

# JUDICIAL COUNCIL MEETING

## AGENDA

**November 19, 2018**

**Council Room**

**Matheson Courthouse**

**450 South State Street**

**Salt Lake City, Utah 84111**

*Chief Justice Matthew B. Durrant Presiding*

1. 9:00 a.m. Welcome & Approval of Minutes..... Chief Justice Matthew B. Durrant  
(Tab 1 – Action)
2. 9:05 a.m. Chair’s Report ..... Chief Justice Matthew B. Durrant
3. 9:10 a.m. Administrator’s Report .....Richard Schwermer
4. 9:20 a.m. Reports: Management Committee ..... Chief Justice Matthew B. Durrant  
Liaison Committee.....Justice Thomas Lee  
Policy and Planning ..... Judge Derek Pullan  
Bar Commission..... Rob Rice, esq.  
(Tab 2 – Information)
5. 9:30 a.m. Judicial Council Selection of Study Item.....Richard Schwermer  
(Action)
6. 9:40 a.m. Forms Committee Report.....Randy Dryer  
(Information) Brent Johnson
7. 9:50 a.m. Proposed JPEC Rule Amendments ..... Dr. Jennifer Yim  
(Tab 3 – Action)
8. 10:00 a.m. Judicial Performance Evaluation Commission ..... Dr. Jennifer Yim  
(Information) Commissioner Rick Hoffman
- 10:20 a.m. Break
9. 10:30 a.m. Judicial Conduct Commission Report .....Alex Peterson  
(Information)
10. 10:45 a.m. Board of District Court Judges Report..... Judge Christine Johnson  
(Information) Shane Bahr

11. 10:55 a.m. Board of Justice Court Judges Report..... Judge Reuben Renstrom  
(Information) Jim Peters
12. 11:05 a.m. Recognition of Outgoing Council Members.....  
..... Chief Justice Matthew B. Durrant  
(Information)
13. 11:10 a.m. Senior Judge Certification.....Brent Johnson  
(Tab 4 – Action)
14. 11:20 a.m. Executive Session – There will be an executive session
15. 12:00 p.m. Adjourn
- 12:10 p.m. Council Photo – 5<sup>th</sup> floor rotunda

### **Consent Calendar**

The consent calendar items in this section are approved without discussion if no objection has been raised with the Administrative Office of the Courts or with a Judicial Council member by the scheduled Judicial Council meeting or with the Chair of the Judicial Council during the scheduled Judicial Council meeting.

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|---|---|
| <ol style="list-style-type: none"> <li>1. Committee Appointments<br/>(Tab 5)</li> </ol>   | <p>Forms Committee - Brent Johnson<br/>MUJI – Civil – Nancy Sylvester</p> |
| <ol style="list-style-type: none"> <li>2. 2019 IOLTA Grant<br/>(Tab 6)</li> </ol>         | <p>Nathanael Player</p>   |
| <ol style="list-style-type: none"> <li>3. Rules for Public Comment<br/>(Tab 7)</li> </ol> | <p>Michael Drechsel</p>   |

# Tab 1



## JUDICIAL COUNCIL MEETING

**Minutes**  
**October 22, 2018**  
**Price Courthouse**  
**120 East Main Street**  
**Price, Utah 84501**  
**12:30 p.m. – 4:00 p.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Attendees:**

Chief Justice Matthew B. Durrant, Chair  
 Hon. Kate Toomey, Vice Chair  
 Hon. Kevin Allen  
 Hon. Augustus Chin  
 Hon. Ryan Evershed  
 Hon. Paul Farr  
 Justice Thomas Lee  
 Hon. David Marx  
 Hon. Mark May  
 Hon. Kara Pettit  
 Hon. Derek Pullan  
 Hon. Todd Shaughnessy  
 Hon. John Walton  
 Rob Rice, esq.

**Staff:**

Richard Schwermer  
 Ray Wahl  
 Jacey Skinner  
 Shane Bahr  
 Michael Drechsel  
 Cathy Dupont  
 Brent Johnson  
 Rob Parkes  
 Jeni Wood

**Excused:**

**Guests:**

John Dougall, Utah State Auditor  
 Travis Erickson  
 Hon. Doug Thomas

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Chief Justice Durrant welcomed John Dougall, Utah State Auditor.

Judge Derek Pullan recommended amending the September 18, 2018 minutes to note in section 7, Court Commissioner Conduct Committee, that Rule 3-201.02 was sent for review to the Policy & Planning Committee.

**Motion:** Judge Kate Toomey moved to approve the Judicial Council minutes from the September 18, 2018 meeting, as amended. Judge Augustus Chin seconded the motion, and it passed unanimously.

**2. OATH OF OFFICE – JUDGE KEVIN ALLEN: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant administered the Judicial Council Oath of Office to Judge Kevin Allen.

**3. CHAIR’S REPORT: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant thanked the Seventh District for inviting the Judicial Council to the new Price Courthouse. Chief Justice Durrant said the Price Courthouse dedication ceremony held this morning went well and noted Judge Thomas’ comments.

**4. ADMINISTRATOR’S REPORT: (Richard Schwermer)**

Richard Schwermer thanked everyone who attended the Price dedication ceremony, including Senator David Hinkins and Representative Christine Watkins. Mr. Schwermer said the Juvenile Court Administrator, Dawn Marie Rubio, would be leaving the courts in November for a position in Washington, where she has been appointed Court Administrator. Neira Siaperas, the Third District Juvenile Court Trial Court Executive, has agreed to fill the position temporarily.

Mr. Schwermer next reviewed the ABA/OPC Committee summary recommendations report. An oversight committee will be formed to review and implement the findings of the ABA/OPC report. The oversight committee will report to the Supreme Court.

The Utah courts will present on the new ODR small claims program at the South-by-Southwest (SXSW) 2019 conference. The program is currently being piloted in the West Valley Justice Court.

Mr. Schwermer stated the media recently published a negative article about a Fourth District Court judge. The Utah State Bar will respond and explain to the media the role of JPEC. Mr. Schwermer noted that judges could not respond to the media. Justice Thomas Lee would like to see a fairer environment about the timing of posting negative reports against judges, while voting is still active. Rob Rice believes this may be an opportunity to educate the media. Mr. Schwermer will discuss this with Geoff Fattah.

Mr. Schwermer stated the Management Committee approved replacing Judge Mark DeCaria on the Liaison Committee with Judge Kara Pettit and adding Judge Kevin Allen to the Policy & Planning Committee. The Judicial Council agreed.

Mr. Schwermer said that the Judicial Council, in past years, has selected a study item. After brief discussion, the Council asked Mr. Schwermer to present a few ideas for discussion at the next Council meeting.

## 5. COMMITTEE REPORTS:

### *Management Committee Report:*

The work of this committee is reflective in the minutes.

### *Liaison Committee Report:*

Justice Thomas Lee said the Liaison Committee has not met recently.

### *Policy and Planning Committee Report:*

Judge Derek Pullan said updates from Policy & Planning Committee would be addressed with agenda items 6 & 7.

### *Bar Commission Report:*

Rob Rice said the Lawyer Attorney Client Fund would include Licensed Paralegal Practitioners (LPPs). The Bar will review the Fund in five years to determine whether the LPPs should continue to be included in the Attorney Fund or have their own fund.

## 6. RULE 4-409 FOR PUBLIC COMMENT: (Judge Derek Pullan and Michael Drechsel)

Judge Pullan reviewed proposed changes to rule 4-409. Judge Pullan noted that the Adult Drug Court Certification Checklist needed to be amended to comply with the revisions to rule 4-409. The Council discussed the definition of “structural inability.” After further review, the Council agreed to the following amendments to rule 4-409 and the Certification Checklist: 1) Remove certification criteria from the rule and add it to the Checklist; and 2) Reformat and reorganize the Checklist.

**Motion:** Justice Lee moved to approve publishing rule 4-409, as amended, and approve the revisions to the Adult Drug Court Certification Checklist, as amended, for a 45-day comment period. Judge Toomey seconded the motion, and it passed unanimously.

## 7. RULES FOR FINAL APPROVAL 3-401, 3-414, 4-202.03, 4-202.09, 4-403, AND 4-701: (Michael Drechsel)

Mr. Drechsel reviewed rules 3-401, 3-414, 4-202.03, 4-202.09, 4-403, and 4-701 as presented for final approval. Mr. Drechsel noted the rules completed a comment period in June 2018, with no comments received. Mr. Drechsel requested rule 3-414 be approved with the understanding that the rule will return to the Policy & Planning Committee to readdress the section that addressed color-coded badges.

**Motion:** Justice Lee moved to approve rule 3-414 with an effective date of November 1, 2018, and send the rule to Policy & Planning to readdress the color-coded badges section. Judge Toomey seconded the motion, and it passed unanimously.

**Motion:** Judge Toomey moved to approve rules 3-401, 4-202.03, 4-202.09, 4-403, and 4-701, as presented, with an effective date of November 1, 2018. Justice Lee seconded the motion, and it passed unanimously.

**8. PROFESSIONAL APPEARANCE POLICY: (Rob Parkes and Michael Drechsel)**

Rob Parkes said a committee of statewide court employees was formed to create a professional appearance policy. The TCEs, Policy & Planning Committee, and the Management Committee have reviewed the policy. Judge Toomey expressed her appreciation in creating a gender-neutral policy. The Council discussed the policy on polo shirts. Judge Shaughnessy said many law enforcement and probation officers wear polo shirts when testifying in court. Mr. Parkes said there is a lack of consistency in dress appearance throughout the state.

**Motion:** Judge Toomey moved to approve the professional appearance policy as presented. Judge Mark May seconded the motion, and it passed with Justice Lee and Judges Shaughnessy and Judge Pettit voting no.

**9. SENIOR JUDGE CERTIFICATIONS: (Ray Wahl)**

Ray Wahl reviewed the applications. The Board of Justice Court Judges recommended Judge Weidauer's certification. Mr. Wahl noted Judge Kay Lindsay has reapplied to remain as an inactive senior judge. Mr. Wahl requested the application for Judge Dawson be addressed at the November Council meeting.

**Motion:** Judge Shaughnessy moved to approve Judge Susan Weidauer as an inactive senior judge, and the recertification of Judge Kay Lindsay as an inactive senior judge, as presented. Judge Paul Farr seconded the motion, and it passed unanimously.

**10. SEVENTH DISTRICT REPORT: (Judge Doug Thomas and Travis Erickson)**

Chief Justice Durrant welcomed Judge Doug Thomas and Travis Erickson. Judge Thomas thanked the Council for visiting the new Price Courthouse. Judge Thomas said there are three district court judges and two juvenile court judges that serve four Seventh District courthouses, located in Carbon County, Emery County, Grand County, and San Juan County. There are also four problem-solving courts. Judge Thomas said clerical personnel are cross-trained across court levels.

Court filings throughout the district have increased 27% this year. Judge Thomas said the Seventh District is one of two districts serving a pilot program for domestic case processing. Judge Thomas explained the details of the new domestic case process.

Mr. Schwermer said the National Center for State Courts is studying best practices with domestic matters and thanked the Seventh District for their work on this process. Chief Justice Durrant thanked Judge Thomas on structuring the Seventh District in a positive and effective manner.

**11. EXECUTIVE SESSION**

Judge Toomey moved to go into an executive session to discuss the character, competence or mental health of a person or a personnel matter. Judge Pullan seconded the motion, and it passed unanimously.

**Motion:** Judge Toomey moved to have the Council direct Mr. Schwermer to file a formal complaint. Judge Chin seconded the motion, and it passed with Justice Lee abstaining.

**12. CONSENT CALENDAR ITEMS****1) Committee Appointments.**

Standing Committee on Children and Family Law reappointment of James Hanks.

Approved without comment.

Ethics Advisory Committee appointment of Ryan Tenney. Approved without comment.

**2) Probation Policies.** Revisions to rules 1.6, 2.3, and 2.4, and the deletion of policies 1.5 and 4.12. Approved without comment.

**3) New Senior Judge Questionnaires.** Approved without comment.

**4) Probate Cover Sheet Revisions:** Approved without comment.

**13. ADJOURN**

The meeting adjourned.



# Tab 2



# JUDICIAL COUNCIL MANAGEMENT COMMITTEE

**Minutes**  
**November 13, 2018**  
**Council Room**  
**Matheson Courthouse**  
**450 South State Street**  
**Salt Lake City, Utah 84111**  
**12:00 p.m. – 2:00 p.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Members Present:**

Chief Justice Matthew B. Durrant, Chair  
 Hon. Kate Toomey, Vice Chair  
 Hon. David Marx  
 Hon. Todd Shaughnessy

**Staff Present:**

Richard Schwermer  
 Ray Wahl  
 Shane Bahr  
 Cathy Dupont  
 Geoff Fattah  
 Brent Johnson  
 Heather Marshall  
 Jim Peters  
 Nathanael Player  
 Clayson Quigley  
 Neira Siaperas  
 Jeni Wood

**Excused:**

**Guests:**

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

Chief Justice Matthew Durrant welcomed everyone to the meeting.

After reviewing the minutes, the following motion was made:

**Motion:** Judge Kate Toomey moved to approve the October 9, 2018 Management Committee meeting minutes. Judge David Marx seconded the motion, and it passed unanimously.

**2. ADMINISTRATOR'S REPORT: (Richard Schwermer)**

Richard Schwermer stated the new Provo Courthouse won the Utah Construction & Design 2018 Most Outstanding Project award. Chris Talbot and Judge David Mortenson will attend the award ceremony.

Mr. Schwermer reviewed statistics of cases that have been filed under the new ODR small claims program in the West Valley Justice Court. Mr. Schwermer said the AOC is holding weekly meetings with the facilitators to continually monitor the program. Judge Marx said a clerk from the West Valley Justice Court attended a Justice Court conference and noted the program has saved the clerks a considerable amount of time.

Mr. Schwermer next addressed a group of individuals who attempt to film individuals in courthouses, including a recent visit to the Bountiful Courthouse.

Chief Justice Durrant and Mr. Schwermer met with the Executive Judicial Compensation Commission. The Commission is expected to recommend an increase of COLA plus 1% for the next 3-4 years for judges. Mr. Schwermer and Chief Justice Durrant will meet with Governor Herbert tomorrow regarding the budget requests.

### **3. UNIFORM FINE & BAIL SCHEDULE PROPOSED CHANGES COMPARISON: (Heather Marshall)**

Heather Marshall presented a side-by-side comparison of the current and proposed Uniform Fine and Bail Schedule amounts. The changes include increasing the recommended fine amounts for offenses categorized as “other.” North Logan Justice Court remained the only court with an estimated revenue decrease of 4%. Examples of offenses responsible for this decrease are Following To Close (Utah Code § 41-6A-711(1)) and Fail To Yield Right of Way (Utah Code § 41-6A-901). Judge Marx noted the fines assessed for these offenses are \$120, which is the current bail schedule amount. The overall goal is to have the reorganization be revenue neutral.

The current Fine and Bail Schedule, lists 1,549 offenses within misdemeanor B, C and infraction crime levels. Of those, 38 offenses are set by statute and 4 offenses fall under the speeding offense. The Uniform Fine and Bail Committee examined the remaining 1,507 offense and designated each of them as one of four categories: 1) public safety crimes; 2) person crimes; 3) property crimes; and 4) other crimes.

Judge Marx is concerned the proposed schedule attempts to fix a system that is not broken and recommended further research. Ms. Marshall will prepare the revenue impact information for all courts and bring it to the December Management Committee meeting.

### **4. COMMITTEE APPOINTMENTS: (Brent Johnson) Forms Committee**

Brent Johnson addressed the justice court judge vacancy and commissioner vacancy on the committee. The committee recommended the appointment of Judge Randy Birch for the justice court judge position and Commissioner Russ Minas for the commissioner position.

**Motion:** Judge Toomey moved to approve the appointment of Judge Randy Birch for the justice court judge position and Commissioner Russ Minas for the commissioner position to the Forms Committee, and to place this item on the Judicial Council consent calendar. Judge Marx seconded the motion, and it passed unanimously.

### **MUJI - Civil Committee**

Mr. Johnson addressed the attorney vacancy and linguist vacancy on the committee. The committee recommended Alyson McAllister.

**Motion:** Judge Toomey moved to approve the appointment of Alyson McAllister to the MUJI - Civil Committee, and to place this item on the Judicial Council consent calendar. Judge Marx seconded the motion, and it passed unanimously.

### **5. 2019 IOLTA GRANT: (Nathanael Player)**

Nathanael Player presented the proposed IOLTA grant for 2019. The Self-Help Center requested a 1 year grant of \$19,095 to begin January 1, 2019 from the Utah State Bar. Last year the Center assisted 807 people whose cases were heard before a commissioner at the Matheson Courthouse on a pro se calendar. Funds from this grant would allow the Center to continue to provide substantial services to pro se parties. There is not match required.

**Motion:** Judge Toomey moved to approve the 2019 IOLTA grant and to place this item on the Judicial Council consent calendar. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

### **6. REVIEW OF 2018 JUDICIAL RETENTION ISSUES: (Geoff Fattah)**

Geoff Fattah identified four judges that were targeted with negative media and public criticism. Mr. Fattah said he and Mr. Schwermer met with the Salt Lake Tribune to discuss the articles written and suggestions on how to obtain accurate information for the next election cycle. Judge Shaughnessy said articles may have more of an impact in rural areas. Judge Toomey is concerned the efforts from the media may escalate with the 2020 elections. Judge Toomey recommended, prior to the next elections, a meeting with the media to discuss these issues. Mr. Schwermer said in the past, the courts have provided educational opportunities to journalists where they hold mock sentencings so they better understand the information available to judges at the time of sentencing.

Mr. Fattah recommended holding similar seminars for journalists in the future. The committee discussed the rippling effect with the articles and how they are shared on social media. The response from the Utah State Bar was discussed. Mr. Fattah suggested having retired judges on standby to respond to media inquiries without speaking to case specifics. Judge Shaughnessy reviewed a conversation he had on the impact the Canons of ethics for judges and their ability to respond to articles in news print.

Mr. Fattah agreed to provide educational opportunities to members of the media several months in advance of retention elections. Judge Shaughnessy said there needs to be a dedicated mechanism to address negative media attention, and to explain the rules of the judiciary to the public. Mr. Schwermer indicated this discussion should carry forward in more detail at a future meeting. Chief Justice Durrant suggested adding this item to a future meeting agenda for the Management Committee.

**7. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Durrant)**

Chief Justice Durrant addressed the proposed agenda for the November 19, 2018 Judicial Council meeting. Mr. Schwermer noted there was an addition to the consent calendar of rules for public comment.

**Motion:** Judge Toomey moved to approve the Judicial Council agenda, as amended. Judge Marx seconded the motion, and it passed unanimously.

**8. EXECUTIVE SESSION**

An executive session was held.

**9. ADJOURN**

The meeting adjourned.

