samuel McVey (Tab 3 - Information) Alyn Lunceford
6.	10.20 a.m.	Judicial Assistant Equivalency Update
7.	10:30 a.m.	GAL Oversight Committee Update Stacey Snyder (Information)
	10:50 a.m.	Break
8.	11:00 a.m.	Presentation of the FY 2018 Spending Recommendations
9.	11:30 a.m.	Rules for Final Action Nancy Sylvester (Tab 4 – Action)
10.	11:40 a.m.	Senior Judge Certifications
11.	11:45 a.m.	Executive Session

11:50 a.m.

Lunch

12.

12:25 p.m.

Adjourn

Consent Calendar

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

1. Committee Appointments (Tab 6)

Alyn Lunceford Brent Johnson

2. Grant Approval (Tab 7)

Mary Jane Ciccarello

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

Sworn Statement under Rule 2-103(4)(B) of the Utah Code of Judicial Administration Regarding Judicial Council Meeting Closure

Regarding outstar Council Meeting Closure					
I, Justice Mat	thew B. Durrant, state as follows:				
	5-27-17 (date), the Judicial Council closed its meeting. The meeting was sed only to discuss:				
	the character, competence, or physical or mental health of an individual; litigation;				
	the deployment of security personnel, devices, or systems; allegations of criminal misconduct;				
	consideration of a private, protected, sealed, juvenile court social, juvenile court legal, or safeguarded record;				
	the purchase, or exchange or lease of real property because public discussion would prevent the Council from completing the transaction on the best possible terms; or				
	the sale of real property because public discussion would prevent the Council from completing the transaction on the best possible terms.				
	the reason(s) noted above, a recording and minutes were not kept during the portion of the meeting.				
I declare unde	er penalty of perjury that the statements made in this document are true and correct.				
<u>5-22-</u>	Justice Matthew B. Durrant				

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.

Chair, Utah Judicial Council

Tab 1

JUDICIAL COUNCIL MEETING

Minutes Monday, April 24, 2017 **Judicial Council Room Matheson Courthouse** Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant

Justice Thomas Lee Hon. Marvin Bagley

Hon. Ann Boyden

Hon. Mark DeCaria

Hon. Paul Farr

Hon. Thomas Higbee

Hon. David Marx

Hon. Mary Noonan

Hon. Reed Parkin

Hon. Derek Pullan

Hon. Todd Shaughnessy

Hon. Kate Toomey

John Lund, esq.

STAFF PRESENT:

Daniel J. Becker

Ray Wahl

Jody Gonzales

James Ishida

Debra Moore

Jim Peters

Dawn Marie Rubio

Rick Schwermer

Clayson Quigley

Rob Parkes

Ron Bowmaster

Geoff Fattah

Alyn Lunceford

Nancy Sylvester

EXCUSED:

GUESTS:

Hon. James Brady

Hon. Fred Voros

Hon. Stephen Roth

Jennifer Yim, JPEC

John Ashton, JPEC

Hon. Dennis Fuchs

Hon. Reuben Renstrom

Drew Mingl, DTS

Jensie Anderson

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. He reported that this would be Mr. Dan Becker's last Council meeting.

Motion: Judge Toomey moved to approve the minutes from the March 10 Judicial Council meeting. Judge Noonan seconded the motion, and it passed unanimously.

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

Chief Justice Durrant recognized Mr. Becker for his many years of service and contributions to the Utah courts.







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

Mr. Becker reported on the following items:

<u>District Court Administrator</u>. Ms. Debra Moore has announced her upcoming retirement effective May 25. He recognized and thanked Ms. Moore for her involvement, service and contributions to the Utah courts.

<u>Chief Information Officer</u>. He reminded the Council that Mr. Ron Bowmaster will be retiring from the Utah courts effective May 1. He acknowledged all he has done on behalf of the Utah courts.

<u>Tenure with the Courts</u>. Mr. Becker expressed his appreciation to the Council for selecting him as the State Court Administrator in 1995 and allowing him to serve the Utah courts and the Council during that time.

4. **COMMITTEE REPORTS:**

Management Committee Report:

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

Liaison Committee Report:

No meeting was held in April.

Policy and Planning Meeting:

No meeting was held in April. Judge Pullan mentioned that he is working with Mr. Brent Johnson and Ms. Nancy Sylvester to address the following: 1) to standardize the process by which rules are sent to the Policy and Planning Committee for consideration, and 2) to develop a way to prioritize the rules once they have been received by the Policy and Planning Committee.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the Bar Commission is working on responses to an evaluation from an outside consulting firm who reviewed aspects of the Bar's operations; 2) Mr. Lund, Mr. Rob Rice, and Mr. John Baldwin are scheduled to meet with every member of the Congressional Delegation in Washington, D.C. tomorrow; and 3) the Summer Bar Conference will be held in Sun Valley, ID on July 26-29.

5. UNIFORM FINE AND BAIL SCHEDULE COMMITTEE UPDATE/2017 UNIFORM FINE/BAIL SCHEDULE: (Judge James Brady and Clayson Quigley) Chief Justice Durrant welcomed Judge Brady and Mr. Quigley to the meeting.

Judge Brady provided the following update to the Council on the Uniform Fine and Bail Schedule Committee:

- > The Uniform Fine and Bail Schedule Committee has met several times throughout the year
- > Committee membership was noted
- > Routine Function of the Uniform Fine and Bail Schedule Committee
 - ❖ 2017 legislative changes, agency requested changes, and public input have been addressed in the proposed 2017 Uniform Fine and Bail Schedule
- > Committee Special Project
 - Evaluation of 125 different fine levels within the fine/bail structure

- Approval of placing offenses into four categories by the committee at their last meeting
 - Offenses against a person
 - Property offenses
 - Public Safety
 - Other
- All offenses divided into appropriate offense categories which account for approximately 2,100 offenses
- * Recommended fine levels have been developed, but they have not been approved by the committee
- ❖ Assignment of an appropriate fine value for each category will be addressed

Chief Justice Durrant thanked Judge Brady for all that he and the Uniform Fine and Bail Schedule Committee is doing on behalf of the Utah courts.

<u>Motion</u>: Judge Toomey moved to approve the proposed 2017 Uniform Fine and Bail Schedule and authorize the Uniform Fine and Bail Schedule Committee to continue their work addressing structural changes. Judge Higbee seconded the motion, and it passed unanimously.

6. POST-CONVICTION SUBCOMMITTEE REPORT: (Judge Fred Voros and Judge Stephen Roth)

Chief Justice Durrant welcomed Judge Voros and Judge Roth to the meeting.

Background information was provided on the work of the Post-Conviction Study

Committee formed in 2011 as part of the Indigent Defense Study Committee to identify and evaluate possible means to improve access to legal representation in post-conviction proceedings.

The proposed recommendations as prepared by the Post-Conviction Subcommittee include:

- > Develop a post-conviction manual and checklist for use by pro se litigants and pro bono counsel
- > Develop a more robust post-conviction pro bono program in the Utah State Bar
- ➤ Amend the Post-Conviction Remedies Act to expand the factors for trial courts' consideration in determining whether to appoint counsel and to provide funding for expenses
- > Create a Post-Conviction Center modeled after the Rocky Mountain Innocence Center

Discussion took place.

<u>Motion</u>: Judge Toomey moved to approve the recommendations as presented by the Post-Conviction Subcommittee and forward them to the Management Committee for the purpose of addressing implementation of the proposed recommendations. Judge DeCaria seconded the motion, and it passed unanimously.

7. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Jennifer Yim and John Ashton)

Chief Justice Durrant welcomed Ms. Yim and Mr. Ashton to the meeting. Ms. Yim introduced Mr. Ashton to the Council.





Ms. Yim and Mr. Ashton highlighted the following in their update to the Council:

- > Surveys of judges relative to the adjective question
 - o Past surveys provided a list of adjectives which would allow respondents to select appropriate adjectives, and it allowed for the respondent to write in their own adjectives, as well
 - o A new adjective question is being proposed with a limited list of adjectives and a different scoring system
- > Proposal to create an online-based educational tool that would offer CLE opportunities for attorneys who complete judicial surveys

Discussion took place.

Chief Justice thanked Ms. Yim and Mr. Ashton for their update.

8. PROBLEM-SOLVING COURT CERTIFICATIONS: (Judge Dennis Fuchs and Rick Schwermer)

Chief Justice Durrant welcomed Judge Fuchs and Mr. Schwermer to the meeting.
Mr. Schwermer reminded the Council that in December, Judge Fuchs raised several
concerns arising in the problem-solving courts statewide relative to the requirements,
presumptive requirements, and best practices. At that meeting, the Council determined that the
concerns raised by Judge Fuchs could best be addressed by a working group on best practices,
and they would then make recommendations to the Council. He also noted that the information
included in the Council material for certification of certain problem-solving courts has been
prepared in a different format.

Judge Fuchs highlighted the following recommendations as prepared by the Problem-Solving Working Group: 1) number of participants, 2) judicial assignment, and 3) drug and alcohol testing.

- Number of Participants
 - ❖ It was determined, by the study group, that the number of participants should not be a critical factor as long as the problem-solving court was functioning according to the remainder of best practices and not causing any harm to the participants.
- > Judicial Assignment
 - ❖ It was determined that there should be an established training protocol for all new problem-solving court judges.
- > Drug and Alcohol Testing
 - ❖ It was recommended that the Judicial Council take the position, in coordination with State Substance Abuse, that all problem-solving courts require urinalysis be performed at least twice per week on a truly random basis seven days a week—including holidays.

Questions were asked and discussion took place.

<u>Motion</u>: Judge Noonan moved to certify the 12 courts being recommended for full certification, and conditionally certify Judge Bean's Adult Drug Court, the Second District Adult Drug Court for six months to allow time for the areas needing attention to be addressed, and to adopt the work group's recommendations conceptually and ask the work group to provide more detailed steps for implementing the recommendations. Judge Toomey seconded the motion, and it passed unanimously.





9. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer highlighted the following in his legislative update: Distributed a copy of the 2017 Potential Interim Study Items

- ❖ A special session will likely be held in August to address implementation of HB 155
 − Driving Under the Influence and Public Safety Revisions
- Interim committees scheduled as usual, three scheduled appropriation subcommittee meetings have been scheduled ahead of time
- > Study Items Highlighted:
 - Government Operations
 - Election law cleanup
 - ❖ Health and Human Services
 - Opiods
 - o Controlled substance database
 - ✓ Relationship between database use and prescriber behavior
 - ✓ Identification of the real problem
 - ✓ Etc.
 - Judiciary
 - DNA
 - Family Law
 - Indigent Defense
 - Jury Nullification
 - Protective Orders
 - Release from Jail or Prison (not to include cash or bail bond)
 - ❖ Law Enforcement
 - Whether drops in law enforcement staffing levels have impacted the number of traffic citations in the state, and how this impacts state and local revenue generated from criminal convictions, including revenue from the 35/90 surcharge
 - Impact of lowering legal blood alcohol limit to .05 on DUI offender's ability to possess a weapon
 - **❖** Political Subdivisions
 - Local government enforcement mechanisms
 - * Retirement and Independent Entities
 - State employee compensation, including pay and benefits (specifically health and retirement benefits), for a holistic approach to employee compensation
 - Transportation
 - DUI 0.05%
 - Look at other countries with 0.05% and how their system is different, including cultural differences (neighborhood bars)
 - o Insurance Issues
 - o Etc.

10. JUDICIAL ASSISTANT EQUIVALENCY UPDATE: (Rob Parkes)

This item was deferred to the May Council meeting.



11. COMPENSATION ADJUSTMENTS: (Ray Wahl)

Commissioner Compensation and Staff Compensation:

Mr. Wahl reported that a 2% cost of living adjustment was authorized for state employees during the 2017 Legislative Session. However, the Judiciary has the authority to determine how to implement the cost of living funds as they see fit.

It was recommended to approve the cost-of-living adjustment for all court employees and all court commissioners at 2%.

<u>Motion</u>: Judge Toomey moved to approve the 2% cost-of-living adjustment for all court employees and all court commissioners. Judge DeCaria seconded the motion, and it passed unanimously.

12. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge Reuben Renstrom and Jim Peters)

Chief Justice Durrant welcomed Judge Renstrom to the meeting Judge Renstrom highlighted the following in his update to the Council:

- > Justice Court Goals:
 - Development of a presiding judge rule for justice courts
 - Improved orientation for new justice court judges
 - ❖ Judicial Conduct Commission improve professionalism and accountability at the justice court level justice court judge representative on the Commission

Chief Justice Durrant thanked him for his update.

13. JUDICIAL NEEDS ASSESSMENT: (Daniel J. Becker)

Mr. Becker reminded the Council of Chief Justice Durrant's comments on the request for the Fifth District Judge where he mentioned that it would be the last judgeship request for a number of years. There were additional issues that were reflected by this comment:

- > The Fifth District Court's need was far greater than any other district at that time.
- The threshold that the Council has historically used in determining a need for an additional judgeship has been 130% of standard, and no other district was close to that.
- > While the steep decline in filings had eased, most caseloads were still declining.
- > The Appropriations subcommittee had begun discussions about whether judges should be moved from a relatively overstaffed district to a relatively understaffed district rather than creating a new judgeship.

A question arose, recently, relative to the Third District Court being at 115% of standard, yet showing a need for five additional judgeships. Mr. Becker determined that discussion of the matter by the Judicial Council would be appropriate at this time.

Discussion took place.

Mr. Becker suggested the Council consider the following when addressing the matter of judicial needs assessment: 1) the standard used in determining a judicial need, 2) the ability to move judicial resources as appropriate, and 3) reviewing the current judicial district configuration to determine if changes can be made in judicial district boundaries.

Further discussion of judicial needs assessment will take place at the next Management Committee meeting.

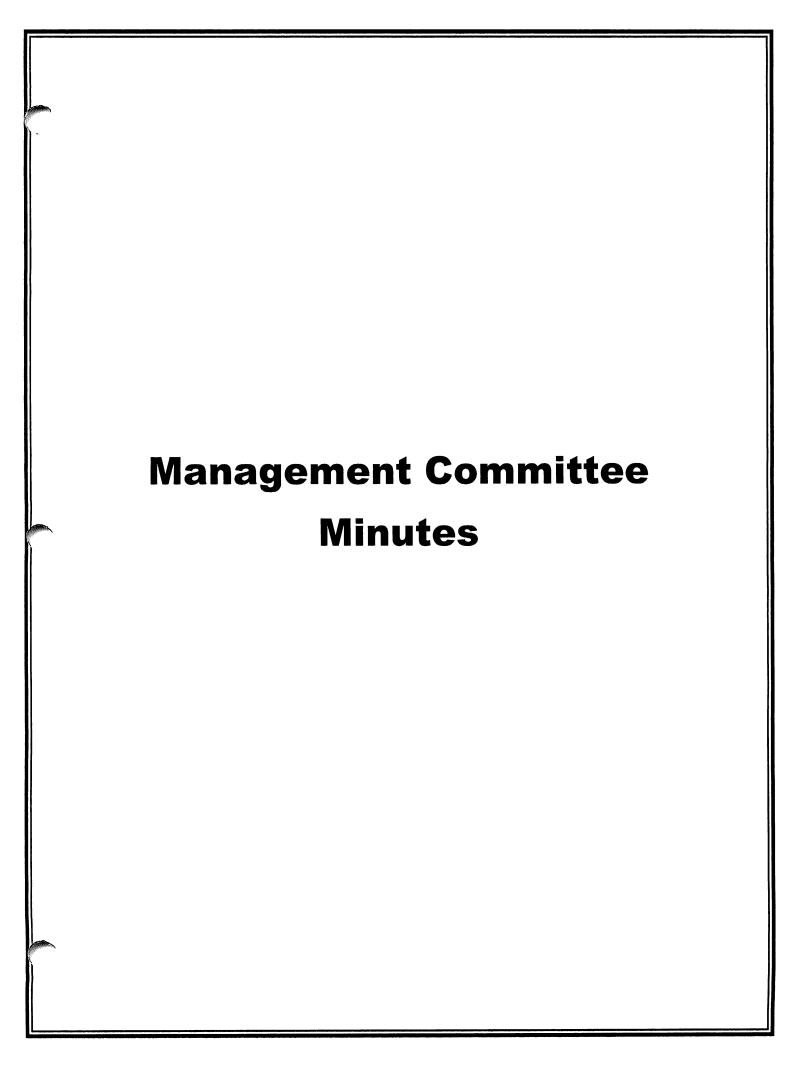
14. EXECUTIVE SESSION:

An executive session was not held at this time.

15. ADJOURN

The meeting was adjourned.

Tab 2



JUDICIAL COUNCIL MANAGEMENT COMMITTEE MINUTES

Tuesday, May 9, 2017 Matheson Courthouse 450 South State Street Salt Lake City, Utah 84111

MEMBERS PRESENT:

Chief Justice Matthew B. Durrant Hon. Kate Toomey, vice chair

Hon. Thomas Higbee

Hon. David Marx

Hon. Todd Shaughnessy

EXCUSED:

STAFF PRESENT:

Rick Schwermer

Ray Wahl

Jody Gonzales

Debra Moore

James Peters

Dawn Marie Rubio

Alyn Lunceford

Nancy Sylvester

Mary Jane Ciccarello

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:

<u>Motion</u>: Judge Toomey moved to approve the April 11, 2017 Management Committee meeting minutes. Judge Higbee seconded the motion, and it passed unanimously.

2. ADMINISTRATOR'S REPORT: (Richard Schwermer)

Mr. Schwermer provided the following update:

Justice. Exe App. Mr. Schwermer circulated a copy of a report prepared by a group of students at the Honors School at the University of Utah entitled When Machines Decide: Creating Justice. Exe. The makeup of the group was provided by Mr. Schwermer. The group was tasked with addressing an interesting topic to study and report on. The group chose to analyze the application of algorithms to justice. Background information was provided on various aspects of the project.

<u>Judicial Appointments</u>. The Governor has appointed Ms. Susan Eisenman and Mr. Steve Beck to fill the judicial vacancies in the Third Juvenile Court, pending confirmation.

<u>CIP Program</u>. Mr. Schwermer reminded members of the Management Committee that federal funding for the Court Improvement Program (CIP) was not approved before the Congressional recess. At that time, Mr. Becker mentioned that the CIP Program in Utah was funded through September 2017. Funding of the last two of three grants was restored last week.

<u>Council Membership – Term of Office</u>. Mr. Schwermer reported that a matter relative to Council membership terms surfaced which prompted review of Rule 1-201. Membership – Election. Upon reviewing the rule, it was found that the rule states: "The term of office of all elected Council members shall begin with the October meeting of the Council." It was





recommended that the rule be amended to state that the term of office of all elected Council members shall begin with the Council meeting following the Annual Judicial Conference.

Council. Mr. Schwermer mentioned the following relative to the Council: 1) the Liaison Committee plans to meet later in the summer to discuss applying more rigorous principles related to how the Council takes a position on proposed legislation, 2) the Policy and Planning Committee is currently discussing the best way to restructure their approach to addressing rules in the future, and 3) consider holding a Council retreat, in the afternoon following the Council meeting, in the future.

3. COMMITTEE APPOINTMENTS: (Alyn Lunceford and Brent Johnson)

The Facilities Standing Committee recommended the appointment of Mr. Lyle Richard Knudsen to fill a vacancy for a representative from the architectural community due to Mr. Ben Nilsen's resignation from the committee. Mr. Lunceford provided Mr. Knudsen's background and work experience.

<u>Motion</u>: Judge Toomey moved to approve the appointment of Mr. Lyle Richard Knudsen to fill the vacancy on the Facilities Standing Committee for a representative from the architectural community and place it on the May Judicial Council consent calendar. Judge Marx seconded the motion, and it passed unanimously.

The Forms Committee is still adding members to its roster. The current openings are for a paralegal and for an educator from a paralegal college. The committee is also seeking a member who is an expert in language and communications. An amendment to <u>Rule 1-205</u>. Standing and ad hoc committees allows for the member skilled in linguistics or communication and one educator from a paralegal program or law school.

With that, the Forms Committee recommended the appointment of Ms. Cyndie Bayles as the paralegal representative and Ms. Christina Cope as the educator from a paralegal college.

<u>Motion</u>: Judge Marx moved to approve the appointment of Ms. Cyndie Bayles as the paralegal representative and Ms. Christina Cope as the educator from a paralegal college on the Forms Committee contingent on final approval of the amendments to <u>Rule 1-205</u>. Standing and ad hoc <u>committees</u> and place it on the May Judicial Council consent calendar. Judge Toomey seconded the motion, and it passed unanimously.

4. COMMISSIONER ATTORNEY SURVEY: (Nancy Sylvester)

Commissioner T. Patrick Casey has requested an attorney exclusion from his performance evaluation survey this year.

Discussion took place.

<u>Motion</u>: Judge Higbee moved to deny the request for an attorney exclusion by Commissioner T. Patrick Casey due to insufficient justification. Judge Toomey seconded the motion, and it passed unanimously.



5. GRANT APPROVAL: (Mary Jane Ciccarello)

Chief Justice Durrant welcomed Ms. Ciccarello to the meeting.

Ms. Ciccarello requested approval for a Utah Bar Foundation grant application proposal in the amount of \$18,515. The grant funding would provide for two additional hours per Self-Help Center staff per week. The additional hours would allow for increased training for court clerical staff.

