

# JUDICIAL COUNCIL MEETING

## AGENDA December 21, 2020

Meeting held through Webex

*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  
(Information)
3. 9:10 a.m. Administrator's Report and COVID-19 Update. ....Judge Mary T. Noonan  
(Information)
4. 9:20 a.m. Board of District Court Judges Report .....Judge Barry Lawrence  
(Information) Shane Bahr
5. 9:30 a.m. Reports: Management Committee.....Chief Justice Matthew B. Durrant  
Budget & Fiscal Management Committee .....Judge Mark May  
Liaison Committee.....Judge Kara Pettit  
Policy & Planning Committee .....Judge Derek Pullan  
Bar Commission ..... Rob Rice, esq.  
(Tab 2 - Information)
6. 9:55 a.m. Pretrial Release and Supervision Committee Report .....  
(Information) Judge George Harmond  
Keisa Williams
7. 10:05 a.m. CJA Rules 3-105, 3-201, 3-201.02, and 3-301.01 for Final Approval.....  
(Tab 3 - Action) Keisa Williams
8. 10:15 a.m. Senior Judge Appointments and Rules ..... Cathy Dupont  
(Tab 4 - Action) Nancy Sylvester
- 10:30 a.m. Break
9. 10:40 a.m. Judicial Conduct Commission Report ..... Alex Petersen  
(Tab 5 - Information)

10. 10:55 a.m. Model Utah Criminal Jury Instructions Committee Report .....  
(Tab 9 - Information) Judge James Blanch  
Michael Drechsel
11. 11:05 a.m. Old Business/New Business ..... All  
(Discussion)
12. 11:25 a.m. Recognition of Outgoing Judicial Council Member .....  
Chief Justice Matthew B. Durrant
13. 11:30 a.m. Executive Session - There will be an executive session
14. 11:45 a.m. Adjourn

### **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.

1. Committee Appointment MUJI - Civil Committee – Nancy Sylvester  
(Tab 6)
2. Probation Policies 2.4, 2.7, 4.3, and 4.7 Neira Siaperas  
(Tab 7)
3. CJA Rules 3-108 and 3-101 for Public Keisa Williams  
Comment (Tab 8)

# Tab 1

## JUDICIAL COUNCIL MEETING

### Minutes

November 23, 2020

Meeting conducted through Webex

9:00 a.m. – 1:00 p.m.

*Chief Justice Matthew B. Durrant, Presiding*

#### **Members:**

Chief Justice Matthew B. Durrant, Chair  
 Hon. Kate Appleby, Vice Chair  
 Hon. Brian Cannell  
 Hon. Augustus Chin  
 Hon. David Connors  
 Hon. Ryan Evershed  
 Hon. Paul Farr  
 Hon. Michelle Heward  
 Justice Deno Himonas  
 Hon. Mark May  
 Hon. Kara Pettit  
 Hon. Derek Pullan  
 Hon. Brook Sessions  
 Hon. Todd Shaughnessy  
 Rob Rice, esq.

#### **Excused:**

Hon. Samuel Chiara

#### **Guests:**

Randy Dryer, Professor, University of Utah  
 Hon. Dennis Fuchs, Senior Judge

#### **AOC Staff:**

Hon. Mary T. Noonan  
 Cathy Dupont  
 Michael Drechsel  
 Heidi Anderson  
 Shane Bahr  
 Geoff Fattah  
 Larissa Lee  
 Jordan Murray  
 Jim Peters  
 Neira Siaperas  
 Karl Sweeney  
 Nancy Sylvester  
 Keisa Williams  
 Jeni Wood

#### **Guests Cont.:**

Hon. George Harmond, Seventh District Court  
 Hon. Jeremiah Humes, Eighth District Court  
 Hon. Keith Kelly, Fifth District Court  
 Kristina King, OLRGG  
 Hon. Michael Leavitt, Fifth District Juvenile Court  
 Hon. David Mortensen, Court of Appeals

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Due to the coronavirus pandemic, the Council held their meeting entirely through Webex. Judge Jeremiah Humes attended on behalf of Judge Samuel Chiara. Judge David Mortensen has been selected to replace Judge Kate Appleby on the Council beginning January 2021.

**Motion:** Judge Kate Appleby moved to approve the October 26, 2020 Judicial Council meeting minutes, as presented. Judge Paul Farr seconded the motion, and it passed unanimously.

**Motion:** Judge David Connors later in the meeting moved to approve the October 26, 2020 Judicial Council meeting minutes, as amended to correct paragraph 15 commissioner evaluations. Judge Appleby seconded the motion, and it passed unanimously.

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

Chief Justice Durrant and other court personnel will meet with the Governor today to discuss the court budget.

**3. ADMINISTRATOR’S REPORT: (Judge Mary T. Noonan)**

Judge Mary T. Noonan announced that Judge Jerald Lee Jensen, who served as a justice court judge for Davis County passed away last week.

The COVID jury trial pilot project was expected to start in December, however, the medical experts from the University of Utah Health Sciences, who have consulted with the Courts and the state Health Department felt with rising numbers it would be best to delay the Third District and Eighth District pilot program. Judge Derek Pullan requested further discussion on jury trials.

**4. COMMITTEE REPORTS:**

**Management Committee Report:**

The work of this committee is reflected in the minutes.

**Budget & Fiscal Management Committee Report:**

Judge Mark May said the committee addressed carryforward requests that will be discussed later in the meeting.

**Liaison Committee Report:**

Judge Kara Pettit noted the committee met to review draft bills. They will meet again in December.

**Policy and Planning Committee Report:**

Judge Pullan requested CJA Rule 3-101 be removed from the consent calendar and placed on the December 21, 2020 Council agenda to allow additional time to address the proposed changes.

**Motion:** Judge Pullan moved to remove CJA Rule 3-101 from the consent calendar and at it to the December Council agenda. Judge Pettit seconded the motion, and it passed unanimously.

The committee formed a subcommittee lead by Judge David Connors to address the senior judge rules. Judge Connors briefly reviewed senior judge statistics.

The committee created subcommittees to review the HR policies.

**Bar Commission Report:**

Rob Rice announced the Bar Commission is conducting a nationwide search for John Baldwin’s replacement as Mr. Baldwin will retire on July 1, 2021.

**5. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge Michael Leavitt and Neira Siaperas)**

Chief Justice Durrant welcomed Judge Michael Leavitt and Neira Siaperas. The Board of Juvenile Court Judges adopted a goal to address fairness and accountability and will work on further reporting to the Board on mentoring efforts. The Board continues to avoid backlog of cases due to the pandemic. Judge Leavitt complimented Judge Mark May for his representation of the juvenile courts on the Council and his assistance with ensuring the Administrative Order addresses the needs of the juvenile courts.

Video hearings have been going well and help with youth not missing as much school time in traveling to a courthouse. The courts would like to continue video chats even after the pandemic. Judge Leavitt noted Neira Siaperas and her team have done a wonderful job during such difficult times.

Judge Pullan said the district court reviewed the bail system. Judge Leavitt is on a group that has been studying the point when youth enter detention and early decisions.

Chief Justice Durrant thanked Judge Leavitt and Ms. Siaperas.

**6. COVID JURY TRIAL WORKGROUP REPORT: (Judge Todd Shaughnessy, Judge Paul Farr, and Judge Mary T. Noonan)**

Chief Justice Durrant welcomed Judge Todd Shaughnessy, Judge Paul Farr, and Judge Mary T. Noonan. Judge Pullan was grateful for the work of the committee on this project but noted the system has to provide jury trials in light of the Sixth Amendment. Judge Connors echoed Judge Pullan's comments regarding jury trials. Judge Todd Shaughnessy agreed stating the pilot program implemented all the steps recommended by the medical consultant in an effort to minimize the risk of COVID transmission, however, there is a strong reluctance on both prosecutors and defense counsel to move forward with the jury trial pilot program at this time. There is also an issue of whether jurors will feel safe and provide their undivided attention due to the fear of exposure to the virus. Unfortunately, with the very high community rates, the medical consultants determined that a jury trial would be risky.

Judge Pullan questioned the possibility of a virtual jury trial. Chief Justice Durrant noted there is an appellate process for constitutional issues that may arise. Judge Noonan noted that earlier in the pandemic, the Health Department said it would be safe to hold jury trials if the viral positivity rate was in an acceptable range of 5-10%. Currently, Utah is between 25-30% positivity. Judge Shaughnessy said even with testing every day, the odds are that someone will test positive. Jurors who test positive could be more easily replaced than one of the parties or counsel. He suggested that if we tried the pilot program at this time, the rate of mistrials will increase significantly.

Judge Connors thought given the extent of the circumstances, one option may be to have a virtual jury. Judge Shaughnessy is reviewing rule changes with the amendments to the Administrative Order when defendants waive their rights. Judge Shaughnessy said the Order should be extremely clear that all hearings, with the exception of jury trials, can be held virtually.

Heidi Anderson said Texas is holding virtual civil jury trials by purchasing 120 iPads and cell service on the iPads, which are then sent to jurors. Judge Jeremiah Humes noted that in the Eighth Judicial District, more than 50% of the juror questionnaire responses showed jurors were willing to serve. Justice Himonas noted Rule 17 provides for a defendant to be present during a trial. Judge Pullan questioned if the changes to jury trials would include death penalty cases. The workgroup will meet to discuss jury trials and the results of this conversation.

Chief Justice Durrant thanked Judge Shaughnessy, Judge Farr, and Judge Noonan.

**7. LEGISLATIVE AUDITS (JRI; INFO SHARING; AND FINES/SURCHARGES) – PROPOSED ACTION PLAN: (Michael Drechsel)**

Chief Justice Durrant welcomed Michael Drechsel. Mr. Drechsel said workgroups will be created to address the three legislative audits. The workgroups hope to be able to provide the Council a final product in January, 2021.

Chief Justice Durrant thanked Mr. Drechsel.

**8. FORMS COMMITTEE REPORT: (Professor Randy Dryer and Brent Johnson)**

Chief Justice Durrant welcomed Professor Randy Dryer. In October of 2020, the Committee made the decision to move to meeting every other month during the pandemic, with the recognition that the committee will likely need to meet two months in a row following the 2021 General Session of the Legislature.. Professor Dryer was very appreciative of Jessica Van Buren and Judge James Taylor for their dedication to the committee.

- The Committee completed updating numerous forms that required revision due to recent court rule changes and the 2020 General Session of the Legislature.
- The vast majority of the forms needed by the newly licensed LPP practitioners to practice in the areas of landlord-tenant, debt collection and family law have been reviewed and approved.
- Approximately 90% of the OCAP provisions relating to family law have been reviewed and approved. There are numerous other general family law practice forms that the committee will be reviewing well into 2020.
- In total almost 200 forms have been reviewed and approved by the Committee and approximately 40 additional forms are in the queue to be reviewed by either a subcommittee or the full Committee.

Mr. Rice was very impressed and thanked the committee for their work. Chief Justice Durrant thanked Professor Dryer and noted the courts owe the committee a debt of gratitude.

**9. PROPOSED RESERVE CHANGES AND CARRYFORWARD REQUESTS: (Judge David Mortensen, Larissa Lee, and Geoff Fattah)**

Chief Justice Durrant welcomed Judge David Mortensen and Larissa Lee. In August, the Judicial Council approved legislative funding to automate the process for creating and paginating a record on appeal. This request estimated that \$210,000 would be needed to create an automated solution in-house. Tybera, the vendor behind CORIS is not compatible with CARE; therefore a solution to automate records on appeal is not the same as what could have been built in-house. If

funded, Tybera estimates a 2-3 month completion to fully activate the binder (automated records) function.

The courts would also see immediate savings of judicial assistants' time. The Third District Court has a judicial assistant who spends nearly all their time solely preparing records. The Second and Fourth Districts similarly spend a significant amount of time manually preparing records and would be able to redistribute this time too much needed projects. The Budget & Fiscal Management Committee approved this request.

**Breakdown of costs:**

Tybera: \$22,500

IT (personnel time, storage): \$10,000

Total: \$32,500

**Alternative funding sources, if any:** None

**Motion:** Judge May moved to approve the Tybera one-time carryforward funds request of \$32,500 from the Reserve Account, as presented. Judge Appleby seconded the motion, and it passed unanimously.

**#23 COVID Outreach Ad Campaign**

\$34,000 one-time funds (original request)

\$17,000 UBF Grant – Transfer to Reserve account

\$17,000 Courts expenditures

Subsequent to the approval of this request, the Utah Bar Foundation (“UBF”) funded 50% of the cost of the Public Service Ad Campaign (\$17,000). The Public Information Office is returning the surplus \$17,000 it received. The Budget & Fiscal Management Committee approved the request to accept these returned funds to be added to the Reserve Account.

The Council agreed to the return of \$17,000 in funds to be added to the Reserve Account, as presented.

Chief Justice Durrant thanked Judge Mortensen and Ms. Lee.

**10. CJA APPENDIX J ABILITY-TO-PAY MATRIX: (Judge George Harmond and Keisa Williams)**

Chief Justice Durrant welcomed Judge George Harmond and Keisa Williams. The Ability-to-Pay Matrix was adopted by the Judicial Council on August 21, 2020. The Standing Committee on Pretrial Release and Supervision has been soliciting feedback on, and considering necessary adjustments to policies implemented in response to the 2020 General Session HB 206.

Policy and Planning approved the proposed amendments to the matrix and recommended that it be approved by the Judicial Council on an expedited basis, with a November 23, 2020 effective date.



Chief Justice Durrant thanked Judge Harmond and Ms. Williams.

**Motion:** Judge Shaughnessy moved to approve the Ability-to-Pay Matrix effective November 23, 2020, as presented. Judge Appleby seconded the motion, and it passed unanimously.

# **11. PROBLEM-SOLVING COURTS RECERTIFICATIONS; NUMBERING SYSTEM; AND JUSTICE COURTS: (Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Judge Dennis Fuchs.

## **Numbering of PSCs**

Judge Fuchs created a numbering system for PSCs to more easily identify each court. If approved, the numbers would be used on each PSC Checklist completed.

**Motion:** Judge Shaughnessy moved to approve the problem-solving courts numbering system, as amended to use the numbering system currently being used in the Third District. Judge Connors seconded the motion, and it passed unanimously.

## **Justice Courts**

Judge Fuchs tracks the justice court PSCs, although the Council has not been certifying them. Judge Fuchs would like the Council to determine whether they would like a formal justice court PSC certification or continue with the current informal process. There are three to four justice court PSCs.

**Motion:** Judge Farr moved to approve the certifications of justice courts by the Council. Judge Augustus Chin seconded the motion, and it passed unanimously.

## **Conditionally Approved, Deferral or Rejected PSCs**

In the past when a PSC is non-compliant, the Council conditionally approves, defers or rejects the recertification request. Judge Fuchs questioned if once a court that has been conditionally approved, deferred or rejected due to non-compliance meet the criteria, they can be added to the Council's consent calendar. Since the majority of a Checklist has already been approved, this would save the Council time from reviewing the entire Checklist again and readdressing it.

Chief Justice Durrant thanked Judge Fuchs.

**Motion:** Judge Pullan moved to continue requiring problem-solving courts that have been conditionally approved, deferred or rejected be placed on the Council agenda once the problems have been corrected. Judge Appleby seconded the motion, and it passed unanimously.

## **Adult Drug Courts**

ADC1Cache	Judge Cannell
ADC1Carbon	Judge Harmond
ADC1Emery	Judge Humes
ADC1SanJuan	Judge Torgerson
ADC1Uintah	Judge McClellan

ADC1Utah	Judge Howell
ADC2Utah	Judge Eldridge
ADC3Utah	Judge Brown
ADC3Weber	Judge DiReda

**Juvenile Family Dependency Drug Courts**

JFDDC3Utah	Judge Bartholomew
JFDDC2Weber	Judge Heward

**Motion:** Judge Appleby moved to approve all problem-solving courts for recertification including Judge Torgerson and Judge Brown's courts, as presented. Judge Connors seconded the motion, and it passed with Judge Cannell abstaining as to his court and Judge Michelle Heward abstaining as to her court.

**12. MODEL UTAH CIVIL JURY INSTRUCTIONS COMMITTEE REPORT: (Judge Keith Kelly and Nancy Sylvester)**

Chief Justice Durrant welcomed Judge Keith Kelly and Nancy Sylvester. The Committee on the Model Utah Civil Jury Instructions (MUJI-Civil) is comprised of district judges, civil practitioners from both sides of the aisle, and a linguist. In the last year or so, the committee has completed two sets of instructions: 1) trespass and nuisance and 2) updates to the general instructions. The trespass and nuisance instructions are new and the general instructions have been streamlined and amended to more closely resemble the general criminal jury instructions.

Due to the pandemic, meetings were canceled from March through September. The committee is now meeting through Webex and is working on updates to the products liability instructions. Because of the deliberative nature of the committee's work, it is not clear how quickly the work will get done in a virtual meeting space as opposed to in-person.

Chief Justice Durrant thanked Judge Kelly and Ms. Sylvester.

**13. SENIOR JUDGE CERTIFICATIONS: (Cathy Dupont and Nancy Sylvester)**

Chief Justice Durrant welcomed Cathy Dupont and Nancy Sylvester. In January, 2020 the Council approved a moratorium suspending all senior judge applications pending further information. In October, 2020 the Council renewed their moratorium on the suspension of senior judge applications pending additional data. The Policy & Planning Committee created a workgroup to address the rule amendment proposals and process. Judge Connors supported approving the current senior judge certifications and recertifications. Judge May asked if there was an age limit for judges, why would there not be one for senior judges. Judge Connors said they are working on the rule amendments that are urgent, then they will address other issues. Cathy Dupont noted those judges receiving health insurance benefits may be affected if they are not recertified by the end of December because their terms end and they would no longer be eligible for the benefits. .

**Motion:** Justice Himonas moved to lift the moratorium with respect to the new applicants as well as recertifications of those who are receiving benefits that would be affected, as amended. The motion was held until after an executive session.

Justice Himonas believed senior judges should be required to work if called upon.

### **Senior judge certifications**

Judge James R. Taylor, Fourth District Court. Retiring January 1, 2021

Judge Edwin T. Peterson, Eighth District Court. Retiring January 15, 2021

Judge Mary Kate Appleby, Court of Appeals. Retiring January 1, 2021

### **Active senior judge recertifications**

#### **District**

Judge Michael Allphin

Judge G. Rand Beacham

Judge Glen R. Dawson

Judge L.A. Dever

Judge Gordon J. Low

Judge Michael D. Lyon

Judge Gary D. Stott

#### **Juvenile**

Judge Frederic M. Oddone

Judge Sterling B. Sainsbury

### **Inactive senior judge recertifications**

#### **District**

Judge Robert W. Adkins

#### **Juvenile**

Judge Arthur Christean

Judge Thomas M. Higbee

#### **Justice**

Judge Lee Bunnell

Judge Jack Stevens

Chief Justice Durrant thanked Ms. Dupont and Ms. Sylvester.

## **14. LEGAL RESEARCH VENDOR: (Cathy Dupont)**

Chief Justice Durrant welcomed Cathy Dupont. Ms. Dupont noted the state has not completed their master contracts with the legal research vendors and requested this be addressed in an executive session.

Chief Justice Durrant thanked Ms. Dupont.

## **15. OLD BUSINESS/NEW BUSINESS**

Geoff Fattah reviewed the results from the COVID campaign ads.

### **Bonneville (9/14/20 – 10/02/20)**

KSL (3 weeks) 134,300

FM100 (3 weeks) 136,600

Arrow 103.5 (3 weeks) 130,700

Total: 401,600

### **Alphamedia (9/28/20 – 10/31/20)**

LaGran D

Latino 106.3

Juan 1600

Total for Website/Streaming: 136,970  
(est.)

Total for On-air: 100,000 (est.)

### **Telemundo (9/30/20 – 10/21/20)**

Facebook Live – 3,300

### **Facebook**

Reach – 62,416

Engagement – 1,360

Nelson Ratings believes Telemundo controls 65% of the Spanish-speaking viewer market in Utah.

Morning (15 ads): 10,500

Afternoon (11 ads): 16,500

Evening (11 ads): 37,400

Total: 64,400

Shares – 62

59.6% women, 40.4% men – Mostly 35-65 years old

**Grand Total Reach: 785,386**

**Weekly website hits from 9/14/20 – 10/31/20**

Home Page: 15,949 – 18,851 (up 16%)

Alerts Page: 1,745 – 2,223 (up 22 %)

Judge Appleby thought about whether the percentage of retention votes for judges in general elections has shifted over time. Clayson Quigley conducted a study that identified over the past six years there has been an increase in votes for the retention of judges.

Karl Sweeney requested the Council allow remaining funds from the ODR improvement grant be applied as recommended by PEW for an ADA/Usability Study.

## **16. EXECUTIVE SESSION**

**Motion:** Judge Appleby moved to go into an executive session to discuss a personnel matter and a contract issue. Judge Chin seconded the motion, and it passed unanimously.

**Motion:** Justice Himonas moved to lift the moratorium passed on senior judge certifications; instruct the Policy & Planning Committee to evaluate need and cost of senior judges over the next year or two, including a review of age limits and the matrix used with senior judge evaluations, and how the senior judge work is tracked; approve all eligible senior judge certifications and recertification's with the exception of Judge Low and Judge Beacham, who have not worked in the past two years; defer the decision on Judge Low and Judge Beacham pending Cathy Dupont's follow up with the presiding judges and TCEs of the First and Fifth districts. Judge Pettit seconded the motion. Judge Pullan noted that the Council and court should be making its evaluation under the rules that are in place for senior judges, rather than proposed amendments to those rules. Justice Himonas amended his motion to note that the Council could meet as needed. Judge Appleby abstained, and it passed unanimously.

## **17. CONSENT CALENDAR ITEMS**

**a) Committee Appointment.** Education Committee reappointment of Judge Diana Hagen and Joyce Pace. Approved without comment.

**b) CJA Rule 3-101 for Public Comment.** Item removed.

**c) Forms Committee Forms.** Petition to Modify Divorce Decree, Findings of Fact and Conclusions of Law on Petition to Modify Divorce Decree, and Order on Petition to Modify Divorce Decree. Approved without comment.

- 18. ADJOURN**  
The meeting adjourned.

# Tab 2

**JUDICIAL COUNCIL'S  
MANAGEMENT COMMITTEE**

**Minutes  
December 8, 2020  
Meeting held through Webex  
12:00 p.m. – 1:45 p.m.**

***Chief Justice Matthew B. Durrant, Presiding***

**Committee Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Kate Appleby, Vice Chair  
Hon. Paul Farr  
Hon. Mark May  
Hon. Todd Shaughnessy

**Excused:**

Michael Drechsel  
Larissa Lee

**Guests:**

Justice Deno Himonas, Supreme Court  
Hon. David Mortensen, Court of Appeals

**AOC Staff:**

Hon. Mary T. Noonan  
Cathy Dupont  
Shane Bahr  
Lucy Beecroft  
Tracy Chorn  
Brent Johnson  
Wayne Kidd  
Chris Palmer  
Jim Peters  
Neira Siaperas  
Nancy Sylvester  
Diane Williams  
Jeni Wood

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. After reviewing the minutes, the following motion was made:

**Motion:** Judge Paul Farr moved to approve the November 10, 2020 and November 23, 2020 Management Committee meeting minutes, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

Judge David Mortensen attended in preparation of replacing Judge Appleby upon her retirement, effective January 1, 2021.

**2. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)**

Judge Mary T. Noonan noted the courts received an additional \$75,000 from the Utah Bar Foundation as part of Salt Lake County's Federal CARES Act money. The efforts of the COVID Jury Trial Workgroup has reached other districts who are interested in holding pilot trials, including the Second, Fourth, Fifth, and Seventh Districts. Hepa filters will be available in approximately 4-6 weeks. The IT Department has ensured the public can participate in the pilot trials through video. Judge Andrew Stone has been working with a civil jury trial workgroup and members of the state bar to create a mock civil jury trial.

### **3. PROPOSED AUDIT PLAN FOR 2021: (Wayne Kidd)**

Wayne Kidd presented the Internal Audit Department's 2021 audit plan. Mr. Kidd thanked his team for their continued hard work over a difficult year. Mr. Kidd explained the process and noted the goal for the department is to complete 25 self-assessment audits in addition to the other audits identified. Mr. Kidd is assisting with the three legislative audits. Mr. Kidd will participate on the Utah Governmental Auditors Board for a three-year term.

Chief Justice Durrant thanked Mr. Kidd and his team.

**Motion:** Judge Shaughnessy moved to approve the Internal Audit Department's proposed 2021 audit plan, as presented. Judge Mark May seconded the motion, and it passed unanimously.

### **4. INTERNAL CONTROL SELF-ASSESSMENT SUMMARY FOR SELECTED JUSTICE COURTS: (Diane Williams and Lucy Beecroft)**

Diane Williams reviewed the internal control self-assessment summary for justice courts noting that the audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. Each member of the audit team, served as the lead auditor for this review. The purpose of the ICSA is to assess the adequacy of the court's risk management and control processes. The self-assessment provides the court an opportunity to address recommendations to mitigate risks and improve controls. Lucy Beecroft informed the committee that the recommended corrections are being addressed.

### **5. LIMITED AUDITS OF SELECTED DISTRICT AND JUVENILE COURTS: (Tracy Chorn)**

The Audit Department completed the audit report for the 2020 Limited Audits of Selected District and Juvenile Courts. The audits were conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. Tracy Chorn briefly reviewed the recommendations. The TCEs recognized that limited audits were valuable.

**Motion:** Judge Farr moved to approve the 2020 Limited District and Juvenile Court Audits, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

### **6. PROBATION POLICIES 2.4, 2.7, 4.3, AND 4.7: (Neira Siaperas)**

Neira Siaperas reviewed proposed changes to probation policies 2.4, 2.7, 4.3, and 4.7.

#### **Section 2.4 Nonjudicial Adjustment**

This policy was last updated October 22, 2018. The purpose of the policy is to provide direction to probation officers regarding nonjudicial adjustments with minors.

#### **Section 2.7 Assessment Tools**

This policy was last updated August 17, 2018. The purpose of this policy is to provide direction to probation staff administering assessments to youth.

#### **Section 4.3 Case Planning**

This policy was last updated September 18, 2018. The purpose of this policy is to provide direction to probation officers when developing a case plan with a youth and family.