**UTAH JUDICIAL COUNCIL  
POLICY AND PLANNING COMMITTEE  
MEETING MINUTES**

Judicial Council Room (N301), Matheson Courthouse  
450 South State Street, Salt Lake City, Utah 84114  
November 2, 2018 – 9:00 a.m. to 3:00 p.m.

**DRAFT**

**MEMBERS:**

**PRESENT    EXCUSED**

Judge Derek Pullan, <i>Chair</i>	•	
Judge Kevin Allen		•
Judge Augustus Chin (arrived at 11:00)	•	
Judge Ryan Evershed (via phone 11:27 to 14:18)	•	
Judge John Walton	•	
Mr. Rob Rice	•	

**GUESTS:**

John Bell  
Jim Peters  
Tom Langhorn  
Rick Schwermer  
Jacey Skinner  
Brent Johnson  
Nancy Sylvester  
Rob Parkes  
Jessica Van Buren

**STAFF:**

Michael Drechsel  
Minhvan Brimhall (recording secretary)

**(1) WELCOME AND APPROVAL OF MINUTES:**

Judge Pullan welcomed the committee members to the meeting. At the commencement of the meeting, there was not a quorum to make and vote upon motions. As a result, review of the meeting minutes from October (and any other matters requiring a quorum) was postponed until later in the meeting.

**(2) RULE 4-405 – JUROR AND WITNESS FEES:**

John Bell reported that this rule required revisions to address changing business practices. State Finance changed the per diem rate to \$5.00. Mr. Bell proposed that the current rule be updated to reflect this change. The proposed changes would also clarify that the rate was “not to exceed state per diem rate.” The committee discussed additional language changes to rule 4-405 to further reflect alignment with current business practice. The changes also provide clarification for the issuance of payment of juror and witness fees and expenses. Payment will be processed and completed within 10 days of the juror and/or witness date. The committee asked questions of Mr. Bell to better understand the implications of the proposed changes.

With no quorum present, the committee tabled the matter for further discussion and possible vote when a quorum was present.

**(3) RULE 3-403 – JUDICIAL BRANCH EDUCATION:**

The committee welcomed Jim Peters and Tom Langhorn to the meeting. Mr. Peters discussed proposed changes to rule 3-403 in regards to the number of training hours required of justice court clerks. The current rule states that justice court clerks need 10 hours. Justice court clerks are employed by counties / municipalities, while district

court clerks are employees of the court. Mr. Peters would like to develop a program that would allow justice court clerks to get the same amount of training as district court clerks. The current policy needs clarification on required training hours for justice court clerk staff.

The committee recommended distinguishing between state employees and local employees as a means to distinguish differences between required training hours. The committee discussed changing the language to read: "All court staff employed by local government shall complete 20 hours of approved coursework." The committee also discussed language changes to clarify the certification and reporting location of justice court training on an annual basis.

Mr. Peters will meet with the court administrators to discuss the recommended changes made by this committee. Mr. Peters will return at the next meeting to provide this committee with an update. The matter was tabled until that time.

#### **(4) RULE 4-202.02 – RECORD CLASSIFICATION (TABLE FORMAT)**

Mr. Drechsel sought clarification regarding a project that had started prior to Mr. Drechsel's employment with the Courts. The committee re-affirmed that it wanted to move forward with creating a convenience version of Rule 4-202.02 that is formatted in a table layout. Mr. Drechsel was assigned to finalize preparations of the table-based version of the rule so that it can be added to the code website. Because this version is solely for convenience and merely restates the actual rule, no further process is required on this matter.

#### **(5) RULES 3-201.02 / 3-201 – COMMISSIONER CONDUCT RULES:**

The committee welcomed Mr. Rick Schwermer and Ms. Jacey Skinner to the meeting. They discussed potential proposed changes to the commissioner complaint process. Currently there are two different processes for complaints, one for formal complaints and one for informal complaints. The need to make changes to rule 3-201.0 and 3-201 is to provide clarification on the types of complaints filed against a commissioner and who addresses those complaints. Ms. Skinner reported that commissioners are often times aware that a complaint has been filed against them, but do not have clear knowledge of the complaint and who is addressing the complaint. Mr. Schwermer stated that commissioners are court employees and are not under the jurisdiction of the Judicial Conduct Commission, and therefore the complaint process would not be processed by the JCC, nor should the process necessarily be the same. Ms. Skinner described the details of the current process and procedures.

The committee discussed distinctions between informal and formal complaints against a commissioner. The committee discussed who is best situated to address a complaint. The committee discussed the possibility of having two complaint processes, one to address ethical complaints, and the other to address administrative/performance complaints. Judge Pullan stated that a presiding judge should not be a screener for commissioner complaints, but rather that the chairperson of the conduct commission would better serve in this capacity. Judge Pullan noted that ethical complaints are recommended to be addressed by the commissioner's presiding judge. Upon further discussion and consideration, the committee determined that there was not a meaningful way to distinguish between those complaints that might be classified as "ethical" as opposed to "administrative" in nature. All complaints appear to implicate ethical considerations.

The committee discussed specific draft provisions for possible revision of the rule. The committee then instructed Mr. Drechsel to create a draft for further consideration at the next meeting.

## **(6) APPROVAL OF MINUTES**

Judge Chin then arrived at the meeting. With a quorum was present, the committee considered the minutes from the October 5th, 2018 meeting. With no objections or amendments, Mr. Rice moved to approve the draft minutes. Judge Chin seconded the motion. A vote was taken and the motion passed unanimously.

## **(7) RULE 4-405 – CONTINUED DISCUSSION FROM #2 ABOVE**

The committee turned its attention back to this matter. Prior to a vote, Judge Chin was updated by the committee members regarding the information presented by John Bell, as well as the committee's discussions. After reviewing the matter, Judge Walton made motion to recommend to the Judicial Council that the proposed revisions to Rule 4-405 be published for public comment. Mr. Rice seconded the motion. A vote was taken and the motion passed unanimously.

## **(8) DISCUSSION OF PREVIOUSLY IDENTIFIED RULES WHERE NO CHANGE IS RECOMMENDED / CORRECTION OF MINOR PUNCTUATION:**

Mr. Drechsel then briefly updated the committee members regarding several rules that the committee had identified at the October 5<sup>th</sup> meeting. Mr. Drechsel reported that, after doing further research on these matters, he was recommending to the committee that the rules did not need any revisions at this time. Particular details, as follows:

**Rule 3-417:** The court is required as a public entity by the ADA to have a procedure to address rules and grievances concerns. The reason this is a public-facing rule and not just an internal policy is so the public can be aware of the information and act accordingly when the situation warrants.

**Rules 3-303 and 3-302:** Describes the role of the clerks of court. Mr. Drechsel reported that he had made contact with Kim Allard, Jim Peters, and Shane Bahr about any perceived need to amend these rules. None of those individuals believed any changes were warranted at this time.

**Rule 3-202:** The rule regarding court referees is not implicated by the domestic case tracking pilot currently taking place. No amendment is necessary.

**Rule 3-102:** Assumption of judicial office. The October review revealed that several commas could be added to the rule. The committee discussed whether it was better to simply make the change, push the changes through the full rulemaking process (even though it was merely three commas), or leave the rule alone. After discussion, it was decided to leave the rule alone.

After a review of all of the above, the committee determined that these rules did not need any revision at this time. No further action was taken by the committee in connection with these matters at this time.

## **(9) RULE 3-101(4) – JUDICIAL PERFORMANCE STANDARDS**

The committee began its discussion of this rule, which deals with the standards for assessing judges. Shortly after beginning this conversation, the committee paused the discussion to accommodate guests who had joined the meeting to discuss the next agenda topic.

## **(10) RECORDING / PHOTOGRAPHY IN COURTHOUSES**

Mr. Brent Johnson was welcomed to the meeting. Mr. Johnson had been invited to discuss a proposed rule to allow for recording or photographing in courthouses. There are three different common scenarios of recording in courthouses: the media; commercial use of the building; and regular patrons of the court. The Management Committee had asked Mr. Johnson to review the current policy and bring a proposed policy to Policy and Planning Committee for review. Mr. Johnson states that one proposal being discussed is to have judges dictate when and where recording should be allowed in their specific courtroom.

Mr. Johnson will conduct additional research on courtroom recording policies, and make additional revision to the proposed rule. Mr. Johnson will return at another date and provide additional information to this committee.

#### **(11) RULE 4-403 – ELECTRONIC SIGNATURE AND SIGNATURE STAMP USE**

Judge Evershed joined the meeting via phone just a few minutes into addressing this agenda item. Rule 4-403 allows for court clerks to electronically sign and use signature stamps on behalf of a judge or commissioner on orders and motions, with prior permission of the judge or commissioner. The proposed revisions would permit clerks to sign the equivalent of federal transport orders (i.e., “writs of habeas corpus and prosequendum and testificandum”). This same draft also would permit the use of signature stamps on orders of “domestic relations injunctions” under future URCP 109. The committee discussed the merits of these proposed changes.

After reviewing the matter, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rule 4-403 be published for public comment. Judge Walton seconded the motion. A vote was taken and the motion passed unanimously.

#### **(12) RULE 4-202.09 – MISCELLANEOUS**

Mr. Drechsel discussed that Rule 4-202.09 currently requires parties to label documents that are filed with a classification (private, protected, safeguarded, etc.). Many documents are not being filed with the required designation. Mr. Drechsel stated that e-filing has automated the designations based upon the filing type. The recommendation is that the requirement to classify the record at the top of the page be removed from this rule.

The committee discussed the deletion of this requirement and determined it would be appropriate; however, the Advisory Committee on Civil Procedures should review the entirety of Rule 4-202.09(10) to determine if action should be taken to move those provisions to the Utah Rules of Civil Procedure.

After reviewing the matter, Judge Walton made motion to recommend to the Judicial Council that the proposed revisions to Rule 4-202.09 be published for public comment. Mr. Rice seconded the motion. A vote was taken and the motion passed unanimously.

#### **(13) HR 590 – INTERNS AND WORK CONFLICTS**

Ms. Nancy Sylvester discussed HR 590 that addresses the availability of court interns to hold a second job. The current policy does not allow court interns to maintain their current position with the court, while maintaining employment or volunteering in a law firm / other legal work. The proposed HR policy would require interns to screen themselves from cases in which their other employment or volunteer position is associated with the case. If the court intern is employed with a law firm that has presence before the court, the intern will recuse themselves from that case.

Judge Pullan raised concern that there is an automatic conflict of interest for a court intern to continuing to maintain employment with a law firm that appears before court. The court intern will have access to information pertaining to the case. The court intern may be perceived as having unlimited access to the case information, that could be shared with opposing counsel. Members of the committee were concerned about the appearance of conflict.

Mr. Rob Parkes stated that all court interns are subjected to court’s HR policies.

The committee made recommendations for language changes to the proposed policy. Even after the revisions were drafted, the committee was still not convinced that such a policy was advisable. The committee asked Ms.

Sylvester to invite members of the Supreme Court to attend the next committee meeting to help the committee better understand the situation so that a solution might be crafted, if at all possible. Ms. Sylvester agreed to return for the next meeting and will provide updated information to this committee.

**(14) RULE 1-205 – STANDING AND AD HOC COMMITTEES**

Mr. Drechsel explained that rule 1-205 is currently out for public comment for some earlier-approved revisions. This proposed amendment to Rule 1-205 is to include the court security director to the court facilities planning committee. The current court security director, Mr. Chris Palmer, has been attending these meetings as a non-voting participant. That committee suggested that Mr. Palmer be added as a member of the committee so that he may be able to may provide input and vote.

The committee did not have other additional concerns or questions regarding the proposed amendments. After reviewing the matter, Judge Walton made motion to recommend to the Judicial Council that the proposed revisions to Rule 1-205 be published for public comment. Mr. Rice seconded the motion. A vote was taken and the motion passed unanimously.

**(15) RULE 4-508 – GUIDELINES FOR RULING ON A MOTION TO WAIVE FEES**

Mr. Drechsel briefly discussed an amendment to rule 4-508. This rule is currently out for public comment on other revisions. This additional amendment would clarify a party filing a motion to waive fees would only need to provide documentation in support of the affidavit if requested by the court. The committee discussed the matter.

After reviewing the matter, Judge Chin made motion to recommend to the Judicial Council that the proposed revisions to Rule 4-508 be published for public comment. Judge Walton seconded the motion. A vote was taken and the motion passed unanimously.

**(16) RULE 3-101(4) – CONTINUED DISCUSSION FROM #9 ABOVE**

The committee resumed discussion of this item. Rick Schwermer re-joined the committee for this portion of the meeting. Judge Pullan suggested that this committee hold off making any changes to this rule until the committee can better understand the implications of proposing changes. The committee discussed whether the “intent” section of the rule is accurate and drafted language that was more descriptive of the actual intent of the rule. This rule will be brought back in January for further discussion.

**(17) RULES 3-103, 3-104, AND 3-111 – PRESIDING JUSTICE COURT JUDGES**

Mr. Drechsel reminded the committee that several rules needed to be updated in light of the recent adoption of a rule creating presiding judges in justice courts. These rules had been identified by Judge Pullan as needing attention from the committee for this purpose. The committee discussed minor revisions to each rule that would bring consistency to certain responsibilities of being a presiding judge, regardless of whether the involved court is a district court or a justice court.

After reviewing the matter, Judge Chin made motion to recommend to the Judicial Council that the proposed revisions to Rules 3-103, 3-104, and 3-111 be published for public comment. Mr. Rice seconded the motion. A vote was taken and the motion passed unanimously.

### **(18) RULES 3-106 AND 3-107 – JUDICIAL COUNCIL OPTIONS ON LEGISLATIVE / EXECUTIVE INITIATIVES**

Rule 3-106: clarifies the Judicial Council’s ability to endorse, oppose and recommend amendments to, or take no position on Legislative (3-106) and Executive (3-107) matters.

After reviewing the matter, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rules 3-106 and 3-107 be published for public comment. Judge Chin seconded the motion. A vote was taken and the motion passed unanimously.

### **(19) RULE 2-208 – PUBLICATION AND DISTRIBUTION OF CJA**

Rule 2-208(2) was identified by Judge Pettit prior to her reassignment. The rule appeared to be out of date in requiring the AOC and each TCE to “maintain” a copy of the Code for public access and review. The committee reviewed draft language that would bring the rule into a more modern age where the internet is the primary source of information for the public.

After reviewing the matter, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rule 2-208 be published for public comment. Judge Walton seconded the motion. A vote was taken and the motion passed unanimously.

### **(20) RULE 3-501 – INSURANCE BENEFITS UPON RETIREMENT**

Rule 3-501 discusses ongoing insurance benefits for retired judges, justices, and commissioners. Judges, justices, and commissioners can qualify for 8 months of coverage if they do not use more than 4 sick leave days in the year. Currently, maternity leave is counted as sick leave. The proposed rule also designates parental leave as sick leave. The proposed language makes the rule more gender neutral. The committee briefly discussed the proposal.

After reviewing the matter, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rule 3-501 be published for public comment. Judge Walton seconded the motion. A vote was taken and the motion passed unanimously.

### **(21) RULE 3-109 – ETHICS ADVISORY COMMITTEE**

At the last meeting, Judge Pullan identified this rule for a potential revision. Rule 3-109 currently provides the Board of District Court Judges 30 days to request a reconsideration of an ethics opinion. The proposed revision would change this to 28 days, being an amount of time that is divisible by 7 (as many other time period have become over the last several years). During the discussions, the committee determined that there was a need for the time period to be at least 30 full days, so that the Board would have an opportunity to meet prior to the request for reconsideration being required. After discussion, the committee decided to not pursue any change to this rule at this time.

### **(22) RULE 3-413 – JUDICIAL LIBRARY RESOURCES**

Mr. Schwermer and Ms. Jessica Van Buren were welcomed as guests to the meeting. The committee discussed proposed language changes that have been made to rule 3-413 to reflect current practices. At the time the rule was created, electronic research resources were not robust as print publications. The proposed revisions, therefore, also reflect the increasing importance of electronic research resources in court activities. The proposed revisions makes no change to actual current practices.

Ms. Van Buren indicates that the court has access to Westlaw and HeinOnline, as well as other free resources. The committee discussed the need for printed copies, as opposed to electronic copies. Many judges prefer printed

copies. The committee recognized that both types of research materials are important. The committee discussed the proposed revisions in detail.

Following further discussion and additional minor language changes for clarification, Mr. Rice made motion to recommend to the Judicial Council that the proposed revisions to Rule 3-413 be published for public comment. Judge Chin seconded the motion. During this conversation, Judge Evershed was disconnected from the meeting (at approximately 2:20 p.m.). A vote was taken with a quorum still present and the motion passed unanimously.

**(23) ADJOURN**

The meeting adjourned at approximately 2:38 p.m. The next meeting will be held on December 7th, 2018, starting at 12:00 noon.

DRAFT



# Tab 3



**R597-3-5. Public Comments.**

(1) Persons desiring to comment about a particular judge with whom they have had experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than March 1<sup>st</sup> of the year in which the judge's name appears on the ballot.

(3) Comments received after March 1<sup>st</sup> of the year in which the judge's name appears on the ballot will be included as part of the judge's mid-term evaluation report in the subsequent evaluation cycle.

(4) Comments received about a judge after the mid-term evaluation cycle ends will be included in the judge's next retention evaluation report.

(5) ~~Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.~~ Persons submitting comments may choose whether to include their name and contact information with their submission.

(6) All public comments are subject to GRAMA, pursuant to 78A-12-206(1).



# Tab 4





## Senior Judge Application Active Status

### Qualifications for Office

I, Glen R. Dawson, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is \_\_\_\_\_ and my retirement date is 12/31/2018.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

\_\_\_\_\_  
 My email address and phone  
 number are: \_\_\_\_\_

#### **Judicial Performance Evaluation Information**

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2015	2016	2017	2018
30	30	30	30

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

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- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Oct. 1, 2018  
Date

Glen R. Dawson  
Glen R. Dawson

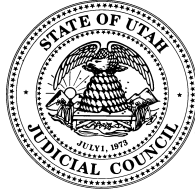
Please complete and return by October 1, 2018 to:

Nancy J. Sylvester  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241  
Fax: 801-578-3843  
Email: [nancyjs@utcourts.gov](mailto:nancyjs@utcourts.gov)



# Tab 5





## Administrative Office of the Courts

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

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

November 5, 2018

### MEMORANDUM

**TO: Management Committee and Utah Judicial Council**

**FROM: Brent M. Johnson**

**RE: Forms Committee Vacancy**

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The Forms Committee has a vacancy for a court commissioner member. This is a result of a recent rule change creating a position for a court commissioner. In accordance with usual practice, we asked the Board of District Court Judges to recommend a member. The Board of District Court Judges has recommended that Commissioner Russell Minas be appointed to the position. Commissioner Minas is anxious and willing to serve.