<u>Motion</u>: Judge Toomey moved to approve the Utah Bar Foundation Grant Application Proposal in the amount of \$18,515 and place it on the May Judicial Council consent calendar. Judge Shaughnessy seconded the motion, and it passed unanimously.

6. HB 239 IMPLEMENTATION COMMITTEE: (Richard Schwermer)

Mr. Schwermer reported that the Commission on Criminal and Juvenile Justice (CCJJ) will be creating an HB 239 Implementation Committee to address matters relative to implementation of the bill. Appointment of a juvenile judge to the committee is to be made by the Judicial Council. Proposed membership from the courts includes: 1) Ms. Dawn Marie Rubio, Juvenile Court Administrator; 2) Ms. Krista Airam, Assistant Juvenile Court Administrator; and 3) Judge Mary Noonan, Fourth District Juvenile Court Judge.

<u>Motion</u>: Judge Toomey moved to approve the appointment of Judge Mary Noonan, Fourth District Court Juvenile Judge to serve on the HB 239 Implementation Committee. Judge Marx seconded the motion, and it passed unanimously.



Mr. Schwermer reminded members of the Management Committee of the Council's decision at the April meeting to refer the matter of PCRA recommendations to the Management Committee for further action.

The proposed recommendations as prepared by the Post-Conviction Subcommittee include:

- Develop a post-conviction manual and checklist for use by pro se litigants and pro bono counsel
- > Develop a more robust post-conviction pro bono program in the Utah State Bar
- Amend the Post-Conviction Remedies Act to expand the factors for trial courts' consideration in determining whether to appoint counsel and to provide funding for expenses
- > Create a Post-Conviction Center modeled after the Rocky Mountain Innocence Center

Discussion took place.

The Management Committee was in agreement to request that Mr. Brent Johnson review the proposed recommendations regarding solicitation of pro bono counsel, including determination of what the responsibilities of the presiding judge would include and present his findings to the Management Committee at a future meeting.





<u>Motion</u>: Judge Higbee moved to table further discussion of the PCRA recommendations until the June Management Committee meeting to allow for Mr. Brent Johnson to review the recommendations and determine the appropriate court interaction. Judge Toomey seconded the motion, and it passed unanimously.

8. JUDICIAL NEEDS ASSESSMENT FOLLOWUP: (Richard Schwermer)

Mr. Schwermer mentioned that Mr. Becker touched on this matter, at the April Council meeting, relative to further discussion of a judicial needs assessment resulting from the approval of the district court judicial weighted caseload in February. At the April Council meeting, it was referred to the Management Committee for further action. With no judicial requests anticipated in the near future, no further action is required at this time. Mr. Schwermer suggested that data be gathered after the first full year of using the new district court judicial weighted caseload and an assessment and further discussion occur at that time.

9. FY 2018 SPENDING PLAN REVIEW: (Ray Wahl)

Mr. Wahl provided a preview of the FY 2018 spending plan which will be presented to the members of the Council at their April meeting for approval.

He highlighted the following available ongoing funding sources: 1) ongoing turnover savings, and 2) fiscal note funding.

Mr. Wahl highlighted the following ongoing budget obligations and ongoing budget items deferred from the August Budget and Planning Session: 1) career track obligations, 2) Fifth District Court Judge, 3) juvenile justice reform, 4) SB 3: contracts and leases rent increase, 5) market comparability adjustment, and 6) Fourth District law clerk (1).

He mentioned that judicial assistants, team managers, and case managers are the positions being considered in the market comparability study.

The available one-time funding sources include: 1) one-time personnel turnover savings and current expense, 2) fiscal note funding, 3) TCE projected unspent current expenses, and 4) AOC projected unspent current expenses.

Mr. Wahl highlighted the one-time budget obligations, the one-time budget items deferred from the August Budget and Planning Session, and the one-time budget requests to include:

One-Time Budget Obligations: 1) Fourth District law clerk/bailiff package, 2) Utah code, and 3) juvenile justice reform.

One-Time Budget Items Deferred from August Budget and Planning Session: 1) volunteer court visitor program (2 FTE), and 2) computer replacement schedule.

One-Time Budget Requests: 1) time-limited law clerks (2 FTEs); 2) MSU/Succession programs; 3) PJ/TCE/Clerk of Court conference; 4) ICJ dues, training, and travel; 5) Access and Fairness Survey, 6) District Court Administrator (.75 to 1.0 FTE); 7) Justice Court Administrator (.5 to 1.0 FTE); 8) employee incentive awards; 9) employee assistance; 10) tuition assistance; 11) secondary language stipend; 12) judicial operations budget; 13) videos; 14) contract sites; 15) grant match; 16) Domestic Violence Program Coordinator (.5 to .75 FTE); 17) drug court conference; 18) courtroom technology; and 19) reserve.





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

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

<u>Motion:</u> Judge Toomey moved to approve the agenda for the May 22 Judicial Council as amended. Judge Marx seconded the motion, and it passed unanimously.

<u>Motion</u>: Judge Toomey moved to enter into an executive session to address a matter of professional competence. Judge Shaughnessy seconded the motion, and it passed unanimously.

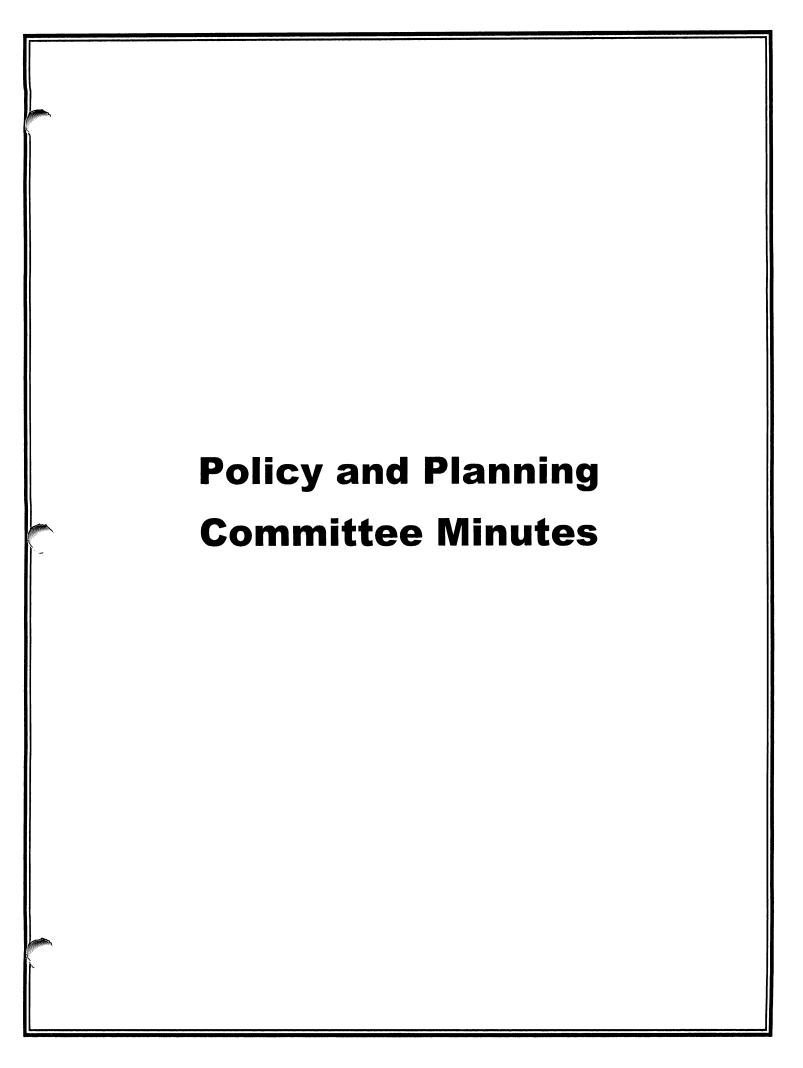
11. EXECUTIVE SESSION:

An executive session was entered into at this time.

12. ADJOURN

The meeting was adjourned.





Policy and Planning Committee

Executive Dining Room Matheson Courthouse 450 S. State St. Salt Lake City, Utah 84111

March 3, 2017

Members Present

Members Excused

Hon. Derek Pullan - Chair (by phone)

Hon. Marvin Bagley

Hon. Ann Boyden

John Lund

Hon. Mary Noonan

Hon. Reed S. Parkin

Staff

Guests

Nancy J. Sylvester Keisa L. Williams

Jeni Wood - recording secretary

(1) Approval of minutes.

Judge Derek Pullan welcomed the members to the meeting. Judge Parkin addressed the February 3, 2017 minutes. There being no changes to the minutes, Judge Ann Boyden moved to approve the February 2, 2017 minutes. John Lund seconded the motion and it passed unanimously.

(2) CJA 3-201. Court Commissioners.

CJA 3-111. Performance Evaluations of Senior Judges and Court Commissioners.

Ms. Sylvester addressed her memorandum regarding Rules 3-201 and 3-111. She focused first on new paragraph (7) in Rule 3-201, which deals with sanctions and removal. In the process of reviewing this rule at past meetings, the committee had requested that the process for both be clarified and separated from retention. Ms. Sylvester reviewed the changes she had made.

Ms. Sylvester then reviewed (7)(C) and, at the committee members' request, updated the paragraph to remove "presiding judge" and insert "district or court level," which was an update from earlier in the rule. Judge Pullan then asked if it has historically been the practice to reduce a commissioner's salary as is proposed on line 135 of the rule under "sanctions." Ms. Sylvester said yes it has always been the rule, however, she has not heard of this happening in the past. Judge Pullan said a district court judge cannot constitutionally have his or her salary reduced. Judge Pullan wondered about the effect of that sanction. Judge Parkin asked if this section was necessary. Judge Boyden said in



the past commissioners were not at the same pay rate as district court judges or appellate court judges but they have always had a set pay. Judge Parkin said he believed salary could be set on a step program. Judge Boyden said she is also concerned about the terms, salary reduction or suspension. Judge Parkin asked if there are only full-time or if there are part-time commissioners as well. Ms. Sylvester said it is her belief that all commissioners are full-time. Judge Pullan wondered if a reduction in salary was similar to a suspension without pay. After further discussion, the committee agreed to change lines 134 and 135 regarding the reduction in salary to reduction in case assignments with corresponding salary reduction and add a suspension without pay.

Judge Boyden moved to change the section as discussed. Judge Parkin seconded the motion. The committee asked if they needed to approve each change or the rule in full. The committee decided to approve at the end.

Judge Parkin next discussed the two-thirds rule in section 7(B)(i)(c) regarding commissioner removals by the Council. He wanted to make sure this rule reflected the current rules in practice for how voting is done. Judge Parkin asked who sets the rule for the Council's processes. Does this committee have the authority to direct the Judicial Council to set a higher standard? Judge Pullan noted this committee submits the rule proposals and the Council acts on them. Mr. Lund said he was concerned that the Council would see this as a recommendation to set the standard higher. Ms. Sylvester noted she was concerned about saying "simple majority" instead of two-thirds because of the message this would send to current commissioners, and also noted that the two-thirds language is already in the existing rule. Judge Parkin said with the justice court judges, decisions are based on a majority. Mr. Lund said the rule would be sent to the Council and that body would decide if that was still acceptable. Judge Boyden said the practice of majority has been done in the district courts as well but also noted that the Council cannot remove a judge, only the Judicial Conduct Commission can.

Judge Mary Noonan said, in reference to section (7)(C) there are protections for judges, but are there protections for commissioners? Is there an appeal right? The committee agreed to amend section (C) to clarify how and to whom a commissioner can request a review. Judge Pullan recommended dividing this into two sections. Judge Pullan explained that an attempted removal would initially start with the presiding judges. But a removal could go directly to the Management Committee. Judge Pullan stated he believes it's important to preserve the idea that decisions are to be made at either the local level or Council level. Mr. Lund recommended that section (C) have a title as well. Keisa Williams asked if the committee would keep the section on the Management Committee making the decision. Judge Boyden said she could see there being an issue if a commissioner is really effective in their job in one district or court level but not in another. Judge Boyden does not want to see two-thirds move forward, she would



prefer majority instead. The committee discussed the Council's authority to remove or sanction a commissioner.

Judge Parkin requested that Ms. Sylvester organize the rule better, such as with more titles. He said the committee was also getting confused because of all of the formatting. Ms. Sylvester said she would be happy to clean up the rule.

Mr. Lund said he is concerned judges can vote to remove a commissioner and then the Management Committee can overturn that decision. The committee agreed this is a concern. Judge Parkin noted the Management Committee moves most issues to the Council. Judge Pullan said he is okay with the Management Committee taking on issues but he believes the Council should be the final decision-maker. The committee agreed to change line 148 to add that the Council will make the final decision.

Ms. Sylvester discussed line 160, paragraph 8, which discusses retention. Ms. Sylvester noted the practice has been the Council reviews a commissioner's declaration and the supporting materials (attorney surveys, etc.) and then votes on whether to certify that person for another term. The Council then sends the recommendation to the district courts for their approval. Judge Pullan said he would like the rule to be specific as to retention. Judge Noonan recommended putting "is eligible to be retained." Mr. Lund agreed. The committee agreed to change this section to say the decision sent from the Counsel is as to eligibility. Ms. Sylvester said the rule isn't on the Council's agenda for this month therefore the committee can make a final decision at the next meeting.

Ms. Sylvester next discussed rule 3-111. Ms. Sylvester noted the rule was sent to the Council in November 2016 on a different issue but she held it back from comment when she realized the issues overlapped with the ones raised here.

The committee discussed changes to section (1). Judge Noonan was concerned about some of the language, such as at lines 16 and 22. Line 22 talked about courtroom observation, which could be done by a review of recordings. Judge Noonan said in juvenile court the audio would not be helpful, specifically to evaluation of demeanor. The committee removed the option to review audio. Ms. Sylvester noted Mr. Johnson had put this proposal in rule 3-201 but she moved it to rule 3-111 since it seemed like a better fit there.

Judge Parkin asked if the language was underlined because it was new language or just moved from another rule. Ms. Sylvester said it's both. She explained which words were new and which were preexisting. Mr. Lund asked if the results from the commissioners' performance plans would be kept in the human resources personnel file. Ms. Sylvester noted this was new language recommended through a discussion she had with Judge Pullan, Mr. Johnson, and Keisa Williams. Ms. Sylvester stated that currently the performance plan is only for someone needing correction. Mr. Lund said



this should be an HR issue, he is not sure if this needs to be in a rule. Ms. Sylvester noted she currently manages the process and performance plans are ineffective. Ms. Sylvester noted the evaluations are done annually but the performance plans have not been done and they contain basically the same language as the evaluations. Judge Noonan said she would like to clarify performance plans in section 4(G). The committee agreed on line 155 to delete "new" performance plan and instead use just performance plans. Then that would allow for corrective action plans. Judge Parkin didn't agree with using corrective action plans because it had a negative connotation. Ms. Sylvester noted a situation that had recently happened with a commissioner who needed corrective action and the presiding judge prepared a performance plan for them. The committee briefly discussed how performance or corrective action plans apply to senior judges then decided to remove the section since senior judges are not employees.

Judge Parkin then went back to discussing section (1)(D). Judge Parkin asked if the justice courts policy is only for that section. Ms. Sylvester stated lines 11 through 13 say the rule applies to justice court judges. Judge Parkin said he specifically wanted to know if after line 35, sections (1)(E) and on apply to justice courts. Ms. Sylvester said they do. Mr. Lund recommended identifying that in the rule. Mr. Lund recommends having section (2) have a title to clarify it is where evaluations section begins.

No voting took place. The committee instructed Ms. Sylvester to make the changes as proposed and return with cleaner versions of the rules.

(3) Other Business.

The next meeting is scheduled for April 7 in the Judicial Council room at 12:00. The legislative update is the same day so Ms. Sylvester will see if they can get a meeting room onsite. Mr. Lund noted he will not be able to attend the April 7 meeting. There being no other business, the meeting adjourned at 11:44 am.

Policy and Planning Committee

Executive Dining Room Matheson Courthouse 450 S. State St. Salt Lake City, Utah 84111

> May 5, 2017 Draft

Members Present

Hon. Derek Pullan - Chair Hon. Marvin Bagley Hon. Ann Boyden John Lund Hon. Mary Noonan Hon. Reed S. Parkin

Members Excused

Staff

Nancy J. Sylvester Keisa L. Williams

Guests

Rick Schwermer Jennifer Valencia Jeff Hunt David Reymann

(1) Approval of minutes.

Judge Derek Pullan welcomed the members to the meeting and asked if anyone had edits to the March 3, 2017 minutes. Judge Pullan addressed one change on page two. There being no further changes to the minutes, Judge Reed Parkin moved to approve the March 3, 2017 minutes. Judge Ann Boyden seconded the motion and it passed unanimously.

Judge Pullan welcomed the guests to the meeting. The guests introduced themselves.

(2) CJA 4-202.02 Criminal dismissals and record access.

Rule 4-202.02 was circulated for comment, the proposed amendments of which would have made dismissals in criminal cases private except in limited circumstances. Jennifer Valencia, appearing on behalf of the Utah Commission on Criminal and Juvenile Justice (CCJJ), introduced the issue and discussed the interplay between criminal case dismissals and public access to records. She said that landlords and employers are using all criminal history, not just convictions, to deny both housing and employment. It's creating real barriers, she said, to reintegration for an accused person. She noted that this issue came up during discussions at the legislature this year regarding Senate Bill 12, which amended areas of the Expungement Act. She said recent policy decisions



have been made to restrict the ability of the Sentencing Commission to use charged-only cases in its determinations. Ms. Valencia then talked about how they are looking at this from a security risk perspective. Ms. Valencia said the courts records are fairly easily accessible, whereas the BCI records are more secure. The court records are the ones landlords and employers are pulling from to deny housing and employment, which is why CCJJ approached the judiciary about amending its rules. She said the Good Landlord program in Weber County is an example where this has been encouraged in some ways.

Jeff Hunt, appearing on behalf of the Utah Media Coalition, next discussed the constitutional policy implications of the rule and the remedies that already exist to address these issues. Mr. Hunt said the public interest in knowing why the charge was dismissed is just as important as why the charge was initiated. Mr. Hunt said the Salt Lake Tribune reports on why cases are being dismissed. Mr. Hunt noted the media and the public do not have access to records when a case is dismissed like they do when the case is initiated. Mr. Hunt said the public assumes the worst due to a natural fear of not being able to accept something they can't see. Mr. Hunt said reporting information to the public is important and reporters must have access to do their jobs. Mr. Hunt noted the records are presumed to be public. Mr. Hunt said transparency and accountability is important since the courts are all public officials discharging public duties. The public has a right to hold public officials accountable and that can only be accomplished by having records accessible. Mr. Hunt said a rule making an entire category of cases private does not comport with judges' critical role to make individual rulings in individual cases. Judge Pullan asked him to clarify what he meant since the judiciary has made more than a few categories of cases private. Mr. Hunt clarified that criminal cases are different in that they demand a higher level of public scrutiny than other case types. And, he said, the burden should not be put on the person seeking access to request it in what should be public records. He said this flips that presumption on its head. Mr. Hunt stated if people are being unlawfully discriminated against as a result of access to court records then the laws should be enforced. He said the bill Ms. Valencia worked on this session is a workable statute. Mr. Hunt then noted that rule 4-202.03 also provides an avenue for parties to request reclassification of records. Mr. Hunt said this is an acceptable process because it is done on a case by case basis.

Rick Schwermer asked Ms. Valencia to share her thoughts on the expungement process. Ms. Valencia said the right to a speedy and public trial is a citizen's right to be proven guilty in a court of law. After the process is complete and the expungement process begins, it is often too late to repair a person's reputation. Mr. Hunt said he understands the process cannot completely repair a person's reputation, but he also believes the presumption of openness is critical.

Judge Mary Noonan said that there are pleadings in a case that are protected but they still show up in the docket. She asked if the media would prefer to have the docket



state which documents are protected, which would be a signal to request it. Mr. Hunt said it would depend on how detailed the docket would be; certainly the docket would not be as complete as the document itself. Mr. Schwermer asked what the guests thought about limiting it to only cases dismissed with prejudice. Mr. Hunt said that it would not be acceptable because the same policy concerns would be there. David Reymann noted that keeping cases more public would hold prosecutors and other officials accountable.

Ms. Valencia then focused on how the information is often used. There was concern that people don't have the financial ability to seek remedies. Ms. Valencia said the ACLU has initiated plenty of cases in which individuals accused of crimes have been denied housing.

Jennifer Valencia, Jeff Hunt, and David Reymann were thanked for their time and excused.

The committee discussed the proposed rule changes and agreed that transparency holds the judiciary accountable, as well as attorneys, prosecutors, and law enforcement officers. It discussed *State v. Archuleta*, in which the Utah Supreme Court held that the public has a "qualified, or presumptive, right of access to public records under the First Amendment." 857 P.2d 234, 237 (Utah 1993). But that right of access "exists only if (1) there has been a tradition of accessibility to the information desired, and (2) public access would play a significant positive role in the functioning of the process in question." *Id.* The committee also discussed the other tools already available to the defendants, such as the Expungement Act and Rule 4-202.04 (request to classify a record associated with a case).

Mr. Schwermer stated the better route was to probably leave the rule as is since the judiciary's records classifications rules already provide an individually tailored avenue for making records private. The committee agreed.