#### **Section 4.7 Interstate Compact for Juveniles**

This policy was last updated February 26, 2018. The purpose of this policy is to establish procedure for the probation department and ICJ coordinator when processing and supervising youth who fall under the Interstate Compact for Juveniles (ICJ).

**Motion:** Judge Kate Appleby moved to approve proposed changes to probation policies 2.4, 2.7, 4.3, and 4.7, as presented, and to place them on the Judicial Council consent calendar. Judge Farr seconded the motion, and it passed unanimously.

#### **7. RISK RESPONSE MONTHLY REPORTING: (Neira Siaperas, Shane Bahr, and Jim Peters)**

Neira Siaperas stated courts are required to submit monthly reporting statements after their Risk Response Checklist is approved. Ms. Siaperas recommended that the court-level administrators review each report and report to the Management Committee only the courts that are not in compliance.

Jim Peters said the justice courts will begin their monthly reporting in January.

The committee approved, without motion, having court-level administrators review the monthly reports submitted by the courts, and report to the Management Committee only the courts that are not in compliance.

#### **8. JUSTICE COURTS' RISK RESPONSE CHECKLISTS: (Jim Peters)**

Mr. Peters said there were a number of justice courts that assumed they would not need to complete the Risk Response Checklist until they were allowed to operate in the Yellow phase. The committee was concerned about incomplete Checklists. Mr. Peters has been conveying to the justice courts the importance of the Checklist.

Many justice courts indicated that there are no public computers, which could pose an access to justice issue. Some courts divert patrons to the city libraries, however due to the pandemic; most libraries are not allowing people to enter their facilities. The committee agreed to remove the computer availability to court patrons from the Checklist for justice courts. Judge May questioned if there could be a quality control of the Checklists before they come to the committee. Mr. Peters rejected several Checklists prior to the committee receiving them. Judge Farr said Mr. Peters has a heavy workload with reviewing about 120 Checklists.

The committee would like additional information on South Weber Justice Court due to the comment about contact tracing. Mr. Peters will follow up with South Weber on their comment about the health department's recommendation regarding contact tracing. Judge Noonan suggested the courts conduct their own contact tracing with court employees.

**Motion:** Judge May moved to approve the justice courts that received a unanimous decision. Those include the Mantua, Providence, Richmond, Clearfield, Clinton, Syracuse, Woods Cross, Farr West, Pleasant View, South Ogden, Washington Terrace, and Alta Justice Courts. Judge Appleby seconded the motion, and it passed with Judge Farr abstaining as to the Alta Justice Court.

Judge Shaughnessy believed it would be acceptable to explain to those who indicated “yes” in item #1 of the Checklist that they are approved as to the Checklist but not approved as to moving to the Yellow phase. Those courts are: Harrisville, Holladay, Alpine & Highland, and Lehi Justice Courts. Wayne County is already in the Low Transmission Index therefore they can operate in the Yellow phase.

The committee did not approve the San Juan, Centerville, North Salt Lake, and South Jordan due to incomplete Checklists. All justice courts that identified issues with public computers are approved. Those are: Sunset, Morgan County, Harrisville, North Ogden, Plain City, Riverdale, Roy, Uintah/Huntsville, Holladay, Alpine & Highland, Lehi, Utah County, Washington City, Big Water, and Wellington Justice Courts. The committee determined not to approve Wellsville and Smithfield Justice Courts until they complete the approved Checklist.

**9. COMMITTEE APPOINTMENT: (Nancy Sylvester)**  
**MUJI - Civil Committee**

Nancy Sylvester addressed the district court vacancy, reappointments, and replacement of the Chair on the MUJI-Civil Committee.

**Motion:** Judge Farr moved to approve the appointment of Ruth Shapiro as Chair, appointment of Judge Kent Holmberg, and reappointments of Judge Keith Kelly and Lauren Shurman to the MUJI - Civil Committee, as presented, and place this on the Judicial Council consent calendar. Judge Appleby seconded the motion, and it passed unanimously.

**10. RECORDS ACCESS APPEAL: (Nancy Sylvester)**

Jeena Nilson appealed the denial by the First District and State Court Administrator to obtain security camera footage from September 2, 2020. Ms. Nilson was approved to view the footage but not receive a copy of it. Utah Code of Judicial Administration 4-202(5)(J)(iv) provides that court records concerning the security of a court facility are protected. Ms. Sylvester noted she provided Jenna Nilson the information for her appeal at the Management Committee meeting; however, Ms. Nilson did not appear at the meeting.

Brent Johnson informed the committee that they are allowed to deny an appeal based on failure to appear. Ms. Sylvester will prepare the letter to Ms. Nilson.

**Motion:** Judge Appleby moved to deny Jenna Nilson’s appeal to obtain a copy of the video footage from September 2, 2020 in the First District Court for failure to appear. Judge Shaughnessy seconded the motion, and it pass unanimously.

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

The committee reviewed the Judicial Council agenda.

**Motion:** Judge Appleby moved to approve the Judicial Council agenda, as presented. Judge Farr seconded the motion, and it passed unanimously.

**12. OLD BUSINESS/NEW BUSINESS: (All)**

Mr. Johnson is amending the Risk Response Plan, as well as other pandemic related plans for clarification purposes and to amend the 14 day quarantine to 10 days, per CDC updated

guidelines. Exigent circumstances seem to be focused in the justice courts. Judge Farr said at times individuals appear in court without being summoned. Mr. Johnson noted when that occurs individuals would be provided instructions on how to contact the court and reappear. Judge May felt courts should not hold exigent circumstance calendars and did not prefer to have the committee rule on who could hold hearings. Judge May preferred the second alternative with language prepared by Mr. Johnson. Judge Appleby and Judge Farr also approved the second option. Shane Bahr stated some of the members of the Board of District Court Judges are holding exigent circumstance hearings, while others are not. Mr. Johnson requested examples on exigent circumstances happening in the courts be sent to him. Judge Shaughnessy recommended following up at the district court level. Judge Farr said as to justice courts there was nothing consistent. Judge Noonan recommended contacting the presiding judges for more information before the committee makes a decision.

**13. EXECUTIVE SESSION**

An executive session was held.

**14. ADJOURN**

The meeting adjourned.

**JUDICIAL COUNCIL'S  
BUDGET & FISCAL MANAGEMENT COMMITTEE**

**Minutes  
November 12, 2020  
Meeting held through Webex  
12:00 p.m. – 12:30 p.m.**

**Members Present:**

Hon. Mark May, Chair  
Hon. Augustus Chin  
Hon. Kara Pettit

**Excused:**

Cathy Dupont  
Michael Drechsel  
Karl Sweeney

**Guests:**

Paul Barron, Software Support  
Hon. David Mortensen, Court of Appeals  
Joyce Pace, TCE Fifth District Court

**AOC Staff Present:**

Hon. Mary T. Noonan  
Shane Bahr  
Geoff Fattah  
Alisha Johnson  
Larissa Lee  
Bart Olsen  
Jim Peters  
Neira Siaperas  
Jeni Wood

**Guests Cont.:**

Larry Webster, TCE Second District Court

**1. WELCOME AND APPROVAL OF MINUTES: (Judge Mark May)**

Judge Mark May welcomed everyone to the meeting. Judge May addressed the meeting minutes.

**Motion:** Judge Augustus Chin moved to approve the September 10, 2020 minutes, as presented. Judge Kara Pettit seconded the motion, and it passed unanimously.

**2. PERIOD 3 FINANCIALS: (Alisha Johnson)**

Alisha Johnson provided an update of ongoing and one-time turnover savings.

Forecasted Available One-time Funds			
#	Description	Funding Type	Amount
*	Period 3 Forecast Surplus (Deficit)	Internal Savings	4,887,846
	Carryforward Dedicated Credits from FY 2020 (not usable for YE Spend Plan)	DC Beginning Bal.	380,088
	Expected Non-Lapse Dedicated Credits (not usable in YE Spending Plan)	Estimated DC Non-Lapse	(407,348)
+	Desired Carryforward into FY 2022	Desired Non-Lapse	(2,500,000)
+	Estimated regular year end spend (based upon FY 2020 year end spend)	Estimated YE Spend	(1,836,450)

#	Description	Funding Type	Amount
1	Carried over Ongoing Savings (from FY 2020)	Internal Savings	44,296
2	Current Ongoing Turnover Savings (Beginning in FY 2022)	Internal Savings	(1,273)
	<b>TOTAL SAVINGS</b>		<b>43,023</b>
3	Pro-Rata Ongoing Turnover Savings Pledged to Budget Cuts (retirements)	(\$245,300/12) * 4	(81,767)
4	Pro-Rata Ongoing Turnover Savings Pledged to Budget Cuts (non-retirements)	(\$230,148/12) * 4	(76,716)
<b>Actual Turnover Savings for FY 2021 as of 10/28/2020</b>			<b>\$ (115,459)</b>

- Ongoing turnover savings only happens when a vacant position is filled at a lower rate and/or with lower benefits.
- There will be numerous hires in October/November that will end up increasing ongoing savings.
- There are currently eight positions that have turned over that are currently listed as having the most costly benefits. As those employees select their benefits, if they select lower benefits, there will be additional savings.
- Currently 73 FTE (60 regular and 13 who took advantage of the retirement offer) are vacant with 30 to be filled (24 regular and 6 retired positions).

#		Funding Type	Amount
1	One Time Turnover Savings (calculated from actual vacancies)	Internal Savings	1,337,978
2	Current reserve set-aside available for use	Internal Savings	381,163
	<b>TOTAL POTENTIAL SAVINGS</b>		<b>1,719,141</b>
3	Annual One Time TO Savings Pledged to Budget Cuts		(2,500,000)
	<b>Current Balance of One Time Savings</b>		<b>\$ (780,859)</b>

- The one-time turnover savings (1) has reached 54% of our \$2,500,000 (3) goal (without considering use of reserve). The courts are 31% of the way through payroll postings for the fiscal year.
- Due to a reduction in the open position expectation from 50 to 25 authorized by the Legislature to be effective October 1, 2020, the growth in one-time savings will begin to slow.
- The courts expect to meet or exceed the \$2,500,000 target this fiscal year.

The Finance Department will begin the yearend spending with the TCEs and AOC Departments in January, 2021. Ms. Johnson reviewed anticipated expenditures.

**3. CARRY-FORWARD AND RESERVE CHANGE REQUESTS: (Karl Sweeney, Heidi Anderson, Larissa Lee, Judge David Mortensen, and Geoff Fattah)**

**#23 COVID Outreach Ad Campaign**

\$34,000 one-time funds (original request)

\$17,000 UBF Grant – Transfer to Reserve account

\$17,000 Courts expenditures

Subsequent to the approval of this request, the Utah Bar Foundation (“UBF”) funded 50% of the cost of the Public Service Ad Campaign (\$17,000). The Public Information Office is returning the surplus \$17,000 it received from carry forward funds to the Judicial Council.

No motion was made. The committee agreed to accept this funding return for the Reserve Account.

**#33 Tybera Binder**

\$32,500 one-time funds (includes \$10,000 for the IT Department)

In August, the Judicial Council approved a legislative funding request to automate the process for creating and paginating a record on appeal. This request estimated that \$210,000 would be needed to create an automated solution in-house. The Judicial Council voted to combine this one time request with other IT requests for FY 2021. The purpose of this request is to remove a \$210,000 line item from the FY 2022 Legislative Funding Requests for IT needs and instead ask for the use of \$32,500 in one-time reserve funds. Judge David Mortensen noted once implemented this will immediately begin saving JA's time.

Larissa Lee said Judge Derek Pullan was concerned that the courts were including an appellate e-filing system with Tybera. Ms. Lee noted this contract will not affect e-filing at all and that they have been working on an e-filing system separately. Once an appeal is filed, the Tybera Binder will create the record, including removing notifications, create an index, adds Bates stamp, and is converts it to a searchable format. Judge May mentioned after speaking with the Finance Department they confirmed there is funding for this. Judge Mortensen said the districts, appellate courts, and parties would benefit from this. Judge Mortensen said parties can request a notice be added to the record. Judge May recommended explaining this to Judge Pullan.

**Motion:** Judge Pettit moved to approve \$32,500 in one-time funds from the Reserve Account for the Tybera Binder, as presented. Judge Chin seconded the motion, and it passed unanimously.

#### **New request**

Increase Utah Bar Foundation Funds

This funding is managed by the Utah Bar Foundation who requires a list of expenditures. These are from the Federal CARES Act. This will only benefit Salt Lake County district and justice courts. Requests need to be made soon.

**Motion:** Judge Pettit moved to approve the application for the Bar Foundation funds. Judge Chin seconded the motion, and it passed unanimously.

#### **4. OLD BUSINESS/NEW BUSINESS: (All)**

There was no additional business discussed.

#### **5. ADJOURN**

The meeting adjourned.

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

Webex video conferencing  
December 4, 2020: 12 pm -2 pm

**DRAFT**

<b>MEMBERS:</b>	<b>PRESENT</b>	<b>EXCUSED</b>	<b>GUESTS:</b>
Judge Derek Pullan, <i>Chair</i>	•		Judge Mary Noonan
Judge Brian Cannell		•	Judge Ryan Harris
Judge Augustus Chin	•		Paul Barron
Judge David Connors	•		Brent Johnson
Judge Michelle Heward	•		James Peters
Mr. Rob Rice	•		Bart Olsen
			Jeremy Marsh
			<b>STAFF:</b>
			Keisa Williams
			Minhvan Brimhall

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

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the November 6, 2020 meeting. With no changes, Rob Rice moved to approve the minutes as drafted. Judge Connors seconded the motion. The motion passed unanimously.

**(2) Reschedule January 2021 meeting:**

The committee moved the January 2021 meeting to January 8<sup>th</sup>.

**(3) Rules back from public comment:**

- 3-105. Administration of the Judiciary.
- 3-301.01. State Court Administrator – Complaints and performance review; complaints regarding judicial officers.
- 3-201. Court commissioners.

Ms. Williams: These rules are back from public comment. No comment was received on 3-201. We received one positive comment on rule 3-105, and two comments on 3-301.01. One comment was positive, and one was negative. The negative comment involved concerns addressed by Policy and Planning in previous meetings. No changes are recommended.

Judge Pullan: The section of Rule 3-301.01 related to judicial officers addresses the ability of employees to file complaints directly with the Council and comports with HR policies and procedures. It's important to create and encourage that environment.

Mr. Rice moved to approve all three rules as drafted and to send them to the Judicial Council with a recommendation that they be approved as final. Judge Chin seconded the motion and it passed unanimously.

**(4) 3-201.02. Court commissioner conduct:**

Ms. Williams: Rule 3-201.02 is back from public comment. No comments were received. However, after further consideration, Judge Harris recommends minor amendments to the rule.

Judge Harris: The proposed amendments are to paragraphs (3)(A) and (3)(B). In paragraph (2), the chair shall dismiss any frivolous complaints and complaints found to raise only issues of law or fact for which the remedy is review of the case by a trial court or on appeal. Complaints not dismissed by the chair must be referred to the full committee. In the draft that went out for comment, complaints referred to the full committee require a hearing, unless they qualify for a 12(b)(6) dismissal. The full committee recently reviewed a complaint and determined that a provision in the original version of the rule allowing the full committee to dismiss a complaint after a review or minimal examination, and on something other than (12)(b)(6) grounds, should be preserved. Not every complaint referred to the full committee warrants a hearing. The proposed amendments bring back the mechanism in paragraph (1)(H) of the rule in effect now.

Mr. Rice moved to approve rule 3-201.02, with the amendments proposed by Judge Harris, and to send it to the Judicial Council with a recommendation that it be approved as final. Judge Heward seconded the motion and it passed unanimously.

**(5) 3-104. Presiding judges****3-108. Judicial assistance:**

Mr. Johnson: In regard to the expungement issue, Policy and Planning determined that district court presiding judges should be the signing judge for all district courts within their district, and justice court presiding judges should be the signing judge for all justice courts within their district. After further research, I discovered statutory obstacles. Rule 3-108 applies only to the assignment of judges in courts of record. The rule is based in part on Utah Code § 78A-2-104(9)(a) which states that the Council “shall establish written procedures authorizing the presiding officer of the Council to appoint judges of courts of record by special general assignment to serve temporarily in another level of court in a specific court or generally within that level.” The statute does not expressly permit the Council to enact a rule allowing assignment of one justice court judge to serve in another justice court.

In addition, section 78A-2-225 permits a judge of a court of record to “serve temporarily as a judge in another geographic division or in another court of record, in accordance with the Utah Constitution and the rules of the Judicial Council.” This suggests that district court judges may serve only in other courts of record. Another problem with assigning presiding justice court judges to other justice courts is section 78A-7-208, which states, “when necessary, the governing body may appoint any senior justice court judge, or justice court judge currently holding office within the judicial district or within an adjacent county, to serve as a temporary justice court judge.” This suggests that local government governing bodies decide who will sign orders in their courts. All the Judicial Council can do at this point is appoint presiding district court judges to sign expungement orders in district court cases. In order for presiding justice court judges to sign for all justice courts in their district, a statutory amendment is necessary. The Council will need to decide if they want to pursue legislation. Internally, I will meet with Michael Drechsel and Paul Barron to determine whether it would work logistically. There may be resistance from cities and counties to a legislative change allowing judges to sign orders for other courts without approval by local governments. That should be part of the Council’s discussion.

Without a legislative change, the system will need to be programmed to affix each justice court judge’s signature to orders in their own cases. Tracking and updating the system when a justice court judge leaves the bench or retires will be critical. Orders with the signature of a judge no longer on the bench would be void.

The proposed amendment to rule 3-108(C) would read, “The presiding officer of the Council may appoint a district court presiding judge as the signing judge for automatic expungements in all district courts within the presiding judge’s district. The length of the assignment may coincide with the judge’s term as presiding judge.”



Mr. Rice moved to approve rule 3-108 as proposed by Mr. Johnson, and to send it to the Judicial Council with a recommendation that it be published for comment. The Council should also discuss whether it wants to pursue legislation. Judge Connors seconded the motion and it passed unanimously.

**(6) Senior judge program update:**

Judge Connors reviewed the memo from Cathy Dupont summarizing the senior judge working group's progress. At a previous meeting, Policy and Planning asked whether an analysis should be conducted to identify the number of senior court judges needed in each district, and limiting the number of appointments accordingly. The working group determined that limiting the number of senior judges isn't a good idea, at least not at this time. Needs fluctuate and the costs for senior judges in their first 7 years is de minimis. About 6 or 7 years ago, we were struggling for coverage because we had so few senior judges. The TCE's indicated that even with 25-30 senior judges, there are times when they aren't able to get coverage in a timely manner. The Supreme Court may limit the number of appointments either based on need or for some other reason, so the working group added a provision that service is subject to appointment. Senior judge status is not a matter of right.

The TCE's agreed to develop a better tracking method. A rule prescribes the prioritization of requests so we shouldn't require that every request go out to every senior judge, but at least over time, we should ensure all senior judges have an opportunity to participate and we should track their responses. If there are judges who routinely turn down assignments, we need to be aware of that.

Another policy question was whether there should be an age limit for senior judges. The working group determined that no age limit should be imposed. The more important question is competence. Performance isn't necessarily dictated by age. We should ensure TCE's and presiding judges understand their role in evaluating and soliciting feedback on performance. One issue is how to determine the best source of feedback. In addition, the working group will propose changes to ensure senior judges receive adequate training.

In regard to senior judges beyond the first 7 years, the cost of the incentive benefit ranges from \$1,900 to \$4,100. Currently, 10 of the 26 senior judges fall into that category. The working group recommends a rule amendment making it clear that an extended period of refusing assignments could lead to a denial of reappointment. Policy and Planning recommended that the Council appoint or reappoint all senior judges with pending applications, with the exception of the two judges who have not taken any assignments in the last 2-3 years, and recommended asking the Supreme Court to sit down with those two judges to conduct an evaluation of the reasons for the lack of work.

Mr. Rice: One way of addressing that concern is simply eliminating eligibility after seven years of service.

Judge Connors: In rule 3-501, the description for automatic benefits sounds like it guarantees benefits for five years, making the earned benefits only two years. What is the history behind that? I don't entirely understand it. If it isn't accurate then we ought to change it. Mr. Olsen agreed to look into it.

Judge Pullan: The rule says a senior judge can only be appointed with their consent. That seems to build in the ability not to work. What was the thinking behind that?

Judge Connors: The discussion centered around conflicts in senior judge's schedules because they don't always have a lot of notice and they may have other plans. It might be a good idea to explore the idea of having senior judges designate weeks they are available. That could be built into the tracking system.

Judge Pullan: Was there a discussion about the fiscal impact of doubling the amount for training, from \$50 to \$100 a day?

Judge Connors: The working group recommends increasing the amount from \$25 to \$50 for a half day training, and \$50 to \$100 for a full day. The costs would primarily be for one conference a year with 25 judges. The working group will present the full packet of recommendations to Policy and Planning and the Council in January.

**(7) HR policies:**

- HR 1-5 – Judge Pullan
- HR 6-7 – Judge Cannell/Judge Heward
- HR 8-9 – Rob Rice
- HR 10-14 – Judge Connors
- HR 15-17 – Judge Chin

Mr. Olsen recommended discussing policies flagged by members with questions and proposed edits. Below are summaries of the changes based on the committee's discussion. Mr. Olsen will preserve redlined and clean copies of the Google drive documents for future review.

**Chapter 1:****01:**

- "Incumbent" was changed to "employee."
- Misconduct can include a violation of HR policies, i.e. the harassment policy. Language was added to the end of paragraph (86), "...and/or a violation of current judicial branch policies."
- All references to "the Judiciary" were replaced with "judicial branch."
- Language was added to expand the use of telecommunicating, and to distinguish between telecommuting and routine telecommuting.
- Substantial evidence: The definition was borrowed from the Executive Branch. After discussion, the committee determined that the definition is sufficient as written. Caselaw will be referenced in a footnote.

**02:**

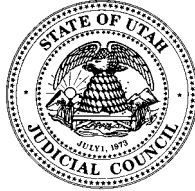
- Unlawful discrimination: a reference was added in (a), "...consistent with HR15-3..."
- The Committee discussed electronic personnel files maintained by the HR Department and hard copy files maintained in a local district or court location. The central electronic files maintained by HR are the official personnel files. Employees should not have more than one personnel file. Item (7) was removed.

The committee will continue its review of the remainder of the HR policies at the next meeting.

**(10) ADJOURN:**

With no further items for discussion, Judge Heward moved to adjourn the meeting. Judge Connors seconded the motion. With no opposition, the meeting adjourned at 2:03 pm. The next meeting will be on January 8, 2021 at noon via Webex video conferencing.

# Tab 3



## Administrative Office of the Courts

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

December 14, 2020

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO: Judicial Council**

**FROM: Keisa Williams**

**RE: Rules for Final Approval**

---

The Judicial Council approved the following rules for public comment. During the 45-day comment period, no comments were received on 3-201 and 3-201.02. One positive comment was received on 3-105. Two comments were received on 3-301.01, one positive and one negative. Judge Harris, chair of the Court Commissioner Conduct Committee recommended minor changes to 3-201.02 (outlined below). Policy and Planning made no amendments in response to public comments, but approved the recommended amendments made by Judge Harris to 3-201.02.

The Committee recommends the following rules to the Judicial Council for final approval with an effective date of May 1, 2020.

#### **CJA 3-201. Court Commissioners (AMEND)**

The proposed amendments in lines 134-139 are clarifying and not substantive. Throughout the remainder of the rule, the term “sanction” is replaced with “corrective action” to make it clear that both the Council and the presiding judge(s) can take corrective actions in response to a complaint or poor performance. The proposed amendments also include removal as a possible corrective action.

#### **CJA 3-201.02. Court Commissioner Conduct Committee (AMEND)**

In July 2020, the Judicial Council reviewed and issued a ruling on findings and recommendations made by the Court Commissioner Conduct Committee. During its deliberations, the Judicial Council noted two issues with this rule: (1) the typo in 3-201.02(2)(B) referencing 3-201(6), on its face, appeared to limit the sanctions the CCCC could recommend; and (2) the complainant was not afforded an equal right to cross-examine witnesses under 3-201.02(2)(A)(i). The proposed amendments address the two issues raised by the Council, more clearly define the committee’s charge and complaint procedures, and create an appeals process if the Committee dismisses a complaint without a hearing.

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

The new amendments proposed by Judge Harris are to paragraphs (3)(A) and (3)(B) (lines 102-110). Under paragraph (2), the chair shall dismiss any frivolous complaints and complaints found to raise only issues of law or fact for which the remedy is review of the case by a trial court or on appeal. Complaints not dismissed by the chair must be referred to the full committee. In the draft that went out for comment, complaints referred to the full committee require a hearing, unless they qualify for a 12(b)(6) dismissal. The full committee recently reviewed a complaint and determined that a provision in the original version of the rule allowing the full committee to dismiss a complaint after a review or minimal examination, and on something other than (12)(b)(6) grounds, should be preserved. Not every complaint referred to the full committee warrants a hearing. The proposed amendments bring back the mechanism in paragraph (1)(H) of the rule in effect now.

**CJA03-0301.01. State Court Administrator—Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees (NEW)**

Establishes the Management Performance Review Committee, outlines a process for reviewing the performance of the State Court Administrator, and creates an avenue by which complaints regarding the State Court Administrator, judicial officers, and state court employees can be received, reviewed, and investigated.

**CJA03-0105. Administration of the Judiciary (NEW)**

Sets forth the authority of judges, courts, the Supreme Court, and the Judicial Council to administer the functions of the judicial branch. Creates a process by which the Supreme Court and Judicial Council may assess and determine exclusive and predominate authority, and how those two bodies will communicate with each other when issues arise.

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

## UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

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Posted: October 7, 2020

### Utah Courts



#### Code of Judicial Administration – Comment Period Closed November 21, 2020

##### **CJA03-0301.01. State Court Administrator—Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees (NEW)**

Establishes the Management Performance Review Committee, outlines a process for reviewing the performance of the State Court Administrator, and creates an avenue by which complaints regarding the State Court Administrator, judicial officers, and state court employees can be received, reviewed, and investigated.

##### **CJA03-0105. Administration of the Judiciary (NEW)**

Sets forth the authority of judges, courts, the Supreme Court, and the Judicial Council to administer the functions of the judicial branch. Creates a process by which the Supreme Court and Judicial Council may assess and determine exclusive and predominate authority, and how those two bodies will communicate with each other when issues arise.

This entry was posted in [CJA03-0105](#), [CJA03-0301.01](#).