Although Commissioner Minas was only recently appointed to be a commissioner he has long been active in matters involving the administration of justice. Commissioner Minas has served on the OCAP Policy Board, the Standing Committee on Children and Family Law, the Utah Child Support Guidelines Advisory Committee, the Executive Committee of the Family Law Section of the Bar, and the Committee on Resources for the Self-Represented.

Commissioner Minas will be an excellent member. The Forms Committee recommends that Commissioner Minas be appointed.

**The mission of the Utah judiciary is to provide an open, fair,  
efficient, and independent system for the advancement of justice under the law.**

**Court Forms Committee members**

**Randy L. Dryer**, Chair, S. J. Quinney College of Law

**Kim Allard**, Administrative Office of the Courts

**Cyndie Bayles** , UPA President

**Christina Cope**, Fourth District Court

**Guy Galli**, Third District Court

**Judge Elizabeth Lindsley**, Third District Juvenile Court

**Kara Mann**, Administrative Office of the Courts

**Nathanael Player**, Self-Help Center

**Stewart Ralphs**, Legal Aid Society of Salt Lake City

**Judge James Taylor**, Fourth District Court

**Jessica Van Buren**, Utah State Law Library

**Mary E. Westby**, Court of Appeals



## Administrative Office of the Courts

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

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

October 17, 2018

### MEMORANDUM

**TO:** Management Committee of the Utah Judicial Council  
**FROM:**  Brent M. Johnson  
**RE:** Forms Committee Vacancy

The Forms Committee has a vacancy for a Justice Court Judge member due to the resignation of Judge Greg Bown. In accordance with usual practice, we asked the Board of Justice Court Judges to recommend a judge. The Board of Justice Court judges has recommended that Judge Randy Birch be appointed to the position. Judge Birch is willing to serve. Judge Birch was appointed as a justice court judge in Heber City in 2010. For over 25 years, and prior to his bench appointment, Judge Birch served as a small claims judge pro tempore in Salt Lake and Summit counties. Judge Birch previously served on the Board of the Utah Association of Criminal Defense Lawyers. Judge Birch is not currently serving on any court committees.

I know Judge Birch fairly well and I believe he will be an excellent member. The Forms Committee recommends that Judge Birch be appointed.

The mission of the Utah judiciary is to provide an open, fair,  
efficient, and independent system for the advancement of justice under the law.





# Administrative Office of the Courts

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

November 5, 2018

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

## MEMORANDUM

**TO:** Management Committee and Judicial Council

**FROM:** Nancy Sylvester

**RE:** Model Utah Civil Jury Instructions Plaintiff Attorney and Linguist Appointments

**Name of Committee:** The Standing Committee on the Model Utah Civil Jury Instructions (MUJI-Civil)

**Reason for Vacancy:** Christopher Von Maack elected not to seek a second term.

**Eligibility requirements:** The first position is for an attorney who primarily represents civil plaintiffs and the second is for a linguist.

### Current committee member list:

Last	First	Title	Appointed	Current Term Start	Term End	Role
Sylvester	Nancy	Staff	6/23/2014	6/23/2014	-	Staff
Stone	Andrew	Judge	9/1/2012	9/11/2017	9/11/2020	Chair, Judge
Di Paolo	Marianna		2/26/2003	10/27/2014	10/27/2018	Linguist
Ferre	Joel		7/1/2015	8/17/2018	8/17/2018	Defendant
Fowler	Tracy		2/26/2003	10/27/2014	7/1/2019	Defendant
Kelly	Keith	Judge	11/20/2017	11/20/2017	11/20/2020	Judge
Mortensen	Doug		4/16/2018	4/16/2018	4/16/2021	Plaintiff
Shapiro	Ruth		2/27/2017	2/27/2017	2/27/2020	Defendant
Shurman	Lauren		11/20/2017	11/20/2017	11/20/2020	Defendant
Simmons	Paul		2/26/2003	10/27/2014	7/1/2019	Plaintiff
Summerill	Peter		11/19/2007	10/27/2014	7/1/2019	Plaintiff
Von Maack	Christopher		10/29/2015	10/29/2015	10/29/2018	Plaintiff

The mission of the Utah judiciary is to provide an open, fair, efficient, and independent system for the advancement of justice under the law.

**Description of recruitment process:**

For the plaintiff position, I circulated an email to the Utah State Bar listserv. There are only a couple linguists in the state, so the committee requests that the linguist position be treated more like a staff position, which is basically the way the Supreme Court treats the Professor of Civil Procedure position on the Rules of Civil Procedure Committee.

**List of names for consideration:**

Randy Andrus  
David Head  
Alyson McAllister  
George Tait

**Statement of interest:**

The applicants' letters or emails are attached.

**List of other current and past court committee assignments:**

Randy Andrus: None.

David Head: None

Alyson McAllister: Subcommittee on Civil Rights Jury Instructions

George Tait: None

**Recommendation:**

The committee would be pleased to welcome any of these applicants. Judge Stone and I are still in discussions about an appropriate replacement for Christopher Von Maack. I will come to the Management Committee prepared to discuss the recommendation.



299 SOUTH MAIN STREET, SUITE 1300  
SALT LAKE CITY, UTAH 84111-2241

000043  
RANDY M. ANDRUS  
TRIAL LAWYER  
OFFICE: 801.535.4645  
RANDY@ANDRUSFIRM.COM  
WWW.ANDRUSFIRM.COM

October 11, 2018

Nancy Sylvester  
Associate General Counsel  
Administrative Office of the Court  
**UTAH JUDICIAL COUNCIL**

**VIA ELECTRONIC MAIL**  
nancyjs@utcourts.gov

**Re: Application – Standing Committee on Model Utah Civil Jury Instructions**

Dear Ms. Sylvester:

I raise my hand with this application to serve on the Standing Committee on Model Civil Jury Instructions. I represent civil plaintiffs, which I have done for over 33 years. I have not served on any Court Committee, although I have served and have experience in serving on other committees as well as service as a judge, arbitrator, and mediator.

Enclosed is my brief Resume, as well as a summary of Results & Testimonials for your reference.

Thank you for your consideration.

Warmest regards,

**ANDRUS LAW FIRM, LLC**

*Randy M. Andrus*

**RANDY M. ANDRUS**  
Attorney at Law

Enclosures

**RANDY M. ANDRUS**  
**ANDRUS LAW FIRM, LLC**

299 S. Main Street, Suite 1300  
 Salt Lake City, Utah 84111  
 (801) 400-9860  
 randy@andrusfirm.com

**EDUCATION & LICENSING**

**Active Member**, State Bar of Utah, Bar No.: 10392  
 State Bar of California, Bar No.: 116745

**Master of Laws**, University of the Pacific, McGeorge School of Law, Sacramento, California, 1987

- Business and Taxation – Transnational Practice
- Courses taken at University of Salzburg, Austria
- Assisted with International Bar Association, Convention, Vienna, Austria

**Juris Doctor**, Southwestern University School of Law, Los Angeles, California, 1984

- Dean's List
- President, Howard W. Hunter Law Society

**Bachelor of Arts**, Brigham Young University, Provo, Utah, 1981

- College of Humanities, French, literature
- Scholarships: Presidential Scholar and Alvina S. Barrett Scholar
- GPA 3.56/4.0

**Associates in Arts and Sciences**, Ricks College, Rexburg, Idaho, 1978

- Academics Council Committee Chairman
- GPA 3.86/4.0

**EXPERIENCE**

**Trial Lawyer**

Andrus Law Firm, 2013 to present, Salt Lake City, Utah

Andrus Attorneys, 2003 to 2011, California and Utah

- Represented full range of civil litigation clients, intake to conclusion
- Numerous jury trials, arbitrations, mediations in state, federal, appellate, and other forums
- Managed staff of attorneys, paralegals, legal and office assistants in team case work up

**Of Counsel**

Pia, Anderson, Dorius, Reynard & Moss, 2011-2012, Salt Lake City, Utah

- Represented full range of civil litigation clients, intake to conclusion

**Associate Attorney**

Guy G. Gibson & Associates, Folsom, California (1996-2002)

Allen Law Corporation, Sacramento, California (1984-1995)

- Represented full range of civil litigation clients, intake to conclusion
- Numerous jury trials, arbitrations, mediations in state, federal, appellate, and other forums

**Internship**, Patry Junet Simon et LeFort, Geneva, Switzerland, 1984

- Legal research and case development in international commercial and Swiss banking cases

**Law Clerk**, Munns Kofford Hoffman Hunt & Throckmorton, Pasadena, California, 1983

- Researched legal issues, drafted internal memoranda and summaries, trial preparation

**SKILLS & INTERESTS**

**Judge Pro Tem**, appointed service in Municipal/Superior Courts, Sacramento County, California

**Alternative Dispute Resolution Judge Pro Tem**, El Dorado County, California

**Personal**, family, networking, sports, traveling

**Other languages**, French

## RESULTS & TESTIMONIALS

### Labor/Employment

- Represented one of many former employees of fortune 500 companies in a wrongful termination action, whose injuries were totally and permanently disabling resulting in a structured settlement for life.
- Represented key executives, including both the Founder/Chief Executive Officer and the President and members of the Board of Directors, of insurance company, in the equity merger negotiations, and drafting of buy-sell documents, including employment compensation and bonus agreements, stock option and purchase agreements.
- Represented client in legal malpractice action involving employment issues resulting in judgment in favor of the employee in excess of \$1 million.
- Represented terminated insurance representative in wrongful termination action resulting in jury verdict in excess of \$700,000.
- Represented and negotiated player contract terms for professional athletes, including the National Football League.
- Represented employees in discrimination, sexual harassment, civil rights, termination, and retaliation claims, including against a prominent professional sports organization.
- Represented key executive of national health insurance company, involving breach of contract, religious discrimination, and severance claims.

“I also recognize your contributions, hard work and dedication; that I could not have done this alone, but relied on you to navigate us through the legal process – which you did with much style, tact, and aplomb . . . I heeded your advice at every turn and we worked together to conquer the giant.”

### Civil Litigation

- Represented oil company against claims of underground petroleum environmental contamination.
- Represented elderly couple against mortgage lender for age discrimination in lending action.
- Represented basketball league and executive against competitor, obtaining injunctive relief and monetary recovery for damages due to unfair competition and violation of trade secrets.
- Represented family members in wills, trusts, and other estate disputes.
- Represented property owner losses to land and structures in arson fire involving 700 acres.
- Represented elderly widow against moving company which added weight to an interstate move involving PUC regulation violations, with full jury verdict.
- Represented business owner against City for breach of contract with full arbitration award.
- Represented real property owners in the United States against claims involving the Courts and claims in Pakistan.

“This comes with sincere gratitude . . . thank you for all the hard work you did on our lawsuit. You took our case when no one else would, and we really appreciate all the time and effort.”

## Real Estate

- Represented owners of residential home for construction defect and fraudulent non-disclosure with a jury verdict for full recovery.
- Represented buyers in action for real estate non-disclosure against sellers. Binding arbitration resulted in full recovery in favor of buyers, including attorney fees. Sometime later, the opposing party wanted to become a client and hired me on multiple other legal matters.
- Represented commercial real estate tenant against property owner for substantial damages due to breaches of lease resulting from multiple construction code violations.
- Represented landowners of ranch and other properties regarding property boundary disputes.
- Represented joint tenant in partition actions involving historical and other properties.
- Represented property owner against City for inadequate municipal drainage system which caused flooding and damage to rental complex.

“Attorney Andrus was completely understanding . . .

He was very positive but let me know what I was up against at the same time.

He worked very hard for me and I was quite impressed with his ability to stand firm on negotiations.”

## Personal Injury

- Represented parents in wrongful death matter of daughter against a major health care provider.
- Represented parents against insurance company to recover death benefits for deceased son, resulting in the recovery of policy limits, and additional sums for bad faith insurance practices.
- Represented husband and wife in a products liability matter against a national manufacturer following an explosion from a water heater resulting in serious burn injuries and permanent scarring, also involving recovery for the wife’s loss of consortium claim.
- Represented mother and daughter, critically injured victims of a highway crash caused by the negligence of a drunk driver with recovery of policy limits from multiple insurance companies.
- Represented in federal court a cruise ship passenger who suffered injuries from spewing fire which erupted on deck from the engine of the foreign-registered cruise ship while sailing in international waters, causing severe emotional and psychological injury.
- Represented estate of deceased visiting professor from foreign country who died after being denied medical benefits under an ERISA health benefit plan, *Embassy of the Arab Republic of Egypt v. Lasheen*, 603 F.3d 1166 (9th Cir. 2010); 485 Fed. Appx. 203 (9th Cir. 2012); 13-17143 (9th Cir. 2015); *cert. denied*, 578 U.S. \_\_\_\_ (2016).

“In the end, he helped me more than I ever thought anyone could.

I will be forever grateful to Attorney Andrus for everything he has done for me.

I would certainly recommend him to anyone suffering a situation that is or seems to be out of their control.”

**HEAD LAW®**

David S. Head, Attorney at Law  
111 E. 5600 S., Ste. 100, Murray, UT 84107  
Phone: (801) 691-7511 | Fax: (801) 691-7512  
Email: Dhead@headlawusa.com

October 12, 2018

ATTN: Nancy Sylvester  
Utah Judicial Council  
[nancyjs@utcourts.gov](mailto:nancyjs@utcourts.gov)

*Re: Standing Committee on Model Utah Civil Jury Instructions*

To Whom It May Concern:

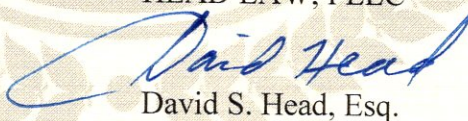
Please find enclosed my application for the Standing Committee on Model Utah Civil Jury Instructions. More specifically, I am applying for the available position for an attorney who primarily represents civil plaintiffs. I am interested in the foregoing position because I have a deep interest in serving my community and profession, and would like to be involved in the further development of civil jury instructions in Utah.

First, I am invested in serving my community. I am currently on the Board of Governors for the Utah Association of Justice (UAJ). I am also member of the UAJ's Legislative Committee wherein I have assisted in drafting and opposing legislation to protect the constitutional rights of Utah citizens. I am also part of the Utah State Bar's 2018 Utah Leadership Academy (Academy), which has further deepened my desire to serve the Utah Bar. As part of the Academy, I have learned more about court committees, and I have wanted to participate on a court committee to help serve other members of the legal profession.

Second, over the last eight (8) years, I have regularly tried civil cases on behalf of plaintiffs, and I have realized the importance of jury instructions in the jury's ultimate deliberation and verdict. Accordingly, I am interested in this position because I want to help in the further development of the Model Utah Civil Jury Instructions to help the process be even clearer and easier for litigants and juries.

In conclusion, I know I will be of great service as a member of the Standing Committee on Model Utah Civil Jury Instructions. Thank you for your consideration of my application.

Sincerely,  
HEAD LAW, PLLC



David S. Head, Esq.

Enclosure(s)

**DAVID S. HEAD**

111 E. 5600 S., Ste. 100  
Murray, UT 84107  
Telephone: (801) 691-7511  
Facsimile: (801) 691-7512  
[dhead@headlawusa.com](mailto:dhead@headlawusa.com)

**LICENSE**

**Utah Law License**

Admitted in October 2010, Bar Number 13237

**EXPERIENCE**

**Head Law, PLLC**, Murray, Utah, April 2015-Present

President and Managing Attorney

Represent and manage all aspects of personal injury, insurance, and civil and commercial litigation matters for clients, including the initial case evaluation, preparation, discovery, trials, and appeals.

**Salt Lake City Justice Court**, Salt Lake City, Utah, March 2018-Present

Judge Pro Tempore

Judge small claims cases and traffic infraction cases.

**Arrow Legal Solutions Group, PC**, Midvale, Utah, September 2010-April 2015

Associate Attorney

Represented clients in employment law, personal injury, and criminal law matters. Performed all parts of litigation, including, but not limited to, draft complaints, motions, memoranda and briefs, including appellate briefs; and conduct discovery, oral arguments, evidentiary hearings and trials.

**Utah Division of Occupational and Professional Licensing**, Salt Lake City, UT

January 2014-April 2015

Medical Malpractice Prelitigation Panel Chairperson

Conducted and led prelitigation panels for medical malpractice cases, including issuing the respective decisions, and drafting the corresponding panel opinions.

**St. Mary's University Center for Legal & Social Justice**, San Antonio, Texas

**Civil Justice Clinic**

Fall 2009- Spring 2010

Student Attorney

Provided consumer protection, probate, family law, debt collection, and social security legal services and counsel for indigent clients. Performed research, filed documents at the courthouse, drafted legal pleadings, and interviewed clients.

**Law Professor Robert L. Summers**, San Antonio, Texas, Spring 2008-Spring 2010

Research Assistant

Conducted national security and intelligence law research. Assisted in the compilation of national security law and intelligence law casebook.

## **EDUCATION**

**St. Mary's University School of Law**, San Antonio, Texas

Doctor of Jurisprudence, 2010

- 2010 Presidential Management Fellows Nominee
- Pro Bono Service Certificate

**St. Mary's University Graduate School**, San Antonio, Texas

Master of Arts, Major: International Relations, 2010

Grade Point Average: 3.96

- 2010 Distinguished Graduate

**University of Utah**, Salt Lake City, Utah

Bachelor of Arts, Major: Political Science; Minor: Spanish, 2007

Grade Point Average: 3.44

- **Universidad de Oviedo**, Oviedo, Spain
  - Spanish Language Program Certificate of Completion, 2007

## **PUBLISHED DECISIONS**

- *O'Hearon v. Hansen*, 2017 UT App 214, 409 P.3d 85 (Utah App. 2017)
- *Valerios Corp. v. Macias*, 342 P.3d 1127, 2015 UT App 4 (Utah App. 2015)
- *Merena v. Davis*, 283 P.3d 973, 2012 UT App 193 (Utah App. 2012)

## **PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS**

- Utah State Bar, Utah Leadership Academy (2018)
- Utah Association for Justice, Board of Governors
- Utah Association for Justice, Legislative Committee
- Utah Association for Justice, Member

## **LANGUAGES**

- Fluent in Portuguese (lived in Brazil for two years)
- Fluent in Spanish

## **INTERESTS**

- Painting; mixed martial arts; traveling to Europe and Latin America

LIST OF CURRENT AND PAST COURT COMMITTEE ASSIGNMENTS

- None.