Judge Marvin Bagley moved to recommend no further action on the rule proposal due to the existing remedies currently available, but with an explanation to the Council as to the reasoning behind the committee's decision. Judge Mary Noonan seconded the motion. One member abstained due to lack of knowledge. Judge Pullan and Ms. Sylvester will draft and present a memorandum to the Council.

(3) CJA 2-212. Communication with the Office of Legislative Research and General Counsel.

The committee then discussed the amendments to Rule 2-212, which would have limited and changed the timing of the court's draft rule notices to the Office of Legislative Research and General Counsel. Judge Pullan noted that over time, the practice of communication between the courts and the Judicial Rule Review Committee



had changed from what was delineated in Rule 2-212. Therefore, this rule change was proposed. But the legislature commented that it did not think that the rule should change, but instead that the practices in the original rule language should be restored. The committee discussed how the Office of Legislative Research and the General Counsel is comprised and discussed at what stages draft rules should be made public. The committee expressed concern about early drafts being too public and too subject to outside scrutiny.

Ms. Sylvester noted that the Criminal and Civil Procedure Committees make their materials and early drafts public on the courts website, but the Juvenile Procedures Committee does not, nor does the Rules of Evidence Committee (the Appellate Rules and Rules of Professional Conduct Committee meeting materials are also public).

The committee put this rule on next month's agenda to track it. In the meantime, Mr. Schwermer and Ms. Sylvester will discuss this with the Supreme Court. The Court's next conference is May 16.

Judge Bagley moved to refer the rule back to staff to explore options for protecting the rule making process of the judiciary. Judge Noonan seconded the motion and it passed unanimously.

(4) CJA 1-205. Standing Committee on Court Forms. CJA 3-117. Forms committee charge.

Judge Pullan next discussed the two comments received on the Forms Committee rules. Rule 1-205 created a new Judicial Council Standing Committee on Forms and provided committee composition. The rule was expedited under Rule 2-205. Rule 3-117 is new and established the charge for the new Committee on Forms. It was also expedited under Rule 2-205.

Judge Pullan agreed with the comment that the court needs to review and delete forms that are not in use. Keisa Williams said her forms subcommittee just had its first meeting and discussed removing forms that are not being used. Judge Boyden said she would like to see the forms presented to the Council and not just on the Council's consent calendar. The committee then discussed adding the task of specifically declaring some forms obsolete and removing them. This will involve the Forms Committee comparing the forms to current statutes and rules. The committee also discussed adding a provision to address those forms that should be translated into different languages.

Regarding the committee composition rule, CJA 1-205, it was noted that the committee may be too large. Ms. Williams noted that the subcommittees, though, are fairly small, and that is where much of the work will be done. The committee discussed whether having both the Self-Help Center and the Law Library on the committee made sense.

Mr. Schwermer noted that both bring different things to the table, and they both have extensive contact with pro se litigants. Ms. Williams noted that Brent Johnson and both the Self Help Center and the Law Library had members on the more informal forms committee in existence before the rule, so there were at least historical reasons for it.

John Lund moved to recommend the rules to the Council with the two edits to the committee's charge in Rule 3-117. Judge Reed Parkin seconded the motion and it passed unanimously.

(5) CJA 4-202.09. Records in tax cases.

The committee reviewed the proposal to amend Rule 4-202.09. The amendments provide that records in property and use tax cases involving commercial information as that term is defined in Utah Code § 59-1-404 are protected. If a request is made to access a record or records, the records will be released within 14 days, except for specific records ordered by the court as sealed, private, protected, or safeguarded. 30 days after the court issues a non-appealable, final order, all records will be public, except as otherwise classified.

Members noted that because stakeholders on both sides jointly presented to the committee, the proposal received no further comments. The committee agreed to recommend the amendments to the Judicial Council.

Judge Noonan moved to recommend Rule 4-202.09 as amended. Judge Boyden seconded the motion and it passed unanimously.

(6) CJA 4-103. Orders of dismissal. CJA 9-301. Record of arraignment and conviction.

The committee discussed the amendments to Rules 4-103 and 9-301. Pursuant to *Cannon v. Holmes*, 2016 UT 42 and Civil Rule 41, Rule 4-103 will require that all orders of dismissal entered under the rule must contain the language "without prejudice."

Rule 9-301 will be repealed since the Court of Appeals has determined that failure to follow the rule does not affect the validity of a plea or conviction with respect to enhancements. *State v. Gonzales*, 2005 UT App 538, 127 P.3d 1252. The rule is also redundant to other rules and statutes. See, e.g., URCRP Rule 11, CJA Rule 4-609, UTAH CODE § 53-10-208.1.

Neither rule received comments.

John Lund moved to recommend the rules as amended to the Council. Judge Noonan seconded the motion and it passed unanimously.

(7) Other Business.

The next meeting is scheduled for June 2 at 12 p.m. in the Council Room. Ms. Williams noted that committee staffing assignments have changed and she will now be the primary staff person for the committee. Judge Pullan thanked Ms. Sylvester for her work. There being no other business, the meeting adjourned at 2:00 pm.

Tab 3

Court
Facility
Planning
Committee

Annual report

Standing Committee Report 2017 Courts Facility Planning

Rule 3-409

Intent:

To provide for the responsibilities of the Courts Facility Planning Committee.

To provide for the effective planning of courts capital facilities.

To promote the efficient use of new and existing courthouses through application of colocation and multi-use court facility concepts.

To establish a framework for the conceptual, planning, developmental and implementation phases of court capital facilities.

To provide for Council review and approval of all proposed court capital facilities.

To ensure adherence to the design and space guidelines and other requirements of the Utah Judicial System Capital Facilities Master Plan.

Committee Responsibilities:

Review trends and projections in population, caseload, and other growth indicators to anticipate courthouse construction needs:

Studies Current and ongoing

Sanpete County Wasatch County Iron County Davis County

Capital Development Projects

Fourth District – Provo - District and Juvenile Courthouse Utah County – Construction Seventh District – Price - District and Juvenile Courthouse Carbon County - Construction

Review the evaluations of courthouses required by this rule and recommend the prioritized placement of courthouse construction projects within the Master Plan:

The Committee evaluates and prioritizes all court sites and court facilities for the Facility Master Plan. The information is used to evaluate facility for capital development, capital improvement, facility maintenance and remodel projects. The Master Plan includes all court facilities; state owned, leased and contract sites. (Attached)

Review recommendations from the facility coordinator on construction projects and the Master Plan:

As part of the budget process the facility coordinators are required to submit a list of projects for funding consideration to the Committee. These requests are reviewed, evaluated and prioritized for the Capital Improvement Project funding.

Make recommendations to the Council regarding the reordering of Master Plan priorities and amendments to design and space guidelines:

The Master Plan is reviewed as events, conditions or opportunities develop. The Committee evaluates the prioritization of the Master Plan annually and presents recommendations and changes to the Judicial Council as needed.

The Design and Space Guidelines are updated at the end of each Capital Development project; the Design and Space Guidelines have been updated to reflect the lessons learned at the completion of each Capital Development Project. Ogden Juvenile Courthouse and the Duchesne Courthouse lessons learned include changes to the clerical work area, courtroom holding cells and courthouse security. The Design and Space Guidelines have been updated to reflect these changes.

Compare construction requests with the Design and Space Guidelines of the Master Plan to ensure the current and anticipated needs of the court are met:

All construction requests are reviewed for compliance to the Design and Space Guidelines. The guidelines are updated as needed to ensure they meet the current needs of the courts.

Develop timetable for construction requests so that the Committee presents its recommendations to the Council in advance of the Annual Planning Workshop:

The Master Plan prioritizes all court facilities. This prioritization is used to select the order of Capital Development and Capital Improvement requests based on the needs of the courts and included in the annual report of the Standing Committee.

Make recommendations to the Council for the approval, modification or disapproval of construction requests:

All Capital Development Project Requests are evaluated for need and compliance with the Master Plan and Design Guide Lines before presentation to the Council. The Council can modify or change the list before taking action.

Develop procedures for the delegation of committee responsibilities to the facility coordinator:

The Committee has delegated the responsibility of defining and requesting improvement projects to the facility coordinators for each district. The procedures for evaluating and developing these requests have been incorporated into the annual budget request process. The facility coordinators are attending the construction meetings within their district.

Utah State Courts Facility Master Plan 2017

Owned Court Facilities					
Location Status	Project Description and Cost Estimates	Update			
Fourth District Provo District and Juvenile Courthouse Status: Projected completion date Fall 2018	To provide a new Court facility in Provo to replace the Provo District Courthouse, Provo Juvenile Courthouse, Orem Juvenile Courthouse and Provo Guardian Ad Litem. FY 2016 project cost \$91,000,000	2015 Legislature Approved an \$88,000,000. 2016 Legislature Approved an additional \$3,000,000.			
Fifth District Cedar City Status: Current Study item	To provide additional courtrooms and program space when needed. Current courthouses should be reevaluated by 2020. No cost estimate at this time	One new Fifth District Judicial position was authorized in the 2017 legislative session.			
Sixth District Richfield Status: No action planned	Identify timing for expansion of existing courthouse. Current courthouses should accommodate Courts until 2025. No cost estimate at this time	No action has been taken or planned.			
Second District Davis County Court Facilities (Layton, Farmington and Bountiful)	Space needs will be defined in the feasibility study when projections indicate additional courtrooms and program space is needed. The feasibility study will evaluate the needs of all three court facilities in Davis County. Current courthouses should accommodate Courts until 2030.	No action has been taken or planned.			

No cost estimate at this time

Status: No action planned

Leased Court Facilities

Location Status	Project Description and Cost Estimates	Update
Seventh District Carbon County Price Status: Projected completion date Summer 2018	Construct a new courthouse on the site of the old Carbon County office building. This building site is located on the main street of Price and has the support of the County and City. The County is financing up to \$13,800,000 for design and construction.	This project is funded through Carbon County (Lease Revenue bond) 2016.
Sixth District Sanpete County Manti Status: This project should be presented to the 2018 Legislature.	Construct a new courthouse in the central business district of Manti City. Sanpete County is not interested in participating in the project. Property Acquisition cost - \$400,000 Estimated Project cost will be \$17,000,000	This request was presented to the State building Board and legislature 2017. (not funded)
Seventh District San Juan County Monticello Status: No action planned	Remodel the current facility to improve security and operational issues. Construct additional space for Juvenile Probation and secure holding for Juvenile defendants in custody. No cost estimate at this time	No action has been taken. This project should be reevaluated in 2018.
Second District Morgan County Morgan Status: No action planned	Construct a new courthouse in the central business district of Morgan City. Morgan County is not interested in participating in the project. No cost estimate at this time	No action has been taken. This project should be reevaluated in 2022.

Location	Project Description and Cost Estimates	Update
Status		_
Second District	Remodel the old Ogden Juvenile Courthouse to properly house the Juvenile	Remodeling the existing
Juvenile Probation / GAL Offices	Probation Supervision staff and relocate GAL from Layton to Ogden.	space will be completed
<u>Ogden</u>		fall 2016.
COMPLETED		
Sixth District	Remodel and Relocate the move the staff and work crew to the Kane County	Remodeling the county
Juvenile Probation	office building. This will consolidate all District and Juvenile court	building will be complete
Kanab	functions in Kane County to a single location and reduce the annual costs.	August 2016.
COMPLETED	, ,	
Sixth District	Construct a new courthouse in the central business district of Manti City that	This space is included in
Juvenile Probation Manti	will consolidate all District and Juvenile functions in Sanpete County to a	the Sanpete County
Status: This is included in the	single location.	Courthouse request.
Sanpete County Manti request.	č	

Other Projects

These projects require local government funding and are paid for through the Contract and Lease Budget.

1. Wayne County

Letter has been received from Wayne County stating the County will need a new County court facility within 10 years, and wants the State to participate. No formal talks have been scheduled with the County. Wayne County is talking with DFCM about Planning and Programming a new county facility that would include the Courts needs.

2. Wasatch County

Fourth Juvenile Court has submitted a building block to add one additional courtroom to this facility for Juvenile court cases. Wasatch County has agreed to fund the development if the State Courts will enter into a Long-term lease agreement that is designed to cover the debt service on the expansion. This project was presented to the committee and the budget committee for consideration in 2016 and will be resubmitted in 2017.

Planning Projects

- 1. Sanpete County (District Court, Juvenile Court, Juvenile Probation and GAL)
- 2. **Iron County** (District Court, Juvenile Court, Juvenile Probation and GAL)
- 3. Davis County(District Court, Juvenile Court, Juvenile Probation and GAL)

All Co	urt F	acilities	by Distric	t 2017								
Facility #	District	County	Facility Type	State / Contract	Unit Name	Leased / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	Total
2602	1		Courthouse	State	Brigham City	Owned	3	35,000	9	9	9	27
2603	1	Cache	Courthouse	State	Logan	Owned	6	73,644	9	9	10	28
2604 2607	2	Rich Davis	Courthouse	Contract	Randolph :	Leased	<u>. II</u>	2,415	3) 150	<u> </u>	10	18
2607	2	Davis Davis	Courthouse	State State	Farmington	Leased Owned	10	26,804 131,699	8 7	8	9	25 24
2610	2	Davis	Courthouse	State	Layton	Owned	2	20,025	7	6	9	24 22
2611	2	Morgan	Courthouse	State	Morgan	Leased	1	2,727	2	4	7	13
2612	2	Weber	Courthouse	State	Ogden Dist	Owned	11	91.000	8	8	9	25
2614	2	Weber	Courthouse	State	Ogden JV	Owned	3	87.000	9	10	10	29
2618	3	Salt Lake	Courthouse	State	Matheson	Owned	37	417,000	9	8	10	27
2619	3		Courthouse	State	West Jordan	Owned	10	117,439	9	8	10	27
2621	3	Summit	Courthouse	State	Park City (Silver Summit)	Leased	2	15.100	8	8	10	26
2622	3	Tooele	Courthouse	State	Tooele	Owned	2	58,968	9	9	10	28
2625	4	Juab	Courthouse	State	Nephi	Leased	1	3,080	9	9	10	28
2627	4		Courthouse	Contract	Fillmore	Leased	1 1	8,598	4	7/	9	- 20
2628	4	Utah	Courthouse	State	American Fork	Leased	3	27,588	8	8	8	24
2/52/9 2/63/1 2/63/3 2/63/4	á á	Utah Utah Utah Utah	Condinuse Condinuse Condinuse Condinuse	Sine Sine Sine Connect	Orem Provo Disi Provo IV Salem	Owned Owned Covned Leased	의 9 : <u>3</u> :::-:=	16.030 59.923 18.303	3 3 3 N/A	গ্র জ গ্র	5 1 4	13 9 12
2635	4	Utah	Courthouse	State	Spanish Fork	Leased	2	31,779	9	9	9	27
2637	4	Wasatch	Courthouse	State	Heber City	Leased	1	10.043	8	7	1	16
2640	5	Beaver	Courthouse	State	Beaver	Leased	1	7.088	3	8	9	20
2641	5	Iron	Courthouse	State	Cedar City	Owned	3	17,037	7	7	7	21
2643	5	Iron	Courthouse	State	Parowan	Leased	1	3,077	N/A	N/A	N/A	-
2644	5		Courthouse	State	St George	Owned	8	95,550	7	10	10	27
2647 2648	6	Cartield Pinte	Courthouse Courthouse	Contract Contract	Panguitch Junction	Leased		2,481 4,120	6	8	9	24 23
2649	6	Kane	Courthouse	State	Kanab	Leased	1	3.846	5	8	9	22
2651	6	Sanpete	Courthouse	State	Manti	Leased	2	7,301	3	3	5	11
2653	6	Sevier	Courthouse	State	Richfield	Owned	2	19,839	8	9	9	26
2654	6	The second second	Countiouse Countinuse	Contrast Siere	Loa Nijes	Leased	e sa	2 600	3	2 3	3	,
2658	7	Emery	Courthouse	State	Castle Dale	Leased	1	8.800	6	8	9	23
2659	7	Grand	Courthouse	State	Moab	Leased	1	11.936	5	7	9	21
2661	7		Courthouse	State	Monticello	Leased	1	3,206	4	7	7	18
2665	8	Daggett	Courtieuse	Contract	Manila	Leased	ti, y II.	31137	2	4	. 8	146
2666	8		Courthouse	State	Duchesne	Leased	l	7,013	9	9	9	27
2667	8		Courthouse	State	Roosevelt	Leased	1	4,786	4	5	7	16
2668	8	Uintah	Courthouse	State	Vernal	Owned	3	33,331	8	9	9	26
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Own	ed	Court Facil	ities 2017									
Facility#	District	County	Facility Type	State / Contract	Unit Name	Leased / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	Total Score
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2641 2610		Iron Davis	Courthouse	State	Cedar City	Owned	3	17,037	7	7	7	21
2608		Davis Davis	Courthouse	State	Layton	Owned	2	20,025	7	6	9	22
2612		Weber	Courthouse Courthouse	State State	Farmington	Owned Owned	10 11	131,699 91,000	7	8	9	24
2653		Sevier	Courthouse	State	Ogden Dist Richfield	Owned	2	19.839	8 8	9	9 9	25 26
2668	i .	Uintah	Courthouse	State	Vernal	Owned	. 3	33.331	8	9	9	26
2619	1	Salt Lake	Courthouse	State	West Jordan	Owned	10	117,439	9	8	10	27
2618	_	Salt Lake	Courthouse	State	Matheson	Owned	37	417,000	9	8	10	27
2602		Box Elder	Courthouse	State	Brigham City	Owned	3	35,000	9	9	9	27
2644		Washington	Courthouse	State	St George	Owned	8	95,550	7	10	10	27
2622		Tooele	Courthouse	State	Tooele	Owned	2	58,968	9	9	10	28
2603		Cache	Courthouse	State	Logan	Owned	6	73,644	9	9	10	28
2614	2	Weber	Courthouse	State	Ogden JV	Owned	3	87,000	9	10	10	29
Total								1,291,843				
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2651	6	Sanpete	Courthouse	State	Manti	Leased	2	7,301	3	3	5	11
2611	2	Morgan	Courthouse	State	Morgan	Leased	1	2,727	2	4	7	13
2637	4	Wasatch	Courthouse	State	Heber City	Leased	1	10.043	7	8	1	16
2667	8	Duchesne	Courthouse	State	Roosevelt	Leased	1	4,786	4	5	7	16
2661	7	San Juan	Courthouse	State	Monticello	Leased	1	3,206	4	7	7	18
2640		Beaver	Courthouse	State	Beaver	Leased	1	7,088	3	8	9	20
2659		Grand	Courthouse	State	Moab	Leased	1	11,936	5	7	9	21
2649		Kane	Courthouse	State	Kanab	Leased	1	3,846	5	8	9	22
2658		Emery	Courthouse	State	Castle Dale	Leased	1	8.800	6	8	9	23
2628		Utah	Courthouse	State	American Fork	Leased	3	27,588	8	8	8	24
2607		Davis	Courthouse	State	Bountiful	Leased	2	26,804	8	8	9	25
2621		Summit	Courthouse	State	Park City (Silver Summit)	Leased	2	15,100	8	8	10	26
2635		Utah Duahaan	Courthouse	State	Spanish Fork	Leased	2	31,779	9	9	9	27
2666 2625		Duchesne Juab	Courthouse	State	Duchesne	Leased	l 1	7,013	9	9	9	27
2643		Iron	Courthouse Courthouse	State State	Nephi Parowan	Leased Leased	1	3,080 3,077	9 N/A	9 N/A	10	28
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District	County	Facility Type	State / Contract	Unit Name	Leased / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	Total
	Owned Facilities	S	· · · · · · · · · · · · · · · · · · ·		 	<u> </u>					
2 3 4	Weber Salt Lake Utah	Probation Office Probation Office Probation Office Probation Office Probation Office	State State State	Wental training / public programs Ogden JV Probation / GAL West Valley City JV Prob Provo JV Work Crew building City Center Probation	Owned Owned Owned Owned Owned Owned	3 1 0	23.857 26.300 12,000 8.312	7 7 7 7 8	5 7 8 9 9	10 10 9 9	107 24 25 25 26
							75,255	<u>-</u>			
	A STATE OF THE STA		projectinith	ind Ogden Juvenile courthouse, the project w	all be complete	fajl 2016	O NEL	3	Section 1	Lust	
6 7	San Juan Sanpete	Probation Office Probation Office Probation Office Probation Office	State		Leased Leased Leased Leased	0 0 0	540 1,940 374 702	4 3 7 6	4 4 6 7	7 10 5 10	15 17 18 23
	District 6.8 1 4.6.64 District 88 2 3 4 3 7 6 7	County County	6 Wayne 8 Daggett 1 Rich 4 Millard 6 Piute 6 Gartield 6 Gartield 6 Gartield 7 Utah County County Facilities Counthouse Counthouse Facilities Counthouse Counthouse Counthouse Counthouse Facilities Counthouse Counthouse Counthouse Facilities Counthouse Counthouse	County Facility Type Contract Contrac	County Facility Type County Facility Type Countries Contract Los Countries Contract Randolph Countries Contract Randolph Countries Contract Pollmore Contrac	County Facility Type Contract Los Unit Name Courted Los Contract Los Contract Los Contract Los Contract Los Contract Randolph Leased Millard Courthouse Contract Fillmote Leased Contract State Courted Courted Courted Fillmote Leased Contract State Courted Courted State Courted Courted State Courted State Courted State Courted State Countract State Courted State Countract State S	County Facility Type Contract Loa Lased 1 Rich Courthouse Contract Manila Leased 1 Rich Courthouse Contract Pilmore Leased 0 Rich Probation Office State West Valley City JV Prob Owned 1 Rich Courthouse Contract Pilmore Leased 0 Rich Pilmore Leased 1 Rich Courthouse Contract Pilmore Leased 0 Rich Pilmore Rich	County Facility Type Of Unit Name	County Facility Type Countings Contract Las Leased 1 2,600 2 3 1 3,137 2 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 1 Rich Countings Contract Manifa 1,600 1 1 3,137 2 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	County Facility Type County Facility Type County Count	County

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Tab 4



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: Nancy Sylvester

Date:

May 5, 2017

Re:

Rules for Final Action

RULES FOR FINAL ACTION

The public comment periods for the following rules of the Utah Code of Judicial Administration have closed and the proposals are ready for final action by this Council. Only one rule, 3-117, received comments. The Policy and Planning Committee recommends each of the proposals for final action. The committee recommends expedited adoption of Rule 3-117 under CJA Rule 2-205 and adoption as of November 1, 2017 on all others.

a. Standing Committee on Court Forms, Rules 1-205 and 3-117.