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

### CATEGORIES

- [-Alternate Dispute Resolution](#)
- [-Code of Judicial Administration](#)
- [-Code of Judicial Conduct](#)
- [-Fourth District Court Local Rules](#)
- [-Licensed Paralegal Practitioners Rules of Professional Conduct](#)
- [-Rules Governing Licensed Paralegal Practitioner](#)
- [-Rules Governing the State Bar](#)

« [Code of Judicial Administration – Comment](#)

[Code of Judicial Administration – Comment](#)

Period Closed December 10, 2020

Period Closed November 20, 2020 »

## UTAH COURTS

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3 thoughts on “Code of Judicial Administration – Comment Period Closed November 21, 2020”

**Joseph M. Bean**  
October 8, 2020 at 7:06 am

We already have JPEC evaluations and the Judicial Conduct Commission for judicial officers, why do we need more bureaucracy? Next we'll need commissions to oversee other commissions and committees. If there is a need to field complaints about the court administrator then narrow the committee to that inquiry. If the Judicial Conduct Commission is inadequate, then that process needs to be reformed.

**Kara Wells**  
October 8, 2020 at 8:01 am

Thank you for reviewing this policy and creating much clearer direction.

**Michael Zimmerman**  
October 8, 2020 at 10:34 am

CJA 03-0105

This seems an appropriate restatement of the roles of the Court and the Judicial Council, and institutionalization of means for noting and resolving situations where one might trench on an

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0212
- CJA03-0101
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- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112

000031

other's prerogative. This can be an issue that at times lurks unseen.

000032

- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0301.01
- CJA03-0302
- CJA03-0304
- CJA03-0304.01
- CJA03-0305
- CJA03-0306
- CJA03-0306.01
- CJA03-0306.02
- CJA03-0306.03
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- CJA04-0110
- CJA04-0201
- CJA04-0202
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- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206
- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03
- CJA04-0402



**CJA Rule 3-201****Rule 3-201. Court Commissioners.****Intent:**

To define the role of court commissioner.

To establish a term of office for court commissioners.

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

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

**Applicability:**

This rule shall apply to all trial courts of record.

**Statement of the Rule:**

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

(2) **Qualifications.**

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

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

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

(3) **Appointment - Oath of office.**

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

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

(3)(C) A committee for the purpose of nominating candidates for the position of court commissioner shall consist of the presiding judge or designee from each court level and judicial district that the commissioner will serve, three lawyers, and two members of the public. Committee members shall be appointed by the presiding

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judge of the district court of each judicial district. The committee members shall serve three year terms, staggered so that not more than one term of a member of the bench, bar, or public expires during the same calendar year. The presiding judge shall designate a chair of the committee. All members of the committee shall reside in the judicial district. All members of the committee shall be voting members. A quorum of one-half the committee members is necessary for the committee to act. The committee shall act by the concurrence of a majority of the members voting. When voting upon the qualifications of a candidate, the committee shall follow the procedures established in the commissioner nominating manual.

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

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

(3)(F) The administrative office of the courts shall advertise for qualified applicants and shall remove from consideration those applicants who do not meet minimum qualifications of age, citizenship, residency, and admission to the practice of law. The administrative office of the courts shall develop uniform guidelines for the application process for court commissioners.

(3)(G) The nominating committee shall review the applications of qualified applicants and may investigate the qualifications of applicants to its satisfaction. The committee shall interview selected applicants and select the three best qualified

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67 candidates. All voting shall be by confidential ballot. The committee shall  
68 receive public comment on those candidates as provided in paragraph (4). Any  
69 candidate may be reconsidered upon motion by a committee member and upon  
70 agreement by a majority of nominating committee members.

71 (3)(H) When the public comment period as provided in paragraph (4) has closed, the  
72 comments shall be given to the nominating committee. If any comments would  
73 negatively affect the committee's decision on whether to recommend a  
74 candidate, the candidate shall be given all comments with the commenters'  
75 names redacted and an opportunity to respond to the comments. If the  
76 committee decides not to recommend a candidate based on the comments, the  
77 committee shall select another candidate from the interviewed applicants and  
78 again receive public comment on the candidates as provided in paragraph (4).

79 (3)(I) The chair of the nominating committee shall present the names, applications, and  
80 the results of background investigations of the nominees to the judges of the  
81 courts the court commissioner will serve. The committee may indicate its order of  
82 preference.

83 (3)(J) The judges of each court level the court commissioner will serve shall together  
84 select one of the nominees by a concurrence of a majority of judges voting. If the  
85 commissioner will serve more than one judicial district, the concurrence of a  
86 majority of judges in each district is necessary for selection.

87 (3)(K) The presiding judge of the district the court commissioner will primarily serve  
88 shall present the name of the selected candidate to the Council. The selection  
89 shall be final upon the concurrence of two-thirds of the members of the Council.  
90 The Council shall vote upon the selection within 45 days of the selection or the  
91 concurrence of the Council shall be deemed granted.

92 (3)(L) If the Council does not concur in the selection, the judges of the district may  
93 select another of the nominees or a new nominating process will be commenced.

94 (3)(M) The appointment shall be effective upon the court commissioner taking and  
95 subscribing to the oath of office required by the Utah Constitution and taking any  
96 other steps necessary to qualify for office. The court commissioner shall qualify  
97 for office within 45 days after the concurrence by the Council.

98 (4) **Public comment for appointment and retention.**

99 (4)(A) Final candidates for appointment and court commissioners who are up for  
100 retention shall be subject to public comment.

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- 101 (4)(B) For final candidates, the nominating committee shall be responsible for giving  
102 notice of the public comment period.
- 103 (4)(C) For court commissioners, the district in which the commissioner serves shall be  
104 responsible for giving notice of the public comment period.
- 105 (4)(D) The nominating committee or district in which the commissioner serves shall:  
106 (4)(D)(i) email notice to each active member of the Utah State Bar including  
107 the names of the nominees or court commissioner with instructions on  
108 how to submit comments;
- 109 (4)(D)(ii) issue a press release and other public notices listing the names of the  
110 nominees or court commissioner with instructions on how to submit  
111 comments; and
- 112 (4)(D)(iii) allow at least 10 days for public comment.
- 113 (4)(E) Individuals who comment on the nominees or commissioners should be  
114 encouraged, but not required, to provide their names and contact information.
- 115 (4)(F) The comments are classified as protected court records and shall not be made  
116 available to the public.
- 117 (5) **Term of office.** The court commissioner shall be appointed until December 31 of the third  
118 year following concurrence by the Council. At the conclusion of the first term of office and  
119 each subsequent term, the court commissioner shall be retained for a term of four years  
120 unless the judges of the courts the commissioner serves vote not to retain the  
121 commissioner in accordance with paragraph (8)(B) or unless the Judicial Council does not  
122 certify the commissioner for retention under rule 3-111. The term of office of court  
123 commissioners holding office on April 1, 2011 shall end December 31 of the year in which  
124 their term would have ended under the former rule.
- 125 (6) **Court commissioner performance review.**
- 126 (6)(A) **Performance evaluations and performance plans.** The presiding judge of  
127 each district and court level the commissioner serves shall prepare an evaluation  
128 of the commissioner's performance and a performance plan in accordance with  
129 Rule 3-111. Court commissioners shall comply with the program for judicial  
130 performance evaluation, including expectations set forth in a performance plan.
- 131 (6)(B) **Public comment period results.** When the public comment period for a  
132 commissioner provided in paragraph (4) closes, the comments shall be given to  
133 and reviewed by the presiding judge of each district and court level the  
134 commissioner serves. If there are any negative comments ~~would negatively~~

~~affect the presiding judge's decision of whether to sanction the commissioner take~~  
~~corrective actions or remove the commissioner from office in accordance with~~  
~~paragraph (7), the negative comments shall be provided to the~~ commissioner  
~~shall be provided all comments~~ with the commenters' names redacted and the  
commissioner shall be given an opportunity to respond to the comments.

(7) **~~Sanctions~~ Corrective action or removal during a commissioner's term.**

(7)(A) **~~Sanctions~~ Corrective action.**

(7)(A)(i) The Council may take corrective actions ~~court commissioner may be~~  
~~sanctioned by the Council~~ as the result of a ~~formal~~ complaint filed  
under rule 3-201.02.

(7)(A)(ii) If the commissioner's performance is not satisfactory, ~~the~~  
~~commissioner may be sanctioned~~ corrective actions may be taken in  
accordance with paragraph (7)(A)(iii) by the presiding judge, or  
presiding judges if the commissioner serves multiple districts or court  
levels, with the concurrence of a majority of the judges in either district  
or court level the commissioner serves.

(7)(A)(iii) ~~Sanctions~~ Corrective actions may include but are not limited to private  
or public censure, restrictions in case assignments with corresponding  
reduction in salary, mandatory remedial education, ~~and~~ suspension  
without pay for a period not to exceed 60 days, and removal under  
(7)(B)(i)(c).

(7)(B) **Removal.**

(7)(B)(i) **Removal by Judicial Council.** During a commissioner's term, the  
court commissioner may be removed by the Council:

(7)(B)(i)(a) as part of a reduction in force;

(7)(B)(i)(b) for failure to meet the evaluation requirements; or

(7)(B)(i)(c) as the result of a ~~formal~~ complaint filed under rule  
3-201.02 upon the concurrence of two-thirds of the  
Council.

(7)(B)(ii) **Removal by District or Court Level.**

(7)(B)(ii)(a) During a commissioner's term, if the commissioner's  
performance is not satisfactory, the commissioner may  
be removed by the presiding judge, or presiding judges if  
the commissioner serves multiple districts or court levels,

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169 only with the concurrence of a majority of the judges in  
170 each district or court level the commissioner serves.

171 (7)(B)(ii)(b) If the commissioner serves multiple districts or court  
172 levels and one district or court level contests a  
173 commissioner removal decision made by the other  
174 district or court level, the Management Committee will  
175 review the decision, with final determination by the  
176 Judicial Council.

177 (7)(C) **Review of District or Court Level Decisions.** If the commissioner disagrees  
178 with a district or court level's decision to ~~sanction~~remove the commissioner or  
179 take corrective action~~er remove~~, the commissioner may request a review of the  
180 decision by the Management Committee of the Council.

181 (8) **Retention.**

182 (8)(A) The Council shall review materials on the commissioner's performance prior to  
183 the end of the commissioner's term of office and the Council shall vote on  
184 whether the commissioner is eligible to be retained for another term in  
185 accordance with rule 3-111.

186 (8)(B) At the end of a commissioner's term, the judges of each district and court level  
187 the commissioner serves may vote not to retain the commissioner for another  
188 term of office. The decision not to retain is without cause and shall be by the  
189 concurrence of a majority of the judges in each district and court level the  
190 commissioner serves. A decision not to retain a commissioner under this  
191 paragraph shall be communicated to the commissioner within a reasonable time  
192 after the decision is made, and not less than 60 days prior to the end of the  
193 commissioner's term .

194 (9) **Salaries and benefits.**

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

200 (9)(B) Court commissioners shall receive annual leave of 20 days per calendar year  
201 and the same sick leave benefits as judges of the courts of record. Annual leave  
202 not used at the end of the calendar year shall not accrue to the following year. A

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203 commissioner hired part way through the year shall receive annual leave on a  
204 prorated basis. Court commissioners shall receive the same retirement benefits  
205 as non-judicial officers employed in the judicial branch.

206 (10) **Support services.**

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

210 (10)(B) Court commissioners are responsible for requesting necessary support services  
211 from the presiding judge.

212 *Effective May/~~November~~ 1, 2021—*

**CJA 3-201.02****Rule 3-201.02. Court Commissioner Conduct Committee.****Intent:**

To establish a procedure for the review of complaints filed against court commissioners.

**Applicability:**

This rule shall apply to all trial courts of record.

**Statement of the Rule:****(1) Court Commissioner Conduct Committee.**

(1)(A) The Court Commissioner Conduct Committee is established to:

(1)(A)(i) receive, review, and investigate any complaint filed against a court commissioner;

(1)(A)(ii) conduct any hearing related to a complaint, and

(1)(A)(iii) make recommendations to the Council and the presiding judge(s) of the district(s) the commissioner serves regarding corrective actions or removal of the commissioner pursuant to CJA 3-201, where the Committee finds misconduct by a preponderance of the evidence. For purposes of this rule, "misconduct" means:

(1)(A)(iii)(a) action that constitutes willful misconduct in office;

(1)(A)(iii)(b) final conviction of a crime punishable as a felony under state or federal law;

(1)(A)(iii)(c) willful and persistent failure to perform commissioner duties; or

(1)(A)(iii)(d) violations of the Code of Judicial Conduct.

(1)(B) The Court Commissioner Conduct Committee shall consist of the following members:

(1)(B)(i) as chair, the Court of Appeals member of the Ethics Advisory Committee, who shall serve as chair of the Committee;

(1)(B)(ii) two presiding judges from judicial districts with a court commissioner, which presiding judges shall be from districts other than the district the commissioner primarily serves;

(1)(B)(iii) the immediate past Bar Commissioner member of the Judicial Council; and



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~~(1)(A)(iv)~~ (1)(B)(iv) the chair of the Supreme Court Advisory Committee on the Rules of Professional Conduct.

(1)(C) Circumstances which require recusal of a judge shall require recusal of a Committee member from participation in Committee action.

(1)(C)(i) If the chair is recused, a majority of the remaining members shall select from among themselves a chair pro tempore.

(1)(C)(ii) If a presiding judge is recused, the chair shall temporarily appoint a presiding judge of another judicial district with a commissioner.

(1)(C)(iii) If the immediate past Bar Commissioner ~~member of~~ the ~~Judicial~~ Council is recused or otherwise unable to serve, the chair shall temporarily appoint another past Bar Commissioner ~~member of~~ the ~~Judicial~~ Council.

(1)(C)(iv) If the chair of the Supreme Court Advisory Committee on the Rules of Professional Conduct is recused or otherwise unable to serve, the chair shall temporarily appoint another member of the Supreme Court Advisory Committee on the Rules of Professional Conduct.

(1)(D) Three members of the Committee constitute a quorum. Any action of a majority of the quorum constitutes the action of the Committee. The chair shall vote only as necessary to break a tie vote. The Committee shall be organized and meet only as often as necessary to resolve a complaint not previously dismissed by the chair pursuant to paragraph (2)(C) below. Committee members may attend meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

~~(1)(B)(1)(E)~~ The confidentiality of all actions and materials related to a complaint, hearing, appeal, and Council review are governed by Rule 4-202.02, other than any public censure by the Council.

**(2) Complaint submission and initial review.**

(2)(A) A person who has a complaint against a commissioner shall submit a copy of the complaint to the Committee chair.

(2)(B) Each complaint shall be in writing and shall contain:

(2)(B)(i) the complainant's name;

(2)(B)(ii) the complainant's preferred contact information;

(2)(B)(iii) the name of the involved commissioner;

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(2)(B)(iv) a description of the commissioner's actions in sufficient detail to  
inform the Committee of the nature and date of the alleged  
misconduct; and

(2)(B)(v) when possible, supporting documentation.

~~(1)(C) Upon receiving a complaint, the chair shall conduct an initial review to determine~~  
~~if the allegations raise an issue that would be appropriately addressed by the full~~  
~~Committee. The chair shall dismiss frivolous complaints and complaints found to~~  
~~raise only issues of law or fact for which the remedy is the review of the case by~~  
~~the trial court judge or by an appellate court. If the chair dismisses a complaint~~  
~~following initial review, the chair shall provide notice of and basis for the~~  
~~dismissal to the complainant, the presiding judge(s) of the district(s) the~~  
~~commissioner serves, and the commissioner. The chair shall refer any complaint~~  
~~not dismissed following initial review to the full Committee. **Informal complaint.**~~  
~~An informal complaint against a court commissioner may be filed with the~~  
~~presiding judge of the court the court commissioner serves. The presiding judge~~  
~~shall conduct such investigation and take such corrective action as warranted by~~  
~~the complaint.~~

~~(1)(D) **Formal complaint.**~~

~~(1)(E) A formal complaint against a court commissioner shall be in writing and filed with~~  
~~the presiding officer of the Council. The presiding officer shall refer the complaint~~  
~~to the committee and provide a copy of the complaint to the court commissioner~~  
~~and to the presiding judge of the court the commissioner serves.~~

~~(1)(F) All proceedings and materials related to a formal complaint shall be kept~~  
~~confidential.~~

~~(1)(G) The chair or the committee shall dismiss a frivolous complaint. The chair or the~~  
~~committee shall dismiss a complaint found to raise only issues of law or fact for~~  
~~which a remedy is the review of the case by the trial court judge or by an~~  
~~appellate court. The chair of the committee shall provide notice of and basis for~~  
~~the dismissal to the complainant, the presiding judge and the commissioner.~~

~~(1)(H) The committee may investigate a complaint that is not dismissed under~~  
~~paragraph (3)(C). This investigation shall be conducted to determine whether~~  
~~dismissal or a hearing is appropriate.~~

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~~(1)(I) The committee may request that the state court administrator appoint a staff person within the administrative office to perform any investigation and make any presentations to the Committee or the Council.~~

~~(2)(C)~~

**(3) Committee examination**

~~(3)(A) The Committee shall examine any complaint referred to it by the chair under paragraph (2)(C) to determine whether dismissal or a hearing is appropriate. In connection with this examination, the committee may conduct an investigation of the allegations made in the complaint, including review of any relevant court file, hearing transcripts, and related materials.~~

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~~(3)(B) If the Committee dismisses the complaint after examination, the chair shall provide notice of and basis for the dismissal to the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves.~~

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~~(3)(C) If the Committee determines that the matter should proceed to a hearing, the chair shall send notice to the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves. The notice shall:~~

~~(3)(C)(i) inform the commissioner of the allegations and the canons allegedly violated;~~

~~(3)(C)(ii) invite the commissioner to respond to the allegations in writing within 30 days; and~~

~~(3)(C)(iii) include a copy of the complaint.~~

~~(3)(D) If the commissioner chooses to respond to the allegations, the commissioner shall send a copy of the response to the complainant, the Committee chair, and the presiding judge(s) of the district(s) the commissioner serves.~~

~~(3)(E) At any time prior to a hearing, the complainant may request to withdraw his or her complaint. If such a request is made, the Committee may grant the request and dismiss the complaint, or it may deny the request and proceed with the hearing.~~

**~~(2)~~(4) Hearings of the Court Commissioner Conduct Committee.**

~~(4)(A) If the Committee determines that a matter should proceed to a hearing under paragraph (3), a hearing shall be scheduled after receipt of the commissioner's response or expiration of the time to respond in paragraph (3)(C)(ii). Notice of the date, time, and place of the hearing shall be sent to the complainant, the~~

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commissioner, and the presiding judge(s) of the district(s) the commissioner serves.

(4)(B) Hearings shall be closed to the public.

(4)(C) Not later than 20 days before the hearing, the commissioner and complainant shall exchange all proposed exhibits and a list of all potential witnesses. The commissioner and the complainant are not considered witnesses.

(4)(D) The commissioner and complainant may be present at the hearing and have the assistance of counsel.

(4)(E) The Committee shall interview the complainant, the commissioner, and any witnesses determined by the Committee to have relevant information. The commissioner and complainant have the right to testify.

(4)(F) The complainant may ask the Committee to pose specific questions to the commissioner, and the commissioner may ask the Committee to pose specific questions to the complainant. But ordinarily, neither the complainant nor the commissioner, whether acting on their own or through counsel, will be allowed to cross-examine the other unless, upon request, the Committee chair determines that cross-examination would materially assist the Committee in its deliberation.

(4)(G) The commissioner and complainant may present, examine, and cross-examine witnesses.

(4)(H) Testimony shall be presented under oath and a record of the proceedings maintained.

(4)(I) At any time before final decision by the Committee, the commissioner may admit some or all of the allegations in the complaint, and may stipulate to findings and recommendations by the Committee.

(4)(J) Within 30 days after the completion of the hearing, the Committee shall make written findings and conclusions concerning the allegations in the complaint and provide a copy to the complainant, the commissioner, the presiding judge(s) of the district(s) the commissioner serves, and the Council.

(4)(K) If the Committee finds misconduct by a preponderance of the evidence, the Committee shall recommend appropriate corrective actions under CJA Rule 3-201.

(4)(L) In making recommendations for corrective actions, the Committee shall consider the following non-exclusive factors:

(4)(L)(i) the nature of the misconduct;

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- 165 (4)(L)(ii) the gravity of the misconduct;
- 166 (4)(L)(iii) the extent to which the misconduct has been reported to or is known
- 167 by the presiding judge(s) of the district(s) the commissioner serves or
- 168 the commissioner, and the source of the dissemination of information;
- 169 (4)(L)(iv) the extent to which the commissioner has accepted responsibility for
- 170 the misconduct;
- 171 (4)(L)(v) the extent to which the commissioner has made efforts to avoid
- 172 repeating the same or similar misconduct;
- 173 (4)(L)(vi) the length of the commissioner's service with the courts;
- 174 (4)(L)(vii) the effect the misconduct has had upon the confidence of court
- 175 employees, participants in the judicial system, or the public in the
- 176 integrity or impartiality of the judiciary;
- 177 (4)(L)(viii) the extent to which the commissioner profited or satisfied his or her
- 178 personal desires as a result of the misconduct; and
- 179 (4)(L)(ix) the number and type of previous corrective actions against the
- 180 commissioner.
- 181 (4)(M) At the conclusion of the Committee's work, a copy of the complete file shall be
- 182 delivered to the State Court Administrator or designee.
- 183 **(5) Council review of committee action.**
- 184 **(5)(A) Appeals from decisions without a hearing.**
- 185 (5)(A)(i) Complaints dismissed prior to hearing, either by the chair under
- 186 paragraph (2)(C) or by the Committee under paragraph (3)(B), may be
- 187 appealed by the complainant to the Judicial Council. All such appeals
- 188 must be submitted in writing to the Chair of the Council, and must be
- 189 received within 30 days of the notice of dismissal. In the appeal, the
- 190 complainant must set forth the specific grounds on which the appeal is
- 191 based. A copy of the appeal shall be provided to the Committee chair,
- 192 the commissioner, and the presiding judge(s) of the district(s) the
- 193 commissioner serves.
- 194 (5)(A)(ii) The Council, a designated Council member, or a committee of the
- 195 Council shall conduct a de novo review of the file, and shall either
- 196 affirm the dismissal, or shall require the Court Commissioner Conduct
- 197 Committee to set the matter for hearing or re-hearing.

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(5)(A)(iii) The Council's decision shall be in writing and a copy provided to the Committee chair, the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves.

(5)(A)(iv) If the dismissal is affirmed, the complainant has no other right of appeal.

**(5)(B) Council review following a hearing.**

(5)(B)(i) The Committee's findings, conclusions, and recommendations following a hearing will be reviewed by the Council, and considered at a meeting of the Council to be held at least 45 days after issuance of the Committee's decision.

(5)(B)(ii) The complainant, the commissioner, or presiding judge(s) of the district(s) the commissioner serves may file objections to the Committee's findings, conclusions or recommendations. Any such objections must be submitted in writing to the Council within 30 days of the date the Committee's findings, conclusions, and recommendations were issued.

(5)(B)(iii) No person other than the members of the Council are entitled to attend the Council meeting at which the Committee's decision is reviewed.

(5)(B)(iv) In conducting its review, the Council shall review the record of the Committee's hearing, and shall determine whether to adopt, modify, or reject the Committee's findings, conclusions, and recommendations, including any recommendations for corrective action.

(5)(B)(v) The Council's decision shall be in writing and provided to the Committee chair, the commissioner, the complainant, and the presiding judge(s) of the district(s) the commissioner serves.

(5)(B)(vi) The decision reached by the Council after review is final and is not appealable.

**(5)(C) Annual Report.** The chair of the Committee shall report to the Council not less than annually on the Committee's work including a general description of any complaint dismissed without a hearing.

~~(2)(A)(i) The hearings of the committee shall be closed to the public. The committee shall interview the complainant, the court commissioner,~~

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and any witnesses determined to have relevant information. The commissioner has the right to testify. The commissioner and complainant may be present at any hearing of the committee and have the assistance of counsel. The commissioner may present and examine and cross-examine witnesses. Testimony shall be presented under oath and a record of the proceedings maintained. The commissioner may obtain a copy of the record upon payment of any required fee.

~~(2)(A)(ii) — The committee shall make written findings concerning the merits of the complaint and provide a copy of the findings to the complainant, the court commissioner, and the presiding judges of the court the commissioner serves.~~

~~(2)(B) — If the committee finds the complaint to have merit, the committee shall recommend to the Council that a sanction be imposed under CJA Rule 3-201(6). The committee shall dismiss any complaint found to be without merit.~~

~~(2)(C) — Council Review.~~

~~(2)(C)(i) — Complaints dismissed without a hearing. The chair of the committee shall report to the Council not less than annually on the committee's work including a general description of any complaint dismissed without a hearing.~~

~~(2)(C)(ii) — Complaints with a committee hearing.~~

~~(2)(C)(ii)(a) — The Council shall review the record of the committee hearing to determine the correct application of procedures and to determine the sanction to be imposed.~~

~~(2)(C)(ii)(b) — The complainant, commissioner or presiding judges of the districts the commissioner serves shall file any objections to the committee's findings in writing with the Council. No person is entitled to attend the Council meeting at which the complaint is reviewed.~~

Effective May ~~November~~ 1, 2021 —

**Rule 3-301.01. State Court Administrator—Complaints and Performance Review; Complaints Regarding Judicial Officers and State Court Employees.**

**Intent:**

The State Court Administrator serves at the pleasure of both the Supreme Court and the Judicial Council. The intent of this rule is to establish (1) the process for reviewing the performance of the State Court Administrator; (2) an avenue by which complaints regarding the State Court Administrator, judicial officers, and state court employees can be received, reviewed, and investigated; and (3) the confidentiality necessary to perform this work.

**Applicability:**

This rule applies to the judicial branch.

**Statement of the Rule:**

**(1) Definitions.**

- a. “Performance Review Committee” means a committee consisting of one member of the Management Committee of the Judicial Council who is not a member of the Supreme Court, and one member of the Supreme Court. The Management Committee member shall be appointed by a majority vote of the Management Committee. The Supreme Court member shall be appointed by the Chief Justice.
- b. “Management Committee” means the standing committee of the Judicial Council established in Rule 1-204.