# SYKES | McALLISTER

LAW OFFICES PLLC

**Attorneys:**

Robert B. Sykes  
[bob@sykesmcallisterlaw.com](mailto:bob@sykesmcallisterlaw.com)  
Alyson C. McAllister  
[alyson@sykesmcallisterlaw.com](mailto:alyson@sykesmcallisterlaw.com)  
C. Peter Sorensen  
[pete@sykesmcallisterlaw.com](mailto:pete@sykesmcallisterlaw.com)

*Practice Concentrates in  
Personal Injury Law  
Brain and Spinal Cord Injuries  
Civil Rights Litigation*

311 So. State Street, #240  
Salt Lake City, UT 84111  
(801) 533-0222 phone  
(801) 533-8081 fax

October 12, 2018

Utah Judicial Council  
c/o Nancy Sylvester  
[nancyjs@utcourts.gov](mailto:nancyjs@utcourts.gov)

**Re: Statement of Interest for Serving on MUJI Standing Committee**


Dear Council Members:

I would like to be considered for the open position on the standing committee for Model Utah Jury Instructions. I am an attorney practicing law in a small firm in Utah. I have spent the last approximately fifteen years almost entirely representing civil plaintiffs. I was invited to attend one of the standing committee meetings and present/explain some draft civil rights instructions on behalf of another attorney serving on that committee. I found the process to be very interesting, and I believe I could be a valuable part of this committee.

I previously served on the sub-committee for civil rights, where I regularly attended the meetings. While serving on that committee, I spent a lot of time researching, discussing, and putting together information that was useful in putting together a draft of instructions to be submitted to the standing committee. I enjoyed the process, and believe I was a helpful and contributing member of the sub-committee. I am also serving on the sub-committee for the assault/false arrest instructions. A list of my current and past committee assignments is included on my resume.

I am willing, and would be happy to serve, on the standing committee. I appreciate your consideration of my application.

Very truly yours,



Alyson C. McAllister



**ALYSON CARTER**  
**MCALLISTER**  
 PARTNER

### ABOUT

Alyson is a partner in the law firm Sykes McAllister Law Offices. She handles all types of plaintiff's civil litigation. She currently serves on the Boards of Governors for both the Utah Association for Justice and the American Association for Justice. During her 15 years of practice, she has tried many cases, both to juries and at arbitration, and has also argued several civil rights cases to the 10th Circuit Court of Appeals. She is married to Jared McAllister, and they live in Davis County with their son, James.

### VITALS

311 S. State St., Ste. 240  
 SLC, UT 84111  
 T 801-533-0222  
 E [alyson@sykesmcallisterlaw.com](mailto:alyson@sykesmcallisterlaw.com)

## EXPERIENCE

### **SYKES MCALLISTER LAW OFFICES, SLC, UT**

SEPTEMBER 2014-PRESENT

Alyson is currently a partner and co-founder of Sykes McAllister Law Offices. In addition to handling a full caseload, she performs many of the administrative tasks traditionally assigned to a managing partner. Alyson has served as a mentor in the New Lawyer Training Program for many years, and has recently begun volunteering to represent pro se litigants with matters in front of various Commissioners in the Third District Courts.

### **ROBERT B. SYKES & ASSOCIATES, SLC, UT**

MAY 2002-JULY 2014

Alyson began clerking for Sykes & Associates during her 2L summer of law school, and worked for them until she had her son, James, at which time the firm was restructured to allow for more flexibility and control over her schedule. During this time, Alyson gained experience in all aspects of litigation, including depositions, mediations, arbitrations, motions, oral arguments, trials, and appeals.

### **SCALLEY & READING, SLC, UT**

MAY 2001-SEPTEMBER 2001

Alyson clerked for Scalley & Reading during her 1L summer of law school. During this time, Alyson gained experience in drafting various types of legal documents, such as settlement demands, pleadings, and motions. It was there that she became interested in the area of plaintiff's civil litigation.

## EDUCATION

### **UNIVERSITY OF UTAH, BS POLITICAL SCIENCE**

During her time at the University of Utah, Alyson obtained a certification in International Relations. She also served an internship with the U.S. Department of the Treasury through the Hinckley Institute

### **J. REUBEN CLARK LAW SCHOOL, JD**

While in law school, Alyson was a part of the Native American Moot Court team. She was admitted to the Ute Reservation Bar during her third year, and defended juveniles in court on the reservation. She also participated in a program offering

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**ALYSON CARTER  
MCALLISTER**  
PARTNER

assistance to pro se litigants seeking to obtain restraining orders and filing paperwork for divorce and custody cases.

### **CONTINUING LEGAL EDUCATION**

Since law school, Alyson has taken numerous continuing legal education courses covering a multitude of topics. She has also frequently been invited to lecture other lawyers at legal seminars on a variety of subjects, such as civil rights, personal injury related topics, and legal writing.

### **BAR ADMISSIONS AND SERVICE**

#### Admissions

Utah State Bar

U.S. District Court, District of Utah Bar

U.S. Court of Appeals – Tenth Circuit

Ute Tribal Bar

#### Service

MUJI Sub-committee for Civil Rights

MUJI Sub-committee for Assault/False Arrest

Board of Governors, Utah Association for Justice

Executive Committee, Utah Association for Justice

Education Committee, Utah Association for Justice

Journal Committee, Utah Association for Justice

Board of Governors, American Association for Justice

Membership Committee, American Association for Justice

Public Education Committee, American Association for Justice

Mentor, Utah State Bar NLTP

Volunteer, Pro Se Calendar, Third District Court

### **PROFESSIONAL MEMBERSHIPS AND HONORS**

#### Professional Memberships

Utah State Bar Association

American Bar Association

Utah Association for Justice (formerly the Utah Trial Lawyers Association)

American Association for Justice (formerly the American Trial Lawyers Association)



Nancy Sylvester &lt;nancyjs@utcourts.gov&gt;

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## Application - Judicial Council Standing Committee on MUJI

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**George Tait** <george@georgetaitlaw.com>

Sat, Sep 29, 2018 at 11:07 AM

To: nancyjs@utcourts.gov

To Whom It Concerns:

Please consider the following my application for the opening for an attorney on the standing committee who primarily represents civil plaintiffs .

**Statement of Interest:**

Over the years I have exclusively represented plaintiffs in civil litigation. These cases include personal injury cases concerning motor vehicle, premises liability, pedestrians, dog bites, semi-truck litigation and medical malpractice of all types. I am keenly interested in the the civil rules and appreciate the nuances.

**Current & Past Committee Assignments:**

I have never served on any committee assignments. I have been a small claims judge in Salt Lake City for over ten years.

**Resume:**

Attached.

Thanks-you.

George Tait RN JD  
[george@georgetaitlaw.com](mailto:george@georgetaitlaw.com)  
[www.georgetaitlaw.com](http://www.georgetaitlaw.com)

George Tait Law, LLC  
4444 South 700 East, Suite 106  
Salt Lake City, Utah 84107

801-487-6454  
855-207-6118 (Toll Free)

**George Tait - Resume.pdf**

18K

# **George Tait**

## Personal:

754 East Logan Avenue  
Salt Lake City, Utah 84105  
Home: 801-512-1398

## Business:

4444 S. 700 E, Suite 106  
Salt lake City, Utah 84107  
801-487-6454  
E-mail: [george@georgetaitlaw.com](mailto:george@georgetaitlaw.com)

## **Education**

S. J. Quinney School of Law – Juris Doctor  
Graduated December 2003. Salt Lake City, Utah

University of Utah – B.S. Psychology (minor philosophy)  
Graduated 2000. Salt Lake City, Utah

University of Manitoba – School of Nursing  
Graduated May 1992. Winnipeg, Canada

## **Legal Experience**

George Tait Law, LLC Salt Lake City, Utah  
Nov. 2005 – Present: Solo practitioner representing plaintiffs in personal injury and medical malpractice.

Christus Health Shreveport, Louisiana  
July 2004 – Jan. 2005: Risk management and medical malpractice claims investigator for Texas and Louisiana Region including five separate facilities encompassing about 7000 beds.

## **Nursing Experience**

University of Utah Burn Trauma Intensive Care Unit. Charge Nurse: 1996 to 2005. Salt Lake City, Utah



# Tab 6



**TO: Utah Bar Foundation**

**FROM: Nathanael Player, Director, Self-Help Center of the Utah State Courts**

**RE: 2019 IOLTA Grant Application**

**DATE: October 1, 2018**

The Self-Help Center of the Utah State Courts (SHC) seeks a one year grant of \$19,095 to start on January 1, 2019. These funds would allow the Self-Help Center to continue to provide substantial services to *pro se* parties seeking assistance on the *pro se* calendars at the Matheson courthouse so that unrepresented parties and volunteer attorneys receive support before, during and after the calendars.

**Explanation of Self-Help Center services for *pro se* calendars**

Each commissioner at the Matheson Courthouse holds *pro se* calendars. These calendars consolidate cases where parties are unrepresented in domestic cases onto one calendar. At the calendars, volunteer attorneys appear to represent *pro se* parties on a limited scope basis. The commissioners regard these calendars as very successful.

The SHC is a regular participant at these calendars, working behind the scenes to help ensure continued success. The SHC helps before the hearing by providing guidance and support for volunteers, during the hearings by drafting orders and directing volunteers to make the most of their time and after the hearings by preparing final documents for unrepresented parties.

Before there is a calendar, SHC staff carefully review dockets for each scheduled case. Family law cases can be complex and have long histories. SHC staff cut through the confusion and identify the key issues; they print copies of the relevant pleadings and bring them to the hearing. This is a unique function that only court staff can perform because filings in family law cases are not public.

When the hearings begin, SHC staff are there to take attendance of unrepresented litigants, explain the availability of free legal help and manage expectations for wait times during the calendar. SHC attorneys also welcome volunteer attorneys, orient them as to who needs help, and to break down what exactly is at issue in a given case, providing an organized packet of pleadings. This means volunteers feel supported and can hit the ground running, making the most of their volunteer time.

During the hearings, SHC staff draft orders based on commissioners' rulings. This enables people at the calendar walk to out of the courtroom with an order so they understand what happened and what is required of them. If there is only one party at the hearing, SHC staff help explain service of the order. Once a case is finished SHC

staff direct volunteers to other *pro se* parties who still need help and again provide a briefing on the case and packet of relevant pleadings. This makes the calendars efficient and means several people receive needed help.

After the calendars, *pro se* parties need help completing the last step of their case – preparing and filing their final documents. This can be a daunting task and can confuse some people as there are several different pieces required and all of the documents must be consistent. The SHC gets people over this hurdle by gathering needed information and preparing these final documents for people, drafting all of the necessary pleadings, identifying next steps and following up with an email explaining how to finalize the case.

### **The need and rationale**

The large role the SHC plays behind the scenes at the *pro se* calendars takes time. The calendars can take up to two hours to prepare for. The follow up to prepare final documents for a case can also take up to two hours. This means SHC staff may need up to four hours per calendar. There are typically ten calendars per month.<sup>1</sup> Sustaining this level of meaningful help on the calendars would require an extra 40 hours per month, which averages to ten hours per week.

The five SHC staff attorneys only work part-time, currently at 30 hours per week. There are only a few hours staff attorneys have when they are free to catch up on administrative tasks or attend a training – most of their time is needed to answer incoming calls, emails and texts.

This request is for funding in the amount of \$19,095 to allow the SHC to continue providing this important support at the *pro se* calendars. Growing demand for SHC time and limited resources mean there is internal resistance to the SHC's continued participation on the calendars. Meanwhile, demand for the SHC's core services of helping people via phone, text and email continues to be high. The SHC cannot sustain all of its current endeavors without increased hours for its staff.

### **Thank you for your consideration**

This grant would allow this important program to continue and mean hundreds of people get help. Last year 807 people received assistance from the Self-Help Center on a *pro se* calendar. Funding this project would also mean ongoing participation by volunteer attorneys as they would continue to be supported with knowledge and guidance as they try to help unrepresented parties who might not be able to explain what they need in their case.

Thank you very much for your invitation to apply for this funding and for your consideration.

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<sup>1</sup> A typical calendar will have anywhere from six to 12 cases on it, meaning 12 to 24 people can get help.

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**UTAH BAR FOUNDATION**  
**2019 GRANT APPLICATION COVER SHEET**

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Name of Organization/Applicant: Utah State Courts' Self-Help Center

Address: P.O. Box 140220  
Salt Lake City, UT 84114-0220

Contact Person: Nathanael Player, Director

Phone Number: 801-238-7921

Email: nathanaelp@utcourts.gov

Total Amount of Funding Requested for January – December 2019: \$19,095.00

Please provide a brief description of the project for which you are applying for funding:

See attached.

## DESCRIPTION OF ORGANIZATION AND PROGRAM

1. Provide a brief description of your organization including all of the programs offered. If your organization provides services similar to other legal service providers, please explain how your organization will differ.

The Self-Help Center is a free service of the Utah State Courts to help people understand their legal rights and responsibilities and to help them resolve legal problems on their own if they cannot afford a lawyer or choose not to hire one.

The Self-Help Center is a virtual center that provides services through a toll-free telephone helpline, email, text and the court's website. The center's staff speaks English and Spanish and is able to access court interpreters if someone speaks another language. The center helps people with cases at all court levels—justice, juvenile, district and appellate—and responds to questions about all legal issues.

In addition to the primary service of answering people's questions via phone, email and text, the Self-Help Center provides support on *pro se* calendars at the Matheson courthouse. This involves review of court documents, printing of relevant filings and briefing volunteer attorneys at these calendars on the matters at issue in a given case. The Self-Help Center also provides outreach and training to community partners on the courts' substantial library of self-help resources.

Last fiscal year the Self-Help Center fielded 19,766 contacts, averaging almost 100 contacts per day.

2. Please provide a description of the specific legal project for which funding is being requested. **Please include a project budget that shows projected revenue and expenses.** Describe the specific purposes and uses for which you are requesting funds.

See attached.

3. Please describe how the legal work is supervised in your organization (i.e. overseen by a senior attorney) and provide the experience of that supervising attorney. (If you are a provider of legal education, you do not need to answer this question).

The Self-Help Center is a part of the Utah State Courts. This means no legal advice or representation is given as the courts must remain neutral. The Self-Help Center is supervised by Nathanael Player. Nathanael has been practicing since 2010. His litigation experience focused on representing low-income tenants facing eviction. As the supervising attorney of the Eviction Defense Collaborative in San Francisco, he managed

11 staff attorneys and helped to start a trial program that provided representation for hundreds of tenants in San Francisco. This involved developing new policies and procedures to accommodate this work, drafting boilerplate trial documents and a new retainer. It also involved training staff on negotiation and trial representation. Nathanael personally litigated or oversaw the litigation of hundreds of eviction cases. He also helped to manage the drafting of two major reports documenting evictions in San Francisco by guiding research efforts, managing staff and revising drafts. The reports were cited by the City Budget and Legislative Analyst and were a key factor in closing loopholes in San Francisco's rent ordinance. Nathanael also practiced in Washington, D.C. representing tenants at numerous evidentiary hearings. His multi-jurisdiction perspective in cities that are relatively resource rich gives him a sense of what else could be possible in terms of expanding legal services in Utah.

4. Please describe the overall fiscal health of your organization. Please describe your current funding for your entire agency budget. Please indicate if your revenue and funding sources have remained stable, increased or decreased. Please explain if you have a cash reserve or an endowment that can be drawn down during economically difficult times.

The Self-Help Center is a part of the Utah State Courts. Our funding is part of the state general fund.

The five staff attorneys at the Self-Help Center are funded for only 30 hours a week. However, the Judicial Council recently approved a request for increased funding to make these positions full time. This is going to be considered by the legislature in the 2019 session. If this is approved then funding for full time status would begin July 1, 2019.

5. Please describe the community need for the services you will be providing. Please provide the approximate number of individuals in the community that require the services your agency offers and please also provide the estimated number of individuals you will serve during the 2019 (or 2018-2019 fiscal year depending on how you track numbers served). If you are unable to serve everyone that needs assistance, what other resources are available to those individuals?

See attached.

6. Please describe the geographic region that your agency serves. If you do not provide services statewide, how are those services being met elsewhere?

This service would be for litigants in the third judicial district, whose cases are assigned to the Matheson courthouse.

7. Please explain if your agency charges fees and how those fees are determined.

The services of the Self-Help Center are 100% free.

8. Please describe any barriers that your agency has encountered over the past few years and how it has affected your ability to provide services. What are your plans to address these barriers?

The most significant challenge for the Self-Help Center is the overwhelming demand for our services. We continue to address this by seeking increased funding so that more people can be helped and the work for staff can be sustainable.

PLEASE PROVIDE ONE COPY OF THE FOLLOWING DOCUMENTS WITH YOUR REQUEST:

- Attach a copy of your current overall agency budget
- Attach a list of the organization's officers and directors and their primary affiliation.
- Attach copy of your most recent audited financial statements. If your organization is not audited, please attach information to your request explaining why it is not and how you keep financial checks and balances on the organization.
- Attach a copy of your IRS determination letter awarding tax-exempt status (**ONLY REQUIRED FROM NEW APPLICANTS**).

The Self-Help Center is a part of the Utah State Courts. An annual report with details on the courts' budget and financial information and management is available here:

<https://www.utcourts.gov/annualreport/2018-CourtsAnnual.pdf>

The Utah State Courts is not a 501(c)(3) entity.

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

## NON-FEDERAL GRANTS

Contact Person/Phone: Nathanael Player / 801-238-7921 Date: 11-Oct-18

Judicial District or Location: Self-Help Center, State Law Library

Grant Title Utah Bar Foundation IOLTA Grant Grantor: Utah Bar Foundation

Grant type (check one); ☒ New ☐ Renewal ☐ Revision

Grant Level (check one) ☒ Low ☐ Med. ☐ High.  
\$10,000 to \$50,001 \$50,000 to \$1,000,000 Over \$1,000,000

Issues to be addressed by the Project: Funding to allow the Self-Help Center to provide extra hours to staff attorneys. This will enable staff attorneys to provide needed continued support for the pro se calendars at the Matheson Courthouse.

Explanation of how the grant funds will contribute toward resolving the issues identified: The grant will pay for 2 extra hours per staff attorney. Staff attorneys will use this extra time to prepare for the pro se calendars, reviewing dockets, printing necessary documents and conducting follow up and preparing final documents for unrepresented individuals at the calendars.

Fill in the chart(s) for estimated state fiscal year expenditures for up to three years:

Total Funding Sources		(PROVIDE EXPLANATION OF ALL MATCHES IN THE COMMENTS SECTION)					
		MATCHING STATE DOLLARS					
		General Fund	Dedicated Credits	Restricted Funds	Other (Write In)	Maintenance of Effort	
CASH MATCH	Other Matching Funds from Non-State Entities						
State Fiscal Year	Grant Amount						Total Funds
FY							\$0
FY							\$0
FY							\$0

[illegible]

Comments: The grant would increase staff hours at the Self-Help Center by 2 per staff attorney each week and would fund the Self-Help Center to provide the significant services already provided at the family law *pro se* calendars. It would not cost any additional money from the court, but would require the use of laptops that are already used for the calendars.

Will additional state funding be required to maintain or continue this program or its infrastructure when this grant expires or is reduced? Yes \_\_\_\_\_ No XX If yes, explain: \_\_\_\_\_

It is hoped that the legislature will fund the Self-Help Center for full time work starting FY 2020 and the grant will no longer be needed.