CJA01-205. Standing and ad hoc committees. Amend. Creates a new Judicial Council Standing Committee on Forms; provides committee composition. Expedited under Rule 2-205.

Rule 1-205's amendments are at lines 27 and 93-97. The proposal did not receive any comments and Policy and Planning does not recommend further amendments. The rule is already effective under Rule 2-205.

<u>CJA03-117</u>. Committee on Court Forms. New. Establishes the charge for the new Judicial Council Standing Committee on Forms. Expedited under Rule 2-205.

This rule is new and received two comments:

Posted by Samuel D. McVey

CJA 03-117 on charge to forms committee:

The following should be added:

- 1) "No new form shall be approved until the Committee has ensured obsolete forms have been removed from all court clerk offices and destroyed and removed from the Courts' OCAP system and website.
- 2) "In the form for whether a party is on active military duty, there shall be no language about entering a default certificate or judgment."
- 3) "No form shall be approved for publication and use on a consent calendar. Rather, each member of the Judicial Council or Board of District Court Judges shall review the form and not vote for approval without having first read the form."

The justifications for these proposals are:

- 1) There are obsolete forms in our system containing outdated procedures and incorrect law (see, e.g., the federal weapons provisions in the stalking injunction forms)..These forms tend to be available in clerks' offices and through searches resulting in forms appearing from the Court website. The first thing the committee should undertake is a thorough search of clerk offices and the court database to delete old and inaccurate forms.
- 2) A finding of military service or not does not equate to the ability to enter a default or not. There are other requirements. Yet we continue to see language such as "The Court finds the respondent is not on active duty military service and a default may enter."
- 3) We have found incorrect forms were put in place by committee staff and the Board of District Court Judges could not remember voting on them. No form should be promulgated until the governing body–Boards or Council–actually reads and votes on them.

Posted by Susan Vogel

I would say "at" all levels rather than "in" all levels.

Rules for Final Action and Expedited Rule May 5, 2017 Page 3

I hope that the "other interested groups" includes the minority communities (in some areas now "majority") and the LGBTQ community.

I suggest the committee also have the mandate to assess which forms should be bilingual. Basis for comments: Work on a daily basis with pro se litigants who have a lot of difficulty with forms; extensive experience doing outreach to and trainings for the Latino community.

In response to the comments above, the Policy and Planning Committee recommends amending paragraph (3)(a) as follows:

(3)(a) The committee shall adopt procedures for creating new forms or making substantive amendments to existing forms, <u>procedures for eliminating obsolete and outdated forms, procedures for recommending which forms should be translated into other languages</u>, and procedures for expediting technical or non-substantive amendments to forms.

b. Orders of dismissal, record of arraignment and conviction, and tax case records, Rules 4-103, 9-301, and 3-117.

<u>CJA04-103</u>. Civil calendar management. Amend. Pursuant to Cannon v. Holmes, 2016 UT 42 and Civil Rule 41, requires that all orders of dismissal entered under the rule must contain the language "without prejudice."

This rule was amended at lines 16-17. The proposal did not receive any comments.

CJA 09-301. Record of arraignment and conviction. Repeal. The Court of Appeals has determined that failure to follow this rule does not affect the validity of a plea or conviction with respect to enhancements. State v. Gonzales, 2005 UT App 538, 127 P.3d 1252. The rule is also redundant to other rules and statutes. See, e.g., URCrP Rule 11, CJA Rule 4-609, UTAH CODE § 53-10-208.1.

Rules for Final Action and Expedited Rule May 5, 2017 Page 4

The proposal did not receive any comments.

<u>CJA 4-0202.09</u>. **Miscellaneous.** Amend. Provides that records in property and use tax cases involving commercial information as that term is defined in Utah Code § 59-1-404 are protected. If a request is made to access a record or records, the records will be released within 14 days, except for specific records ordered by the court as sealed, private, protected, or safeguarded. 30 days after the court issues a non-appealable, final order, all records will be public, except as otherwise classified.

This rule was amended at lines 53 to 70. Because stakeholders on both sides jointly presented to the committee, the proposal received no further comments.

Encl. CJA01-205

CJA03-117

CJA04-103

CJA 09-301

CJA 4-0202.09

1	Rule 1-205. Standing and ad hoc committees.
2	
3	Intent:
4	To establish standing and ad hoc committees to assist the Council and provide recommendations on
5	topical issues.
6	To establish uniform terms and a uniform method for appointing committee members.
7	To provide for a periodic review of existing committees to assure that their activities are appropriately
8	related to the administration of the judiciary.
9	Applicability:
10	This rule shall apply to the internal operation of the Council.
11	Statement of the Rule:
12	(1) Standing committees.
13	(1)(A) Establishment. The following standing committees of the Council are hereby established:
14	(1)(A)(i) Technology Committee;
15	(1)(A)(ii) Uniform Fine Schedule Committee;
16	(1)(A)(iii) Ethics Advisory Committee;
17	(1)(A)(iv) Judicial Branch Education Committee;
18	(1)(A)(v) Court Facility Planning Committee;
19	(1)(A)(vi) Committee on Children and Family Law;
20	(1)(A)(vii) Committee on Judicial Outreach;
21	(1)(A)(viii) Committee on Resources for Self-represented Parties;
22	(1)(A)(ix) Language Access Committee;
23	(1)(A)(x) Guardian ad Litem Oversight Committee;
24	(1)(A)(xi) Committee on Model Utah Civil Jury Instructions;
25	(1)(A)(xii) Committee on Model Utah Criminal Jury Instructions; and
26	(1)(A)(xiii) Committee on Pretrial Release and Supervision-
27	(1)(A)(xiv) Committee on Court Forms.
28	(1)(B) Composition.
29	(1)(B)(i) The Technology Committee shall consist of one judge from each court of record, one justice
30	court judge, one lawyer recommended by the Board of Bar Commissioners, two court executives, two
31	court clerks and two staff members from the Administrative Office.
32	(1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of one district court judge who has
33	experience with a felony docket, three district court judges who have experience with a misdemeanor
34	docket, one juvenile court judge and three justice court judges.
35	(1)(B)(iii) The Ethics Advisory Committee shall consist of one judge from the Court of Appeals, one

district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6,

7, or 8, one juvenile court judge, one justice court judge, and an attorney from either the Bar or a college of law.

(1)(B)(iv) The Judicial Branch Education Committee shall consist of one judge from an appellate court, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, the education liaison of the Board of Justice Court Judges, one state level administrator, the Human Resource Management Director, one court executive, one juvenile court probation representative, two court clerks from different levels of court and different judicial districts, one data processing manager, and one adult educator from higher education. The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.

(1)(B)(v) The Court Facility Planning Committee shall consist of one judge from each level of trial court, one appellate court judge, the state court administrator, a trial court executive, and two business people with experience in the construction or financing of facilities.

(1)(B)(vi) The Committee on Children and Family Law shall consist of one Senator appointed by the President of the Senate, one Representative appointed by the Speaker of the House, the Director of the Department of Human Services or designee, one attorney of the Executive Committee of the Family Law Section of the Utah State Bar, one attorney with experience in abuse, neglect and dependency cases, one attorney with experience representing parents in abuse, neglect and dependency cases, one representative of a child advocacy organization, one mediator, one professional in the area of child development, one representative of the community, the Director of the Office of Guardian ad Litem or designee, one court commissioner, two district court judges, and two juvenile court judges. One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The Committee on Judicial Outreach shall consist of one appellate court judge, one district court judge, one juvenile court judge, one justice court judge, one state level administrator, a state level judicial education representative, one court executive, one Utah State Bar representative, one communication representative, one law library representative, one civic community representative, and one state education representative. Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.

(1)(B)(viii) The Committee on Resources for Self-represented Parties shall consist of two district court judges, one juvenile court judge, one justice court judge, three clerks of court – one from an appellate court, one from an urban district and one from a rural district – one member of the Online Court Assistance Committee, one representative from the Self-Help Center, one representative from the Utah State Bar, two representatives from legal service organizations that serve low-income clients, one private attorney experienced in providing services to self-represented parties, two law school representatives, the state law librarian, and two community representatives.

(1)(B)(ix) The Language Access Committee shall consist of one district court judge, one juvenile court judge, one justice court judge, one trial court executive, one court clerk, one interpreter coordinator, one probation officer, one prosecuting attorney, one defense attorney, two certified interpreters, one approved interpreter, one expert in the field of linguistics, and one American Sign Language representative.

(1)(B)(x) The Guardian ad Litem Oversight Committee shall consist of seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.

(1)(B)(xi) The Committee on Model Utah Civil Jury Instructions shall consist of two district court judges, four lawyers who primarily represent plaintiffs, four lawyers who primarily represent defendants, and one person skilled in linguistics or communication.

(1)(B)(xii) The Committee on Model Utah Criminal Jury Instructions shall consist of two district court judges, one justice court judge, four prosecutors, four defense counsel, one professor of criminal law, and one person skilled in linguistics or communication.

(1)(B)(xiii) The Committee on Pretrial Release and Supervision shall consist of two district court judges, one juvenile court judge, two justice court judges, one prosecutor, one defense attorney, one county sheriff, one representative of counties, one representative of a county pretrial services agency, one representative of the Utah Insurance Department, one representative of the Utah Commission on Criminal and Juvenile Justice, one commercial surety agent, one state senator, one state representative, and the court's general counsel or designee.

(1)(B)(xiv) The Committee on Court Forms shall consist of one district court judge, one juvenile court judge, one juvenile court judge, one juvenile court judge, one court clerk, one appellate court staff attorney, one representative from the Self-Help Center, the State Law Librarian, the Court Services Director, one member selected by the Online Court Assistance Committee, one representative from a legal service organization that serves low-income clients, one paralegal, and one representative from the Utah State Bar.

(1)(C) The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

(1)(D) At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

- (1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.
- (2) Ad hoc committees. The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form subcommittees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.
- (3) General provisions.
 - (3)(A) Appointment process.
- (3)(A)(i) Administrator's responsibilities. The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:
- (3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;
- (3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;
- (3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and
- (3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.
- (3)(A)(ii) Council's responsibilities. The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.
- (3)(B) Terms. Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.
- (3)(C) Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.
 - (3)(D) The Administrative Office shall serve as secretariat to the Council's committees.

Rule 3-117. Committee on Court Forms

Intent:

To establish a committee to determine the need for forms and to create forms for use by litigants in all court levels.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

- (1) The committee shall conduct a comprehensive review of the need for court forms to assist parties and practitioners in all court levels.
- (2) The committee shall create forms as it deems necessary for use by parties and practitioners, including forms for the Online Court Assistance Program.
 - (3) Process for form creation.
- (3)(a) The committee shall adopt procedures for creating new forms or making substantive amendments to existing forms, <u>procedures for eliminating obsolete and outdated forms, procedures for recommending which forms should be translated into other languages, and procedures for expediting technical or non-substantive amendments to forms.</u>
- (3)(b) Forms should be written in plain language and reference the statutes and rules to which the forms apply.
- (3)(c) The committee shall solicit input from other interested groups as it deems appropriate. The committee may establish subcommittees using non-committee members to facilitate its work.
- (3)(d) The committee may recommend to the Judicial Council mandatory use of particular forms. However the Judicial Council's designation of a form as mandatory is not binding on a decision-maker asked to review the legal correctness of the form.
- (3)(e) The Office of General Counsel shall staff the committee and shall review all forms for legal correctness before final approval by the committee.
 - (4) The State Law Librarian shall be responsible for maintaining and archiving the forms.

Rule 4-103. Draft: October 25, 2016

1	Rule 4-103	Civil calendar	management
	IVUIC TIVO.	Olvii Calciluai	manayement

- 2 Intent:
- 3 To establish a procedure which that allows the trial courts to manage civil case processing.
- 4 To reduce the time between case filing and disposition.
- 5 Applicability:
- 6 This rule shall apply to the District Court.
- 7 Statement of the Rule:
- 8 (1) If a default judgment has not been entered by the plaintiff within 60 days of the availability of default,
- 9 the clerk shall-will mail written notification to the plaintiff stating that absent a showing of good cause by a
- date specified in the notification, the court will shall-dismiss the case without prejudice for lack of
- 11 prosecution.
- 12 (2) If a certificate of readiness for trial has not been served and filed within 330 days of the first answer,
- 13 the clerk will shall-mail written notification to the parties stating that absent a showing of good cause by a
- date specified in the notification, the court will shall dismiss the case without prejudice for lack of
- 15 prosecution.
- 16 (3) Pursuant to Rule 41 of the Utah Rules of Civil Procedure, all orders of dismissal entered under this
- 17 rule must contain the language "without prejudice."
- 18 (34) Any party may, pursuant to the Utah Rules of Civil Procedure, move to vacate a dismissal entered
- 19 under this rule.

Rule 9-301. Draft: January 11, 2017

Rule 9-301. Record of arraignment and conviction. 2 Intent: 3 To establish a procedure for justice courts to follow in making a record at the time of arraignment and conviction. in those cases where the defendant may be subject to an enhanced penalty if convicted of the 4 5 same offense in the future. 6 Applicability: This rule shall apply to the justice courts in those cases where the defendant may be subject to an 7 8 enhanced penalty if convicted of the same offense in the future. 9 Statement of the Rule: (1) At the time of arraignment, the justice court judge shall determine whether the defendant would be 10 subject to an enhanced penalty if convicted of the same offense in the future. 11 (2) If the defendant would be subject to an enhanced penalty, upon the entry of a plea of guilty, the justice 12 13 court judge shall: (A) Advise the defendant, orally and in writing of the defendant's rights, the elements of the charged 14 offense, the penalties for the charged offense, and the enhancement penalty which may be imposed in 15 the event the defendant is convicted of the same offense in the future; and 16 (B) Require the defendant to sign a statement acknowledging that the defendant understands his rights and that he knowingly, intelligently and voluntarily waives those rights. 18 19 (3) Upon the entry of a guilty plea or receipt of a conviction, the justice court judge shall execute a written and signed judgment of conviction and forward the appropriate information and/or fingerprints to the state 20 21 agencies responsible for maintaining criminal records.

Rule 4-202.09 February 6, 2017

- 1 Rule 4-202.09. Miscellaneous.
- 2 Intent:

- 3 To set forth miscellaneous provisions for these rules.
- 4 Applicability:
- 5 This rule applies to the judicial branch.
 - Statement of the Rule:
 - (1) The judicial branch shall provide a person with a certified copy of a record if the requester has a right to inspect it, the requester identifies the record with reasonable specificity, and the requester pays the fees.
 - (2)(A) The judicial branch is not required to create a record in response to a request.
 - (2)(B) Upon request, the judicial branch shall provide a record in a particular format if:
 - (2)(B)(i) it is able to do so without unreasonably interfering with its duties and responsibilities; and
 - (2)(B)(ii) the requester agrees to pay the additional costs, if any, actually incurred in providing the record in the requested format.
 - (2)(C) The judicial branch need not fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.
 - (3) If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the judicial branch may provide the requester with the facilities for copying the requested records and require that the requester make the copies, or allow the requester to provide his own copying facilities and personnel to make the copies at the judicial branch's offices and waive the fees for copying the records.
 - (4) The judicial branch may not use the form in which a record is stored to deny or unreasonably hinder the rights of persons to inspect and receive copies of a record.
 - (5) Subpoenas and other methods of discovery under state or federal statutes or rules of procedure are not records requests under these rules. Compliance with discovery shall be governed by the applicable statutes and rules of procedure.
 - (6) If the judicial branch receives a request for access to a record that contains both information that the requester is entitled to inspect, it shall allow access to the information in the record that the requester is entitled to inspect, and shall deny access to the information in the record that the requester is entitled to inspect, and shall deny access to the information in the record the requester is not entitled to inspect.
 - (7) The Administrative Office shall create and adopt a schedule governing the retention and destruction of all court records.
 - (8) The courts will use their best efforts to ensure that access to court records is properly regulated, but assume no responsibility for accuracy or completeness or for use outside the court.
 - (9)(A) Non-public information in a public record. The person filing a public record shall omit or redact non-public information. The person filing the record shall certify that, upon information and belief, all non-public information has been omitted or redacted from the public record. The person filing a private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social record shall identify the classification of the record at the top of the first page of a classified document or in a statement accompanying the record.
 - (9)(B) A party may move or a non-party interested in a record may petition to classify a record as private, protected, sealed, safeguarded, juvenile court legal, or juvenile court social or to redact non-public information from a public record.

February 6, 2017

Rule 4-202.09 (9)(C) If the following non-public information is required in a public record, only the designated 43 44 information shall be included: (9)(C)(i) social security number: last four digits; 45 (9)(C)(ii) financial or other account number: last four digits; 46 47 (9)(C)(iii) driver's license number: state of issuance and last four digits: 48 (9)(C)(iv) address of a non-party: city, state and zip code; 49 (9)(C)(v) email address or phone number of a non-party: omit; and (9)(C)(vi) minor's name: initials. 50 51 (9)(D) If it is necessary to provide the court with private personal identifying information, it must be 52 provided on a cover sheet or other severable document, which is classified as private. (10)(A) Notwithstanding Rule 4-202.02, except as otherwise ordered by the court and except as 53 54 provided in subsections (B) and (C), if a case involves a tax on property or its use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, Privilege Tax, all records shall be 55 56 classified as public records under Rule 4-202.02. (10)(B) Except as provided in subsection (C), all records in a case that involves a tax on property or its 57 use under Title 59, Chapter 2, Property Tax Act, Chapter 3, Tax Equivalent Property Act, or Chapter 4, 58 Privilege Tax, shall be protected if the case also involves commercial information as that term is defined by 59 Utah Code § 59-1-404. 60 61 (10)(C) For a case described in subsection (B): (10)(C)(i) if a request for a specific record, or access to all records in a case, is made to the court and 62 notice is given to the taxpayer, such record or records shall be released within 14 days after notice is given 63 to the taxpayer, except for specific records ordered by the court to be classified as sealed, private, 64 protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3); 65 (10)(C)(ii) thirty days after the issuance of a non-appealable final order by the court, all records shall be 66 public unless the court orders specific records to be classified as sealed, private, protected, or safeguarded 67 pursuant to a motion made under Rule 4-202.04(3). 68 (10)(C)(iii) The public shall have access to the case history, notwithstanding the limitations in this rule 69 70 applicable to the underlying records.

71 72





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: Judge Derek Pullan, Nancy Sylvester

Date: May 11, 2017

Re: Rule 4-202.02 and criminal case dismissals:

Recommendation to take no further action on proposal to amend

The Policy and Planning Committee recommends that the Judicial Council take no further action on the proposal to amend Code of Judicial Administration Rule 4-202.02 to make criminal case records private when there has been a dismissal of all charges. The proposed language is as follows:

- (4) Private Court Records. The following court records are private:
- (4)(Z) except in the case of a plea held in abeyance, court records involving a criminal charge where a dismissal of all charges has been entered

The genesis for this proposal was <u>Senate Bill 12</u>, Expungement Amendments, from the 2017 legislative session, and related conversations between CCJJ and legislators about the problematic use of criminal case filing information. Examples of problematic use include denying housing and employment based not just on convictions, but also dismissed criminal cases. Jennifer Valencia argued on behalf of CCJJ that this practice occurs regularly and unduly interferes with the ability of people to reintegrate into the community following case dismissal. Although the Policy and Planning Committee was sensitive to this concept, it ultimately determined that

categorizing the entire record in dismissed criminal cases as private raised constitutional concerns and was overbroad.

The Utah Supreme Court has held that the public has a "qualified, or presumptive, right of access to public records under the First Amendment." *State v. Archuleta*, 857 P.2d 234, 237 (Utah 1993). But that right of access "exists only if (1) there has been a tradition of accessibility to the information desired, and (2) public access would play a significant positive role in the functioning of the process in question." *Id.* Criminal cases are exactly the kind of records for which a tradition of accessibility exists *because of* the significant positive role the public plays in the process. As the Utah Media Coalition argued, denying access to criminal case filings "is contrary to the public's right to know and [to] hold the judicial system accountable." Utah Media Coalition, letter to the Utah Judicial Council (February 16, 2017).