**(2) Complaints Regarding and Performance Review of State Court Administrator.**

- a. **Complaints—Receipt, Review, and Investigation.** The Supreme Court and the Management Committee are authorized to receive complaints regarding the conduct or performance of the State Court Administrator.
  - i. The Supreme Court or the Management Committee shall promptly disclose all such complaints to each other and to the Performance Review Committee. The Performance Review Committee shall convene promptly to review the complaint and to determine what investigation is appropriate.
  - ii. After the appropriate investigation is completed, the Performance Review Committee shall make recommendations to the Judicial Council and the Supreme Court. Recommendations may include: no further action, a performance or corrective action plan, discipline as a condition of continued employment, or termination.



- 33           b. **Annual Performance Review.** At least annually, the Performance Review Committee  
34 shall review the performance of the State Court Administrator in accordance with the  
35 standards set forth in the Human Resources Policies and Procedures Manual.
- 36           i. The Performance Review Committee shall report the results of the State Court  
37 Administrator's annual performance review to the Judicial Council and Supreme  
38 Court. After completion of the performance review, the Performance Review  
39 Committee may make recommendations to the Judicial Council and the Supreme  
40 Court. Recommendations may include: no further action, a performance or  
41 corrective action plan, discipline as a condition of continued employment, or  
42 termination.
- 43           ii. The Judicial Council and the Supreme Court shall meet in a joint executive  
44 session to approve, reject, or modify any recommended performance or  
45 corrective action plan.
- 46       c. **Action to Discipline or Terminate the State Court Administrator.**
- 47           i. If the Performance Review Committee recommends that the State Court  
48 Administrator be disciplined as a condition of continued employment or be  
49 terminated, the Performance Review Committee shall promptly report its  
50 recommendation to the Judicial Council and the Supreme Court.
- 51           ii. The Judicial Council and the Supreme Court shall meet in a joint executive  
52 session to consider the recommendation. After considering the recommendation,  
53 the Judicial Council and the Supreme Court may undertake such additional  
54 investigation as they jointly deem necessary. The Judicial Council and the  
55 Supreme Court shall work together in good faith to exercise jointly and by  
56 consensus their statutory rights regarding termination of the State Court  
57 Administrator.
- 58       **(3) Complaints Regarding Judges and State Court Employees.**
- 59           a. **Judicial Officers.** The Management Committee is authorized to receive, review, and  
60 investigate complaints regarding the conduct or performance of any judicial officer. After  
61 completing the investigation it deems appropriate, the Management Committee may refer  
62 the complaint and make recommendations to the appropriate presiding judge or to the  
63 Judicial Council. The Judicial Council shall decide whether to refer the complaint to the  
64 Judicial Conduct Commission.
- 65           b. **Other Court Employees.** The Management Committee is authorized to receive  
66 complaints regarding the conduct or performance of any state court employee. For  
67 complaints involving any employee other than the State Court Administrator or Human  
68 Resources Director, the Management Committee shall refer the complaint to the Human  
69 Resources Department consistent with its Policies and Procedures Manual. Complaints

involving the Human Resources Director shall be referred to the State Court Administrator for review and investigation.

**(4) Consultation Regarding Personnel and Related Matters.**

- a. The Management Committee shall be available to consult with any presiding judge on personnel and related matters involving a judicial officer.
- b. The Management Committee shall be available to consult with the State Court Administrator on personnel and related matters involving any state court employee.

**(5) Confidentiality.**

- a. The work performed by the Supreme Court, the Performance Review Committee or the Management Committee pursuant to this rule shall be kept confidential and shall not be disclosed until (1) disclosure is required by this rule, or (2) disclosure is required by applicable law.

Effective May 1, 2020

**Rule 3-105. Administration of the Judiciary****Intent:**

To set forth the authority of individual judges, courts, the Supreme Court, and the Judicial Council to fairly and effectively administer the functions of the judicial branch, and to provide a process by which the Supreme Court and the Judicial Council (1) determine when a matter is predominantly within the exclusive authority of the Supreme Court or the Judicial Council such that referral to and independent action of either body is required; and (2) determine when a matter significantly implicates the exclusive authority of both the Supreme Court and the Judicial Council such that a coordinated effort is required.

**Applicability:**

This Rule applies to the judicial branch.

**Statement of the Rule:****1. Individual Judges, Courts and Court Levels.**

- a. Individual judges are responsible for administering the cases assigned to them and to their courts for disposition consistent with Rule 3-103.
- b. Individual judges, courts, or court levels may adopt and apply policies, procedures, and practices applicable to them to ensure the fair, efficient, and timely administration of cases assigned to them, provided such policies, procedures, and practices conform to all applicable state and federal laws, to rules and orders promulgated by the Supreme Court, rules promulgated by the Judicial Council, and to applicable provisions of the Human Resources Policies and Procedures Manual.

**2. The Supreme Court.**

- a. The Supreme Court has exclusive authority to adopt rules of procedure and evidence to be used in courts of the State, to manage the appellate process, to authorize retired justices, judges, and judges pro tempore to perform judicial duties, and to govern the practice of law in the State.
- b. To the extent matters arise or come before the Judicial Council that are within the exclusive authority of the Supreme Court, the Judicial Council shall refer all such matters to the Supreme Court by notice to the Chief Justice.

**3. The Judicial Council.**

- a. Except as provided in paragraphs (1) and (2), the Judicial Council has exclusive authority for the administration of the judiciary, including authority to establish and manage the budget, adopt administrative policies and rules, and oversee the Administrative Office of the Courts.

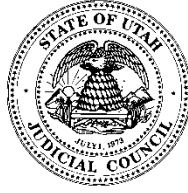
- 34           b. The Chief Justice, as presiding officer of the Judicial Council and chief administrative  
35           officer of the judiciary, shall supervise the State Court Administrator and shall implement  
36           rules and policies adopted by the Judicial Council.
- 37           c. To the extent matters arise or come before the Supreme Court that are within the  
38           exclusive authority of the Judicial Council, the Supreme Court shall refer all such matters  
39           to the Judicial Council by notice to the Management Committee.
- 40       4. **Concurrent Authority of the Supreme Court and Judicial Council.** The Supreme Court and  
41       the Judicial Council are each independently responsible for the removal of the State Court  
42       Administrator as provided in statute and Rule 3-301, but shall exercise that independent authority  
43       consistent with Rule 3-308.
- 44       5. **Coordination and Referral of Activities Implicating Exclusive Authority of the Supreme**  
45       **Court and Judicial Council.**
- 46           a. When the Supreme Court begins considering a matter which implicates both the Court's  
47           and the Council's exclusive authority, or when there is uncertainty about whether the  
48           Court or the Council has authority over such a matter, the Supreme Court or a  
49           designated member of the Supreme Court, shall promptly meet and confer with the  
50           Management Committee.
- 51           b. When the Judicial Council begins considering a matter which implicates both the  
52           Council's and the Court's exclusive authority, or when there is uncertainty about whether  
53           the Council or the Court has authority over such a matter, the Management Committee  
54           shall promptly meet and confer with the Chief Justice.
- 55           c. In the meeting required under subsections (5)(a) and (5)(b), the Supreme Court (acting  
56           through its designated member) and the Judicial Council (acting through its Management  
57           Committee) shall:
- 58               i. Decide whether the matter is predominantly within the exclusive authority of the  
59               Supreme Court or predominantly within the exclusive authority of the Judicial  
60               Council, and then refer the matter to the body with the predominating authority to  
61               act;
- 62               ii. Decide whether the matter substantially implicates both the exclusive authority of  
63               the Supreme Court and the exclusive authority of the Judicial Council, and then  
64               act in a coordinated effort to address the matter.
- 65           d. If after a meeting required under subsections 5(a) and 5(b), no decision can be reached  
66           about predominant authority, substantial implication of authority, referral of the matter, or  
67           coordination of action, the Supreme Court and the Judicial Council shall meet in a joint  
68           session to make the decision.
- 69           e. The designated member of the Supreme Court shall consult with and report to the  
70           Supreme Court regarding any meeting required under this rule.

- 71                    f. The Management Committee shall consult with and report to the Judicial Council  
72                                regarding any meeting required under this rule.

73    Effective May 1, 2020

74    Note: All previous versions of CJA 3-105 have been repealed.

# Tab 4



## Administrative Office of the Courts

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

### MEMORANDUM

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

**To:** Judicial Council  
**From:** Nancy Sylvester *Nancy J. Sylvester*  
**Date:** December 11, 2020  
**Re:** Certification of Senior Judges

The senior judge evaluation and appointment processes are governed by the following Utah Code of Judicial Administration rules:

- [Rule 3-111](#): governs senior judge evaluations;
- [Rule 11-201](#): governs the appointment of senior judges of courts of record.

None of the senior judge applicants below has complaints pending before the Utah Supreme Court or the Judicial Conduct Commission. I will come to the Council's meeting prepared to discuss the Board of Justice Court Judges' recommendation on the justice court applicant.

All applications are attached and certification of each applicant appears to be appropriate.

#### A. SENIOR JUDGE APPLICANTS

The following retiring judge has applied for active senior judge status.

##### New Applicants

Last_Name	First_Name	Salute	Court	Geographic_Division	App?
Kay	Thomas L.	Judge	District Court	Active	X

The following current senior judges have terms of office that will expire on December 31, 2020. Cathy Dupont will provide additional information on the active senior judge applicants.

##### Active Senior Judges

Last_Name	First_Name	Salute	Court	Geographic_Division	App?
Beacham	G. Rand	Judge	District Court	Active	X
Low	Gordon J.	Judge	District Court	Active	X

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

### **Inactive Senior Judges**

<b>Last_Name</b>	<b>First_Name</b>	<b>Salute</b>	<b>Court</b>	<b>Geographic_Division</b>	<b>App?</b>
Noonan	Mary T.	Judge	Juvenile Court	Inactive	X
Weidauer	Susan	Judge	Justice Court	Inactive	X

## **B. CERTIFICATION PROCESS**

You may consider the information regarding each judge in an executive session, but your decision of whether to certify must be made at a public hearing.

If a judge meets all of the certification standards, it is presumed that the Council will certify the individual for senior judge status. If the judge fails to meet all of the standards, it is presumed you will not certify the individual. However, the Council has the discretion to overcome a presumption against certification upon a showing of good cause. Before declining to certify a senior judge, you must invite him or her to meet with you to present evidence and arguments of good cause. If you decline to certify a senior judge, the person will not be retained after the end of his or her term of office.

Any senior judge you certify will be sent to the Supreme Court for its consideration in the reappointment process.

## **C. PERFORMANCE STANDARDS FOR ACTIVE SENIOR JUDGES**

### **i. Attorney Surveys of Senior Judges**

A satisfactory score for an attorney survey question is achieved when the ratio of favorable responses is 70% or greater. The Judicial Council shall determine whether the senior judge's survey scores are satisfactory.

### **ii. Cases Under Advisement**

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 for final determination. The Council shall measure satisfactory performance by the self-declaration of the senior judge or by reviewing the records of the court.

A senior judge in a trial court demonstrates satisfactory performance by holding:

- no more than three cases per calendar year under advisement more than 60 days after submission; and
- no case under advisement more than 180 days after submission.

A senior judge in the court of appeals demonstrates satisfactory performance by:

- 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
- achieving a final average time to circulation of a principal opinion of no more than 120 days after submission.



**iii. Education**

Active senior judges must comply annually with judicial education standards, which is at least 30 hours of continuing education per year. *This year has been a bit different due to the pandemic and the Education Department's changing its reporting cycle, so I asked our active senior judges to simply indicate whether or not they complied with the Education Department's requirements.*

**iv. Substantial Compliance with the Code of Judicial Conduct**

A senior judge's performance is satisfactory if their responses in their application or self-declaration form demonstrate substantial compliance with the Code of Judicial Conduct, and if the Council's review of formal and informal sanctions leads you to conclude they are in substantial compliance with the Code of Judicial Conduct.

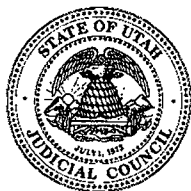
Under Rules 11-201 and 11-203, any sanction of a senior judge disqualifies the senior judge from reappointment.

**v. Physical and Mental Competence**

If the response of the senior judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct, the senior judge's performance is satisfactory.

**vi. Survey of Presiding Judges and Court Staff.**

The Council also measures the performance of active senior judges by a survey of all presiding judges and trial court executives of districts in which the senior judge has been assigned. Those surveys are attached to the extent that I have one has been returned to me for the judge.





**Senior Judge Application for District or Juvenile Court Judge  
Active Status**


**Qualifications for Office**

I, Thomas L. Kay, 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) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

- 13) 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;
- 14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 15) I was not removed from office or involuntarily retired on grounds other than disability.
- 16) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 17) 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.
- 18) I will submit relevant information as requested by the Judicial Council.
- 19) My date of birth is  and my retirement date is Jan. 1, 2024
- 20) I have not been subject to any order of discipline for conduct as a senior judge.
- 21) 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.
- 22) 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.
- 23) The address at which I can be contacted after retirement is:  
  


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My email address and phone number are: 

### Judicial Performance Evaluation Information

I further declare as follows:

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

28) I have obtained the following judicial education hours for the years indicated.

201 8	201 9	202 0
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. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

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29) 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.

September 30, 2020  
Date

Thomas J. Kay  
Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

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



## Senior Judge Application for District or Juvenile Court Judge Active Status

### Qualifications for Office

I, G. RAND BEACHAM 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) *If applying for a subsequent active senior judge term: During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below.*  
I completed my last assigned case with sentencing on 1-19-18.  
I have not been offered any other assignments since then.  
I hope to be able to help with the COVID backlog.
- 12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

- 13) 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;
- 14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 15) I was not removed from office or involuntarily retired on grounds other than disability.
- 16) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 17) 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.
- 18) I will submit relevant information as requested by the Judicial Council.
- 19) My date of birth is [REDACTED] and my retirement date is 12-14-2012
- 20) I have not been subject to any order of discipline for conduct as a senior judge.
- 21) 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.
- 22) 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.
- 23) The address at which I can be contacted after retirement is:

[REDACTED]

My email address and  
phone number are:

[REDACTED]

### Judicial Performance Evaluation Information

I further declare as follows:

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

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
30.5	I complied with the Education Department's education hour requirements.	

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. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

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29) 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.

9-29-2020

Date

G. David Beacham

Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

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

**SENIOR JUDGE G. RAND BEACHAM**

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	88.6%	5	0	2	0	0	0	4.43	4.53
Behavior is free from bias and favoritism	82.9%	5	0	0	2	0	0	4.14	4.51
Avoids ex parte communications (contact with one party without the other parties present)	88.6%	5	0	2	0	0	0	4.43	4.62
Understands and correctly applies the rules of procedure and evidence	94.3%	5	2	0	0	0	0	4.71	4.35
Understands and correctly applies the substantive law	94.3%	5	2	0	0	0	0	4.71	4.23
Is attentive to presentations	94.3%	5	2	0	0	0	0	4.71	4.50
Is prepared for hearings and trials	88.6%	5	0	2	0	0	0	4.43	4.42
Explains the purpose of the hearing	82.9%	3	2	2	0	0	0	4.14	4.44
Demonstrates appropriate demeanor	71.4%	3	2	0	0	2	0	3.57	4.45
Maintains order in the courtroom	88.6%	5	0	2	0	0	0	4.43	4.61
Provides a fair and adequate opportunity to present evidence or proffers of evidence	82.9%	5	0	0	2	0	0	4.14	4.37
Oral and written decisions and orders are clear and well reasoned	94.3%	5	2	0	0	0	0	4.71	4.29
Issues recommendations without unnecessary delay	77.1%	3	2	0	2	0	0	3.86	4.43
Effectively uses pretrial procedures to narrow and define the issues	82.9%	3	2	2	0	0	0	4.14	4.37
Overall, the performance of this court commissioner is	82.9%	5	0	0	2	0	0	4.14	4.45
Overall Average Score:	86.3%	67	16	12	8	2	0	4.31	4.45

**Comments:**

I think he is an excellent judge.

While on the Bench, Judge Beacham needs to exhibit the type of demeanor that he expects from everyone else that appears before his court. Unfortunately, he often can be overbearing and degrading. Behind his back, I have heard others refer to him as a tyrant. Hopefully, this will no longer be the case now that he is a senior judge.





## Senior Judge Application for District or Juvenile Court Judge Active Status

### Qualifications for Office

I, GORDON J. LOW 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) *If applying for a subsequent active senior judge term:* During my last term of office, I accepted assignments at least two days per calendar year. If you did not, please explain why in the lines below. I RETURNED TO ACTIVE SENIOR JUDGE STATUS IN MARCH OF THIS YEAR, HAVING BEEN OUT OF THE COUNTRY FOR 18 MONTHS. I HAVE NOT BEEN REQUESTED TO SERVE DURING THE INTERIM. HAD I BEEN REQUESTED, I CERTAINLY WOULD HAVE SERVED.
- 12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.

- 13) 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;
- 14) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 15) I was not removed from office or involuntarily retired on grounds other than disability.
- 16) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 17) 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.
- 18) I will submit relevant information as requested by the Judicial Council.
- 19) My date of birth is [REDACTED], and my retirement date is September 1, 2007.
- 20) I have not been subject to any order of discipline for conduct as a senior judge.
- 21) 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.
- 22) 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.
- 23) The address at which I can be contacted after retirement is:  
[REDACTED]  
\_\_\_\_\_  
\_\_\_\_\_  
My email address and  
phone number are: [REDACTED]  
\_\_\_\_\_

### **Judicial Performance Evaluation Information**

I further declare as follows:

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

28) I have obtained the following judicial education hours for the years indicated.

2018	2019	2020
0	0	0

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. You may also use these lines to explain the reason(s) for any other gaps in your education hours.

I was in Vietnam teaching mediation to the Vietnamese Judiciary and Bar March-June 2018, and in Australia September 2018 through March 2020 serving as Associate Area Legal Counsel for the Church of Jesus Christ of Latter Day Saints. The 2020 Spring Bar was therefore missed as well as the 2020 District Court conference having been cancelled. Though I was able to join by phone the Senior Judges meeting, I was unable to join, via Zoom, the Annual Conference in September, but have requested the video of the same and intend on obtaining as many hours by December 31 as are required for 2020 in order to meet the standard..



29) 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.

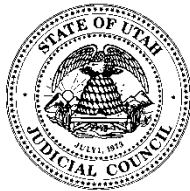
28 September 2020

Date

Signature

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

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



## Inactive District or Juvenile Court Senior Judge Application

### Inactive Status

I, Mary T. Noonan, apply for the office of senior judge, inactive status, 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) 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.
- 8) 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.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

██████████

██████████

██████████

My email address and  
phone number are:

████████████████████  
████████████████████

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.

12/11/2020

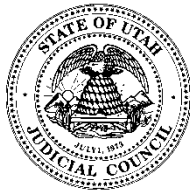
/s/ Mary T. Noonan

Date

by Nancy Sylvester at the direction of  
Signature  
Judge Mary T. Noonan

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

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



**Senior Judge Application for Justice Court Judge  
Inactive Status**

I, Susan Weidauer, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was certified by the Judicial Council for retention election or reappointment the last time the Council considered me for certification.
- 2) I voluntarily resigned from judicial office, was laid off pursuant to a reduction in force, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, recovered from or have accommodated that disability.
- 3) I demonstrate appropriate ability and character.
- 4) I was in office for at least five years. My separation date is 1-1-2012.
- 5) I comply with the restrictions on secondary employment provided by the Utah Code.
- 6) 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.
- 7) 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.
- 8) The mailing address and phone number at which I can be contacted after retirement are:

[REDACTED]

My email address and  
phone number are:

[REDACTED]

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.

12/11/2020

/s/ Susan Weidauer

Date

by Nancy Sylvester at the direction of  
Signature Judge Susan Weidauer

Please complete and return the application at your earliest convenience. An electronic copy (a scanned copy that is emailed) is preferred, but you may return it using the method most convenient to you. Thank you.

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

# Tab 5



Alex G. Peterson  
Executive Director

# State of Utah

## JUDICIAL CONDUCT COMMISSION

1385 S. State St., Suite #143  
Salt Lake City, Utah 84115  
Telephone: (801) 468-0021

**TO** Judicial Council

**FROM** Alex G. Peterson, Executive Director

**DATE** December 11th, 2020

**RE** Biannual JCC Update

**MESSAGE**

1. JCC Membership Update
  - a. New Members: Mr. Studdert (Mr. Cox, deceased).
  - b. Missing Members: None.
  - c. Current Members (11): Rep. Craig Hall, Chair; Ms. Cheylynn Hayman, Ms. Michelle Ballantyne, Judge David Mortensen, Judge Todd Shaughnessy, Rep. Elizabeth Weight, Senator Lyle Hillyard, Senator Jani Iwamoto, Mr. Stephen Studdert, Mr. Mark Raymond, Ms. Georgia Thompson.
  - d. Next SCt appointment is in April 2021 (one Attorney member - renewal)
2. JCC Caseload Update
  - a. 51 cases in FY20 (64 in FY19, 58 in FY18). Currently, we are at 29 cases in FY21.
  - b. Published FY20 Annual Report attached.
  - c. To date in FY21, we have had 0 public dispositions and 0 DWW dispositions. No JCC cases are pending before Utah Supreme Court.
3. Misc. Activities of JCC (over the last six months)
  - a. Annualized requests for info (AOC = 7, JPEC = 4, CCJJ = 8, AJDC/CJE = 13) and 339 answered phone call inquiries.
  - b. Prepared increased budget proposal.
  - c. GRAMA litigation regarding a DWW record.
  - d. JCC video conferencing meetings continue.





# UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2020

1385 S. State St., Suite 143  
Salt Lake City, Utah 84115  
Telephone: (801) 468-0021  
www.jcc.utah.gov

## Creation and Authority of the Judicial Conduct Commission

Although it existed previously as a legislatively created body, Utah's Judicial Conduct Commission (JCC) was constitutionally established in 1984. Constitution of Utah, Article VIII, Section 13. The constitution authorizes the Legislature to statutorily establish the composition and procedures of the JCC. Those provisions are found in Utah Code Ann., Title 78A, Chapter 11.

The JCC is empowered to investigate and conduct confidential hearings regarding complaints against state, county and municipal judges throughout the state. The JCC may recommend the reprimand, censure, suspension, removal, or involuntary retirement of a judge for any of the following reasons:

- action which constitutes willful misconduct in office;
- final conviction of a crime punishable as a felony under state or federal law;
- willful and persistent failure to perform judicial duties;
- disability that seriously interferes with the performance of judicial duties; or
- conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Prior to the implementation of any such JCC recommendation, the Utah Supreme Court reviews the JCC's proceedings as to both law and fact. The Supreme Court then issues an order implementing, rejecting, or modifying the JCC's recommendation.

## Number of Complaints Received in FY 2020

Of the 51 complaints received in FY 2020, 49 have been resolved and 2 are pending.

Complaints Received in FY 2020			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints*
Appellate Courts	12	2	1
District	72	34	28
Juvenile	31	2	2
Justice Court	98	11	10
Pro Tempore	67	2	1
Active Senior	38	0	0
Total	318	51	42

(\*Starting in FY19 and going forward, the JCC counts each judge once even though they may have been named in multiple complaints)

## Confidentiality of JCC Records and Proceedings

Except in certain limited circumstances specified by statute, all complaints, papers and testimony received or maintained by the JCC, and the record of any confidential hearings conducted by the JCC, are confidential, and cannot be disclosed.



## **Sanctions and Other Resolutions**

### **Sanctions Implemented by the Utah Supreme Court**

On September 13, 2019, the Utah Supreme Court reprimanded Tooele Justice Court Judge John M. Dow. Judge Dow had distributed a graphic video showing a man's scrotum via text to the Tooele Justice Court clerks. Judge Dow regretted sending the video and apologized to the clerks the next day. During the JCC investigation, current and former Tooele Justice Court clerks described an unprofessional work environment that was improved after the JCC investigation. Judge Dow engaged in conduct prejudicial to the administration of justice which brings a judicial office into disrepute. Judge Dow accepted responsibility for his actions and expressed sincere remorse for any harm his actions may have caused. The judge's actions violated Code of Judicial Conduct Rules 1.2, 2.3 and 2.8(B).

### **Dismissals with Warnings Issued by the Judicial Conduct Commission**

On November 19, 2019, the Judicial Conduct Commission dismissed complaints with a warning against a District Court Judge as to the following Rule violations: Rule 2.8(B) violation by impatient and discourteous behavior towards certain subordinates, and Rule 1.3 violation that the Judge abused the prestige of the judicial office. The Judge acknowledged that certain subordinates complained of the judge's treatment of them as indecorous and that employees were offended by the judge's behavior. The Judge only became aware of these complaints during the JCC investigation. In addition, the Judge used judicial funds to purchase certain items which might create an appearance of a direct financial and personal benefit to the judge. However, the JCC found that the behavior and misconduct were troubling, but relatively minor for which no public sanction was warranted.

## Administrative Affairs

### Meetings

The JCC meets as needed on the third Tuesday of each month at the offices of the JCC. The JCC met ten (10) times during FY 2020.

### Administrative Rules

The JCC's administrative rules are available on-line at [www.rules.utah.gov](http://www.rules.utah.gov).

### FY20 JCC Commissioners

Neal Cox, Public Member  
 Mark Raymond, Public Member  
 Georgia Beth Thompson, Public Member  
 Terry Welch, Attorney Member (term exp.)  
 Cheyllynn Hayman, Attorney Member (new)  
 James Jardine, Chair, Attorney Member (term exp.)  
 Michelle Ballantyne, Attorney Member (new)  
 Rep. Elizabeth Weight  
 Rep. Craig Hall, Chair  
 Sen. Jani Iwamoto  
 Sen. Lyle Hillyard  
 Hon. David Mortensen  
 Hon. Todd Shaughnessy

### Website

The JCC's website, [www.jcc.utah.gov](http://www.jcc.utah.gov), contains in-depth information, links to related sites, annual reports, copies of public discipline documents, and downloadable complaint forms.

### JCC Statutes

The statutes governing the JCC are located in Utah Code Ann., Title 78A, Chapter 11.

### Budget

Most of the JCC's budget is appropriated annually by the Legislature. For FY 2020, the legislative appropriation was \$289,200. The JCC had non-lapsing savings from FY 2019 in the amount of \$42,893. The JCC had total available funds of \$332,093. JCC expenses for FY 2020 were \$271,646, leaving a balance of \$60,448.