Will the funds to continue this program come from within your exiting budget: Yes\_\_\_\_\_ No\_\_\_\_\_ N/A xx\_\_\_\_\_

How many additional permanent FTEs are required for the grant? 0 Temp FTEs? 0

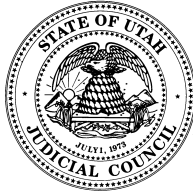
This proposal has been reviewed and approved by the following:  
The court executives and judges in the affected district(s).  
The Grant Coordinator and the Budget Manager at the Administrative Office of the Courts.  
The affected Board(s) of Judges.

Approved by the Judicial Council \_\_\_\_\_ by \_\_\_\_\_  
Date Court Administrator

Copy forwarded to Legislative Fiscal Analyst \_\_\_\_\_ date \_\_\_\_\_

# Tab 7





# Administrative Office of the Courts

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

**Richard H. Schwermer**  
State Court Administrator

**Ray Wahl**  
Deputy Court Administrator

**Jacey Skinner**  
Deputy Court Administrator

## MEMORANDUM

**TO: Judicial Council Members**

**FROM: Michael C. Drechsel, Associate General Counsel – AOC**

**DATE: Thursday, November 8, 2018**

**RE: Policy and Planning – Proposed Rules for Public Comment**

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On November 2, 2018, Policy and Planning held an all-day meeting to address a number of proposed rules that were in the committee's work queue. Many of these rules were the result of the committee's work to make an annual review of the Code of Judicial Administration (the Code), as required by CJA 2-207(2). *The rules that are proposed as part of that annual review are marked below with an asterisk (\*) throughout this memo.* The committee proposes that Judicial Council authorize that the following 13 rules be published for public comment:

- Rule 1-205 – Standing and Ad Hoc Committees
- Rule 2-208 – Publication and Distribution \*
- Rule 3-103 – Administrative Role of Judges \*
- Rule 3-104 – Presiding Judges \*
- Rule 3-111 – Performance Evaluations of Senior Judges and Court Commissioners \*
- Rule 3-106 – Legislative Activities \*
- Rule 3-107 – Executive Branch Policy Initiatives \*
- Rule 3-413 – Judicial Library Resources \*
- Rule 3-501 – Insurance Benefits upon Retirement \*
- Rule 4-202.09 – Miscellaneous
- Rule 4-403 – Electronic Signatures and Signature Stamp Use
- Rule 4-405 – Juror and Witness Fees and Expenses
- Rule 4-508 – Guidelines on Ruling on a Motion to Waive Fees

This memo will explain each proposed revision in turn.

### ***Rule 1-205 – Standing and Ad Hoc Committees***

The Court Facility Planning Committee currently has eight members (enumerated in Rule 1-205(1)(B)(v)). That membership does not include the court security director, even though that individual attends most of the committee's meetings and often is asked to weigh in on issues related to the committee's work. Making the court security director a member of the committee would ensure early input into the design of court facilities so that security issues are identified and resolved in the beginning phase of project planning, saving time and money. After review of this proposed revision, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

### ***Rule 2-208 – Publication and Distribution \****

Rule 2-208(2) has existed in its current form, without modification, since 1993. In those 25 years, access to electronic resources of information (via internet access on mobile phones, in particular) has made the requirement for the AOC and each TCE to "maintain a copy" of the Code of Judicial Administration (the Code) outdated. The proposed revision would require that the AOC and each TCE be able to direct an individual to the Code on the court website and that they provide access during business hours. The manner of access is not specified by the rule in order to preserve flexibility in how that access is provided (i.e., access to a public computer terminal in the courthouse, printed hardcopy, etc.). After review of this proposed revision, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

### ***Rules 3-103 – Administrative Role of Judges, 3-104 – Presiding Judges, and 3-111 – Performance Evaluations of Senior Judges and Court Commissioners \****

On June 25, 2018, the Judicial Council adopted Rule 9-109 regarding presiding judges in justice courts. The revisions to Rules 3-103, 3-104, and 3-111 are proposed to bring consistency to certain responsibilities of being a presiding judge, regardless of whether the involved court is a district court or a justice court.

**Rule 3-103(2)** would require justice court judges to "consult with the presiding judge . . . on matters of judicial administration." The current version of the rule requires the justice court judges to consult with the justice court administrator.

**Rule 3-104(3)(O)** would require presiding district court judges to consult with the presiding justice court judge of that district (and the justice court administrator) to develop a rotation of magistrates. The current version of the rule requires the presiding district court judge to only consult with the justice court administrator.

The proposed draft of Rule 3-104 also recommends a completely unrelated revision, striking the word “total” from subsection (3)(E)(ii). Currently, presiding district court judges “shall represent the court and make statements to the media on matters pertaining to the **total** court . . .” This use of the word “total” did not seem to serve a necessary purpose, and might even result in confusion. As a result, Policy and Planning recommends that the word “total” be removed from that subsection.

**Rule 3-111(3)(B)(i)** would give presiding justice court judges a voice in the senior judge performance evaluation process.

The proposed draft of rule 3-111 also recommends removal of three words that don’t appear to have an antecedent in the current rule. Subsections (3)(E) and (3)(F) both refer to “the response of the senior judge or court commissioner.” But the rule does not state what the senior judge or court commissioner is responding to. When Policy and Planning inquired about this, the committee was informed that there is a question asked of senior judges and court commissioners regarding these topics. When considering ways to revise the rule, the committee determined the words were unnecessary, and recommends that the words simply be omitted from the rule.

After review of these proposed revisions, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

### ***Rules 3-106 – Legislative Activities, and 3-107 – Executive Branch Policy Initiatives \****

The proposed revisions to Rules 3-106 and 3-107 are similar in each rule. Currently, Rule 3-106(1)(D) states that “[t]he Council may endorse, oppose, **amend** or take no position on proposed legislative initiatives” (emphasis added). Rule 3-107(1)(B) states that “[t]he Council may endorse, oppose, or take no action on proposed executive policy initiatives” (note the absence of an option to “amend” in Rule 3-107). When reviewed by Policy and Planning, it was clear that the Council is not in a position to unilaterally “amend” proposed legislative initiatives. It was also clear that the Council may wish to “recommend amendments to” those initiatives. Similarly, the Council may also wish to recommend amendments to executive policy initiatives. As a result, Policy and Planning prepared a draft of each rule that adds the option to recommend amendments to any such initiative. After review of these proposed revisions, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

### ***Rule 3-413 – Judicial Library Resources \****

The current version of Rule 3-413 does not align with actual current practice and contains obsolete language. The proposed revisions are consistent with Rule 2-207’s directive that “[r]ules which are outdated or inconsistent with . . . preferred practice shall be modified,

amended or repealed.” The rule draft provided to the Council reflects actual current practice in regard to both electronic research resources and print publications provided to judges, commissioners, and staff, as implemented by the Council in 2014.

As with the current version of the rule, the draft continues to differentiate between electronic research resources (such as Westlaw, Lexis, HeinOnline, the Utah Legislature’s website for the Utah Code, etc.) and print publications (such as the Utah Code Annotated / Unannotated, etc.). The proposed draft moves electronic research resources from the final paragraph of the rule (lines 144-147), where it appeared to be almost an after-thought, to a location in the rule that reflects the increasing adoption, utilization, and benefit of those resources in the legal research conducted within the courts (lines 20-27).

The current version of Rule 3-413 states that “[a]s . . . access [to legal reference materials stored on electronic data bases] is developed [*sic*] subscriptions to duplicative hard copy publications shall be discontinued” (see lines 145-147). The proposed draft eliminates that language, recognizing the continuing importance, convenience, and viability of hard copy print publications.

Subsections (2)(A) and (2)(B) outline which positions have access to electronic research resources and print publications, respectively. The draft rule changes absolutely nothing regarding current practices. Rather, it brings the rule into conformity with the practice implemented by the Council in 2014.

In addition to the restructuring of the rule, the following miscellaneous revisions are proposed:

- Lines 70-75 regarding the Office of Legislative Printing has not been a viable practice for a number of years;
- Lines 81-85 appeared to the committee to be superfluous;
- Lines 98-102 referenced language in Utah Code section 78A-7-202 that has not been in effect since December 2008;
- Lines 104-106 don’t appear to be well-situated in this particular rule, but no other rule appears to provide a more suitable location, so the language remains unchanged in the proposed draft;
- Lines 107-108 were moved to lines 14-15 without amendment;
- Lines 109-116 regarding “chamber libraries” has not been the practice for many years;
- Lines 135-139 appeared to be so fundamental to the purpose behind having a state law library that it seemed to the committee that including such language was unnecessary; and
- Lines 140-143 have been well-established by other practices that have never created issues and do not appear to require a rule.

As a result, the draft recommends eliminating this obsolete / superfluous language.

Finally, the proposed draft requires separate accounting / budgeting for: (i) the state law library; (ii) costs associated with electronic research resources; and (iii) costs associated with print publications.

After review of these proposed revisions, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

### ***Rule 3-501 – Insurance Benefits upon Retirement \****

Rule 3-501 outlines the circumstances under which a justice, judge, or commissioner remains eligible to continue receiving insurance benefits after retiring. Currently, time away from work for “maternity leave” is counted as “sick leave” when determining benefits under the rule. Policy and Planning suggests that this rule be amended to state that both maternity leave and parental leave be considered as sick leave when determining benefits under the rule.

### ***Rule 4-202.09 – Miscellaneous***

Rule 4-202.09 may currently be the most frequently revised rule in the Code (eclipsed only by Rule 4-202.02). Such is the danger of having a rule titled “Miscellaneous.” Subsection 10 of Rule 4-202.09 contains rules related to “non-public information in a public record.” Currently, the rule requires the person filing any record other than a public record to identify the document’s classification on the document itself or in an accompanying document. For the following several reasons, Policy and Planning recommends that this requirement be removed from the rule. First, electronic filing has resulted in the automatic classification of most filings when the filer chooses either the case type or the file type in the e-filing portal. As a result, manually labeling the document provides no meaningful filing benefit. For those documents that are manually filed, training of court clerks is a more effective method of ensuring that documents are accurately classified (as opposed to trusting a party to select the proper designation or having a document bear the wrong designation throughout the entirety of the file retention period). Finally, requiring this designation on every document has proven to be a burden to the Forms Committee as they have tackled the enormous job of preparing voluminous form templates.

As a side note, Policy and Planning has requested that the Supreme Court Advisory Committee on Civil Procedure review the balance of subsection 10 to determine whether action should be taken to move that subsection to the Utah Rules of Civil Procedure.

After review of these proposed revisions, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

### ***Rule 4-403 – Electronic Signatures and Signature Stamp Use***

Rule 4-403 lists the categories of documents that may, with prior approval, be signed by a court clerk using a judge / commissioner electronic signature or signature stamp. The draft proposes to clarify and expand those categories.

First, subsection (1)(K) states that "orders for transportation of a person in custody to a court hearing" can be signed by the clerk using the electronic signature / signature stamp. The proposed draft would make clear that "writs of habeas corpus ad prosequendum and testificandum" fall within this category of documents. In considering the matter, the committee discerned no meaningful difference between the standard transport orders used for state and local inmates, and the similar writs used for securing the attendance of a federal inmate for prosecution or to testify as a witness.

Second, subsection (1)(M) would permit a judge or commissioner to authorize the clerk to sign the forthcoming domestic relations injunctions anticipated to issue pursuant to URCP 109. URCP 109 will be presented to the Supreme Court in November 2018 for approval. The Board of District Court Judges requested that a mechanism to sign and issue these orders be in place when URCP 109 goes into effect. Because it is anticipated that the Rule 109 injunctions will issue as standard temporary orders until the parties can bring case-specific details before the court, Policy and Planning believed it was appropriate that Rule 4-403 allow a judge to authorize the clerk to sign these documents as a matter of course. Actual adoption of Rule 4-403(1)(M) will be contingent on whether the Supreme Court approves and adopts Rule 109. Seeking public comment on this mechanism for signing and issuing such orders will lay the groundwork for a smooth implementation in the event that Rule 109 is adopted.

After review of these proposed revisions, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

### ***Rule 4-405 – Juror and Witness Fees and Expenses***

Court Finance made a review of Rule 4-405. Several revisions were recommended as a result of that review. First, it is recommended that the rule dispense with naming a particular dollar value for jury refreshments (lines 46-47). Every time that amount is changed by the State Department of Finance, the court would be required to amend the rule to stay current. This amendment, that the rule track "the State Department of Finance per diem rate" is a solution to that problem.

Second, the State has created a Jury Management System. Some tasks that were previously performed in the State Accounting System are now handled in the Jury Management System instead. It is proposed that the rule be revised to reflect those recent changes to the two systems (lines 81-90).

Third, lines 93-99 describe process that, while once manually performed by an employee, are now automated by the underlying computer systems. As a result, these processes are handled automatically without a need for human guidance. The language is obsolete.

After review of these proposed revisions, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

#### ***Rule 4-508 – Guidelines on Ruling on a Motion to Waive Fees***

The draft of this rule includes two separate changes, one of which has already been approved (and is currently out) for public comment. The new recommendation is that the rule be amended so that documentation supporting an affidavit filed in connection with a motion to waive fees only be required “if requested by the court.” There are two reasons supporting this course of action.

First, the affidavit form that is currently being used by the courts was approved by the Board of District Court judges many years ago. The Board made a deliberate decision that the form affidavit state that supporting documentation was only required if requested by the court. It is not clear whether the Board knew about the requirement in Rule 4-508(1) or simply decided to move forward despite the language in the rule. Nevertheless, it was the opinion of the Board that litigants should only provide information upon request of the court. According to notes from the meeting, judges often found all the supporting documentation to be burdensome and unhelpful to determination of the issue.

According to certain reports, many (most?) districts use law clerks or non-judges for the initial review of these affidavits. Having non-judges review the information that would often be contained in the supporting documentation may not be an appropriate role for non-judges. The non-judges could flag affidavits that raise questions, and judges could then order the party to provide documentation in those instances.

After review of these proposed revisions, Policy and Planning recommends to the Judicial Council that the draft rule be published for public comment.

**Rule 1-205. Standing and Ad Hoc Committees.****Intent:**

To establish standing and ad hoc committees to assist the Council and provide recommendations on topical issues.

To establish uniform terms and a uniform method for appointing committee members.

To provide for a periodic review of existing committees to assure that their activities are appropriately related to the administration of the judiciary.

**Applicability:**

This rule shall apply to the internal operation of the Council.

**Statement of the Rule:****(1) Standing Committees.**

(1)(A) **Establishment.** The following standing committees of the Council are hereby established:

- (1)(A)(i) Technology Committee;
- (1)(A)(ii) Uniform Fine Schedule Committee;
- (1)(A)(iii) Ethics Advisory Committee;
- (1)(A)(iv) Judicial Branch Education Committee;
- (1)(A)(v) Court Facility Planning Committee;
- (1)(A)(vi) Committee on Children and Family Law;
- (1)(A)(vii) Committee on Judicial Outreach;
- (1)(A)(viii) Committee on Resources for Self-represented Parties;
- (1)(A)(ix) Language Access Committee;
- (1)(A)(x) Guardian ad Litem Oversight Committee;
- (1)(A)(xi) Committee on Model Utah Civil Jury Instructions;
- (1)(A)(xii) Committee on Model Utah Criminal Jury Instructions;
- (1)(A)(xiii) Committee on Pretrial Release and Supervision; and
- (1)(A)(xiv) Committee on Court Forms.

**(1)(B) Composition.**

- (1)(B)(i) The Technology Committee shall consist of:
- (1)(B)(i)(a) one judge from each court of record;
  - (1)(B)(i)(b) one justice court judge;

- (1)(B)(i)(c) one lawyer recommended by the Board of Bar Commissioners;
- (1)(B)(i)(d) two court executives;
- (1)(B)(i)(e) two court clerks; and
- (1)(B)(i)(f) two staff members from the Administrative Office.
- (1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of:
- (1)(B)(ii)(a) one district court judge who has experience with a felony docket;
- (1)(B)(ii)(b) three district court judges who have experience with a misdemeanor docket;
- (1)(B)(ii)(c) one juvenile court judge; and
- (1)(B)(ii)(d) three justice court judges.
- (1)(B)(iii) The Ethics Advisory Committee shall consist of:
- (1)(B)(iii)(a) one judge from the Court of Appeals;
- (1)(B)(iii)(b) one district court judge from Judicial Districts 2, 3, or 4;
- (1)(B)(iii)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
- (1)(B)(iii)(d) one juvenile court judge;
- (1)(B)(iii)(e) one justice court judge; and
- (1)(B)(iii)(f) an attorney from either the Bar or a college of law.
- (1)(B)(iv) The Judicial Branch Education Committee shall consist of:
- (1)(B)(iv)(a) one judge from an appellate court;
- (1)(B)(iv)(b) one district court judge from Judicial Districts 2, 3, or 4;
- (1)(B)(iv)(c) one district court judge from Judicial Districts 1, 5, 6, 7, or 8;
- (1)(B)(iv)(d) one juvenile court judge;
- (1)(B)(iv)(e) the education liaison of the Board of Justice Court Judges;
- (1)(B)(iv)(f) one state level administrator;
- (1)(B)(iv)(g) the Human Resource Management Director;
- (1)(B)(iv)(h) one court executive;
- (1)(B)(iv)(i) one juvenile court probation representative;
- (1)(B)(iv)(j) two court clerks from different levels of court and different judicial districts;

66 (1)(B)(iv)(k) one data processing manager; and  
67 (1)(B)(iv)(l) one adult educator from higher education.  
68 (1)(B)(iv)(m) The Human Resource Management Director and the  
69 adult educator shall serve as non-voting members. The  
70 state level administrator and the Human Resource  
71 Management Director shall serve as permanent  
72 Committee members.

73 (1)(B)(v) The Court Facility Planning Committee shall consist of:

- 74 (1)(B)(v)(a) one judge from each level of trial court;  
75 (1)(B)(v)(b) one appellate court judge;  
76 (1)(B)(v)(c) the state court administrator;  
77 (1)(B)(v)(d) a trial court executive; ~~and~~  
78 (1)(B)(v)(e) two business people with experience in the  
79 construction or financing of facilities; ~~and-~~  
80 (1)(B)(v)(f) the court security director.