Among other reasons, transparency in criminal cases, the media asserted, 1) ensures that publicly paid law enforcement officers and prosecutors are not improperly filing charges against innocent people; 2) helps identify any patterns of malfeasance by public officials; and 3) builds trust and confidence in the judicial process. And there are tools already available to assist defendants in restoring their reputations. They include the Utah Expungement Act and Utah Code of Judicial Administration Rule 4-202.04 (request to classify a record associated with a case), each of which permit individual and narrowly tailored decisions to be made about whether a criminal record or records should be removed from public view.

Beyond the transparency and right of access issues that Policy and Planning identified as reasons for recommending no action, another reason for tabling the proposal is that it potentially conflicts with the scope of the Utah Expungement Act. Under the Act, "agency" is defined broadly to include any "state . . . entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered." UTAH CODE § 77-40-102(2)). While the

judiciary is an independent branch of government, this definition is broad enough to include the courts.

When we speak of criminal cases filed and dismissed before adjudication, we are talking about section 77-40-104 records – records relating to arrest, investigation, and detention. By statute, a person is entitled to expunge these records subject to these conditions: (1) at least 30 days have passed since the arrest; (2) there are no criminal proceedings pending; and (3) one of the following has occurred – there has been a formal declination of prosecution, the entire case was dismissed with prejudice, the person was acquitted of all charges at trial, or the statute of limitations has expired. <a href="https://doi.org/10.1016/journal.org/1

In the case of dismissed charges, it is rare for the prosecution to dismiss with prejudice. Therefore, the vast majority of people who are charged with a subsequent dismissal must wait for the statute of limitation to run before seeking expungement. For some people charged with very serious offenses, expungement is never available. UTAH
CODE § 76-1-301 (listing 19 offense for which prosecution may be commenced at any time, including capital felonies, murder, rape, object rape, and sex crimes against children). Most others would have to wait eight, four, or two years. UTAH CODE § 76-1-302 (listing general periods of limitations for other offenses).

Finally, eligibility for expungement does not mean you receive it. The Petitioner must demonstrate by clear and convincing evidence that expungement is not contrary to the interests of the public. <u>Utah Code § 77-40-107</u>.

With this framework in mind, our concern is that by amending Rule 4-202.02 to make private cases in which criminal charges have been dismissed but not with prejudice, the judiciary is creating a kind of administrative expungement that conflicts with the expungement statute. Moreover, even if the court records are made private, records of the arrest, detention and investigation in the possession of other "agencies" will remain to some degree publicly available. Thus, the proposed rule goes too far in

Rule 4-202.02 (criminal case dismissals) May 12, 2017 Page 4

that it grants administrative expungement of court records when this is otherwise unavailable under the Expungement Act. Yet, it does not go far enough to address the privacy concerns at which it is aimed.

This analysis may be equally important to the policy considerations which informed the committee's recommendations.

Encl. CJA 04-0202.02 and comments

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) Presumption of Public Court Records. Court records are public unless otherwise classified by
8	this rule.
9	(2) Public Court Records. Public court records include but are not limited to:
10	(2)(A) abstract of a citation that redacts all non-public information;
11	(2)(B) aggregate records without non-public information and without personal identifying
12	information;
13	(2)(C) appellate filings, including briefs;
14	(2)(D) arrest warrants, but a court may restrict access before service;
15	(2)(E) audit reports;
16	(2)(F) case files;
17	(2)(G) committee reports after release by the Judicial Council or the court that requested the
18	study;
19	(2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a
20	contract;
21	(2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;
22	(2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a
23	fair trial or interests favoring closure;
24	(2)(K) financial records;
25	(2)(L) indexes approved by the Management Committee of the Judicial Council, including the
26	following, in courts other than the juvenile court; an index may contain any other index information:
27	(2)(L)(i) amount in controversy;
28	(2)(L)(ii) attorney name;
29	(2)(L)(iii) case number;
30	(2)(K)(iv) case status;
31	(2)(L)(v) civil case type or criminal violation;
32	(2)(L)(vi) civil judgment or criminal disposition;
33	(2)(L)(vii) daily calendar;
34	(2)(L)(viii) file date;
35	(2)(L)(ix) party name;

36 (2)(M) name, business address, business telephone number, and business email address of an 37 adult person or business entity other than a party or a victim or witness of a crime; 38 (2)(N) name, address, telephone number, email address, date of birth, and last four digits of the 39 following: driver's license number; social security number; or account number of a party; 40 (2)(O) name, business address, business telephone number, and business email address of a 41 lawyer appearing in a case; 42 (2)(P) name, business address, business telephone number, and business email address of court 43 personnel other than judges; 44 (2)(Q) name, business address, and business telephone number of judges: 45 (2)(R) name, gender, gross salary and benefits, job title and description, number of hours worked 46 per pay period, dates of employment, and relevant qualifications of a current or former court personnel; 47 (2)(S) unless classified by the judge as private or safeguarded to protect the personal safety of 48 the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury 49 is discharged; 50 (2)(T) opinions, including concurring and dissenting opinions, and orders entered in open 51 hearings: 52 (2)(U) order or decision classifying a record as not public; 53 (2)(V) private record if the subject of the record has given written permission to make the record 54 public; 55 (2)(W) probation progress/violation reports; 56 (2)(X) publications of the administrative office of the courts; 57 (2)(Y) record in which the judicial branch determines or states an opinion on the rights of the 58 state, a political subdivision, the public, or a person; 59 (2)(Z) record of the receipt or expenditure of public funds; 60 (2)(AA) record or minutes of an open meeting or hearing and the transcript of them; 61 (2)(BB) record of formal discipline of current or former court personnel or of a person regulated by 62 the judicial branch if the disciplinary action has been completed, and all time periods for administrative 63 appeal have expired, and the disciplinary action was sustained; 64 (2)(CC) record of a request for a record; 65 (2)(DD) reports used by the judiciary if all of the data in the report is public or the Judicial Council 66 designates the report as a public record: 67 (2)(EE) rules of the Supreme Court and Judicial Council; 68 (2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a 69 warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40; 70 (2)(GG) statistical data derived from public and non-public records but that disclose only public 71 data;

(2)(HH) Notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed
charging a person 14 years of age or older with a felony or an offense that would be a felony if committed
by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the
delinquency history summary of the person are public records. The delinquency history summary shall
contain the name of the person, a listing of the offenses for which the person was adjudged to be within
the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.
(3) Sealed Court Records. The following court records are sealed:
(3)(A) records in the following actions:
(3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of
proceedings, which are private until sealed;
(3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the
conclusion of proceedings, which are private until sealed; -
(3)(A)(iii) Title 76, Chapter 7, Part 304.5, Consent required for abortions performed on
minors; and
(3)(A)(iv) Title 78B, Chapter 8, Part 402, actions for disease testing;
(3)(B) expunged records;
(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code
Section 77-23a-15;
(3)(D) records showing the identity of a confidential informant;
(3)(E) records relating to the possession of a financial institution by the commissioner of financial
institutions under Utah Code Section 7-2-6;
(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;
(3)(G) records designated as sealed by rule of the Supreme Court;
(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any
legal proceedings; and
(3)(I) other records as ordered by the court under Rule 4-202.04.
(4) Private Court Records. The following court records are private:
(4)(A) records in the following actions:
(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;
(4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;
(4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed; and
(4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed;
and
(4)(B) records in the following actions, except that the case history; judgments, orders and

decrees; letters of appointment; and the record of public hearings are public records:

107	(4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, except that
801	an action for consortium due to personal injury under Section 30-2-11 is public;
109	(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;
110	(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;
111	(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;
112	(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;
113	(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement
114	Act;
115	(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;
116	(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
117	(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph
118	(B);
119	(4)(C) an affidavit supporting a motion to waive fees;
120	(4)(D) aggregate records other than public aggregate records under subsection (2);
121	(4)(E) alternative dispute resolution records;
122	(4)(F) applications for accommodation under the Americans with Disabilities Act;
123	(4)(G) jail booking sheets;
124	(4)(H) citation, but an abstract of a citation that redacts all non-public information is public;
125	(4)(I) judgment information statement;
126	(4)(J) judicial review of final agency action under Utah Code Section 62A-4a-1009;
127	(4)(K) the following personal identifying information about a party: driver's license number, social
128	security number, account description and number, password, identification number, maiden name and
129	mother's maiden name, and similar personal identifying information;
130	(4)(L) the following personal identifying information about a person other than a party or a victim
131	or witness of a crime: residential address, personal email address, personal telephone number; date of
132	birth, driver's license number, social security number, account description and number, password,
133	identification number, maiden name, mother's maiden name, and similar personal identifying information;
134	(4)(M) medical, psychiatric, or psychological records;
135	(4)(N) name of a minor, except that the name of a minor party is public in the following district and
136	justice court proceedings:
137	(4)(N)(i) name change of a minor;
138	(4)(N)(ii) guardianship or conservatorship for a minor;
139	(4)(N)(iii) felony, misdemeanor, or infraction;
140	(4)(N)(iv) child protective orders; and
141	(4)((N)(v) custody orders and decrees;
142	(4)(O) nonresident violator notice of noncompliance;

143	(4)(P) personnel file of a current or former court personnel or applicant for employment;
144	(4)(Q) photograph, film, or video of a crime victim;
145	(4)(R) record of a court hearing closed to the public or of a child's testimony taken
146	under URCrP 15.5:
147	(4)(R)(i) permanently if the hearing is not traditionally open to the public and public access
148	does not play a significant positive role in the process; or
149	(4)(R)(ii) if the hearing is traditionally open to the public, until the judge determines it is
150	possible to release the record without prejudice to the interests that justified the closure;
151	(4)(S) record submitted by a senior judge or court commissioner regarding performance
152	evaluation and certification;
153	(4)(T) record submitted for in camera review until its public availability is determined;
154	(4)(U) reports of investigations by Child Protective Services;
155	(4)(V) victim impact statements;
156	(4)(W) name of a prospective juror summoned to attend court, unless classified by the judge as
157	safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;
158	(4)(X) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except
159	briefs filed pursuant to court order;
160	(4)(Y) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;
161	(4)(Z) except in the case of a plea held in abeyance, court records involving a criminal charge
162	where a dismissal of all charges has been entered; and
163	(4)(<u>∠A</u>) other records as ordered by the court under Rule 4-202.04.
164	(5) Protected Court Records. The following court records are protected:
165	(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney o
166	other representative of the courts concerning litigation, privileged communication between the courts and
167	an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation
168	of litigation or a judicial, quasi-judicial, or administrative proceeding;
169	(5)(B) records that are subject to the attorney client privilege;
170	(5)(C) bids or proposals until the deadline for submitting them has closed;
171	(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before
172	issuance of the final recommendations in these areas;
173	(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed
174	would reveal the court's contemplated policies or contemplated courses of action;
175	(5)(F) court security plans;
176	(5)(G) investigation and analysis of loss covered by the risk management fund;
177	(5)(H) memorandum prepared by staff for a member of any body charged by law with performing
178	a judicial function and used in the decision-making process;

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

215	(6)(H) treatment or service plans.
216	(7) Juvenile Court Legal Records. The following are juvenile court legal records:
217	(7)(A) accounting records;
218	(7)(B) discovery filed with the court;
219	(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings,
220	orders, decrees;
221	(7)(D) name of a party or minor;
222	(7)(E) record of a court hearing;
223	(7)(F) referral and offense histories
224	(7)(G) and any other juvenile court record regarding a minor that is not designated as a social
225	record.
226	(8) Safeguarded Court Records. The following court records are safeguarded:
227	(8)(A) upon request, location information, contact information, and identity information other than
228	name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a,
229	Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
230	(8)(B) upon request, location information, contact information and identity information other than
231	name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party
232	or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform
233	Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family
234	Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;
235	(8)(C) location information, contact information, and identity information of prospective jurors on
236	the master jury list or the qualified jury list;
237	(8)(D) location information, contact information, and identity information other than name of a
238	prospective juror summoned to attend court;
239	(8)(E) the following information about a victim or witness of a crime:
240	(8)(E)(i) business and personal address, email address, telephone number, and similar
241	information from which the person can be located or contacted;
242	(8)(E)(ii) date of birth, driver's license number, social security number, account description
243	and number, password, identification number, maiden name, mother's maiden name, and similar
244	personal identifying information.

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February 16, 2017

VIA EMAIL AND U.S. MAIL

UTAH JUDICIAL COUNCIL c/o Ms. Nancy Sylvester Administrative Office of the Courts P.O. Box 140241 Salt Lake City, Utah 84114-0241 nancyjs@utcourts.gov

Dear Members of the Judicial Council:

We represent the Utah Media Coalition, which is comprised of Utah's leading news and journalism organizations, including the Salt Lake Tribune, Deseret News, Standard-Examiner, Daily Herald, The Spectrum, Herald Journal, the Associated Press, KSL, KUTV, KTVX, KSTU, the Utah Press Association, and the Utah Headliners Chapter of the Society of Professional Journalists. We write in opposition to a pending proposed amendment to Rule 4-202.02 of the Utah Rules of Judicial Administration that would classify as private, "except in the case of a plea held in abeyance, court records involving a criminal charge where a dismissal of all charges has been entered." Utah R. Jud. Admin. 4-202.02(4)(Z). The proposed amendment violates the public's constitutional right of access to court records; is contrary to the public's right to know and hold the judicial system accountable; and is an overbroad and unnecessary measure given the properly-tailored tools already present in Utah law. We urge the Council to reject it.

1. The Proposed Amendment Violates the Public's Presumptive Right of Access.

The Utah Supreme Court has recognized that the public has a presumptive right of access to court records. *State v. Archuleta*, 857 P.2d 234 (Utah 1993). This time-honored right is grounded not only in the First Amendment to the United States Constitution, *id.* at 238-39, but also in Article I, section 15 of the Utah Constitution, *id.* at 239-40, and in the common law, *id.* at 240-41. *See also* Utah R. Jud. Admin. 4-202.02(2)(F) (stating that "case files" are public records). As the Court explained in *Archuleta*, the public's right of access to the court file serves a critical function in the judicial process:

"Access to pretrial documents furthers the same societal needs served by open trials and pretrial civil and criminal proceedings.... The availability of documents means that graft and ignorance will be more difficult to conceal." Disclosing documents used by courts in reaching a decision in a preliminary hearing will discourage decisions based on improper means and will promote conscientious performance by all officials involved in the criminal justice system. Therefore, providing a presumptive right of access to documents filed in connection with preliminary hearings can play a significant positive role in the functioning of that process.

857 P.2d at 238-39 (citations omitted) (ellipses in original).

Conversely, denying public access to judicial records precludes public scrutiny of the judicial process, creating an impression of unfairness and secrecy, even though the proceedings may in fact be imminently fair. See M. Fowler & D. Leit, Media Access to the Courts: The Current Status of the Law (American Bar Association, Section of Litigation 1995) at 1; see also Soc'y of Prof'l Journalists v. Sec'y of Labor, 616 F. Supp. 569, 576 (D. Utah 1985) ("Openness safeguards our democratic institutions. Secrecy breeds mistrust and abuse."), appeal dismissed and remanded on other grounds, 832 F.2d 1180 (10th Cir. 1987).

The public's constitutional right of access can be overcome only in the most exceptional circumstances, where the proponent of closure establishes a "substantial probability" that public access will endanger a compelling governmental interest, such as the right to a fair trial, <u>and</u> where there are no less restrictive alternatives to closure that will protect that interest. *Archuleta*,

857 P.2d at 238 (quoting *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 14 (1986)). This standard cannot be satisfied by generalized assertions applicable to entire categories of records. Rather, "[i]t is only upon the showing of some specific circumstance that gives rise to significant probability of prejudice to the proceeding that the courts are inclined to close the courtroom and seal the records." *People v. DeBeer*, 774 N.Y.S.2d 314, 315 (N.Y. Cty. Ct. 2004); *see also State v. Cianci*, 496 A.2d 139, 145 (R.I. 1985) (a "blanket statement of potential prejudice was not sufficient to demonstrate compelling reasons for ordering the sealing of discovery documents").

The proposed amendment plainly violates this constitutional standard. It would place off limits to the public an entire category of criminal court records without any specific findings in a particular case regarding a compelling governmental interest or whether less restrictive alternatives exist. It would also reverse the bedrock presumption of access to records of critical importance to holding the judicial process accountable, and would require journalists to engage in an unnecessary process or hire a lawyer just to restore the presumption of access to what should be the public's property. See Utah R. Jud. Admin. 4-202.04(2)(B).

More than two hundred years ago, the United States Supreme Court declared that "[i]t is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Because the proposed amendment would place the Rules of Judicial Administration directly at odds with the governing constitutional standard, the amendment should be rejected.

2. The Proposed Amendment is Bad Policy.

In addition to its constitutional infirmities, the proposed amendment is misguided from a policy perspective. The apparent purpose of the amendment—to help restore the reputations of the wrongfully accused—may be laudable, but that purpose represents only a small sliver of the issues involved in public access to criminal proceedings that do not result in a conviction.

The public's interest in the criminal process does not vanish when charges are dismissed. To the contrary, in such cases the public's need for information and accountability is often greater. If prosecutors have filed charges that should not have been filed, the public needs to know that. If valid charges have been dismissed for reasons other than the merits, the public needs to know that too. Both are critical to the public's role of holding prosecutors and the courts accountable. And that is in addition to the fact that if the public's resources have been

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expended pursuing and adjudicating charges that ultimately end in dismissal, the public needs to understand why.

Furthermore, there are many reasons criminal charges may be dismissed beyond the innocence of the accused. Indeed, the law is clear that dismissal of charges, as opposed to a conviction or acquittal, is *not* an adjudication of guilt or innocence. *See Neff v. Neff*, 2011 UT 6, ¶ 58, 247 P.3d 380 ("[N]othing about the dismissal of the aggravated assault charge establishes that Branson was innocent of the alleged misconduct underlying the offense...." (internal quotations omitted)); *Ryan v. N.Y. Tel. Co.*, 467 N.E.2d 487, 493 (N.Y. 1984) (dismissal "is neither an acquittal of the charges nor any determination of the merits. Rather, it leaves the question of guilt or innocence unanswered"). As a result, the apparent premise of the proposed amendment—that court files should be sealed because the accused was wrongfully charged—is incorrect.

If the proposed amendment is being driven by a desire to protect former criminal defendants from discrimination in housing or employment, that too may be a laudable goal. But those problems are best addressed directly through legislation or rules preventing such discrimination, not by sacrificing the public's right to know regarding important features of the criminal process and, in the process, making errors and abuses easier to conceal.

The proposed amendment also has the puzzling feature of attempting to close files that previously have been classified as public, both under the Rules of Judicial Administration and the constitutional right of access. This type of retroactive sealing is contrary to the principle that "[t]he law cannot recall information once it is in the public domain." Star-Telegram, Inc. v. Walker, 834 S.W.2d 54, 57 (Tex. 1992); see also State v. Allgier, 2011 UT 47, ¶ 17, 258 P.3d 589 (once information reaches the public domain, "any significant interests that would be protected by requiring the [information] to remain sealed are now greatly diminished."). The effectiveness of the amendment, therefore, depends solely on whether a member of the news media or public happens to seek access before charges are dismissed—an unprincipled distinction that ill serves the public's right to know.

Reporting on the judicial process and those charged with public duties "lies near the core of the First Amendment." *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 838 (1978). The Rules of Judicial Administration should serve this critical function, not place an entire category of criminal files beyond the public's reach.

3. <u>Current Law Already Addresses These Issues in a More Tailored and Appropriate Way.</u>

Finally, even if protecting the future reputations of the accused were a compelling governmental interest, and even if there were an overriding need to address that issue here, Utah law and the Rules of Judicial Administration already provide better tools to address that concern. The Utah Expungement Act, Utah Code §§ 77-40-101, et seq., provides specific procedures for a "person who has been arrested or formally charged with an offense" to have his or her records expunged on conditions much more indicative of innocence than the proposed amendment would provide. Id. § 77-40-104(1). If a person satisfies those conditions, the Rules of Judicial Administration already classify "expunged records" as sealed. Utah R. Jud. Admin. 4-202.02(3)(B).

Further, even if a person decides not to seek expungement, the Rules contain a procedure whereby a person can request that presumptively public records associated with a case be reclassified as non-public. Utah R. Jud. Admin. 4-202.04. That process allows the court to consider the specific interests for and against closure and conduct a constitutionally permissible case-by-case analysis regarding those interests. *Id.* 4-202.04(5). This existing remedy is a far more accurate way to serve the interests the proposed amendment seeks to protect than categorically closing all criminal cases that end in dismissal.

For all of these reasons, the proposed amendment is unconstitutional, unwise, and unnecessary, and if adopted may well lead to litigation challenging it. We urge the Judicial Council to reject it.