### JCC Staff

Alex G. Peterson, Executive Director  
 Aimee Thoman, Investigative Counsel

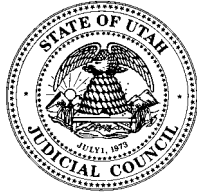


# UTAH JUDICIAL CONDUCT COMMISSION – COMPLAINT RESOLUTION PROCESS

INITIAL SCREENING	PRELIMINARY INVESTIGATION	FULL INVESTIGATION	FORMAL PROCEEDINGS	SUPREME COURT
<p>Executive Director reviews each "complaint" to determine whether it is a complaint within the JCC's jurisdiction.</p> <p>Staff returns non-JCC complaints (i.e., complaints against bar members or court employees) to complainant with appropriate instructions.</p> <p>For JCC complaints, staff prepares electronic and hard-copy files, sends acknowledgment letter to complainant, and returns hard-copy file to Executive Director.</p> <p>Executive Director assigns investigator.</p> <p><i>Note: Anonymous complaints are submitted directly to JCC members, who review and discuss the complaint and vote to either take no action or to have staff conduct a preliminary investigation.</i></p>	<p>Investigator conducts preliminary investigation, writes preliminary investigation report, and recommends whether to dismiss or to proceed to full investigation as to some or all allegations.</p> <p>Executive Director reviews preliminary investigation report and recommendation, and may revise either.</p> <p>Staff distributes preliminary investigation report and recommendation, along with pertinent materials, to JCC members.</p> <p>JCC meets, reviews and discusses preliminary investigation report and recommendation, and votes to dismiss, to have staff conduct additional preliminary investigation, or to proceed to full investigation as to some or all allegations.</p>	<p>Staff provides judge with copy of complaint and other pertinent materials and asks judge to respond in writing to identified allegations.</p> <p>Investigator conducts additional investigation, if necessary, as to issues raised in judge's response. Investigator may write supplemental investigation report and may make recommendation whether to dismiss or to proceed to formal proceedings.</p> <p>Staff distributes judge's response and any supplemental investigation report and recommendation, along with pertinent materials, to JCC members.</p> <p>JCC meets, reviews and discusses judge's response and any supplemental investigation report and recommendation, and votes to dismiss, to have staff conduct additional investigation, or to proceed to formal proceedings as to some or all allegations.</p>	<p>Staff prepares formal complaint and serves same upon judge via certified mail.</p> <p>Judge may file written response.</p> <p>Matter may be resolved by dismissal, stipulated resolution or confidential hearing.</p> <p>A stipulated resolution may recommend: Reprimand Censure Suspension Removal from Office Involuntary Retirement</p> <p>After a confidential hearing, the JCC may dismiss the matter or may recommend: Reprimand Censure Suspension Removal from Office Involuntary Retirement</p>	<p>Staff files JCC's findings of fact, recommendation and other statutorily required materials with Supreme Court.</p> <p>JCC's recommendation becomes public upon filing. All other materials become public only upon Supreme Court order.</p> <p>Supreme Court reviews JCC's proceedings as to both law and fact, and implements, modifies or rejects JCC's recommendation.</p> <p><i>Note: JCC dismissals are not reviewed by the Supreme Court.</i></p>



# Tab 6



# Administrative Office of the Courts

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

November 27, 2020

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

## MEMORANDUM

**TO:** Management Committee and Judicial Council  
**FROM:** Nancy Sylvester  
**RE:** Model Utah Civil Jury Instructions Chair Appointment and Committee Reappointments

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

**Reason for Vacancy:** Judge Andrew Stone's term as chair of the MUJI-Civil Committee expires this year. He has been with the committee since 2012. Judge Keith Kelly and Lauren Shurman also have terms that are expiring.

**Eligibility requirements:** This chair position has no specific eligibility requirements, but it would be helpful to have someone occupying the chair position who has been with the committee for a while. Judge Kelly's position requires a district court judge and Ms. Shurman's position requires an attorney who primarily practices civil defense. Judge Stone will also need to be replaced and his position requires a district court judge.

### Current committee member list:

Last	First	Title	Term End	Role
Sylvester	Nancy	Staff	-	Staff
Stone	Andrew	Judge	9/11/2020	Chair, Judge
Andrus	Randy		12/16/2023	Plaintiff
Di Paolo	Marianna		11/19/2021	Linguist
Ferre	Joel		8/17/2021	Defendant
Kelly	Keith	Judge	11/20/2020	Judge
McAllister	Alyson		11/19/2021	Plaintiff
Mortensen	Doug		4/16/2021	Plaintiff
Shapiro	Ruth		2/27/2020	Defendant

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

Shelton	Ricky		12/16/2023	Plaintiff
Shurman	Lauren		11/20/2020	Defendant
Slark	Samantha		12/16/2023	Defendant
Wentz	Adam	Staff		Recording Secretary

### **Description of recruitment process:**

#### Chair:

Judge Stone and I conferred about who would be an appropriate chair for the committee. Judge Stone and I both feel that Ruth Shapiro would be a great chair. She is affable and intelligent, has been with the committee for over three years, and is committed to the committee's work.

Although Ms. Shapiro's current term expired last February, we would have requested that she be reappointed already but for an oversight.

#### District Court Judge:

To replace Judge Stone's district court judge position, I circulated an email to the district court judges and the Board recommended that Judge Kent Holmberg occupy the position.

### **List of names for consideration:**

- Ruth Shapiro for chairwoman;
- Judge Keith Kelly for reappointment to district court judge position;
- Lauren Shurman for reappointment to civil defense attorney;
- Judge Kent Holmberg to district court judge position (replacing Judge Stone) (alternative: Judge Jeffrey Wilcox).

### **Length of service on the committee:**

Judge Stone has been with the committee since 2012 and Judge Kelly and Lauren Shurman have been with the committee since 2017.

### **Attendance record:**

Each has attended about 90% of the meetings.

### **Assessment of level of contributions to the work:**

All are excellent contributors to the committee. They always have constructive feedback and are unafraid to voice their opinions on the law or the form of an instruction.

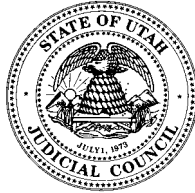
### **Statement of interest:**

Each expressed an interest in serving.

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

- Judge Kelly serves as chair of the WINGS Committee.
- Judge Holmberg serves on the Civil Rules Committee and is chair of the Divorce Procedures Subcommittee (Standing Committee on Children and Family Law)

# Tab 7



## Administrative Office of the Courts

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

November 30, 2020

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO:** Members of the Judicial Council Management Committee

**FROM:** Neira Siaperas  
Utah Juvenile Court Administrator

**DATE:** November 30, 2020

**RE:** Proposed Probation Policies for Review and Approval

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The Board of Juvenile Court Judges has proposed revisions of the following policies which are now advanced to the Management Committee for review and consideration. Additionally, I seek placement on the Judicial Council's consent agenda for December 21, 2020.

#### ***Section 2.4 Nonjudicial Adjustment***

*This policy was last updated October 22, 2018. The purpose of the policy is to provide direction to probation officers regarding nonjudicial adjustments with minors. Updates to this policy are necessary to align with the new statutory requirement to offer nonjudicial adjustments to minors referred for most felonies when the minor was under the age of 12 years at the time the referred incident occurred. Further updates include the requirement to offer a MAYSI-2 assessment; discretion for probation officers in assessing service hours in lieu of fines; additional direction regarding victims/restitution, extensions, incentives/sanctions and referral to the prosecutor.*

#### ***Section 2.7 Assessment Tools***

*This policy was last updated August 17, 2018. The purpose of this policy is to provide direction to probation staff administering assessments to youth. Updates to this policy include an exception to mandatory completion of a Pre-Screen Risk Assessment for youth referred for a first time infraction or status offense; the addition of a process and guides for aggravating or mitigating a youth's assessed risk level.*

#### ***Section 4.3 Case Planning***

*This policy was last updated September 18, 2018. The purpose of this policy is to provide direction to probation officers when developing a case plan with a youth and family. This policy was updated to*

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



*include processes for case planning when an assessment override has been applied as outlined in policy 2.7 Assessment Tools.*

***Section 4.7 Interstate Compact for Juveniles***

*This policy was last updated February 26, 2018. The purpose of this policy is to establish procedure for the probation department and ICJ coordinator when processing and supervising youth who fall under the Interstate Compact for Juveniles (ICJ). This policy was updated to include communication and contact standards for the ICJ Coordinator and probation officers supervising ICJ youth; requirements for the documentation of case contacts and incentive and sanction use; content guidelines for ICJ reports.*

I will be available to respond to questions during your meeting on December 8, 2020.

Thank you.

## ***2.4 Nonjudicial Adjustment***

## 2.4 Nonjudicial Adjustment

---

### Policy:

All eligible youth will be provided the opportunity to participate in the nonjudicial adjustment process regardless of national origin, race, ethnicity, socioeconomic, or custody status. This policy provides direction to probation staff regarding nonjudicial adjustments with minors referred to the Utah State Juvenile Court.

### Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

### Authority:

- [UCA 76-5-401.3](#)
- [UCA 76-9-7](#)
- [UCA 78A-6-105](#)
- [UCA 78A-6-602](#)
- [UCA 78A-6-116](#)
- [Utah Code of Judicial Administration Rule 7-301](#)
- [Utah Rules of Juvenile Procedure Rule 15](#)
- [Utah Rules of Juvenile Procedure Rule 16](#)
- [Accounting Manual Policy 02-13](#)
- [Probation Policy 4.15 Probation Responses to Compliant and Noncompliant Behavior](#)
- [Probation Policy 3.1 Victim Outreach and Response](#)
- Statewide Sliding Fee Scale
- [Utah Juvenile Court: Nonjudicial Adjustment Process](#)

### Procedure:

1. The probation officer is required by statute to offer a nonjudicial adjustment to a minor when:
  - 1.1. The referral is for a misdemeanor (excluding misdemeanors outlined in Section 3 below), infraction or status offense; and
  - 1.2. The minor has only one or two prior adjudicated episodes (excluding contempts); and
  - 1.3. The minor has only one, two or three prior unsuccessful nonjudicial attempts.
  - 1.4. The minor was under the age of 12 years when the incident occurred, unless the offense is one of the following:
    - 1.4.1. Aggravated Assault resulting in serious bodily injury to another
    - 1.4.2. Aggravated murder or Attempted Aggravated Murder
    - 1.4.3. Murder or Attempted Murder
    - 1.4.4. Aggravated Kidnapping
    - 1.4.5. Aggravated Sexual Assault
    - 1.4.6. Aggravated Arson
    - 1.4.7. Aggravated Burglary
    - 1.4.8. Aggravated Robbery
    - 1.4.9. Felony Discharge of a Firearm

2. The probation officer may still offer a nonjudicial adjustment when the above conditions listed in Section 1 are not met, except as outlined in Section 3 below.
3. The probation officer shall not offer a nonjudicial adjustment to a minor charged with any of the following offenses listed under [UCA 76-5-401.3](#):
  - 3.1. a Third Degree Felony if an adolescent who is 17 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years of age;
  - 3.2. a Third Degree Felony if an adolescent who is 16 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 years of age;
  - 3.3. any Class A Misdemeanor if an adolescent who is 16 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age;
  - 3.4. a Class A Misdemeanor if an adolescent who is 14 or 15 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 years of age;
  - 3.5. a Class B Misdemeanor if an adolescent who is 17 years of age engages in unlawful adolescent sexual activity with an adolescent who is 14 years of age;
  - 3.6. a Class B Misdemeanor if an adolescent who is 15 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age;
  - 3.7. a Class C Misdemeanor if an adolescent who is 12 or 13 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years of age; and
  - 3.8. a Class C Misdemeanor if an adolescent who is 14 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age.
4. The probation officer shall screen the following offenses with the prosecutor in the county where the episode occurred prior to offering a nonjudicial adjustment:
  - 4.1. Any felony;
  - 4.2. Driving Under the Influence;
  - 4.3. Reckless Endangerment Creating a Substantial Risk of Death or Serious Bodily Injury;
  - 4.4. Negligent Homicide;
  - 4.5. Sexual Battery;
  - 4.6. Possession of a Dangerous Weapon, Firearm, or Short Barrelled Shotgun on or About School Premises;
  - 4.7. Possession of a Dangerous Weapon by a Minor if the dangerous weapon is a firearm; or
  - 4.8. Any other offense when the youth has a current suspended order for custody.
  - 4.9. The referral involves an offense alleged to have occurred before an individual was 12 years old and the offense is a felony violation of:
    - 4.9.1. Aggravated Assault resulting in serious bodily injury to another
    - 4.9.2. Aggravated murder or Attempted Aggravated Murder
    - 4.9.3. Murder or Attempted Murder
    - 4.9.4. Aggravated Kidnapping
    - 4.9.5. Aggravated Sexual Assault
    - 4.9.6. Aggravated Arson
    - 4.9.7. Aggravated Burglary
    - 4.9.8. Aggravated Robbery
    - 4.9.9. Felony Discharge of a Firearm

5. The probation officer shall conduct a preliminary interview as outlined in [Probation Policy 2.1 Preliminary Interview](#), offer the MAYSI-2 and conduct the Pre-Screen Risk Assessment (PSRA) as outlined in [Probation Policy 2.7 Assessment Tools](#).
6. The probation officer may request that the prosecutor in the county where the episode occurred review the referral when:
  - 6.1. the PSRA indicates the minor is high risk; or
  - 6.2. the PSRA indicates the minor is moderate risk and the referral is for a Class A misdemeanor violation under [Title 76, Chapter 5 \(Offenses Against Persons\)](#), or [Title 76, Chapter 9 \(Offenses Against Public Order and Decency\), Part 7, Miscellaneous Provisions](#).
7. The probation officer may be directed by the prosecutor in the county where the episode occurred or the Court to offer a nonjudicial adjustment to any minor not prohibited by statute.
8. A minor is not required to admit to an offense for a nonjudicial adjustment to be completed.
9. The probation officer shall enter an intake decision within 30 days of the intake date. The probation officer shall enter a case note in CARE when additional time beyond the 30 days is needed by the prosecutor to review the referral or if there are other extenuating circumstances.
10. The probation officer may exercise discretion to assess fines and/or hours according to the [Utah Juvenile Court Nonjudicial Adjustment Process Document](#):
  - 10.1. The payment of a fine and/or restitution shall be based upon the ability of the minor's family to pay as determined by the statewide sliding fee scale.
  - 10.2. Information for the sliding fee scale shall be obtained from the Family Size/Income Statement. The Family Size/Income Statement shall be eFiled (see [Addendum 2.4.1 Family Size/Income Statement](#)).
  - 10.3. A minor may not be denied a nonjudicial adjustment due to the inability to pay.
  - 10.4. Any minor in the custody of the state shall not be assessed a fine.
11. The nonjudicial closure may include:
  - 11.1. payment of a fine not to exceed \$250;
  - 11.2. payment of victim restitution for material loss (uninsured property loss; out of pocket monetary loss; lost wages; or medical expenses); restitution shall be considered separately from a fine and is not limited to \$250;
    - 11.2.1. The probation officer shall consider victim requests for restitution individually when entering restitution amounts into the sliding fee scale.
    - 11.2.2. The probation officer may create an additional 90 day nonjudicial agreement for a restitution amount determined after a youth has participated in mediation or further restitution information has been received from the victim.
  - 11.3. service hours;
  - 11.4. referral to an appropriate provider for screening, assessment, counseling, treatment and/or intervention;

- 11.5. participation in substance use disorder programs, interventions, or counseling programs;
  - 11.6. compliance with specified restrictions on activities and associations;
  - 11.7. other reasonable actions that are in the interest of the minor, the community and the victim;
  - 11.8. participation in probation meetings at the request of the probation officer; and
  - 11.9. participation in the juvenile court truancy mediation and/or victim-offender mediation pre-meetings.
12. The nonjudicial adjustment shall reflect a completion date for the agreed terms and conditions and shall not exceed 90 days from the date the adjustment was signed. The probation officer may request permission from the Court for an additional 90 days by submitting the [Report & Recommendation Regarding Nonjudicial Extension](#).
- 12.1. The probation officer shall ensure the victim is notified when an extension is granted,
  - 12.2. The probation officer shall ensure the minor's parents/guardians/custodians are notified when an extension is granted.
13. The probation officer shall ensure that the victim has been contacted prior to the preliminary interview if the victim packet has not been returned or if the victim is requesting restitution with no supporting documentation.
- 13.1. The probation officer shall include the *NJ Restitution Under Advisement* closure code as part of the nonjudicial adjustment if attempts to contact the victim are unsuccessful.
  - 13.2. The probation officer shall enter the requested amount of restitution into the sliding scale calculator when probation is unable to verify the actual value of material loss or damage (e.g. cash, coins, heirloom, etc.).
    - 13.2.1. The probation officer shall not include restitution in the nonjudicial agreement for items reported to have been returned without damage or loss.
14. The Court may extend the nonjudicial period beyond the 180 day timeline if the nonjudicial is for a sexual offense committed before the minor was 12 years of age and finds the following:
- 14.1. the nonjudicial adjustment requires specific treatment for the sexual offense;
  - 14.2. the treatment cannot be completed within 180 days after the day on which the minor entered into the nonjudicial adjustment; and
  - 14.3. the treatment is necessary based on a clinical assessment that is developmentally appropriate for the minor
15. The probation officer shall eFile a modification form when changes to the existing nonjudicial adjustment become necessary (Addendum 2.4.2 Modification of Nonjudicial Accounting).
16. The probation officer shall employ and document incentives and rewards in support of prosocial and compliant behavior. The probation officer shall also employ and document interventions or sanctions to address non-compliant behavior when a minor fails to

comply with the conditions of the nonjudicial adjustment (see [Probation Policy 4.15 Probation Responses to Compliant and Noncompliant Behavior](#)).

17. The probation officer shall submit the case to the prosecutor in the county where the episode occurred for review and direction when:
  - 17.1. the minor declines the offer of a nonjudicial adjustment.
  - 17.2. a minor fails to substantially comply with the nonjudicial adjustment.
    - 17.2.1. Failure to pay a fine or complete community service hours may not serve as the basis to refer the case to the prosecutor for further action.
18. The probation officer shall mark each nonjudicial adjustment successful or unsuccessful on the nonjudicial screen in CARE.
  - 18.1. The probation officer shall eFile a modification form when a nonjudicial adjustment has been marked as unsuccessful and there are outstanding order fulfillment items (see Addendum 2.4.2 Modification of Nonjudicial Accounting).

#### **Addendum 2.4.1 Family Size/Income Statement**

#### **Addendum 2.4.2 Modification of Nonjudicial Accounting**

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#### **History:**

Approved by the Judicial Council on October 22, 2018

Comment Period Closed March 20, 2020

Legal Review June 15, 2020

Updated by Policy Committee August 20, 2020

Approved by Chiefs September 10, 2020

Approved by JTCEs October 1, 2020

Approved by BJCJ October 9, 2020

**DISTRICT JUVENILE COURT  
SALT LAKE COUNTY, STATE OF UTAH**

<b>STATE OF UTAH</b> , in the interest of  Name _____  A minor <input type="checkbox"/> under <input type="checkbox"/> over eighteen years of age	<b>FAMILY SIZE/INCOME STATEMENT</b>  Case Number: Case Number. Incident(s): Incident
---	---

1. The family household size is: \_\_\_\_\_

Your family size should include all the people who depend on you for support or who provide support for the household. This could include a spouse, children, or other dependents that live in the same house. Your household could also include people who do not live in your house. For example, a child you pay child support for but who does not live with you full-time should be included.

2. The household gross yearly income is \$ \_\_\_\_\_

Gross yearly income is the amount of money earned in one year from all sources of income before any taxes or other deductions are withheld. The money earned by everyone counted as part of the household size should be included. Some examples of likely sources of income are employment wages, social security disability income, unemployment benefits, worker's compensation, child support, and alimony.

\_\_\_\_\_  
Parent/Guardian Signature

\_\_\_\_\_  
Date



**STATE OF UTAH**, in the interest of

DOB:

**MODIFICATION OF  
NONJUDICIAL ACCOUNTING**

Case Number:

Incident(s):

Judge:

I, \_\_\_\_\_, assigned probation officer to this case, request the following modification(s) be made to the original Nonjudicial Agreement from

The modifications are requested for the following reason(s):

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Submitted by: \_\_\_\_\_  
Probation Officer/Unit

Date:

## 2.4 Nonjudicial Adjustment

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### Policy:

All eligible youth will be provided the opportunity to participate in the nonjudicial adjustment process regardless of national origin, race, ethnicity, socioeconomic, or custody status. This policy provides direction to probation staff regarding nonjudicial adjustments with minors referred to the Utah State Juvenile Court.

### Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

### Authority:

- [UCA 76-5-401.3](#)
- [UCA 76-9-7](#)
- [UCA 78A-6-105](#)
- [UCA 78A-6-602](#)
- [UCA 78A-6-116](#)
- [Utah Code of Judicial Administration Rule 7-301](#)
- [Utah Rules of Juvenile Procedure Rule 15](#)
- [Utah Rules of Juvenile Procedure Rule 16](#)
- [Accounting Manual Policy 02-13](#)
- [Probation Policy 4.15 Probation Responses to Compliant and Noncompliant Behavior](#)
- [Probation Policy 3.1 Victim Outreach and Response](#)
- Statewide Sliding Fee Scale
- [Utah Juvenile Court: Nonjudicial Adjustment Process](#)

### Procedure:

1. The probation officer is required by statute to offer a nonjudicial adjustment to a minor when ~~all three of the following exist~~:
  - 1.1. The referral is for a misdemeanor (excluding misdemeanors outlined in Section 3 below), infraction or status offense; and
  - 1.2. The minor has only one or two prior adjudicated episodes (excluding contempts); and
  - 1.3. The minor has only one, two or three prior unsuccessful nonjudicial attempts.
  - 1.4. The minor was under the age of 12 years when the incident occurred, unless the offense is one of the following:
    - 1.4.1. Aggravated Assault resulting in serious bodily injury to another
    - 1.4.2. Aggravated murder or Attempted Aggravated Murder
    - 1.4.3. Murder or Attempted Murder
    - 1.4.4. Aggravated Kidnapping
    - 1.4.5. Aggravated Sexual Assault

**1.4.6. Aggravated Arson****1.4.7. Aggravated Burglary****1.4.8. Aggravated Robbery****1.4.9. Felony Discharge of a Firearm**

2. The probation officer may still offer a nonjudicial adjustment when the above conditions listed in Section 1 are not met, except as outlined in Section 3 below.
3. The probation officer shall not offer a nonjudicial adjustment to a minor charged with any of the following offenses listed under [UCA 76-5-401.3](#):
  - 3.1. a Third Degree Felony if an adolescent who is 17 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years of age;
  - 3.2. a Third Degree Felony if an adolescent who is 16 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 years of age;
  - 3.3. any Class A Misdemeanor if an adolescent who is 16 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age;
  - 3.4. a Class A Misdemeanor if an adolescent who is 14 or 15 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 years of age;
  - 3.5. a Class B Misdemeanor if an adolescent who is 17 years of age engages in unlawful adolescent sexual activity with an adolescent who is 14 years of age;
  - 3.6. a Class B Misdemeanor if an adolescent who is 15 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age;
  - 3.7. a Class C Misdemeanor if an adolescent who is 12 or 13 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years of age; and
  - 3.8. a Class C Misdemeanor if an adolescent who is 14 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age.
4. The probation officer shall screen the following offenses with the prosecutor **in the county where the episode occurred** prior to offering a nonjudicial adjustment:
  - 4.1. Any felony;
  - 4.2. Driving Under the Influence;
  - 4.3. Reckless Endangerment Creating a Substantial Risk of Death or Serious Bodily Injury;
  - 4.4. Negligent Homicide;
  - 4.5. Sexual Battery;
  - 4.6. Possession of a Dangerous Weapon, Firearm, or Short Barrelled Shotgun

on or About School Premises;

4.7. Possession of a Dangerous Weapon by a Minor if the dangerous weapon is a firearm; or

4.8. Any other offense when the youth has a current suspended order for custody.

**4.9. The referral involves an offense alleged to have occurred before an individual was 12 years old and the offense is a felony violation of:**

**4.9.1. Aggravated Assault resulting in serious bodily injury to another**

**4.9.2. Aggravated murder or Attempted Aggravated Murder**

**4.9.3. Murder or Attempted Murder**

**4.9.4. Aggravated Kidnapping**

**4.9.5. Aggravated Sexual Assault**

**4.9.6. Aggravated Arson**

**4.9.7. Aggravated Burglary**

**4.9.8. Aggravated Robbery**

**4.9.9. Felony Discharge of a Firearm**

5. ~~The probation officer shall request that the prosecutor in the county where the episode occurred review the referral when the minor or the minor's parent/guardian/custodian declines the offer of a nonjudicial adjustment. The probation officer shall conduct a preliminary interview and Pre-Screen Risk Assessment (PSRA) as outlined in [Probation Policy 2.1 Preliminary Interview](#), **offer the MAYSI-2 and conduct the Pre-Screen Risk Assessment (PSRA) as outlined in [Probation Policy 2.7 Assessment Tools](#)**. The probation officer shall complete a Protective and Risk Assessment (PRA) on all minors who score moderate or high risk on the PSRA prior to offering the nonjudicial adjustment. The probation officer shall also complete a case plan with any minors who score moderate or high risk and are offered a nonjudicial adjustment.~~
6. The probation officer may request that the prosecutor in the county where the episode occurred review the referral when:
  - 6.1. the PSRA indicates the minor is high risk; or
  - 6.2. the PSRA indicates the minor is moderate risk and the referral is for a Class A misdemeanor violation under [Title 76, Chapter 5 \(Offenses Against Persons\)](#), or [Title 76, Chapter 9 \(Offenses Against Public Order and Decency\)](#), [Part 7, Miscellaneous Provisions](#).
7. The probation officer may be directed by the prosecutor **in the county where the episode occurred** or the Court to offer a nonjudicial adjustment to any minor not prohibited by statute.
8. A minor is not required to admit to an offense for a nonjudicial adjustment to be completed.