81 (1)(B)(vi) The Committee on Children and Family Law shall consist of:

- 82 (1)(B)(vi)(a) one Senator appointed by the President of the Senate;  
83 (1)(B)(vi)(b) one Representative appointed by the Speaker of the  
84 House;  
85 (1)(B)(vi)(c) the Director of the Department of Human Services or  
86 designee;  
87 (1)(B)(vi)(d) one attorney of the Executive Committee of the Family  
88 Law Section of the Utah State Bar;  
89 (1)(B)(vi)(e) one attorney with experience in abuse, neglect and  
90 dependency cases;  
91 (1)(B)(vi)(f) one attorney with experience representing parents in  
92 abuse, neglect and dependency cases;  
93 (1)(B)(vi)(g) one representative of a child advocacy organization;  
94 (1)(B)(vi)(h) one mediator;  
95 (1)(B)(vi)(i) one professional in the area of child development;  
96 (1)(B)(vi)(j) one representative of the community;  
97 (1)(B)(vi)(k) the Director of the Office of Guardian ad Litem or  
98 designee;  
99 (1)(B)(vi)(l) one court commissioner;

- 100 (1)(B)(vi)(m) two district court judges; and  
101 (1)(B)(vi)(n) two juvenile court judges.  
102 (1)(B)(vi)(o) One of the district court judges and one of the juvenile  
103 court judges shall serve as co-chairs to the committee.  
104 In its discretion the committee may appoint non-  
105 members to serve on its subcommittees.
- 106 (1)(B)(vii) The Committee on Judicial Outreach shall consist of:  
107 (1)(B)(vii)(a) one appellate court judge;  
108 (1)(B)(vii)(b) one district court judge;  
109 (1)(B)(vii)(c) one juvenile court judge;  
110 (1)(B)(vii)(d) one justice court judge; one state level administrator;  
111 (1)(B)(vii)(e) a state level judicial education representative;  
112 (1)(B)(vii)(f) one court executive;  
113 (1)(B)(vii)(g) one Utah State Bar representative;  
114 (1)(B)(vii)(h) one communication representative;  
115 (1)(B)(vii)(i) one law library representative;  
116 (1)(B)(vii)(j) one civic community representative; and  
117 (1)(B)(vii)(k) one state education representative.  
118 (1)(B)(vii)(l) Chairs of the Judicial Outreach Committee's  
119 subcommittees shall also serve as members of the  
120 committee.
- 121 (1)(B)(viii) The Committee on Resources for Self-represented Parties shall  
122 consist of:  
123 (1)(B)(viii)(a) two district court judges;  
124 (1)(B)(viii)(b) one juvenile court judge;  
125 (1)(B)(viii)(c) two justice court judges;  
126 (1)(B)(viii)(d) three clerks of court – one from an appellate court, one  
127 from an urban district and one from a rural district;  
128 (1)(B)(viii)(e) one member of the Online Court Assistance  
129 Committee;  
130 (1)(B)(viii)(f) one representative from the Self-Help Center;  
131 (1)(B)(viii)(g) one representative from the Utah State Bar;  
132 (1)(B)(viii)(h) two representatives from legal service organizations  
133 that serve low-income clients;

- 134 (1)(B)(viii)(i) one private attorney experienced in providing services  
135 to self-represented parties;  
136 (1)(B)(viii)(j) two law school representatives;  
137 (1)(B)(viii)(k) the state law librarian; and  
138 (1)(B)(viii)(l) two community representatives.
- 139 (1)(B)(ix) The Language Access Committee shall consist of:  
140 (1)(B)(ix)(a) one district court judge;  
141 (1)(B)(ix)(b) one juvenile court judge;  
142 (1)(B)(ix)(c) one justice court judge;  
143 (1)(B)(ix)(d) one trial court executive;  
144 (1)(B)(ix)(e) one court clerk;  
145 (1)(B)(ix)(f) one interpreter coordinator;  
146 (1)(B)(ix)(g) one probation officer;  
147 (1)(B)(ix)(h) one prosecuting attorney;  
148 (1)(B)(ix)(i) one defense attorney;  
149 (1)(B)(ix)(j) two certified interpreters;  
150 (1)(B)(ix)(k) one approved interpreter;  
151 (1)(B)(ix)(l) one expert in the field of linguistics; and  
152 (1)(B)(ix)(m) one American Sign Language representative.
- 153 (1)(B)(x) The Guardian ad Litem Oversight Committee shall consist of:  
154 (1)(B)(x)(a) seven members with experience in the administration  
155 of law and public services selected from public, private  
156 and non-profit organizations.
- 157 (1)(B)(xi) The Committee on Model Utah Civil Jury Instructions shall consist of:  
158 (1)(B)(xi)(a) two district court judges;  
159 (1)(B)(xi)(b) four lawyers who primarily represent plaintiffs;  
160 (1)(B)(xi)(c) four lawyers who primarily represent defendants; and  
161 (1)(B)(xi)(d) one person skilled in linguistics or communication.
- 162 (1)(B)(xii) The Committee on Model Utah Criminal Jury Instructions shall consist  
163 of:  
164 (1)(B)(xii)(a) two district court judges;  
165 (1)(B)(xii)(b) one justice court judge;  
166 (1)(B)(xii)(c) four prosecutors;  
167 (1)(B)(xii)(d) four defense counsel;

- 168 (1)(B)(xii)(e) one professor of criminal law; and  
169 (1)(B)(xii)(f) one person skilled in linguistics or communication.
- 170 (1)(B)(xiii) The Committee on Pretrial Release and Supervision shall consist of:
- 171 (1)(B)(xiii)(a) two district court judges;  
172 (1)(B)(xiii)(b) one juvenile court judge;  
173 (1)(B)(xiii)(c) two justice court judges;  
174 (1)(B)(xiii)(d) one prosecutor;  
175 (1)(B)(xiii)(e) one defense attorney;  
176 (1)(B)(xiii)(f) one county sheriff;  
177 (1)(B)(xiii)(g) one representative of counties;  
178 (1)(B)(xiii)(h) one representative of a county pretrial services agency;  
179 (1)(B)(xiii)(i) one representative of the Utah Insurance Department;  
180 (1)(B)(xiii)(j) one representative of the Utah Commission on  
181 Criminal and Juvenile Justice;  
182 (1)(B)(xiii)(k) one commercial surety agent;  
183 (1)(B)(xiii)(l) one state senator;  
184 (1)(B)(xiii)(m) one state representative;  
185 (1)(B)(xiii)(n) one member of the Utah Indigent Defense  
186 Commission; and  
187 (1)(B)(xiii)(o) the court's general counsel or designee.
- 188 (1)(B)(xiv) The Committee on Court Forms shall consist of:
- 189 (1)(B)(xiv)(a) one district court judge;  
190 (1)(B)(xiv)(b) one court commissioner;  
191 (1)(B)(xiv)(c) one juvenile court judge;  
192 (1)(B)(xiv)(d) one justice court judge;  
193 (1)(B)(xiv)(e) one court clerk;  
194 (1)(B)(xiv)(f) one appellate court staff attorney;  
195 (1)(B)(xiv)(g) one representative from the Self-Help Center;  
196 (1)(B)(xiv)(h) the State Law Librarian;  
197 (1)(B)(xiv)(i) the Court Services Director;  
198 (1)(B)(xiv)(j) one member selected by the Online Court Assistance  
199 Committee;  
200 (1)(B)(xiv)(k) one representative from a legal service organization  
201 that serves low-income clients;

- (1)(B)(xiv)(l) one paralegal;  
(1)(B)(xiv)(m) one educator from a paralegal program or law school;  
(1)(B)(xiv)(n) one person skilled in linguistics or communication; and  
(1)(B)(xiv)(o) one representative from the Utah State Bar.

(1)(C) **Standing committee chairs.** 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) **Committee performance review.** 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 sub-committees 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) **Expenses.** 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.

**Rule 1-205****DRAFT: 08/17/2018**

269           (3)(D)   **Secretariat.** The Administrative Office shall serve as secretariat to the Council's  
270                               committees.

271   *Effective May/November 1, 20\_\_\_\_*

1 **Rule 2-208. Publication and Distribution.**

2 **Intent:**

3 To establish this Code as the official publication of all rules governing the administration of the  
4 judiciary.

5 **Applicability:**

6 This rule shall apply to the judiciary.

7 **Statement of the Rule:**

8 (1) All rules of the Council, the Boards, and the local courts, as amended, shall be published  
9 in this Code.

10 (2) The administrative office and all court executives shall, upon request:

11 (2)(A) direct any individual to the online publication of this Code on the court website;  
12 and

13 (1)(A)(2)(B) provide access to this Code during business hours maintain a copy of this  
14 Code and make it available for public inspection during business hours.

15 *Effective May/November 1, 20\_\_*

**Rule 3-103. Administrative Role of Judges.****Intent:**

To establish the administrative duties and responsibilities of individual judges.

**Applicability:**

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

**Statement of the Rule:**

- (1) It is the duty and responsibility of individual judges to cooperate with judges from all levels of courts, their presiding judges, their respective Boards, and the Council in the development and implementation of court policy, goals, and rules of administration.
- (2) In courts of record, it is the duty and responsibility of individual judges to consult with the presiding judge and to encourage court employees to consult with court executives on matters of judicial administration. In courts not of record, it is the responsibility of individual judges to consult with the presiding judge and to encourage court employees to consult with the justice court administrator on matters of judicial administration.
- (3) It is the duty and responsibility of individual judges to manage their court responsibilities consistently with the administrative goals of the Council and the fair and efficient administration of justice.
- (4) It is the duty and responsibility of individual judges to give prior notice of their absence from the court for vacation or education purposes to the presiding judge, to determine when additional administrative or judicial assistance is necessary, and to convey that need in a timely manner to the presiding judge.
- (5) In multi-judge jurisdictions, individual judges shall provide recommendations and directives to the court executive and the Administrative Office through the presiding judge.

*Effective May/November 1, 20\_\_\_\_*

**Rule 3-104. Presiding Judges.****Intent:**

To establish the procedure for election, term of office, role, responsibilities and authority of presiding judges and associate presiding judges.

**Applicability:**

This rule shall apply to presiding judges and associate presiding judges in the District and Juvenile Courts.

**Statement of the Rule:****(1) Election and term of office.**

(1)(A) **Presiding judge.** The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court. The presiding judge's term of office shall be at least two years. A district, by majority vote of the judges of the court, may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the presiding officer of the Council to serve for two years.

**(1)(B) Associate presiding judge.**

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A).

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge or by the court.

(1)(C) **Removal.** A presiding judge or associate presiding judge may be removed as the presiding judge or associate presiding judge by a two-thirds vote of all judges in the district. A successor presiding judge or associate presiding judge shall then be selected as provided in this rule.

**(2) Court organization.****(2)(A) Court en banc.**

- 31 (2)(A)(i) Multi-judge courts shall have regular court en banc meetings,  
32 including all judges of the court and the court executive, to discuss  
33 and decide court business. The presiding judge has the discretion to  
34 excuse the attendance of the court executive from court en banc  
35 meetings called for the purpose of discussing the performance of the  
36 court executive. In single-judge courts, the judge shall meet with the  
37 court executive to discuss and decide court business.
- 38 (2)(A)(ii) The presiding judge shall call and preside over court meetings. If  
39 neither the presiding judge nor associate presiding judge, if any, is  
40 present, the presiding judge's designee shall preside.
- 41 (2)(A)(iii) Each court shall have a minimum of four meetings each year.
- 42 (2)(A)(iv) An agenda shall be circulated among the judges in advance of the  
43 meeting with a known method on how matters may be placed on the  
44 agenda.
- 45 (2)(A)(v) In addition to regular court en banc meetings, the presiding judge or a  
46 majority of the judges may call additional meetings as necessary.
- 47 (2)(A)(vi) Minutes of each meeting shall be taken and preserved.
- 48 (2)(A)(vii) Other than judges and court executives, those attending the meeting  
49 shall be by court invitation only.
- 50 (2)(A)(viii) The issues on which judges should vote shall be left to the sound  
51 discretion and judgment of each court and the applicable sections of  
52 the Utah Constitution, statutes, and this Code.
- 53 (2)(B) Absence of presiding judge. When the presiding judge and the associate  
54 presiding judge, if any, are absent from the court, an acting presiding judge shall  
55 be appointed. The method of designating an acting presiding judge shall be at  
56 the discretion of the presiding judge. All parties that must necessarily be informed  
57 shall be notified of the judge acting as presiding judge.
- 58 (3) **Administrative responsibilities and authority of presiding judge.**
- 59 (3)(A) **Generally.**
- 60 (3)(A)(i) The presiding judge is charged with the responsibility for the effective  
61 operation of the court. He or she is responsible for the implementation  
62 and enforcement of statutes, rules, policies and directives of the  
63 Council as they pertain to the administration of the courts, orders of  
64 the court en banc, and supplementary rules. The presiding judge has

the authority to delegate the performance of non-judicial duties to the court executive. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

- (3)(A)(ii) Caseload. Unless the presiding judge determines it to be impractical, there is a presumption that the judicial caseload of the presiding judge shall be adjusted to provide the presiding judge sufficient time to devote to the management and administrative duties of the office. The extent of the caseload reduction shall be determined by each district.
- (3)(A)(iii) Appeals. Any judge of the judicial district may ask the Chief Justice or Judicial Council to review any administrative decision made by the presiding judge of that district.

(3)(B) **Coordination of judicial schedules.**

- (3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.
- (3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge consistent with Rule 3-103(4).

(3)(C) **Authority to appoint senior judges.**

- (3)(C)(i) The presiding judge is authorized to use senior judge coverage for up to 14 judicial days if a judicial position is vacant or if a judge is absent due to illness, accident, or disability. Before assigning a senior judge, the presiding judge will consider the priorities for requesting judicial assistance established in Rule 3-108. The presiding judge may not assign a senior judge beyond the limits established in Rule 11-201(6).
- (3)(C)(ii) The presiding judge will notify the State Court Administrator when a senior judge assignment has been made.
- (3)(C)(iii) If more than 14 judicial days of coverage will be required, the presiding judge will promptly present to the State Court Administrator a plan for meeting the needs of the court for the anticipated duration of the vacancy or absence and a budget to implement that plan. The plan should describe the calendars to be covered by judges of the district, judges of other districts, and senior judges. The budget should

estimate the funds needed for travel by judges and for time and travel by senior judges.

(3)(C)(iv) If any part of the proposed plan is contested by the State Court Administrator, the plan will be reviewed by the Management Committee of the Judicial Council for final determination.

(3)(D) **Court committees.** The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(3)(E) **Outside agencies and the media.**

(3)(E)(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court.

(3)(E)(ii) Generally, the presiding judge or, at the discretion of the presiding judge, the court executive shall represent the court and make statements to the media on matters pertaining to the ~~total~~ court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(3)(F) **Docket management and case and judge assignments.**

(3)(F)(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(3)(F)(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(3)(F)(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the State Court Administrator, request assistance of visiting judges or other appropriate resources when needed to handle the workload of the court.

(3)(F)(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

(3)(G) **Court executives.**

(3)(G)(i) The presiding judge shall review the proposed appointment of the court executive made by the State Court Administrator and must concur in the appointment before it will be effective. The presiding judge shall obtain the approval of a majority of the judges in that jurisdiction prior to concurring in the appointment of a court executive.

(3)(G)(ii) The presiding judge for the respective court level and the state level administrator shall jointly develop an annual performance plan for the court executive.

(3)(G)(iii) Annually, the state level administrator shall consult with the presiding judge in the preparation of an evaluation of the court executive's performance for the previous year, also taking into account input from all judges in the district.

(3)(G)(iv) The presiding judge shall be aware of the day-to-day activities of the court executive, including coordination of annual leave.

(3)(G)(v) Pursuant to Council policy and the direction of the state level administrator, the court executive has the responsibility for the day-to-day supervision of the non-judicial support staff and the non-judicial administration of the court. The presiding judge, in consultation with the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the support staff and the general administration of the court including budget, facility planning, long-range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

(3)(H) **Courtrooms and facilities.** The presiding judge shall direct the assignment of courtrooms and facilities.

(3)(I) **Recordkeeping.** Consistently with Council policies, the court executive, in consultation with the presiding judge, shall:

(3)(I)(i) coordinate the compilation of management and statistical information necessary for the administration of the court;

(3)(I)(ii) establish policies and procedures and ensure that court personnel are advised and aware of these policies;

(3)(I)(iii) approve proposals for automation within the court in compliance with administrative rules.

(3)(J) **Budgets.** The court executive, in consultation with the presiding judge, shall oversee the development of the budget for the court. In contract sites, the court executive shall supervise the preparation and management of the county budget for the court on an annual basis and in accordance with the Utah Code.

(3)(K) **Judicial officers.** In the event that another judge or commissioner of the court fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment or violates the Code of Judicial Conduct, the presiding judge may:

(3)(K)(i) Meet with and explain to the judge or commissioner the reasons for the directive given or the position taken and consult with the judge or commissioner.

(3)(K)(ii) Discuss the position with other judges and reevaluate the position.

(3)(K)(iii) Present the problem to the court en banc or a committee of judges for input.

(3)(K)(iv) Require the judge or commissioner to participate in appropriate counseling, therapy, education or treatment.

(3)(K)(v) Reassign the judge or commissioner to a different location within the district or to a different case assignment.

(3)(K)(vi) Refer the problem to the Judicial Council or to the Chief Justice.

(3)(K)(vii) In the event that the options listed above in subsections (i) through (vi) do not resolve the problem and where the refusal or conduct is willful, continual, and the presiding judge believes the conduct constitutes a violation of the Code of Judicial Conduct, the presiding judge shall refer the problem to the Council or the Judicial Conduct Commission.

(3)(L) **Cases under advisement.**

(3)(L)(i) A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the judge for final determination. The final determination occurs when the judge resolves the pending issue by announcing the decision on the record or by issuing a written decision, regardless of whether the parties are

required to subsequently submit for the judge's signature a final order memorializing the decision.

(3)(L)(ii) Once a month each judge shall submit a statement on a form to be provided by the State Court Administrator notifying the presiding judge of any cases or issues held under advisement for more than two months and the reason why the case or issue continues to be held under advisement.

(3)(L)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than two months to the appropriate state level administrator and indicate the reasons why the case or issue continues to be held under advisement.

(3)(L)(iv) If a case or issue is held under advisement for an additional 30 days, the state level administrator shall report that fact to the Council.

(3)(M) **Board of judges.** The presiding judge shall serve as a liaison between the court and the Board for the respective court level.

(3)(N) **Supervision and evaluation of court commissioners.** The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

(3)(O) **Magistrate availability.** The presiding judge in a district court shall consult with the presiding judge in the justice court of that judicial district and the justice court administrator to develop a rotation of magistrates that ensures regular availability of magistrates within the district. The rotation shall take into account each magistrate's caseload, location, and willingness to serve.

**Rule 3-111. Performance Evaluation of Active Senior Judges and Court Commissioners.****Intent:**

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

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

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

**Applicability:**

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

**Statement of the Rule:****(1) Performance evaluations.****(1)(A) Court commissioners.**

(1)(A)(i) On forms provided by the administrative office, the presiding judge of a district or court level a court commissioner serves shall complete an evaluation of the court commissioner's performance by June 1 of each year. If a commissioner serves multiple districts or court levels, the presiding judge of each district or court level shall complete an evaluation.

(1)(A)(ii) The presiding judge shall survey judges and court personnel seeking feedback for the evaluation. During the evaluation period, the presiding judge shall review at least five of the commissioner's active cases. The review shall include courtroom observation.