Best Regards,

PARR BROWN GEE & LOVELESS

Jeffrey J. Hunt David C. Reymann

Attorneys for the Utah Media Coalition

JONES WALDO HOLBROOK & McDonough

Mishael Varhick Rrien

Michael Patrick O'Brien

Attorneys for the Utah Media Coalition

UTAH JUDICIAL COUNCIL February 16, 2017 Page 6

cc: Geoff Fattah, Administrative Office of the Courts Jennifer Napier-Pearce, Salt Lake Tribune

Doug Wilks, Deseret News

Greg Halling, Standard-Examiner

Scott Tittrington, Daily Herald

Charles McCollum, Herald Journal

Steve Kiggins, The Spectrum

James Clarke, Associated Press

Sheryl Worsley, KSL

Don Kauffman, KUTV

George Severson, KTVX

Marc Sternfield, KSTU

Trent Eyre, Utah Press Association

McKenzie Romero, Utah Chapter of the Society of Professional Journalists

COMMENTS TO CODE OF JUDICIAL ADMINISTRATION RULE 4-202.02 (14 COMMENTS)

CJA04-202.02. Records Classification. Amend. Makes dismissals in criminal cases private except in limited circumstances.

Posted by Linda Petersen

Re: CJA04:0202-02

As the president of the Utah Foundation for Open Government I urge the court not to accept this rule.

The right of the public to review and understand the judicial process would be hampered by deeming this entire set of records as private.

While in this country we operate under the principle that an individual is innocent until proven guilty, that criminal charges have/are filed against an individual at any point is significant information the public has a right to know..

Posted by Mike Cavender

RE: Rule 4-202.02

As the Executive Director of the Radio-Television Digital News Association (RTDNA,) the nation's largest professional association of electronic journalists with members in Utah and across the United States, I am writing to register our opposition to this rule amendment, for the following reasons:

- 1.) The Amendment is unconstitutional. There is a presumptive right of access to court records under both the First Amendment and the Utah Constitution. Placing an entire category of criminal court files off limits to public inspection makes it difficult or impossible for journalists and the public at large to have official knowledge of those proceedings.
- 2.) The Amendment is unnecessary. Utah law currently provides for an accused to seek expungement of charges under certain statutory conditions. We believe a case-by-case consideration of this issue is far preferable to putting all criminal dismissal cases out of the public light.
- 3.) The Amendment is bad policy. The public interest is best served when court proceedings—regardless of their outcomes—are transparent and open to scrutiny. Accurate reporting on these cases is critical to hold court officers and the courts themselves accountable for their actions.

For these and other reasons, the RTDNA strongly urges this Amendment be rejected and the Utah courts continue to follow present accepted practice with regard to the availability of court records, regardless of the disposition of the cases.

Thank you,

Sincerely,

Mike Cavender Executive Director RTDNA Washington, DC

Posted by Sheryl Worsley

I am commenting about rule 4-202.02

The suggested change to make case files private when criminal charges are dismissed flies in the face of transparency and would be a giant step backward. The rule change ignores the need and right of the public to check the work of those who prosecute and adjudicate crime.

The proposed rule ignores the need for the public to understand past history if a crime is re-committed.

The rule is unconstitutional as it would deny the public and news media the right to access records to which they have a presumptive right under the First Amendment and the Utah constitution.

Even when charges are dismissed, the public has an inherent right to know what happened in the case. You can't learn from mistakes if you don't know what those mistakes are. You can't hold an elected District Attorney or his staff paid with public funds accountable for what happened in a dismissed case if you are suddenly denied access to the case file. You can't benefit from collected evidence in a criminal case that was dismissed on a 'technicality' if the entire case is then obscured from view. In cases where public officials or the rich or powerful are able to obtain dismissal, the public has a right to know the details and journalists should be reporting on those cases. That would be impossible without the case files.

Lastly, the proposed rule change is overly broad in that it places an entire category of cases unnecessarily off limits. For those who are innocent, there are already measures in place for expungement under Utah law when charges are dismissed.

I urge you to reject the change to rule 4-202.02. It sends the message that what happens in our courts is secret, is above reproach and takes a giant eraser to the public record.

Sheryl Worsley

News Director, KSL Newsradio

Region 3 Director, RTDNA –Radio Television Digital News Association

Board member, Utah Headliners chapter of SPJ- Society of Professional Journalists

Posted by George Severson

CJA04-202.02. Records Classification. Amend. Makes dismissals in criminal cases private except in limited circumstances.

In regards to this proposed amendment – I strongly disagree with this action. It's a blatant contradiction to our constitutional right to access court records under the First Amendment and the Utah Constitution as well. Restricting access to journalists and therefore the general public of a total section of records is simply bad policy and prohibits the blessed checks and balances system on which our country is founded. We must have access to records to make sure people and institutions are working as they should be and are held accountable for their actions. Being able to review the process from start to finish, regardless of its outcome, is vital in ensuring justice is served. The public has the right to be informed and to take action. As I understand it, this amendment is not only unconstitutional, it is completely unnecessary since Utah Law already provides defendants to seek removal of charges under existing statutory conditions and Utah law already allows citizens to seek privatization of public court records based on their argument of need. The existing case-by-case approach is much more logical than a total, across the board block of all criminal dismissal cases which again, is an absolute disregard of our constitutional rights to review and question the judicial process for the sake of ensuring fairness and balance.

I appreciate your consideration of my opinion.

Sincerely,

George B. Severson
Director of News and Local Content
ABC4 Utah/CW30
Taylorsville Resident

Posted by Jessica Miller

I am writing to oppose CJA04-202.02, a proposed change that would make dismissals in criminal cases private.

This proposed change is not only unconstitutional — the public and news media have a presumptive right of access to these records under the First Amendment and the Utah Constitution — it is an unnecessary amendment. If the goal of such a change is to

protect those who have been falsely accused, a remedy is already in place in the form of an expungement.

If this rule is accepted, there is concern about the public and news media's ability to access important information. As a criminal justice reporter at The Salt Lake Tribune, part of my job is to track criminal court cases to their conclusion. If a case is dismissed, it would become impossible under this proposed rule change to accurately report the conclusion of a case. And the public interest in a dismissed case is often unusually high: Was evidence lost or had a witness recanted? Were the charges improperly filed? Was a plea deal negotiated? Important questions like these can't be answered if a case's conclusion is shrouded in secrecy.

In the last year, the Tribune has reported a number of dismissed cases, each under unique circumstances. One case was dropped because the defendant died, another because it was refiled as a heightened charge in a separate case. Yet another was dismissed because a victim did not show up to court to testify, while another was dropped after a judge found there was not enough evidence for the case to move forward. One of the most high-profile dismissal of charges was that of a former attorney general, whose case was dismissed because of discovery issues and concerns of a speedy trial.

Each one of these cases came to the same conclusion, but each in their own distinct way. To enact a blanket rule that would make all of these cases private is too broad of a meaure. Instead, if there is a concern of privacy in a specific case, it should be resolved on a case-by-case basis through the expungement process.

For these and other reasons, I urge the council to reject the proposed rule change, and keep in place current policy that favors availability of court records, regardless of the disposition of a case.

Thank you,
Jessica Miller
Justice Reporter
Salt Lake Tribune

Posted by Ben Winslow

I write in opposition to CJA04-202.02, which seeks to make dismissals in criminal cases private, except in limited circumstances.

This rule change would significantly affect transparency in court proceedings by obscuring a subject's prior history. That prior history can be telling, both for the subject of the record and the court itself.

As a reporter, being able to write or broadcast whether a criminal case is dismissed and being able to see documents that reveal why it was dismissed are important. It is not only important for the issue of fairness, but also to explain important judicial determinations by prosecutors, defense attorneys and judges.

This rule seeks to roll back important information at a time when the courts have been making moves to be more open and transparent to the public. The existing policies of the courts on privatizing records as well as a process of expungement for defendants is already working.

Regards,
-Ben Winslow
Reporter, KSTU FOX 13
Salt Lake City, Utah

Posted by Marc Sternfield

As News Director of KSTU-TV Fox 13 News in Salt Lake City, Utah, I am writing in opposition to the proposed amendment to Rule 4-202.02 of the Utah Rules of Judicial Administration.

The transparency of court proceedings in the United States is one of the foundations of our free and open society. Put simply, the public has a right to know what happens with criminal cases, regardless of how cases are resolved.

Criminal charges can be dismissed for a variety of reasons, and not just because someone is innocent. As Mike Cavender with the Radio Television Digital News Association points out, evidence may be lost or witnesses may change their stories, or a defendant could reach a pre-trial deal with prosecutors.

Conversely, if a criminal defendant is innocent, it is important for the public to know why and how charges were pursued to begin with. Public scrutiny is critical at every step.

I stand with my colleagues in the Utah Media Coalition in firm opposition to this proposed rule change.

Thank you.

Marc Sternfield News Director, KSTU-TV Fox 13 News Salt Lake City, Utah

Posted by Nate Carlisle

I am commenting on CJA04-202. I oppose the proposal to make private criminal court records when the charges or indictments have been dismissed.

If adopted, the rule would deny access to a large number of court records, including cases with important facts but where justice was not served. The recently dismissed case against former Attorney General Mark Shurtleff is the easy example, but it's not difficult to imagine scenarios where your babysitter, doctor or blind date was thought to have done something serious, but the case was dismissed for a technical reason or because a witness didn't appear for trial.

Incongruities also are possible. Charges could be dismissed against a co-defendant who agrees to testify. So even though he or she may have done everything the remaining defendant did, the witness' case file is sealed. Likewise, you can have someone that was wrongly convicted or whose conviction was overturned on appeal, and while that person's court record is available, there will be no record available for a defendant who was fortunate enough to have his or her case dismissed.

I am also not aware that any other state court system has such a rule. Such a rule certainly does not exist in federal court. Utah could become the oddball with a strange court rule.

I do not know why this rule was proposed. I suspect there is a fear that dismissed cases still leave a certain stigma on the defendant.

However, the Utah Legislature created a remedy for that. The defendant can apply for an expungement of the arrest and charges.

The courts in Utah are part of a great American tradition of open courts. Please don't work against that tradition. Please reject the proposal in 4-202.02.

Nate Carlisle

Reporter, Salt Lake Tribune

Board member Utah Headliners Chapter of Society of Professional Journalists

Posted by Nadine Hansen

CJA04-202.02. Records Classification. Amend. Makes dismissals in criminal cases private except in limited circumstances.

I urge the Judicial Council not to adopt proposed subsection (4)(Z) of this proposed rule. In addition to the public's right to know, which others have addressed here, this rule would shield abusive individuals who are not prosecuted from having past behaviors noted and examined. Sometimes abusers are not prosecuted because their victims are too young or too scared to effectively participate in prosecution. Records of past behaviors should remain public in order to identify patterns of behavior that might help in subsequent prosecutions if abusive behaviors are repeated.

Posted by Brian West

CJA04-202.02. Records Classification. Amend. Makes dismissals in criminal cases private except in limited circumstances.

The idea of classifying as private criminal court records in which the charges are dismissed would critically hamper the public's vital right of access to the court system and of the ability for the public to scrutinize the judicial process.

While the intent of this rule change may be to restore reputations of people who have been wrongly charged, classifying those court files as private would mean the public couldn't even know that such charges have been dismissed.

As a newspaper of record, the Deseret News regularly reports on criminal cases throughout the state. When charges are filed in a newsworthy case, that information is published so the public knows what crimes are occurring and what charges prosecutors are filing against those accused of such crimes. If a case is dismissed, unless a reporter is present during the hearing to learn first hand when such action occurs, how will the newspaper be able to publish a story that says such charges have been dropped? How could explanations of such actions taken by prosecutors and other public employees be presented to the public? In such cases, the accused's reputation could be unfairly tarnished because the records reporting the dropping of the charges aren't available to the public, leaving only the original stories about the charges that were filed and the allegations found within them available through a simple web search.

Occasionally, the Deseret News receives requests to annotate archived stories on the web about people whose cases were dismissed or whose situations otherwise changed from previous news reports. Without public court records to determine whether such cases were dismissed and why they were dismissed, we would be unable to accurately report on any changed circumstances.

Years of experience as a courts reporter and an editor have taught me that in the majority of criminal cases where charges are dismissed, it is not because police and prosecutors believe the crimes weren't committed by the defendant. Many times, the prosecution isn't prepared to move forward, for example, when a witness doesn't show up. Sometimes witnesses disappear for fear of retaliation. Sometimes state charges are dismissed so federal charges can be pursued. Sometimes a person is charged in several cases and one is dismissed in lieu of conviction on the others. This is important information that the public has the right to understand about a criminal case. Another important component of a dismissed criminal case is also whether it was dismissed with or without prejudice. Such information is important for the public to know. If a case is dismissed without prejudice and is later re-filed, the public has the right to know the differences between the new and old case and compare what changes prosecutors may have made to their case. If such dismissed cases become private, the public would not know about the previous case nor would it be able to compare the two.

Part of the job of the free press is to independently be a watchdog to police, prosecutors, defense attorneys and judges. If prosecutors are filing charges against innocent people, the media should and will report such important information to the public. County attorneys, district attorneys and attorney generals are directly elected by the public, which has a right to know how they are performing their duties. Judges are also retained through general elections. Taking away information about dismissed criminal cases takes away important information the public is entitled to know. If a judge dismisses a case, the public has a right to know why it was dismissed and if there is any pattern a judge may have in dismissing cases.

The public needs to know why charges in a case have been dismissed just as much as the public needs to know why charges were filed in the first place. The public's resources are also being used to investigate, prosecute, often defend, and adjuciate these cases. These cases are referred to as "The State of Utah versus John Doe" for a reason. It is the public, its tax dollars and its laws that are prosecuting (and often defending) those accused of breaking the public laws. As such, the public has the constitutional right to know how

such cases are handled in court, which includes their resolutions, be it through an acquittal, a conviction or a dismissal.

For these and other reasons, i urge you to reject the proposed changes to rule 4-202.02. Thank you for your consideration.

Brian West

News director, Deseret News

Posted by Lois M. Collins

RE: CJA04-202.02. I urge you strongly not to make this proposed amendment. There are compelling reasons to keep access to dismissals open, all of which benefit the public. First, a one-size-fits-all closure of records is bad public policy, especially since the people in the records have other options to ask that their file be considered private. It's also a disservice in cases where the occurrence of a crime and an arrest have been made known: responsible journalists also report that the charge has been dismissed and why. It protects both the formerly accused and the public. It's also important from the viewpoint of seeing that the system works well and that arrests are not being made and charges filed frivolously or sloppily; it provides a way to look at that. While it would at first glance appear this benefits those who might be accused of a crime without enough evidence to sustain the charge, it actually does the opposite. It fails to hold law enforcement or prosecutors accountable, while not letting the public know the charge was, in fact, dismissed. It's not needed, it is the opposite of the transparent approach under which our system flourishes and it's bad public policy. Please don't do this. Instead, continue to make the remedy available on a case-by-case basis as needed and keep our legal system as open and viewable as possible. Thank you for considering my comments.

Lois M. Collins

journalist and Salt Lake City resident

Posted by Don Kauffman

RE: CJA04-202.02. Records Classification.

As Acting News Director at 2News (KUTV/KJZZ/KMYU), I'm writing to oppose the proposed rule change. We feel the proposed change would severely limit our access to important information in our community. Being able to view an individual's entire history of criminal legal interactions is a vital part of evaluating a story and providing appropriate context in our reporting.

The courts have taken important steps toward greater transparency and openness in recent years. This feels like a step in the wrong direction.

Thank you for the opportunity to respond.

Don Kauffman

KUTV

Posted by Craig Buschmann

I am commenting about rule 4-202.02

I am opposed to the suggested revision to make case files private when criminal charges are dismissed.

The public has an interest in transparency, but in the disposition of cases against potential defendants and in how the judicial system operates. The proposed rule change ignores the need and right of the public to check the work of those who prosecute and adjudicate crime.

Further, the proposed rule ignores the need for the public to understand past history if a crime is re-committed. Rules of criminal procedure are in place to properly limit such information in a trial. Outside of trial, however, the due process considerations that justify such rules during a trial are not outweighed by the public interests.

In addition, it is possible that the proposed rule is unconstitutional as it would deny the public and news media the right to access records to which they have a presumptive right under the First Amendment and the Utah constitution.

Finally, the proposed rule change is overly broad in that it places an entire category of cases unnecessarily off limits. For those who are innocent, there are already measures in place for expungement under Utah law when charges are dismissed.

I urge you to reject the change to rule 4-202.02. It sends the message that what happens in our courts is secret and above consideration by the public.

Craig Buschmann

UT Bar Member

Posted by Joel Campbell

RE: CJA04-202.02

As has been the case for decades in Utah when talking about the Government Records Access and Management Act, court records or the Open Meetings Act, the Legislature and other policymakers, have generally preferred a "surgical approach" rather than a shotgun approach to improving Utah's public records laws and policies. Unfortunately, the proposal to amend CJA04-202.02 fits into that later shotgun approach category of overly broad policy without properly balancing all public and privacy interests in these records.

I was fortunate enough to serve as one of 13 members on the "Privacy and Public Court Records" Committee appointed by the Utah Judicial Council during 2004. The committee looked at how court records would be made available online. I believe that months-long discussion was invaluable in setting judiciary information balancing standards. However, now 13 years later, this blanket exemption flies directly in the face of the principles adopted by the Privacy and Public Courts Committee. Unfortunately, I believe the work of that committee has been long forgotten, resulting in a knee-jerk

information closure such as this rule proposes. (I am including a link here to the report which is worth review https://www.utcourts.gov/Privacy_Public_Records/Report.pdf/)

Specifically, Rule CJA04-202.02 would simply override the Constitutionally-mandated process for closing an entire category of records. Reviewing the record closure outlined by Privacy and Public Court Records committee on Pages 7-8 relies on both Constitutional and statutory standards. It reads:

- "Since court records are public unless classified otherwise, we believe the same fundamental procedures adopted by the Utah Supreme Court in closing court hearings should apply to closing public court records. Specifically, a party seeking to close a public record must serve advance written notice of a closure motion upon the opposing party, the court and any press representatives who have requested notice in that particular case. The judge must:
- 1) Conduct a hearing when a motion to close a record is contested, when the press has requested notice of closure motions in that particular case or when the judge decides public interest in the record warrants a hearing;
- 2) Identify and analyze with particularity the court record, the interests favoring access and the interests favoring closure;
- 3) Apply the constitutional standard or the common law standard that applies in the circumstances; and
- 12 Society of Professional Journalists v. Bullock, 743 P.2d 1166, 1177 and fn. 15 (Utah 1987) citing KearnsTribune Corp. v. Lewis, 685 P.2d 515 (Utah 1984).7
- 4) Make written findings that the interests favoring closure outweigh the interests favoring access and that there are no reasonable alternatives to closure sufficient to protect the interests served by closure, such as redaction, etc."

In the case of dismissed charges, the first, second and fourth principle are key. This proposed rule is tantamount tossing all records about dismissed charges in Utah into an unconstitutional information black hole. To assert that all of these dismissed charge cases are exactly alike, all raise the same issues, and therefore deserve the came classification is ludicrous. The very specific nature of each case demands a case-by-case judgment where the interests favoring closure for privacy or other reasons outweighs the interests keeping it open are balanced.

Furthermore, this rule would rob Utahns of the Constitutional protection of open courts and thereby open records. Such policy of open courts and open court records must be given even stronger value when considered alongside Utah's GRAMA's guiding principle that all records are "presumed open" unless there is a specific exemption to close them. This rule turns both the Constitutional and statutory right of access on its head and then requires citizens to go to extraordinary means, probably including hiring an attorney and expending legal fees, to mine this presumptive public record out of the information black hole the judiciary proposes to create. This simply create's a devil's workshop. There is plenty of evidence in many U.S. jurisdictions where authorities have tried to hide behind such information black holes to protect criminals and errant police officers and elected officials. I don't have the time here to go into details, but would happy to provide such information.

I hope that the Judicial Council rejects this unconstitutional, unnecessary and overly broad rule change that flies in the face of Utah's developed record policy that enshrines balancing tests for all interests surrounding records. Most importantly, it is an anathema to the First Amendment principles of open courts and public accountability.

Joel Campbell

 ${\bf Associate\ Professor-journalism}$

Brigham Young University (for identification purposes only)

School of Communications

Lindon, Utah

P.S. A note about this policy process. Unlike other public agencies, why does not the court publish justification or reasoning presented for such a dramatic change in the court policy, particularly in relation any other state or in federal courts. Unlike, the amendments to GRAMA and other record policy changes that go through the Legislature, I don't see any evidence that all parties who would be concerned with this policy have been invited to the table to discuss it. I hope that this one-dimensional sterile comment process is not considered sufficient engagement in very opaque policy promulgation process. The appearance of this policy change was a surprise to many. The Judicial Council knows how to conduct more transparent and open processes. I was part of a committee that conducted a more open and public review of record policy. What's the benefit? As we have seen at the Legislature, when broad public discussion is heard and considered, it is easier to do small surgery to correct an record policy issue, that cutting off a limb. Reasonable protections of privacy result from better public input and processes. In this case, I believe broader public discussion may have shown the out-ofstep nature of this policy earlier or shown its unnecessary function when compared to remedies already on the books.

Tab 6

Facilities	Standing	Committee

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Chief Justice Matthew B. Durrant Chair, Utah Judicial Council

MEMORANDUM

Richard Schwermer State Court Administrator Raymond H. Wahl Deputy Court Administrator

To: Judicial Council Management Committee

From: Courts Facility Planning Committee

Date: May 1, 2017

Re: Courts Facility Planning Committee Membership

This memo is requesting approval of Lyle Richard Knudsen to replace Ben Nilsen on the Court Facility Planning Committee. Lyle has been recommended by several contacts in the architectural community and was involved in the design and construction of several of our court facilities. Lyle has expressed his interest and willingness in serving on the Committee.