9. The probation officer shall enter an intake decision within 30 days of the intake date. The probation officer shall enter a case note in CARE when additional time beyond the 30 days is needed by the prosecutor to review the referral or if there are other extenuating circumstances.
10. ~~The payment of a financial fee and/or restitution shall be based upon the ability of the minor's family to pay as determined by the statewide sliding fee scale.~~ **The probation officer may exercise discretion to assess fines and/or hours according to the Utah Juvenile Court Nonjudicial Adjustment Process Document:**
  - 10.1. **The payment of a fine and/or restitution shall be based upon the ability of the minor's family to pay as determined by the statewide sliding fee scale.**
  - 10.2. Information for the sliding fee scale shall be obtained from the Family Size/Income Statement. The Family Size/Income Statement shall be eFiled (see [Addendum 2.4.1 Family Size/Income Statement](#)).
  - 10.3. A minor may not be denied a nonjudicial adjustment due to the inability to pay.
  - 10.4. Any minor in the custody of the state shall not be assessed a fine.
11. The nonjudicial closure may include:
  - 11.1. payment of a fee **fine** not to exceed \$250;
  - 11.2. payment of victim restitution for material loss (uninsured property loss; out of pocket monetary loss; lost wages; or medical expenses); restitution shall be considered separately from a fee **fine** and is not limited to \$250 (see ~~Addendum 2.4.2 Probation Practices to Determine Restitution~~);
    - 11.2.1. **The probation officer shall consider victim requests for restitution individually when entering restitution amounts into the sliding fee scale.**
    - 11.2.2. **The probation officer may create an additional 90 day nonjudicial agreement for a restitution amount determined after a youth has participated in mediation or further restitution information has been received from the victim.**
  - 11.3. service hours;
  - 11.4. referral to an appropriate provider for screening, assessment, counseling, treatment and/or intervention;
  - 11.5. participation in substance use disorder programs, interventions, or counseling programs;
  - 11.6. compliance with specified restrictions on activities and associations;
  - 11.7. other reasonable actions that are in the interest of the minor, the community and the victim;
  - 11.8. participation in probation meetings at the request of the probation officer; and
  - 11.9. participation in the juvenile court truancy mediation and/or victim-offender mediation pre-meetings.

12. The nonjudicial adjustment shall reflect a completion date for the agreed terms and conditions and shall not exceed 90 days from the date the adjustment was signed. The probation officer may request permission from the Court for an additional 90 days by submitting the [Report & Recommendation Regarding Nonjudicial Extension](#) document.
  - 12.1. The probation officer shall ensure the victim is notified when an extension is granted.
  - 12.2. The probation officer shall ensure the minor's parents/guardians/custodians are notified when an extension is granted.
13. The probation officer shall ensure that the victim has been contacted prior to the preliminary interview if the victim packet has not been returned or if the victim is requesting restitution with no supporting documentation.
  - 13.1. The probation officer shall include the *NJ Restitution Under Advisement* closure code as part of the nonjudicial adjustment if attempts to contact the victim are unsuccessful.
  - 13.2. The probation officer shall enter the requested amount of restitution into the sliding scale calculator when probation is unable to verify the actual value of material loss or damage (e.g. cash, coins, heirloom, etc.).
    - 13.2.1. The probation officer shall not include restitution in the nonjudicial agreement for items reported to have been returned without damage or loss.
14. The Court may extend the nonjudicial period beyond the 180 day timeline if the nonjudicial is for a sexual offense committed before the minor was 12 years of age and finds the following:
  - 14.1. The nonjudicial adjustment requires specific treatment for the sexual offense;
  - 14.2. The treatment cannot be completed within 180 days after the day on which the minor entered into the nonjudicial adjustment; and
  - 14.3. The treatment is necessary based on a clinical assessment that is developmentally appropriate for the minor
15. The probation officer shall eFile a modification form when changes to the existing nonjudicial adjustment become necessary (Addendum 2.4.23 Modification of Nonjudicial Accounting agreement).
16. The probation officer shall employ and document- incentives and rewards in support of prosocial and compliant behavior. The probation officer shall also employ and document interventions or sanctions to address non-compliant behavior when a minor fails to comply with the conditions of the nonjudicial

adjustment (see [Probation Policy 4.15 Probation Responses to Compliant and Noncompliant Behavior](#)).

17. The probation officer shall submit the case to the prosecutor in the county where the episode occurred for review and direction; ~~when: a minor fails to substantially comply with the nonjudicial adjustment. Failure to pay a fee may not serve as the basis to refer the case to the prosecutor for further action.~~
  - 17.1. **the minor declines the offer of a nonjudicial adjustment.**
  - 17.2. **a minor fails to substantially comply with the nonjudicial adjustment.**
    - 17.2.1. **Failure to pay a fine or complete service hours may not serve as the basis to refer the case to the prosecutor for further action.**
18. The probation officer shall mark each nonjudicial adjustment successful or unsuccessful on the nonjudicial screen in CARE.
  - 18.1. The probation officer shall eFile a modification form when a nonjudicial adjustment has been marked as unsuccessful and there are outstanding order fulfillment items (see Addendum 2.4.23 Modification of Nonjudicial Accounting agreement).

#### **Addendum 2.4.1 Family Size/Income Statement**

#### **~~Addendum 2.4.2 Probation Practices to Determine Nonjudicial Restitution~~**

#### **Addendum 2.4.23 Modification of Nonjudicial Accounting agreement**

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#### **History:**

Approved by the Judicial Council on October 22, 2018

**Comment Period Closed March 20, 2020**

**Legal Review June 15, 2020**

**Updated by Policy Committee August 20, 2020**

**Approved by Chiefs September 10, 2020**

**Approved by JTCEs October 1, 2020**

**Approved by BJCJ October 9, 2020**

## **Proposed Policy Update for 4.2 Nonjudicial Adjustment**

### **1. Comment/Theme:**

- ❖ #13: Is there a chance the NJ CARE Enhancement (refer to CORE team for more info) will affect the wording on this line? If the document is programmed in CARE or the accounting piece done in CARE by probation for example, should there be thought to what to write on this line since it takes a long while to edit policies?
  - **Policy Committee Response:** Although the logistical process for this may change with CARE enhancements, the process would still be referred to as eFiling so there may not be a wording change. Once the enhancement is made, it can be reviewed to see if additional changes are needed.
  - **Policy Committee Decision:** NA

### **2. Comment/Theme:**

- ❖ 15.2: A minor fails to substantially comply with the nonjudicial adjustment. Current practice is less than 100% compliance with a no contact provision means the case can not be considered substantially compliant. I think this may need to be re-considered. Depending on the “contact” should determine if the youth can be addressed with documented interventions or sanctions to address the non-compliant behavior. If it is addressed appropriately then the youth should still be able to be considered substantially compliant. I’ve seen a recent case where the victim (whom the youth had a no contact provision with) clearly began the contact via text. The youth responded. I feel that this contact could have been addressed through a non compliant response vs failure of the NJ agreement. It would be great if Probation Officers were given some discretion on this. Please consider substantial compliance as probation officer discretion on a violation of a no-contact that was handled with compliant response to intervention or sanction.
  - **Policy Committee Response:** After review of the NJ Process document, the wording indicates that in order to be substantially compliant the youth has to ‘complete’ the no contact provision rather than be 100% compliant. This could include an instance where the probation officer has utilized the noncompliant matrix and the youth has modified their behavior.
  - **Policy Committee Decision:** No change to policy but will be discussed with chiefs to make sure everyone understands this difference.



## 2. Comment/Theme:

- ❖ Probation practices to determine nonjudicial restitution: 78A-6-602 (c) (iii) The inability, failure or refusal of the victim to provide all or part of the requested information shall result in the probation department determining restitution based on the best information available. Please consider that the best information available may be that after multiple attempts if the victim impact statement is not received back the victim may not want/need restitution and therefore has not responded. The victims have to pay for a stamp to provide us this information and take the time and effort to fill out the paperwork.
- ❖ RE: Probation practices to determine nonjudicial restitution: "C. The victim impact and restitution packet is not returned within 10 days and the police report indicates an itemized list or estimate of damage or material loss." "4th bullet point: If Probation is unable to verify the actual value of material loss or damage: the restitution amount will be automatically entered as a condition of the nonjudicial adjustment." Yes, we should continue to ask the victims to return the packet within 10 days (this may be statute) but recognize this does not happen that often. I think we should give the probation officers more time to receive the paperwork and make contact efforts with the victim. The direction should be for POs to amp up their contact efforts with the victims rather than having the PO decide on an amount without speaking with the victim. If we use the 90 days given for a NJ this will give us time to make efforts to reach the victim and if the victim chooses not to respond then it can be considered that our best information available is that the victim does not want restitution and therefore is not responding to probation. I pulled a sample of 120 cases to make sure I understood the impact and to help you understand the impact to our community and our youth. I pulled 2 samples of 60 cases. 60 cases where a VIS was received and 60 cases when it was not. Of the 60 cases when a VIS was received, 10/60 cases the victim asked for a lesser amount than the police report estimated. 6 of 60 cases the victim requested restitution but the police report did not indicate an amount. 11 of 60 cases the police report and victim's restitution requests were similar within \$20.00. 2 of 60 cases were auto accidents, the victim's indicated \$0 when the police report estimated damage (most likely due to insurance) There were 8 of the 60 cases when the victim asked for more than the police estimate. 3 of the 60 cases the police report indicated an amount and the VIS received indicated the items was returned/ recovered after the police report. The final 20 cases of my sample were \$0, and \$0 police report. The 60 cases I reference here are from cases where a VIS was not returned. In 11 of 60 cases the police report indicated an amount of restitution from \$2000-\$1 amounts, each of these victims was contacted and verified that they didn't want/need restitution

on the case therefore there was no restitution assessed. In my small random sampling that is 18% of cases that we would be asking for restitution for when the victim didn't want/ need it if the victim was not able to be contacted prior to the PI, because we would be asking for restitution from the police report estimates. The restitution amount discrepancies can be addressed by allowing probation more time to contact the victims before the restitution becomes part of the NJ agreement rather than determining an amount based on the police report. With our case management we are maintaining better contact with even the low risk NJ youth so I think giving Probation officers more time will result in supported restitution non judicial agreements and our maintained contact with provide the ability to get restitution NJs completed at a later than the PI date.

- ❖ RE: Probation practices to determine nonjudicial restitution: "C. The victim impact and restitution packet is not returned within 10 days and the police report indicates an itemized list or estimate of damage or material loss." 1st bullet point: "Probation shall attempt to contact the victim by phone prior to the preliminary interview to gather supporting documentation." The VIS has already been sent at this point. Do we really need to make additional efforts to contact the victims when the police reports indicate recovered/ returned items. The "shall" makes it necessary.
- ❖ C. 4th bullet point, PO should determine amount based on the police report."Sub bullet: "Do not include restitution for items reported to have been returned without damage or loss to retail chain stores." Should this include items that were returned to all victims? The victim's are receiving a VIS to return it if they feel the items returned were not satisfactory, they would probably consider the VIS more seriously and return it.
- ❖ C: 4th bullet point Do not include restitution for items reported to have been returned without damage or loss to retail chain stores. I have been directed by several local retail stores that any total under \$50 to \$25 (depending on the store) they will not request restitution. This practice will void any discussion I have had with them and we will be assessing restitution on these minimal cases. I don't have an issue with this but I want it to be included in the discussion of facts on how this will affect the court.
- ❖ "C. The victim impact and restitution packet is not returned within 10 days and the police report indicates an itemized list or estimate of damage or material loss." "4th bullet point: If Probation is unable to verify the actual value of material loss or damage: the restitution amount will be automatically entered as a condition of the nonjudicial adjustment." The police reports I see regularly indicate a value of \$1.00 on property, vehicles, etc when the police report indicates there is little or no damage. Do we consider this value or use common

sense and disregard the amount. My concern here is where is the line drawn? Are we to consider the police value even knowing it is not accurate in a case like this? Also how much will cost the court to send a \$1.00 check if we don't disregard this. Are audits going to read the full police reports to indicate the itemized \$1.00 isn't accurate.

- **Policy Committee Response:** We appreciate all of the thoughts, comments and even stats that were provided in regards to the direction from this addendum, it helped us to realize that our probation department may need a more comprehensive best practice guide when it comes to how we are assisting victims and handling restitution.
- **Policy Committee Decision:** An update was made to the policy (#13) to include the requirement that probation officers should assure that attempts have been made to contact victims to make sure we aren't missing an opportunity to have their voice heard if they haven't returned the VIS. We also included the requirement that a PO must identify in the youth's NJ that restitution is pending. Also, the addendum titled "Probation practices to determine nonjudicial restitution" has been removed and will not be sent on with the policy for approval.
- Further, policy is going to send a recommendation to the Chiefs group that a small workgroup should be put together to review the available resources in regards to best practices for working with victims to create a process/information section in the Statewide QAP that provides more information to probation officers about this part of our responsibilities.

## ***2.7 Assessment Tools***

## 2.7 Assessment Tools

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**Policy:**

This policy provides direction to probation staff on administering assessments to minors referred to the Utah State Juvenile Court.

**Scope:**

This policy applies to all probation staff of the Utah State Juvenile Court.

**Authority:**

- [UCA 78A-6-117](#)
- Massachusetts Youth Screening Instrument-Version 2 (MAYSI-2) Training Manual

**Reference:**

- [Pre-Screen Risk Assessment Tool](#)
- [Protective and Risk Assessment Tool](#)

**Procedure:**

1. The probation officer shall complete a Pre-Screen Risk Assessment (PSRA) on all minors referred to the juvenile court with the exception of minors who are referred for the first time and the offense is an infraction or status offense.
  - 1.1. The probation officer may choose to complete a PSRA on the minors excepted above when it appears necessary to accurately identify the youth's risk.
  - 1.2. The probation officer shall utilize Addendum 2.7.1 Override Guide (Aggravating Risk) to determine if an override is appropriate when the probation officer has identified additional risk factors in the Attitude/Behavior Indicators section of the PSRA.
2. The probation officer shall complete a Protective and Risk Assessment (PRA) on all minors who score moderate or high risk on the PSRA.
  - 2.1. The PRA shall be completed within 14 days of the completion of the PSRA on moderate and high risk nonjudicial cases.
  - 2.2. The PRA shall be completed within 14 days following adjudication on moderate and high risk cases.
  - 2.3. The PRA shall be updated within 14 days of a significant change that increases or decreases scoring values for the PRA questions. A closing PRA shall be completed within seven days of termination of court jurisdiction.
  - 2.4. The probation officer shall utilize Addendum 2.7.2 Override Guide (Mitigating Risk) to determine if an assessment override is appropriate when there are no dynamic risk factors identified in the PRA.

3. The probation officer shall update the risk assessment(s) prior to disposition when charges have been modified.
4. The results of the PRA shall be used to make appropriate recommendations for court reports and case plans.
5. The probation officer shall request that the minor complete the Massachusetts Youth Screening Instrument-Version 2 (MAYSI-2) as part of the preliminary interview on all minors referred to the juvenile court between the ages of 12-17 who have not participated in the screening in the past 14 days. The minor may be requested to complete an additional MAYSI-2 when significant events or stressors are evident in the minor's life.
  - 5.1. The probation officer shall meet with the minor individually to collect further information if secondary screening questions are generated by the initial screening.
    - 5.1.1. The probation officer may invite the minor's parent, guardian, and/or custodian to observe the meeting when requested by the minor.
  - 5.2. The probation officer shall provide referral information to the minor's parent, guardian, and/or custodian if the secondary screening questions indicate a need for further assessment(s).
  - 5.3. The probation officer shall release the minor to a parent, guardian, custodian, or responsible adult when a minor scores above the "warning" cut-off on the suicide ideation section.
  - 5.4. The probation officer shall not use the MAYSI-2 score, scales, or individual answers to make recommendations to the court.
  - 5.5. The probation officer shall eFile the MAYSI-2 assessment, including any secondary questions in CARE under *Probation Records (Safeguarded) MAYSI-2 Results*.
  - 5.6. The probation officer may refer to the *MAYSI-2 Training Manual* for procedural information.
6. The probation officer shall consider the results of all available screening tools, assessments, and/or evaluations when determining if further assessment is appropriate.

#### **Addendum 2.7.1 Override Guide (Aggravating Risk)**

#### **Addendum 2.7.2 Override Guide (Mitigating Risk)**

#### **History:**

Approved by the Judicial Council on August 17, 2018

Updated by Policy Committee on June 15, 2020

Legal Review July 1, 2020

Comment Period Ended August 3, 2020  
Approved by Chiefs September 10, 2020  
Approved by JTCEs October 1, 2020  
Approved by BJCJ October 9, 2020

**Editorial Note from 5.1:** There is some debate on this subject and whether or not the parents are to be present. Here is the response from the MAYSI creator on the subject. *"We recommend that kids be told (prior to taking MAYSI) that their answers won't be shown to parents, for the reason that you mention. However, it is also true that sometimes we have to tell parents things we learn from kids if we think they are in danger (e.g., suicidal). So typically we tell them (before the MAYSI) that we won't tell parents anything unless we think they (the youth) is in danger. Once you have told the youth that, it applies both to the MAYSI and the second screening questions."*

## Override Guide (Aggravating Risk)

This guide provides guidance to Probation Officers (PO) on overriding and individuals risk to re-offend when completing the **Pre-Screen Risk Assessment (PSRA)** and **Protective Risk Assessment (PRA)**. Additionally, the guide outlines the required circumstances when considering **aggravating** the assessed risk level and the process of aggravating the risk level when appropriate. **Overrides should be used infrequently** to adjust the outcomes of a valid risk assessment tool (such as the PSRA and PRA). Errors are minimized long term by accepting the results identified by the assessments, but in exceptional circumstances an override may be necessary.

### **Pre-Screen Risk Assessment (PSRA):**

The PSRA is a validated risk assessment designed to collect information about behaviors and characteristics, called **risk factors**, known to predict reoffending. Risk factors are identified in three different areas: (1) **Delinquency History**, (2) **Social History**, and (3) **Attitude/Behavior Indicators**. Areas One and Two of the PSRA look at both **static risk factors** (factors that never change, i.e. delinquency history) and **dynamic risk factors** (factors that can change over time, i.e. attitudes and behaviors) that are known to predict an individual's likelihood to re-offend. These areas are both scored separately and then used to determine if an individual's overall risk falls into one of three categories: Low, Moderate or High.

It is important to note that although the PSRA may score an individual as **low risk**, this does not mean they have **no risk**. An individual who scores as low risk means that the individual is unlikely to commit an offense (or engage in a delinquent behavior) in the near future. Although uncommon, this may not always be the case and an override may be necessary if additional dynamic risk factors are present that aggravate the individual's risk. These circumstances are the reason Area Three of the PSRA was created. This area helps determine if additional dynamic risk factors are present that may indicate the need for further assessments/case planning.

### **Area Three (Attitudes/Behavior Indicators)**

The PSRA instructions state;

*“The third area (Attitudes/Behavior Indicators) may be used to document overrides of a low risk level if there is a reason to believe that the risk level underestimates the individual's actual risk.”*

As stated previously, this area is used to assess whether there are additional dynamic risk factors present in the individual's life that are affecting their likelihood to re-offend. It is important to r



remember that this area does not change the individual's risk score on the assessment but may tell us that there is more information that needs to be gathered to determine if the individual being assessed has a need for further intervention. As these circumstances are unusual, the following steps should be followed to determine if an override should be considered.

**Step One:** The PO should staff the individual's case with their supervisor or chief (when a supervisor is unavailable) and discuss why they are considering an override.

- The Supervisor/Chief should ask open-ended questions while they review the completed PSRA together with the assigned PO.
- The PO should articulate why items in the Third Area show additional dynamic risk.
- The benefits of the override should be discussed and what ongoing service delivery is planned.

**Step Two:** The PO will make a note in CARE that an override has taken place and indicate who they staffed the override with, as well as, the reason for the override.

**Step Three:** The PO will follow case planning guidelines in policy for Moderate/High Risk individuals (completion of a PRA, BAW, and Case Plan).

- As a reminder, an override means that a PO has identified indicators of dynamic risk that may be increasing an individual's likelihood to re-offend.
- The Zeroing-In process as outlined in the case planning policy identifies what criminogenic risk factors are contributing to an individual's risk.
- The PO will work with the individual and their family to develop goals to reduce their risk.

#### **Dont's for Aggravating Risk**

- Overrides should never be used as the reason why an individual is referred to the prosecutor's office for further decision. The PO should follow statute and policies when determining what steps should be followed when processing referrals.
- The PO should still be strategic when determining program options and should not simply send an individual to a program because an override has taken place. It is important to remember that the individual still scored low risk and putting them into a program with individuals that score moderate or high risk can result in them becoming a higher risk. The PO should collaborate with the individual and family when determining what program is most appropriate for the identified dynamic risk factors determined by the Zeroing-In process.

## Override Guide (Mitigating Risk)

This guide provides guidance to Probation Officers (PO) on overriding and individuals risk to re-offend when completing the **Pre-Screen Risk Assessment (PSRA)** and **Protective Risk Assessment (PRA)**. Additionally, the guide outlines the required circumstances when considering **mitigating** the assessed risk level and the process of mitigating the risk level when appropriate. **Overrides should be used infrequently** to adjust the outcomes of a valid risk assessment tool (such as the PSRA and PRA). Errors are minimized long term by accepting the results identified by the assessments, but in exceptional circumstances, an override may be necessary.

### Protective and Risk Assessment (PRA)

The PRA is a validated risk and needs assessment tool similar to the PSRA that looks at both **static risk factors** (factors that never change, i.e. delinquency history) and **dynamic risk factors** (factors that can change over time, i.e. attitudes and behaviors) that are known to predict an individual's likelihood to re-offend. Additionally, the PRA is designed to collect information about an individual's strengths and weaknesses in 10 different life areas called **Domains**. Assessment of each domain is based on the identification of **dynamic protective factors** that are thought to keep the individual from problems and **dynamic risk factors**, thought to increase the likelihood the individual will have problems.

An individual who scores as Moderate or High Risk means that the individual is likely to commit an offense (or engage in a delinquent behavior) in the near future. Although uncommon, an override may be necessary if additional dynamic protective factors are present that mitigate the individual's risk. For a PO to consider an override, an individual would present with **no dynamic risk factors** in the PRA assessment that are leading to their likelihood of re-offending. As these circumstances are unusual, the following steps should be followed to determine if an override is necessary.

**Step One:** The PO shall staff the individual's case with their supervisor or Chief (when a supervisor is unavailable) and discuss why they are considering an override.

- The Supervisor/Chief should ask open-ended questions while they review the completed PRA together with the assigned PO.
- The PO should articulate why items throughout the PRA were identified as protective or why they have no impact on dynamic risk.

- The Supervisor will assure that **Domains Nine and Ten** are scored correctly and reflect the youth's attitudes and behavior **at the time of the offense** when stated as such in the instructions.

**PRA Instructions:** *For Initial Assessment and New Charge/Significant Change Reassessment, these items will generally be based on the youth's feelings/attitudes/beliefs as they apply to the pattern of behavior in the last 3 months. However, if the youth hasn't offended during that time, base answers on the youth's feelings/attitudes/beliefs as they apply to the most recent pattern of behaviors even if more than 3 months ago.*

- The benefits of the override would be discussed as well as what ongoing service delivery is planned.

**Step Two:** The PO will make a note in CARE that an override has taken place and indicate who they staffed the override with, as well as, the reason for the override.

**Step Three:** If it is determined that an override is appropriate the PO will still put some accountability measures in place (i.e. hours, fines, or other appropriate measures) but is not required to complete the case planning process (completion of a BAW and Case Plan).

- As a reminder, an override means that a PO has identified indicators of dynamic protective factors that mitigate a youth's likelihood to re-offend, as well as, has **no dynamic risk factors**.
- The PO should relay to the family the importance of the protective factors that may be mitigating the individual's risk and why they should continue to support these factors throughout the individual's life.
- The PO may still develop goals with families on how to increase these protective factors but is not required to complete the case planning process.
- The PO should reassess the PRA if issues arise while the youth is under jurisdiction that would indicate a significant change in their dynamic risk factors.

## 2.7 Assessment Tools

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### Policy:

This policy provides direction to probation staff on administering assessments to minors referred to the Utah State Juvenile Court.

### Scope:

This policy applies to all probation staff of the Utah State Juvenile Court.

### Authority:

- [UCA 78A-6-117](#)
- ~~Pre-Screen Risk Assessment (PSRA)~~
- ~~Protective and Risk Assessment (PRA)~~
- ~~Juvenile Sexual Offense Recidivism Risk Assessment Tool-II (JSORRAT-II)~~
- Massachusetts Youth Screening Instrument-Version 2 (MAYSI-2) and Training Manual

### Reference:

- **Pre-Screen Risk Assessment Tool**
- **Protective and Risk Assessment Tool**

### Procedure:

1. The probation officer shall complete a Pre-Screen Risk Assessment (PSRA) on all minors referred to the juvenile court: **with the exception of minors who are referred for the first time and the offense is an infraction or status offense.**
  - 1.1. **The probation officer may choose to complete a PSRA on the minors excepted above when it appears necessary to accurately identify the youth's risk.**
  - 1.2. **The probation officer shall utilize Addendum 2.7.1 Override Guide (Aggravating Risk) to determine if an override is appropriate when the probation officer has identified additional risk factors in the Attitude/Behavior Indicators section of the PSRA.**
2. The probation officer shall complete a Protective and Risk Assessment (PRA) on all minors who score moderate or high risk on the PSRA.
  - 2.1. The PRA shall be completed within 14 days of the completion of the PSRA on moderate and high risk nonjudicial cases.
  - 2.2. The PRA shall be completed within 14 days following adjudication on moderate and high risk cases.