(1)(A)(iii) The presiding judge shall provide a copy of each commissioner evaluation to the Judicial Council. Copies of plans under paragraph (3)(G) and all evaluations shall also be maintained in the commissioner's personnel file in the administrative office.

(2) **Evaluation and certification criteria.** Active senior judges and court commissioners shall be evaluated and certified upon the following criteria:

(3)(A)(i) The Council shall measure satisfactory performance by a sample survey of the attorneys appearing before the active senior judge or court commissioner during the period for which the active senior judge or court commissioner is being evaluated. The Council shall measure

satisfactory performance based on the results of the final survey conducted during a court commissioner's term of office, subject to the discretion of a court commissioner serving an abbreviated initial term not to participate in a second survey under Section (3)(A)(vi) of this rule.

(3)(A)(ii) **Survey scoring.** The survey shall be scored as follows.

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

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

(3)(A)(ii)(c) A court commissioner's performance is satisfactory if: at least 75% of the questions have a satisfactory score; and the favorable responses when divided by the total number of all responses, excluding "No Personal Knowledge" responses, is 70% or greater.

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

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

(3)(A)(iv) **Exclusion from survey respondents.**

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

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

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

(3)(A)(vi) **Administration of the survey.** Court commissioners shall be the subject of a survey approximately six months prior to the expiration of their term of office. Court commissioners shall be the subject of a survey during the second year of each term of office. Newly appointed court commissioners shall be the subject of a survey during the second year of their term of office and, at their option, approximately six months prior to the expiration of their term of office.

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

(3)(B) **Non-attorney surveys.**

(3)(B)(i) **Surveys of presiding judges and court staff regarding non-appellate senior judges.** The Council shall measure performance of active senior judges by a survey of all presiding judges and trial court executives, or in the justice courts, all presiding justice court judges and the justice court administrator~~Justice Court Administrator~~, of districts in which the senior judge has been assigned. The presiding judge and trial court executive will gather information for the survey from anonymous questionnaires completed by court staff on the calendars to which the senior judge is assigned and by jurors on jury trials to which the senior judge is assigned. The Administrative Office of the Courts shall distribute survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be

based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

(3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.**

The Council shall measure performance of active appellate senior judges by a survey of the presiding judge and clerk of court of the Court of Appeals. The presiding judge and clerk of court will gather information for the survey from anonymous questionnaires completed by the other judges on each panel to which the appellate senior judge is assigned and by the appellate law clerks with whom the appellate senior judge works. The Administrative Office of the Courts shall distribute the survey forms with instructions to return completed surveys to the Surveyor. The survey questions will be based on the non-legal ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the responses on each survey question. The Judicial Council shall determine whether the qualitative assessment of the senior judge indicates satisfactory performance.

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

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

- (3)(C)(i)(a) no more than three cases per calendar year under advisement more than 60 days after submission; and
- (3)(C)(i)(b) no case under advisement more than 180 days after submission.

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

- (3)(C)(ii)(a) circulating no more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and
- (3)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of no more than 120 days after submission.

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

(3)(E) **Substantial compliance with Code of Judicial Conduct.** Satisfactory performance is established if ~~the response of~~ the senior judge or court commissioner demonstrates substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive information to be complete and correct and if the Council's review of formal and informal sanctions lead the Council to conclude the court commissioner is in substantial compliance with the Code of Judicial Conduct. Under Rule 11-201 and Rule 11-203, any sanction of a senior judge disqualifies the senior judge from reappointment.

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

(3)(G) **Performance and corrective action plans for court commissioners.**

- (3)(G)(i) The presiding judge of the district a court commissioner serves shall prepare a performance plan for a new court commissioner within 30 days of the court commissioner's appointment. If a court commissioner serves multiple districts or court levels, the presiding judge of each district and court level shall prepare a performance plan. The performance plan shall communicate the expectations set forth in paragraph (2) of this rule.

(3)(G)(ii) If a presiding judge issues an overall “Needs Improvement” rating on a court commissioner’s annual performance evaluation as provided in paragraph (1), that presiding judge shall prepare a corrective action plan setting forth specific ways in which the court commissioner can improve in deficient areas.

(4) **Judicial Council certification process.**

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

(4)(A)(i) survey scores;

(4)(A)(ii) judicial education records;

(4)(A)(iii) self-declaration forms;

(4)(A)(iv) records of formal and informal sanctions;

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

(4)(A)(vi) any information requested by the Council.

(4)(B) **Records delivery.** Prior to the meeting the Administrative Office of the Courts shall deliver the records to the Council and to the senior judges and court commissioners being evaluated.

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

(4)(D) **Certification presumptions.** If the Council finds the senior judge or court commissioner has met the performance standards, it is presumed the Council will certify the senior judge or court commissioner for reappointment. If the Council finds the senior judge or court commissioner did not meet the performance standards, it is presumed the Council will not certify the senior judge or court commissioner for reappointment. The Council may certify the senior judge or court commissioner or withhold decision until after meeting with the senior judge or court commissioner.

(4)(E) **Overcoming presumptions.** A presumption against certification may be overcome by a showing of good cause to the contrary. A presumption in favor of certification may be overcome by:

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

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

(4)(F) **August Council meeting.** At the request of the Council the senior judge or court commissioner challenging a non-certification decision shall meet with the Council in August. At the request of the Council the presiding judge shall report to the Council any meetings held with the senior judge or court commissioner, the steps toward self-improvement identified as a result of those meetings, and the efforts to complete those steps. Not later than 5 days after the July meeting, the Administrative Office of the Courts shall deliver to the senior judge or court commissioner being evaluated notice of the Council's action and any records not already delivered to the senior judge or court commissioner. The notice shall contain an adequate description of the reasons the Council has withheld its decision and the date by which the senior judge or court commissioner is to deliver written materials. The Administrative Office of the Courts shall deliver copies of all materials to the Council and to the senior judge or court commissioner prior to the August meeting.

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

(4)(H) **Final certification decision.** At its August meeting in open session, the Council shall approve its final findings and certification regarding all senior judges and court commissioners whose terms of office expire that year.

(4)(I) **Communication of certification decision.** The Judicial Council shall communicate its certification decision to the senior judge or court commissioner.

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268                   The Judicial Council shall communicate its certification decision for senior judges  
269                   to the Supreme Court and for court commissioners to the presiding judge of the  
270                   district the commissioner serves.

271   *Effective May/November 1, 20\_\_\_\_*

**Rule 3-106. Legislative Activities.****Intent:**

To identify the Council as the principal authority for establishing and representing the position of the judiciary in legislative matters.

To identify the role of other offices and entities within the judicial branch in legislative matters.

To establish a procedure for considering legislative initiatives by the judiciary.

To establish a procedure for agencies, groups, and individuals to seek Council review of legislative initiatives.

**Applicability:**

This rule shall apply to the legislative activities of the judiciary.

**Statement of the Rule:****(1) Authority and responsibility of the council.**

(1)(A) The Judicial Council or its Liaison Committee shall be the authority for establishing and representing the position of the judiciary in legislative matters.

(1)(B) The Council shall be the principal authority for coordinating judicial participation in legislative matters.

(1)(C) The Council shall schedule time prior to the legislative session to consider those legislative items proposed for Council action by the Liaison Committee and the Boards.

(1)(D) The Council may endorse, oppose, ~~amend~~ recommend amendments to, or take no position on proposed legislative initiatives. The Council shall limit its consideration of legislative matters to those which affect the Constitutional authority, the statutory authority, the jurisdiction, the organization, or the administration of the judiciary.

**(2) Responsibility of presiding officer of council.**

(2)(A) The presiding officer shall be responsible for representing the interest of the judiciary through the presentation of "The State of the Judiciary" speech during the regular session of the legislature.

(2)(B) The presiding officer shall be responsible for overseeing the day to day legislative activities of the Court Administrator.

**(3) Authority and responsibility of liaison committee.**

(3)(A) The Liaison Committee shall meet periodically throughout the year and regularly during the legislative session to consider proposed legislative initiatives which affect the judiciary. The Liaison Committee shall recommend positions to the Council and is authorized to take positions on behalf of the Council when the exigencies of the legislative process preclude full discussion of the issues by the Council.

(3)(B) Any individual, group or agency may request that the Council consider proposed legislative initiatives by transmitting a copy of the legislation with their request to the State Court Administrator. The State Court Administrator shall submit the request to the Liaison Committee. The Liaison Committee shall review the legislative initiative, recommend whether the matter should be placed on the Council agenda, recommend whether a guest should be invited to explain the issues involved, and recommend a position to the Council.

**(4) Authority and responsibility of the boards.**

(4)(A) Boards may direct the staff of the Administrative Office to prepare legislation and may recommend that legislation to the Council. The Boards may also review legislative issues and recommend positions to the Council, but may not take public positions independent of the Council.

**(5) Authority and responsibility of the court administrator.**

(5)(A) Consistent with this Code and the policies and priorities of the Council, the Court Administrator shall act as the official spokesperson for the judiciary and is authorized to negotiate, on behalf of the Council, positions related to budget and legislative matters.

(5)(B) Under the direction of the Council, the Court Administrator is responsible for coordinating all interaction between the judiciary and the legislative branch including the following:

(5)(B)(i) scheduling meetings between the Council and the legislative branch;

(5)(B)(ii) meeting with legislators and other representatives of the legislative branch to convey the position of the judiciary; and

(5)(B)(iii) calling on individual judges to participate in legislative activities.

*Effective May/November 1, 20\_\_*

**Rule 3-107. Executive Branch Policy Initiatives.****Intent:**

To identify the Council or its designee as the sole authority for establishing and representing the position of the judiciary to the executive branch on policy initiatives.

To identify the role of other judicial offices and entities in executive branch policy making.

To establish a procedure for judicial consideration of executive branch policy initiatives.

To establish a procedure for agencies, groups, and individuals to seek Council review of executive branch policy initiatives.

**Applicability:**

This rule shall apply to the judiciary's involvement in executive branch policy making.

**Statement of the Rule:****(1) Authority and responsibility of the council and its liaison committee.**

(1)(A) The Council shall establish and represent the position of the judiciary to the executive branch on executive branch policy initiatives.

(1)(B) The Council may endorse, oppose, recommend amendments to, or take no position on proposed executive policy initiatives. The Council shall limit its consideration of executive action to that which affects the Constitutional authority, the statutory authority, the jurisdiction, the organization, or the administration of the judiciary.

**(2) Authority and responsibility of the boards.**

(2)(A) Boards may review proposed executive policy initiatives and recommend positions to the Council, but may not take public positions independent of the Council.

**(3) Authority and responsibility of the court administrator.**

(3)(A) Consistent with this Code and the policies and priorities of the Council, the Court Administrator shall act as the official spokesperson for the judiciary and is authorized to negotiate, on behalf of the Council, positions related to budget and other executive matters.

(3)(B) Under the direction of the Council, the Court Administrator is responsible for coordinating all interaction between the judiciary and the executive branch including the following:

- (3)(B)(i) scheduling meetings between the Council and the executive branch;
- (3)(B)(ii) meeting with representatives of the executive branch to convey the position of the judiciary;
- (3)(B)(iii) calling on individual judges to participate in executive branch activities; and
- (3)(B)(iv) receiving requests for Council consideration of executive initiatives from interested individuals, groups, or agencies.

(4) **Authority of individual judicial officers and employees.**

- (4)(A) Nothing in this rule shall be construed to prohibit individual judges, court administrators, or court executives from meeting with representatives of the executive branch on an individual basis to resolve local management or administrative issues consistently with Council policy and the provisions of this Code.

*Effective May/November 1, 20\_\_*

## Rule 3-413

DRAFT: 10/30/2018

1 **Rule 3-413. Judicial Library Resources.**2 **Intent:**

3 To establish minimum standards for legal reference materials to be provided to judicial and  
4 quasi-judicial officers and court employees.

5 To establish acquisition, distribution and budgetary responsibilities for the legal reference  
6 materials identified in this rule for the state law librarian.

7 To realize financial advantages through the use of high volume purchases of regularly used  
8 legal reference materials

9 **Applicability:**

10 This rule shall apply to the state law library, all judges and commissioners of courts of record  
11 and not of record, and all court employees.

12 **Statement of the Rule:**13 **(1) State Law Library.**

14 (1)(A) The State Law Library shall be supervised and administered by the state law  
15 librarian under the general supervision of the Appellate Court Administrator.

16 (1)(B) The state law librarian shall facilitate the purchase of the electronic research  
17 resources and print publications authorized by this rule and arrange to have them  
18 distributed in accordance with this rule.

19 **(1)(2) Responsibility for providing judicial library resources.**20 **(2)(A) Electronic research resources.**

21 (2)(A)(i) The state court administrator shall provide access to approved  
22 electronic research resources, including commercial legal databases.

23 (2)(A)(ii) All judges of courts of record, judges of courts not of record, court  
24 commissioners, and staff attorneys shall have access to these  
25 electronic research resources. Other employees may receive access  
26 to these resources based upon a demonstrated need and supervisor  
27 authorization.

28 **(2)(B) Authorized Print publications.** The following officials or locations are  
29 authorized to receive the print publications, which shall be provided by the state  
30 court administrator, unless specifically noted below, as indicated follows:

31 **(2)(B)(i) Judges of courts of record:**

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- (2)(B)(i)(a) one set of the Utah Code Annotated, one set of the Utah Code Unannotated, and one set of the Utah Court Rules Annotated; or
- (2)(B)(i)(b) two sets of the Utah Code Unannotated and one set of the Utah Court Rules Annotated.
- (2)(B)(ii) **Court commissioners;** two sets of the Utah Code Unannotated and one set of Utah Court Rules Annotated.
- (2)(B)(iii) **Active senior judges;** one set of the Utah Code Unannotated, paid for by the Administrative Office of the Courts.
- (2)(B)(iv) **Staff attorneys;** one set of the Utah Code Unannotated and one set of Utah Court Rules Annotated.
- (1)(A)(i)(2)(B)(v) **Courts without a permanently-sitting judge;** two sets of the Utah Code Unannotated and one set of Utah Court Rules Annotated.
- (1)(A)(ii) ~~a current set of the softbound Utah Code Unannotated for each justice, judge, and commissioner of the courts of record for use in the justice's, judge's, or commissioner's principal courtroom or hearing room and additional sets as needed for actively used courtrooms and hearing rooms, the administrative office library, the Supreme Court and Court of Appeals chambers libraries, senior judges on active status, staff of the administrative office and other senior managers as determined by the state court administrator, and central staff attorneys;~~
- (1)(A)(iii) ~~one set of Utah Code Annotated 1953 with annual supplements, indexes, rules, and replacement volumes to justices, judges, and commissioners of the courts of record, staff of the administrative office and other senior managers as determined by the state court administrator, central staff attorneys, appellate court law clerks at a ratio of one set for two clerks, the administrative office library, and the Supreme Court and Court of Appeals chambers libraries;~~
- (1)(A)(iv) ~~one copy of the Utah Court Rules Annotated for senior judges on active status, staff of the administrative office and other senior managers as determined by the state court administrator, the~~

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**Commented [MCD1]:** First district (Randolph)  
 Second district (Morgan)  
 Fourth District (Fillmore, Nephi, Heber Juvenile)  
 Fifth district (Beaver)  
 Sixth district (Junction, Kanab, Loa, Manti, Panguitch)  
 Seventh district (Castle Dale, Monticello)  
 Eighth district (Manila)

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- administrative office library, and the Supreme Court and Court of Appeals chambers libraries; and
- ~~(1)(A)(v) — one set of the Utah Reporter to justices, judges, and central staff attorneys of the Supreme Court and Court of Appeals and a sufficient number for the research needs of the trial courts of record.~~
- ~~(1)(B) — The office of legislative printing. The current policy of the Office of Legislative Printing is to provide the set of Utah Code Annotated 1953 with annual supplements, indexes, rules, and replacement volumes to all justices and judges of courts of record referred to in paragraph (1)(A)(iv) of this rule. The state law librarian shall coordinate the distribution of these materials with the judges and the Office of Legislative Printing.~~
- ~~(1)(C)(2)(C) —~~ **Publisher's complimentary copies.** The ~~current policy of the~~ publisher of the Pacific Reporter ~~is to provide~~ currently provides complimentary volumes to appellate judges as of the date of the judge's appointment to the appellate court. The state law librarian shall coordinate the distribution of these materials with the judges and the publisher.
- ~~(1)(D) — State law library. Except for copies furnished as indicated in paragraphs (1)(B) and (C) of this rule and the purchasing authority described in paragraphs (1)(E), (F), and (G), the state law librarian shall purchase the publications authorized by this rule and distribute them in accordance with this rule.~~
- ~~(1)(E)(2)(D) —~~ **Counties.** Each county shall provide a current copy of either the Utah Code Annotated with annual updates or the softbound Utah Code Unannotated to each county justice court judge serving within that county. Each county operating a court of record under contract with the administrative office of the courts shall provide the judge with access to the local law library pursuant to Section 78A-5-111.
- ~~(1)(F) —~~ **Municipalities.** Each municipality shall provide a current copy of either the Utah Code Annotated with annual updates or the softbound Utah Code Unannotated to each municipal justice court judge serving within that municipality. Each municipality operating a court of record under contract with the administrative office of the courts shall provide the judge with access to the local law library pursuant to Section 78A-5-111.

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~~(1)(G)(2)(E)~~ Counties and municipalities contracting with justice court judges. Each county and municipality which contracts with a justice court judge pursuant to Utah Code Ann. Section 78A-7-202 shall provide, at the location used by the judge within the county or municipality, either the Utah Code Annotated with annual updates or the softbound Utah Code Unannotated.

~~(1)(H)~~—

~~(1)(I)(2)(F)~~ Administrative office of the courts. The administrative office of the courts shall provide a Justice Court Manual, updated biannually, to each judge of a court not of record. ~~Law libraries.~~

~~(1)(J)~~ The State Law Library shall be supervised and administered by the state law librarian under the general supervision of the Appellate Court Administrator.

~~(1)(K)~~ The Appellate Courts' Chambers Library shall be maintained by the State Law Library, and the Appellate Courts shall pay for the materials in that collection.

~~(1)(L)~~ The Council may authorize the establishment of chambers law libraries for trial courts of record, provide update services consistent with funding limitations and adopt minimum standards for those libraries.

~~(1)(M)~~ For purposes of this rule, "chambers libraries" means those law libraries which are established and maintained for the exclusive use of judicial officers and employees and are not available for use by members of the public.

~~(2)(3)~~ **Budget Procedures.**

~~(3)(A)~~ The state law librarian shall separately account for:

~~(3)(A)(i)~~ the operating budget for the state law library;

~~(3)(A)(ii)~~ the costs associated with access to electronic research resources in subsection (2)(A); and

~~(3)(A)(iii)~~ the costs associated with the purchase of print publications in subsection (2)(B), trial court operations, appellate court operations, and administrative operations.