The Committee feels Lyle can provide a very valuable prospective on facility needs and design.

I have attached Lyle's resume as a statement of his qualification for your review.

Thank you for your consideration.

Lyle Richard Knudsen

3671 Stream Side Court Salt Lake City, Utah 84109 (801) 538-3275 (W) (801) 273-0382 (H)

Summary of qualifications

- Successful, knowledgeable, resourceful and professional project manager that achieves goals as established by the expectations of administration. Also has the ability to set and achieve individual goals.
- Diplomatic and effective facilitator in project management and customer service.
- Effective skills ranging from project planning, budgeting, and architectural programming through final construction.
- Thirty-five years of experience at many different levels in the construction industry. Progressing from laborer through to project manager with Architectural License in Utah. Registered with the National Council of Architectural Registrations Boards.
- Sixteen years of experience in project management.
- Demonstrated supervisory skills in coordinating and guiding staff members and consultants to achieve project goals. Twenty-two years in directing project personnel ranging from a staff of seventeen too professional consultants as hired to assist the project.
- Proven self-starter, proprietor of own architectural firm for ten years.
- Skilled in Prostat, CBE, Microsoft Word, and Word Perfect. Basic knowledge of Excel.

Professional Experience

State of Utah, DFCM

Salt Lake City, Utah

Project Manager

Managing multiple Design and Construction projects. Project responsibility has ranged from thirty to forty projects at any one period of time. The project scope ranges from \$50,000 to \$31 million. Also assisting with the planning and design of the University of Utah Housing project with a budget of \$121,000,000. Examples of projects are:

Managed the design and current construction of the Widtsoe Hall Chemistry Building at Utah State University. Through management and direction of the design team, the project found an innovative solution whereby not expending \$1.5 million in temporary facilities, but better utilization of State resources in the permanent solution.

Managed the final phase of construction of the Renovation of Old Main at Utah State University. This one hundred-year plus, historic structure was renovated within the change order parameters of new construction. Thus completing the project without burdening the budget.

Reprogrammed the Davis ATC Medical Health Technology Addition to better utilize the existing facility and reducing the need for twenty-five percent of the new addition. Managed the design and bidding of the project. The project bid slightly under budget. Current construction is on time and within the budget.

1989 - Present

Assistant Director of Planning and Budget

As Director, with a staff of seven, oversaw all planning, programming and special studies for the Division. The architectural programming for all state projects and agencies was completed through this section within DFCM. The architectural programming function was developed from a generic application to a building specific analysis with a dependable budget for submittal to the Legislature for funding. The legislature has depended on the budget being correct and that the buildings can be constructed for their purpose within the budget.

Oversaw the entire Capital Budget Request System. This is the process by which all state agencies make requests to the Legislature for capital facilities. The requests for Capital Developments are in excess of one billion dollars annually. The requests for facility improvements exceed one hundred million dollars annually. Responsible for the prioritization of the requests and the production of the Strategic Five Year Building Plan. The process was brought from an infant computer program with cut and paste, to a new level of computer application and reliability.

Programmer/Analyst

As programmer/analyst, directly managed multiple programming teams on many state projects. Held the scope and budget of project within the parameter of the need and the budget. Developed specific programming practices and dependable cost estimates.

1979 - 1989

Knudsen and Associates, Architects

Salt Lake City, Utah

As proprietor of an architectural firm, was responsible for all aspects of the business. Project scope included diverse commercial projects to custom residential. Responsibilities ranged from the clients interests, desires and budget, to the operation of the firm. As owner, managed all projects and staff. These were years of economic hardship in Utah; however, the firm prospered and was viable until other professional development decisions were undertaken

1976 - 1979

The Environmental Associates - Associate Neils Valentiner & Associates - Associate Fowler Fergeson and Associates Architects

Salt Lake City, Utah

Managed and directed the production of commercial and institutional projects through all phases of the document production, estimating, budget conformance and construction. Managed multiple projects in different phases of the process at any given period.

Assist Incorporated

Salt Lake City, Utah

1973 - 1976

As Director of the three-year-old Community Design Center, took the organization from a fledgling, to a well-recognized, well-funded non-profit organization. A Community Design Center is an organization focusing on urban planning and housing related problems issues in cities. Founded many programs, such as Emergency Home Repairs, and Neighborhood Housing Services. Directed special grant studies and individual projects. Staff varied from five to seventeen. The organization is still filling a need in the community and is functioning on the base that had been laid.

Education

Various continuing education classes and seminars. Bachelor of Architecture, 1971

Professional Memberships

Utah Architectural License

Member of the National Council of Architectural Registration Boards

Community Activities

Steering Committee member of the South Temple Reconstruction Committee
Steering Committee member of the Gateway District Redevelopment
Capitol Hill Masterplan Steering Committee
Salt Lake City Landmarks Committee
Salt Lake City Landmarks Architectural Subcommittee
Assist Inc., President of the Board of Trustees
Assist Inc., Board of Trustees

References

Available upon request

Forms Committee

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: Forms Committee

Date: April 25, 2017

The Forms Committee is still adding members to its roster. The openings are for a paralegal and for an educator from a paralegal college. For this latter position the Forms Committee recommends an amendment to the rule. The Management Committee should note that the Forms Committee is also seeking a member who is an expert in language and communication and is therefore proposing a rule change to add such a member. I am attaching the rule proposal.

The Forms Committee solicited individuals to join the committee in the paralegal roles. The Committee received interest from two individuals. The Committee recommends that Cyndie Bayles be appointed as the paralegal representative and that Christina Cope be appointed as the educator from a paralegal college. Copies of both Ms. Bayles and Ms. Cope's resumes and bios are attached. Ms. Bayles and Ms. Cope's knowledge in the paralegal field will help tremendously when creating and revising forms to be used in the LPP program. I am confident that they will be excellent members. The Forms Committee asks the Judicial Council to appoint Cyndie Bayles and Christina Cope.

Cyndie Bayles, ACP – Cyndie Bayles, ACP is currently serving as President of the Utah Paralegal Association (UPA), and has previously served as UPA's Second Vice President/Membership Chair and First Vice President/Education Chair. Cyndie graduated from Mountain West College with an Associate of Arts degree in Paralegal Studies in 2000, and later obtained her Bachelor of Science in Paralegal Studies from Broadview University in 2011. During her college studies, Cyndie volunteered at the Utah Legal Services' Pro Se Clinic and completed an externship through Attorney Catherine Hoskins. She has worked at Dental Select as Paralegal to the General Counsel, Dana Smith, since June 2011, where she also serves as the company's Compliance Officer. Cyndie obtained her Certified Paralegal credential in 2014, received her Advanced Certified Paralegal credential in Contracts earlier this year, and is currently working on an additional Advanced Certified Paralegal credential in Family Law – Child Custody, Support, & Visitation. She is a member of NALA and the Paralegal Division of the Utah State Bar. Cyndie lives in Daybreak with her husband and three daughters who keep her extremely busy. She enjoys reading, spending time with her family, and volunteering for charitable endeavors, such as Wills for Heroes and Rocky Mountain Innocence Center.

CYNDIE BAYLES, ACP

10247 S. Clarks Hill Drive, South Jordan, UT 84009

LL PHONE 801.589.9542

cyndiehb@gmail.com

KEY SKILLS

- Certified Paralegal (CP)
- Utah Notary Public
- Excellent Written and Verbal Communication Skills
- Legal Research
- Office Management

- Report and Document Preparation
- Records Management
- Advanced Skills in MS Office Suite
- Prioritize Effectively
- Work Well Under Pressure

PROFESSIONAL EXPERIENCE

Dental Select, Salt Lake City, UT, Salt Lake City, UT

Paralegal to the General Counsel

June 2011 to present

- Create and implement all HIPAA education to Dental Select workforce, perform periodic compliance audits resulting in reduction of violations, create and distribute quarterly compliance newsletter, maintain a current knowledge of applicable federal and state privacy laws, and serve as company Compliance Officer.
- Create and implement company compliance policies and post to company intranet for employee reference.
- Updated Dental Select's Business Associate Agreement to be in compliance with Omnibus Rule changes, and manage all Business Associate Agreements received.
- Responsible for self-funded plan document creation, tracking, and follow-up as needed.
- Create insurance certificates for fully insured dental and vision plans.
- Instituted an electronic administrative guide to ensure compliance with insurance laws, and allow for faster delivery of insurance plan documents.
- Perform legal research.
- Gather required documents and respond to subpoenas, Department of Insurance requests, and other requests for information.
- Compose letters, memorandums and other documents as needed.
- Responsible for calendaring and completing various other projects for the General Counsel.

Primary Children's Medical Center, Salt Lake City, UT

April 2005 to June 2011

ED/RTU Office Coordinator, June 2006 to June 2011

Health Unit Coordinator, April 2005-June 2006

- Promoted during employment with Primary Children's Medical Center, culminating in responsibility for coordinating all
 office functions.
- Entered all patients' billing charges, researched any issues that arose, & helped to institute new billing process.
- Responsible for RTU timekeeping in relation to the department payroll.
- Took minutes at several department meetings & sent them out to attendees for review and follow-up.
- Created & distributed various monthly reports to be given to department director, nurse managers, and other members of the administrative staff to be used in forming budget related and other decisions.
- Created & distributed the monthly department newsletter.
- Scanned and indexed patient billing and other documents to maintain permanent records.
- Maintained the department websites for both the ED & RTU with current policies, educational materials, and other information.
- Completed various other projects for department director, two nurse managers, and other administrative staff as needed.

EDUCATION AND TRAINING

Broadview University, Layton, UT Bachelor of Science in Paralegal Studies March 2008-June 2011

Bachelor of Science Externship with Attorney Catherine Hoskins, Layton, UT

April 2011 – June 2011

nountain West College, Salt Lake City, UT Associate of Arts in Paralegal Studies

April 1999-October 2000

LICENSES AND CERTIFICATIONS

Lertified Paralegal, National Association of Legal Assistants (NALA), March 2015-March 31, 2020

Advanced Certified Paralegal in Contracts Administration/Contracts Management (NALA), February 2017 - March 2020

PROFESSIONAL ORGANIZATIONS

Utah Paralegal Association

President, October 2015 – present
First Vice President/Education Chair, October 2014 – October 2015
Second Vice President/ Membership Chair, October 2012-October 2014
Active member of Membership Committee, 2011 – 2012

National Association of Legal Assistants (NALA), active member 2013-present

Paralegal Division of the Utah State Bar, active member 2015-present

National Notary Association, active member from June 2012 - present

HONORS AND AWARDS

Graduated with High Honors from both Mountain West College & Broadview University

REFERENCES

Professional and personal references available upon request

Christina Cope bio

Chris is a formal paralegal with the Utah State Bar Office of Professional Conduct and has over 13 years' experience with a focus on civil litigation and trial support. She is a graduate of Utah Valley University and is an adjunct professor in the UVU Paralegal Studies Program. Prior to joining the OPC Chris was a contract paralegal providing litigation support to small firms and sole practitioners. She is a member of the Board of Directors for the Paralegal Division of the Utah State Bar and has served as the Education/CLE Chair, the Region III Director, and Social Media Chair. Chris also works with her husband of 27 years in their family owned business, Ascent IRT, providing outpatient youth treatment and rehabilitative services and proctor/transitional living.

Christina L. Cope christina.cope@utahbar.org (801) 310-2176

Professional Strengths

- Successful paralegal career supporting attorneys in complex cases and versatile settings.
- Lead paralegal and paralegal team leader for several jury trials.
- Strong interpersonal and group communication skills. Effective communication with clients, expert witnesses, court personnel, opposing, in-house, and co-counsel.
- Perform efficiently as integral part of fast-paced teams with the unique ability to jump into a project, quickly get up to speed, and complete tasks.
- Independently prioritize workloads and complete assignments with a strong work ethic, integrity, and meticulous attention to detail.
- 2014-2017 Board member, Paralegal Division of the Utah State Bar and 2016 Summer Convention presenter.
- Current Adjunct Professor, UVU Paralegal Studies program.

Technology Snapshot

FileSite, NetDocuments, CM/ECF, PACER, GreenFiling, Judicialink, Clio, QuickBooks, Microsoft Office, Excel, PowerPoint, Adobe DC Pro, Ipro Eclipse SE, Westlaw, Lexis-Nexis, various trial presentation and other law-related software.

Experience

Utah State Bar Office of Professional Conduct

Formal Paralegal

March 2017-present

Paralegal supporting OPC counsel in formal litigation regarding attorney discipline matters in state district and appellate courts. Draft complaints, discovery, and other pleadings relevant to adjudication and sanction trials. Attend trials with counsel.

Eisenberg Gilchrist & Cutt

Paralegal

June 2016-March 2017

Member of litigation team preparing high-level injury cases for litigation including analyzing and summarizing documents, witness interviews, and document preparation.

Cope Litigation Support

Owner, Contract Paralegal

February 2014-June 2016

Provided professional, high-level paralegal services including full eDiscovery management to corporate in-house legal departments, solo attorneys, and small law firms in the areas of civil litigation, contracts, and corporate compliance. Worked with legal teams and independently to meet litigation deadlines and with an emphasis on discovery.

- Performed contract review for corporate mergers and acquisitions and compliance issues.
- Lead paralegal in four jury trials over two years.
- Manage all aspects of eDiscovery and document review.

- Gathered and analyzed evidence, prepared discovery responses, propounded discovery requests, communicated with clients and expert witnesses.
- Managed pretrial deadlines, witness scheduling, exhibit preparation, and communication with co-counsel, opposing counsel, court clerks.
- Provided superior trial support. Attended trials and motion hearings with attorneys. Assisted clients, coordinated witness scheduling, provided real time jury observations, coordinated exhibit lists with court clerks and counsel, manage exhibits.
- Drafted complaints, motions, declarations, subpoenas, fact summaries.

Heideman & Associates

Lead Civil Litigation Paralegal

July 2010-January 2014

February-November 2014 Hired as independent contractor for litigation, trial and appellate work.

Developed effective case management techniques, educated attorneys on proper utilization of paralegals, directed litigation support teams, and assisted in all aspects of litigation supporting four to six attorneys. Organized and facilitated mock trials.

- Lead paralegal in an out of town, three-week jury trial.
- Maintained precise calendaring system to insure timely filing of all pretrial pleadings and motions, attended pretrial conferences, worked with opposing counsel and court clerk during pretrial preparations.
- Directed the organization of 880 exhibits/9,800 pages of evidence. Managed exhibits during trial, working closely with court personnel and all counsel to maintain orderly exhibit file structure and tracking of evidence.
- Efficiently managed the scheduling of and communication with 15 witnesses.
- Provided voir dire support, evaluated jury questionnaires, monitored jury responsiveness.
- Maintained communication with clients as directed by the attorney
- Drafted and reviewed corporate documents, performed various corporate filings, and assisted in business formations and patent filings and estate planning documents, assisted with signings.
- Assisted in training new associate attorneys.
- Worked with accounting department to monitor and mitigate expenditures.

Bradford & Brady P.C.

Paralegal

July 2008-April 2010

Performed paralegal, receptionist, and accounting duties. Managed large caseload including organizing of discovery, pleadings, evidence, and correspondence. Prepared and filed pleadings with various courts and county recorder. Coordinated work between attorneys and law clerks. Scheduled hearings, mediations, and depositions. Prepared estate planning documents and attended signings.

Utah County Public Defender Association

Legal Assistant II

1992-1995

Provided skilled paralegal support for a capital murder case through sentencing phase. Assisted attorneys from commencement to adjudication of cases. Managing paralegal for the UCPDA Juvenile Court Division. Conducted, analyzed and summarized witness and client interviews.

Managed discovery. Conducted and applied legal research. Assisted in voir dire proceedings, preparation and analysis. Contributed to the formation of the UCPDA and transition from private contract counsel. Maintained caseload for four to six attorneys.

Education

A.A.S. Legal Assisting, Utah Valley University

Professional Organizations and Projects

Paralegal Division of the Utah State Bar Board of Directors.

Chair, USB Paralegal Division 20th Anniversary Celebration

Webinar presenter, GWU Graduate Paralegal Studies.

Historic Wendover WWII Airfield volunteer.

Former radKIDS Independent Instructor

- 1 Rule 1-205. Standing and ad hoc committees. 2 Intent: 3 To establish standing and ad hoc committees to assist the Council and provide recommendations on 4 topical issues. To establish uniform terms and a uniform method for appointing committee members. 5 6 To provide for a periodic review of existing committees to assure that their activities are appropriately 7 related to the administration of the judiciary. 8 Applicability: 9 This rule shall apply to the internal operation of the Council. Statement of the Rule: 10 (1) Standing committees. 11 (1)(A) Establishment. The following standing committees of the Council are hereby established: 12 (1)(A)(i) Technology Committee; 13 (1)(A)(ii) Uniform Fine Schedule Committee; 14 (1)(A)(iii) Ethics Advisory Committee; 15 (1)(A)(iv) Judicial Branch Education Committee; 16 (1)(A)(v) Court Facility Planning Committee; 17 (1)(A)(vi) Committee on Children and Family Law; 8۔ (1)(A)(vii) Committee on Judicial Outreach; 19 (1)(A)(viii) Committee on Resources for Self-represented Parties; 20 (1)(A)(ix) Language Access Committee; 21 (1)(A)(x) Guardian ad Litem Oversight Committee; 22 (1)(A)(xi) Committee on Model Utah Civil Jury Instructions; 23 (1)(A)(xii) Committee on Model Utah Criminal Jury Instructions; and 24 (1)(A)(xiii) Committee on Pretrial Release and Supervision-; 25 (1)(A)(xiv) Committee on Court Forms. 26 (1)(B) Composition. 27 (1)(B)(i) The Technology Committee shall consist of one judge from each court of record, one justice 28 court judge, one lawyer recommended by the Board of Bar Commissioners, two court executives, two 29 court clerks and two staff members from the Administrative Office. 30 (1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of one district court judge who has 31 experience with a felony docket, three district court judges who have experience with a misdemeanor
 - (1)(B)(iii) The Ethics Advisory Committee shall consist of one judge from the Court of Appeals, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, one justice court judge, and an attorney from either the Bar or a college of law.

docket, one juvenile court judge and three justice court judges.

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(1)(B)(v) The Court Facility Planning Committee shall consist of one judge from each level of trial court, one appellate court judge, the state court administrator, a trial court executive, and two business people with experience in the construction or financing of facilities.

(1)(B)(vi) The Committee on Children and Family Law shall consist of one Senator appointed by the President of the Senate, one Representative appointed by the Speaker of the House, the Director of the Department of Human Services or designee, one attorney of the Executive Committee of the Family Law Section of the Utah State Bar, one attorney with experience in abuse, neglect and dependency cases, one attorney with experience representing parents in abuse, neglect and dependency cases, one representative of a child advocacy organization, one mediator, one professional in the area of child development, one representative of the community, the Director of the Office of Guardian ad Litem or designee, one court commissioner, two district court judges, and two juvenile court judges. One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The Committee on Judicial Outreach shall consist of one appellate court judge, one district court judge, one juvenile court judge, one justice court judge, one state level administrator, a state level judicial education representative, one court executive, one Utah State Bar representative, one communication representative, one law library representative, one civic community representative, and one state education representative. Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.

(1)(B)(viii) The Committee on Resources for Self-represented Parties shall consist of two district court judges, one juvenile court judge, one justice court judge, three clerks of court – one from an appellate court, one from an urban district and one from a rural district – one member of the Online Court Assistance Committee, one representative from the Self-Help Center, one representative from the Utah State Bar, two representatives from legal service organizations that serve low-income clients, one private attorney experienced in providing services to self-represented parties, two law school representatives, the state law librarian, and two community representatives.

(1)(B)(ix) The Language Access Committee shall consist of one district court judge, one juvenile court judge, one justice court judge, one trial court executive, one court clerk, one interpreter coordinator, one probation officer, one prosecuting attorney, one defense attorney, two certified interpreters, one approved interpreter, one expert in the field of linguistics, and one American Sign Language representative.

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(1)(B)(x) The Guardian ad Litem Oversight Committee shall consist of seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.

(1)(B)(xi) The Committee on Model Utah Civil Jury Instructions shall consist of two district court judges, four lawyers who primarily represent plaintiffs, four lawyers who primarily represent defendants, and one person skilled in linguistics or communication.

(1)(B)(xii) The Committee on Model Utah Criminal Jury Instructions shall consist of two district court judges, one justice court judge, four prosecutors, four defense counsel, one professor of criminal law, and one person skilled in linguistics or communication.

(1)(B)(xiii) The Committee on Pretrial Release and Supervision shall consist of two district court judges, one juvenile court judge, two justice court judges, one prosecutor, one defense attorney, one county sheriff, one representative of counties, one representative of a county pretrial services agency, one representative of the Utah Insurance Department, one representative of the Utah Commission on Criminal and Juvenile Justice, one commercial surety agent, one state senator, one state representative, and the court's general counsel or designee.

(1)(B)(xiv) The Committee on Court Forms shall consist of one district court judge, one juvenile court judge, one justice court judge, one court clerk, one appellate court staff attorney, one representative from the Self-Help Center, the State Law Librarian, the Court Services Director, one member selected by the Online Court Assistance Committee, one representative from a legal service organization that serves low-income clients, one paralegal, and one representative from the Utah State Bar-, one person skilled in linguistics or communication, and one educator from a paralegal program or law school.