- 2.3. The PRA shall be updated within 14 days of a new charge or significant change that increases or decreases scoring values for the PRA questions. A closing PRA shall be completed within 7 **seven** days of termination of court jurisdiction.
- 2.4. **The probation officer shall utilize Addendum 2.7.2 Override Guide (Mitigating Risk) to determine if an assessment override is appropriate when there are no dynamic risk factors identified in the PRA.**
3. The probation officer shall update the risk assessment(s) prior to disposition when charges have been modified.
4. The results of the PRA shall be used to make appropriate recommendations for court reports and case plans.
5. The probation officer shall request that the minor complete the Massachusetts Youth Screening Instrument-Version 2 (MAYSI-2) as part of the preliminary interview on all minors referred to the juvenile court between the ages of 12-17 who have not participated in the screening in the past 14 days. The minor may be requested to complete an additional MAYSI-2 when significant events or stressors are evident in the minor's life.
  - 5.1. The probation officer shall meet with the minor individually to collect further information if secondary screening questions are generated by the initial screening.
    - 5.1.1. **The probation officer may invite the minor's parent, guardian and/or custodian to observe the meeting when requested by the minor.**
  - 5.2. The probation officer shall provide referral information to the minor's parent, guardian **and**/or custodian if the secondary screening questions indicate a need for further assessment(s).
  - 5.3. The probation officer shall release the minor to a parent, guardian, custodian or other responsible adult when a minor scores above the "warning" cut-off on the suicide ideation section.
  - 5.4. The probation officer shall not use the MAYSI-2 score, scales or individual answers to make recommendations to the court.
  - 5.5. The probation officer shall eFile the MAYSI-2 assessment, including any secondary questions in CARE under *Probation Records (Safeguarded) MAYSI-2 #Results*.
  - 5.6. The probation officer may refer to the *MAYSI-2 Training Manual* for procedural information.
- ~~6. The probation officer shall use the Juvenile Sexual Offense Recidivism Risk~~

~~Assessment Tool-II (JSORRAT-II) to determine the need for further assessment.~~

~~6.1. The probation officer shall adhere to the JSORRAT-II instructions to assure proper completion of the assessment tool.~~

~~6.2. The probation officer shall not use the JSORRAT-II information for detention release purposes.~~

- 7. The probation officer shall consider the results of all available screening tools, assessments and/or evaluations when determining if further assessment is appropriate.**

**~~Addendum 2.7.1 Pre-Screen Risk Assessment Tool~~**

**~~Addendum 2.7.2 Protective and Risk Assessment Tool~~**

**~~Addendum 2.7.3 Juvenile Sexual Offense Recidivism Risk Assessment Tool-II (JSORRAT-II)~~**

**Addendum 2.7.1 Override Guide (Aggravating Risk)**

**Addendum 2.7.2 Override Guide (Mitigating Risk)**

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#### **History:**

Approved by the Judicial Council on August 17, 2018

**Updated by Policy Committee on June 15, 2020**

**Legal Review July 1, 2020**

**Comment Period Ended August 3, 2020**

**Approved by Chiefs September 10, 2020**

**Approved by JTCEs October 1, 2020**

**Approved by BJCJ October 9, 2020**

**Editorial Note from 5.1:** There is some debate on this subject and whether or not the parents are to be present. Here is the response from the MAYSI creator on the subject.

*“We recommend that kids be told (prior to taking MAYSI) that their answers won’t be shown to parents, for the reason that you mention. However, it is also true that sometimes we have to tell parents things we learn from kids if we think they are in danger (e.g., suicidal). So typically we tell them (before the MAYSI) that we won’t tell parents anything unless we think they (the youth) is in danger. Once you have told the youth that, it applies both to the MAYSI and the second screening questions.”*

## **Proposed Policy Update for 2.7 Assessment Tools**

### **1. Comment/Theme:**

- ❖ *Regarding this - "A closing PRA shall be completed within seven days of termination of court jurisdiction." I wonder if it would be helpful to explain this a little further indicating that this is done when a PO closes out his or her name in case assignments. Or when they go JJS if that's the intent. I'm just wondering if making it more detailed would help staff.*
- ❖ *A closing PRA should be completed within 7 days of termination of court jurisdiction. Should you also state "and within 7 days of completion of the NJ"*
  - **Policy Committee Response:** A Progress or Significant Change reassessment should be completed when a youth is placed into custody since court jurisdiction is not terminated. The term "court jurisdiction" encompasses both petitioned cases and cases processed nonjudicially.
  - **Policy Committee Decision:** N/A

### **2. Comment/Theme:**

- ❖ *Regarding JSORRAT - would it be helpful to add the offenses or a link to the offenses for which the assessment is required?*
- ❖ *The Policy states "The probation officer shall use the Juvenile Sexual Offense Recidivism Risk Assessment Tool-II (JSORRAT-II) to determine the need for further assessment. 6.1. The probation officer shall not use the JSORRAT-II information for detention release purposes." Do we want to continue to use the JSORRAT-II? The Judges in our district do not use the JSORRAT-II to determine the need for an assessment, and don't want the results from the JSORRAT-II. The results from the JSORRAT-II often come back low on first time offense but SBRA come back Moderate or High risk, not matching risk levels.*
- ❖ *Why are we still doing the JSORRAT? If the youth can only be ordered to complete sex-specific treatment if there is a validated risk needs assessment, which would be the SBRA, why do the JSORRAT?*
  - **Policy Committee Response:** NA
  - **Policy Committee Decision:** The JSORRAT section was deleted due to the recent BJCJ decision to suspend the use of the assessment tool.

### **3. Comment/Theme:**

- ❖ *A PSRA should not be required on youth already working with probation that receive new charges and have a PRA completed. The PRA has to be updated and there's no point in wasting time doing a PSRA when we already have a more comprehensive assessment open and going.*

- **Policy Committee Response:** CARE functionality does not currently allow for pulling PSRA data from a PRA. This data is required to demonstrate compliance with statute. There are plans to enhance this functionality and incorporate these assessments into one assessment to be able to capture this data. Until that functionality is added to CARE probation will need to continue to complete the PSRA at the point of each new referral.
- **Policy Committee Decision:** N/A (for now)

#### 4. Comment/Theme:

- ❖ *Probation officers "shall request" should be "shall offer" the MAYSI-2. When youth meet PO's for the first time, they feel obligated to do whatever is asked of them whether they understand what it is for or not. I feel this language is manipulative and taking advantage of this. Youth and families should know what the MAYSI-2 is, what it is for, and then be given the option to take it. The wording that is in the policy now does not come across as anything more making them do it.*
  - **Policy Committee Response:** The term request is synonymous with offer in that neither is a demand; both communicate that we are asking the family to participate in an assessment. The intent of the assessment is to assure that we are capturing those youth who come in contact with our system who have mental health concerns that need to be addressed so that they can get the help that they need. The way in which the assessment is presented is important in fulfilling this intent as we ultimately want the family to agree to participate in the assessment.
  - **Policy Committee Decision:** NA

#### 5. Comment/Theme:

- ❖ *I think that on #1 PSRA it might need to be more specific. Example - The probation officer shall complete a PSRA on all minors for each episode they are referred to the juvenile court with the exception.....*
  - **Policy Committee Response:** Adding "each episode" could communicate that separate PSRA's would be required for each episode even if the episodes were addressed during the same PI appointment.
  - **Policy Committee Decision:** N/A

#### 6. Comment/Theme:

- ❖ *Item 2.3 My question is - if this is court kid would we be updating the PRA within 14 days of new charge/significant change if this is pre-adjudication? Wouldn't we*



*first need to update the PSRA and then wait for adjudication to complete PRA. In our district we are not allowed to talk to the youth about their charge if it is a court case and they are pre-adjudication. Is this saying if they are under jurisdiction with an NJ or court that we don't need to do a PSRA for a new charge? I think this needs to be clarified.*

➤ **Policy Committee Response:** NA

➤ **Policy Committee Decision:** Removed “a new charge” from 2.3 since 2.1 and 2.2 outlines the process for completing a PRA when a youth has a new offense.

## **7. Comment/Theme:**

❖ *The age guidelines for the PSRA, PRA, and the MAYSI are pretty clear that they are for MINORS. There are numerous examples of these assessments being used on adult youth we work with and we're told to "just put in" answers in order to "fit" the case planning model when the youth's criteria don't match the options in the assessment, such as current living, for example. These are not valid for our 18+ year old youth and we should not be required to continue to use them for such cases. We should have valid assessment tools for adults for our adult aged youth, especially if things moving forward are going to include "youth" ages 18-25.*

❖ *Shouldn't we put the age ranges for all of the assessments listed since we are putting it for the MAYSI?*

➤ **Policy Committee Response:** It is correct that the MAYSI-2 has specific guidelines on ages based on it's validation. The PRA and PSRA have achieved 'local validation' which means that it has been shown to accurately predict the risk of anyone who enters our juvenile system, regardless of age. The PSRA and PRA validations included 'youth' who committed offenses as juveniles but were assessed after their 18th birthday, and the validation studies showed that the assessment was accurately predicting their level of recidivism risk. This is different from emerging adults, who are adults who commit offenses after the age of 18 but are remaining under the jurisdiction of the juvenile court. It is correct that we will need to look into assessments for this population if and when emerging adult legislation is passed to determine what would be most appropriate for them.

➤ **Policy Committee Decision:** NA

## 8. Comment/Theme:

- ❖ *As I noted in the Juvenile Judge's board meeting, it may be helpful to establish a policy for situations where a juvenile refuses to participate in an assessment. I would suggest that the policy be that, where a juvenile refuses to participate, the probation officer is instructed to prepare the assessment based upon any other known information and submit that assessment to the court, noting that the juvenile refused to participate.*
  - **Policy Committee Response:** Assuring the validity of the assessment requires that the information entered is accurate and collected according to established standards. Responses to assessment questions based on a guess or assumption by a probation officer would be considered invalid information. Assessments scored with unanswered questions are also not considered to be valid. Probation officers have been given direction to not offer a nonjudicial agreement to the youth or request that the court order the family to complete the assessment in these cases. In circumstances under which a family continues to refuse despite a court order, probation would defer to the court regarding how to move forward with the case.
  - **Policy Committee Decision:** NA

## 9. Comment/Theme:

- ❖ *2.3 Can we have guidance on the terminology "significant change." Really we should demonstrate at least 6 months of showing that change to consider it being a true change.*
  - **Policy Committee Response:** The statewide QAP includes a matrix with examples and guidance on how and when to reassess for significant change.
  - **Policy Committee Decision:** NA

## ***4.3 Case Planning***

## 4.3 Case Planning

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**Policy:**

The probation officer shall develop an individualized case plan in collaboration with the minor and the minor's parent or guardian which is informed by the results of the Behavior Analysis Worksheet (BAW) and Protective and Risk Assessment (PRA).

**Scope:**

This policy applies to all probation department staff of the Utah State Juvenile Court.

**Authority:**

- [UCA 78A-6-123](#)

**Procedure:**

1. The probation officer shall complete the Protective and Risk Assessment (PRA) and Behavioral Analysis Worksheet (BAW) in CARE on all minors who score moderate or high on the most recent risk assessment in the development of a case plan.
  - 1.1. The probation officer shall enter a summary of the minor's pattern of behavior into the case plan worksheet if the minor refuses or is unable to complete the BAW.
  - 1.2. The probation officer shall also complete a PRA and BAW on all minors when an aggravating override has been applied as outline in [Probation Policy 2.7 Assessment Tools](#).
2. The probation officer shall collaborate with the minor and the minor's parent or guardian in the development of the case plan which shall include:
  - 2.1. Identification of priority risk items based upon a review of the PRA and the BAW results (best practice indicates four to six risk items be identified);
  - 2.2. Protective factors identified in the PRA;
  - 2.3. Mental health factors;
  - 2.4. Responsivity factors; and
  - 2.5. Incentives.
3. The probation officer is not required to complete a case plan with a minor if a mitigating override has been applied as outlined in [Probation Policy 2.7 Assessment Tools](#).
4. The probation officer is not required to complete a case plan while a minor is placed in a residential facility.
  - 4.1. The probation officer shall complete a case plan within 30 days if the minor returns to the community.
5. The probation officer shall collaborate with the minor and the minor's parent or

guardian to identify goals, action steps, strategies, and stages of change specific to the priority risk items prior to eFiling the case plan.

6. The probation officer shall eFile the case plan and provide a written copy to the minor and the minor's parent or guardian within 30 days of disposition or signing of the nonjudicial agreement. The probation officer shall staff the case with a supervisor when the case plan cannot be completed within 30 days because of extenuating circumstances. The results of that staffing shall be documented in case notes in CARE.
7. The probation officer shall enter all notes and progress related to the case plan in the case plan worksheet.
8. The probation officer shall continue to work with the minor on the case plan until the minor's case has been concluded.
9. The probation officer shall use evidence-based case management methods including modeling and skill practice to address the minor's identified risk items.
10. The probation officer shall complete a reassessment of the BAW and PRA and create an updated case plan when there is a new charge or significant change that increases or decreases scoring values for the PRA questions.
  - 10.1. The BAW does not need to be updated if the PRA reassessment is being completed because of an increase in protective factors.
11. The probation officer shall eFile the working case plan document every 90 days, prior to every review hearing or within seven days of the minor's case being concluded.

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**History:**

Approved by Judicial Council and Effective September 18, 2018

Update by Policy Committee June 15, 2020

Legal Review July 1, 2020

Comment Period Ended August 3, 2020

Approved by Chiefs September 10, 2020

Approved by JTCEs October 1, 2020

Approved by BJCJ October 9, 2020

## 4.3 Case Planning

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### Policy:

The probation officer shall develop an individualized case plan in collaboration with the minor and the minor's parent or guardian which is informed by the results of the Behavior Analysis Worksheet (BAW) and Protective and Risk Assessment (PRA).

### Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

### Authority:

- [UCA 78A-6-123](#)

### Procedure:

1. The probation officer shall complete the Protective and Risk Assessment (PRA) and Behavioral Analysis Worksheet (BAW) in CARE on all minors who score moderate or high on the most recent risk assessment in the development of a case plan.
  - 1.1. The probation officer shall enter a summary of the minor's pattern of behavior into the case plan worksheet if the minor refuses or is unable to complete the BAW.
  - 1.2. **The probation officer shall also complete a PRA and BAW on all minors when an aggravating override has been applied as outline in [Probation Policy 2.7 Assessment Tools](#).**
2. The probation officer shall collaborate with the minor and the minor's parent or guardian in the development of the case plan which shall include:
  - 2.1. Identification of priority risk items based upon a review of the PRA and the BAW results (best practice indicates four to six risk items be identified);
  - 2.2. Protective factors identified in the PRA;
  - 2.3. Mental health factors;
  - 2.4. Responsivity factors; and
  - 2.5. Incentives.
3. **The probation officer is not required to complete a case plan with a minor if a mitigating override has been applied as outlined in [Probation Policy 2.7 Assessment Tools](#).**

**4. The probation officer is not required to complete a case plan while a minor is placed in a residential facility.**

**4.1. The probation officer shall complete a case plan within 30 days if the minor returns to the community.**

5. The probation officer shall collaborate with the minor and the minor's parent or guardian to identify goals, action steps, strategies and stages of change specific to the priority risk items prior to eFiling the case plan.
6. The probation officer shall eFile the case plan and provide a written copy to the minor and the minor's parent or guardian within ~~14~~ **30** days of disposition or signing of the nonjudicial agreement.
7. The probation officer shall enter all notes and progress related to the case plan in the case plan worksheet.
8. The probation officer shall continue to work with the minor on the case plan until the minor's case has been concluded.
9. The probation officer shall use evidence-based case management methods including modeling and skill practice to address the minor's identified risk items.
10. The probation officer shall complete a reassessment of the BAW and PRA and create an updated case plan when there is a new charge or significant change that increases or decreases scoring values for the PRA questions.
  - 10.1. The BAW does not need to be updated if the PRA reassessment is being completed because of an increase in protective factors.
11. The probation officer shall eFile the working case plan document every 90 days, prior to every review hearing or within seven days of the minor's case being concluded.

**History:**

Approved by Judicial Council and Effective September 18, 2018

Updated by Policy Committee **June 15, 2020**

**Legal Review July 1, 2020**

Comment Period Ended August 3, 2020  
Approved by Chiefs September 10, 2020  
Approved by JTCEs October 1, 2020  
Approved by BJCJ October 9, 2020

OLD VERSION- WITH EDITS



## **Proposed Policy Update for 4.3 Case Planning**

### **1. Comment/Theme:**

- ❖ *A Case plan should not be mandated on Non-Judicial cases. The whole point of an NJ is to provide the youth the opportunity to handle their situation outside the court with minimal involvement. Having youth with NJ's also meeting to do case planning, goals, etc. seems to go against the whole point of an NJ. With the new NJ procedures and schedule, completing a case plan and meeting with probation for the same dosage a court-involved youth would receive is not consistent with the minimal consequences of hours or fines the youth is receiving for doing the NJ contract. This is insane.*

- **Policy Committee Response:** The policy for case planning with all moderate and high-risk youth, regardless of their court status or offense, aligns with our systemic approach of utilizing evidence-based practices and Risk, Need, and Responsivity model.

- **Policy Committee Decision:** NA

### **2. Comment/Theme:**

- ❖ *Are there any exceptions to number 7? Is there ever a situation where the case plan will be concluded and the case still open?*

- **Policy Committee Response:** Evidence-based practices indicate that there is never a time when case plans are 'concluded'. When working with a moderate or high risk youth there would likely be more risk factors than the initial 4-6 selected for the case plan. If a youth has completed their initial case plan goals, the PRA should be reassessed under the significant change section to determine what additional risk factors we could work on with that youth while they are still under jurisdiction.

- **Policy Committee Decision:** NA

### **3. Comment/Theme:**

- ❖ *Can "significant change" be defined out please?*

- **Policy Committee Response:** The statewide QAP includes a matrix with examples and guidance on how and when to reassess for significant change.

- **Policy Committee Decision:** NA

### **4. Comment/Theme:**

- ❖ *So thankful we no longer need to complete a case plan on youth in residential care. What about youth in a group home setting? They receive just as much care as a youth in a residential setting.*

- **Policy Committee Response:** One of the most significant factors supporting the change to not case plan youth in a residential treatment program was the fact that those youth are not in the community. Youth in group homes, generally speaking, are still in the community. As a result,

probation needs to support those intervention efforts through case planning and collaboration with treatment providers.

➤ **Policy Committee Decision:** NA

**5. Comment/Theme:**

- ❖ *Why are we required to do case plans on out-of-state youth? The whole purpose of the case plan is to meet with the youth and provide "programming" and give them incentives and sanctions, etc... you can't do that with a youth who lives out of state. All it is is busy work and all it does is take time away from the youth we can actually work with. Let's stop with the busy work and "check-off lists" and actually focus on the youth we can actually work with. Let's stop wasting everyone's time doing case plans on youth we don't have access too (out-of-state youth, residential, group homes) and let us spend more time working with youth we can actually meet with and help. All of this 'busy work' isn't hurting probation officers, it's hurting the youth we work with because it is taking away time we could be spending with them. It's just common sense.*

- **Policy Committee Response:** The goal is to create case plans before youth leave out of state to help the receiving probation officer know where to focus their efforts when working with the youth to help them stay out of the system. Understanding that timelines with these youth are complicated, we should do our best to complete what we can prior to the youth leaving. If the minor returns to our jurisdiction we can reassess to determine what needs the youth have at that time. Although we are sending the information to the PO in the receiving state, the Utah PO would not need to case plan while the youth is in that state (i.e. setting weekly goals, providing incentives/sanctions, etc.) but would be a collaborative partner with the probation officer in the receiving state.

➤ **Policy Committee Decision:** NA

**6. Comment/Theme**

- ❖ *Item 5: The probation officer shall eFile the case plan and provide a written copy to the minor and the minor's parent or guardian within 30 days of disposition or signing of the nonjudicial agreement. I love that we are allowed 30 days instead of 14, which is a much more realistic time frame for most cases. However, I am wondering if you have considered what if the PO is unable to efile the case plan in that time frame because the youth has canceled or not showed up, or because the youth is in pre-contemplation or uncooperative with developing the case plan? I have this situation right now. I have been trying to do a case plan with a youth, and he keeps shutting down. I realized that he is in pre-contemplation, and I need to step back and figure out more incentives and build more discrepancies with him - not keep trying to get him to set goals on things he does not care about.*

- **Policy Committee Response:** Probation policies establish standards for probation work that probation officers should do their best to meet. There will be instances with all policy processes in which, due to extenuating

circumstances, probation officers are unable to meet that standard. In these cases, the direction is to discuss the issue with your supervisor and document in case notes in CARE.

➤ **Policy Committee Decision:** N/A

## ***4.7 Interstate Compact for Juveniles***

## 4.7 Interstate Compact for Juveniles

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**Policy:**

The Interstate Compact for Juveniles (ICJ) provides for the transfer of supervision of minors under court jurisdiction, establishes a procedure for the return of runaways, probation/parole absconders, escapees, accused status offenders, and accused delinquents, and outlines the process for submitting travel permits.

**Scope:**

This policy applies to all probation staff of the Utah State Juvenile Court.

**Authority:**

- [UCA 55-12-100 through 118](#)
- [UCA 78A-6-103](#)
- [UCA 78A-6-106.5](#)
- [UCA 78A-6-117](#)
- [Utah Administrative Code R547-13-4\(1\)\(c\)](#)
- [ICJ Rules - Interstate Commission for Juveniles](#)

**Reference:**

- [ICJ Overview of the Transfer of Supervision Flow Chart](#)
- [ICJ Voluntary Return of a Juvenile Flow Chart](#)
- [ICJ Travel Permit Overview Flow Chart](#)
- [ICJ Transportation Overview for Returning a Juvenile to the Home/Demanding/Sending State via Air Flow Chart](#)

**Procedure:**

1. Sending a minor on Interstate Compact:
  - 1.1. The probation officer shall complete and submit to the Utah ICJ office all applicable Interstate Compact forms once a minor is adjudicated and is establishing a residence out of state:
    - 1.1.1. [Form IA/VI Application for Services and Waiver](#);
    - 1.1.2. [Form IV Parole and Probation Investigation Request](#) (including cover letter, petitions, orders, legal and social history, parole/probation conditions, school records, immunizations, assessments and evaluations, supervision summary, and any other pertinent information);
    - 1.1.3. [Form VII Travel Permit](#) (mandatory for sex offenders relocating to the receiving state prior to the receiving state accepting supervision).
  - 1.2. The probation officer shall complete all assessments and case plans as outlined in probation policy.
  - 1.3. The Utah ICJ Office, upon the receiving state accepting supervision, will request permission from the receiving state's ICJ Office for the local probation officers to speak directly about the case.

- 1.3.1. The Utah probation officer shall make an entry in Case Notes of any communication/correspondence with the receiving state probation officer and notify the Utah ICJ Office that the note(s) have been entered when direct communication has been approved.
  - 1.4. The probation officer shall maintain responsibility for the case until Interstate Compact probation supervision is terminated. This includes but is not limited to:
    - 1.4.1. Contacting the minor and family regarding progress, compliance, and noncompliance at least once a month;
    - 1.4.2. Contacting the minor and family within two business days to gain their perspective on the matter and discuss possible responses when a Violation Report from the receiving state is received;
  - 1.5. The Utah ICJ Office may request progress reports from the receiving state at any time to aid in the completion of risk assessments and court reports.
2. Receiving a minor on Interstate Compact:
- 2.1. The assigned probation officer, after reviewing the transfer of supervision referral packet, shall conduct and submit a home evaluation to the Utah ICJ Office within 30 days recommending that supervision be accepted or denied. The Utah ICJ Office will make a final determination of whether or not the case is accepted for supervision.
  - 2.2. The probation officer shall submit [ICJ Form IX](#) (Quarterly Progress, Violation, or Absconder Report) every 90 days to the Utah ICJ Office. Reports shall be typed and thoroughly detail the probation department's efforts in reducing risk through the use of incentives and sanctions.
  - 2.3. The probation officer shall submit [ICJ Form IX](#) (Quarterly Progress, Violation, or Absconder Report) to the Utah ICJ Office within five business days of any violation or new charge.
    - 2.3.1. Absconder Reports shall include:
      - 2.3.1.1. the probation officer's efforts to locate the minor including contact at the last known residence, school and/or employer and contact with family members and collateral contacts
      - 2.3.1.2. the minor's last known address and telephone number
      - 2.3.1.3. the date of the minor's last personal contact with the probation officer
      - 2.3.1.4. the details leading to the discovery that the minor absconded
      - 2.3.1.5. information regarding pending charges, if any.
    - 2.3.2. Violation Reports shall include:
      - 2.3.2.1. the date and description of a new citation or technical violation
      - 2.3.2.2. the status and disposition of charges, if any
      - 2.3.2.3. supporting documentation regarding the violation, e.g. police reports, drug testing results, and/or lab results, court orders, etc.
      - 2.3.2.4. sanctions utilized
      - 2.3.2.5. the probation officer's recommendations.

- 2.4. The probation officer shall supervise the out-of-state probationer exercising the same standards of supervision that prevail for a Utah probation minor, including applying the Risk, Need, and Responsivity Principles of Effective Case Management (See [ICJ Rule 5-101\(1\)\(2\)\(3\)](#)), including but not limited to:
    - 2.4.1. Completion of assessments as outlined in [Probation Policy 2.7](#) and Case Plans as outlined in [Probation Policy 4.3](#).
    - 2.4.2. Responding to compliant and non-compliant behavior as outlined in [Probation Policy 4.15](#).
    - 2.4.3. Staffing of the case with a Probation Supervisor to address criminogenic needs through the use of court contracts, community interventions, and the Department of Human Services (DHS) contracted services.
  - 2.5. The probation officer may supervise the minor according to the reduced risk level when the minor is on a determinate sentence in the sending state but has demonstrated a reduction in risk,
  - 2.6. The Utah ICJ Office shall request any additional information from the sending state that may aid the probation officer in effectively supervising the minor.
3. Out-of-State Runaways, Probation/Parole Absconders, Escapees, Accused Status Offenders, and Accused Delinquents:
    - 3.1. An out of state runaway may be released from detention by juvenile authorities to parents or legal guardians within 24 hours of being detained (excluding weekends and holidays) except in cases where abuse or neglect in the residence of the legal guardian or custodial agency is suspected.
    - 3.2. A detention hearing shall be scheduled for any out of state runaway held longer than 24 hours (excluding weekends and holidays), or for any out-of-state probation/parole absconder, escapee, accused status offender, and accused delinquent. The Utah ICJ office shall be notified that the minor is in detention.
      - 3.2.1. At the detention or subsequent hearing, the probation officer shall present the [Form III](#) (Consent for Voluntary Return of Out of State Juvenile) and the [ICJ Juvenile Rights Form for Consent for Voluntary Return of Out of State Juvenile](#) to the Court, counsel, and the minor after pending charges, if any, have been resolved.
      - 3.2.2. The probation officer shall forward the signed forms to the Utah ICJ Office immediately following the hearing.
      - 3.2.3. All travel arrangements will be coordinated through the Utah ICJ Office.
    - 3.3. The probation officer shall contact the Utah ICJ office for further direction if the runaway does not voluntarily agree to return home and refuses to sign the Form III.
    - 3.4. The probation officer shall refer to [Probation Policy 5.2](#) if responsible for the transport of the minor.