~~(2)(A)(3)(B)~~ Funds appropriated or allocated for purchasing in accordance with subsections (2)(A) and (2)(B) to the appellate court, trial court, or administrative operations shall not be used to supplement the appropriation to the state law library.

~~(2)(B)(3)(C)~~ The purchase of electronic research resources and print publications to fully implement the provisions of this rule shall be limited by the availability of funds.

## Rule 3-413

DRAFT: 10/30/2018

~~(2)(C)(3)(D)~~ Any publication purchased with public funds shall be the property of the court and not the property of any official. Publications provided to an official without charge to the state shall be the personal property of the official.

~~(2)(D)~~ Upon request of a justice, judge, commissioner or court employee, the state law librarian shall make available legal reference publications or photocopies or facsimile copies thereof for the use of the requesting party. The state law librarian shall develop procedures for the control of publications removed from the library.

~~(2)(E)~~ The state court administrator shall notify the state law librarian whenever there is a change to the list of senior judges on active status. The court executive shall notify the state law librarian whenever there is a change in the personnel authorized by this rule to receive publications.

~~(3)~~ Electronic data base legal research. The state court administrator shall, as funds permit, develop access to legal reference materials stored on electronic data bases. As such access is developed subscriptions to duplicative hard copy publications shall be discontinued.

Effective May/November 1, 20\_\_

**Rule 3-501. Insurance Benefits Upon Retirement.****Intent:**

To establish uniform policies regarding sick leave for justices, judges, and court commissioners and conversion of sick leave to paid up medical, dental and life insurance at the time of retirement.

**Applicability:**

This rule shall apply to all justices, judges, and court commissioners of courts of record.

**Statement of the Rule:****(1) Earned benefits.**

(1)(A) For each year of full-time employment that a justice, judge, or court commissioner uses less than four days of sick leave in a calendar year, the judge, justice, or court commissioner will be eligible for and accumulate eight months of paid up medical insurance, dental insurance, prescription drug insurance and life insurance benefits at the time of retirement. Upon retirement, the submission of an annual application and a showing that the judge, justice, or court commissioner is not otherwise covered by a comparable medical insurance policy, the judge, justice, or court commissioner shall be eligible for and receive the insurance benefits which have accrued.

(1)(B) Maternity leave and parental leave is considered sick leave for determining benefits under this rule.

(1)(C) Medical and dental insurance coverage provided will be the same as that carried by the justice, judge, or court commissioner at retirement, i.e., family, two party, single.

(2) **Automatic benefits.** Notwithstanding the provisions of paragraph (1), a justice, judge, or court commissioner who retires and who is eligible for retirement benefits at the time of retirement shall receive a maximum of five years medical insurance, dental insurance, prescription drug insurance and life insurance .

**(3) Duration of benefits.**

(3)(A) The duration of benefits shall be calculated from the effective date of the justice's, judge's or court commissioner's retirement. Earned benefits shall not

- 31 exceed seven years. Automatic benefits shall not exceed five years. Earned  
32 benefits and automatic benefits shall not exceed seven years.
- 33 (3)(B) Earned benefits and automatic benefits shall terminate when the justice, judge,  
34 or commissioner is eligible for Medicare, except that prescription drug insurance  
35 and supplemental Medicare insurance shall continue for the balance of the term  
36 of earned or automatic benefits.
- 37 (3)(C) If the spouse of the justice, judge, or court commissioner qualifies for medical  
38 insurance, prescription drug insurance or dental insurance under subsection  
39 (1)(C), such insurance shall continue for the period of earned or automatic  
40 benefits or until the spouse becomes eligible for Medicare, whichever is earlier,  
41 except that prescription drug insurance and supplemental Medicare insurance for  
42 the spouse shall continue for the balance of the term of earned or automatic  
43 benefits.
- 44 (3)(D) Benefits for dependents of the justice, judge, or court commissioner terminate  
45 when the justice, judge, or court commissioner reaches age 65.
- 46 (4) As authorized by Utah Code Section 78A-2-107(9), the Court Administrator will develop  
47 methods for recording sick leave use by justices, judges, and court commissioners and for  
48 recording sick leave conversion to paid up medical, dental and life insurance benefits.
- 49 (5) **Active Senior Judge incentive benefit.**
- 50 (5)(A) The judiciary will pay 50% of the cost of medical and dental insurance premiums  
51 for a qualifying senior judge and spouse until the qualifying senior judge is age  
52 65. The judiciary will pay 50% of the cost of supplemental Medicare insurance  
53 and prescription drugs for a qualifying senior judge and spouse if the senior  
54 judge is age 65 or older.
- 55 (5)(B) To qualify for the incentive benefit the senior judge must:
- 56 (5)(B)(i) qualify as an active senior judge pursuant to Rule 11-201;  
57 (5)(B)(ii) have exhausted the other benefits provided for by this rule;  
58 (5)(B)(iii) submit to the state court administrator or designee on or before July 1  
59 of each year a letter expressing an intent to participate in the incentive  
60 benefit program;  
61 (5)(B)(iv) perform case work, subject to being called, for at least 6 days per  
62 fiscal year; and

63                   (5)(B)(v) show good cause to the Judicial Council why he or she should not be  
64                                   disqualified for the incentive benefit upon declining three times within  
65                                   any fiscal year to accept case work.

66           (5)(C) The State Retirement Office shall deduct from the active senior judge's  
67                   retirement benefit the portion of the cost payable by the active senior judge.

68   (6) This policy will be implemented subject to availability of funds.

69   *Effective May/November 1, 20\_\_*

**Rule 4-202.09. Miscellaneous.****Intent:**

To set forth miscellaneous provisions for these rules.

**Applicability:**

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) Fulfilling a records request.

(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) Subject to the Government Records Access Management Act (GRAMA) and Chapter 4, Article 2 of the Code of Judicial Administration, a request for email correspondence shall be sufficiently detailed to identify the email(s) sought with reasonable specificity. The request shall be narrowly tailored to yield a search that is not unduly burdensome. Requests shall include the subject matter of the email(s), the identity of individuals to

whom the email(s) were sent or received, if known, and the date, or approximate date(s) of email(s). Upon receipt of a request, the person handling the request will forward it to the Court Information Technology Department, a representative of which will develop the parameters of the search.

(6) 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.

(7) If the judicial branch receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not 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 the requester is not entitled to inspect.

(8) The Administrative Office shall create and adopt a schedule governing the retention and destruction of all court records.

(9) 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.

(10) Non-public information in a public record.

(10)(A) The person filing a public record shall omit or redact non-public information. ~~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.~~

(10)(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.

(10)(C) If the following non-public information is required in a public record, only the designated information shall be included:

(10)(C)(i) social security number: last four digits;

(10)(C)(ii) financial or other account number: last four digits;

(10)(C)(iii) driver's license number: state of issuance and last four digits;

(10)(C)(iv) address of a non-party: city, state and zip code;

(10)(C)(v) email address or phone number of a non-party: omit; and

(10)(C)(vi) minor's name: initials.

- (10)(D) If it is necessary to provide the court with private personal identifying information, it must be provided on a cover sheet or other severable document, which is classified as private.
- (11) Tax-related records.
- (11)(A) Notwithstanding Rule 4-202.02, except as otherwise ordered by the court and except as provided in subsections (10)(B) and (10)(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 classified as public records under Rule 4-202.02.
- (11)(B) Except as provided in subsection (10)(C), all records in a case that 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, shall be protected if the case also involves commercial information as that term is defined by Utah Code § 59-1-404.
- (11)(C) For a case described in subsection (10)(B):
- (11)(C)(i) if a request for a specific record, or access to all records in a case, is made to the court and notice is given to the taxpayer, such record or records shall be released within 14 days after notice is given to the taxpayer, except for specific records ordered by the court to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3);
- (11)(C)(ii) thirty days after the issuance of a non-appealable final order by the court, all records shall be public unless the court orders specific records to be classified as sealed, private, protected, or safeguarded pursuant to a motion made under Rule 4-202.04(3).
- (11)(C)(iii) The public shall have access to the case history, notwithstanding the limitations in this rule applicable to the underlying records.

*Effective May/November 1, 20\_\_*

**Rule 4-403. Electronic signature and signature stamp use.****Intent:**

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

**Applicability:**

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

**Statement of the Rule:**

- (1) A clerk may, with the prior approval of the judge or commissioner, use an electronic signature or signature stamp in lieu of obtaining the judge's or commissioner's signature on the following:
- (1)(A) bail bonds from approved bondsmen;
  - (1)(B) bench warrants;
  - (1)(C) civil orders for dismissal when submitted by the plaintiff in uncontested cases or when stipulated by both parties in contested cases;
  - (1)(D) civil orders for dismissal pursuant to Rule 4-103, URCP 3 and URCP 4(b);
  - (1)(E) orders to show cause;
  - (1)(F) orders to take into custody;
  - (1)(G) summons;
  - (1)(H) supplemental procedure orders;
  - (1)(I) orders setting dates for hearing and for notice;
  - (1)(J) orders on motions requesting the Department of Workforce Services (DWS) to release information concerning a debtor, where neither DWS nor the debtor opposes the motion; **and**
  - (1)(K) orders for transportation of a person in custody to a court hearing, including writs of habeas corpus ad prosequendum and testificandum;
  - (1)(L) orders appointing a court visitor; and
  - (1)(M) domestic relations injunctions under URCP 109.
- (2) When a clerk is authorized to use a judge's or commissioner's electronic signature or signature stamp as provided in paragraph (1), the clerk shall sign his or her name on the document directly beneath the electronic signature or stamped imprint of the judge's or commissioner's signature.

- (3) All other documents requiring the judge's or commissioner's signature shall be personally signed by the judge or commissioner, unless the judge or commissioner, on a document by document basis, authorizes the clerk to use the judge's or commissioner's electronic signature or signature stamp in lieu of the judge's or commissioner's signature. On such documents, the clerk shall indicate in writing that the electronic signature or signature stamp was used at the direction of the judge or commissioner and shall sign his or her name directly beneath the electronic signature or stamped imprint of the judge's or commissioner's signature.

*Effective May/November 1, 20\_\_\_\_*

**Rule 4-405. Juror and Witness Fees and Expenses.****Intent:**

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

**Applicability:**

This rule shall apply to all trial courts of record.

**Statement of the Rule:****(1) Fees.**

(1)(A) The courts shall pay the fee established by statute for all jurors of the courts of record. The courts shall pay the fee established by statute for witnesses subpoenaed by the prosecutor or by an indigent defendant in criminal cases in the courts of record and in actions in the juvenile court. The courts shall pay no fee to a witness appearing for a hearing that was canceled or postponed with at least 24 hours' notice to the parties, excluding Saturdays, Sundays, and holidays. The parties shall notify witnesses when a hearing is canceled or postponed. Upon request, a civil witness's necessary and reasonable parking expenses shall be reimbursed by the attorney who issued the subpoena.

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

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

(1)(B)(ii) for a juror, attendance on a subsequent day during the juror's term of availability, as defined in Rule 4-404(2)(B), regardless of whether attendance is for the same trial.

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

(2) **Mileage.** The courts shall reimburse the cost of travel at the rate established by statute for those jurors and witnesses to whom the court pays a fee. A witness in a criminal case or juvenile court case traveling from out of state to whom the court pays a witness fee shall

be reimbursed the cost of round trip airfare or round trip travel at \$.20 per mile, as determined by the court.

(3) **Meals and refreshments.**

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

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

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

(3)(D) Refreshments may be provided to a jury during the course of trial, upon order of the judge. Payment for refreshments shall not exceed the State Department of Finance per diem rate~~\$4.00~~ per person per day.

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

(5) **Method and record of payment.**

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

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

- 66 (5)(C) **Jurors.** Jurors must present a summons for payment for the first day of service.  
67 If a juror does not present a summons, the clerk may certify that the juror was  
68 summoned. The clerk shall file the summons and shall record the attendance of  
69 jurors for payment, including subsequent days of service.
- 70 (5)(D) **Witnesses in criminal cases and juvenile court cases.** Witnesses in criminal  
71 cases and juvenile court cases must present a subpoena for payment. If the  
72 subpoena is issued on behalf of an indigent defendant, it shall bear the certificate  
73 of defense counsel that the witness has appeared on behalf of the defendant at  
74 state expense, regardless of the number of days for which the witness is eligible  
75 for payment. If the subpoena is issued on behalf of the prosecution, the  
76 prosecutor shall certify the number of days and the number of miles for which the  
77 witness is eligible for payment. The clerk shall file the subpoena and record of  
78 attendance. If a witness does not present a subpoena, the clerk may record the  
79 witness' attendance and mailing address that is certified by the prosecutor or  
80 defense counsel.
- 81 (5)(E) The clerk of the court, or designee, shall enter the payment due the ~~juror or~~  
82 witness in the State Accounting System (FINET) within 10 business calendar  
83 days after receipt of certification. ~~The state will mail the payment to the juror or~~  
84 ~~witness within 3 days. The clerk of court shall maintain both a list of undeliverable~~  
85 ~~juror and witness checks and the checks. A payment is considered abandoned~~  
86 ~~one year after it became payable and will be sent to the Division of Unclaimed~~  
87 ~~Property pursuant to the Utah Code.~~
- 88 (5)(F) The clerk of the court, or designee, shall enter the payment due the juror into the  
89 Jury Management System within 10 business days from the last court date  
90 served.
- 91 (5)(G) The clerk of court shall maintain both a list of undeliverable juror and witness  
92 checks and the checks. State Finance reports all stale dated checks to the  
93 Unclaimed Property Division and the court destroys the checks. A payment is  
94 considered abandoned one year after it became payable and will be sent to the  
95 Division of Unclaimed Property pursuant to the Utah Code.
- 96 (6) **Audit of records.** ~~At least once per month, the clerk of the court or a designee shall~~  
97 ~~compare the jurors summoned and the witnesses subpoenaed with the FINET log of~~  
98 ~~payments. Any unauthorized payment or other irregularity shall be reported to the court~~  
99 ~~executive and the audit department of the Administrative Office of the Courts. The~~

100 Administrative Office of the Courts audit program shall include ~~the~~an audit of juror and  
101 witness payments within the scope of their regularly scheduled audits.

102 *Effective May/November 1, 20\_\_\_\_*

**Rule 4-508****DRAFT: 08/17/2018****Rule 4-508. Guidelines for Ruling on a Motion to Waive Fees.****Intent:**

To promote statewide consistency in deciding motions to waive fees in civil cases and in the expungement of criminal records in which the moving party is not a prisoner.

To promote statewide consistency in deciding motions to waive fees in juvenile court cases in which the moving party is not a prisoner.

Nothing in this rule should be interpreted as limiting the discretion of the judge to decide a motion to waive fees.

**Applicability:**

This rule applies to all civil and small claims cases and in the expungement of criminal records in which the moving party is not a prisoner.

This rule applies to all juvenile court cases in which the moving party is not a prisoner.

As used in this rule “fee waiver” and similar phrases include waiving the fee in full or in part, as may be ordered by the judge.

**Statement of the Rule:**

- (1) The moving party must complete a motion to waive fees and a financial affidavit approved by the ~~Board of District Court Judges or, in the juvenile court, by the Board of Juvenile Court Judges Judicial Council's Standing Committee on Court Forms. If requested by the court, The the~~ moving party must provide supporting documentation of the claims made in the affidavit. In juvenile court, the minor or a minor's parent, guardian or authorized representative may move to waive fees.
- (2) Upon the filing of a motion to waive fees and financial affidavit, the court, sheriff or any other provider of a service offered by or through a government entity shall do what is necessary and proper as promptly as if the fee had been fully paid.
- (3) A motion to waive fees may be decided without notice to the other parties, requires no response, request to submit for decision or hearing. The court will review the affidavit and make an independent determination whether the fee should be waived. The court should apply a common sense standard to the information and evaluate whether the information is complete, consistent and true. Section 78A-2-304 requires a party to pay a full or partial fee if the financial affidavit and any further questioning demonstrate the party is reasonably able to pay a fee.

**Commented [MCD1]:** This change is presently out for public comment (as of 20180928), which comment period closes 20181112. This change is project 20180606a.

**Commented [MCD2]:** This change is the new proposed amendment for this project. It is project 20181004a.

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- 32 (4) In general, a party is reasonably able to pay a fee if:
- 33 (4)(A) gross monthly income exceeds 100% of the poverty guidelines updated
- 34 periodically in the Federal Register by the U.S. Department of Health and Human
- 35 Services under the authority of 42 U.S.C. 9902(2).
- 36 (4)(B) the moving party has liquid assets that can be used to pay the fee without
- 37 harming the party's financial position;
- 38 (4)(C) the moving party has credit that can be used to pay the fee without harming the
- 39 party's financial position;
- 40 (4)(D) the moving party has assets that can be liquidated or borrowed against without
- 41 harming the party's financial position;
- 42 (4)(E) expenses are less than net income;
- 43 (4)(F) Section 30-3-3 applies and the court orders another party to pay the fee of the
- 44 moving party; or
- 45 (4)(G) in the judge's discretion, the moving party is reasonably able to pay some part of
- 46 the fee.
- 47 (5) If the moving party is represented by private counsel, the motion to waive fees may be
- 48 granted in proportion to the attorney's discount of the attorney fee. The moving party's
- 49 attorney must provide an affidavit describing the fee agreement and what percentage of
- 50 the attorney's normal, full fee is represented by the discounted fee.
- 51 (6) A motion to waive fees should be ruled upon within ten days after being filed.
- 52 (6)(A) If the fee is fully waived, the court, sheriff or any other provider of a service
- 53 offered by or through a government entity shall do what is necessary and proper
- 54 as promptly as if the fee had been fully paid.
- 55 (6)(B) If the fee is not fully waived, the court, sheriff or any other provider of a service
- 56 offered by or through a government entity may require payment of the fee before
- 57 doing what is necessary and proper. If the service has already been performed,
- 58 the court, sheriff or service provider may do what is necessary and proper to
- 59 collect the fee, including dismissal of the case.
- 60 (6)(C) If the fee is not fully waived, the court shall notify the party in writing of the fee
- 61 amount, the procedure to challenge the fee: and the consequences of failing to
- 62 pay the fee.
- 63 (6)(D) If the motion is rejected because of a technical error, such as failure to complete
- 64 a form correctly or to attach supporting documentation, the court shall notify the

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65 moving party, and the moving party may file a corrected motion and affidavit  
66 within 14 days after being notified of the decision.

67 (7) In addition to any statutory remedies, an order granting a fee waiver may be reviewed at  
68 any time if the court has jurisdiction of the case. If the court determines, after waiving a  
69 fee, that the moving party is reasonably able to pay the fee, including from the proceeds of  
70 a judgment, the court may modify its previous order. The court may allocate the fee  
71 among the parties under Utah Rule of Civil Procedure 54, Utah Code Section 30-3-3, or  
72 as otherwise provided by law.

73 *Effective May/November 1, 20\_\_*