(1)(C) The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

(1)(D) At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

(1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.

(2) Ad hoc committees. The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc

116 committees shall keep the Council informed of their activities. Ad hoc committees may form sub117 committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or
118 recommendations to the Council, upon expiration of the time set for termination, or upon the order of the
119 Council.

(3) General provisions.

-35

- (3)(A) Appointment process.
- (3)(A)(i) Administrator's responsibilities. The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:
- (3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;
- (3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;
- (3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and
- (3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.
- (3)(A)(ii) Council's responsibilities. The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.
- (3)(B) Terms. Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.
- (3)(C) Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.
 - (3)(D) The Administrative Office shall serve as secretariat to the Council's committees.

Tab

Judicial Council Grant Application Proposal Code of Judicial Administration 3-411

NON-FEDERAL GRANTS

Contact Person/Phone:	Mary Jane Ciccar	rello / 801-238-7921		Date:	5-2-1	l			
Judicial District or Locati	on: Self-Help C	Center							
Grant Title Utah Bar Fou	indation		Grantor:	Utah Bar Fou	indation				
Grant type (check one);	x New	Renewal	Revision						
Grant Level (check one)	x Low \$10,000 to \$50,0	001 \$50,0	Med. 000 to \$1,00	00,000	Over \$1,000,0	High. 100			
Issues to be addressed	by the Project:	Provide two additiona	l hours per	Self-Help Cer	nter staff perso	n per week t	o provide training	for court clerical s	staff.
Explanation of how the g	grant funds will co	ntribute toward resolvi	ng the issue	es identified:	Provides fund	ing for addition	onal staff hours.		
Fill in the chart(s) for est		l year expenditures for	up to three	e years:	,				
, same anama sources		Othor Matchine	(PROVII	DE EXPLANA	TION OF ALL	MATCHES I	IN THE COMMEN	NTS SECTION)	
CASH MATCH	Count Amount	Other Matching Funds from Non- State Entities	General Fund	Dedicated Credits	Restricted Funds	Other (Write In)	Maintenance of Effort		
State Fiscal Year FY 2018	Grant Amount \$18,515		\$0	\$0	\$0	\$0	\$0	Total Funds \$18,515	
FY								\$0 \$0	
IN-KIND MATCH		Other Matching Funds from Non- State Entities	(PROVII General Fund	DE EXPLANA Dedicated Credits	Restricted	Other	Maintenance	NTS SECTION)	
State Fiscal Year FY	Grant Amount		rund	Credits	Funds	(Write In)	of Effort	Total Funds	
FY								\$0 \$0	
Comments:	!		L					\$0	
Will additional state fund when this grant expires of	ling be required to or is reduced?	maintain or continue YesNo	this prograr x	n or its infrast . If yes, explai	ructure n:				
Will the funds to continue	e this program cor	me from within your ex	isting budg	et:	Yes x	No	N/A		
How many additional per				Temp FTEs?					
The Grant Co	ecutives and judge	es in the affected distri Budget Manager at th	ct(s)						
Approved by the Judicial	Council Date	by Court	Administra	itor					
Copy forwarded to Legislative Fiscal Analyst									
	ianvo i local i mary	date							

Self-Help Center of the Utah State Courts Court Staff Training Program

Request for Funding to the Utah Bar Foundation

The Self-Help Center asks the Utah Bar Foundation for a **one-year grant of \$18,515** to start immediately to support our statewide Court Staff Training Program.

Description of the Court Staff Training Program ("Program")

The program aims to prepare court staff, especially in rural judicial districts, to help self-represented parties in their courthouses.

The training consists of two parts: one is virtual and the second is live.

Court staff first participate in a virtual, self-study program. The individual staff member goes through the study units on their own, at their own pace, and then are tested by Self-Help Center staff attorneys on each study unit by telephone. The Self-Help Center director, Mary Jane Ciccarello, prepared and updates the training study units and overall curriculum.

The staff member proceeds to the next study unit upon successful testing.

There are 13 study units. Each unit reviews several webpages and legal topics and any associated court forms. The testing frequency depends on the preferences of the staff member.

Staff must first determine with their supervisors when they will be able to participate in the training. When a staff member is ready to start, they contact Mary Jane who emails them the first study unit. When the staff member is ready to be tested, they sign up on a shared Google calendar for a time slot. Upon successful completion of the testing, Mary Jane emails the staff member the next study unit.

Upon successful completion of the study units, the staff member spends one to two days in the Matheson Courthouse in Salt Lake City and shadows both Self-Help Center staff attorneys and State Law Library staff as they help self-represented parties.

Court staff also learn methods of contacting the Self-Help Center staff attorneys when needed by internal chat, email and phone. Court staff continue to receive ongoing support and information from the Self-Help Center as needed.

Upon successful completion of both training parts, a court staff member is able to confidently help self-represented parties by providing legal information, appropriate court forms, completion of court forms, and navigation of the court website and court proceedings.

Background Information

The program started in late September 2016 at the request of court clerks in the 7th Judicial District for intensive training from the Self-Help Center. Due to lack of resources (staff and money) and geographical distances, we decided to structure a virtual training program where local staff could work on their own with individualized guidance and testing by Self-Help Center staff.

To date, 2 clerks (one in the 7th and one in the 8th judicial districts) have completed the entire program. Currently, 42 clerks are progressing through the program. These include clerks from six of Utah's 8 judicial districts and include both rural and urban courts. Most clerks serve the district court but several are solely juvenile court clerks while several others serve both courts, especially in the more rural districts.

There are approximately 300 juvenile and district court clerks statewide. The program is entirely voluntary and we do not anticipate that all 300 clerks will participate. However, we hope to be able to train approximately 60 clerks per year.

Explanation of Request for Funding the Self-Help Center Staff

The Self-Help Center is staffed by 6 attorneys but only Mary Jane, the director, is full time. The other 5 attorneys are part time working 30 hours a week 4 days a week. We try to schedule program training sessions outside the Self-Help Center helpline hours of Monday through Thursday, 11 a.m. to 5 p.m. This scheduling is to assure that all staff are responding to incoming calls, emails and texts during helpline hours. However, at this point, we are also conducting the telephone testing sessions during helpline hours and we hope to be able to avoid this.

We currently spend about 5 hours per week testing clerks, training about 20 clerks per year at this rate. Our proposal is to receive funding for one year from the Utah Bar Foundation to pay for 5 staff attorneys to work 32 hours a week at 8 hours a day, 4 days a week. With the added 10 hours of staff time per week we estimate that we can train 40 additional clerks.

The calculation is 10 additional hours per week 52 weeks per year for a total of 520 additional hours. Each clerk needs 13 hours of training. 520 hours divided by 13 hours equals 40 clerks.

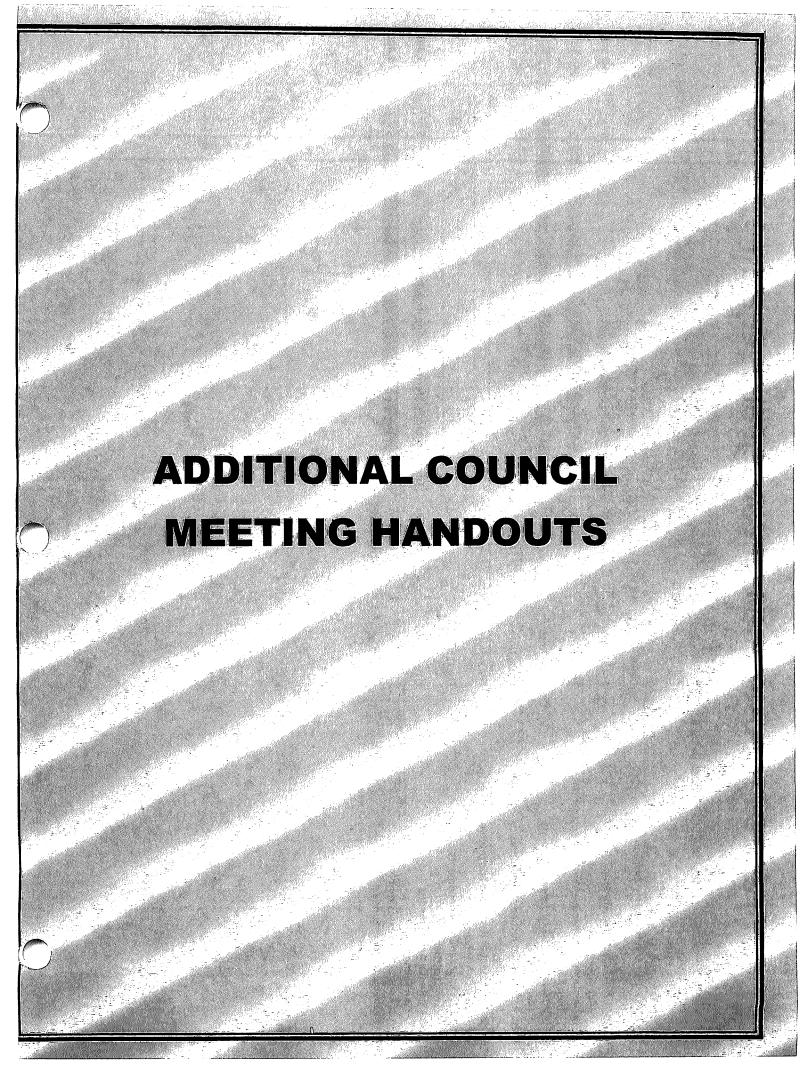
 $10 \times 52 = 520$; $520 \div 13 = 40$

Additional funding would allow us to increase the number of clerks trained by 300% from 20 per year to 60 per year.

The cost to increase one .75 FTE to.8 FTE at the current wage of \$25.71/hour (i.e., 30 hrs/wk to 32 hrs/wk) is \$18,515. So, we are asking for a one-year grant of \$18,515 to cover this cost.

The increase in funding would allow us to both train many clerks throughout Utah as well as allow us to keep our helpline hours dedicated to responding to incoming contacts. The end result would be increased services both at the local court level as well as the virtual statewide level to people in need of legal information and guidance as they access justice.

Thank you for your kind consideration of our request and your kind invitation for us to make the request.

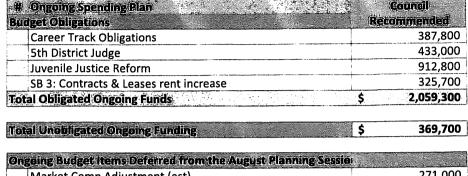




FY 2018 Proposed Judicial Council Budget Plan

	The Control of the Co	Ongoing	Spending Plan:	water the first of the second
**	New Available Ongoing Funding by Source	Funding Type	Amount	- Ongoing Spending Plan
1	Ongoing Turnover Savings	Internal Savings	560,500	Budget Obligations
2	HB 77: Fifth District Judge	Fiscal Note	433,000	Career Track Obligations
-	(Rep Snow, L)			5th District Judge
3	HB 155: DUI & Public Safety Revisions	Fiscal Note	**	Juvenile Justice Reform
	(Rep Thurston, N)			SB 3: Contracts & Leases rent increase
4	HB 202: Trespass Amendments	Fiscal Note	10,600	Total Obligated Ongoing Funds
	(Rep Greene, B)			
5	HB206: Domestic Violence-Weapons Restrictions	Fiscal Note	33,600	Total Unobligated Ongoing Funding
L	(Rep King, B)	1		
6	HB 208: Jail Release Order Amendments	Fiscal Note	98,200	Ongoing Budget Items Deferred from the Augu
	(Rep Ivory, K)			Market Comp Adjustment (est)
7	HB 239: Juvenile Justice Amendments	Fiscal Note	912,800	4th Dist law clerk (1)
1	(Rep Snow, L)			1-1
8	HB 286: Essential Treatment and Intervention Act	Fiscal Note	11,900	
	(Rep Christensen, L)			
9	SB 12: Expungement Amendments	Fiscal Note	33,800	
	(Sen Thatcher, D)		,	
10	SB 52: Rental Amendments	Fiscal Note	8,900	Total Ongoing Deferred Funding Requests
	(Sen Fillmore, L)			
11	SB 3: Contracts & Leases rent increase		325,700	Ongoing Funding Balance
Tot	al Available: Ongoing Funds		\$ 2,429,000	

^{**}Due to effective date of law, no funding available in FY2018.



Orgaing Budget Items Deferred from the August Planning Sessio	la esta de la companya della companya della companya de la companya de la companya della company
Market Comp Adjustment (est)	271,000
4th Dist law clerk (1)	94,300
Total Ongoing Deferred Funding Requests	\$ 365,300
	· · · · · · · · · · · · · · · · · · ·







7.5			One-time Spen
Αva	liebie@redinelinds		. Action 1500
#	Available One time Funding	Funding Type	Amount
1	One-time Personnel Turnover Savings & Current Expense	Internal Savings	1,644,000
2	HB 235: Automated Traffic Enforcement Safety (Rep McKell, M)	Fiscal Note	20,000
3	HB 239: Juvenile Justice Amendments (Rep Snow, L)	Fiscal Note	87,200
4	SB 54: Adoption Revisions (Sen Weiler, T)	Fiscal Note	5,000
5	HB 155: DUI & Public Safety Revisions (Rep Thurston, N)	Fiscal Note	**
6	TCE projected unspent current expenses		146,400
7 Fot	AOC projected unspent current expenses al Available One-time Funds		73,100 \$ 1,975,700

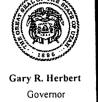
**Due t	0	effective	date (of	law,	no	funding	a vail	able	in FY2018.	
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# One-Gine Spending (Pan)	Council
Budget Obligations	Recommended
4th District LCB Benefit package	56,500
Utah Code	58,000
Juvenile Justice Reform	87,200

One-time Budget Items Deferred from the A	iugust Planning Session
Volunteer Court Visitor Program (2 FTE)	130,000
Computer replacement schedule	250,000

Stime Budget Requests	P. 10 10 10 10 10 10 10 10 10 10 10 10 10
Time-limited Law Clerks (2 FTEs)	18
Education: MSU/Succession programs	5:
PJ/TCE/Clerk of the Court conference	20
ICJ dues, training, & travel	20
Access & Fairness Survey	18
District Court Program Administrator (.75 to 1.0 FTE)	24
Justice Court Administrator (.5 to 1.0 FTE)	75
Employee incentive awards	200
Employee assistance	10
Tuition assistance	75
Secondary language stipend	88
Judicial operations budget	62
Videos	10
Contract sites	10
Grant match	50
Domestic Violence Program Coordinator (.5 to .75 FTE)	26
Drug Court conference	20
Courtroom technology	248
Reserve	200

Total One-time Obligations \$ 1,975,700



Spencer J. Cox

Lieutenant Governor

State of Utah

Judicial Performance Evaluation Commission

Jennifer MJ Yim Executive Director

Utah State Capitol Complex, Senate Building, Suite 330 • Salt Lake City, Utah 84114 801-538-1652 • Fax: 801-538-1024 • www.judges.utah.gov

Evaluating Judge Nat Mildner

[District and Juvenile Court Judges - Attorney Survey]

Thank you for participating in the judicial evaluation process. The commission welcomes your opinion about the recent performance of this judge. Please answer only the questions for which you have direct professional experience. You can opt out of any questions you don't feel qualified to answer by checking the "Not Enough Experience to Rate" box. This survey should take about 5 minutes to complete.

All your responses will be reported anonymously. When commenting, please do not include any information that would reveal individual identities.

Minimum performance standards for judicial performance are established by state statute and administrative rule. JPEC evaluates the following performance standards: Legal Ability, Integrity / Judicial Temperament, Administrative Skills, and Procedural Fairness.

- For Legal Ability, the judge must receive an overall average score of 3.6 out of a possible 5.0 in order to pass the minimum performance standard set by statute.
- For Integrity / Judicial Temperament, the judge must receive an overall average score of 3.6 out of a possible 5.0 in order to pass the minimum performance standard set by statute.
- For Administrative Skills, the judge must receive an overall average score of 3.6 out of a possible 5.0 in order to pass the minimum performance standard set by statute.
- For Procedural Fairness, the judge must receive an overall average score of 3.0 out of a possible 5.0 in order to pass the minimum performance standard set by administrative rule.

If you have received a survey for a judge whose work you do not know first-hand, please do not delete it. Instead, to opt out of the entire survey, complete the set of questions on the next page and then submit it by clicking "Next". For questions about any technical aspect of this survey, contact Brian Robertson at Market Decisions. 1-800-293-1538 x 102.

~2018 Opt Out

The following three questions will help us understand the nature and extent of your experience with Judge Mildner. Your responses are confidential. They will not be part of the judge's evaluation and will not be disclosed to the judge.

Research has shown that people make better and more accurate performance evaluations when they take a few minutes to think about the specific behaviors they have seen the person engage in rather than simply relying on their general impressions of the person. Please use your direct professional experience between January 1, 2016 and today to evaluate this judge. Do not base your response on reputation or personal or social contact.

Q1.1 How many hearings or trials have you had with Judge Mildner over the past year? O 0 [If 0, then CLOSE.] O 1 to 3 O 4 - 9 O 10 or more
Q1.2 What was the nature of your most recent appearance? O Trial O Motion O Scheduling conference O Preliminary hearing O Sentencing O Juvenile hearing O Other
Q1.3 Have you worked with Judge Mildner since January 2016 enough to feel qualified to evaluate his or her performance? O Yes O No [If No, then CLOSE.]

[If Q1.1 = 0 or Q1.3 = No, then **CLOSE**:]

Thank you for sharing your opinions and participating in the judicial evaluation process. Please click "Next" to record your responses.

`Adjectives

Q2.1 Considering your experience since January 2016, how well would you say the following attributes describe the judge?

Click on the slider and move it along the line to the score you choose, ranging from 1 (Does not describe at all) to 5 (Describes very well).

1=Does r	not describe at all 1 2	3	5=Describes very	/ well 5	Not enough experience to rate
Knowledgeable					
Impatient					
Attentive					
◯ Disrespectful					
Indecisive					
Open-minded				* • ·	
Unprepared					
Capable					
Impartial					
Ethical					

Q3.1 Legal Ability

Instructions:

- Please rate Judge Mildner on each of the following statements.
- Click on the slider and move it along the line to the score you choose, ranging from 1 (Low) to 5 (High).
- Remember, if you had insufficient opportunity to observe a particular behavior since January 2016, mark "Not enough experience to rate" in the box to the right of the slider.

	1=Low 1	2	3	4	5=High 5	Not enough experience to rate
The judge followed the legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that applied to the case at issue.						
The judge made adequate findings of fact and applied the law to those facts.						
The judge followed legal precedent or explained departures from precedent.						
The judge only considered evidence in the record.						
The judge based opinions/decisions on applicable legal principles and controlling law.	4					ł
The judge's opinions contained a readily understandable ruling.						

'Q4.1 Integrity / Judicial Temperament

Remember, if you had insufficient opportunity to observe a particular behavior since January 2016, mark "Not enough experience to rate" in the box to the right of the slider.

enough experience to rate	1=Low	2	3	4	5=High 5	Not enough experience to rate
The judge made sure that everyone's behavior in the courtroom was proper.	.,					
The judge paid attention to what went on in court.						
The judge's personal life or beliefs did not impair his or her judicial performance.					A 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
The judge demonstrated respect for the time and expense of those attending court.						
The judge worked to ensure that the participants understood the court proceedings.						
The judge conducted proceedings without favoritism.						
The judge considered arguments from all sides before ruling.						
The judge demonstrated diligent work habits.						
The judge maintained a professional demeanor in the courtroom.						

Q5.1 Administrative Skills

Remember, if you had insufficient opportunity to observe a particular behavior since January 2016, mark "Not enough experience to rate" in the box to the right of the slider.

	1=Low 1	2	3	4	5=High 5	Not enough experience to rate
The judge was prepared for court proceedings.						
The judge's interactions with courtroom participants and staff were professional and constructive.						
The judge managed the court calendar effectively.						
The judge convened court without undue delay.						
The judge ruled in a timely fashion.						
The judge communicated clearly.						: .

Q6.1 Procedural Fairness

Remember, if you had insufficient opportunity to observe a particular behavior since January 2016, mark "Not enough experience to rate" in the box to the right of the slider.

_		1=Low 1	2	3	4	5=High 5	Not enough experience to rate
	The judge treated all courtroom participants with equal respect.						
-	The judge performed his or her duties fairly and impartially.						
-	The judge promoted public trust and confidence in the courts through his or her conduct.						
	The judge provided the court participants with a meaningful opportunity to be heard.						

27.1 Judges find constructive comments very helpful to improving their performance. Please enter any comments you have about Judge Mildner's Legal Ability, Integrity and Judicial Temperament, Administrative Skills, or Procedural Fairness. (Remember to comment in a way that does not reveal anyone's identity.)						

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Q8.1 Considering Judge Mildner's overall performance since January 2016, would you recorgudge be retained? O Yes O No	nmend that this					
Q8.2 Please explain why or why not (optional).						

Q9.1 Is there anything else you would like to tell us about Judge Milder?					

Q9.2 If you have comments about the survey process or suggestions for improvement, please email them to judicialperformance@utah.gov. Thank you!

*Close]

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