#### 4. Travel Permits

- 4.1. The probation officer shall complete [ICJ Form VII Travel Permit](#) and submit to the Utah ICJ office for a minor traveling out of state for a period longer than 24 hours under the following circumstances:
  - 4.1.1. The minor has been adjudicated and under supervision for:
    - 4.1.1.1. Sex-related offenses;
    - 4.1.1.2. Violent offenses that have resulted in personal injury or death;
    - 4.1.1.3. Offenses committed with a weapon;
  - 4.1.2. The minor is testing placement and is eligible for transfer under ICJ rules;
  - 4.1.3. The minor is returning to the state from which they were transferred for the purposes of visitation;
  - 4.1.4. The minor is transferring to a subsequent state with the approval of the initial sending state.
  - 4.1.5. The minor has been accepted in Utah and the victim notification laws, policies and practices of the sending and/or receiving state require notification.
- 4.2. The probation officer may submit [ICJ Form VII Travel Permit](#) for minors placed in a residential treatment facility for notification purposes.
- 4.3. A travel permit shall not exceed 90 calendar days.

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#### History:

Updated and Effective February 26, 2018  
Updated by Policy Workgroup January 6, 2020  
Legal Review Completed March 26, 2020  
Comment Period Ended August 3, 2020  
Approved by Chiefs September 10, 2020  
Approved by JTCEs October 1, 2020  
Approved by BJCJ October 9, 2020



## Section 4.7 Interstate Compact for Juveniles

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### Policy:

The Interstate Compact for Juveniles (ICJ) provides for the transfer of supervision of minors under court jurisdiction, establishes a procedure for the return of runaways, **probation/parole absconders, escapees, accused status offenders and accused delinquents**, and outlines the process for submitting travel permits.

### Scope:

This policy applies to all probation staff of the Utah State Juvenile Court.

### Authority:

UCA 55-12-100 through 118, 78A-6-103, 106.5, 117 R547-13-4(1)(d) ICJ Rules-Interstate Commission for Juveniles ([www.juvenilecompact.org](http://www.juvenilecompact.org))

- [UCA 55-12-100 through 118](#)
- [UCA 78A-6-103](#)
- [UCA 78A-6-106.5](#)
- [UCA 78A-6-117](#)
- [Utah Administrative Code R547-13-4\(1\)\(c\)](#)
- [ICJ Rules - Interstate Commission for Juveniles](#)

### Reference:

- [ICJ Overview of the Transfer of Supervision Flow Chart](#)
- [ICJ Voluntary Return of a Juvenile Flow Chart](#)
- [ICJ Travel Permit Overview Flow Chart](#)
- [ICJ Transportation Overview for Returning a Juvenile to the Home/Demanding/Sending State via Air Flow Chart](#)

### Procedure:

1. Sending a minor on Interstate Compact:
  - 1.1. The probation officer shall complete and submit to the Utah ICJ office all applicable Interstate Compact forms once a minor is adjudicated and is establishing a residence out of state:
    - 1.1.1. Form IA/VI Application for Services and Waiver;
    - 1.1.2. Form IV Parole and Probation Investigation Request (including cover letter, petitions, orders, legal and social history, parole/probation conditions, school records, immunizations, assessments and evaluations, **supervision summary**, and any other pertinent information);
    - 1.1.3. Form VII Travel Permit (mandatory for sex offenders **relocating to the receiving state prior to the receiving state accepting supervision**).
  - 1.2. The probation officer shall complete all assessments and case plans as outlined in probation policy.

- 1.3. The Utah ICJ Office, upon the receiving state accepting supervision, will request permission from the receiving state's ICJ Office for the local probation officers to speak directly about the case.
    - 1.3.1. The Utah probation officer shall make an entry in Case Notes of any communication/correspondence with the receiving state probation officer and notify the Utah ICJ Office that the note(s) have been entered when direct communication has been approved.
  - 1.4. The probation officer shall maintain responsibility for the case until Interstate Compact probation supervision is terminated. **This includes but is not limited to:**
    - 1.4.1. Contacting the minor and family regarding progress, compliance and noncompliance at least once a month;
    - 1.4.2. Contacting the minor and family within two business days to gain their perspective on the matter and discuss possible responses when a Violation Report from the receiving state is received;
  - 1.5. The Utah ICJ Office may request progress reports from the receiving state at any time to aid in the completion of risk assessments and court reports.
2. Receiving a minor on Interstate Compact:
- 2.1. The assigned probation officer, after reviewing the transfer of supervision referral packet, shall conduct and submit a home evaluation to the Utah ICJ Office within 30 days recommending that supervision be accepted or denied. The Utah ICJ Office will make a final determination of whether or not the case is accepted for supervision.
  - 2.2. The probation officer shall submit ICJ Form IX (Quarterly Progress, Violation, or Absconder Report) every 90 days to the Utah ICJ Office. **Reports shall be typed and thoroughly detail the probation department's efforts in reducing risk through the use of incentives and sanctions.**
  - 2.3. The probation officer shall submit ICJ Form IX (Quarterly Progress, Violation, or Absconder Report) to the Utah ICJ Office within **5 five** business days of any violation or new charge.
    - 2.3.1. **Absconder Reports shall include:**
      - 2.3.1.1. the probation officer's efforts to locate the minor including contact at the last known residence, school and/or employer and contact with family members and collateral contacts
      - 2.3.1.2. the minor's last known address and telephone number
      - 2.3.1.3. the date of the minor's last personal contact with the probation officer
      - 2.3.1.4. the details leading to the discovery that the minor absconded
      - 2.3.1.5. information regarding pending charges, if any.

**2.3.2. Violation Reports shall include:**

- 2.3.2.1. the date and description of a new citation or technical violation**
- 2.3.2.2. the status and disposition of charges, if any**
- 2.3.2.3. supporting documentation regarding the violation, e.g. police reports, drug testing results and/or lab results, court orders, etc.**
- 2.3.2.4. sanctions utilized**
- 2.3.2.5. the probation officer's recommendations.**

**2.4. The probation officer shall supervise the out-of-state probationer exercising the same standards of supervision that prevail for a Utah probation minor, including applying the Risk, Need, and Responsivity Principles of Effective Case Management (See ICJ Rule 5-101(1)(2)(3)), including but not limited to:**

- 2.4.1. Completion of assessments as outlined in Probation Policy 2.7 and Case Plans as outlined in Probation Policy 4.3.**
- 2.4.2. Responding to compliant and non-compliant behavior as outlined in Probation Policy 4.15.**
- 2.4.3. Staffing of the case with a Probation Supervisor to address criminogenic needs through the use of court contracts, community interventions, and the Department of Human Services (DHS) contracted services.**

**2.5. The probation officer may supervise the minor according to the reduced risk level when the minor is on a determinate sentence in the sending state but has demonstrated a reduction in risk,**

**2.6. The Utah ICJ Office shall request any additional information from the sending state that may aid the probation officer in effectively supervising the minor.**

**3. Out-of-State Runaways, Probation/Parole Absconders, Escapees, Accused Status Offenders and Accused Delinquents:**

**3.1. An out of state runaway may be released from detention by juvenile authorities to parents or legal guardians within 24 hours of being detained (excluding weekends and holidays) except in cases where abuse or neglect in the residence of the legal guardian or custodial agency is suspected.**

**3.2. A detention hearing shall be scheduled for any out of state runaway held longer than 24 hours (excluding weekends and holidays), or for any out-of-state probation/parole absconder, escapee, accused status offender, and accused delinquent. The Utah ICJ office shall be notified that the minor is in detention.**

**3.2.1. At the detention or subsequent hearing, the probation officer shall present the Form III (Consent for Voluntary Return of Out of State Juvenile) and the ICJ Juvenile Rights Form for Consent for Voluntary Return of Out of State Juvenile to the Court, counsel, and the minor after pending charges, if any, have been resolved.**

- 3.2.2. The probation officer shall forward the signed forms to the Utah ICJ Office immediately following the hearing.
  - 3.2.3. All travel arrangements will be coordinated through the Utah ICJ Office.
  - 3.3. The probation officer shall contact the Utah ICJ office for further direction if the runaway does not voluntarily agree to return home and refuses to sign the Form III.
  - 3.4. **The probation officer shall refer to Probation Policy 5.2 if responsible for the transport of the minor.**
4. Travel Permits
- 4.1. The probation officer shall complete ICJ Form VII Travel Permit and submit to the Utah ICJ office for a minor traveling out of state for a period longer than 24 hours under the following circumstances:
    - 4.1.1. The minor has been adjudicated **and under supervision** for:
      - 4.1.1.1. Sex-related offenses;
      - 4.1.1.2. Violent offenses that have resulted in personal injury or death;
      - 4.1.1.3. Offenses committed with a weapon;
    - 4.1.2. The minor is testing placement and is eligible for transfer under ICJ rules;
    - 4.1.3. The minor is returning to the state from which they were transferred for the purposes of visitation;
    - 4.1.4. The minor is transferring to a subsequent state with the approval of the initial sending state.
    - 4.1.5. **The minor has been accepted in Utah and the victim notification laws, policies and practices of the sending and/or receiving state require notification.**
  - 4.2. The probation officer may submit ICJ Form VII Travel Permit for minors placed in a residential treatment facility for notification purposes.
  - 4.3. A travel permit shall not exceed 90 calendar days.

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#### History:

Effective August 1, 2004 ~~Updated and~~ **Effective** approved February 26, 2018

**Updated by Policy Workgroup January 6, 2020**

**Legal Review Completed March 26, 2020**

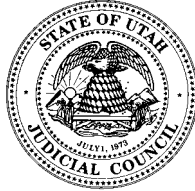
**Comment Period Ended August 3, 2020**

**Approved by Chiefs September 10, 2020**

**Approved by JTCEs October 1, 2020**

**Approved by BJCJ October 9, 2020**

# Tab 8



## Administrative Office of the Courts

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

December 14, 2020

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO: Judicial Council**

**FROM: Keisa Williams**

**RE: Rules for Public Comment**

---

The Policy and Planning Committee recommends the following rule to the Judicial Council for public comment.

#### **CJA 3-108. Judicial Assistance (AMEND)**

The proposed amendments to Rule 3-108 (lines 26 and 59-61) authorize the presiding officer of the Judicial Council to appoint a district court presiding judge as the signing judge for automatic expungements in all district courts within the presiding judge's district. The length of the assignment may coincide with the judge's term as presiding judge.

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

**Rule 3-108. Judicial assistance.****Intent:**

To establish the authority, procedure and criteria for judicial assistance.

**Applicability:**

This rule shall apply to judicial assistance provided by active senior judges and judges of courts of record.

**Statement of the Rule:**

(1) **Criteria for requesting assistance.** Judicial assistance shall be provided only for the following reasons:

(A) to prevent the occurrence of a backlog in the court's calendar;

(B) to reduce a critical accumulated backlog;

(C) to handle a particular case involving complex issues and extensive time which would have a substantial impact on the court's calendar;

(D) to replace a sitting judge who is absent because of assignment as a tax judge, illness or to replace the judges in that location because of disqualification in a particular case;

(E) to handle essential cases when there is a vacant judicial position;

(F) to handle high priority cases during vacation periods or during attendance at education programs by the sitting judge, following every effort by that judge to adjust the calendar to minimize the need for assistance and only to handle those matters which cannot be accommodated by the other judges of the court during the absence;

(G) to provide education and training opportunities to judges of one court level in the disposition of cases in another court level; ~~and~~

(H) in district court, to handle cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration; and

(I) to handle automatic expungement cases.

(2) **Criteria for transferring or assigning judges.** The transfer or assignment of judges shall be based upon the following priorities:

(A) experience and familiarity with the subject matter, including, in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, knowledge of the theory and practice of ad valorem, excise, income, sales and use, and corporate taxation;

(B) active judges before active senior judges with consideration of the following:

(i) active judges from a court of equal jurisdiction in a different geographical division than the court in need, who are physically situated nearest and are most convenient to that court;

(ii) active senior judges from a court of equal jurisdiction to the court in need who are physically situated nearest and are most convenient to that court;

(iii) active judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is most closely related to that court and who are in close proximity to it;

(iv) active judges from a court of equal jurisdiction in a different geographical division than the court in need who are far removed from that court;

(v) active or active senior judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is similar to that court who are not in close proximity;

(C) availability;

(D) expenses and budget.

**(3) Assignment of active judges.**

(A) Any active judge of a court of record may serve temporarily as the judge of a court with equal jurisdiction in a different judicial district upon assignment by the presiding judge of the district in which the judge to be assigned normally sits or, in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, assignment by the supervising tax judge with the approval of the presiding officer of the Council.

(B) Any active judge of a court of record may serve temporarily as the judge of a court with different jurisdiction in the same or a different judicial district upon assignment by the presiding officer of the Council or assignment by the state court administrator with the approval of the presiding officer of the Council.

(C) The presiding officer of the Council may appoint a district court presiding judge as the signing judge for automatic expungements in all district courts within the presiding judge's district. The length of the assignment may coincide with the judge's term as presiding judge.

~~(G D)~~ (D) The assignment shall be made only after consideration of the judge's calendar. The assignment may be for a special or general assignment in a specific court or generally within that level of court and shall be for a specific period of time, or for the duration of a specific case. Full time assignments in excess of 30 days in a calendar year shall require the concurrence of the assigned judge. The state court administrator shall report all assignments to the Council on an annual basis.

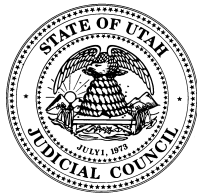
~~(D E)~~ (E) Requests for the assignment of a judge shall be conveyed, through the presiding judge, to the person with authority to make the assignment under paragraphs (A) and (B). A judge who is assigned temporarily to another court shall have the same powers as a judge of that court.

(4) Notice of assignments made under this rule shall be made in writing, a copy of which shall be sent to the state court administrator.

**(5) Schedule of trials or court sessions.** The state court administrator, under the supervision of the presiding officer of the Council, may schedule trials or court sessions and designate a judge to preside, assign judges within courts and throughout the state, reassign cases to judges, and change the county for trial of any case if no party to the litigation files timely objections to the change.

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





## Administrative Office of the Courts

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

December 16, 2020

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO: Judicial Council**

**FROM: Keisa Williams**

**RE: Rule for Public Comment – CJA 3-101**

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The Policy and Planning Committee recommends the following rule to the Judicial Council for public comment.

#### **CJA 3-101. Judicial Performance Standards (AMEND)**

The proposed amendments to Rule 3-101 establish a definition for “submitted” for purposes of the case under advisement performance standard. The proposed amendments also clarify that judges will be considered compliant with education and case under advisement standards if their failure to meet one or both of those standards was due to circumstances outside of the judge’s control. All material relied upon by the Judicial Council in making a certification decision or explanation shall be forwarded to JPEC and shall be made public to the extent that the information is not confidential personal health information.

Policy and Planning met with members of the Board of District Court Judges and with Dr. Jennifer Yim and two JPEC commissioners on October 2<sup>nd</sup> and November 6<sup>th</sup> to discuss the draft rule. Neither group expressed strong objections to the rule draft on November 6<sup>th</sup>. Judge Pullan met with JPEC on December 15<sup>th</sup>. The language in (7)(D) was recommended and approved by JPEC.

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

**Rule 3-101. Judicial performance standards.****Intent**

~~To establish standards of performance for application by the Judicial Performance Evaluation Commission.~~ To establish performance standards upon which the Judicial Council will certify judicial compliance to the Judicial Performance Evaluation Commission ("JPEC").

**Applicability**

This rule applies to all justices and judges of the courts of record and not of record.

**Statement of the Rule****(1) Certification of performance standards.**

(1)(A) The Judicial Council will certify to JPEC judicial compliance with the following performance standards: cases under advisement, education, and physical and mental competence.

(1)(B) The Judicial Council will transmit its certification to JPEC by the deadline established in the Utah Administrative Code.

~~(42)~~ **Definition of cCase 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 judge for final determination. For purposes of this rule, "submitted to the judge" or "submission" is the last of the following:

(2)(A) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;

(2)(B) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(2)(C) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

**(3) Satisfactory Performance by a justice or judgeCase under advisement performance standards.**

~~(23)~~ **Supreme Court justice.** A justice of the Supreme Court demonstrates satisfactory performance by circulating not 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.

~~(23)~~ **Court of Appeals judge.** A judge of the Court of Appeals demonstrates satisfactory performance by:

(23)(B)(i) circulating not 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

(23)(B)(ii) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(23)(C) Trial court judge. A trial court judge demonstrates satisfactory performance by holding:

(23)(C)(i) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(23)(C)(ii) no case under advisement more than six months after submission.

(3)(C)(iii) A case is no longer under advisement when the trial court judge makes a decision on the issue that is under advisement or on the entire case.

(4) Case under advisement performance standards—compliance. A judge or justice shall decide all matters submitted for decision within the applicable time period prescribed by this rule, unless circumstances causing a delayed decision are beyond the judge's or justice's personal control.

(35) Judicial eEducation performance standard.

(5)(A) Education hour standard. Satisfactory performance is established if the judge annually obtains 30 hours of judicial education subject to the availability of in-state education programs.

(5)(B) Education hour standard—compliance. A judge or justice shall obtain the number of education hours prescribed by this rule, unless circumstances preventing the judge from doing so are beyond the judge's or justice's personal control.

(46) Physical and mental competence performance standard. Satisfactory performance is established if the response of the judge 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.

(7) Judicial Council certification. As to the performance standards in this Rule, the Judicial Council shall certify to JPEC that each judge or justice standing for retention is:

(7)(A) Compliant;

(7)(B) Compliant with explanation, meaning that the Judicial Council has received credible information that non-compliance was due to circumstances beyond the personal control of the judge or justice; or

69       (7)(C) Non-compliant, which may include a judge who has certified his or her own  
70       compliance but the Judicial Council has received credible information inconsistent with that  
71       certification.

72       (7)(D) All material relied upon by the Judicial Council in making a certification decision or  
73       explanation shall be forwarded to JPEC and shall be made public to the extent that the  
74       information is not confidential personal health information.

75  
76       *Effective May/November 1, 20\_\_*

**Rule 3-101. Judicial performance standards.****Intent**

To establish performance standards upon which the Judicial Council will certify judicial compliance to the Judicial Performance Evaluation Commission ("JPEC").

**Applicability**

This rule applies to all justices and judges of the courts of record and not of record.

**Statement of the Rule****(1) Certification of performance standards.**

(1)(A) The Judicial Council will certify to JPEC judicial compliance with the following performance standards: cases under advisement, education, and physical and mental competence.

(1)(B) The Judicial Council will transmit its certification to JPEC by the deadline established in the Utah Administrative Code.

**(2) Definition of case under advisement.** 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. For purposes of this rule, "submitted to the judge" or "submission" is the last of the following:

(2)(A) When a matter requiring attention is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent;

(2)(B) If a hearing or oral argument is set, at the conclusion of all hearings or oral argument held on the specific motion or matter; or

(2)(C) If further briefing is required after a hearing or oral argument, when all permitted briefing is completed, a request to submit is filed, if required, and the matter is placed by staff in the judge's personal electronic queue, inbox, personal possession, or equivalent.

**(3) Case under advisement performance standards.**

(3)(A) **Supreme Court justice.** A justice of the Supreme Court demonstrates satisfactory performance by circulating not 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.

(3)(B) **Court of Appeals judge.** A judge of the Court of Appeals demonstrates satisfactory performance by:

(3)(B)(i) circulating not 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)(B)(ii) achieving a final average time to circulation of a principal opinion of not more than 120 days after submission.

(3)(C) **Trial court judge.** A trial court judge demonstrates satisfactory performance by holding:

(3)(C)(i) not more than an average of three cases per calendar year under advisement more than two months after submission with no more than half of the maximum exceptional cases in any one calendar year; and

(3)(C)(ii) no case under advisement more than six months after submission.

(3)(C)(iii) A case is no longer under advisement when the trial court judge makes a decision on the issue that is under advisement or on the entire case.

(4) **Case under advisement performance standards—compliance.** A judge or justice shall decide all matters submitted for decision within the applicable time period prescribed by this rule, unless circumstances causing a delayed decision are beyond the judge's or justice's personal control.

(5) **Judicial education performance standard.**

(5)(A) **Education hour standard.** Satisfactory performance is established if the judge annually obtains 30 hours of judicial education subject to the availability of in-state education programs.

(5)(B) **Education hour standard—compliance.** A judge or justice shall obtain the number of education hours prescribed by this rule, unless circumstances preventing the judge from doing so are beyond the judge's or justice's personal control.

(6) **Physical and mental competence performance standard.** Satisfactory performance is established if the response of the judge 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.

(7) **Judicial Council certification.** As to the performance standards in this Rule, the Judicial Council shall certify to JPEC that each judge or justice standing for retention is:

(7)(A) Compliant;

(7)(B) Compliant with explanation, meaning that the Judicial Council has received credible information that non-compliance was due to circumstances beyond the personal control of the judge or justice; or

(7)(C) Non-compliant, which may include a judge who has certified his or her own compliance but the Judicial Council has received credible information inconsistent with that certification.

69           (7)(D) All material relied upon by the Judicial Council in making a certification decision or  
70           explanation shall be forwarded to JPEC and shall be made public to the extent that the  
71           information is not confidential personal health information.

72

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

# Tab 9



**STANDING COMMITTEE ON  
MODEL UTAH CRIMINAL JURY INSTRUCTIONS  
2020 REPORT TO UTAH JUDICIAL COUNCIL**

Hon. James Blanch, *District Court Judge [Chair]*  
 Hon. Brendan McCullagh, *Justice Court Judge*  
 Hon. Michael Westfall, *District Court Judge*  
 Jennifer Andrus, *Linguist / Communications*  
 Melinda Bowen, *Criminal Law Professor*  
 Mark Field, *Prosecutor*  
 Sandi Johnson, *Prosecutor*  
 Karen Klucznik, *Prosecutor*  
 Elise Lockwood, *Defense Attorney*  
 Debra Nelson, *Defense Attorney*  
 Stephen Nelson, *Prosecutor*  
 Nathan Phelps, *Defense Attorney*  
 Scott Young, *Defense Attorney*  
 Hon. Linda Jones, *District Court Judge [Emeritus]*

Michael C. Drechsel, *Staff*

***New Instructions and Special Verdict Forms***

During 2020, the committee met eight times. The committee completed work on the following new instructions and special verdict forms:

- CR1001 Preamble to Driving Under the Influence Instructions
- CR1003 Driving Under the Influence of Alcohol, Drugs, or Combination (class B misdemeanor)
- CR1004 Driving Under the Influence of Alcohol, Drugs, or Combination (class A misdemeanor)
- CR1005 Driving Under the Influence of Alcohol, Drugs, or Combination (third degree felony)
- SVF100 Driving Under the Influence Offenses
- SVF1302 Aggravated Assault – Targeting a Law Enforcement Officer (in response to public comment; in connection with revisions to CR1322)

### *Revised Instructions and Special Verdict Forms*

In addition to those new instructions and special verdict forms, the committee also revised, or added committee notes to assist practitioners in, the following existing instructions and special verdict forms:

- CR216 Jury Deliberations (in response to jury unanimity issues raised in *State v. Alires*, 2019 UT App 206)
- CR218 Deadlocked Juries (in response to jury unanimity issues raised in *State v. Alires*, 2019 UT App 206)
- CR522 Defense of Habitation – Presumption (in response to public comment)
- CR530 Defense of Self or Other (in response to public comment)
- CR1003 Driving Under the Influence of Alcohol, Drugs, or Combination (class B misdemeanor) (per HB0139 from the 2020 general session)
- CR1004 Driving Under the Influence of Alcohol, Drugs, or Combination (class A misdemeanor) (per HB0139 from the 2020 general session)
- CR1005 Driving Under the Influence of Alcohol, Drugs, or Combination (third degree felony) (per HB0139 from the 2020 general session)
- SVF100 Driving Under the Influence Offenses (per HB0139 from the 2020 general session)
- CR1301 Definitions for Assault and Related Offenses (in response to public comment)
- CR1302 Misdemeanor Assaults (in response to public comment)
- CR1303 Assault Against School Employees (in response to public comment)
- CR1304 Assault Against a Peace Officer (in response to public comment)
- CR1305 Assault Against a Military Servicemember in Uniform (in response to public comment)
- CR1306 Assault by Prisoner (in response to public comment)
- CR1320 Aggravated Assault (in response to public comment)
- CR1321 Aggravated Assault by Prisoner (in response to public comment)
- CR1322 Aggravated Assault – Targeting a Law Enforcement Officer (in response to public comment)
- CR1411 Murder (in response to public comment)
- CR1601 Definitions (Sexual Offenses) (revised definition of “indecent liberties” to conform with Utah Code § 76-5-416)
- CR1607 Object Rape
- CR1615 Consent (per HB0213 from the 2020 general session)
- CR1616A Conduct Sufficient to Constitute Sexual Intercourse for Unlawful Sexual Activity with a Minor, Unlawful Sexual Conduct with a 16 or 17 year old, or Rape

### *Current Projects*

From June 3, 2020, through July 19, 2020, the committee had published for public comment a body of instructions previously adopted by the committee. Those instructions related to:

- Defense of Habitation / Self / Others (500 series)
- DUI Instructions (1000 series)
- Assault Instructions (1300 series) – review already completed
- Homicide Instructions (1400 series)
- Sexual Offense Instructions (1600 series)
- Miscellaneous Instructions

During the comment period, the committee received more than 30 comments, many of which were very detailed and nuanced. The committee sincerely appreciates the time and effort invested by individuals who provided these comments. As noted in the “New Instructions” and “Revised Instructions” sections above, many of these public comments have already resulted in the committee making revisions to existing MUJI materials. The committee still has significant work left to do in considering these public comments.

In addition to that ongoing public comment review, the committee continues its work on the Driving Under the Influence and Related Traffic instructions. This work was interrupted briefly in 2020 in order for the public comments to be addressed in a timely manner.

During the 2020 general session, the legislature passed SB0238 (“Battered Person Mitigation Amendments”). Since that time, members of the committee have been working on model jury instructions on this topic. That work will continue in 2021.

The committee makes a constant review of developing case law to ensure that jury-instruction-related issues raised in appellate case law are considered and addressed by the committee. Currently, the committee is assessing whether and how instructions might be crafted consistent with the supreme court’s decision in *Pleasant Grove City v. Terry*, 2020 UT 69 (re: impossible verdicts).

### *Upcoming Projects*

Once the current projects are finalized, the committee plans to proceed with crafting instructions for the following areas of law:

Burglary and Robbery Offenses

Homicide Offenses  
Use of Force and Prisoner Offenses  
Wildlife Offenses